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HELPING REVITALIZE AMERICAN COMMUNITIES THROUGH THE BROWNFIELDS PROGRAM

(114–25)

HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

Christopher P. Bertram, Staff Director

Katherine W. Dedrick, Democratic Staff Director

July 20, 2015

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Hearing on "Helping Revitalize American Communities Through the Brownfields Program"

PURPOSE

On Wednesday, July 22, 2015, at 10:00 a.m. in 2167 Rayburn House Office Building, the Subcommittee on Water Resources and Environment will meet to receive testimony on "Helping Revitalize American Communities Through the Brownfields Program." Witnesses will include representatives from the Environmental Protection Agency (EPA), a state brownfields agency, a municipal official, environmental engineering firms, and an environmental consultant.

BACKGROUND

Brownfields are properties where the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Types of brownfields include inactive factories, gas stations, salvage yards, or abandoned warehouses. These sites drive down property values, provide little or no tax revenue, and contribute to community blight. There are estimated to be 450,000 to one million brownfields sites in the United States. Redevelopment of these abandoned sites can promote economic development, revitalize neighborhoods, enable the creation of public parks and open space, or preserve existing properties, including undeveloped green spaces.

Prior to enactment of the Brownfields Revitalization and Environmental Restoration Act of 2001, many potential lenders, investors, and developers were reluctant to become involved with brownfields sites because they feared environmental liability through laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund). This uncertainty over liability protection and standards for cleanup was identified as a hindrance to

the redevelopment of brownfields. Investors too often instead turn to green spaces on the outskirts of cities for new development opportunities. This tends to encourage sprawl.

EPA began to issue some demonstration grants for brownfield assessments in 1995. However, at that time there was no specific authority for a comprehensive brownfields program to encourage the redevelopment of these contaminated sites so that municipalities could realize the economic, environmental, and social benefits of reclaimed land.

BROWNFIELDS REVITALIZATION AND ENVIRONMENTAL RESTORATION ACT OF 2001

In 2001, Congress created specific authority to address brownfields with the Brownfields Revitalization and Environmental Restoration Act of 2001, which is title II of the Small Business Liability Relief and Brownfields Revitalization Act. This became Public Law 107-118 in January 2002. This legislation amended the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) to authorize funding through EPA for brownfields assessment and cleanup grants, provide targeted liability protections, and increase support for state and tribal voluntary cleanup programs. The authorization for brownfield grants under this law expired at the end of fiscal year 2006.

Though its authorization has expired, Congress continues to provide funding for the Brownfields Program. In fiscal year 2014 the Brownfields Programs received $137.7 million, and in fiscal year 2015 it received $127.7 million. The President's fiscal year 2016 request is for $187.5 million. Only about one-third of eligible applicants receive grants. EPA typically receives between 800-900 proposals, and is only able to fund between 200-300.

The Brownfields Revitalization and Environmental Restoration Act provided grant authority totaling $250 million annually. This included $200 million annually for assessment, cleanup, revolving loan funds, research, and job training. Though the authorization has expired, program still receives appropriations and issues grants. Of that amount, $50 million, or 25 percent of appropriated funds if less than the fully authorized level, is set aside for assessment and cleanup of petroleum contaminated sites. Assessment grants are limited to $200,000 per site except in some cases, where due to size or anticipated contamination level, the limit is $350,000. The cleanup grants can be used to capitalize a revolving loan fund or used directly to remediate sites. Each cleanup grant is limited to $1 million.

$50 million of the $250 million previously authorized for each year is for state and tribal response programs. States may use this assistance to establish or enhance their response programs, capitalize existing revolving loan programs, and develop risk-sharing pools, indemnity pools, or insurance mechanisms to provide financing for remediation activities.

The law continues to provide protection from Superfund liability for certain owners of property contaminated by a source on contiguous property and for bona fide prospective purchasers of property which may be contaminated. The Brownfields Revitalization and Environmental Restoration Act clarified Superfund's "innocent landowner" defense against liability for a person who unknowingly purchased contaminated land, provided the person made

"all appropriate inquiry" prior to the transaction. The brownfields law clarifies what constitutes "all appropriate inquiry."

The Brownfields Program has been well received by the EPA, states, communities, investors, and developers. Through fiscal year 2014, for each EPA Brownfields Program dollar expended an average of $17.79 was leveraged. EPA is often just one of several funding sources for brownfields assessment and cleanup. These grants are used in conjunction with funding from state, local, private, and other federal sources to address brownfield sites. As of April 2015, this investment has leveraged $22.6 billion in cleanup and redevelopment dollars. The program has resulted in the assessment of more than 24,000 properties and readied nearly 50,000 acres of land for reuse.

Additionally, the program creates jobs and revenue for municipalities by redeveloping land for a variety of new uses including commercial and residential development, as well as recreation and educational facilities. In fiscal year 2015, the goal of the program is to successfully complete 120 cleanups, 71 of which have been accomplished as of April 2015, and to conduct 1,300 assessments, 811 of which have been accomplished as of April 2015. Given how many remaining brownfield sites there are, further job creation and revenues can be expected in communities all around the country. Since the start of the program nearly 106,000 jobs have been leveraged, with an average starting hourly wage of $14.12. Property owners in areas surrounding brownfields have also enjoyed the benefits of this program, as their property's value increased by 5.1-12.8 percent once the nearby brownfield was assessed and cleaned up. This program also incentivizes success by requiring that the local community where the site is located to provide 20 percent of the funding for the assessment and cleanup.

In 2014, the Environmental Protection Agency announced its grants for fiscal year 2014. A total of $67 million was issued to 43 states and one territory for 264 grants to 171 communities.

ISSUES

Although the Brownfields Program is generally well received, some have suggested that changes be considered along with reauthorization of the funding. These include allowing the grants to be for multiple purposes so that they are not just for assessment or cleanup. Multiple purposes could include assessment, cleanup, and demolition. In addition, the grant limits per site could be raised, although without additional funding even fewer than one-third of eligible recipients could receive funding if grant limits increase. In addition, some have suggested eliminating the 25 percent funding set aside for petroleum site grants, letting them compete with other sites for priority and funding.

Another issue related to the program is the lack of performance measures available to determine the extent to which the program is achieving its goals. While the EPA does report on the cumulative sites addressed, jobs generated, and the cleanup and redevelopment funds leveraged, there has been little reporting on cleanup and redevelopment activities, which is one of the primary objectives of the program. In addition, the EPA has not developed measures to determine how the Brownfields Program has reduced environmental risks, thereby meeting the agency mission to protect human health and the environment.

WITNESSES

Panel I

The Honorable Mathy Stanislaus
Assistant Administrator, Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
Washington, D.C.

Panel II

Ms. Cindy Hafner
Chief Legal Counsel
Ohio Environmental Protection Agency
Columbus, Ohio

The Honorable J. Christian Bollwage
Mayor of the City of Elizabeth
Elizabeth, New Jersey

Ms. Kelley C. Race, PG, LSP
Brownfields Program Manager
TRC

Mr. Paul Gruber
On Behalf of the National Ground Water Association

Ms. Vernice Miller-Travis
Vice Chair, Maryland Commission on Environmental Justice and Sustainable Communities
Member, National Environmental Justice Advisory Council to U.S. EPA

HELPING REVITALIZE AMERICAN COMMUNITIES THROUGH THE BROWNFIELDS PROGRAM

WEDNESDAY, JULY 22, 2015

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

The subcommittee met, pursuant to call, at 10:06 a.m., in room 2167, Rayburn House Office Building, Hon. Bob Gibbs (Chairman of the subcommittee) presiding.

Mr. GIBBS. The Subcommittee on Water Resources and Environment of the full Committee on Transportation and Infrastructure will come to order. I want to thank everybody for attending today. I know there will be Members in and out. There is a lot going on today. I think everybody is trying to finish up a lot of loose ends, cross the t's and dot the i's here before we go back and meet with our constituents in August. Some housekeeping business first. I ask unanimous consent that the hearing record be kept open for 30 days after this hearing in order to accept written testimony for the hearing record. Is there objection? Without objection, so ordered.

I also ask unanimous consent that written testimony submitted on behalf of the following parties be included in this hearing's record: Scott Thompson, the executive director of the Oklahoma Department of Environmental Quality; Clarence Anthony, the CEO and executive director of the National League of Cities; Jonathan Philips, the managing director of Anka Funds; and Congresswoman Janice Hahn from California. Is there objection? Hearing none, without objection, so ordered.

OK. I will open up with my opening remarks. Today, we are here to talk about helping revitalize America's communities through the Brownfields Program. Following the passage of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, also known as Superfund, a new kind of property emerged, brownfields. Brownfields are properties where contamination was suspected but unknown. These sites include inactive factories, gas stations, salvage yards, and many other previously used properties where possible environmental liability and cleanup standards prevented their continued use and redevelopment.

Fear of environmental liability at these sites caused developers to look outside cities to previously undeveloped properties for new opportunities. This left many sites untouched, driving down prop-

erty values, contributing to blight, and providing no tax revenue to cities. Both the States and the EPA [Environmental Protection Agency] began looking for ways to more successfully address the concerns of potential contamination to get these sites back to productive use.

In 1995, the EPA issued demonstration grants to help assess sites to determine what cleanup might be needed. States, cities, and developers also began looking for better ways to address these sites. In 2001, Congress created the specific authority for dealing with brownfields, the Brownfields Revitalization and Environmental Restoration Act of 2001, amended the Superfund law, and authorized funding to the EPA to provide grants for assessment and cleanup, provided targeted liability relief for property owners, and increased Federal support for the State and tribal programs that were already underway.

The authorization for brownfield grants under the Brownfields Revitalization and Environmental Restoration Act of 2001 expired at the end of fiscal year 2006, though Congress has continued to appropriate funds for the Brownfields Program. To say this program has been a success is understating its achievements. As of June last year, the EPA and the State and tribal programs had assessed more than 21,000 properties, completed over 99,450 cleanups, and made more than 900,000 acres ready for reuse. On average, $17.79 was leveraged for every EPA dollar spent in the Brownfields Program. And nearly 106,000 jobs have been leveraged since the start of the program. The benefits of having these sites redeveloped include increased property values of between 5 percent and nearly 13 percent, and measurable environmental benefits, such as fewer vehicle miles traveled and decreased stormwater run off.

To quote a line from our upcoming witness from the Ohio EPA, Cindy Hafner, Ohio has been "blessed with a rich industrial history, which resulted in a very large number of brownfields that no one wanted to use." I know Ohio is not alone in its appreciation for this important program. The Brownfields Program has been a successful partnership between the EPA—I want to stress that, partnership—between the EPA, States, communities, investors, and developers. Because it applies to so many sites and generates such a high return in investment, it is an incredibly popular program throughout the country. But like many other good programs, there may be ways to make it more effective. And I think this is a good time to look at this, since the authorization expired in 2007, it is a good time to see what is happening, see what adjustments might be needed, and how we can make the programs better, and be more successful.

Today, we will hear from the Honorable Mathy Stanislaus, the Assistant Administrator for the Office of Solid Waste and Emergency Response at the U.S. EPA. Our second panel, we have Ms. Cindy Hafner, the chief legal counsel for the Ohio EPA; the Honorable Christian Bollwage, mayor of Elizabeth, New Jersey; Ms. Kelley Race, Mr. Paul Gruber, and Ms. Vernice Miller-Travis. I want to thank the witnesses for taking the time out of their schedules to be here today. I now recognize Ranking Member Napolitano for any remarks she may have.

Mrs. NAPOLITANO. Thank you so very much, Chairman Gibbs, for holding today's hearing on the status of the EPA's program. Welcome to our witnesses again. The EPA's brownfields was conceived and initiated as a pilot program, as was indicated by my colleague, during the Clinton administration and the fully fledged program was enacted during the Bush administration. It has proven to be a critical community development tool that transforms some, not all, underutilized and potentially contaminated sites into productive and useful environments. The term "brownfield" refers to abandoned and underutilized properties where, with expansion or redevelopment, it is hampered by either real or perceived environmental contamination. They are not Superfund sites, but are properties that are former gas stations, dry cleaning establishments, warehouses, industrial properties and other things as such where the potential stigma of contamination was enough to hamper redevelopment. As one can imagine, these types of sites are located in almost every community in our country. The brownfield signed in 2002 represented a needed and unique solution to the challenges facing redevelopment on these sites into productive spaces with grants as seed money for assessment or cleanup of brownfields, and eases legitimate liability concerns of potential developers.

Benefits are twofold: First, the redevelopment of these brownfield sites discourages development of greenfields, which would exacerbate the problem of suburban sprawl. Second, creating new uses for these otherwise underutilized sites reinvigorates the tax base and generates job growth with sustainable economic development in the areas surrounding these sites. The Brownfields Program has been very successful because it facilitated the redevelopment of approximately 49,000 acres of land, and created nearly 106,000 jobs. And EPA estimates that it has created 7.3 jobs for every $100,000 invested, leveraging over $17 of investment for every Federal dollar invested.

It is a highly effective and productive program. And it is not surprising that the competition for brownfield grants is highly competitive. These results beg the question then: Why are we not investing more in redevelopment of brownfield spaces? Further, if this is a success rate of an underfunded program, imagine the potential economic impact and potential for job creation that would come from fully funding this program. EPA estimates that over the past 5 years, as my colleague has pointed out, funding deficiencies have caused 1,767 viable programs to go unfunded.

This is a backlog of $693.6 million worth of projects. These sites are not only sitting idle and unproductive, but are missing out on the return of investment that these sites could realize if these proposals had received the funding. And it is estimated the grants would have leveraged approximately 50,600 jobs and over $12 billion in public and private financing.

In my world, I call that a missed opportunity. There is an area where the Brownfields Program has yet to achieve its goal. It is my impression the program was originally created with two goals in mind. First, spurring economic redevelopment of formerly underutilized and potentially contaminated sites; and, secondly, targeted redevelopment of sites located in economically distressed communities in particular, which begs the question, are we then not look-

ing at areas where we have more need? In other words, checking whether or not they really are in need of this economic development.

While the program's success speaks for itself on the first mission, I am interested to hear whether or not our witnesses feel as though gains are being made on the second mission. Put another way, are we doing enough to encourage the redevelopment of brownfield sites located in communities throughout the country where the market forces may not be as strong? Are there ways to make sure the successes of the Brownfields Program can be amplified for urban neighborhoods away from city centers or rural or smaller communities where redevelopment may need just a little more push to get started.

And I can tell you, Chairman Gibbs, and everybody that might be interested, is that there was an EDI and a BEDI [HUD Economic Development Initiative and Brownfield Economic Development Initiative grants] in my background in Santa Fe Springs which created 3,000 jobs, 3,000 jobs with the EDI and the BEDI. So does it work? Yes, it works. And I think we need to take a longer look in how we can spur more funding into this program to make it more available where it is most needed. Again, welcome to our witnesses. And thank you, Chairman Gibbs, for holding this hearing. And I yield back my time.

Mr. GIBBS. Thank you. At this time, I want to recognize the chairman of the full Committee on Transportation and Infrastructure, the gentleman from Pennsylvania, Chairman Shuster.

Mr. SHUSTER. Thank you, Chairman Gibbs. I appreciate you holding this hearing. I think most people who have been around here long know that there aren't many times that I give great compliments to the EPA. But this is one of those programs that has been very beneficial. And I think the EPA has done a good job. But we always can do better. When we are dealing with these brownfield sites, I know there are hundreds of thousands around the country. My home State of Pennsylvania, there are thousands and thousands. And we have seen great examples of how you can take those brownfield sites and turn them into valuable productive pieces of land. As we know, the property values, tax revenues, when those are able to be brought back online, things improve in the area in general. So we want to continue to view these things and work with the EPA. It makes good economic and environmental sense to move forward with these.

And in 2001, we passed legislation, the Small Business Liability Relief and Brownfields Revitalization Act. That was really the starting point for many of these brownfields to be turned back into, as I said, productive pieces of land. And, again, we appreciate what the EPA has done. I am not going to be here for the second panel of witnesses. But Kelley Race spends a lot of time working brownfield issues in Pennsylvania. We appreciate you being here with your expertise in helping us to move forward. So I thank you and all of our witnesses for being here today. I appreciate that. And with that, I yield back.

Mr. GIBBS. I thank the chairman. At this time, I want to welcome our first panel, our witness, the Honorable Mathy Stanislaus,

Assistant Administrator of the Office of Solid Waste and Emergency Response at the U.S. EPA. Welcome. And the floor is yours.

TESTIMONY OF HON. MATHY STANISLAUS, ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. STANISLAUS. Thank you. Good morning, Chairman Gibbs, Ranking Member Napolitano, and members of the subcommittee. I am Mathy Stanislaus, Assistant Administrator of the Office of Solid Waste and Emergency Response. Again, thank you for the opportunity to be here today. And really, thank you for your recognition of the value and benefit of the program. And we welcome this exchange. The brownfield sites are the heart of American's downtowns and economic centers. And reclaiming these vacant, underutilized properties are a real core to EPA's community economic revitalization efforts. Our Brownfields Program has been a catalyst for redevelopment, revitalization, and really hinges on the success of local partners working together to implement the vision of local communities. It achieves public health protection by cleaning up these properties. It achieves economic development and community revitalization. And it addresses social issues like unemployment.

EPA's Brownfields Program provides direct funding to communities, States, tribes, and not-for-profits for brownfield assessment, cleanup, revolving loans, technical assistance, areawide planning, and environmental job training. The Brownfields Program is premised on partnerships between the public and private sector. The EPA's critical early resources provide certainty to leverage funding from other Government agencies and the private sector to achieve economic, environmental, and social outcomes.

On average, as recognized earlier, for every dollar EPA invests in a community, it leverages about $18 of public and private investment. We think, as a model, that works. The Brownfields Program is also a key component of the administration's effort to advance manufacturing in the United States through the investing and manufacturing community partnership. It is also a key aspect of the administration's work on advancing sustainable communities in partnership with HUD [U.S. Department of Housing and Urban Development] and DOT [U.S. Department of Transportation]. As recognized earlier, the Brownfields Program grantees for fiscal year 2014 are projected to assess more than 1,300 properties, and clean up more than 120 properties, leverage about $1.1 billion in cleanup and redevelopment, and create at least 5,000 jobs in communities across the country.

Additionally, EPA's research has shown that redeveloping a brownfield site, rather than a greenfield site, has significant, environmental, and public health benefits, including reducing vehicle miles travel, reducing emissions by 32 to 57 percent, and reducing stormwater runoff estimated by 47 to 62 percent. It also reduces the infrastructure investment necessary to promote economic revitalization. Over many years, the Brownfields Program implementation has taught us that it is a real model for successful projects. And it is a real model for maximizing limited Federal dollars to really achieve local outcomes. And that occurs, again, through pub-

lic-private partnerships and leveraging the limited Federal dollars to State, local, and private investment.

The job training program is highly successful. We have a 70-percent hiring rate. It is really targeted in areas of high unemployment. And it is a multiskill, multicertificate program. Over the years, we have heard from stakeholders lots of things about the Brownfields Program, how it can be improved. One of the issues that we have heard is whether we should consider increasing the size of the cleanup grants. We actually think that it could have the unintended impact of actually reducing the total number of communities that receive grants, and actually, potentially get in the way of this good model of leveraging EPA dollars with local and private dollars.

We have also heard some focus on particular kinds of end uses. And we actually think that it should be the community to decide the end use that works for them and for us to administer a nationally competitive process that looks at the key factors of additional resources, strong local partners, and a real plan to really implement that rather than the Federal Government determining what uses are best, be it waterfront, manufacturing, or housing kind of issues. The Brownfields Program also provides on a noncompetitive basis tremendous resources for State and tribal programs to build and administer a cleanup program. As you all know, the cleanup side of the Brownfields Program is largely administered by States and tribes, as really critical resources to States to administer that program.

Now, a critical aspect of what EPA provides is, as technical assistance, is really critical, particularly for communities with limited capacity. And we believe that has been really successful in the real spread of communities receiving grants. So in the last grant cycle, 56 percent of communities under 100,000 population receive our grants. And 24 percent of communities under 10,000 receive our grants. With that, I will close. I am out of time. I look forward to your questions.

Mr. GIBBS. Thank you. I will lead off here. First of all, I like your comment about the communities deciding what the end use is going to be. That is better, I always believe they know what is best in their local communities. So I am glad to see the U.S. EPA recognizes that. I am curious, approximately how many applications each year do you get? And how do you make the decisions which sites get it? And has it become more competitive? Is it a competitive process?

Mr. STANISLAUS. Yes, I can get you the specific numbers over the years. But in terms of how many we actually award, about a third of the applicants that we award every year. And how we make determinations, it is a national competition based on criteria that we establish the basic elements of a project, how far in advance the project is, what kind of leveraging other resources. Because ultimately we want to make sure that these projects are successful.

Mr. GIBBS. And, I think, to go along with that, if you can get us the information later on. But how many brownfield sites since the program has been in use have been cleaned up and put in new use? And of that, how many was the U.S. EPA involved in versus the States doing it all, you know, how that works?

Mr. STANISLAUS. Sure. We can provide information regarding where EPA has invested in projects, as well as through States and State resources where States have invested in cleanups.

Mr. GIBBS. I am curious about administrative costs. This program, how does it compare to other programs within the EPA for administrative costs?

Mr. STANISLAUS. The comparison to other programs, I don't have that in front of me. Again, I can get that to you.

Mr. GIBBS. OK. Do you expect it is higher or lower?

Mr. STANISLAUS. I think it is a model program. I think it is a lean program.

Mr. GIBBS. Yesterday, the EPA's inspector general released findings that some sites which had been cleared by the EPA, regions 4 and 6, for redevelopment may still contain levels of toxic substances above public health standards. Can you please explain how your office plans to handle this report?

Mr. STANISLAUS. Yes. I need to take a look at the details of that report. But cleanups, in any redevelopment of a site, in some cases, may require a complete cleanup of contaminants. Some places leave the contaminants in place with effective engineering and institutional controls. A lot of that is administered through the State programs. So we will look at the details of that report. We completely are in support of, we want to make sure these cleanups are protected, while also advancing redevelopment.

Mr. GIBBS. Personally, I didn't see the report, but I know that the two regions, that they cleared it for redevelopment. And, obviously, according to the IG [inspector general] anyway, there are toxic substances still there. So that is something we really need to address to make sure that our processes and our end processes are adequate so we don't have problems down the road, especially for a new owner.

Mr. STANISLAUS. There are many successful projects where contaminants continue to be in the ground, but it is still protective. And if you have effective engineering mechanisms, effective legal mechanisms, it can still be protective while the contaminants are left in place.

Mr. GIBBS. OK. One thing I know that was in the original authorization is a 25-percent set-aside for petroleum, i.e., abandoned gas tanks. And I think through this, you know, over the years, it used to be, if you were in an urban area, it seemed like almost every intersection, on three of the four corners there would be a gas station. Now, that is not the case anymore. So we have gone through a lot of cleanup. The 25-percent set-aside, is that still needed, or is that causing problems for you when you only have so many dollars to work with? But if you have to allocate 25 percent to an earmark, essentially, I am assuming we have made a lot of progress, the program is working, that should be a declining set-aside percentage. What are your thoughts on that?

Mr. STANISLAUS. Actually, we have suggested elimination of that provision. Because I think the administration of that provision really requires upfront dividing——

Mr. GIBBS. Wait. Did you say you suggested eliminating the 25 percent?

Mr. STANISLAUS. That provision, that 25-percent provision. Because what that does is it, in a sense, requires us to set aside 25 percent. And what we prefer is a consistent national competition among all sites, and all sites should compete in the same way, whether it is petroleum or hazardous substances and all the other elements.

Mr. GIBBS. I agree. The reason we are having this hearing today is see what we need to do to make this program better. Briefly here, do you have any other ideas or suggestions where you see, if we are looking at a reauthorization bill, that we should be——

Mr. STANISLAUS. Well, a couple—administrative costs have clearly been raised. Particularly by smaller applicants, it continues to be a burden. And the current legal prohibition of administrative costs, I think, has been raised by grantees to us. Extending the not-for-profit eligibility for also assessments. Not-for-profits play a real strong role with local governments, like the housing organizations. And so right now, they are ineligible. Those are the things that immediately come to mind. But we can provide broader technical assistance to you.

Mr. GIBBS. I am out of time. I do have one question I do want to get to before I move on. The small business liability protection, liability protection in general, how do you see that? Has that been working well? Or are there problems we should be addressing with that?

Mr. STANISLAUS. Well, yes, I think the law does provide the acquisition, be it voluntary, involuntary, and the kind of due diligence. I know that looking at the testimony of the National League of Cities, there, potentially, is either a concern about a perception or reality in terms of how do we make sure we protect from liability. We have done a lot of things in this way. For example, we have heard from lessees, particularly, a number of projects rely on lease arrangements, not fee simple arrangements. So we issued a guidance to make clear that a lessee would fall into the same shoes as an owner. But I think there is more, we want to engage more with, be it the National League of Cities or other kind of local mayors and communities on this issue.

Mr. GIBBS. Thank you. Next, to Mrs. Napolitano for any questions you may have.

Mrs. NAPOLITANO. Thank you, sir. Administrator Stanislaus, on the topic of liability, there are some that would claim that local governments are left unprotected by CERCLA's [Comprehensive Environmental Response, Compensation, and Liability Act of 1980] liabilities defenses and exemptions due to how they acquire the site. Even properties acquired through tax delinquency may not be exempt if local government took voluntary steps in a tax delinquency process. However, has EPA taken action to address this over the years, or have you come up with some remedy for this? And if so, what specifically has been taken? What actions has EPA taken to ensure that these procedures, protections, rather, do not have the chilling effect on some of the groups they warn of?

Mr. STANISLAUS. We have taken the liability protections set forth in the brownfield law, and provided for the guidance of that and provide clarity, that a municipality can acquire, either voluntarily or involuntarily, as long as they do certain kinds of due diligence

actions. We also understand that there may be a need for more to provide that certainty. Because none of us want properties to be lying idle, even for the perception of liability. So we welcome further engagement with you all, as well as communities around the country of what more we can do to, one, better communicate how they can protect themselves from liability, but if there is more that we can do.

Mrs. NAPOLITANO. Sir, do you communicate that with either the Conference of Mayors or the Governors associations so that they understand that this is something you have been addressing, and somehow, some of the smaller communities that have no way of being able to further look into the issue may be able to garner information to help themselves?

Mr. STANISLAUS. Absolutely. In fact, in September, I invited all the members to attend, we are having a brownfields conference. And one of the things that a number of communities around the country are going to explain how they manage liability, how they have been able to underwrite projects——

Mrs. NAPOLITANO. Is this going to be live-streamed?

Mr. STANISLAUS. I don't know. I will check on that.

Mrs. NAPOLITANO. We need to be able to get all this information. See, everybody thinks that local governments know what is happening here or what the Agency's rules may have now encompassed into helping them. But if we don't get that information to them, we are not able then to get enough information from them how we can help develop the brownfields into productive land.

Mr. STANISLAUS. OK.

Mrs. NAPOLITANO. I look forward to working with you on that, sir.

Mr. STANISLAUS. Sure.

Mrs. NAPOLITANO. Then, one witness who will be testifying in our second panel indicates we must refocus our efforts in the hope of the successful brownfields redevelopment, what it does to broad-based economic opportunity and community revitalization, especially those in the bottom of our economic strata, in other words, our poorer areas. So what is EPA doing to ensure that these underserved communities receive their fair share? Not only that if they are not successful in the first round, and they should be able to reapply, do you tell them how to better their ability to be successful in the second round?

Mr. STANISLAUS. Sure. We put in place a broad technical assistance program for that reason. Because we have heard from smaller communities, distressed communities, the issue of how to best put together an application. So we do direct outreach. But we are prevented——

Mrs. NAPOLITANO. How direct, sir? How direct? Because, again, I go back to being able to ensure that they have the ability to know where to find that information, whether it is through some of their organizations, the county governments, et cetera. That is the issue I am trying to get across is getting more openness to this process.

Mr. STANISLAUS. Everything from engaging, be it the National League of Cities or the Conference of Mayors and local community groups, but we also, through our technical assistance, provide and conduct workshops around the country. And we also, in some of our

contract vehicles, enable direct assistance to actually prepare applications. We can provide that direct assistance by providing grants to others to help them. So we think that is going a long way of dealing with this issue. But we hear from a lot of small towns that from budget constraints, that they may not have staff on board to really follow these opportunities. So we completely agree that we need to really invest in that technical assistance for smaller communities.

Mrs. NAPOLITANO. Again, sir, I would love to be able to ensure that we able to put this in the hands of everybody that would want to patch in, if you will, to any of the online discussion. Then the other area was, and I think you just touched on that, that there are areas where DOT helps out in the Brownfields Program and some other agencies. Is there a way to be able to get that information to us and to—well, we can disseminate to our areas, but we need to know who the other partners are besides the local government, your county government, and your private parties.

Mr. STANISLAUS. Yes. Sure. I will get that to you. I will give you one example of working with DOT. We have something called the Areawide Planning Program, which really was a tool designed for communities that have broad economic distress, to be able to conduct infrastructure studies, market studies, and planning studies. Based on that, DOT has built within its program some preferential points for communities who have done that local planning effort. That is one of the areas that we are collaborating with DOT.

Mrs. NAPOLITANO. Great. That would be something I would love to see. And I hope that you can get a copy to this subcommittee. Thank you, sir. I yield back.

Mr. GIBBS. Mr. Rokita.

Mr. ROKITA. I thank the chair. Good morning, Mr. Stanislaus. I appreciate your presentation. I mostly now represent a suburban and rural district with some cities in it. This is really my first exposure to brownfields, not only since being on the committee, but since being in Congress. I didn't have much experience when I was secretary of state with brownfields. So bear with me. But it seems like the myth is that brownfields are an urban situation. Are there situations where brownfields exist in rural areas or suburban areas? What might that look like for me?

Mr. STANISLAUS. Absolutely. It is one of the reasons, I am trying to remember the statistics, about 56 percent of communities less than 100,000, and 24 percent less than 10,000, so in smaller rural communities, it could be the former ag processing facility, it could be a former petroleum-related facility. In some cases, it could be that former, one big manufacturing facility that that community was built around. So it kind of runs the gamut of the prior uses.

Mr. ROKITA. OK. Got it. Thank you. Regarding non-owners that might be occupying the land that was a brownfield or is a brownfield: Is there a Superfund liability of some sort, and does that liability extend to tenants or other non-owners? How does that work? How do we ensure that the non-owners are secured or protected from liability?

Mr. STANISLAUS. If you are asking in a scenario of an existing contaminated site and a lessee wanted to redevelop the site and not have liability?

Mr. ROKITA. Yes.

Mr. STANISLAUS. We have actually issued guidelines to make clear that the lessee will be protected from liability as long as they follow the same steps as an owner would in terms of due diligence.

Mr. ROKITA. OK. Then the flip side of that question: How do you protect against exposure risk to tenants?

Mr. STANISLAUS. From the contaminants themselves?

Mr. ROKITA. Yes.

Mr. STANISLAUS. Well, yes, the program is built on, EPA administers the grant program. But the cleanup side is almost exclusively administered by State cleanup programs which are very effective.

Mr. ROKITA. OK. Now, if I understand this right, we have brownfield assessments. Your data suggests that the assessments of brownfields find little or no contamination when the assessment is done. Do you agree or disagree with that?

Mr. STANISLAUS. No, I think the universe, a certain segment, as was noted earlier, of brownfields are abandoned, underutilized, either because there is real contamination or a perception of contamination, because it could have a former use. So when you go into a site, you may discover that actually you don't have contaminants on the site. You can move forward on redevelopment.

Mr. ROKITA. Right.

Mr. STANISLAUS. In other cases, you identify, yes, there is some contamination. And then you develop——

Mr. ROKITA. What is the percentage breakdown?

Mr. STANISLAUS. I can get that to you. It may be in my testimony. But I will get that to you. I don't have that available.

Mr. ROKITA. Let's assume it is not in your testimony. If it is not, can you get it to me in 2 weeks?

Mr. STANISLAUS. Sure. No problem.

Mr. ROKITA. Is that fair enough?

Mr. STANISLAUS. Yes.

Mr. ROKITA. Two weeks?

Mr. STANISLAUS. Yes. No problem.

Mr. ROKITA. OK. So should we be funding the assessment side of things, assuming a good number of these assessments find no contaminations? I am looking for certainty and increasing property values. If we are finding that a lot of these assessments, and I don't know the percentage but we are going to find out, find no contamination, maybe we need to change the definition of brownfield. Is the brownfield definition too strict?

Mr. STANISLAUS. Really, I view the assessment as a key component of a financial transaction. What assessments would do, whether you find contamination or you don't, really enables the financial underwriting of a project.

Mr. ROKITA. Right.

Mr. STANISLAUS. So having done underwriting before I got here, you know, does a site have contamination, then you can immediately go to underwriting. If it has contamination, how do you wall off and then estimate that cleanup of contamination. And then you can build it into project financing. So it is a real critical component of addressing uncertainty to enable projects to move forward.

Mr. ROKITA. If that is the case, regardless of what percentage of assessments we find with no contamination, should we front-load?

I am not saying new funding or new money, but should we take some of your funding and use more of it for assessments?

Mr. STANISLAUS. Well, you know, over the years, in working with stakeholders, we think we have struck a balance between the right proportion of assessments and the cleanup grants. It is kind of driven by how many applicants we get for the assessment. It is kind of driven by need, given our fixed resources and how we break it up between assessment and cleanup.

Mr. ROKITA. Great. I see I am out of time, Chairman. But I just want to say for the record that you, indeed, put it in your testimony, and 20 percent of the properties assessed show little or no contamination.

Mr. STANISLAUS. That is right.

Mr. ROKITA. Thank you, Chairman.

Mr. GIBBS. Ms. Esty.

Ms. ESTY. Thank you, Mr. Chairman, for holding today's important hearing. Thank you, Ranking Member Napolitano. And thank you, Administrator Stanislaus, for joining us again today. It is great to see you. This is a really important issue. I represent central and northwest Connecticut, which is full of brownfield sites, a few Superfund, but, frankly, a lot of brownfield sites. So this is of critical importance to us to both preserve open spaces, which I am glad you mentioned, as well as ensuring we get these properties back into productive play for our communities.

It is an important part of revitalizing. So I want to give you two examples of how importance this is. We have—Naugatuck Valley Community College received a grant for one of the training programs. It had tremendous success, have trained a lot of young, and not as young, people to enter into the workforce and are helping to clean up sites. And this is a vitally important part of the program, and I am glad you flagged that.

My city of Meriden just recently won a $200,000 award, again, to do assessment. And it is going to be part of an important downtown revitalization. And I want to also salute you for mentioning the critical importance of this to the administration's and, frankly, the country's commitment to manufacturing. Many of our communities in the Northeast, as well as the Midwest, as well as Ohio, Indiana, are full of former brownfield sites. And it is vitally important if we are going to reinvigorate the manufacturing sector to take seriously our commitment to these communities that helped drive the last century's economic development.

We need to look, I think, at the nonprofit sector. You mentioned that in passing. And I would like to explore that a little bit more with you. For example, in my largest city of Waterbury, there is a nonprofit called Brass City Harvest. They want to address the nutritional needs of the community, help put people to work, and, frankly, help teach STEM [science, technology, engineering, and mathematics] education to young people. It is a wonderful program. But as a nonprofit, they are not eligible for some of these programs. Can you talk a little bit about what the Agency is looking at in this, how important they think that might be? Thank you.

Mr. STANISLAUS. We have heard from numerous not-for-profits, those that would like to get, particularly this is applicable to assessment grants, they are currently ineligible. So everything from

housing developers that are the extension of local government to construct affordable housing, to various kinds of manufacturing, not-for-profits locally, they would like these assessment grants to really, again, extend the arm of local government. I think it was an inadvertent division between cleanup and assessment. So you have not-for-profits eligible for cleanup, but they don't have the ability to get the upfront assessment resources to identify sites, whether they are or are not contaminated.

Ms. ESTY. And I can tell you our nonprofits have a great deal of trouble coming up with the funds as it is. So to come up with the funds for an assessment to even determine whether this is feasible is a real barrier. It may not seem like a lot of money. But to them it is. Is this an area where you believe Congress, congressional action would facilitate or, frankly, be necessary in order for the Agency to include nonprofits?

Mr. STANISLAUS. Yes. Again, as we have heard from the stakeholders, because the statute prohibits not-for-profits from being eligible, it would require congressional action.

Ms. ESTY. Next, I wanted to follow up on your remarks a little bit. We know there is a Senate proposal out there that cordons off some areas of funding and sets them aside. Could you talk a little bit more about whether you think that is a good route, are there unintended consequences that could come from an understandable and laudable attempt to ensure that certain areas get more attention?

Mr. STANISLAUS. Yes. Again, I think that it should be up to the community at the right time to determine end uses. A lot of times, viable end uses really come in the middle of that process. Once you have done assessment, you can quantify the cost of cleanup, you can figure out what is financially viable at that site, among a suite of uses. So if we divide the pot upfront, essentially you are putting the Federal Government in the position of judging an end use, which we don't believe is the right place for the Federal Government.

Rather, we would rather have—let's just look at is the applicant competent? Have they demonstrated competency? Have they demonstrated partnership? Additional leveraging resources, will the end, ultimate shared end result of making a project happen, whatever those end uses may be that the community selects.

Ms. ESTY. And if I may, it ties into, you mentioned in your written testimony about multipurpose grants. Could you tell us a little bit more about what you discovered on that?

Mr. STANISLAUS. Sure. This really emerged from comments that we received from communities, the opportunities to possibly look at both assessment and cleanup grants together. We think that we want to continue to pursue that. We have authority, existing authority to do that. We are still looking at what is the best fit of mixing a number of uses in one grant. I think what we are trying to do is balance flexibility for the applicant versus if you have money that is laid out for extended periods of time, then it may not be the best use of money.

So we are trying to figure out giving flexibility for multipurposes, but making sure it is structured in a way that is accountable as well.

Ms. ESTY. Thank you. And I see my time has expired. Thank you very much.

Mr. GIBBS. Mr. Katko.

Mr. KATKO. Thank you very much. I am from Syracuse, New York. That is my district. And we have had a tremendous amount of experience with brownfields and Superfund sites. As a matter of fact, Onondaga Lake, which is adjacent to the city of Syracuse, is, perhaps, one of the largest Superfund sites in the country. And it is reprehensible what previous industry did to the lake. But now, we are enjoying a renaissance of that lake that is truly amazing. So I really believe in environmental revitalization with the help of Government when it is appropriate.

Along the lake, in addition to what is going on with the lake itself, the property along the eastern shore of the lake has enjoyed some renaissance as well. One site where there was a very large metal scrapyard with all kinds of contaminants has now become one of the largest malls in the United States, a very successful mall that employs 4,000 people. So the program does work when properly applied. But that being said, I want to throw a little fact pattern at you so I can properly understand your portion of the brownfield revitalization.

There is a company that just up and pulled out of Syracuse, Roth Steel, that operated on the shores of Onondaga Lake for over 80 years, I believe. And they went bankrupt. They are gone. And they left behind a scrapyard that probably has a stunningly high amount of PCB [polychlorinated biphenyl] contaminants in the soils. Now, this property is on the shore of Onondaga Lake, the shore of a Superfund site. And now local authorities are now trying to figure out what the heck to do with this place.

One of the problems is the unbelievable contamination. A good citizen and a good member of our community bought the property not knowing how badly it was contaminated and promptly had to get rid of it because he realized he couldn't do anything with it. And so another steel manufacturer, a steel company, scrapyard bought it. But I am not sure that is going to work. There is some contemplation about taking the property by the county.

So with that fact pattern, that being adjacent to a brownfield site, on the shores of it, there is some concern of possible leakage into the lake. And after all the hundreds of millions of dollars that have been spent by industry, and by the Government to clean up that lake and to fix it, we now have this problem. The company is gone. So I don't know what liability there is going to be to that company. It is bankrupt. But what can we do with your program for this site, assuming that the county takes it over? And maybe look at both sides, whether the county takes it over and whether it doesn't, whether somebody else takes it over. What is available to make this site, and stop it from leaking into the lake, and poisoning what is becoming a great place. And I will note today, I just looked online, a bunch of local leaders, to prove the lake is good, all went swimming in it today. We don't want to have to have them go swimming in PCBs. So what can we do?

Mr. STANISLAUS. I would break my answer to a short-term addressing the risk that you identified and a long-term cleanup and redevelopment. So separate from the Brownfields Program, and you

have the Superfund program, and so we have resources, if there is imminent risk, we can conduct what is called a removal action to deal with imminent risk. So if there is ongoing migration of PCBs, give me the information and we will work with our regional office on that.

Mr. KATKO. It is Roth Steel on Hiawatha Boulevard in Syracuse.

Mr. STANISLAUS. OK. So assuming that we have dealt with the imminent risk issue, then the longer term strategy is to really figure out what is the extent of contamination, how can we quantify the cleanup, and what are the redevelopment uses. That is going to drive what cleanups and, obviously, the redevelopment. So we have site assessment grants that the county or the municipality can access. We also have in certain—it is really designed for individual sites, mostly for communities that have struggled to participate in the grant competition, we have a contract base assistance for going in and actually conducting assessments on sites. So we have a set of tools that are potentially available.

Mr. KATKO. How quickly, if you believe there is an imminent risk, how quickly can we get that moving?

Mr. STANISLAUS. Well, I mean, I will connect with my staff and connect with the regional office. And if I can get a point of contact, we need to figure out is there an imminent risk and then the action necessary. But we could do that in a relatively short time period. I am not sure exactly that time period. But we can initiate the examination of that relatively soon.

Mr. KATKO. Great. I will make sure my office contacts yours. And we can get that moving. I appreciate it. These are the types of things that communities like Syracuse, New York, that are recovering from the mass exodus of manufacturing over the last 20 years, revitalizing those neighborhoods and revitalizing those areas. I agree with my colleague, Ms. Esty, we absolutely have to get manufacturing back in New York State and the Northeast. And I believe we can do that. But in the meantime, we have got to take care of the sites that some manufacturers and businesses left a mess. Whether there is liability to those companies on road I think is a separate issue. We have got to get these places cleaned up. And we can't ruin what is becoming a gem for central New York and Onondaga Lake. So thank you very much.

Mr. STANISLAUS. Thank you.

Mr. GIBBS. Mr. Huffman.

Mr. HUFFMAN. Thank you, Mr. Chairman. And welcome, thanks for your testimony, Mr. Stanislaus. I have seen the value of this Brownfields Program in my district in the North Coast of California. Among many examples, I have an Indian tribe in a very rural part of the far northern end of my district, the Elk Valley Rancheria, they have used Brownfields Program funding to redevelop a couple of abandoned motels that were highly contaminated with asbestos. And they are turning those into really important economic development projects. So thank you for that. An even better example is in another rural part of my district, Humboldt County, where at the height of the timber industry, there was a pulp mill on a spit of land called Samoa, with the pristine Pacific Ocean on one side, and the pristine Humboldt Bay on the other side. It was abandoned. The Chinese company that came to own it at one

point basically walked away from it, leaving all sorts of toxic chemicals in place and leaking tanks.

And we discovered that millions of gallons of highly toxic pulping liquors were leaking right as we went into the Government shutdown a couple of years ago. And I really want to thank your agency, because that would seem like the worst possible time for a Member of Congress to have a crisis like that, right in the tsunami zone, could have been one of the worst toxic incidents in the country if something had gone wrong. And EPA leapt into action with other local government partners and we got that site cleaned up, despite the shutdown that definitely complicated that effort. So you are doing terrific work. And I am very grateful to your program and your agency.

I wanted to ask you about a problem, a very vexing problem in my district and throughout the West and that is trespass marijuana grows. These are illegal activities that are happening more and more on public lands. I have seen these sites in wilderness areas. And the level of pollution and environmental destruction is quite significant with rodenticides and highly concentrated fertilizers and just about every terrible practice you can imagine in very sensitive, pristine areas.

We can interdict and shut down these sites. But we don't have funding in most cases to actually clean them up. And so I wanted to ask you if you had given any thought about that, about how folks who are affected by this on public lands throughout the West may be able to work with EPA and the Superfund program. Congress did definitely highlight controlled substances as a source of pollution for this program. But I wanted to hear your thoughts. And also, whether there are steps that communities like the ones I represent should be taking to better access those funds?

Mr. STANISLAUS. I have not thought about this marijuana problem. There have been other situations where drug production has resulted in contamination. In some cases, we have used the Superfund program to go in and conduct cleanup. In other cases, we provided resources to communities to conduct site assessment or cleanup. And we could follow up. We have also worked with law enforcement where there is some opportunity in the proceeds from an enforcement action that they may take to bring that back into local communities. But we can talk more.

Mr. HUFFMAN. I would love to work with you more on that. And then my second, and probably last question involves the California drought. And you know that we are in the fourth year of a critical drought. We have entire communities in southern California that have lost wells and lost drinking water supplies because of contamination from perchlorate or, in some cases, nitrates and other pollutants. The Superfund program has provided some benefits, the Brownfields Program as well.

But I often hear from stakeholders that cleaning up contaminated aquifers, getting them back into the drinking water supply is sometimes an afterthought. And with this critical drought forcing us to value every possible source of potable water that could be brought online and be part of the solution to get us through it, I wonder if you have any thoughts on how your program might be

better leveraged to stretch our drinking water supplies in places like that?

Mr. STANISLAUS. It is really more the Superfund program rather than the Brownfields Program. And we fundamentally believe that we should protect and restore drinking water sources. I don't think at all that it is an afterthought. Although cleaning up aquifers are very tough and takes a longer period of time, it is just the technical nature of cleaning up groundwater aquifers. On the brownfield side, there are opportunities to prevent contamination of groundwater. One of the things we have done is try to link up things like green infrastructure, things like preventative measures to prevent further contamination as part of the footprint of a new project.

Mr. HUFFMAN. All right. Thank you. Thank you, Mr. Chairman.

Mr. GIBBS. Mr. Nolan.

Mr. NOLAN. Thank you, Mr. Chairman. And thank you, Mr. Stanislaus, for being here and all the important good work that you do. As some of the other members have indicated, we often see, you know, the benefits of a particular program at a specific level, hopefully, within our own districts. And then we try to draw some larger conclusions from that. We have had several projects in Duluth, Minnesota, which is in my district, Canal Park Brewing site, and the Clyde Iron Works, both of which were funded by the Brownfields Program. But they ended up stimulating and leveraging State investment, city investment, private, for-profit investment, nonprofit investment, creating businesses and restaurants and retail and recreational facilities, hockey rinks, which are a big deal up in our area.

My grandkids happen to play frequently at the Clyde Iron Works Hockey Arena. And they really create a lot of good jobs, a lot of good business activities, help to revitalize important neighborhoods. My point in bringing all that up is that clearly, in our case, the brownfield investments by the Federal Government have stimulated a tremendous amount of additional investment that has been so important for the development of those communities and the businesses and the jobs that flow from that.

My question is twofold. One is, have you attempted to quantify the amount of investment that flows from a brownfield investment, the investment made by the other entities that I just cited? And if so, you know, what is that amount? And then, secondly, how many worthy brownfield projects have you had to look at and reject for lack of funding? Those would be my two questions. Thank you.

Mr. STANISLAUS. Sure. So of the applicants, over the past 5 years, a little over 1,700 viable projects that we scored highly but were not selected because of limited funding. Again, these are highly qualified projects that if we had funding we think would result in a lot of the outcomes that you are talking about.

In terms of quantifying the additional investment, our 1-for-18 ratio, for every $1 we invest, $18 is other investment, is information that we have collected from the applicants based on reporting to us, based on the various kinds of mix of funding. We also have done studies about real estate values adjacent to these properties. And it was cited earlier, we see real estate values increasing, I think, in the range of about 10 percent or so. We are also conducting a study of local tax revenue from the site and associated

sites. So there is a stimulative effect as you noted. It is not just the project itself, but the stimulative effect of that anchor project which then attracts other kinds of investments. We are in the midst of quantifying that as well.

Mr. NOLAN. OK. Thank you. That is important. And it continues to have an even ongoing effect. Once you clean up a site and you stimulate all that investment around it, why, it remains forever an inducement to other business activities to gravitate toward that site. So I applaud you for the good job you are doing administering that program. And I look forward to working with you and my colleagues here to see what we can do to expand the tremendous benefits that flow from this program, both in terms of cleaning up our environment and the messes we have made in the past, and then moving us forward with good jobs, good communities, good neighborhoods and community development activities. Thank you very much.

Mr. STANISLAUS. Thank you.

Mr. GIBBS. That concludes all our questions. I do have a request. It is a simple request really. I know my ranking member is going to ask some more questions in writing to you, and any response, give back to the full committee, so we will keep it so everybody knows what is going on and gets what they requested.

I appreciate that and I appreciate you coming in today, and you are excused, and we will bring up panel number two.

While panel number two is coming up, I do want to recognize a young gentleman who is going to be leaving the committee. Tracy Zea, hold your hand up. He's been here, in his tenure he has worked with the Subcommittee on Water Resources and Environment. He's been a great asset to the subcommittee and the full committee. I personally want to wish him well in new endeavors.

Am I allowed to say who it is? Waterways Council. I am sure we will have a lot of interaction in the future and input, but I wish him well in his new endeavors and new challenges as he grows in his professional career.

So, Tracy, thank you very much for all you have done here for us, thank you.

Take a moment here for our panelists to get situated. We are ready. I want to thank you all for being here and taking time out of your busy schedules to come here and talk about something I know is near and dear to your heart, and it is important.

Our first witness is Ms. Cindy Hafner. She is the chief legal counsel of the Ohio Environmental Protection Agency out of Columbus.

Welcome, Ms. Hafner, the floor is yours.

TESTIMONY OF CYNTHIA A. HAFNER, CHIEF LEGAL COUNSEL, OHIO ENVIRONMENTAL PROTECTION AGENCY; HON. J. CHRISTIAN BOLLWAGE, MAYOR OF THE CITY OF ELIZABETH, NEW JERSEY, ON BEHALF OF THE U.S. CONFERENCE OF MAYORS; KELLEY C. RACE, P.G., L.S.P., BROWNFIELDS PROGRAM MANAGER, TRC COMPANIES, INC.; PAUL GRUBER, P.G., ON BEHALF OF THE NATIONAL GROUND WATER ASSOCIATION; AND VERNICE MILLER-TRAVIS, VICE CHAIR, MARYLAND COMMISSION ON ENVIRONMENTAL JUSTICE AND SUSTAINABLE COMMUNITIES, AND MEMBER, NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL TO U.S. EPA

Ms. HAFNER. Chairman Gibbs and members of the subcommittee, I really appreciate you inviting me here today to talk about Ohio's successful Brownfields Program. I am Cindy Hafner, and I am chief legal counsel for the Ohio EPA.

Today I want to talk a little bit about our voluntary cleanup program that was designed to clean up brownfields. I will tell you a little bit about how we use the Superfund grants for brownfields in Ohio and about the State funding that we use for brownfields in Ohio.

In 1994, the Ohio General Assembly and Governor George Voinovich passed a law that created a voluntary cleanup program. It was designed to address the universe of contaminated sites that weren't being addressed by the Superfund program or the State's involuntary cleanup program.

We have a rich industrial history in Ohio, and that resulted in thousands and thousands of these brownfield sites that were sitting idle, contaminated, and underused. So this program was designed to help those sites get cleaned up.

The voluntary cleanup program authorized anyone to clean up a dirty site and receive a legal release in exchange for it. Three key components of the program are rules describing clear processes in cleanup standards that are protective and based on the plan's land use; reliance on certified consultants and laboratories to oversee the cleanup in partnership with Ohio EPA, while Ohio EPA focused its oversight on developing the cleanup standards in auditing cleanups after they were completed; creation of incentives in the form of tax abatements and, at the time, low-interest loans.

Today volunteers have used this program to clean up and request a legal release at 484 properties, covering more than 9,251 acres. Those, however, are just the tip of cleanups in Ohio, and there is an iceberg of cleanup effects that is underneath it. The program was designed intentionally so that users did not have to request a legal release if it was not necessary for the redevelopment project. Certified consultants tell us that for every one project that they work on that seeks a legal release, there are five times as many they are working on where no legal release is sought, but the cleanup standards for the program are used for the private property transaction.

While the statute's policy maximizes privatization and flexibility, it can sometimes create a misperception that only those 484 cleanup projects are a result of our cleanup program. In actuality, a more accurate number is probably about 2,500 cleanup projects have resulted from the program.

As the program matured, stakeholders asked for additional liability relief. In 2001, Ohio EPA finalized a Superfund memorandum of agreement with U.S. EPA, providing additional assurance to Ohio's volunteers that EPA was satisfied with our program and that they would not ask for additional cleanup for projects that are cleaned up in our program.

Additionally, the State's statute was amended several times to expand eligibility of the program so more different kinds of sites could use the program to limit the liability.

In late 1990, CERCLA was amended to provide Federal funding, and Ohio uses this funding in four ways. First, we provide services free of charge to local governments. Since 2002, Ohio EPA has assisted 104 communities in 57 counties by completing 81 phase I assessments; 23 certified asbestos inspections; and 86 phase II sampling events.

We also provide regional workshops for local economic development officials and provide them information about all the financial tools that are available to local governments. We also perform training for our certified environmental consultants, where we inform them of changes in the program and seek their input on improvements to the program.

Finally, we provide free technical assistance to 60 to 80 communities each year conducting brownfield cleanups. This is a very popular tool, especially for our small and medium-sized communities. We used CERCLA 104(k) brownfield revitalization for our local governments. This has been available since 2002. There have been 128 awards settling approximately $55.4 million, and this is very essential to our local communities to revitalize their urban cores. They use it for planning, assessments, and cleanup of brownfields.

Our State funding programs for brownfields started in the early 2000s. Since then, the State has provided $417 million to assess or clean up 409 brownfield projects. This has leveraged nearly $4 billion in private investments. Ohio's economic development partner Jobs-Ohio provides $45 million per year for assessment or cleanup where the projects create or retain jobs. Ohio EPA has also invested nearly $500,000 of our own budget to perform phase I for local communities. This fills a gap because those are projects that aren't eligible for other Federal funding.

Ohio has benefited greatly from the funding available for both CERCLA and State law. Thank you for the funding that you have given to U.S. EPA to pass along to us. As Ohio's economy continues to grow today, new businesses are still interested in locating in brownfields. Ohio's cleanup program, State funding, and Federal funding are keystones to the economic growth and revitalization of Ohio.

Thanks, again, for inviting me here to extol the virtues of our cleanup programs in Ohio, and I will answer any questions later.

Mr. GIBBS. Thank you.

Our next witness is the Honorable Christian Bollwage, he is the mayor of the city of Elizabeth, New Jersey.

The floor is yours.

Mr. BOLLWAGE. Thank you very much, Mr. Chairman and members of the committee for holding this most important hearing. I have been the mayor since 1993. I have testified here in Congress

both before Senate and congressional committees on brownfields in 1994 to 2001 when President George Bush signed the brownfield legislation in Conshohocken, Pennsylvania.

Mr. Chairman, brownfields legislation has made it really possible for the private sector to work with municipal governments and invest in our cities. We all know the history of brownfield legislation, and it is part of my testimony, but I am not going to go through that. I would just like to highlight one in Elizabeth and then talk about some things where the mayors of this country think we can make the legislation a little bit better.

The Jersey Gardens Mall in our city was built on a former 166-acre landfill. This partnership between the county, and the State, and the Federal level of the Government all started with a brownfield assessment grant in the 1990s. The conversion of this former eyesore into a shopping center had numerous positive effects, up to 5,000 jobs, not only the people who work there but construction jobs; took a health hazard away from our city; continues to flourish with business up 10 percent; visits are up 37 percent. The Jersey Gardens is adjacent to Newark airport. It has now been renamed The Mills and recently announced a 411,000-square-foot expansion on top of the existing 2 million square feet that is there. We work with Union County College. We have a retail skill center, a workforce investment center, provides job placement, soft skill training. We work with We Are One New Jersey, an initiative spearheaded by the county of Union. It also has a 4.8-megawatt sun-powered rooftop solar system, which is among the largest rooftop systems in North America. That broke ground in 2011, and it started producing power in February of 2012.

Some ways that the mayors and the U.S. Conference of Mayors think we can improve this program because it has such a proven track record. The GAO has mentioned that there are 400,000 to 600,000 brownfield sites throughout the U.S. The one Member asked a question about the rural areas. The U.S. Conference of Mayors did a study years ago that shows there is at least 10 brownfield sites in every congressional district throughout this entire Nation. We would suggest that there is full funding of the Brownfields Program, that the EPA only funds, as the Assistant Administrator said, about 30 percent of the applications. We would ask that the previously authorized levels of $250 million is fully funded, but we also ask that this committee address higher funding levels. We recognize budgets are tight.

Creation of the multipurpose grant, the Assistant Administrator also spoke of that. Many cities could use the ability to assess a number of properties and provide cleanup grants and loans depending on which sites are chosen for redevelopment. It hinders the opportunity if a city has to apply for a grant, wait 6 months to see if they will get funding. The developer, the partner, could walk away in that period of time. The Conference of Mayors would like to see the establishment of this type of grant, and especially municipalities who have a proven track record of fully utilizing their brownfield money.

Increase the cleanup grant amounts: Many of the easy brownfield sites have been developed, especially in our city. We developed some gas stations that may have been easy to develop. The

brownfields economic development that occurred at the mall, just south of Newark airport, was something in retrospect that the joint effort, financially, but there was a market for it. So now we have the tougher ones. We would like to see an increase in the funding ceiling of the cleanup grants to be $1 million and, in some circumstances, to be $2 million. This could give additional resources to conduct cleanup at more contaminated sites and bring those properties back to productive use.

Allow some reasonable administrative costs: Should be allowed to use a small portion of the grant to cover reasonable administrative costs.

Clarify the eligibility of publicly owned sites acquired before 2002: We believe that as long as local governments do not cause or contribute to the contamination of the property but just happened to own the property before the law was enacted, they should be allowed to apply for EPA funding for that property.

It took Congress 9 years to pass the original law, Mr. Chairman. I know; I testified here for 9 years, so I know how long it took. It has been an extremely productive piece of legislation. We can work together to remove barriers to the local and State governments by addressing some of the mothball sites to the CERCLA liability that the earlier speaker just highlighted how it worked in her State.

In closing, Mr. Chairman, I would like to thank the subcommittee for having me testify. I have submitted written testimony and will be available to answer questions.

Thank you for your time, Mr. Chairman.

Mr. GIBBS. Thank you for your input and all your time before the committee. This program is making it work.

Our next witness is Ms. Kelley Race. She is the Brownfields Program manager for TRC Companies. Welcome.

Ms. RACE. Good morning, Congressman Gibbs and honorable members of the Water Resources and Environment Subcommittee. Thank you for allowing me to testify about this very important program.

As you mentioned, I am a Brownfields Program manager. I have 25-plus years of experience, and I have a bachelor's and master's in geology, and I have worked on contaminated sites for most of my entire career.

Many of the EPA-funded Brownfields Programs that we work on are located in the Northeast as well as the Midwest and California. We are passionate about the redevelopment of brownfields and the impact brownfields have had on communities. We have seen firsthand how a single site——

Mr. GIBBS. Ms. Race, could you pull the mic a little bit closer? We are having trouble back here, pull the box, just yank it.

Ms. RACE. How is that?

Mr. GIBBS. Yes, thank you.

Ms. RACE. We have seen firsthand how a single site using a few thousand EPA assessment dollars can be transformed into a community icon and how a portfolio of sites can actually result in the rebirth of a downtown, infusing millions of leveraged dollars into a community.

My testimony today will highlight EPA brownfields successes, highlight some challenges, and offer some considerations that we think would help make the program more versatile.

We all know EPA brownfields funding has led to many successful cleanups and redevelopment and has leveraged millions of dollars in private investment. Obviously, an $8 million to $10 million decrease in funding for assessment, cleanup, and revolving loan funds has resulted in fewer grantees being awarded. But, actually, let me back up and ask, what are brownfields to communities? Brownfields are opportunities. They are the funding that is often the seed money to different organizations to assess, clean up, and sustainably reuse a property. Many of these eligible entities have limited resources to address and facilitate redevelopment of brownfields as communities are tasked with doing more with less.

A couple examples that I would like to actually highlight on some creative successes that we have seen over the hundreds of sites that we have worked on across the country include one from Massachusetts, which is a transit-oriented development. This site was initiated with a $3,000 Phase I Site Assessment and a Phase II Site Investigation. This project actually facilitated over $100 million in private developer interest in the area. The project created construction of a pedestrian-friendly parking garage, linking it with a former shoe manufacturing mill, and renovated new housing, creating over 340 housing units, 75 of which are set aside for low-income families and individuals.

The second example is the reuse of a former textile mill in Sanford, Maine. The former mill once produced armed service uniforms. From a $4,000 EPA brownfields assessment grant, over $60 million of investment was secured, resulting in 274 construction jobs, 36 affordable housing units and retail and commercial businesses.

The third example, a 100-acre former steel facility in Jefferson County, Ohio. From this—Jefferson County received a $1 million Assessment Coalition Grant. Based on that coalition grant, they were able to leverage an additional $6.5 million in State and private brownfields funding, returning 9 vacant properties to beneficial reuse and creating over 150 new jobs.

As someone who assists communities in preparing applications, the application process can be challenging but also rewarding when a community must think outside the box on how they will utilize the funds and turn a story of despair into sustainable reuse and opportunity. There are so many worthy projects and communities out there, but the EPA application process is extremely competitive.

Now for some of the challenges. The FY 2015 Brownfields Guidance for Assessment: EPA allocated approximately 50 percent of the total amount of funding available under the announcement was to be used for grants for new applicants. While dedicating 50 percent of funding to new applicants creates a base of eligible new entities, it also limits the funding available for existing grantees, who may have a long established program, spent a considerable amount of time creating an inventory and conducting phase I and phase II's to ready those properties for redevelopment. Existing grantees who may have submitted multiple applications only to lose again may

result in a disincentive to compete, leaving a program with a large inventory of potential sites stagnant.

With regard to petroleum assessment funding, EPA must expend 25 percent of the amount appropriated for brownfields grants on sites contaminated with petroleum. The brownfields law outlines specific criteria by which petroleum sites may be eligible for brownfields grants if EPA funding or the State makes a petroleum eligibility. Because of the eligibility determinations, petroleum brownfield funding is harder for grantees to utilize and is more complicated, as it is a case-by-case State agency determination. Therefore, the brownfields petroleum funding may actually be sitting on the sidelines stranded.

In summary, the EPA Brownfields Program works, but we believe there may be considerations in the brownfields funding that provide versatility and flexibility to the program.

I would like to thank the subcommittee for my being able to provide testimony, and I am available to answer questions.

Mr. GIBBS. Thank you.

The next witness is Mr. Paul Gruber, on behalf of the National Ground Water Association.

Welcome.

Mr. GRUBER. Thank you, Chairman Gibbs, Ranking Member Napolitano, and members of the subcommittee, thanks for the opportunity to testify today.

My name is Paul Gruber, I am testifying on behalf of the National Ground Water Association, the trade association and professional society of 11,000 members in every State represented here. My testimony will address the importance of used science-based decisionmaking for the investigation, remediation, and redevelopment of brownfields sites, as well as highlight the importance of preserving and improving the availability of our Nation's groundwater resources.

The Brownfields Revitalization Act is an excellent example of the right law for the right reasons. Brownfields Programs are not only critical for environmental improvement and protection of public health, but they are vehicles to provide economic development, providing employment opportunity for thousands of Americans in both urban and rural areas.

On a typical brownfields project, our members support all stages of the investigation and cleanup process. NGWA professionals evaluate various remediation alternatives, employing a variety of sophisticated tools. These tools, such as groundwater models, can cost-effectively assess the public health impacts of proposed remediation technologies and optimize cleanup selections, ultimately turning the site into a springboard for community revitalization.

Often brownfields redevelopment success stories in urban areas receive the most publicity. I want to be sure to emphasize the need to promote the success of rural brownfields development. Potential brownfield sites in rural areas include a variety of legacy industrial operations that previously led to economic development in the area. Examples include manufactured gas plants, fertilizer plants, tanneries, and small businesses, like gas stations and dry cleaners, among others.

These rural brownfields sites affect soil, surface, and groundwater quality and availability. As most rural residents rely on individual wells or community water systems for potable water supply, these resource impacts can be more critical than those in urban areas. In rural areas, groundwater quality impacts can be more widespread, and hence, cleanup costs can be cost-prohibitive while having a broader local community impact.

In rural areas, the presence of ample green space often minimizes the perceived need to clean up and restore a brownfields site. Rather than an either/or scenario, brownfields and green spaces should be viewed in tandem. By restoring rural brownfields sites, communities can preserve natural existing systems. The preservation of these systems improves and protects surface and groundwater quality and quantity; maintains important groundwater recharge systems; and improves stormwater management opportunities.

As many communities currently experienced unprecedented drought conditions, by improving and preserving these natural systems in greenfield areas, local communities are now more resilient and sustainable.

The EPA Brownfields Program is a well-crafted and effective program. As the subcommittee considers reauthorization of the program, NGWA would like to offer the following observations and recommendations. Congress should consider brownfield grant incentives that not only limit liability but also encourages cleanup and redevelopment of brownfield sites rather than greenfield sites; why incur the potential liability with brownfields sites where, in rural areas, ample green space is available for development, unless the right incentives are in place.

The committee should consider increasing incentives for rural applicants by directing EPA to prioritize funds for rural communities where local groundwater supplies are impacted. Public-private partnerships are effective vehicles to leverage investments and create economic benefits for all stakeholders where single-entity investment may not be feasible, encouraging beneficial reuse of brownfield sites and providing liability limits while managing long-term cleanup.

Lastly, Congress should urge EPA to continue its research focus on development of new technologies and methods of site remediation that integrates combined remedies, integrating risk assessment of future land uses when establishing cleanup goals. Since its inception in 1995, EPA's Brownfields Program has changed the way we approach development and reutilization of contaminated sites. It has provided a vehicle to investigate and clean up abandoned sites without encouraging development in greenfield locations. Brownfield grants and cleanups focused in rural areas can be instrumental in reinvigorating economic activity while increasing the value of ecosystem services of undisturbed natural systems.

With over 400,000 brownfields sites across the country, it is likely we probably all live or work near one. The work needed to clean up these sites is far from complete, which is why reauthorizing this program is critical. I would like to thank the subcommittee for its attention, and I look forward to your questions.

Mr. GIBBS. Thank you.

Our next witness is Ms. Vernice Miller-Travis. She is the vice chair of the Maryland Commission on Environmental Justice and Sustainable Communities. She is a member of the National Environmental Justice Advisory Council to the EPA.

Welcome, Ms. Miller-Travis.

Ms. MILLER-TRAVIS. Thank you, Chairman Gibbs and Ranking Member Napolitano and all the members of the committee for this hearing today. I have invested the last 22 years of my life in bringing this process forward and brownfields and helping to draft some of the language in the implementing law. I served on the All Appropriate Inquiry Federal Advisory Committee that wrote the implementing language for the Small Business Liability Relief and Brownfields Redevelopment Act. I was there at ground zero, as they say, when EPA began this process. And immediately I saw the opportunity to bring real, long-term reinvestment to some of the most distressed parts of our country, which were also the places that had some of the biggest and largest and longest impacted brownfields sites across the country. So when EPA announced this process, I jumped at the chance to be a partner with them to really bring this process to life.

One of the things that EPA did early on through its National Environmental Justice Advisory Council and the Subcommittee on Waste and Facility Siting, which I served as the cochair of from 1997 to 2001, was to host a series of public dialogues on urban revitalization and brownfields, envisioning healthy and sustainable communities, in 1995. The public dialogues were held in five cities: Boston; Philadelphia; Detroit; Oakland, California; and Atlanta, Georgia. The public dialogues were intended to provide an opportunity for environmental justice advocates and residents of environmentally impacted communities where brownfield sites proliferated to offer their input and perspective regarding the development of EPA's brownfields economic redevelopment initiative. In my written testimony, I included a link to the report; here is my dog-eared copy that I still lecture from and talk about 19 years later because it is still very relevant.

Those dialogues led to the publication of this report, and many concerns were raised by communities during that process, including whether or not the brownfields issue was a smokescreen for gutting cleanup standards, environmental regulations, and liability concerns because, heretofore, when people talked about brownfields and recapturing industrial and commercial vacant spaces, they were talking about the real estate transactions but not talking about the economic revitalization that could come to low-income and distressed communities who live near and bore the burden of the environmental contamination and the perceived disinvestment in their communities, which was driven largely by the loss of industrial and commercial activities in those communities. So this was a very personal issue for a lot of communities around the country who pin their hopes on revitalization and new economic activity on the success of this program.

So they have a tremendous amount invested in the Brownfields Program.

Much of the national conversation today regarding environmental protection and improving public health, job creation to ad-

dress high levels of unemployment and underemployment, reducing growing inequality and poverty rates, and how to spur community revitalization and create public-private partnerships to undertake these decades-old problems were tackled in this report.

The success of the program today has been just extraordinary; we have heard lots today from Administrator Stanislaus and others, but by any objective measure, after 20 years of brownfields redevelopment, there is much to report in terms of success. For example, the Brownfields Job Training Program has trained over 14,100 individuals to become certified in a range of site remediation skills. The Brownfield Jobs Training Program graduates include many unemployed and underemployed veterans, at-risk young adults, and 50 percent of the graduates are ex-offenders. Seventy percent of the Brownfields Job Training graduates have been placed in living wage jobs. The program's placement rate is to be highly commended, especially when one considers the target population of trainees.

Other successes of the program to date include hundreds of examples of transformative brownfields redevelopment projects, including the epic struggle to clean up brownfields sites and restore the Los Angeles River. Atlantic Station, where a former steel mill has been transferred into a brandnew, thriving, high-end community in Atlanta. It is really breathtaking if you haven't seen it. The Spicket River Revitalization Project, which is a partnership with Groundwork USA, where a once dying mill town has been revived in Lawrence, Massachusetts. And the Florida Brownfields Association Partnership with environmental justice and other medically underserved communities like the Eastside community of Jacksonville, Florida, by developing brownfields sites into healthcare facilities.

But there is a downside to successful brownfields redevelopment. Of all the promise I envisioned for distressed serving communities via successful brownfields redevelopment, I did not envision a large-scale gentrification and displacement of longstanding communities of color that brownfields redevelopment projects have spawned in some places. For example, Bayview-Hunters Point in San Francisco, The Dudley Street community in Roxbury, Massachusetts; here in the District of Columbia, the Southwest Waterfront; and my own beloved hometown of West Harlem in New York City where Columbia University, my alma mater, is building a new campus that will occupy more square footage than the former World Trade Center.

A lot of people in public housing, and low-income and affordable housing are being displaced by a lot of these successful projects. That was not what EPA envisioned, but nevertheless, it is an unintended consequence, so we need to balance the economic revitalization that is happening and driven by brownfields redevelopment with the needs to make sure that that revitalization is broad-based.

We must refocus our efforts if the hope of successful brownfields redevelopment is to bring broad-based economic opportunity and community revitalization to all. The last thing I would say is the program needs to be fully funded. EPA's brownfields redevelopment initiative has been catalytic in transforming economic opportunity in large cities, small cities, tribal communities, you name it, the

Brownfields Program has been there, and we want to see that revitalization happen everywhere, and your appropriation is what makes that program happen. I strongly recommend that you fully fund it. And please, under no circumstances, diminish the funding that goes to the Brownfields Program. Thank you so very much.

Mr. GIBBS. Thank you and that might be more talk to the appropriators. Ms. Hafner, I see in your testimony, you cite an example of a program in Louisville, Ohio, at Chesapeake Energy. I want you to know that is in my district, I have been there. Great work. I want to recognize that you put that in there. That is actually my district.

I do want to ask you, Ms. Hafner, in your testimony, you talked about how the State of Ohio handles liability aspects in its Brownfields Program. Can you explain how the Ohio example could be replicated in the Federal Brownfields law?

Ms. HAFNER. In terms of the liability?

Mr. GIBBS. Yes. I am really concerned about liability aspects. What have you done in Ohio that maybe could be helpful in the Federal legislation?

Ms. HAFNER. Well, notwithstanding one of the most important things of the Brownfields Program, in my view, is that the State programs are uniquely designed for each and every State. So adopting some of the things that we did in Ohio and putting them on a Federal level may not maintain that flexibility. However, individual liability tweaks along the way may provide some additional assistance to the volunteers and folks who are cleaning up the sites.

Mr. GIBBS. Ms. Race, do you have a comment on the liability aspects of your examples, should we be looking at it as concerns?

Ms. RACE. Well, I would just add that I do agree that it is a State-by-State designation. There are several States, Pennsylvania is actually an example where Act III has actually reduced some of the liabilities and they have actually used wording to get their hands around that liability. I think with the liability protection, that is where the brownfields, the phase I's, and due diligence is really important, because that actually gives you the AAI, All Appropriate Inquiry, it gives you the baseline of some of the liability protection initially.

Mr. GIBBS. Mr. Gruber, I am a little intrigued. You talked about the groundwater cleanup, aquifers and stuff. Where it is feasible to do cleanup, what tools and technologies are available to ensure that the contamination doesn't spread, can you just elaborate on what's happening on that?

Mr. GRUBER. So there is a variety of different tools and technologies, most effective and probably used most commonly are groundwater pump and treat systems; there are barriers that can be placed inground that can prevent the spread of groundwater contamination, all associated with different levels of cost. So one of the roles that professionals like myself and Ms. Race get involved with is trying to optimize the groundwater treatment technology to stem the spread of contamination, and to effectively treat the groundwater systems and prevent it from spreading.

Mr. GIBBS. I really appreciate your comments regarding the rural areas and green spaces. You are absolutely right, there are lots of

sites in rural areas, like abandoned fertilizer facilities, whatever, and I think that is—I am glad you mentioned that because I think there is an important need there, and, of course, it really ties the importance to the groundwater because in the rural areas, that is where we get our water, in most cases, so it is important.

Mr. GRUBER. That is correct. I think there is a real impact in rural areas associated with brownfields sites and propensity for developers to look for new greenfield locations. Particularly in areas, in rural areas where community water systems don't have a lot of funds available to treat groundwater, they are pumping it directly out of the ground with minimal treatment. The effort to encourage redevelopment of brownfield sites as opposed to new greenfields is critically important to preserving community resources.

Mr. GIBBS. What is your experience with public-private partnership investments in brownfields sites?

Mr. GRUBER. Well, I think everybody has addressed the issues associated with liability limits. From a public investment perspective, obviously, liability limits are different than when private parties get involved. I would ask, perhaps, the mayor to address some of those issues, but the opportunity to increase private-sector investment in public projects by limiting liability associated with the long-term development of these sites, would go a long way towards accelerating the pace of brownfields redevelopment.

Mr. GIBBS. Mayor, the question, what recommendations do you have to improve the Small Business Liability Relief and Brownfields Revitalization Act on the liability issue? What is your take on that, and what recommendations might you have to make that better to help incentivize people?

Mr. BOLLWAGE. I believe it is in the testimony about removing the barriers on the mothball sites and the CERCLA liability and the Government and the brownfields defined by section 101–39, if it did not cause or contribute to the contamination of the property, and exercises due care with regard to any known contamination to site. We also, in our testimony, have attached recommendations on exact language that we submitted in our written testimony, Mr. Chairman.

Mr. GIBBS. Thank you. Mrs. Napolitano.

Mrs. NAPOLITANO. Oh, definitely, sir. Thank you. In fact, I could do the whole 1 hour on this. Ms. Miller-Travis, your statement about investment in underserved communities, how would we incentivize the investors to be able to go to those areas? The market forces are great because they will go to where they think they are going to make the best investment, how would you incentivize them to go into lower income communities?

Ms. MILLER-TRAVIS. So there has been a lot of conversation about approaching the Department of the Treasury to explore opportunities to encourage greater use of new market tax credits, and the low-income housing tax credits to enable those who are doing brownfields redevelopment to tap into those tax credit programs, so that they can spur investment in terms of new markets as well as low-income housing.

Mrs. NAPOLITANO. Is that anywhere in writing? I am sorry, I don't want to run out of time.

Ms. MILLER-TRAVIS. Sure.

Mrs. NAPOLITANO. In reference to HUD, EPA, Department of——

Ms. MILLER-TRAVIS. Energy.

Mrs. NAPOLITANO [continuing]. Energy, DOT, Office of Economic Adjustments, Department of Defense, Community Health Initiative under CDC [Centers for Disease Control and Prevention], all those areas, add Treasury to it. Why are we not getting them all together and saying we need to address this as a whole rather than everybody doing their own thing and spreading those funds out in different areas?

Ms. MILLER-TRAVIS. It would be great if the new legislation, or reauthorized legislation, could direct EPA and the Federal family to do exactly that, because local governments, local community development organizations, State agencies are having to shop all of those entities.

Mrs. NAPOLITANO. It would take also those entities, the counties and the cities to be able to work with, including the Governors organizations.

Ms. MILLER-TRAVIS. Yes.

Mrs. NAPOLITANO. Now how do we then look at prioritization of those areas, as Mr. Gruber was saying, groundwater contamination, because we are having continuous drought cycles. That is not going to go away. Are we not looking at how do we protect our water? How do we clean it up? How do we help the communities be able to revitalize that source of critical water? Water is money, there is no investment if water isn't there for business.

Ms. MILLER-TRAVIS. Absolutely. So there is also a recommendation to encourage EPA to access its Clean Water State Revolving Fund, which allows States to then push money down, Federal money down to local governments and tribal governments to really do new investment in infrastructure for clean water. We would like to see those—that program, that revolving loan fund be accessed and merged, in a sense, with access to the brownfields revolving loan.

Mrs. NAPOLITANO. I would love to see your recommendations to the subcommittee.

Ms. MILLER-TRAVIS. It is in my testimony, ma'am.

Mrs. NAPOLITANO. Right, I know. But that is a recommendation, because I will be looking a little further on this one. All of you, when was the last time that EPA utilized—how would I say, cost of living. The year 2001 was when the maximum amounts were set. What do you think that affects the ability to be able it use those dollars in today's dollars? Anybody?

Ms. MILLER-TRAVIS. So if I could start, I actually disagree a little bit with Administrator Stanislaus, I think the grant amounts do need to go up to $300,000, but that can only happen if the appropriation for the program is increased somewhat. But I do think it is time to increase the amount of money in those assessment——

Mrs. NAPOLITANO. Yeah, it was just $200,000 was set for 2001. We are in 2014, 13 years later, and we are still at that amount.

Ms. MILLER-TRAVIS. Well, actually $200,000 was set in 1995 when they first launched the program.

Mrs. NAPOLITANO. You understand where I am going, is we need to increase the funding based on today's dollars.

And let's see, to Mr. Gruber, I very much am interested in how you look at the rural applicant, because you have fertilizer and all kinds of other insecticides that go into the ground and eventually into the water table. How do we help be able to identify that, especially when there is no funding in those rural areas by small communities?

Mr. GRUBER. So I think EPA does have an outreach program, a technical assistance program to provide support to communities to develop brownfield grants. I think we need to do as much as we can to encourage EPA to step up on those activities, because often in rural communities, they may not have the technical resources or the financial resources to address the development of the grants, hire engineers like myself, or Ms. Race. So I think anything you can do to increase opportunities for EPA to broaden their outreach to rural communities, where many of these brownfield sites are located, would be very instrumental in making the program more successful.

Ms. RACE. I was going to add to that, I think one of the things that is being looked at now are technical assistance grants. For a small amount of dollars, maybe in the $7,000 to $10,000 range, those type of funds would be very instrumental to these small communities and these small entities that really can't afford to hire a big giant consultant, or even actually facilitate something like that.

Mrs. NAPOLITANO. Understood, but don't forget, right now with economic stress that many of the communities face, they may not even be able to match any funding. Why are we not looking at the Treasury incentivizing those areas to be able to put those properties back on the tax roll?

Ms. RACE. I think it would be a great idea.

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

Mr. GIBBS. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman, thank you to the witnesses. Although I came in late, I was reading your testimony while questions were being asked at another hearing that I was a part of. I do appreciate what you are doing here today.

Mr. Gruber, I do want to put a specific emphasis on offering you my appreciation, because the emphasis that you make in your testimony about the importance of brownfields development in the projects in rural America that I know my colleague just alluded to, I want to commend you on that.

As you note, the impact of soil surface and groundwater contamination in rural areas can have serious implications for potable water supplies and addressing these contaminations, I am sure has been discussed before I got here, it can be very cost prohibitive to some of the smaller communities that I serve in Illinois right in rural—the middle of rural America.

Earlier this year, I joined two of my colleagues from Illinois, John Shimkus and Mike Bost, in sending a letter of support to the EPA for a brownfield assessment grant application submitted by Madison County, Illinois. I was subsequently pleased to learn that Madison County was actually awarded two brownfield grants; one to assess a hazardous substance site, and one to assess a site contaminated by petroleum. I look forward to working with Madison

County and the other stakeholders as these projects move forward, and want to say thank you to those who made those decisions.

Mr. Gruber, I know it was alluded to in the last question about how do we help ensure that rural America is not left behind when it comes to brownfield development projects. Is there any other—is there any advice that you would give us to be able to help make sure that that does not happen?

Mr. GRUBER. I think I addressed a little bit of it when I talked about EPA's ability to provide outreach and support to rural communities for the development of brownfield grants. I think Ms. Miller-Travis also addressed some critical funding issues. State grants under the Clean Water Act have been significantly diminished over the last 20 years. Anything Congress can do to increase appropriations and broaden the funding support under the Clean Water Act to support local communities, particularly in rural areas, which are often excluded from Clean Water Act funding grants, would be a very important mechanism to improve environmental quality and availability of surface and groundwater quality in rural areas.

Mr. DAVIS. Thank you, Mr. Gruber. I appreciate your comments. I, too, want to reprioritize how we spend money here in Washington. That is something that I hope all of my colleagues on both sides of the aisle want to continue to do. That is the only way that Congress and our legislative branch can actually regain the power of the purse that many of the witnesses that sit at your tables we see on a regular basis come in and talk about increased appropriations, the need for more money to actually put forth to solve some of the problems that we are even talking about here today. And I, too, agree.

But both sides of the aisle have to make tough decisions how we actually spend the taxpayer dollars, and that is a debate that I look forward to having with all of my colleagues here. I guess I will open my last question quickly to the first one who wants to volunteer to answer it. Is it your experience the working relationship that State, local and private leaders have with administrators of the Brownfields Program at EPA has been positive? Is there any specific issue that you think could improve that communication or relationship? Who is first?

Ms. RACE. I will go first.

Mr. DAVIS. Ms. Race.

Ms. RACE. I actually think the State programs and the region programs are very strong as far as community outreach. I do a lot of work in region 1 and region 3, I think there is a great partnership between those agencies, they do a great job in trying to get the word out there about what needs to be done. As far as more improvement, I think sometimes the States need to talk more with the regions themselves as far as making sure that everybody is on the same page with what they want to have as the outcome.

Mr. DAVIS. Anybody else? I have 30 seconds.

Ms. MILLER-TRAVIS. I would just say that I think EPA has gone to great lengths to try to decentralize the Brownfields Program to put brownfields coordinators in each of the regional offices to provide technical assistance, to provide counseling to States, to make it possible to do the letters of no further action so the States can give people a sense of comfort that they can go in and redevelop

those sites and purchase them without getting tangled up into the CERCLA liability scheme.

I think EPA has spent 20 years trying to figure out how to push this money out and down and give as much technical assistance as they can. If you are in Chicago, since you are from Illinois, if you can be there the first week of September for the brownfields conference, you will see thousands of people from all over the country who have been able to do extraordinary work because of the support of EPA.

Mr. DAVIS. Well, let me see if that might be a possibility. I am 3½ hours south, hence the rural references. But I do very much appreciate the largest city in my State of Illinois. I would love to be able to be a part of that. Thank you. My time has expired.

Mr. GIBBS. Ms. Johnson.

Ms. JOHNSON. Thank you very much, Mr. Chairman. Let me thank you and the ranking member for holding this hearing and let me thank all the witnesses. I have enjoyed hearing all of you and I think it is because I agree with everything you have said. It is gratifying to see that EPA has a program that gets so much positiveness. EPA is probably one of the most beat-up agencies around here when they are trying to protect the health of individuals. But I have strongly supported the brownfields legislation over the years, and feel that because it is such a public-private partnership, it has been very, very successful. And I would hope that all of you would advocate, because I think that there are more and more municipalities, and small municipalities as well, that would need to put brownfields into greenfields to create more of a tax base. When you create that tax base, we all profit from it because some of those taxes flow back in here where we need some money. So I would applaud you for working with the program. I don't have any particular questions other than what I would ask you might be illegal for you to answer, that is, how much do you advocate reauthorizing this program with more dollars?

Thank you, Mr. Chairman, I won't insist that they answer that.

Mr. GIBBS. I have just a couple of questions for the panel I would like to ask. Are there any categories of parties, like tenants or other non-owner parties that might occupy a user site who still fear exposure to the Superfund liability, even though they did not contribute to the contamination of brownfield sites? Does anybody want to respond? Is there still a fear out there?

Mr. GRUBER. I will take a crack at that. One of the issues I think that we have been advocating as an organization and an association is associated with vapor monitoring, and vapor intrusion in occupied buildings particularly, sites that are on or near petroleum locations because the volatile organic chemicals from petroleum spills can easily seep into buildings. People may not know that they could be exposed to harmful vapors from toxic gases. So I think the funding and the effort associated with vapor monitoring and vapor intrusion could be improved as part of the program to protect residents in buildings.

Mr. BOLLWAGE. Mr. Chairman, what we did with the Jersey Gardens Mall, which was built on a landfill, is we vented the methane and then created power from the methane for the mall. So the 200-and-some-odd stores that are in the Jersey Gardens plus all the

people that go there, we don't really deal with the issue because of the proper ventilation.

Mr. GIBBS. Ms. Race.

Ms. RACE. I would just add there are sites that I think some of the Federal programs have to talk to each other about. Some of the RCRA [Resource Conservation and Recovery Act] obligations are not the same as some of the brownfields. What I mean by that is there are entities out there that are interested in using brownfields money to redevelop a property, but because it has a RCRA designation, there are certain liability protections that they just can't get over because of the RCRA Superfund tie-ins with that.

Mr. GIBBS. Ms. Race, you mentioned in your testimony about the 25-percent set-aside, and I mentioned petroleum. I mentioned that to the Administrator, and you heard his response. What is your take on how we should we modify that?

Ms. RACE. I am thrilled. I think there should—actually, either do away with it or have a much less percentage that has to go to petroleum. I can speak as one that knows a lot of grantees that have a lot of money sitting on the sidelines that they just cannot use.

Mr. GIBBS. What would your take be on the applications? I think everybody is in agreement, we are making progress with these petroleum-abandoned tanks. You know, what percent would you guess might be in the application process now that actually would qualify for that set-aside?

Ms. RACE. I would rather see closer to 10 percent, not any more than 10 percent, because the State designation and a case-by-case where the State actually makes that determination, a lot of States are requiring tax returns for a property owner before they can actually even assume that there is any viability——

Mr. GIBBS. I know, you mention flexibility.

Ms. RACE. Yes.

Mr. GIBBS. I am big for that, too. I think that obviously that was put in—it probably made a lot of sense because we—like I said, there was a gas station in three of the four corners, most typically in urban areas.

Mr. GRUBER. If I might add to that.

Mr. GIBBS. Yes.

Mr. GRUBER. Many States have leaking underground storage tank program funding mechanisms individually, so the opportunity to investigate and clean up underground storage tanks can come from other sources and not the Brownfields Program, so it is a way of leveraging other dollars and improving and increasing opportunities if you remove the 25-percent requirement for funding for underground storage tanks under the Brownfields Program.

Mr. GIBBS. Excellent point. Do you have any more questions?

Mrs. NAPOLITANO. No questions, but I certainly would want to ask all the panelists to forward any recommendations you might have that will help this committee, subcommittee, be able to understand some of the things that you are facing that we may not have in writing, especially issues like coordination between the agencies to be able to leverage. And then how do we reach out to the Conference of Mayors, the League of Cities, the Governors associations, to have them identify where the major issues are in economic development to be able to help us understand a little better how EPA

can then look at maybe it's rural, to me, it is water runoff for contamination because of the drought issue, things that you see that might help us be able to better deal with this issue as the subcommittee, joint subcommittee on a bipartisan basis, because water and economic development is everybody's issue.

Thank you, Mr. Chairman.

Mr. GIBBS. I do have one more question since we do have a State administrator of a very successful program. Ms. Hafner, if you could name the most important aspect of your Brownfields Program's success, what would it be?

Ms. HAFNER. I think, at least in Ohio, and other folks have talked about it, so it is probably true in other States as well, but it's our collaboration with the stakeholders who are actually implementing the program, so the local governments, the consultants, the developers—we are truly partners with them in not only developing the statute and writing the rules, but also in implementing the program.

It is a culture of working together, collaboratively. And so even the staff view this as part of their job to ask those folks first what do you need to make this program better. And so I think it is a little unique at Ohio EPA, and that, to me, is one of the most important factors to its success.

Mr. GIBBS. Just a thought too, I am just curious, are there times when you have to work with, besides U.S. EPA, but another Federal agency, Army Corps of Engineers, Department of Transportation, can you elaborate if that is the case or not?

Ms. HAFNER. Right. Most of our partners are U.S. EPA and the local governments, but the Navy was interested in using the voluntary program to clean up the site in Ohio, and so far we have not gotten the Army Corps of Engineers to use some of the old defense sites in the voluntary program, but that would be of interest to us.

Mr. GIBBS. OK. Thank you, thank you for all witnesses coming today, it has been very helpful to us and the written testimony, as we look towards working reauthorization of the Brownfields Revitalization Program. So thank you and that adjourns us here.

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

Janice Hahn

CONGRESSWOMAN JANICE HAHN (CA-44)

Statement for the Record

I would like to thank the Chairman for holding this hearing and for allowing me to provide my testimony for the record.

My district has benefitted greatly from the EPA grants made available through the "Brownfields Revitalization and Environmental Restoration Act of 2001," and I am happy that the committee is once again looking at how redevelopment of these lands can help our communities.

Last week, I reintroduced the "Brownfield Redevelopment and Economic Development Innovative Financing Act of 2015." This legislation takes a different financing approach to redevelop large brownfield projects that have the potential to create jobs, provide affordable housing opportunities and transform regional economics.

Across the country, from Baltimore to Los Angeles, there are brownfield sites that communities have identified for economic redevelopment. As you know, brownfields are untapped resources that when environmentally remediated and redeveloped, will address tax base shortfalls, provide affordable housing, create jobs, attract new businesses as well as unify communities with planned sustainable development that will meet the needs of a changing economy and a growing population.

For instance, in my district, the city of Carson provides an example of how large brownfield properties can be redeveloped and transformed into successful redevelopment projects.

In 2003, Carson invested $90 million in redevelopment funding, some of which came from of U.S. federal EPA grants, in the cleanup of a 160 acre site. Immediately, the private sector matched public funding and the project moved forward with the cleanup of the site.

The project, called The Boulevards, is set to finish construction in 2016, and will have two hotels, retail space, affordable housing, office buildings, restaurants and movie theatres. This will raise an estimated $107 million in property tax revenues over the next 30 years! The Boulevards is a great investment for Carson and for the region.

Unfortunately, there is no current federal funding or financing mechanism to support and leverage local and private sector resources to remediate brownfield redevelopment sites.

As you know, private lenders are hesitant to loan money for these projects since the extensive remediation and clean-up of these sites means investors are not going to begin seeing returns for possibly a decade or longer.

That is why I introduced my legislation which creates a pilot program that establishes a partnership with communities by providing the HUD Secretary the authority to guarantee the

repayment of principal and interest on loans made by lenders to local governments for large brownfield redevelopment projects.

By providing a federally backed loan guarantee for brownfield redevelopment, this will eliminate traditional lending risk and thus attract private resources for projects that otherwise would not have received funding. At the same time, this bill grants local governments enough time to remediate and develop their properties so they will not need to begin making loan repayments until they start receiving revenue.

These tools will provide communities with the ability to make an immediate and long term economic impact on their region and will be the drivers that help move our national economy forward.

By providing a platform for partnerships and innovative financing tools, we will finally arm communities with the necessary tools to fully plan, invest and develop their futures.

I support your examination in how we can redevelop and remediate brownfields.

Thank you Mr. Chairman.

TESTIMONY OF
MATHY STANISLAUS
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
U.S. HOUSE OF REPRESENTATIVES

July 22, 2015

Good morning Chairman Gibbs, Ranking Member Napolitano, and Members of the Subcommittee. I am Mathy Stanislaus, Assistant Administrator for the U.S. Environmental Protection Agency's (EPA) Office of Solid Waste and Emergency Response (OSWER) that is responsible for the EPA Brownfields program. Thank you for the opportunity to appear today to discuss the status of the Brownfields program.

Brownfields sites are in the heart of America's downtowns and existing/former economic centers and reclaiming these vacant or underutilized properties and repurposing brownfields is at the core of the EPA's community economic revitalization efforts through the Brownfields program. Repurposing land can be the impetus for spurring community revitalization. The keys to community revitalization are the willingness of the people to work together to find common needs and goals and government's willingness to work with the community to redefine, and in some cases, rezone, industrial corridors, commercial districts, and residential neighborhoods to match neighborhood needs and community goals. We know the damage that abandoned, blighted, properties can do to a community, and the opportunities these properties present when local, state, or federal partners can provide seed money to leverage other private or public sector funding. That is why our Brownfields program can help be a catalyst for redevelopment and revitalization and hinges on the success of key partners working together to

implement the vision of local communities. On average, approximately $18 in private and public funding is leveraged for every grant dollar expended by the EPA's Brownfields program.

By awarding brownfields grants, the EPA is making investments in communities so that they can realize their visions for environmental health, economic growth, help support job creation and advance social goals. In reviewing proposals and awarding grants, the EPA has found that brownfields come in a range of sizes and types. Brownfields range from large industrial sites to small properties such as dry cleaners, vacant lots and gas stations. They represent the faded economic vibrancy of a community, and are often associated with social issues of high employment, and crime. They also represent future opportunities to revitalize the area to bring jobs, affordable housing, recreational space and other vibrant activity back to the community. These sites are hidden assets, but assets nonetheless, because of their advantages such as proximity to transportation, and other infrastructure, we are also now investing in some of the communities identified in the President's Investing in Manufacturing Communities Partnership (IMCP) initiative. The IMCP is an Administration-wide initiative that will accelerate the resurgence of manufacturing and help communities cultivate an environment for businesses to create well-paying manufacturing jobs in cities across the country. The EPA is involved in the IMCP initiative because many of these sites have past industrial uses, have access to a ready workforce that through training can participate in the cleanup, have redeveloped, end uses, and are located near established universities and R&D centers. These brownfields sites are uniquely situated to attract new manufacturing activities.

The EPA's land cleanup programs help protect public health and the environment and maintains a data base with more than 541,000 sites, almost 23 million acres. As part of our data analysis, the EPA found that the population living within 3 miles of brownfields sites is more likely to be minority (47.6%), low income (17.1%), linguistically isolated (11.9%), and less likely to have a high school education than the

U.S. population as whole (17.2%)[1]. However, by cleaning up brownfields properties not only are we protecting human health and the environment, studies have shown that residential property values near brownfields sites that are cleaned up increase between 5 and 13 percent, and there are additional economic and environmental benefits.

The EPA Brownfields program provides direct funding to communities, states, tribes and nonprofits for brownfields assessment, cleanup, revolving loans, research, technical assistance, area-wide planning, and environmental job training. The unmet need for brownfields funding for local communities to address abandoned, underutilized, and contaminated sites continues to rise. This demand for brownfields funding far exceeds Brownfields program funding levels and is exacerbated by increasing assessment and cleanup costs. The EPA is currently only able to fund approximately one quarter to one third of the competitive grant applications we receive. The program estimates that over the past five years, an additional 1,767 requests for viable projects scored highly, but were not selected because of limited funding. If the EPA had the funding to select, and the resources to manage, the additional 1,767 high scoring proposals, the grants would have leveraged an estimated additional 50,633 jobs and over $12 billion of public and private funding.

Brownfields Program Accomplishments

The Brownfields program is premised on partnerships between the public and private sector, with the EPA's critical early resources providing certainty and leveraging funding from other government agencies and the private sector to achieve positive economic, environmental and social outcomes. More than 106,000 jobs have been leveraged and $23.3 billion in cleanup and redevelopment has been leveraged through brownfields project funding since the inception of the Brownfields program. In FY

[1] [1]U.S. EPA, Office of Solid Waste and Emergency Response Estimate. 2014. Data collected includes: (1) site information as of the end of FY 2011 from ACRES; and (2) census data from the 2007-2011 American Community Survey (ACS). Site data from FY 2011 was chosen to correspond most closely to the census data in the 2007-2011 ACS. In FY 2011 this included 11,568 Brownfields Program sites in the 50 U.S. states with accurate location data.

2015, Brownfields program grantees are projected to assess more than 1,300 properties, clean up more than 120 properties, leverage more than $1.1 billion in cleanup and redevelopment funding, and help create at least 5,000 cleanup and redevelopment jobs in communities that typically have unemployment rates higher than the national average. Additionally, the EPA's research has shown that redeveloping a brownfields site rather than a greenfield site has significant environmental benefits, including reducing vehicle miles traveled and related emissions by 32 to 57 percent, and reducing stormwater runoff by an estimated 47 to 62 percent.

Small and Rural Communities

Our data show that our funding and technical assistance is reaching many small and rural communities. In FY 2015 alone, 56 percent of the EPA assessment and cleanup grant funding went to small and mid-size communities of 100,000 population or less, and approximately 24 percent went to smaller communities of 20,000 population or less. The distribution of funding in FY15 was consistent with what we have been seeing over the past six years, with over half of the funding going to communities of 100,000 or less and about one quarter going to communities of populations less than 20,000.

In addition, the average grant award success rate of communities with populations less than 1,000 was 34 percent and for communities with populations under 10,000 it averaged 30 percent which compares favorably to our overall average success rate of 28 percent for all communities that enter our grant competition. Additionally, our Technical Assistance to Brownfields Communities (TAB) grantees have provided technical assistance to hundreds of small and rural communities.

Technical Assistance

The Brownfields program provides a host of technical assistance directly to communities through other cooperative agreement recipients. Our technical assistance providers are extremely successful in providing workshops and one-on-one assistance to all brownfields communities, with a special focus on small and rural communities. For example, Technical Assistance to Brownfields (TAB) grants support technical assistance providers in every region of the country to work with communities to help them increase their understanding and involvement in brownfields cleanup and revitalization, help to move brownfields sites forward in the process of cleanup and reuse, and identify and prepare applications for funding resources. The TAB grantees serve as an independent resource assisting communities with community involvement, better understanding the health impacts of brownfields sites, science and technology relating to brownfields site assessment, remediation, and site preparation activities, brownfields finance questions, information on integrated approaches to brownfields cleanup and redevelopment, facilitating stakeholder involvement, understanding and complying with state brownfields and voluntary cleanup program requirements, and facilitating redevelopment activities.

On average, TAB grantees spend over half of their effort providing direct, site-specific technical assistance to communities that ultimately contributes to cleanup and redevelopment. However, it is important to note that even the general brownfields information provided by TAB trainings, workshops and seminars has a ripple effect that often leads to cleanup and redevelopment. We have cities tell us that it was attending one of the TAB grantee sessions that got their brownfields program started.
In the past five years, the TAB Program has provided technical assistance to several thousand communities.

Brownfields Grants

Area-Wide Planning Grants

Through our Brownfields Area-Wide Planning Program, the EPA is enabling communities to identify cleanup and reuse scenarios for the high priority brownfields sites within their neighborhood (or downtown, waterfront, commercial or industrial corridor, etc) and use these sites as catalysts to drive larger community revitalization efforts. These grants fund development of area-wide plans that are the result of broad community involvement including stakeholder and partnership engagement, brownfields and market-based economic and feasibility analyses, evaluations of existing environmental conditions and infrastructure, coordination with other local or regional community planning efforts, and financial strategies needed to generate new economic vibrancy in areas characterized by abandoned and underutilized brownfields properties.

The EPA's Area-Wide Planning Grants is a relatively recent innovation that emerged from economically distressed communities which have identified a need to conduct comprehensive inclusive community planning and studies to reverse decline and decay by assessing infrastructure needs, and redevelopment uses on brownfields sites that meets community needs. A key factor in the emergence of this tool is communities desire to have a direct stake in the redevelopment strategies so they can benefit from the redevelopment and avoid displacement of long term residents and existing businesses.

The program also helps communities identify resources they can access (or need to access) to help implement the projects identified in the plans, and to attract the public and private sector investments needed to help with cleanup and area revitalization, in a more systematic and resource-effective manner. We have held three competition rounds since we initiated the program in 2010. Information provided by grantees indicate the $4 million the EPA grant investment helped leverage approximately $400 million in other public and private sector funding for area-wide plans.

To foster the implementation of these plans, the EPA has partnered with other agencies such as HUD and DOT to take a one government approach to redevelopment implementation resources. Specifically, we have advanced the "preference and priority" concept in which communities that have successfully completed the planning under the AWP program would get preferential points in TIGER grant competition. This essentially would deliver federal economic development resources based on a local community's vision, built on strong local partnerships, and an inclusive local engagement process.

For example, Cumberland County and the City of Carlisle, Pennsylvania, worked closely with members of their community, the state and local partners to develop a plan and implementation strategy for connecting, cleaning up and revitalizing three large brownfields that were former manufacturing sites. A combination of state transportation and economic development funding and local and private resources totaling $5.5 million are being devoted to the effort. Together these partners will work to transform these sites into community-oriented mixed-use development and build upon local tourism opportunities.

In Toledo, Ohio the City is addressing challenges associated with the multiple brownfields sites located within the Overland Industrial and Cherry Street Legacy neighborhoods, including high poverty and unemployment rates, a high percentage of vacant parcels, limited access to food, and difficult transportation access due to an outdated street layout. Through their brownfields area-wide planning process, community members were able to organize together, build upon previous efforts (including the EPA-supported brownfields assessment and cleanup activities, urban agriculture development, sustainable communities technical assistance) and leverage new support from the Toledo Community Foundation Partners for Places initiatives, Vista volunteers from the Corporation for National Service, and brownfields assessment support from the State of Ohio. Together, they created an approach that concentrates on strategies to support a revitalized area with a mix of industrial, commercial, and live/work spaces.

Through the course of our EPA staff working closely with these grantees, we identified that there are several cross-project themes that help grantees develop successful brownfields area-wide planning projects. Most notably, the strongest projects have well-managed and innovative community involvement opportunities throughout the project, well-maintained partnerships, feasible cleanup and redevelopment scenarios, clear priorities and strategies developed for plan implementation, and a focus on maximizing investments and leveraging. We encourage our current grantees to incorporate these and other key lessons learned from past projects.

Assessment Grants

Assessment grants provide funding to: inventory, characterize, and assess properties; develop cleanup plans; and conduct community involvement activities related to brownfields. Assessment grants have the effect of being a financial risk management tool by identifying a management strategy for environmental conditions. The environmental site assessment is a key redevelopment tool that provides the information that communities need to jump-start economic development and reuse. Such information is critical in financial underwriting and generally providing cost assurance as a predicate to additional funds necessary to cleanup and redevelop these projects. Grantees have reported to the EPA that brownfields assessment grants have led to the cleanup of more than 1,240 properties, 2,500 sites with ongoing development activities, and another 6,075 sites were found not to require cleanup. Data provided by the EPA funded site assessments indicates that about 20 percent of the properties assessed show little or no contamination, thus making these sites available for development and reuse after a relatively small public investment. Since the program's inception, the EPA has awarded 2,648 assessment grants to small and large communities, usually for $200,000 each, for a total of $633.9 million.

In many communities, the EPA's brownfields assessment and cleanup programs address critical site preparation needs that have made us "step one" in the economic redevelopment process. For example,

the City of Brea, California's Rails-to-Trails project will transform an abandoned Union Pacific railroad corridor and other city properties into a multiuse trail using assessment and cleanup funds. The Tracks at Brea will consist of a 4.5-mile east-west route across the city featuring a two-way paved bicycle trail and a separate pedestrian path. Comprising about 50 acres of linear open space, the project will create a significant public amenity within an urban corridor previously lacking in recreational and open spaces. The long-term goal is to connect the Tracks to pedestrian and bicycle infrastructure in neighboring cities. The EPA has awarded $2.725 million toward the project, including brownfields assessment ($200,000), cleanup grants ($200,000 & FY15 $600,000) and revolving loan funds ($1.725 million) to address environmental challenges. The city also received more than $7.6 million in funds from various federal and state agencies for the project. Construction is underway in several segments, and the entire project is expected to be completed in 2016-2017.

Cleanup Grants

The EPA awards direct cleanup grants of up to $200,000 per site to public and nonprofit property owners to carry out cleanup activities at brownfields sites. Since passage of the Brownfields Law, the EPA has awarded 1,128 cleanup grants totaling $214.5 million. In Fairborn, Ohio, a former cement plant has been reborn as a training venue where emergency first responders build their skills. Funding for the site remediation came from a $200,000 Brownfields cleanup grant, $1 million from Wright State University and $2.8 million from the Clean Ohio Fund. After two years of cleanup and revitalization, the property is the home office for the National Center for Medical Readiness, along with a tactical training facility managed by Wright State University. It is the first-ever research and training facility focused on the medicine of emergency disaster response. The project is poised to deliver a variety of benefits for the region. Due to the property's location on a state highway and close to downtown, the city expects the site to become a viable economic driver. Already, 16 permanent jobs have been created and more are expected as the university brings in additional staff to do the training.

These examples help demonstrate the model for successful brownfields cleanup projects- the EPA resources being part of the overall cleanup and redevelopment that not only maximizes limited federal resources to as many communities as possible but also incentivizes the public partnerships that are the anchor to a successful brownfields project.

Our cleanup grants allow us to deliver resources to a wide-range of projects across many communities. At $200,000 per cleanup grant, the EPA often provides the first dollar that leverages other public and private funding; this model has been successful because it encourages community support for projects and allows us to work in as many communities as we have resources to engage with. The current program's success depends in large part on the ability of local communities to determine the best uses for brownfields sites based on their community engagement, their economic and infrastructure circumstances and other factors deemed important to advance a successful project. The grants are awarded based upon the strength of an applicant's response to statutory requirements, program criteria, and other factors. This has led to a broad range of successful projects from housing, manufacturing, clean energy, and recreational projects in both inland and waterfront sites. Our experience implementing the Brownfields program indicates that community decision making regarding local property reuse and development has the greatest chance of community support and success.

Revolving Loan Fund Grants

The Brownfields Program also supports property cleanup with grants to states and local governments to capitalize revolving loan funds. The Brownfields Revolving Loan Fund (RLF) grants provide the capital to make low or no interest loans and sub-grants to finance brownfields cleanup. Since passage of the Brownfields Law, the EPA has awarded 330 RLF grants totaling $319.3 million. A Brownfields Revolving Loan Fund grantee, Downriver Community Conference (DCC), made a $2.2 million loan to a developer to cleanup a former industrial waste landfill at the Port of Monroe, MI. The site is now home

to a fully operational green energy manufacturer called Ventower Industries. The company is a full-service fabricator and supplier of industrial scale wind turbine towers. They operate multiple shifts 24 hours a day, 7 days a week and have provided much-needed jobs to the area. The company has worked with the local community college to develop a specialized training curriculum for high-end welders that are required for its workforce. The developer's first payment on the loan from DCC is due in September 2015 with yearly payments of approximately $225,000 for the next 10 years. These repayments will be used by DCC to issue new loans or sub grants for brownfields cleanup.

In response to stakeholder interest to combine assessment and cleanup resources, in 2012, the EPA piloted a multipurpose grant. These nine pilots are in the final year of their grant period and while a full analysis has not been completed, the pilot indicates that the more successful multipurpose grant recipients were those that had multiple areas of a brownfields site that needed assessment and cleanup funds simultaneously, such that timing did not become an impediment. The EPA is taking these lessons learned and is exploring other multipurpose options, such as assessment and RLF funds.

Environmental Workforce Development and Job Training Grants

As communities clean up brownfields and other contaminated sites, they need a trained workforce with environmental cleanup skills. The EPA's environmental workforce development and job training (EWDJT) grants provide funding to recruit, train, and place local unemployed or underemployed residents of brownfields-affected communities with the skills and certifications needed to secure full-time environmental employment in their communities, including placing graduates in brownfields assessment and cleanup projects and in the larger environmental field.

EWDJT grants form the basis of effective partnerships with local businesses that directly impact local economies. Grant funds are provided to applicants that obtain commitments from employers to hire graduates from their programs. Local businesses provide input into the development of training

curricula and in turn hire graduates to work with their businesses performing environmental remediation in their communities. Graduates of the EWDJT program are placed in local jobs conducting site assessments, brownfields and Superfund cleanup, wastewater treatment facility operations, underground storage tank removals, mold and asbestos removal, oil spill cleanup and emergency response, and other environmental services related jobs. To date, the EPA has funded 256 job training grants. Approximately 14,000 individuals have completed training, of which, approximately 10,100 have obtained employment in the environmental field with an average starting hourly wage of $14.18. This equates to a cumulative placement rate of approximately 72% since the program was created in 1998.

For example, through a $200,000 EWDJT grant awarded to Civic Works in Baltimore, Maryland, 139 unemployed residents were trained, and of those, 115 were placed in full-time employment in the environmental field, including brownfields assessment and cleanup work. Civic Works recruits and trains individuals with significant barriers to employment, including low-income, ex-offenders, and veterans. In fact, 43% of the individuals entering the EPA-funded training at Civic Works have been veterans and 70% of the individuals entering the training were formerly incarcerated or have a substantial history of arrest and conviction. A notable graduate of Civic Works' training program decided to start her own environmental services business, Lifeline Environmental, LLC. The company provides asbestos, lead, and mold remediation services, as well as oil recovery and demolition and debris recycling and was formed to help address the significant unemployment in the City of Baltimore. The company has hired a number of graduates from the EPA funded Civic Works

Several other EWDJT grantees throughout the country are supporting entrepreneurial development in conjunction with the EPA funded environmental training, fostering growth of the environmental industry and helping to address unemployment in America's most economically distressed and blighted communities. Graduates of the program have also participated in the response and cleanup associated

with the BP Oil Spill along the Gulf Coast, the World Trade Center site in New York City, and Hurricanes Katrina, Rita, and Sandy.

Targeted Brownfields Assessment

In addition to its grant programs, the EPA conducts Targeted Brownfields Assessments (TBAs) through contracts with small and large businesses and interagency agreements with our federal partners. The assessment services are delivered directly to communities and tribes through the EPA contracts, enabling small and rural communities to address sites when they lack the resources or capacity to successfully compete for brownfields competitive grants. These single property assessments help communities on a direct basis, especially small and rural communities. The EPA has allocated more than $68 million for TBA support in fiscal years 2003 through 2015. To date, the EPA has conducted TBAs at more than 2,400 properties.

Cross-Agency Partnerships

For the past six years, the Brownfields program has participated alongside fellow EPA offices, the Department of Housing and Urban Development (HUD) and the Department of Transportation (DOT) in the Partnership for Sustainable Communities. Together, our joint efforts help to ensure that federal investments, policies, and actions support development in an efficient and sustainable manner, ensuring that each agencies' policies, programs, and funding consider affordable housing, transportation, and environmental protection. Through this Partnership, the Brownfields program is able to identify key opportunities for cross-agency coordination and alignment of funding, and to strengthen our knowledge of other federal agency programs, which helps us to better assist the communities we work with. We know that each federal investment can be maximized when the local planning, infrastructure, facilities, and services are coordinated and leveraged to meet multiple economic, environmental, and community objectives.

For example, investing in public transit can lower household transportation costs, provide better access to more job opportunities, reduce greenhouse gas emissions and air pollution, decrease traffic congestion, encourage healthy walking and bicycling, and spur development of new homes and amenities around transit stations. Investing in brownfields near transit brings new sites into productive use, and can increase the use of transit. This effort maximizes the impact of millions of dollars in federal resources for transit, housing and brownfields by aligning priorities in a collaborative approach that benefits the communities in need of assistance. We anticipate that our continued coordination with HUD, DOT and our other federal partners, amongst our regional and headquarters leadership and staff, will help communities leverage planning and implementation resources for brownfields redevelopment projects for years to come.

State and Tribal Programs

Under the Brownfields Law, the EPA provides non-competitive grant assistance to build capacity and establish state and tribal response programs so that brownfields sites in communities can be cleaned up and reused. States and tribes are at the forefront of brownfields cleanup and reuse. The majority of brownfields cleanups are overseen by state response programs. Section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) provides grant assistance to states and tribes to build capacity and strengthen state and tribal environmental response programs. State and tribal programs have proven to be effective partners by using this grant funding to address site assessments and cleanups. In fact, since 2006, CERCLA 128(a) grantees reported that an average of over 38,000 properties were enrolled in state and tribal response programs and more than 1,077,650 acres were made ready for reuse. Additionally, since 2006, state and tribal response programs provided technical assistance at more than 30,600 properties.

Similarly, tribal response programs are taking an active role in the cleanup and reuse of contaminated property on tribal lands. Tribes are developing and enhancing their response programs to address environmental issues on tribal lands. Through brownfields grant assistance, tribes are creating self-sufficient organizations for environmental protection. Tribal response programs conduct assessments, create cleanup standards, and educate their communities about the value and possibilities of brownfields clean up and reuse. The development of state and tribal programs is essential to help ensure the successful implementation of the national brownfields program. Providing financial assistance to states and tribes increases their capacity to meet brownfields cleanup and reuse challenges.

In fiscal year 2015, the EPA received $54 million in requests for cleanup programs from states, tribes, and U.S. Territories. A majority of brownfields cleanups across the country are being conducted under the supervision of these programs.

The EPA awards funds to states and tribes through a national allocation process where the EPA makes individual cooperative agreement funding decisions based on remaining balances available from state and tribal prior years' grant awards, activities that help ensure effective planning and development of response and voluntary cleanup programs, as well as activities that provide the public with access to information to create an environment for meaningful public participation. States and tribes use 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. Some states, such as Colorado, use the funds to support cleanup revolving loan funds, while others, such as Wisconsin, use the funds to maintain a combined approach to assessment and cleanup. Many use a portion of the funds to conduct site specific activities, such as the assessment and cleanup of brownfields sites. Since fiscal year 2003, states and tribes have reported the completion of more than 2,500 site assessments on brownfields properties.

Liability Protection

A critical element of the Brownfields Law is the statutory liability protections and clarifications under CERCLA for certain landowners who are not responsible for prior contamination at brownfields properties. The Brownfields Law clarified the landowner liability protection of bona fide prospective purchasers, innocent landowners and contiguous property owners under CERCLA. These self-implementing protections increase comfort and certainty for prospective purchasers and provide incentives for redeveloping brownfields.

To qualify for liability protection, 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 previous uses and condition of the property. In collaboration with a wide range of stakeholders, the EPA developed a regulation establishing standards for conducting "all appropriate inquiries." The final rule was issued in November 2005 and went into effect in November 2006. To further increase comfort and certainty and advance brownfields cleanup and redevelopment, the EPA has issued guidance and enforcement discretion policies clarifying the steps that prospective purchasers, including local governments, can take to qualify for these liability protections.

Brownfields Reauthorization

The EPA supports reauthorizing the Brownfields Program consistent with the 2002 Brownfields Law, with technical corrections included as part of the process. The EPA is ready to work with Congress and stakeholders on reauthorization efforts. It is important that any reauthorization effort be developed to avoid unintended consequences that would adversely affect the successful implementation of the Brownfields program.

Conclusion

The EPA's Brownfields Program serves as an innovative approach to environmental protection, spurring environmental cleanup, reducing neighborhood blight, preserving greenspace, leveraging private investment, leveraging jobs in cleanup and redevelopment activities, and promoting community revitalization. Our continued success will require collaboration among all levels of government, the private sector, and nongovernmental organizations. The EPA will continue to implement the Brownfields Program to protect human health and the environment, enhance public participation in local decision making, help support safe and sustainable communities through public and private partnerships, and demonstrate that environmental cleanup can be accomplished in a way that promotes economic redevelopment.

Committee on Transportation and Infrastructure
Subcommittee on Water Resources and Environment
Hearing on

"Helping Revitalize American Communities through the Brownfields Program"

July 22, 2015

Questions from Chairman Bob Gibbs for Assistant Administrator Mathy Stanislaus

1. Does current law provide the EPA with all the authorities necessary to carry out the mission of the Brownfields Program?

   Response: The current Brownfields Law, generally, provides the EPA with the necessary authority to carry out the mission of the Brownfields Program. However, if the authority under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k)(3) were amended to include the ability for the EPA to carry out Targeted Brownfields Cleanup activities (similar to Targeted Brownfields Assessment activities authorized under CERCLA 104(k)(2)), it would greatly assist the agency in addressing cleanups in small, rural, and disadvantaged communities. These communities either do not have site ownership or do not have the capacity to manage a cleanup or revolving loan fund grant, or to perform or oversee cleanup activities.

2. Many grants have been issued for assessments of potential brownfield sites to determine if they are indeed contaminated and need to be cleaned up. Can you give us a summary of what those assessments have found?

   Response: Assessment grants provide funding to: inventory, characterize, and assess properties; develop cleanup plans; and conduct community involvement activities related to brownfields. Site assessments are essential in helping to support the financing of site cleanup and redevelopment. Data provided by the EPA funded site assessments indicates that about 20 percent of the properties assessed show little or no contamination, thus making these sites available for development and reuse after a relatively small public investment. When contamination is found, the most commonly identified contaminants include asbestos, lead, polychlorinated biphenyl, volatile organic compounds (VOCs)/ Semi-VOCs, and petroleum products.

3. In what ways have cleaned up brownfield sites been reused?

   Response: The most commonly reported form of usage is mixed use. As of July 2015, current brownfields property data recorded in the ACRES database reflects 15,455 properties totaling more than 684,533 acres. Not all properties have reported end uses. Out of 15,016 reported end uses:

   - 31% (4,620 properties/9,726.87 acres) reported for mixed use;

- 29% (4,313 properties /18,298.43 acres) reported for commercial use;
- 16% (2,387 properties/24,191.43 acres) reported for greenspace;
- 13% (1,953 properties/4,666.99 acres) reported for residential use; and
- 11% (1,743 properties/101,514.67 acres) reported for industrial use.

4. One of the primary issues with brownfields is the participation of responsible parties in cleanup. What is the EPA's view on allowing this practice?

   Response: Under the current Brownfields Law, responsible parties are prohibited from receiving Brownfields grant funding. Generally, EPA policy is to promote a "polluter pays" principal regarding the cleanup of contaminated properties. The participation of responsible parties in cleaning up brownfields assists communities in meeting their community revitalization goals and saves local resources that otherwise may not be available for needs such as infrastructure improvements and redevelopment. The Brownfields Program supports local governments to work within their communities to assess, clean up and reuse brownfields, including working with and encouraging responsible parties to clean up those sites where such parties are responsible for the contamination.

5. You have given excellent examples of the success with brownfield redevelopments. State programs have cleaned up close to 100,000 properties to date. Is the EPA using its role in the most effective way possible to cleanup brownfields? Should we be providing more money to the state and tribal programs instead of local grants?

   Response: State and tribal response programs have generally not directly cleaned up, but have provided oversight in the cleanup of more than 100,000 properties that have been enrolled in their response programs.

   The EPA Brownfields Program staff believe we are supporting state and tribal response programs effectively to clean up brownfields. Because there are no federal requirements for brownfields cleanup, we rely on our state and tribal partners to establish response programs which can provide the necessary cleanup standards that will be protective of human health and the environment, and then oversee these cleanups to ensure they are done properly and that necessary institutional and engineering controls are in place.

   States and tribes are our key partners in helping to ensure sites are cleaned up and protective of human health and the environment. By providing funding for states and tribes to establish and enhance their response programs it helps support communities as they cleanup and reuse their brownfields sites. Currently, the EPA receives $47.745 million to support 160 state and tribal response programs to establish and enhance response programs. However, we continue to see an increase in the number of eligible entities that apply, increasing demands on our funding.

Local governments serve an important role and we do not believe that the states and tribes alone could perform all brownfields cleanups. By having property owners perform the cleanup with state oversight, it significantly increases the number of sites that can be cleaned up instead of only relying on state resources to do direct cleanup. Additionally, we provide grants to local government entities for them to lead the cleanup and redevelopment of properties, in partnership with the private sector. For every $1 of the EPA's Brownfields grant investment, more than $17 is leveraged from the public and private sectors.

6. Since many Brownfields assessments find little or no contamination, should we encourage (or mandate) more site assessment funding as compared to actual cleanup funding?

   Response: The Brownfields Program is designed to allow communities to decide what type of brownfields funding is right for their communities and what grants to apply for in each competition cycle. By not mandating a certain amount of funding be directed to each grant type, the program is afforded the flexibility to adjust allocations based on demand, program priorities and the quality of project proposals received. Mandating quotas on resources will only promote inflexibility in the program and may have a negative impact on our ability to adjust allocations to meet the changing demands from communities in any given year.

   Further, the majority of our funding requests are for assessment grants and we generally follow a demand-driven approach to our allocation of resources, which means the majority of our funding in any given year already goes to assessments. For example, about 59% of our 2015 appropriation went towards assessment activities through assessment grant awards and Targeted Brownfields Assessments. We found this level of funding to be appropriate for that grant cycle.

   While approximately 20% of assessment grants find little or no contamination, performing assessments at these sites is still critical since it provides the necessary information to clear the property and promote the property transfer and eventual reuse by developers and others. Unfortunately, the vast majority of assessments do find contamination. Having the information on the nature and extent of contamination allows owners to then look for cleanup resources to continue addressing their brownfields. We need the flexibility to be responsive to these requests, while still being responsive to our overall assessment demand. Additionally, on sites where contaminants are found, local communities view cleanup grants as critical to advance cleanups and redevelopment.

   Increasing, or mandating funding, for those areas would take away the market-driven approach to our program and lessen the community based approach that is the foundation of the program.

7. What steps has EPA taken to address Resource Conservation and Recovery Act corrective action sites under the brownfields programs?

Response: The EPA's authorities under the Small Business Liability Relief and Brownfields Revitalization Act include the authority to award brownfields grants to eligible entities that plan to address sites subject to corrective action under section 3004(u) or 3008(h) of the Resource Conservation and Recovery Act (RCRA). This authority allows the EPA Brownfields Program the ability to provide brownfields assessment and cleanup grants to government entities and non-profits that acquire properties where solid and hazardous wastes formerly were managed. An example of the EPA's use of this authority includes our support to communities affected by the downturn in the U.S. auto industry. Many former auto manufacturing sites were RCRA permitted facilities. Communities such as Dayton, OH and Flint, MI were able to use brownfields assessment and cleanup grants to address former auto manufacturing sites that were permitted under RCRA. In the case of the Buick City property in Flint, a former GM plant, the EPA also used its authorities under CERCLA and RCRA to facilitate the redevelopment of the property by issuing a RCRA "prospective purchaser agreement" that facilitated the redevelopment by delineating the environmental liability concerns at the property.

8. How successful are the revolving loan fund grants in furthering the assessment and clean-up of these sites?

   Response: Revolving Loan Funds (RLFs) specifically supply funding for loans and sub-grants to carry out cleanup activities at brownfields sites. When these loans are repaid, the loan amount is then returned to the fund and re-loaned to other borrowers, providing an ongoing sustainable source of capital within a community for additional cleanup of brownfields sites. RLF funds cannot be used directly for assessments, however, by providing RLF funds it can free-up funding the community would have otherwise used for cleanup or assessment activities.

   The RLF program is a central component of the Brownfields Program. The RLF can clean up sites that would otherwise not get cleaned up. RLFs are one of our most flexible tools for addressing brownfields cleanup and account for over a third of our total cleanups each year. The RLFs provide a level of funding for cleanups that isn't available through traditional financing options or through other brownfields grants, serving as the critical gap financing needed to jump-start the redevelopment process. RLF funding is often the first key piece of funding needed to make the cleanup and reuse of the property happen. As of August 2015, RLF grants have cleaned up 33% of the brownfields sites reported cleaned in 2015.

9. Apart from competitive site assessment grants, the EPA provides non-competitive funding to states and tribes. How are the states and tribes using the non-competitive funding EPA provides? What measures does the EPA take in assuring they are properly used?

   Response: States and tribes use the non-competitive funding that the EPA provides to carry out the four elements listed in the authorizing statute, including: timely survey and

inventory of brownfields sites in states and on tribal land, oversight and enforcement, providing for meaningful public participation, and approval of a cleanup plan and verification and certification that cleanup is complete.

The EPA collects program activity levels to ensure that states and tribes are properly using the non-completive funding to establish and enhance their response programs. The program activity levels include the number of properties enrolled in a response program, and the number of properties and associated acreage with cleanup work complete and all required institutional controls are in place. The EPA reviews the program activity levels as well as the state and tribal funding requests during the annual funding allocation process to ensure the funding is used properly.

Since 2006, the state and tribal programs have reported enrollment of nearly 38,700 properties in response programs annually; the completion of more than 117,000 cleanups, with all required institutional controls in place; and more than 1 million acres now ready for reuse.

10. Could you discuss your grant allotment criteria?

Response: In light of the demand for our funding, the Brownfields Program continues to be strategic in how resources are distributed and in determining which areas our resources will have the greatest impact. The Brownfields Program determines the percentage of funding to each grant program based on program goals, and the expressed need and demand of resources from communities. Currently, the greatest resource demand is for assessment funding since these resources help remove the uncertainty around site contamination and is a critical step in moving sites towards cleanup and redevelopment activities. In response, the Brownfields Program has allocated the majority of grant funds towards assessment projects.

All proposed projects are evaluated against established criteria, including criteria required by the brownfields statute, contained within the national solicitations. The current assessment, revolving loan fund, and cleanup grant competition solicitations require applicants to respond to the following criteria:

Community Need - Proposals are evaluated on the extent to which they describe the health, welfare, environmental, and financial needs of the targeted community, how the community is affected by the presence of brownfields, whether this information is supported by data sources; and how compelling and adequately it sets the context for the rest of the proposal.

Project Description/Feasibility of Success - Proposals are evaluated on the extent to which the applicant describes a reasonable approach to the project; has sufficient resources to complete the project and a capability to complete the project in a timely manner.

Community Engagement and Partnerships - Proposals are evaluated on the extent to which the applicant has a plan for engaging the targeted community in the project; the procedures for identifying sensitive populations and ensuring that the cleanup will be protective of sensitive populations and nearby residents; the identification and establishment with partners necessary to achieve the project's goals; and letters of commitment from community organizations which will be involved with the project that demonstrate specific and valuable contributions to the project.

Project Benefits - Proposals are evaluated on the extent to which the applicant describes project outcomes that promote the community's general health and/or welfare and environment through the improvement of the public health and safety, economy, and environment of the targeted community; how the project will contribute to the overall community "vision" for the revitalization of brownfields sites; how the project will use planning, policies and other tools to implement sustainable redevelopment and what long-term economic or non-economic benefits are expected.

Programmatic Capability and Past Performance - Proposals are evaluated on the extent to which the applicant described the ability of their organization to successfully manage and complete the project, their programmatic and administrative capacity, plans for measuring and reporting your outputs and outcomes, and past and/or current performance under federally and/or non-federally funded assistance agreements.

11. Has EPA used any of its other statutory authorities to get sites voluntarily cleaned up and put back into productive use?

    Response: Beyond its general brownfields grants and funding authorities, the EPA also makes use of its general enforcement authorities under CERCLA sections 106 and 107 to encourage the cleanup and reuse of brownfields sites by issuing comfort status letters, entering into bona fide prospective purchaser (BFPP) agreements, and issuing ready for reuse determinations. Each of these documents provides prospective purchasers or developers of brownfields sites with information regarding the regulatory status of brownfields properties, and in some cases, information regarding the EPA's interest in potentially taking enforcement actions at the property. The EPA also may enter into "BFPP Doing Work Agreements" with prospective owners or developers that meet the statutory criteria for a bona fide prospective purchaser and who are willing to take on critical cleanup activities at the property. Each of these documents or agreements may encourage cleanup and redevelopment of brownfields by disclosing critical information regarding the status and conditions of a property to the prospective owner and by potentially outlining the Agency's understanding of the cleanup activities necessary to render the property "ready for anticipated use."

12. Does EPA conduct post-cleanup or post-redevelopment reviews for sites that have received federal funding? If so, how often is this done? Of what value would such reviews be? Are states conducing such reviews?

Response: The Brownfields Program requires sites to be cleaned to levels that are protective of human health and the environment based on the intended reuse. This is done primarily by oversight through state cleanup programs. The program encourages communities to enroll their brownfields sites in state and tribal response programs. These programs work with the enrollee to establish risk based cleanup levels that are protective of human health and the environment and then oversee the cleanup to ensure it is done properly and meets the standards established for the cleanup and ensures that all institutional and environmental controls are in place. For cleanups that are not done through a state or tribal response program, the community is required to work directly with the EPA to ensure the cleanup is protective of human health and the environment and is properly completed.

13. Brownfields often have the stereotype of being sites in populous urban areas. To what degree are brownfields found in rural areas? How are we using federal Brownfield Program funds at a variety of site types, such as rural locations or abandoned mines?

Response: Brownfields are found in large urban areas and rural communities alike. Both scenarios pose a risk to public health and both scenarios are impediments to economic revitalization. While the Brownfields Program receives very few, if any, proposals for assessment and cleanup of abandoned mines, we do receive a large proportion of small/rural communities requesting our funding for assessment and cleanup of other types of brownfields sites. We have found small/rural communities to be quite successful in our competitions and in assessing and cleaning up brownfields sites. Over the past six years rural communities have had a success rate commensurate with our average success rate for all communities that enter the brownfields assessment, RLF and cleanup cooperative agreement competition. As the table shows below, applicants at a variety of population sizes are successful in securing brownfields funding in an extremely competitive applicant pool. A critical function in this success is providing technical assistance directly to communities. Our technical assistance providers typically provide workshops and one-on-one assistance to all brownfields communities, with a special focus on small and rural communities.

	Success Rate Among Applicants with <1,000 Population	Success Rate Among Applicants with <5,000 Population	Success Rate among Applicants with <10,000 Population	Success Rate Among Applicants with <20,000 Population	Success Rate for All Applicants, All Populations
FY10	28.6%	39.5%	35.4%	31.7%	32.4%
FY11	20.0%	25.4%	24.0%	20.2%	21.6%
FY12	36.4%	25.7%	24.6%	23.7%	23.8%
FY13	37.5%	20.4%	28.4%	24.5%	27.1%
FY14	50.0%	27.3%	39.3%	37.5%	32.4%
FY15	40.0%	24.2%	25.8%	28.7%	33.2%
Past 6 Year Period	33.8%	28.0%	29.6%	27.7%	28.1%

14. How has the liability relief provided in the Small Business Liability Relief and Brownfields Revitalization Act increased the pace of brownfields property redevelopment and cleanup?

    Response: The carefully tailored provisions of CERCLA, as amended by the Small Business Liability Relief and Brownfields Revitalization Act, including the liability protections for bona fide prospective purchasers, innocent landowners, and contiguous property owners, have supported brownfields cleanup and redevelopment by providing comfort and assurances to prospective property owners and developers. In addition, the assurances provided by the statute, as amended, are helpful in providing confidence to bankers and lenders regarding the potential viability of lenders and brownfields transactions.

15. In addition to assessment, cleanup, and revolving loan fund grants, EPA has begun trying different types of grants such as area-wide planning grants and multi-purpose grants. How are these other grant programs working? Are there ways they can be improved? Are they diluting the core mission of the Brownfield Program?

    Response: The EPA's Brownfields Area-Wide Planning (BF AWP) and multi-purpose grant programs are able to help communities address their brownfields revitalization challenges in different ways. These programs are designed to produce outcomes linked to the eventual assessment, cleanup, and subsequent reuse of brownfields sites. In this manner, Brownfields Area-Wide Planning and multi-purpose grants complement, not dilute, the EPA's Brownfields Assessment, Cleanup, Revolving Loan Fund, and Environmental Workforce Development and Job Training competitive grant opportunities and targeted brownfields assessment assistance.

The BF AWP approach enhances the EPA's core brownfields assistance programs for assessment and cleanup by encouraging strong and long-term community and partnership involvement throughout a locally-driven planning process. The burden of a single large, blighted and/or contaminated site, or multiple blighted and/or contaminated sites concentrated within an area, can weigh down an entire community. These brownfields sites are often connected to each other by more than just proximity; they share infrastructure and are affected by the same economic and social conditions, together creating a collective and negative impact on the community. Oftentimes, there is no obvious reuse for one or more of the brownfields properties, and communities struggle with what will happen at the sites. This dilemma results in long-term environmental and economic community distress.

Recipients of the EPA's BF AWP grant use the funding to focus on one or more catalyst sites as part of a broader strategy to revitalize an area of the community. Grantees involve their community members and other stakeholders in developing a feasible plan for cleaning up and reusing priority brownfields sites, and identifying the various investments needed in infrastructure upgrades, economic revitalization, and community capacity. A brownfields area-wide plan contains implementation strategies which serve as a valuable blueprint even after the grant ends. The plan helps communities decide how to align and target existing resources, update local policies, continue community involvement, and attract new investment to the project area. These implementation activities yield a variety of economic, social and environmental benefits to the local community. Informal leveraging reporting from our FY 2010 pilot grantees to date shows leveraging of public and private funds for plan implementation to be more than $400 million.

The multi-purpose grants are in the last year of the pilot and the EPA will evaluate their performance in the coming year. The intent behind the multi-purpose grant pilot was to offer both assessment and cleanup funding simultaneously to reduce the lag time many projects experience between assessments and beginning cleanup.

16. In cases where state or local governments involuntarily acquire brownfields by bankruptcy, abandonment, etc. how do they protect themselves from liability? What about cases where they voluntarily acquire these sites.

Response: The definition of "owner or operator" under Section 101(20)(D) of CERCLA provides an *exemption* from liability claims in the case of properties involuntarily acquired by local governments through bankruptcy, tax delinquency, abandonment, or "other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign."

When a state or local government acquires a brownfields property voluntarily, the statute generally provides no extraordinary liability protections, beyond those available for

private parties. However, under the third party *defense* provisions of CERCLA, at Section 101(35) (A) (ii), that statute offers an affirmative *defense* to state and local governments that "acquire property by escheat, or through any involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation." The third party defense for state and local governments requires that the government entity asserting the defense exercise "due care" with respect to hazardous substances at the property.

Beyond the provisions of the third party defense, state and local governments that acquire brownfields properties voluntarily must comply with the requirements established under CERCLA for bona fide prospective purchasers, innocent landowners, or contiguous property owner. These provisions require that the entity acquiring potentially contaminated property perform "all appropriate inquiries" prior to purchasing the property and exercise appropriate care with respect to any hazardous substance on the property (i.e., comply the "continuing obligations") following acquisition.

17. Some states allow responsible parties to receive state funding under their Brownfields programs. Should we amend the federal program to allow potentially responsible parties to receive federal funding?

Response: The Brownfields Program encourages local governments to work within their communities to assess, clean up and reuse brownfields, including working with and encouraging responsible parties to clean up those sites where such parties are responsible for the contamination. The EPA's policy is to promote a "polluter pays" principal regarding the cleanup of contaminated properties. The participation of responsible parties in cleaning up brownfields assists communities in meeting their community revitalization goals and saves local resources that otherwise may not be available for needs such as infrastructure improvements and redevelopment.

Of course, under the current Brownfields Law, responsible parties are prohibited from receiving brownfields grant funding. While this is generally appropriate, local governments may be considered to be responsible parties and are ineligible for brownfields grant funding, when they purchase property or voluntarily acquire property, even though they did not cause or contribute to previous contamination at the property. In such cases, local governments are ineligible for brownfields grants because they cannot meet all of the criteria required to establish one of the defenses to liability provided under CERCLA (e.g., bona fide prospective purchasers, innocent landowners, or contiguous property owner).

The definition of "owner or operator" under Section 101(20)(D) of CERCLA provides an *exemption* from liability claims only in the case of properties involuntarily acquired by local governments through bankruptcy, tax delinquency, abandonment, or "other

circumstances in which the government involuntarily acquires title by virtue of its function as sovereign."

Federal brownfields funding should *not* be available to entities who cause or contribute to contamination at brownfields properties. However, in the limited case where local governments acquire previously contaminated property and have not caused or contributed to the contamination at the property, the EPA Brownfields Program could support the use of federal funding to assist local governments in assessing and cleaning up such properties.

18. The Brownfields Law requires that 25% of the site assessment and cleanup grant awards be directed to sites with petroleum contamination. What are the pros and cons of this annual set aside?

    Response: The Brownfields Program is required by statute to set aside 25 percent of its annual appropriation funding to be directed to petroleum-contaminated sites. Petroleum funding is awarded via assessment, cleanup and revolving loan fund grants and through Targeted Brownfields Assessments (TBAs). Beginning in 2014, the program was given the flexibility via appropriations language to set aside *up to* 25 percent of funding for petroleum-contaminated sites. The Brownfields Law requires the program to select the highest ranking proposals. In order to award funding to the highest ranked proposals, the EPA continues to request the flexibility to use *up to* 25 percent of its CERCLA104 (k) funding to address petroleum contaminated sites versus an exact 25 percent identified by statute. The current 25 percent set-aside restricts the Brownfields Program from selecting higher-ranked applicants who requested hazardous substances funding. Replacing the 25 percent set-aside requirement with a 25 percent ceiling would provide the EPA with the flexibility to select the highest ranked project, regardless of the type of money requested and therefore meet the demand of the communities applying for the various brownfields grants.

19. What recommendations would you give to improve the Small Business Liability Relief and Brownfields Revitalization Act?

    Response: While the current Small Business Liability Relief and Brownfields Revitalization Act allows us to accomplish the mission of the Brownfields Program, we would offer the following changes to enhance the program:

    - Expand the authority under CERCLA 104(k)(3) to include Targeted Brownfields Cleanups. This authority would greatly assist the national program in addressing cleanups in small, rural, and disadvantaged communities which do not either have site ownership or which do not have capacity to manage a cleanup or RLF grant or to oversee site cleanup activities.
    - Remove language requiring 25 percent of the appropriation must fund petroleum projects.

- Expand the language in both CERCLA 104(k)(2)(assessment activities) and 104(k)(3)(cleanup activities) to allow a "governmental entity" to receive a grant for property acquired prior to January 11, 2002, even if they do not qualify under the statutory definition of bona fide prospective purchaser so long as the eligible entity has not caused or contributed to a release or threatened release of a hazardous substance at the property.
- In addition, we look forward to continuing to discuss with Congress the role of multipurpose grants and CERCLA 104(k)(6) technical assistance funding as well as what costs and expenses are allowable under brownfields grants. These aspects of the current brownfields law relate to program flexibility and the EPA's ability to support communities in the most appropriate manner.

20. What would be the best ways to attract additional private capital into the Brownfields Program?

Response: While brownfields projects often enjoy a significant amount of leveraged funding from private sources, each project is unique and may lend itself to more public, rather than private financing. The program continues to seek out ways to identify resources and assist communities with attracting those private sources of funding. The mechanisms the program has used so far include funding entities such as the Council of Development Finance Agencies (CDFA) to provide direct assistance in financing brownfields activities and to develop models, tools, and best practices that can be shared with communities. For example, the Brownfields Program awarded a $1 million (over five years) technical assistance, training and research grant to CDFA to assist communities with identifying ways to attract both other public and private funds for the financing of brownfields projects. While we are still in the first year of the award, CDFA has already created a brownfields redevelopment toolkit available to all brownfields communities to assist with financing their projects and has conducted several site visits to provide direct technical assistance. Through this grant some high-level themes are already emerging, including exploration of use of unique financing tools through the EB-5 program and staging the brownfields project correctly to attract private developers because they have an assessment completed and a cleanup plan in place, preferably with some cleanup funding and assurances.

Within the program, TBAs are helpful because the assessment information derived can help communities' market sites with more certainty, and attract private investment more easily, because risk can be better and more easily defined. Often a TBA can also help establish a defense to CERCLA liability which will pave the way for developers to invest and reuse a site.

Other options include providing incentives that will stimulate cleanup and reuse such as reinstating the expired brownfields tax incentive or providing new redevelopment incentives.

Finally, by working with the state response programs, site owners can get the necessary designations to satisfy the New Market Tax Credit requirements (brownfields projects using the credits must be undertaken in the EPA-designated or defined brownfields areas). Getting the New Market Tax Credit can also pave the way toward redevelopment.

21. Are there any process related changes that could be made to speed up assessments and cleanups? Can we reduce some paperwork requirements?

    Response: There are many federal requirements that are attached to our brownfields grants. These include the requirements to submit quarterly reports, submit minority-owned business enterprises/women-owned business enterprises reports, document compliance with Davis-Bacon (for cleanup/RLF grants), submit Quality Assurance Program Plans (QAPPs), and prepare community involvement plans and Alternatives to Brownfields Cleanup Analysis (ABCA) documents before cleanups can begin. These ensure federally-funded brownfields assessments and cleanups are done lawfully, take into consideration community interests, ensure the safety of public health and the environment, as well as protecting against fraud, waste and abuse of federal funds. The Brownfields Program equips our grantees with templates and examples of model QAPPs and ABCAs to assist them in putting together the necessary paperwork at time of grant award and when reviewing assessment/cleanup requirements. We also provide trainings to clarify requirements, troubleshoot and answer questions. Our Project Officers are also substantially involved in day-to-day management of communities' brownfields grants and are available to answer questions and further assist in navigating the requirements.

Questions from Ranking Member Napolitano for Assistant Administrator Mathy Stanislaus

1. In your testimony, you noted that Area-Wide Planning Grants fund broad community development efforts by involving stakeholder and partnership engagement, brownfields and market-based economic and feasibility analyses, and coordination with other local, federal or regional community planning efforts.

   Please describe what has made the Area-Wide Planning Program so successful and what EPA can do to foster stronger local and federal partnerships to make this program even more successful?

   Response: The Brownfields Area-Wide Planning approach enhances the EPA's core brownfields assistance programs for assessment and cleanup by encouraging strong and long-term community and partnership involvement throughout a locally-driven planning process. The burden of a single large, blighted and/or contaminated site, or multiple blighted and/or contaminated sites concentrated within an area, can weigh down an entire community. These brownfields sites are often connected to each other by more than just proximity; they share infrastructure and are affected by the same economic and social conditions, together creating a collective and negative impact on the community.

Oftentimes, there is no obvious reuse for one or more of the brownfields properties, and communities struggle with what will happen at the sites. This dilemma results in long-term environmental and economic community distress.

Providing recipients with resources to develop specific revitalization goals for their key brownfields sites, and creating discrete implementation steps for local partners and community members to see the plan through completion, is helping raise each community's readiness level and local capacity for cleaning up and reusing brownfields sites.

The EPA has provided approximately $4 million in cooperative agreement funding every other year since FY11 through our newest program - Brownfields Area-Wide Planning.

Year	Number of Awards	Amount
FY11 (pilot round)	23	$3.8 M
FY13	20	$3.9 M
FY15	21	$4.2 M
Total	64	$11.9 M

Recipients of Brownfields Area-Wide Planning cooperative agreements have included local governments, non-profit community organizations, regional planning entities, one university and one tribe.

The EPA's Brownfields Area-Wide Planning program is designed to help communities address their brownfields revitalization challenges. Area-wide plans are valuable blueprints for laying out cleanup and reuse strategies for priority brownfields sites, and identifying further investment needed in infrastructure upgrades, economic revitalization, and community capacity.

Recipients designate a specific area within their city or community (such as a neighborhood, commercial or downtown district, industrial corridor, waterfront or greenway) that is affected by one or more brownfields sites. They use the EPA funds to conduct important planning research activities, such as:

- Facilitating community involvement activities that led to identifying the community priorities related to reuse and area revitalization, and prioritizing properties for assessment or cleanup and helping to ensure that community residents participate and benefit from redevelopment;
- Analysis of the existing conditions of the brownfields site(s) and project area (such as brownfields economic research and market analysis; needed infrastructure improvements/investments to support specific end uses; known environmental conditions of the brownfields and project area, and coordination with other community or regional plans that apply to the project area); and

- Developing a detailed brownfields area-wide plan which included specific strategies for brownfields site assessment, cleanup, reuse and related improvements, and other plan implementation strategies (such as near- and long-term actions, resources available and needed, leveraging opportunities, and partners responsible for implementation).

Some of the common plan implementation activities that are taking place amongst the pilot recipients include:

- Conducting brownfields site assessments, cleanup or other site preparation activities within the project area
- Continuing to reach out to community members and project partners, and create opportunities to be involved with plan implementation
- Working with local property owners, developers, and/or securing parcels as needed, to prepare brownfields for reuse
- Targeting infrastructure and housing improvements (including design/construction/ abatement activities) to the project area
- Tying the brownfields area-wide planning implementation efforts to other city or regional planning efforts
- Changing local zoning, creating tax increment (or similar) financing or business improvement districts, making other policy changes and adopting the brownfields area-wide plan
- Leveraging infrastructure investments that foster brownfields area revitalization
- Securing grants or technical assistance opportunities, nonprofit or private funds, and working with developers to help further implementation
- Strengthening relationships with federal, state, tribal, regional and local partners and continuing to gain support for the goals the plan

The EPA continues to encourage BF AWP grantees to coordinate their plans and build strong, lasting partnerships with a variety of federal, state and local stakeholders. The EPA evaluates proposals based, in part, on established partnerships and plans to build new partnerships. The most successful BF AWP projects reflect diverse perspectives on community priorities and shared responsibility for implementation across multiple entities. Partnerships typically include government agencies, institutional or community-based organizations, local or regional funding providers and the private sector. Long-term collaboration amongst partners helps ensure the interests voiced in the community engagement process are applied throughout the life of the project and facilitates implementation of the area-wide plan. Information provided by BF AWP grantees indicate that the EPA's $4 million grant investment has helped leverage approximately $400 million in other public and private sector funding for area-wide plans.

2. Also, please describe the nature of your partnerships other federal agencies, including the U.S. Department of Housing and Urban Development and the U.S. Department of Transportation in the redevelopment of brownfields properties. Are there ways to enhance the coordination among the various Federal authorities that promote the redevelopment of brownfields and the revitalization of disadvantaged communities?

Response: The EPA works with a wide variety of federal partners on brownfields issues. We find that by working with staff and management from other federal agencies, at the headquarters and regional office level, the Brownfields Program is able to identify key opportunities for cross-agency coordination and alignment of funding. Strengthening our knowledge of other federal agency programs helps us to better assist the communities we work with. Examples of specific ways that we work with other federal agencies include:

- For the past six years, the Brownfields Program has participated alongside fellow EPA offices, the Department of Housing and Urban Development and the Department of Transportation in the Partnership for Sustainable Communities (PSC) (http://www.sustainablecommunities.gov/). The Partnership is built around advancing six principles to promote increased livability within communities, and PSC agencies look for opportunities to incorporate the livability principles/concepts within federal funding programs and policies. Other federal agencies, such as Department of Agriculture (USDA) Rural Development, Economic Development Administration, Federal Emergency Management Agency and others are often involved in PSC efforts as well. Involvement from other federal agencies often happens when the EPA regional staff involved in a specific brownfields project help make these important connections on the ground.

- Through the PSC, the EPA's Brownfields Program has been helping to advance the "preference and priority" concept among different federal grant programs. The idea behind "preference and priority" is that a key strength of the PSC is its work to better align federal resources towards more sustainable, environmentally- and economically-sound outcomes, using grant dollars that can build on related and prior investments by other federal agencies.

- Every two years, the EPA works with various federal agencies to produce the Brownfields Federal Partners Guide (http://www.epa.gov/brownfields/partners/brownfields-federal-programs-guide-2013.pdf) which helps brownfields communities better understand which federal programs have resources to support brownfields –related cleanup and redevelopment.

- For several years, the EPA has worked with the National Institutes of Environmental Health Sciences to support our Environmental Workforce Development and Job Training Program.

- The EPA incorporates staff with brownfields-related knowledge from relevant federal agencies to be part of proposal review teams for the Brownfields Area-Wide Planning grant competition and being a Brownfields Program grantee is incorporated into DOT criteria for its Tiger Grant Program.

The EPA has more information about our federal partnerships on our website: http://www.epa.gov/brownfields/partners/federal_partnerships.htm.

3. During Subcommittee Q&A, you suggested that there may be a benefit to multi-purpose grants to help remediate brownfields properties, provided that there were sufficient safeguards and oversight of these types of grants. What recommendations would you make to ensure that these safeguards and oversight are in place to ensure the most efficient and most effective use of these funds for the redevelopment of brownfields?

   Response: We generally support the concept of multipurpose grants.

   The multi-purpose grants are in the last year of the pilot and the EPA will evaluate their performance in the coming year. The intent behind the multi-purpose grant pilot was to offer both assessment and cleanup funding simultaneously to reduce the lag time many projects experience between assessments and beginning cleanup.

   Based upon the results of the initial multipurpose pilot, the Brownfields Program plans to examine other possible funding combinations for multipurpose awards including pairing of assessment and revolving loan funds. The EPA will continue to use its statutory authority to award multipurpose grants.

   Safeguards and oversight would include ensuring spending stayed within statutory caps of $200,000 per site basis, ongoing EPA Project Officer monitoring of the status of funds, training for multi-purpose pilot grant recipients and best practices shared among the community to ensure appropriate use of funds.

4. Stakeholders have suggested that the Brownfields Program has been very effective at fostering the redevelopment of properties where there are strong market forces for reuse of these properties, but less effective at also redeveloping brownfields where these market forces may be less strong, such as low-income urban neighborhoods or rural communities. What recommendations do you have on ensuring that the EPA's brownfields program brings "broad-based economic opportunity and community revitalization to all"?

   Response: The Brownfields Program has historically worked in low-income neighborhoods and rural communities. We have found that brownfields seed money can often act as a catalyst to accelerate the revitalization of an entire area, regardless of the demographic make-up of that community.

   However, the Brownfields Program cannot create a market for redevelopment of sites. Instead, we provide seed money to a community where a market may exist and provide them with the tools needed to assess and cleanup sites. A strategy that rural market areas have used is the critical focus on public uses such as recreational, medical and the arts that set the stage for private enterprise. No matter the community demographic, brownfields projects are most successful where there is established stakeholder support, a local champion, a variety of leveraged funding available and a vision for the site. The communities that possess these are often successful in securing brownfields seed money, regardless of location, population size and other demographic factors. These communities also have a wide variety of available technical assistance from the EPA and our technical

assistance providers, including workshops on marketing properties, leveraging other funds and exploring financing strategies to ensure a project that is assessed/cleaned up with brownfields funding is positioned to be redeveloped.

For those communities that do not have the capacity to manage a brownfields grant, the program offers Targeted Brownfields Assessments which are assessments conducted on behalf of communities.

5. How does EPA differentiate between Superfund sites and brownfield sites? The goal of the Brownfields program is to encourage the redevelopment of as many sites as possible, but not at the expense of public health. As such, how does EPA ensure that heavily contaminated sites do not end up in the Brownfields program?

   Response: The Small Business Liability Relief and Brownfields Revitalization Act of 2002 provides the legal definition of a "brownfields site" as: "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." By statute, excluded from this definition, are:

   - Facilities listed (or proposed for listing) on the National Priorities List (NPL);
   - Facilities subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA; and
   - Facilities that are subject to the jurisdiction, custody, or control of the United States government. (Note: Land held in trust by the United States government for an Indian tribe is eligible for brownfields funding.)

   If a site is not already being addressed under the Superfund or other EPA regulatory program and meets the definition of a brownfield, a community may apply for brownfield funding. Communities work with their state response or voluntary cleanup programs to help ensure the assessments and cleanup of the site is protective of human health and the environment. For brownfield projects not being overseen by state response or voluntary cleanup programs, the EPA project managers help ensure proper cleanup levels are used in the cleanup of the site. In situations where a property starts out as a brownfield and then through the site assessment and cleanup process higher amounts of contamination are found, the information is reported to the state and appropriate EPA program office. While it does not happen frequently, occasionally we will have a site that started out as a brownfield site become a superfund site. Monitoring and oversight by a state response program and/or the EPA program office overseeing the brownfield work at a site helps ensure protection of human health and the environment.

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

Testimony of Cynthia A. Hafner, Chief Legal Counsel, Ohio EPA
U.S House of Representatives Water and Environment Subcommittee
Wednesday, July 22, 2015 10:00 AM

Chairman Gibbs, Ranking Member Napolitano and members of the Water Resources and Environment Subcommittee, I first would like to thank you for the opportunity to testify on behalf of Ohio's successful brownfields program. My name is Cynthia Hafner and I serve as the chief legal counsel at the Ohio EPA with 23 years of firsthand experience with Ohio's brownfields.

As some background, in the wake of CERCLA reauthorization in the mid-1980's a new phenomenon of contaminated sites emerged. Developers began fleeing the used and contaminated "brownfield" sites in and near cities and started new businesses in uncontaminated "green fields" in order to avoid the liability and cost of clean-up. In Ohio, this unintended consequence of the industrial revolution was increasing blight in urban cores, moving jobs away from cities, using up precious farmland, and abandoning existing infrastructure while creating the need to fund and build more to the new businesses. Ohio was blessed with a rich industrial history, which resulted in a very large number of brownfields that no one wanted to use. In order to take advantage of reusing the brownfields, the Ohio General Assembly and Governor Voinovich passed a law in 1994 creating the Ohio voluntary cleanup program that provides the tools necessary for stakeholders to clean up and reuse brownfields and preserves Ohio's agricultural land.

Voluntary Action Program

Ohio's law became known as the voluntary action program (or VAP). The VAP has resulted in the successful cleanup of numerous properties around the State of Ohio. Ohio has done this through partnerships with many stakeholders including business owners, developers, municipalities, and environmental professionals. This partnership began on day one of the program. Representatives of these and other stakeholder groups participated in the initial development of the administrative rules for the program. The input VAP receives from its stakeholders helps meet vital business development needs of our communities while also being protective of the human health, safety and environment for those communities.

Since its inception, the VAP has resulted in the cleanup of over 484 properties totaling more than 9,251 acres. The VAP approaches cleanup through a privatized system with State oversight focused on setting clear cleanup standards and auditing completed cleanups. Professionals certified by the program are responsible for the investigation and cleanup of a property. This is done without upfront oversight by Ohio EPA. Instead, Ohio EPA reviews documentation after the cleanup is complete and issues a release of liability if the property meets the appropriate applicable standards for its intended use. Program rules

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define clear cleanup standards and a clear process volunteers must use to investigate and cleanup property. Cleanup standards must protect public health and the environment from realistic exposure scenarios and relies on existing or planned land uses for the property. Financial incentives in the form of tax abatements complete the suite of tools for folks who are cleaning up sites for reuse and redevelopment.

Because the VAP has been a successful cleanup program for the State, its use continues to be expanded so that more properties can participate in the program. On July 31, 2001, Ohio EPA finalized and signed a Superfund Memorandum of Agreement (MOA) with U.S. EPA for the VAP. The importance of this signed MOA is the reassurance it gives volunteers that U.S. EPA is comfortable that Ohio EPA's cleanup program leads to protective cleanups. In 2007, the MOA was modified to extend federal comfort to sites undergoing RCRA corrective actions. In 2011 and 2012, changes were made to state law to allow brownfield properties with releases from petroleum underground storage tanks (USTs) to use the VAP for cleanup.

To better serve the people of Ohio and stakeholders of the program, the VAP has continually improved over the years. With input from its stakeholders, rule revisions and changes to program procedures have refined the VAP cleanup process. Changes focus on providing flexibility for site investigation and cleanup of property and streamlining document review procedures to be more responsive to the needs of our stakeholders. The evolution and improvement of the VAP could not be accomplished without the valuable input Ohio EPA receives from its stakeholders.

The program seeks feedback from its stakeholders with outreach to certified professionals, environmental attorneys, municipalities, developers and banks. One of the forums for outreach to stakeholders includes periodic state-run brownfield conferences. These conferences are modeled after the national brownfield conference sponsored by U.S. EPA. Interest in brownfield cleanup and redevelopment is demonstrated by attendance figures at Ohio's brownfield conferences. The conference has enjoyed healthy attendance figures over the years with 375 participants at last year's conference. Participants range from the local county economic development professional who may not know a whole lot about brownfields to the experienced environmental professional.

After 20 plus years of the VAP, the program has served as a catalyst for brownfield redevelopment in the State of Ohio. Anecdotally, environmental professionals inform us that for every project that formally submits documentation to the VAP for a release of liability there are about five times as many projects that utilize the VAP rules and standards for property transactions and redevelopment without formal submittals to Ohio EPA. Although these projects do not receive the benefit of a state release of liability, properties are being cleaned up and redeveloped which is an intended effect of the original legislation. The VAP was designed to let its users decide if the transaction required a legal release and if the project needed to be on the radar screen of the agency. The beneficial effect of the VAP reaches far beyond the statistics Ohio EPA reports which are just the tip of the proverbial ice berg.

CERCLA Grants

128(a) brownfield grant funding from U.S. EPA has provided and continues to provide tangible brownfield revitalization benefits to Ohio and its municipalities. Some of these benefits include:

- Targeted Brownfield Assessment (TBA): Ohio EPA provides in-kind services to Ohio municipalities in the form of Phase I assessments, asbestos investigations and Phase II sampling through both the Agency's field unit and contractors. Since 2002, Ohio EPA has completed 81 Phase I assessments, 23 certified asbestos inspections, 86 Phase II sampling events. These have assisted 104 communities (in 57 counties) in Ohio.

  We increased the percentage of our grant award used to conduct TBAs from about 25% to 50% of the total award last year. We anticipate we will complete 33 TBAs by the end of this FFY. That is more than twice as many per year as we conducted in previous years. We expect to provide about the same number of TBAs to communities next year.

- 128(a) brownfield grant funds also allow Ohio EPA to provide brownfield funding regional workshops to 2-4 regions of the state each year. These workshops provide detailed information on state, federal and private financial incentives (grants, low interest loans, tax abatements, and technical assistance) available to communities seeking to cleanup and revitalize brownfields. These workshops typically pull in 30-100 local economic development and brownfield revitalization officials from the region in which they are held. These workshops have resulted in several communities receiving incentives that they did not know were available prior to the workshop.

- Grant funding is also used to provide initial and periodic training to the environmental consultants who are licensed to conduct assessment and cleanup in the VAP. This helps ensure that these licensed environmental professionals are up to date on the latest regulations as well as the latest cleanup and assessment technologies.

- Brownfield Technical Assistance to Communities (TA): the grant allows Ohio EPA to provide technical assistance to communities conducting brownfield cleanups. Ohio EPA's VAP is funded by fees, including fees for conducting reviews of technical documents related to cleanups. Because of the funding from the 128(a) brownfield grant, we can provide this type of assistance to communities at no charge. This is a very popular incentive with our Ohio communities and we typically conduct 60-80 of these grant funded projects each year.

In addition to the 128(a) funding from U.S. EPA, 104(k) funding from U.S. EPA for area-wide planning grants and brownfield assessment, revolving loan fund and cleanup grants have also benefited Ohio and its communities. Since 2002, 128 awards totaling approximately $55.4 million have helped with community planning, assessment and cleanup of brownfields sites within Ohio's communities.

State Funding

Brownfield funding from federal resources makes a significant contribution to Ohio and its communities. Ohio also recognizes the importance of offering State funding to assist with revitalization of brownfield properties within our own communities. Some of these programs include:

- Jobs-Ohio, the privatized economic development arm for the state, offers brownfield funding in the form of grants and loans for projects that will create and retain jobs. They have an annual budget of $45 million to assist with assessment and cleanup of brownfield projects that commit to job creation or retention.

- Over the past 13 years, the State -- through its Development Services Agency -- has provided approximately $417 million to assess or cleanup 409 projects. This funding resulted in leveraging nearly $4 billion in additional local public and private investment.

- Ohio EPA has supplemented the TBA program funded by the 128(a) brownfield grant from U.S. EPA with an extra $492,000. This funding has assisted an additional 44 projects. The State funds are used similar to Federal funds to provide in-kind services to local communities. State funds are used for projects that do not qualify for federal funding or for projects Ohio EPA considers to be a priority. The State-funded TBA program has often been used to support projects that receive funding from other sources, using the State funding to fill funding gaps for the projects. Although Ohio EPA's funding levels are not as large as some of the other programs, it has served a vital role in keeping a project on track and bring it to completion.

By working collaboratively with our sister state agencies, private sector partners and local stakeholders, we are able to support our local communities with their efforts toward economic prosperity and enhanced quality of life. Additionally, we provide a network of resources so we can be responsive to stakeholders. One of our best collaborations is with the Ohio Development Services Agency and the Ohio Water Development Authority. Collectively, we work to eliminate the blighting impact of brownfields, improve water quality through better infrastructure and provide financing for projects that visibly impact communities. Also, coming this fall, a new tool will be available for Ohio communities to address abandoned gas station properties. With all of these opportunities, the U.S. EPA brownfield grants are still the necessary backbone to the financing structure. Without the brownfields funding received at the local level through 104(k) grants as well as through 128(a) funds, many projects in Ohio would not come to fruition.

A good example of collaborative financing is in Louisville, Ohio near Canton. A former industrial manufacturing site with a sorted history could not be redeveloped without assessment and remediation. By providing first-in funding from the 128(a) program, as well as other state resources, the site was once again valuable to the new oil and gas manufacturing sector. It is now the home of the new Chesapeake headquarters and equipment storage facility. Before brownfield funding it would be just another site with environmental issues.

Again, I would like thank Chairman Gibbs for allowing me this opportunity to present Ohio's successful brownfields program to the committee and would be happy to answer any questions you may have. Thank you.

ANSWERS FOR THE RECORD

HOUSE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT HEARING ON

"Helping Revitalize American Communities Through the Brownfields Program"

ANSWERS from Ms. Cindy Hafner (Chief Legal Counsel, Ohio EPA)

A. Submitted on Behalf of Congressman Gibbs:

Q1 - Would an exemption from CERCLA liability for non-liable parties that do *not* take ownership of a brownfields site, but are willing to take cleanup action, contribute cleanup funding, or provide other substantial support to the cleanup of the site, encourage more brownfield site cleanups by such "innocent" parties?

In Ohio, my experience has been that parties funding or taking cleanup actions are the existing or future property owners. At least in Ohio this would probably not encourage more brownfield cleanup by innocent parties.

Q2 - How does the VAP approach of using a privatized system of certified professionals with state oversight improve the program's efficiency, while maintaining protection of the environment?

Professionals applying for certification must demonstrate they possess the professional competency and knowledge to perform tasks required of a CP and then complete an 8-hour initial training on agency rule requirements. CPs must also adhere to professional codes of conduct contained in program rule or face license suspensions or revocations. Once certified, CPs must complete a minimum of 12 professional development hour units in relevant continuing education training, half of which must be conducted by Ohio EPA. Ohio EPA maintains close professional contact with its CP community with annual training and seminars covering programmatic and technical topics relevant to the VAP. These trainings are also designed to ensure open lines of communication between the Agency and CPs.

All documents related to the voluntary action may be examined by Ohio EPA during an audit. During the audit, Ohio EPA may also conduct on-site sampling to verify compliance with cleanup standards. Volunteers may lose their covenants if problems identified in an audit are not corrected. CPs and laboratories who have conducted work under the VAP may be civilly or criminally penalized for violating agreements and falsifying or withholding information.

The processes, training, cleanup rules, CP standards and audits provide the system of checks and balances to ensure the clean-ups are protective in a streamlined privatized cleanup program.

Q3 - How do you propose that "mothballed" sites be addressed?

The Sarbanes Oxley Act's requirement to report liabilities on companies' balance sheets gave significant incentive to companies to abandon the practice of retaining ownership of contaminated property and fencing it off rather than putting it back into productive use.

In Ohio, local governments are using land banks and nuisance laws to accumulate contaminated property and clean it up or to force cleanups by responsible properties respectively. Ohio law provides liability limitations to land banks and entities that clean up under the Ohio's brownfield clean up law. Commensurate limitations of liability at the federal level would provide additional safe guards for local governments who are trying to clean up sites and reuse them. More specifically, a release of CERCLA liability for land banks and entities that clean up under a state MOA with USEPA (once completed) could help local governments' better deal with abandoned or mothballed sites.

Q4 - What balance between federal and state government roles do you see as being most effective in the redevelopment of brownfields?

The effectiveness of The MOA process between Ohio and USEPA has been and effective and positive resource. USPEA reviewed Ohio's overall cleanup program and the state oversees the individual clean ups throughout Ohio. USEP's Chicago office is a back stop and Ohio EPA is the boots on the ground regulator helping volunteers clean up the sites. As mentioned in the previous answer, I feel a CERCLA legal release for Ohio's volunteers that successfully complete a MOA clean up would be more of an incentive than the "comfort" they get now.

Q5 - Brownfields often have the stereotype of being sites in populous urban areas. To what degree are brownfields found in rural areas? How are we using federal brownfield program funds at a variety of site types, such as rural locations or abandoned mines?

Ohio has dealt with numerous rural and small communities' brownfield issues. Early on in state and federal brownfields programs, most of the cleanups occurred, and incentives were focused on, the more "visible eyesore" brownfields in larger cities. Over the last several years, cleanup work and incentives are occurring in urban areas, suburban areas, rural areas and even small communities. In these cases, Ohio has found the both state and federal Targeted Brownfield Assessments (TBAs),which provide free Phase I, II and sampling assessments extremely helpful to small and rural communities. Particularly advantageous to small and rural communities is that TBAs do not require small town administrators to issue Requests For Proposals, review environmental contractor bids, and select contractors for brownfield assessment work. With TBAs, the state or USEPA does the work and provides the results to the local government for free.

Q6 - How has the liability relief provided in the Small Business Liability Relief and Brownfields Revitalization Act increased the pace of brownfield property redevelopment and cleanup?

Ohio EPA has not measured statistically cause and effect relationships between the factors and the pace of cleanup. USEPA is probably best suited to provide analysis on the effects of the Small Business Liability Relief and Brownfields Revitalization Act

Q7 - In addition to assessment, cleanup, and revolving loan fund grants, EPA has begun trying different types of grants such as area-wide planning grants and multi-purpose grants. How are these other grant programs working? Are there ways they can be improved? Are they diluting

the core mission of the brownfields program?

The type of grant is less important than the efficiency of the grant and award process. Flexibility in the use of the grant funding allows more investigation and cleanup work to be accomplished.

Q8 - In cases where state or local governments involuntarily acquire brownfields by bankruptcy, abandonment, etc., how do they protect themselves from liability? What about cases where they voluntarily acquire these sites?

In Ohio, the tools for local governments are innocent purchaser defense, bona fide purchaser defense, creating a land bank under state law, cleaning up the site, and the USEPA comfort letters. These protections are used for both voluntary and involuntary acquisition.

Q9 - Some states allow responsible parties to receive state funding under their Brownfields programs. Should we amend the federal program to allow potentially responsible parties to receive federal funding?

At the brownfield sites in Ohio, the potentially responsible party (PRP) is usually gone or unable to pay for the clean- up. We do find instances in the involuntary cleanup programs (Superfund and State ordered clean ups) that some PRPs do not have the ability to pay for all of the clean-up. In those cases, either other PRPs, state, or federal funds may be used for clean-up.

Q10 - The Brownfields Law requires that 25% of the site assessment and cleanup grant awards be directed to sites with petroleum contamination. What are the pros and cons of this annual set aside?

Most of the petroleum cleanup is done at the Ohio Department of Commerce. I do not have the experience or perspective to identify the pros and cons of the current percentage.

Q11 - What recommendations would you give to improve the Small Business Liability Relief and Brownfields Revitalization Act?

The liability limitations for land banks and entities cleaning up under the MOA with USEPA as explained in my answer to Question 4.

Q12 - What would be the best ways to attract additional private capital into the Brownfields Program?

In Ohio, new businesses are looking to locate on brownfields. A hurdle I have seen occurs when the phase I and II work has not been done on a property so the risk of citing the facility on a dirty brownfield is unquantified. This can possibly delay the progress of any pending transactions.

Q13 - Are there any process related changes that could be made to speed up assessments and cleanups? Can we reduce some paperwork requirements?

Many of the federal grant and loan requirements are driven by laws other than CERCLA. My expertise and observations in Ohio do not give me the perspective necessary to make informed suggestions for process and paperwork reductions.

Hon. Grace F. Napolitano, a Representative in Congress from the State of California
Questions for the Record issued to Cynthia A. Hafner, Chief Legal Counsel, Ohio EPA

The Honorable Grace F. Napolitano
Ranking Member
Subcommittee on Water Resources and the Environment

Ms. Napolitano,

Thank you for your July 24, 2015 letter. Ohio EPA appreciates your interest in Ohio's very successful brownfields Voluntary Action Program (VAP). While this voluntary program has been well-received and resulted in the clean-up of many industrial sites, we continue to seek ways to improve the options available for site remediation and redevelopment. In your letter you asked 5 questions. Your questions and my responses, in italics, are presented in the order you asked them.

- As Congress considers legislation to reauthorize appropriations for EPA's brownfields authorities, what is your opinion on the recent Federal appropriations for these authorities?

  As I mentioned in my testimony, the brownfields appropriations are appreciated and an important component to helping new businesses or expanding business reuse brownfields in Ohio.
- Have recent Federal appropriations been too high, too low, or about right?

  From my perspective as a single state brownfields program it would be difficult to determine a nationwide policy decision on setting federal appropriations.
- Has funding EPA's brownfields authorities at levels below their traditional authorized levels had an impact on the overall effectiveness of the program, and if so, can you describe this impact as it pertains to your entity?

  Many factors influence the effectiveness of Ohio's brownfield program and funding sources each year. It would be nearly impossible to take a single factor like less federal authorizations and identify specific consequences to Ohio EPA.
- If you were to recommend a target for Federal appropriations for these authorities in the upcoming reauthorization bill, what level would you recommend for brownfields site assessment and remediation grants?

  As indicated above, my limited perspective makes recommending a level of setting federal appropriations for brownfield site assessment and remediation grants difficult. However, the federal brownfield as used in Ohio is money well spent based on the private, state and local money leveraged by the federal funding. We do support continued funding of brownfields assessment and grant programs.
- What appropriations level would you recommend for state response programs?

  As indicated above, my limited perspective makes recommending a level of setting federal appropriations for state response programs difficult. From my perspective, the federal brownfield as used in Ohio is money well spent based on the private, state and local money leveraged by the federal funding.

Please let me know if you have any additional questions on these responses. Thank you for your consideration.

Written Testimony of Elizabeth Mayor J. Christian Bollwage
For The U.S. Conference of Mayors
Before the House Transportation and Infrastructure
Subcommittee on Water Resources and the Environment
On Brownfields Reauthorization

INTRODUCTION

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

I am pleased to be here today to discuss the brownfields legislation and subsequent program, its national and local impact, including the impact on my community, and the importance of reauthorizing the bill with some improvements that would make the law work even better.

HISTORY

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

Developers were unwilling to touch these properties out of fear of liability that was the result of the joint, several, and strict liability provisions in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), a 1980s law more commonly known as Superfund. As a result, they would develop on greenfields that contributed to urban sprawl and left abandoned sites in just about every community in the United States.

As Chicago Mayor Richard Daley said at the time, "As a nation, we recycle aluminum, glass, and paper, but we don't recycle our most valuable commodity, our land."

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

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

NATIONAL IMPACT OF BROWNFIELDS

The Brownfields Law and the EPA Programs that resulted from that law has had a very positive impact on many communities throughout the nation. According to EPA, since the inception of the program, there have been over 24,000 Assessments, over 1,200 cleanups completed, nearly 110,000 jobs, and over $23 billion dollars leveraged. In fact, for every EPA dollar spent leverages (on average) $17.79 in other investments.

In the last Conference of Mayors survey, 84 percent of cities said that they have successfully redeveloped a brownfield site with 150 cities successfully redeveloping nearly 2,100 sites, comprising more than 18,000 acres of land. And, at that time, there were over 1,200 sites comprising of another 15,000 acres that were in the process of being redeveloped. 106 cities reported that 187,000 jobs have already been created through the redevelopment of brownfield properties with 71,000 jobs in the pre-development stage and 116,000 permanent jobs.

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

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

BROWNFIELDS REDEVELOPMENT IN ELIZABETH

Attached to my testimony is a summary of some of the most notable brownfield redevelopment projects in my community including our Hope VI project, the area surrounding Midtown Elizabeth Train Station, the Harbor Front Villas, but I wanted to highlight the Jersey Gardens Mall.

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

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

The Mall continues to flourish with business up 10% and international visits up 37%. *Jersey Gardens Mall* was renamed *The Mills at Jersey Gardens* which recently announced a 411,00-square foot expansion, which is expected to start in 2016 and be completed in 2018. Improvements will include adding high-quality restaurants and top retail brands to the location.

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

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

WAYS TO IMPROVE THE PROGRAM

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

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

I would like to highlight some of the key recommendations that the Conference of Mayors believe would make a significant difference with redeveloping even more properties.

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

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

Increase Cleanup Grant Amounts – As I mentioned earlier, many of the "easy" brownfield redevelopment projects are already underway or have been completed. What we have left are brownfields that are more complicated due to the level of cleanup that is needed, market conditions, location of the site, or a combination of these factors. The Conference of Mayors would like an increase in the funding ceiling for cleanup grants to be $1 million and in special circumstances, $2 million. This would give some additional resources to conduct cleanup at the more contaminated sites and bring these properties back into productive use.

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

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

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

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

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

Although property acquisition is a vital tool for facilitating the development of brownfields, many local governments have been dissuaded by fears of environmental liability.

Encouraging Brownfield Cleanups by Good Samaritans – The Act should provide an owner-operator exemption from CERCLA liability for non-liable parties that take cleanup action or contribute funding or other substantial support to the cleanup of a brownfield, in conformance with a federal or state cleanup program, but do not take ownership of that site.

Closing

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

City of Elizabeth - Brownfield Summary

1. The Mills at Jersey Gardens

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

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

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

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

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

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

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

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

2. The HOPE VI Project

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

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

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

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

3. Area Surrounding Midtown Elizabeth Train Station

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

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

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

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

4. Harbor Front Villas

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

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

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

Responses to Questions for the Record from Mayor J. Christian Bollwage
"Helping Revitalize American Communities Through the Brownfields Program"

Questions submitted on behalf of Congressman Gibbs:

Q1 - Would an exemption from CERCLA liability for non-liable parties that do *not* take ownership of a brownfields site, but are willing to take cleanup action, contribute cleanup funding, or provide other substantial support to the cleanup of the site, encourage more brownfield site cleanups by such "innocent" parties?

Answer 1 – I believe that an exemption from CERCLA liability for non-liable parties that do not take ownership of a brownfields sites, but are willing to take cleanup action, would definitely encourage more brownfield sites to be cleaned up by these innocent parties. There are many good Samaritans out there, who have a desire to clean up properties but have been told not to due to liability concerns if they set foot on the property and start doing work on a site. I'm sure there was a reason for this to originally be the case but it has hindered well meaning citizens and civic groups from helping in our cause to clean up more properties and make them assets, not liabilities in our communities.

Q2 - Can you please describe what it was like before the brownfields law was passed in 2002 trying to redevelop these sites? What were some of the liability issues that faced cities and developers? Were there unintended consequences?

Answer 2 – Before the Brownfields law was passed in 2002, local governments and potential developers were in an extremely difficult situation. Most cities had huge numbers of brownfield sites that they were trying to get redeveloped but developers weren't willing to touch them due to the joint, several and strict liability provisions of the CERCLA law. To help reassure developers that they wouldn't be sued or at least sued alone, many cities purchased or took over properties so they would be in the chain of custody for the property. In that way, it would give reassurance to the developer that if they were going to be sued for contamination of a property (even though they never contributed to the contamination), they would at least have the city as a co-defendant. This does NOT make for easy transactions and as a result, most brownfield sites remained undeveloped in favor of greenfield sites. This contributed to suburban sprawl and expansion of road and water infrastructure while leaving behind previously developed sections of towns. Another unintended result was that some of this additional infrastructure has to be continually supported by virtually the same amount of tax base. As a result, less money can be allocated to invest in the older infrastructure, such as water as well as sewer plants and pipes, that serve as a core for the new, outlying infrastructure.

Q3 - Will you further explain the need you see for multi-purpose grants? How would such grants provide greater flexibility to municipalities?

Answer 3 – The Conference of Mayors' version of a multi-purpose grant would be one that was more flexible given marketplace conditions. Currently, a city must identify the site they want to apply for funding for either a cleanup or assessment grant. Unfortunately, by the time you are potentially awarded a grant, market conditions may have changed and another site might have attracted some potential developer. In the current system, a city would have to reapply in the next

funding cycle for a grant for the new site. The Conference of Mayors' version of a multi-purpose grant would be for a city, who has a good track record of utilizing their brownfields money well could get money that they could use for either assessments or cleanup funds on whichever site that had interested developers, who made need some assistance. In that way, a city could be more flexible given real marketplace conditions.

Q4 - In your testimony, you propose increasing the cleanup grant amounts from $1 million to $2 million "in special circumstances." Can you give the Committee a description of these "special circumstances"?

Answer 4 – As I mentioned in my testimony, many of the easier brownfield sites have been redeveloped. What are left are the sites that are harder to develop due to the level of contamination or the location of the site. Currently the level of funding is only $200,000 per site. This does not go very far if we have more contaminated sites that need, for example, $5-$15 million worth of cleanup. Those are the types of redevelopment sites that we would think might be good candidates for a larger cleanup grant. If a developer has a large percentage of the money but needs some gap funding to help make the deal go through, we think that would be a good candidate for a much larger cleanup grant amount.

Q5 - How has the liability relief provided in the Small Business Liability Relief and Brownfields Revitalization Act increased the pace of brownfield property redevelopment and cleanup?

Answer 5: For the first time, developers feel a bit more confident that if they are an innocent developer and conduct all appropriate inquiry, they will not be held liable for the contamination caused by others. It still isn't perfect but at least it is better than before. As cities, we still have to market these sites and try to make them attractive to potential developers, but at least now, with these liability reliefs in place, we are a bit more competitive. Unfortunately, the Great Recession hit us right when we were increasing the pace of brownfield redevelopments. We are hopeful that as we emerge from this recession, we can once again pick up the pace of redevelopment.

Q6 - In addition to assessment, cleanup, and revolving loan fund grants, EPA has begun trying different types of grants such as area-wide planning grants and multi-purpose grants. How are these other grant programs working? Are there ways they can be improved? Are they diluting the core mission of the brownfields program?

Answer 6: For the few cities we talked to, there were some very positive comments on the area-wide planning grants since they act, in a way, as a design charrette. Therefore, more comprehensive planning can be done for an area that includes buy-in for the community and a game plan for achieving that vision. As for multi-purpose grants, we were not able to talk to any city that was awarded a multi-purpose grant to ascertain their thoughts. As for diluting the core mission, the Conference of Mayors has two thoughts – we don't want to see too many boutique programs cutting into the core mission, however, we do want EPA to be flexible and try new things to see if they are useful. We understand it is a delicate balance but that is something we have to do at the local level all the time.

Responses to Questions for the Record from Mayor J. Christian Bollwage
"Helping Revitalize American Communities Through the Brownfields Program"

Q7 - In cases where state or local governments involuntarily acquire brownfields by bankruptcy, abandonment, etc., how do they protect themselves from liability? What about cases where they voluntarily acquire these sites?

Answer 7: We would suggest contacting the legal departments for some of the leading cities on this issue such as Chicago and New York. It is the USCM's understanding that there is not any or very little liability protection for involuntary acquisitions of brownfield sites. That is why the Conference of Mayors' recommendation is to provide liability relief in the statute to those localities. We would even suggest adding the caveat of providing liability relief as long as the local government didn't further contaminate the site.

As for voluntary acquisitions, cities go through the same process as a private sector developer and that is called All Appropriate Inquiry (AAI). It is not a perfect process given real life situations, but it is at least a process.

Q8 - Some states allow responsible parties to receive state funding under their Brownfields programs. Should we amend the federal program to allow potentially responsible parties to receive federal funding?

Answer 8: The Conference of Mayors does not have policy regarding the issue of allowing potentially responsible parties to receive federal funding but we have discussed the issue at length and have formed some opinions on the matter. When the brownfields program began, there were hundreds of thousands of brownfields whose owners had completely abandoned these sites. It was decided that the limited amount of appropriated money should be targeted to these abandoned sites given there was no chance of recovering the costs from the responsible party. Now, almost 20 years later, there are still thousands of abandoned sites where there is no viable responsible party to pay for clean up costs and so conventional wisdom would suggest still limiting the money to these types of sites. However, cities are also dealing with thousands of mothballed properties where the owner is unwilling to sell or even redevelop the site due to the fact that they know they will be held responsible for the entire cost of cleaning up the site. It might be beneficial to allow some of the money to be used to pay for part of the cleanup as part of a package to incentivize the current owners to pay for the remaining cleanup costs and sell the site to a developer or redevelop the site themself. This seems to be a logical next step to be used for a small portion of the appropriated money to see if this would work to encourage the redevelopment of mothballed properties. Of course, this should not be done directly but through a state or local government program.

Q9 - The Brownfields Law requires that 25% of the site assessment and cleanup grant awards be directed to sites with petroleum contamination. What are the pros and cons of this annual set aside?

Answer 9: Given the large number of petroleum brownfield sites and the difficulty in sometimes redeveloping these small sites, it was a nice added bonus to have these sites added to the original brownfields law. In practice, it seems that certain areas have had more success in applying for these funds than others. A suggestion would be to still allow these sites to be eligible for funding but remove the 25 percent set aside. Another, more useful fix that the Brownfields Coalition recommended would be to not make grantees demonstrate that the site

is "low risk" and that there are "no viable responsible party" connected with the site. A recommendation would be to replace "no viable responsible party" language in section 101(39)(D) with a prohibition on using funds to pay for cleanup costs at a brownfields site for which the recipient of the grant is potentially liable under the petroleum statutes. This would parallel the language for non-petroleum brownfield sites.

Q10 - What recommendations would you give to improve the Small Business Liability Relief and Brownfields Revitalization Act?

Answer 10: As the testimony outlined, the biggest improvements that could be made to the Small Business Liability Relief and Brownfields Revitalization Act would be increasing the authorized (and appropriated) amount, creating a multi-purpose grant, increasing the cleanup grant amounts to $1-$2 million, removing the administrative cost prohibition, clarifying eligibility of publicly-owned sites acquired by local governments prior to 2002, removing barriers to state and local governments in addressing mothballed properties, removing eligibility barriers for petroleum brownfield sites, and providing some form of liability relief for good Samaritans, who did not cause or further harm a property.

Q11 - What would be the best ways to attract additional private capital into the Brownfields Program?

Answer 11: The best way to attract private capital into the Brownfields Program would be any number of items including: a variety of tax incentive packages such as renewing IRS Section 198, the federal brownfields tax incentive. Other ideas would be the establishment of a redevelopment grant program that would allow local or state governments to provide gap funding to incentivize private sector deals. (Similar to the old Urban Development Action Grant or UDAG) Our suggestion for a multi-purpose grant might also help so that local governments can be more market friendly and adaptable to the business market.

Q12 - Are there any process related changes that could be made to speed up assessments and cleanups? Can we reduce some paperwork requirements?

Answer 12: Not sure about the paperwork requirements, but it would be useful to not have to identify the exact site for assessment and cleanup and maybe allow for a number of sites to be identified so that when a developer is potentially interested in a site, a local government need not wait for another grant cycle and instead use their brownfield money to do an assessment or cleanup on the site that the developer identifies among the brownfield sites.

Hon. Grace F. Napolitano, a Representative in Congress from the State of California
Questions for the Record issued to J. Christian Bollwage, Mayor of Elizabeth, NJ

Questions for the Record

The Brownfields Revitalization and Environmental Restoration Act of 2001 (Pub. L. 107-118) authorized $200 million annually in Federal appropriations for brownfields site assessment and remediation, and $50 million annually for state response programs. Federal appropriations for these authorities have typically been below the fully-authorized amount, such as the fiscal year 2015 appropriations for these authorities being $80 million and $47.7 million, respectfully.

- As Congress considers legislation to reauthorize appropriations for EPA's brownfields authorities, what is your opinion on the recent Federal appropriations for these authorities?

- *We do sincerely Congress steadily funding EPA's Brownfields Program. But, as I mentioned in my testimony, EPA only funds around 30% of the qualified applications that they get at Headquarters. The Conference of Mayors has no doubt that if Congress would increase the funding levels, the money would be fully utilized.*

- Have recent Federal appropriations been too high, too low, or about right?

- *In the Conference of Mayors opinion, the Federal appropriations have been steady but too low. There is a tremendous need for more sites to be assessed and cleaned up. This program has a proven track record of being effective, leveraging money, and putting properties back on the tax roll. This is a program that needs to be encouraged and fully funded.*

- Has funding EPA's brownfields authorities at levels below their traditional authorized levels had an impact on the overall effectiveness of the program, and if so, can you describe this impact as it pertains to your entity?

- *Due to the fact that the brownfields program has never been fully funded may have had an impact on its effectiveness. The fact that 70% of all applicants are turned down and must wait another year to try to apply again for either assessment or cleanup funds may delay a community's opportunity to move forward on a project. That, in turn, delays new development, new jobs, or even a simple removal of a blighted site within a neighborhood. This not only impacts cities but the businesses that want to locate or expand in those communities. The brownfield assessments and cleanup grants provide an incentive to those business to consider properties that they may not have considered before and it levels out the playing field a bit when these sites have to compete with greenfield sites outside an already built community. If a business decides not to locate on a brownfield site and instead locates on a greenfield, this has other environmental impacts as it relates to air quality, water, wastewater, and stormwater issues. Given the fact that the Brownfields program was created to help improve the environment, not fully funding the project may have impacted this goal.*

Hon. Grace F. Napolitano, a Representative in Congress from the State of California
Questions for the Record issued to J. Christian Bollwage, Mayor of Elizabeth, NJ

- If you were to recommend a target for Federal appropriations for these authorities in the upcoming reauthorization bill, what level would you recommend for brownfields site assessment and remediation grants?

- *Given the fact that the Government Accountability Office estimated that there were between 400-600,000 brownfield properties back in mid 1990s, and with either EPA's or USCM's estimates, there have been only several thousand sites fully redeveloped, we have a long ways to go. The National Brownfields Coalition, in which USCM is a member, believes that at least $600 million annually is needed and easily justified. Another, more modest funding increase, based on inflation adjustment of the 2002 authorization level ($250 million), would translate to $361 million in FY 2016. At a minimum, the program needs to not go backwards and at least be authorized at the previously authorized level of $250 million. All of this money would especially be easily utilized if Congress authorizes an increase in cleanup grants from the current $200,000 per site to $1 million or $2 million in special cases. We believe that would have a significant impact on some of the more blighted properties that remain in many of our communities.*

- What appropriations level would you recommend for state response programs?

- *It is difficult to ascertain the appropriation levels for the state responses programs. The current levels, in some states, seem to be more than adequate. However, in other states that have more robust and aggressive programs, or have higher numbers of brownfield sites, those states could probably use more money in order to keep up with demand.*

Committee on Transportation and Infrastructure
U.S. House of Representatives
Water Resources and Environment Subcommittee
Helping Revitalize American Communities Through the Brownfields Program
July 22, 2015

Commentary from Kelley Race, PG, LSP
Brownfields Program Manager
TRC Companies, Inc.

Introduction

Good morning Congressman Gibbs, and honorable members of the Water Resources and Environment Subcommittee. Thank you for allowing me to testify about this important program. My name is Kelley Race. I am a Brownfields Program Manager for TRC Companies, Inc. (TRC), a national engineering, environmental consulting and construction management firm that provides integrated services to the real estate, energy, environmental, and infrastructure markets.

TRC is headquartered in Windsor, Connecticut, and is comprised of over 3,500 technical professionals and support personnel at more than 100 offices throughout the U.S and the UK. TRC serves numerous public and private clients operating across the U.S. Our network of offices and experts enables TRC to understand the technical aspects of projects as well as local sensitivities and regional needs that can be integral to the success of a project.

Nationwide, TRC serves a broad range of clients in industry and government. We manage our business under three operating segments: Energy, Environmental, and Infrastructure, offering a wide variety of services, many of which relate to Brownfields – from grant support, planning, permitting and stakeholder engagement to conducting due, diligence, site investigations, cleanup planning and engineering, through cleanup and redevelopment assistance

Basis of Testimony

As a brief overview to my background with regard to Brownfields, I am an environmental consultant with over 25 years of experience, have a BS and MS in Geology, and have worked on contaminated sites for my entire career. Over the last decade, I have managed and coordinated community outreach activities, assessment, cleanup, and remediation activities for hundreds of Brownfields sites across the country, often strategizing with communities, regional planning commissions, nonprofits, and developers on Brownfields redevelopment to support repurposing and adaptive reuse. Many of the sites have been funded through EPA Brownfields Assessment, Cleanup, and Revolving Loan Fund (RLF) monies. I also coordinated with grantees, EPA, and state regulators on Brownfields strategies to incorporate sustainable and green initiatives during the assessment, remedial, and reuse process. I have assisted numerous communities in developing funding strategies for Brownfields sites utilizing EPA Brownfields dollars to leverage additional public and private financing and have presented at several national Brownfields conferences and have lead Brownfields economic development seminars.

To understand the basis of my testimony and TRC's experience, I should point out that TRC has managed over 100 Brownfields programs across the country. Many of our EPA-funded Brownfields projects are located in the Northeast (Massachusetts, Maine, New Hampshire, Connecticut, New Jersey, and Pennsylvania) as well as in the Midwest and California. We have also provided environmental services on many other State and private Brownfields sites. TRC has dedicated, experienced Brownfields professionals at multiple locations and has been involved with EPA-funded Brownfields programs since 1995, essentially since the initiation of the EPA funding.

Brownfields Funding – A Program that Works

We are passionate about the redevelopment of Brownfields and the impact EPA Brownfields funding has had on communities. EPA estimates Brownfields projects have leveraged $17.79 for every EPA dollar expended. We have seen firsthand how a single site using a few thousand EPA Assessment Brownfields dollars can be transformed into a community icon and how a portfolio of sites can result in the rebirth of a downtown, in both instances leaving a lasting legacy and infusing millions of leveraged dollars into a community. The EPA Brownfields program works so well and has become so successful, that the application process for EPA Brownfields funding has become fiercely competitive with considerably more projects and applicants than funding. We are excited to support the EPA Brownfields Reauthorization effort and encourage continued funding of the program.

My testimony today will highlight EPA-funded Brownfields successes, highlight some challenges, and offer some considerations that we think would help make the program more versatile.

Key Points in my testimony will include the following:

- EPA Brownfields Grant funding has led to many successful cleanups and redevelopments, has leveraged millions of dollars in private funding, and has provided flexibility in redevelopment options, allowing sustainable initiatives and innovative reuse of properties.

- EPA Brownfields Grants have expanded into several different types of programs, such as job training and area-wide planning initiatives, resulting in less money for the core assessment and cleanup programs. Multiple EPA-funded grant programs while potentially useful to a wider audience, have somewhat weakened one of the initial tenants of the Brownfields program at its outset, that is to assess and clean up contaminated properties.

- An $8-10M decrease (FY 15 -$59.5M from FY14 - $67M and FY12 - $69.3) in EPA-Brownfields funding for Assessment and Cleanup Grants and Revolving Loan Funds has resulted in fewer grantees being awarded. An EPA goal to award 50% of EPA Brownfields funding to "new grantees" limits an existing grantee's ability to be awarded additional funds as competition for available funding is decreased, reducing that grantee's ability to sustain a long term successful program.

- Grantees who were not awarded additional Assessment grant funding may need to "update/redo" Phase I Environmental Site Assessments (ESAs) completed under earlier awards to comply with CERLCA liability defenses. Once the grantee does receive a new Brownfields award, "updating" an existing Phase I ESA may entail a duplication of dollars and could limit the number

of new sites that can be "assessed" under a new award, potentially creating inefficiency in the program.

- The statutory framework of EPA Brownfields Petroleum funding requires 25% of EPA Brownfields funds to be allocated to Petroleum funding, limiting monies available for hazardous substances, a more common suite of contaminants. The Brownfields Petroleum funding eligibility determinations are approved on a state-by-state basis which can add layers of complexity and state variability. Based on the complexities associated with Petroleum funding eligibility determinations, grantees with prior Petroleum funds may not be able to fully utilize the monies, thereby stranding untold Federal dollars that could be used to assess and/or cleanup sites elsewhere.

What are Brownfields?

"A brownfield site means 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".

But what are Brownfields to a community? Brownfields are opportunities to:

- Eliminate risk and the unknowns associated with a property;
- Spur economic development;
- Create new revenue streams;
- Create jobs;
- Return a neighborhood and/or town/city to economic stability;
- Create a sustainable environment; and
- Reduce the development of "green space", thereby curtailing urban sprawl.

Many Brownfields sites are located in economically depressed and visually unattractive areas of a neighborhood, downtown, or community. But cleanup and redevelopment of these stigmatized sites can encourage and stimulate higher property values and create jobs, as well as positively impact the community by developing safer and healthier spaces to support future businesses and housing. Brownfields redevelopment engages a variety of private and public sector organizations to play a role in the assessing, cleaning up, and redeveloping Brownfield sites.

Why is EPA Brownfields Funding Critical?

EPA Brownfields funds are critical to promote the redevelopment of impaired sites and provide community benefits such as an increased tax base, creation of new jobs, utilization of existing infrastructure, and the removal of contaminants further protecting human health and the environment. They do so primarily through redevelopment planning and by helping eliminate the uncertainty about environmental conditions and liability that might otherwise hamper investment in communities and projects.

EPA Brownfields Grants funds are often the seed monies for municipalities, counties, regional councils of governments, regional planning commissions, economic development entities, and other eligible organizations to assess, cleanup, and sustainably reuse Brownfields. Many eligible entities have limited

resources to address and facilitate redevelopment of Brownfields sites, as communities are tasked with doing more with less.

EPA Brownfields funds are one of the only dedicated sources of funding that allows for the creation of administrative management and infrastructure, specifically focused around perceived or contaminated sites. Once a community Brownfields program has been established, the goal of the program is to identify and prioritize brownfields opportunities and pave the path for successful redevelopment and associated economic development. With administrative management and infrastructure in place, a Brownfields program can leverage other sources of federal, state, and local funding into specific projects to compliment AND develop viable reuse initiatives that allow for replicable success on a sustainable basis.

Without these funds – without reauthorization the EPA estimated 450,000 Brownfields sites will languish. The Brownfields monies spent in these communities represent not only dollars of investment but are directly tied to the people in the community and their success, health, and well-being. Investment in Brownfields produces measureable environmental benefits by cleaning up the environment and improving public health.

Brownfields Grantee Awards – The Process

EPA has developed several Brownfields-related grant programs including:

- Area-Wide Planning Grants,
- Environmental Workforce Development Job Training Grants,
- Assessment Grants,
- Cleanup Grants,
- Revolving Loan Funds (including subgrant and loan programs),
- Multi-Purpose Grants (Assessment and Cleanup),
- Training, Research, and Technical Assistance Grants, and
- Targeted Brownfields Assessments.

For this testimony, I'll highlight the EPA-funded Brownfields grants that focus on the core programs- Assessment, Cleanup, and Revolving Loan Funds.

EPA Brownfields Assessment funds include up to $200k for sites contaminated with hazardous substances and/or up to $200k for sites contaminated with petroleum. For Brownfields Cleanup Grants, up to $200k is available with a 20% grantee match. Revolving Loan Funds can include funding of up to $1M of which 50% can be subgranted and 50% loaned and also includes a 20% grantee match.

Once a new grantee is awarded EPA Brownfields Assessment monies, the grantee begins programmatic activities including contracting with a Qualified Environmental Professional (QEP). The QEP along with EPA helps the grantee understand the EPA Brownfields program and eligible activities. The general steps of an Assessment Grant include:

- Establish a Brownfields Advisory Committee (to review potential sites)
- Conduct Community Outreach (throughout the grant period)
- Establish an Inventory of potential brownfields sites (usually 10- 100+ sites)

TRC
Results you can rely on

- Conduct Phase I Environmental Site Assessments (ASTM 1527-13/All Appropriate Inquiry-AAI)
- Conduct Phase II Environmental Site Assessments (including testing)
- Cleanup Planning

Many Brownfields grantees accomplish creating an inventory, conducting numerous Phase Is and a limited number of Phase II ESAs during their initial grant period and with the available funding. Once the Brownfields funding is expended, the grantee can apply for another grant during the application competition.

As examples of how EPA Brownfields monies have created success stories and utilized innovative applications of Brownfields program funding, I have highlighted a cross-section of sites from our recent experience across the country. Many EPA-funded Brownfields sites are the result of an initial infusion of a few thousand dollars for a Phase I Environmental Site Assessment and result in the leveraging of millions of dollars in public and private funding.

Transit Oriented Development (TOD), Haverhill, Massachusetts – ***EPA Brownfields Assessment Grant Funds*** managed through the City of Haverhill utilized ***a $3,000 Phase I Environmental Site Assessment*** and a $35,000 Phase II to leverage a $200,000 ***EPA Brownfields Cleanup Grant***, paired with a $1M state agency cleanup loan and ***$15M in Federal infrastructure funding which facilitated $100M of private developer investment in the area.*** Overall, the project included the construction of a pedestrian-friendly parking garage connecting the Massachusetts Bay Transit Authority (MBTA) Commuter Rail Train Station, the Amtrak Downeaster, and the local transit station with former shoe manufacturing mills, newly renovated to housing and retail. The project added more than 300 badly needed parking spaces to the City's fledgling downtown retail and social scene, making possible ***over 340 housing units, 75 of which are set aside for low income individuals and families***. The project created a lifestyle for walkable transit commuting and urban living, while preserving the historic character of the downtown.

Residential/Retail – Reuse of a Former Textile Mill , Sanford, Maine – Several EPA Brownfields Funding sources were cobbled together to revitalize a former mill that once produced armed service uniforms. EPA Brownfields monies included an ***EPA Area-Wide Planning Grant***, an ***EPA Brownfields Assessment Grant, EPA Brownfields Cleanup Grants, EPA Brownfields Cleanup Revolving Loan Fund (RLF) Subgrants (through the Regional Planning Commission) and EPA Brownfields Cleanup RLF Loans*** to the town and the private developer. For this site, the RLF loan to the developer was a critical funding element to initiate the project. Without the RLF loan, the developer would have walked away. The EPA funds for this project further leveraged state monies as well as private monies from the developer and others. ***From a $4,000 EPA-funded Brownfields Assessment, over $16M of investment was secured*** resulting in ***274 construction jobs, 36 affordable housing units*** and several retail/commercial ventures.

Retail/Residential – Lycoming County, Pennsylvania – An ***EPA Brownfields Assessment Coalition Grant***, including Williamsport, Muncy Borough, and Lycoming County was utilized to conduct numerous Phase I Environmental Site Assessments and Phase IIs which has led to the construction of housing and retail. For example, a former furniture manufacturing facility has been replaced with ***40 apartments*** which will ***help the housing shortage created by Marcellus Shale gas boom and bring more taxpayers*** into Williamsport. Another former brownfields site utilizing EPA-funded assessment dollars is now the location of a

Williamsport Kohls Department store. In Muncy, EPA assessment dollars are being used to assess an unsafe dilapidated building prior to demolition to support intersection improvements that are desperately needed for community safety. The EPA assessment dollars spent ***enabled the Borough to apply for supplemental funding to support a transportation corridor study and land use planning***.

Redevelopment of 100+ Acre Former Steel Facility, Jefferson County, Ohio - EPA selected the Jefferson County Regional Brownfields Coalition including Steubenville, Toronto, and Mingo Junction for a $1M ***EPA Brownfields Assessment Coalition Grant***. The Steel Valley community was faced with the daunting challenge of how to inventory, prioritize, and implement a brownfields revitalization program for communities devastated by the economic recession and the shrinking steel industry, spur property redevelopment, and job growth. An inventory to identify and prioritize brownfield sites was developed and followed by environmental assessments and remediation action plans which further leveraged an ***additional $6.5M in state and private brownfield funding, returning 9 vacant properties to beneficial re-use, and creating over 150 new jobs***. The Jefferson County Coalition grant program was recognized as the USEPA Region 5 Success Story Award at the 2013 National Brownfield Conference. EPA Brownfields monies have supported the redevelopment of the RG Steel Facility as a multi-modal transfer and support station for the shale gas industry.

The Landing, Mt. Shasta Commerce Park, Mt. Shasta, California – EPA selected Mt. Shasta and Siskiyou County Economic Development for an ***EPA Brownfields Multi-Purpose Pilot Assessment and Cleanup Grant*** ($200,000 for assessment and $200,000 for cleanup). Mt. Shasta, an alpine community at the base of Northern California's majestic peak, once known for timber harvesting and mills struggled with legacy petroleum and hazardous materials. The timber industry remnants, now remediated and revitalized is a hub for outdoor enthusiasts. The Landing, a 127 acre former lumber mill close to downtown and bordered by the National Forest, Union Pacific rail line, and the West Coast's N/S transportation corridor had ***over $1M dollars targeted towards site remediation*** including property certification, assessments, cleanup, and redevelopment to re-use land and existing infrastructure protecting the environment and limiting sprawl. Today, ***70% of the property is ready for redevelopment*** including public-space, recreation areas, and a performing arts center.

Grantee Application Process

As someone who assists communities in preparing applications, the application process can be challenging but also rewarding when a community must think outside the box on how they will utilize the funds and turn a story of despair into sustainable reuse and opportunity. There are so many worthy projects and communities where numerous industrial legacies have plagued cities and small towns that are now littered with abandoned buildings, boarded up windows, chain-link fences with barbed wire, and properties with illegal dumping. But the grantee project plan in their grant applications offer visions for renewal and an improved quality of life.

As previously mentioned, the EPA Brownfields application process is extremely competitive. As program funding has decreased, the applications have increased. For example, in FY 2015 $59.5M was allocated to Assessment ($34M), Cleanup ($18.1M) and Revolving Loan Funds ($5.8M). This is a decrease of approximately $8M from FY 2014 of $67M and $10M from FY 2012.

In FY 2015, $54.3 M was awarded to 147 communities resulting in 243 assessment or cleanup grants, however 446 grant applications were received by EPA, resulting in almost 300 applicants who did not receive Brownfields funding. Based on the number of applications, the projects far outweigh the available funding.

Based on EPA's posted FY15 Guidelines for Brownfields Assessment Grants (EPA-OSWER-OBLR-14-07), EPA's Office of Brownfields and Land Revitalization (OBLR) prepared two ranked lists of eligible applications for evaluation and selection purposes. One list was comprised of "new applicants" for Brownfield agreements, defined as:

- Applicants who have never received an EPA brownfields grant, or
- Applicants who were awarded a brownfields grant that closed in 2007 or earlier

A second list was comprised of "existing and recent recipients", defined as:

- Applicants who have a current brownfields grant, or
- Applicants who were awarded a brownfields grant that closed in 2008 or later

Based on the EPA FY 15 Brownfields Guidelines for Assessment, approximately 50% of the total amount of funding available under the announcement was to be used for grants to "new applicants." However, EPA did qualify the language as being an estimate and subject to change based on funding levels, the quality of proposals received and other applicable considerations.

While dedicating 50% of funding to new applicants creates a base of new eligible entities, it also limits the funding available for existing grantees who may have a long established program, spent a considerable amount of time creating an inventory and conducting Phase I ESAs and Phase IIs to ready the properties for redevelopment. Existing grantees who may have submitted multiple applications, only to lose "again" may result in a disincentive to compete, leaving a program with a large inventory of potential sites, stagnate.

Many existing grantees have spent tens of thousands of dollars conducting Phase I ESAs utilizing existing program dollars. But those Phase I ESAs have a "shelf life" of 180 days to ensure liability defenses and to be eligible for additional brownfields funding such as Cleanup Grants and Revolving Loan Funds. If the sites assessed using brownfields dollars are not acquired within the 180 days, and are left on the sidelines, a Phase I ESA "update" will need to be conducted to ensure liability protections. Updating the Phase I ESA will result in utilizing brownfields dollars twice for the same site. However, for many existing grantees, a viable Phase I ESA could be the difference between a developer buying the property or moving on to another property without the risk of being held accountable for future remediation efforts.

Obtaining Liability Defenses/What is AAI?

The Small Business Liability Relief and Brownfields Revitalization Act required EPA to develop federal standards and practices for "All Appropriate Inquiries- AAI" and requires parties receiving Brownfields Assessment Grants to use AAI. All Appropriate Inquires (AAI), also called "due diligence", is the process of evaluating a property for potential environmental contamination and assessing potential liability for contamination present at the property. AAI provides CERCLA liability defenses for landowners who qualify

as innocent landowners, contiguous property owners, or bona fide prospective purchasers to understand the potential environmental risks associated with a property prior to purchase.

The liability defenses can be established during the Phase I ESA process (utilizing ASTM 1527-13) and All Appropriate Inquiry (AAI) and must be documented in the Phase I ESA to assert these defenses, at the time of property acquisition. However, as previously discussed, the AAI Compliant Phase I ESA has a ticking clock of 180 days. For a potential Brownfields site purchaser to gain the liability protections, they must acquire the property within the 180 days or have the Phase I ESA "updated" (new interviews, title searches, visual inspections) which results in an expenditure of funds that might have been used on a different site.

Municipalities are excluded from owner/operator liability under Superfund where the contaminated property was involuntarily acquired, for example obtained through bankruptcy, tax delinquency, abandonment, etc. However, if a municipality voluntarily acquires a property, they would be held to the standards as previously discussed.

Hazardous Substances vs Petroleum Assessment Funding

Based on EPA Brownfields Application Guidance, EPA must expend 25% of the amount appropriated for Brownfields grants on sites contaminated with petroleum. The Brownfields Law outlines specific criteria by which petroleum sites may be eligible for Brownfields grant funding if EPA or the State makes a petroleum eligibility determination.

EPA or the state must determine the following:

- Is the site of "relatively low risk" compared with other "petroleum-only" sites in the state; and
- There is no viable responsible party; and
- Funding will be used by a party that is not potentially liable for the petroleum contamination to assess, investigate, or clean up the site.

If an applicant is identified as being responsible for the site and that party is financially viable, then the site is not eligible for petroleum Brownfields grant funds. State petroleum site eligibility determinations can be time consuming based on the requirements of evaluating past ownership, acquisition, responsibility, risk, financial liability of responsible parties, among other criteria.

Because of the eligibility determinations listed above, petroleum brownfields funding is harder for grantees to utilize and is more complicated as it is a "case by case" state agency determination. The additional information needed to make a state determination adds layers of complexity and results in existing grantees not utilizing the funding. The state by state determination also introduces variability in approvals. Therefore, brownfields petroleum funding may be sitting on the sidelines, stranded.

Reducing the 25% allocation specifically designated for petroleum funding may create an opportunity for more money to be utilized for hazardous substances. Many grantees we assist in writing Brownfields applications struggle with whether to apply for petroleum funding because of the strict eligibility determinations. Unused existing Petroleum funding also impacts a community's financial need when applying for Brownfields monies. A grantee will have a harder time justifying why they need additional

funding when they have $150,000 of unused Petroleum funding even if the future need is for hazardous substances funding.

Summary and Closing

The EPA-funded Brownfields Program works. And it works on a scale of success that has generated fierce competition with considerably more applicants and projects than funds available.

As previously discussed, we believe there may be considerations in the EPA Brownfields Funding that provide versatility and flexibility to the program. One of the considerations would include reviewing the goal of funding 50% of new grantees in an effort to provide flexibility to existing grantees for continued funding and to maintain a sustainable program. A second consideration would be to provide flexibility in the requirement to allocate 25% of funding to petroleum sites. Both of these considerations may provide more funding avenues for future and existing grantees.

I and TRC on behalf of the many municipalities, non-profits, regional councils of governments, economic development commissions, and others who have received EPA Brownfields monies, look forward to the reauthorization of the Brownfields program and the continued success of reusing, revitalizing, and readapting underutilized sites to create jobs, economic vitality, sustainable solutions, and eliminate properties that have been languishing because of a perceived stigma of contamination.

Thank you for this opportunity to share TRC's experience and insights on the EPA-funded Brownfields programs. I am honored the Subcommittee provided me the opportunity to provide testimony in support of a program that has had such a meaningful impact on the communities who have been the recipients of federal brownfields funds. I would be happy to answer questions or provide further insights at this time or at a later date.

Committee on Transportation and Infrastructure
U.S. House of Representatives
Water Resources and Environment Subcommittee
Helping Revitalize American Communities Through the Brownfields Program
July 22, 2015

Questions Submitted on Behalf of Congressman Gibbs

Questions for Kelley Race, PG, LSP/Responses Dated June 15, 2016
Brownfields Program Manager
TRC Companies, Inc.

Questions/Responses (Congressional Questions are in plain font/Responses are in **bold** font)

1. How should the Small Business Liability Relief and Brownfields Revitalization Act be updated to better provide communities with the tools and resources needed to cleanup brownfields sites? Are there any process related changes that could be made to speed up assessments and cleanups? Can we reduce some of the paperwork requirements?

EPA Brownfields funds are critical to promote the redevelopment of impaired sites and provide community benefits such as an increased tax base, creation of new jobs, utilization of existing infrastructure, and the removal of contaminants further protecting human health and the environment. They do so primarily through redevelopment planning and by helping eliminate the uncertainty about environmental conditions and liability that might otherwise hamper public and private investment in communities and projects.

Providing communities with additional tools and resources would be very beneficial. I think some of the best tools would be to expand the descriptive examples of how a community can utilize the Brownfields monies and take them through the process. EPA has several very good guidance documents available but they are lengthy and time consuming to read. I would suggest simpler examples of the Brownfields process and program. With regard to process changes, review times (generally 30 days is required- by state and/or EPA staff) could be reduced; however, some EPA Regions have many more grantees and therefore have a larger burden of approvals.

Reporting requirements associated with federal monies have different reporting periods, reporting frequencies, and reporting requirements. Simplification across federal programs would provide grantees who utilize several different federal programs an opportunity to streamline their reporting, further promoting efficiency.

Another suggestion would be to reduce the paperwork associated with Quarterly Reporting and reduce the reporting to semi-annual. The Quarterly reports do not provide enough value to

grantees and require preparation time that could be better spent on assessments and or cleanups. If Quarterly Reports remain as quarterly, I would suggest reducing the form content and providing a mechanism for submission through ACRES (the EPA reporting system).

With regard to paperwork requirements, many of the documents prepared are submitted to the Regional/State entity for approvals and as part of the final required submittals, however, these reports (e.g., Phase I ESAs, Quality Assurance Project Plans, Phase II ESAs, Cleanup Plans, etc.) are not available on-line. In many cases, the only way to access a previously prepared report or document is to conduct a state file review. Many of the states do not provide electronic copies or electronic access and require the grantee's consultant to drive to the state offices and "photocopy" a hard copy. Electronic copies of Brownfields reports could be made available to the public.

2. During your testimony, you mentioned how EPA-funded Brownfields grantees are thinking "outside the box" with regard to reuse of Brownfields sites after assessment and cleanup activities have been completed and provided the Subcommittee with several large projects. Can you provide the Subcommittee with a couple of examples of smaller projects that had a significant impact on a rural community?

An example in a rural community would be the creation of a local community-agricultural facility in a small community of approximately 2,000 in Unity, Maine. The Food Hub project utilized the EPA Revolving Loan Fund (RLF) program from a regional council of governments for a Subgrant of $175k to support cleanup of lead impacted soil and asbestos abatement in the building. The project leveraged an additional $1.2M in private investment to redevelop the former 1898 school house into a central community gathering point for food distribution that will support local farmers, area residents and retail outlets.

A second example would be where EPA Brownfields assessment dollars were used in Muncy Borough, Pennsylvania (pop 2,467) to assess a property, once a former auto parts/service facility. The property was assessed and the building demolished. Lycoming County, PA utilized approximately $44k to conduct assessments on the property and $75k of shale/oil monies (not taxpayer funds) to demolish and remove the building. The property is located on a small corner of a state highway where safety had been compromised when large trucks that needed to turn often scraped intersection infrastructure and impeded pedestrian crossings. The property will now allow for the expansion of the intersection, improving safety as well as creating a small "pocket park" next to a historic opera house, providing an open-space gathering point for this small community.

A third example would be a small rural site in Beckett, Massachusetts (pop 1,779) where the Berkshire Regional Planning Commission in western Massachusetts utilized approximately $220k of EPA Brownfields Assessment monies for investigation and removal of leaking petroleum

underground storage tanks (USTs) at an early 1900's general store. The USTs could be removed utilizing EPA Assessment dollars based on the potential for contamination under the tanks. Eliminating the contamination source and liability from this site facilitated re-opening of this historic social and food hub in an isolated rural community.

3. If you had to consider how EPA could provide more funding to more communities but utilizing existing allocations, what would you suggest?

I would suggest increasing assessment funds to regional entities (e.g. regional planning governments, council of governments, etc.) and decreasing assessment monies to municipalities. Regional entities have several communities within their jurisdiction and have the ability to parcel monies to several communities, thereby promoting assessment of properties over a larger area.

Utilizing existing funding allocations (e.g., Assessment grants $200k), a suggestion could be regional entities would be eligible for $250k (rather than $200k per grant) and municipalities would be capped at $150k per assessment grant (e.g. $150k for Hazardous and $150k for Petroleum). This type of reallocation would be much more beneficial to small rural areas that would have difficulty in managing a large grant program. Also see the response to question 8 regarding dilution of the Brownfields funds.

4. Have you or others you work with found the revolving loan funds useful in addressing brownfields?

Yes, many small rural communities do not have the capacity to apply for EPA cleanup monies directly and an RLF program provides an opportunity to obtain cleanup monies either subgranted or loaned at a low interest rate. In addition, developers are drawn to Brownfields RLF loan programs because of the low interest loans and favorable loan programs (e.g. extended payback time on principal, interest only-first year programs, etc.). RLF monies are often the "seed funds" necessary to encourage private investment. Many of the Brownfields redevelopment properties would not have undergone cleanup and been redeveloped without the RLF monies.

Many of the RLF programs we have worked with (and are working with) have very successful histories of subgranting and offering low interest loans which have resulted in redevelopment Brownfields projects including redevelopment of former woolen mills that are now residential condominiums and apartments; rehabilitation/redevelopment of former tanneries; cleanup of contaminated soil and groundwater; implementation of green and sustainable remedies (including rain gardens, permeable caps, storm water collection systems, etc.); and cleanup of an areas into Transit-Oriented Development; supporting both bus, rail, retail, and housing needs.

5. In your experience, do liability concerns faced by non-owner third parties have an impact on their willingness to engage in brownfields cleanup and redevelopment? Would additional liability protections for lessees or other operators or other parties that have an interest in a property like a nonprofit or municipality help promote additional cleanup and redevelopment?

The liability defenses can be established during the Phase I Environmental Site Assessment (Phase I ESA) process (utilizing ASTM 1527-13) and All Appropriate Inquiry (AAI) and must be documented in the Phase I ESA to assert these defenses, at the time of property acquisition. However, the AAI Compliant Phase I ESA has a ticking clock of 180 days. For a potential Brownfields site purchaser to gain the liability protections, they must acquire the property within the 180 days or have the Phase I ESA "updated" (new interviews, title searches, visual inspections) which results in an expenditure of funds that might have been used on a different site. Non-owner third parties can be included in a Phase I ESA as a "User" as defined under ASTM 1527-13 and would have the liability protections. In other cases, a "Reliance Letter" can be prepared to afford the third party owner liability protections prior to purchase. Additional liability protections beyond those currently available for lessees and other parties do not appear to be necessary.

6. Brownfields often have the stereotype of being sites in populous urban areas. To what degree are brownfields found in rural areas? How are we using federal brownfield programs funds at a variety of sites, such as rural locations or abandoned mines?

Brownfields sites are located everywhere. Rural communities have many Brownfields properties but they don't get noticed because the urban communities are much more populous and are where developers will spend resources to redevelop or rehabilitate a building or property. Many of the rural Brownfields sit idle, slowly contaminating the groundwater and soil. These properties may actually be more dangerous to the environment because they are "ignored".

Many of the old mills that once lined the rivers and waterways are slowly fading back into the landscape as lead paint, asbestos, and chemicals once used to power the industry are left to degrade. Many times, there are no "redevelopment" plans for these properties as the building's infrastructure becomes too costly to repair and upgrade. As we lose population from our rural communities, it becomes harder to justify spending dollars on cleaning up and redeveloping a property that will be much harder to fill. But we all understand, Brownfields is a successful "redevelopment" tool that promotes redevelopment of existing properties rather than development on green lands.

If we were to focus more Brownfields dollars on rural initiatives, regional planning commissions, councils of governments and other entities that service a wider area of communities, especially

in smaller rural/suburban locations would have more resources to reach more communities and position the rural sites in the region/community for cleanup grants. I believe it's important to spread the funding out to support the regional groups who may have the ability to understand trends in their geographic area, potentially what developers are looking for and how area master planning could impact the big picture for the region while also addressing the sites that are languishing. Both rural sites and abandoned mines could be addressed if more Brownfields monies could be "steered" toward regional initiatives.

7. How has the liability relief provided in the Small Business Liability Relief and Brownfields Revitalization Act increased the pace of the brownfields property redevelopment and cleanup?

Brownfields assessment monies can be used to conduct an ASTM 1527-13 AAI Phase I ESA which provides the liability protections prior to purchase of the property by an innocent party (as defined in the ASTM standard) as long as the time periods for the Phase I ESA are adhered to. These assurances have led to many more property transactions and developers willing to spend redevelopment dollars creating and "redeveloping" rather than spending their dollars on "assessing". Many of the developers we work with have prepared pro formas that indicate the Brownfields assessment and cleanup dollars provide the needed funding to ensure the redevelopment is viable. Developers would rather spend their dollars on infrastructure upgrades (e.g. utilities, structural, etc.) where they will be able to calculate a return on investment based on price per square foot rather than the unknowns associated with "asbestos assessment and abatement".

8. In addition to assess, cleanup, and revolving loan fund grants, EPA has begun trying different types of grants such as area-wide planning grants and multipurpose grants. How are these other grant programs working? Are there ways they can be improved? Are they diluting the core mission of the brownfields program?

EPA Brownfields Grants have expanded into several different types of programs, such as job training and area-wide planning initiatives, resulting in less money for the core assessment and cleanup programs. Multiple EPA-funded grant programs while potentially useful to a wider audience, have somewhat weakened one of the initial tenants of the Brownfields program at its outset, that is to assess and clean up contaminated properties.

I believe the some of the other grants could be either eliminated or significantly reduced. For example, the jobs training program was useful when the economy was struggling after the housing recession and this program created opportunities for people to jobs in the evolving real estate market (e.g. provide asbestos abatement training, 40-hour health and safety training, etc.); however, the market has changed and the program could benefit by an infusion of monies

previously allocated to jobs training to be diverted back to the core mission of assessment and cleanup.

I also believe the area-wide planning grants further dilutes the core mission by diverting $200k per grant. An $8-10M decrease (FY 15 -$59.5M from FY14 - $67M and FY12 - $69.3) in EPA-Brownfields funding for Assessment and Cleanup Grants and Revolving Loan Funds has resulted in fewer grantees being awarded. An EPA goal to award 50% of EPA Brownfields funding to "new grantees" limits an existing grantee's ability to be awarded additional funds as competition for available funding is decreased, reducing that grantee's ability to sustain a long term successful program.

The Area-Wide Planning Grants and the Jobs Training Grants do not result in assessed or cleaned up properties- the implied goal of the Brownfields program. These additional grant programs further stretch the EPA project officer resources potentially adding further time constraints on approvals and availability to a grantee.

9. In cases where the state or local governments involuntarily acquire brownfields by bankruptcy, abandonment, etc., how do they protect themselves from liability? What about cases where they voluntarily acquire these sites?

The Small Business Liability Relief and Brownfields Revitalization Act required EPA to develop federal standards and practices for "All Appropriate Inquiries- AAI" and requires parties receiving Brownfields Assessment Grants to use AAI. AAI, also called "due diligence", is the process of evaluating a property for potential environmental contamination and assessing potential liability for contamination present at the property.

AAI provides CERCLA liability defenses for landowners who qualify as innocent landowners, contiguous property owners, or bona fide prospective purchasers to understand the potential environmental risks associated with a property prior to purchase.

Municipalities are excluded from owner/operator liability under Superfund where the contaminated property was involuntarily acquired, for example obtained through bankruptcy, tax delinquency, abandonment, etc. However, if a municipality voluntarily acquires a property, they would be held to the standards (ASTM 1527-13 AAI) as previously discussed.

10. Some states allow responsible parties to receive state funding under their Brownfields programs. Should we amend the federal program to allow potentially responsible parties to receive federal funding?

I believe amending the federal program could allow potentially responsible parties the flexibility to receive funding but approvals would need to be on case by case basis and in conjunction with the state funded program.

11. The Brownfields Law requires that 25% of the site assessment and cleanup grant awards be directed to sites with petroleum contamination. What are the pros and cons of this annual set aside?

The change/reduction in the 25% set aside for petroleum funds for the FY 16 Brownfields funding has been met by many as a welcome sign to the changing tide associated with petroleum versus hazardous substances. Many of the "Mom and Pop" gasoline service stations have been addressed and we do not see petroleum as one of the leading contaminants today.

The Brownfields Law outlines specific criteria by which petroleum sites may be eligible for Brownfields grant funding if EPA or the State makes a petroleum eligibility determination.

EPA or the state must determine the following:

- **Is the site of "relatively low risk" compared with other "petroleum-only" sites in the state;**
- **There is no viable responsible party; and**
- **Funding will be used by a party that is not potentially liable for the petroleum contamination to assess, investigate, or clean up the site.**

If an applicant is identified as being responsible for the site and that party is financially viable, then the site is not eligible for petroleum Brownfields grant funds. State petroleum site eligibility determinations can be time consuming based on the requirements of evaluating past ownership, acquisition, responsibility, risk, financial liability of responsible parties, among other criteria.

Because of the eligibility determinations listed above, petroleum Brownfields funding is harder for grantees to utilize and is more complicated as it is a "case by case" state agency determination. The additional information needed to make a state determination adds layers of complexity and results in existing grantees not utilizing the funding. The state by

state determination also introduces variability in approvals. Therefore, Brownfields petroleum funding may be sitting on the sidelines, stranded.

Further, to access the petroleum funding, the grantee/community would prepare the eligibility form but would need to have information on the financial viability of the property owner. In some cases to demonstrate insufficient financial viability to pay for the assessment, property owners need to provide several years of tax returns for the state to review. Obtaining this type

of information to utilize petroleum funding has proved time consuming and many property owners do not want to provide tax returns. The additional steps to complete even just a Phase I Environmental Site Assessment is not worth the time; therefore communities put petroleum sites on a back burner.

Reducing the 25% allocation specifically designated for petroleum funding may create an opportunity for more money to be utilized for hazardous substances. Many grantees we assist in writing Brownfields applications struggle with whether to apply for petroleum funding because of the strict eligibility determinations.

12. What recommendations would you give to improve the Small Business Liability Relief and Brownfields Revitalization Act?

The Brownfields Revitalization Act could be better improved with the reduction of the EPA mandate to provide 50% of Brownfields monies to "new grantees". This initiative by EPA significantly lessens the pool of money available for existing grantees. For example, if $60M is allocated to the FY 17 Brownfields grant program, EPA would set aside $30M for new grantees. With the petroleum set aside, that pool of money becomes even smaller.

I have several previously funded communities I have worked with who have prepared applications year after year and not received a new award. As the pool of grantees increases with more money allocated to new grantees, an existing grantee has less opportunity because of significant competition with other existing grantees.

In some cases, grantees who have had successful programs for several years and have a pipeline of sites are deciding not to reapply which leaves many sites on the sidelines without potential redevelopment. What makes many of these Brownfields sites interesting and viable to developers are that the Phase I and Phase II investigations have reduced many of the unknowns associated with the property (e.g., in the ground and in the buildings), letting the developer focus on cleanup and redevelopment of the property.

13. What would be the best way to attract additional private capital into the Brownfields Program?

We have found that tax incentive programs generally work the best for developers. More developers would implement green remedies and environmentally friendly energy initiatives if there were more federal and state tax incentives specifically for Brownfields sites.

Committee on Transportation and Infrastructure
U.S. House of Representatives
Water Resources and Environment Subcommittee
Helping Revitalize American Communities Through the Brownfields Program
August 7, 2015

Questions for the Record
Kelley Race, PG, LSP
Brownfields Program Manager
TRC Companies, Inc.

On July 24, 2015, Kelley Race of TRC Companies, Inc. (TRC) received a letter from Ms. Grace F. Napolitano, Ranking Member of the Subcommittee on Water Resources and Environment requesting written responses for the record based on her testimony provided on July 22, 2015, concerning "Helping Revitalize American Communities Through the Brownfields Program".

The Brownfields Revitalization and Environmental Restoration Act of 2001 (Pub. L. 107-118) authorized $200 million annually in Federal appropriations for brownfields site assessment and remediation, and $50 million annually for state responses programs. Federal appropriations for these authorities have typically been below the fully-authorized amount, such as the fiscal year 2015 appropriations for these authorities being $80 million and $47.7 million, respectfully.

The Questions for the Record are included below in ***italic and bold font*** and Ms. Race's responses are provided as standard font.

1. ***As Congress considers legislation to reauthorize appropriations for EPA's brownfields authorities, what is your opinion on the recent Federal appropriations for these authorities?***

As indicated above, for FY15 $80 million was appropriated for brownfields "assessment and remediation". However, the EPA brownfields program funding and appropriations of $80 million have been spread across several programs and are not only utilized for "assessment and remediation". Over the years, several new brownfields-related grant programs have been introduced, funded, and include:

- Area-Wide Planning Grants,
- Environmental Workforce Development Job Training Grants,
- Assessment Grants,
- Cleanup Grants,
- Revolving Loan Funds (including subgrant and loan programs),
- Multi-Purpose Grants (Assessment and Cleanup),
- Training, Research, and Technical Assistance Grants, and
- Targeted Brownfields Assessments.

While many of these programs have been effective in achieving the goal of the stated grant program, they add additional administrative costs to managing another grant, resulting in less monies for the core programs of assessment and remediation. For example, in FY 15, $4 million was allocated to "Area-Wide Planning Grants (AWP). The monies allocated to these grants do not result in the "assessment or cleanup" of a potentially contaminated site. The monies are used for "planning". In FY 15, $3.6 million was allocated to Environmental Workforce Development Job Training Grants. The $7.6 million used for these two programs alone could have resulted in 38 more assessment or remediation grants (assuming $200,000 per grant), resulting in potentially 38 additional communities, regional councils of government, etc. who would have received assessment or cleanup/remediation funding for a potentially contaminated property.

Utilizing monies for other brownfields-related programs, results in the overall brownfields appropriation becoming diluted and coupled with less funding results in a less effective program based on the scarcity of the funding resources. These multiple EPA-funded grant programs have weakened one of the initial tenants of the Brownfields program at its outset that is to "assess and remediate/clean up" contaminated properties.

If the $80 million appropriated as referenced above was allocated specifically for "assessment and remediation", funding at this level while lower than the $200 million initially authorized would be instrumental to the program and would result in many more assessed properties which would then be eligible for cleanup and eventual redevelopment. Dividing the appropriated $80 million across several brownfields grant programs erodes the basic elements of "assess and remediate".

2. Have recent Federal appropriations been too high, too low, or about right?

In FY 2015, $54.3 M (http://www.epa.gov/brownfields/pdfs/FY15-AC-grants-selected-for-funding-5-22-15.pdf) was awarded to 147 communities resulting in 243 assessment or cleanup grants, however 446 grant applications (http://www.epa.gov/brownfields/pdfs/FY15-all-applicants-5-22-15.pdf) were received by EPA, resulting in almost 300 applicants who did not receive Brownfields funding. Based on the number of applications and the number of applicants, it appears the number of potential viable projects far outweigh the available funding. Given the documented success of the program with regard to return on investment and the amount of other public and private funding leveraged, there appears to be a missed opportunity.

Based on the EPA FY 15 Brownfields Guidelines for Assessment, approximately 50% of the total amount of funding available under the FY 15 Application Guidelines Announcement was to be used for grants to "new applicants." Dedicating 50% of funding to new applicants creates a base of new eligible entities, however, it severely limits the funding available for existing grantees who have long-established, successful programs, spent a considerable amount of time and money creating an inventory, conducting Phase I and Phase II ESAs to ready the properties for redevelopment, and developing an infrastructure to manage the overall process. Existing grantees who may have submitted multiple applications, only to lose "again" to a "new" grantee may result in a disincentive to compete, leaving a program with a large inventory of potential sites, to stagnate.

3. ***Has funding EPA's brownfields authorities at levels below their traditional authorized levels had an impact on the overall effectiveness of the program, and if so, can you describe this impact as it pertains to your entity?***

As noted above, program funding specifically for assessment and remediation has decreased, however, the applications have increased. For example, in FY 2015 $59.5M was allocated to Assessment ($34M), Cleanup ($18.1M) and Revolving Loan Funds ($5.8M). This is a decrease of approximately $8M from FY 2014 of $67M and $10M from FY 2012. In addition to the significant funding decreases, EPA has implemented award selection criteria that handicaps well-established grantees, decreasing their ability to receive funding. The brownfields monies spent in these communities represent not only dollars of investment but are directly tied to the people in the community and their success, health, and well-being.

There are so many worthy projects and communities where numerous industrial legacies have plagued cities and small towns that are now littered with abandoned buildings, boarded-up windows, chain-link fences with barbed wire, and properties with illegal dumping. Funding brownfields below authorized levels impacts the continuity of bringing a site into the brownfields cycle of assessment and remediation, and then redevelopment. Many communities have begun the assessment process with completion of a Phase I Environmental Site Assessment but do not have the funds to conduct the testing (Phase II) and therefore are not eligible to apply for cleanup funding, continuing to leave a legacy of contaminated sites in a community.

4. ***If you were to recommend a target for Federal appropriations for these authorities in the upcoming reauthorization bill, what level would you recommend for brownfields site assessment and remediation grants?***

If the Reauthorization is to include assessment and remediation/cleanup grants <u>only</u> (e.g. eliminate other grant programs listed above), an appropriation of $80 to$100 million would provide a significant number of grantees with the funding needed to assess and cleanup sites. Additional monies, specifically for assessment and remediation would be beneficial as brownfields sites have become increasingly complex and more dollars may be needed to ready the properties for redevelopment. Many of the less complex sites or "low-hanging fruit", have been assessed, remediated, and/or developed, leaving sites that require more than $200,000 to cleanup. Therefore, increasing the appropriation would provide additional monies to cleanup a site. In addition, providing increased grant dollars to regional planning entities, regional council of governments, etc. would enable many more communities within an area access to funding for specific sites in their communities.

If the future appropriations include the other grant programs listed above (e.g. Area-Wide Planning Grants, Environmental Workforce Development Job Training Grants, etc.), additional monies of $20-$30 million could be allocated to those programs without impacting the core brownfields assessment and cleanup grants. However, as noted above, more brownfields programs dilute the initial core goal to assess, remediate, and redevelop a site.

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5. ***What appropriations level would you recommend for state response programs?***

State response programs vary by Region and by state. As indicated in the links above several states only have a few entities that apply for brownfields funding. For example, Texas (Region 6) submitted six (6) grant applications of which one (1) was selected for funding while Massachusetts (Region 1) submitted 27 of which nine (9) were funded. Or in the case of New York (Region 2), 19 applications were submitted and only one (1) was funded. Should a state with so few applications be allocated similar funding for a state with so many?

Statement of Paul Gruber, P.G.

on behalf of the

National Ground Water Association

before the

Subcommittee on Water Resources and Environment

of the

Committee on Transportation & Infrastructure

U.S. House of Representatives

July 22, 2015

Chairman Gibbs, Ranking Member Napolitano, and members of the Subcommittee, thank you for the opportunity to testify. My name is Paul Gruber, and I am testifying on behalf of the National Ground Water Association, an international organization committed to the protection, management, and use of the world's groundwater resources. I am a licensed professional geologist in multiple states and a member of NGWA's Groundwater Protection and Management Subcommittee. My testimony will highlight the importance of using science-based decision-making for the investigation, remediation, and redevelopment of Brownfield sites and the importance of preserving and improving the availability of our nation's groundwater resources.

The federal Brownfields Revitalization and Environmental Restoration Act is an excellent example of the right law for the right reasons, successfully generating economic development, while protecting human health, and improving the local environmental quality, while permitting beneficial reuse of formerly impacted properties. The goal of Brownfields redevelopment, as currently practiced, identifies and manages risks by employing engineering and science-based tools to guide effective site remediation, ensuring successful cleanup of these unusable sites, balancing protection of public health and the environment, while optimizing the beneficial land uses within the local setting.

The National Ground Water Association (NGWA) is a trade association and professional society of over 11,000 groundwater professionals within the United States and internationally. NGWA represents scientists and engineers who conduct academic research, assess groundwater quality, availability, and sustainability, and water well contractors responsible for developing and constructing water well infrastructure for residential, commercial, and agricultural use. NGWA is excited about the Subcommittee's interest in Brownfields reauthorization, as it is a critical program not just for environmental improvement and protecting public health, but also

promoting economic development and providing employment opportunities for thousands of Americans in urban and rural areas.

On a typical Brownfields project, NGWA members, both contractors and engineering and scientific professionals, are engaged in assessing the site, its soil, and surface water and ground water quality conditions, in order to effectively plan the needed remediation measures to restore it to productive use. NGWA members work alongside a variety of other technical professionals: engineers, scientists, field technicians, and landscape architects, among others, to ensure site restoration to an appropriate standard for functional reuse.

NGWA members' roles in projects require collaboration and coordination of all stakeholder interests from the initial site assessments, public participation and risk communication, and finally to development of a sequenced remediation approach, and long-term monitoring and operations and maintenance of remediation progress. Work activities can involve a broad range of technical disciplines and tools, such as sophisticated groundwater models. These can be used to predict the public health impacts of various remediation alternatives, such as: excavation and treatment of soil; groundwater remediation alternatives; and other technologies, that ultimately can return the site into a springboard for community revitalization—drawing new businesses to the area, increasing property values, all while improving the local environmental condition.

As evidenced by the range of witnesses at today's hearing, Brownfields cleanup projects require cooperation by a diverse group of stakeholders, from federal and state regulatory officials to local governments and the private sector. Currently, the Act serves as a testament to the effectiveness of these partnerships, both between local, state, and federal governments, but also public private partnerships for redevelopment.

The Brownfields program serves as an important kick-starter for redevelopment, providing the inertia to generate additional investment from governments and stakeholders. Whereas federal program eligibility limits applicants to local and municipal government, as well as quasi-government agencies, like redevelopment authorities, state programs often provide incentives directly to developers, incentivizing important buy-in from the business community. Having the initial Brownfields grant from EPA to conduct activities like site assessments and/or remediation, builds confidence in the business community, providing certainty in outcomes and allowing pursuit of longer terms plans for redevelopment.

While the success stories of Brownfields redevelopment are often publicized in urban, metropolitan areas, I want to be sure to emphasize the need to promote rural Brownfields redevelopment. Potential Brownfields sites in rural areas include a variety of abandoned sites, whose legacy operations led to economic development in the area. Examples include Manufactured Gas Plants; Fertilizer Plants, Tanneries; and small businesses, like gas stations or dry cleaners. As these sites, in rural areas were abandoned, in particular, the impact of soil, surface, and groundwater contamination can be much more critical. Often in rural areas, groundwater quality impacts and remediation can be cost-prohibitive and will have a larger impact on the local community, who relies more heavily on groundwater for their potable supply.

However, in rural areas the presence of ample green spaces often minimizes the perceived need to clean-up and restore a Brownfields site. Rather than an "either/or" scenario, Brownfields and green spaces should be viewed in tandem. By restoring Brownfields sites in rural areas, communities can expand and preserve existing natural systems, not currently impacted by development, which allows for preservation of surface water quality and quantity, maintenance of important groundwater recharge systems, and storm water management. This is particularly

relevant in many rural areas, currently undergoing unprecedented drought conditions. By improving and preserving these natural systems, local communities are now more resilient and are better equipped to sustain themselves and react to both short and long-term changes in climate conditions.

EPA's Brownfields program is a well-crafted and effective program, but as the Subcommittee considers reauthorization of the program, NGWA would like to offer the following observations and recommendations:

- As business owners weigh their options for development of Greenfield versus Brownfield sites, clearly long-term liability is a significant risk for development. Why incur the potential liability associated with a Brownfields site when, in rural areas, ample green space in available for redevelopment? Congress should consider incentives to Brownfields grants that not only limit liability, but also encourages clean-up and redevelopment of existing sites, thus increasing community resilience and maintaining critical natural systems, allowing them to perform their functions of maintaining water resources and ecosystem functions, thereby enriching the community.

- The Brownfields Act should continue to promote and provide mechanisms to enhance flexibility in decision-making based on qualified scientific and engineering professional input, integrating site-specific conditions, and realistic risk assessment. Site-specific flexibility to design cleanups based on objective scientific and engineering evaluations and the incorporation of anticipated future land use in determining clean-up levels provides communities with the mechanism to develop and implement cost-effective reuse strategies. Effective Brownfield reuse plans can be vehicles to ensure efficient and

productive methods to assess, manage, and monitor long-term improvement in environmental quality of all media ensuring the maintenance and improvement in public health and environmental quality.

- As Brownfield sites are developed, monitoring of groundwater quality throughout project life cycle, beginning with the initial site investigation, clean up, post remediation, and during development is critical for maintenance of public acceptability of these sites. EPA should ensure that in some areas, where groundwater clean-up is not feasible that adequate groundwater and vapor monitoring programs are in place to contain and detect any potential spread of contaminated groundwater plumes or vapors in an effort to protect the local residents in the community. As America's water resources become more constrained, areas that were previously not considered drinking water sources could become a source in the future.

- The Committee should consider increasing incentives for rural applicants by directing EPA to prioritize funds for rural communities where local groundwater supplies are impacted.

- Public-Private Partnerships are effective vehicles to leverage investment and create economic benefits for all stakeholders, where single entity investment, may not be feasible. Encouraging beneficial reuse of Brownfield sites and providing liability limits while maintaining site conditions, as designed by engineering professionals, improves local economic opportunity,

- EPA should continue to focus research funding to develop new technologies and methods of site restoration and develop combined remedies that integrates risk-based assessment

of future use. NGWA continues to encourage the development of science-based remediation technologies tailored to specific site conditions. Consensus building and local community participation in outcomes is essential to the decision-making process and must involve all affected stakeholders. Often site remediation technologies are dynamic and reflect advances in engineering solutions, new innovative technologies, and scientific breakthroughs. Recognizing this dynamism between state and federal programs highlights the need to preserve flexibility and allow for process modifications, in order to deal with new information and long-term cleanup goals.

- The regulatory review process of remedy selection can often be lengthy. . An initial, expedited remedy decision that allows cleanup to begin while maintaining flexibility for later adjustments is preferable to a review process that can last years, allowing contamination to spread while awaiting decisions.

EPA should continue its efforts to expand the Brownfields and Land Revitalization Technology Support Center (BTSC), Their Technical Assistance to Brownfields Communities (TAB) Program, and the Interstate Technology Regulatory Council (ITRC). Efforts to expand and develop guidance criteria to facilitate property transfers that incorporate site condition assessment and monitoring data permitting normal economic activity to proceed is critical. EPA's current guidance provides a framework for assessment of site conditions, while allowing flexibility and integration objective science-based risk-decision tools for the varying site conditions encountered can facilitate property transfers. The NGWA encourages the EPA to refine its technical guidance and continue to develop tools, engaging qualified and trained professionals to conduct and implement site assessment and remediation activities and test technologies and strategies to streamline the site investigation and clean-up process.

Since its inception in 1995, EPA's Brownfields program has provided a vehicle to investigate and clean-up abandoned sites and has had a positive impact in both urban and rural locations. The Brownfields program has changed the way we approach development and reutilization of contaminated sites. In rural areas, in particular, Brownfields grants and clean-up are instrumental in re-invigorating economic activity and increases the ecological value of natural systems, preserving their function, without encouraging development in Greenfield locations, while increasing community resilience. But with over 400,000 Brownfields sites across the country, the work needed to clean-up these sites is far from complete, which is why reauthorizing this program is critical. Thank you for the Subcommittee's attention to this important matter, and I look forward to your questions.

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To: Chairman Bob Gibbs, Chairman
House Transportation & Infrastructure
Subcommittee on Water Resources & Environment
From: Paul Gruber on behalf of the National Ground Water Association
Date: September 22, 2015
Re: Helping Revitalize Communities Through the Brownfields Program

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Q1) In your testimony you discuss how state programs often provide incentives directly to developers to help incentivize buy-in from the business community. Can you discuss some of these incentives and how they work?

A1) Each state operates its Brownfields program differently and provides a range of incentives to aid developers. Below are just a selection from various states that have robust state-level brownfields incentives. The list is not exhaustive, but provides some examples of steps states have taken to encourage buy-in from the business community.

- *Florida:* The Florida Department of Environmental Protection provides tax credits to private or public entities in support of voluntary clean-up of brownfields sites and liability protection. The Department of Tourism provides businesses loan guarantees and a refund program for jobs created on redeveloped brownfield sites of up to $2,500 per job created.
- *New York:* The New York Department of Environmental Conservation provides tax credits to the private sector when cleaning up contaminated sites. They also created a more streamlined program for lightly contaminated sites, that removes the tax credit incentive, but provides a more streamlined path for liability release.
- *Oklahoma*: Through the Oklahoma Quality Jobs Act, Oklahoma's Department of Environmental Quality provides support to companies locating on cleaned-up sites. These companies receive incentive payments that correlate with the number of direct jobs created. Oklahoma's tax code also allows an exemption for equipment, machinery, chemicals, and fuels used in the clean-up of sites, incentivizing the private sector's involvement.

Q2) How can the Brownfields program be more streamlined in order to expedite the clean-up of properties?

A2) The regulatory review process of remedy selection can often be lengthy. An initial, expedited remedy decision that allows cleanup to begin while maintaining flexibility for later adjustments, is preferable. Given the current lengthy review process that often lasts years, contamination is able to spread while awaiting decisions.

Q3) Brownfields often have the stereotype of being sites in populous urban areas. To what degree are brownfields found in rural areas? How are we using federal brownfields at a variety of site types, such as rural locations or abandoned mines?

A3) The following map, courtesy of EPA, identifies the location of brownfields sites across the country and provides a good representation of the breadth and distribution of brownfields sites across both urban and rural areas.

Exact numbers and breakdowns of brownfields in urban and rural areas are not available, which is why NGWA suggests EPA inventory existing brownfields sites using available metropolitan and micropolitan data.

Q4) In addition to assessment, cleanup, and revolving loan fund grants, EPA has begun trying different types of grants, such as area-wide planning grants and multi-purpose grants. How are these other grant programs working? Are there way these can be improved? Are they diluting the core mission of the brownfields program?

A4) NGWA does not have adequate experience with multi-purpose grants to answer these questions.

Q5) In cases where state and local governments involuntarily acquire brownfields by bankruptcy, abandonment etc., how do they protect themselves from liability? What about cases where they voluntarily acquire these sites?

A5) State and local governments often shield themselves from liability by choose to not clean up or redevelop these sites. This is particularly problematic in rural areas, where the presence of ample green space is often more attractive to development then spending the money and risking the liability of a brownfield redevelopment. However, this does not eliminate the need to clean up contaminated groundwater and other hazards present at brownfields sites.

Q6) Some states allow responsible parties to receive state funding under their Brownfields programs. Should we amend the federal program to allow potentially responsible parties to receive federal funding?

A6) NGWA does not have a position on which parties receive federal funding. In some cases, non-state or local actors may have expertise outside of traditional Brownfields grantees that could enable streamlining without compromising the quality, speed, or rigor of work completed.

In particular, NGWA believes this could be applicable in rural areas, where technical assistance grants are especially critical. Non-government actors often have the ability to provide the training needed to interested parties in rural areas. Numerous not-for-profit organizations focused on rural communities and the environment work collaboratively with rural communities to increase local technical capacity and capability and should be considered as potentially responsible parties to receive federal funding.

Q7) The Brownfields law requires that 25% of site assessment and clean-up grant awards be directed to sites with petroleum contamination. What are the pros and cons of this annual set aside?

A7) The annual set aside ensures that petroleum contamination, which represents a significant portion of brownfields sites, are cleaned up. However, without an up-to-dateinventory of the number and type of brownfields sites in existence, it is unclear whether petroleum contamination represents a quarter of the number and severity of brownfields sites.

NGWA supports cleanup of any brownfields sites and would be open to Congress modifying this set aside, if it can be concluded clear that petroleum contamination representative of one quarter of contaminated sites across the country.

Q8) What recommendations would you give to improve the Small Business Liability Relief and Brownfields Revitalization Act?

The following are recommendations that NGWA believes would improve the Small Business Liability Relief and Brownfields Revitalization Act:

- A reauthorization of Brownfields legislation should continue to promote and provide mechanisms to enhance flexibility in decision-making based on qualified scientific and engineering professional input, integrating site-specific conditions, and realistic risk assessment. Doing so provides communities with the mechanism to develop and implement cost-effective reuse strategies.
- The Committee should consider increasing incentives for rural applicants by directing EPA to prioritize funds for rural communities where local groundwater supplies are impacted. In particular, consider increases to technical assistance grants.
- The regulatory review process of remedy selection can often be lengthy. An initial, expedited remedy decision that allows cleanup to begin while maintaining flexibility for later adjustments, is preferable to a review process that can last years, allowing contamination to spread while awaiting decisions.
- Congress should provide funds for EPA to expand the Brownfields and Land Revitalization Technology Support Center (BTSC), the Technical Assistance to Brownfields Communities (TAB) Program, and the Interstate Technology Regulatory Council (ITRC). Efforts to expand and develop guidance criteria to facilitate property transfers that incorporate site condition assessment and monitoring data permitting normal economic activity to proceed is critical. EPA's current guidance provides a framework for assessment of site conditions, while allowing flexibility and integration objective science-based risk-decision tools for the varying site conditions encountered can facilitate property transfers.

Q9) What would be the best ways to attract private capital into the Brownfields program?

A9) Incentivizing public private partnerships has the ability to attract private capital, as does increased federal support for initial site assessments. The consistent support of the program by

Congress and the EPA gives businesses confidence and certainty to invest in sites. Brownfields redevelopment takes several years, and this consistency is critical to helping businesses have the confidence to take on the risks associated with redevelopment.

As the Committee considers reauthorization, please also consider increasing the Brownfields Grant Fund amounts to keep abreast with inflation, at a minimum, in order to realize the beneficial economic impact of Brownfields redevelopment.

Q10) Are there any process related changes that could be made to speed up assessments and cleanups? Can we reduce some paperwork requirements?

A10) The regulatory review process of remedy selection can often be lengthy. An initial, expedited remedy decision that allows cleanup to begin while maintaining flexibility for later adjustments, is preferable to a review process that can last years, allowing contamination to spread while awaiting decisions.

NGWA looks forward to continuing to work with you throughout the reauthorization of brownfields programs. Please contact Lauren Schapker, NGWA government affairs director, at lschapker@ngwa.org or 202-888-9151 with any additional questions.

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To: Congresswoman Grace Napolitano
Ranking Member, House Transportation & Infrastructure
Subcommittee on Water Resources & the Environment
From: National Ground Water Association (NGWA)
Date: August 7, 2015
Re: Additional Questions for the Record from 7/24 Hearing

On behalf of the National Ground Water Association, please find below the following responses to your July 24 request for additional information on Rural Brownfields.

As addressed in my testimony, rural brownfields comprise a subset of the estimated 500,000 sites nationwide. Following below are responses to your questions.

Query: In an effort to assess the scope of this issue, please provide the Subcommittee with a description of the importance of rural brownfields sites and the number of these sites that exists nationwide.

Response:

NGWA's testimony made an effort to focus on rural brownfields in its testimony because of the perception that brownfields are more prevalent in urban areas. This was not to downgrade the importance of urban brownfields, but to highlight several concerns that are unique to rural areas. The following map, courtesy of EPA, identifies their location across the country. This map is a good representation of the breadth and distribution of brownfields sites. While the map is a good reference for identifying brownfield locations, it does not illuminate the scope of the rural brownfields issues.

Recommendation 1: EPA and the States should develop a comprehensive inventory and database of Brownfield sites by population center using the GSA's Metropolitan and Micropolitan Statistical Areas for quick reference by all communities.

Issue: As groundwater is relied on much more heavily by individuals in rural areas as a primary source of drinking water. Roughly, 15% of Americans, predominantly in rural communities, draw drinking water supplies from individual wells, which are not subject to the treatment or testing. In addition to individual wells, EPA estimates that there are over 52,000 Community Water Systems (CWS) in the United States, serving 300 million residents. EPA classifies these CWS as follows:

- Very Small water systems serve 25-500 people
- Small water systems serve 501-3,300 people
- Medium water systems serve 3,301-10,000 people
- Large water systems serve 10,001-100,000 people
- Very Large water systems serve 100,001+ people

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Recommendation 2: Using their Source Water Protection data (http://water.epa.gov/infrastructure/drinkingwater/sourcewater/protection/) EPA should inventory Brownfields sites by the CWS size and Source Water Protection areas as a means to prioritize potential impacts to drinking water supplies in rural areas.

Issue: Cleaning up rural brownfields is also critical due to the important role they play in preserving ecosystems and greenspace. In rural areas, ample land exists for redevelopment, making it much easier to overlook the costly brownfields clean-up process in favor of development of Greenfield sites.

Recommendation 3: EPA should amend the Brownfield Grant to include consideration of 1) Ecosystem Services value; 2) Watershed Protection, and 3) Ecological Risk Assessments when assessing alternatives for Brownfield development.

Query: What types of incentives would NGWA suggest for rural applicants?

Response:

Recommendation 4: NGWA suggests increased funding of Technical Assistance Grants providing additional resources to rural communities interested in beginning Brownfields clean-up. Technical resources, in addition to funding, should be made available to rural communities to support the grant application process. There are numerous not-for-profit organizations focused on rural communities and the environment who could work collaboratively with rural communities to increase local technical capacity and capability, ensuring equal distribution of funding to both rural and urban sites.

Recommendation 5: NGWA also suggests expanding of the Environmental Workforce Development and Job Training program for rural communities.

Query: As Congress considers legislation to reauthorize appropriations for EPA's brownfields authorities, what is your opinion on the recent Federal appropriations for these authorities?

Response:

Issue: While NGWA realizes the budget limitations under which Congress operates, the EPA Brownfields program currently leverage $17.54 per each dollar spent by EPA.

Recommendation 6: In consideration of Brownfields re-authorization, Congress should consider increasing the Brownfields Grant Fund amount to keep abreast with inflation, at a minimum, and the beneficial economic impact of Brownfields redevelopment.

Query: Have recent Federal appropriations been too high, too low, or about right?

Response: Brownfield grant limits have been stagnant and have not kept pace with either inflation or technology and/or construction cost acceleration. Recent appropriations have been too low.

Query: Has funding below authorized levels had an impact on the effectiveness of the program?

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Response: Funding has not had an impact on the effectiveness of the program. However, it has limited the pace and number of sites, annually while reducing economic and environmental benefits derived from the program. Neither the pace of clean-up or absolute number is adequate to reduce the backlog of potential Brownfield sites.

Query: What level would you recommend for brownfields site assessment and remediation grants?

Response:

Issue: As stated earlier, there are an estimated 500,000 brownfield sites nationwide. On average, there are nearly 400 applicants for brownfields grants each year and only 243 awards. The demand exists to expand the number of grants funded for site assessment and remediation each year.

Recommendation 7: NGWA recommends authorizing levels in line with BRERA authorization of $200 million annually and appropriating funds at the level. The program is a proven success, and given the number of applicants each year, the demand exceeds the need.

Query: What level would you recommend for state response programs?

Recommendation 8: NGWA would recommend state response programs funded and appropriated at levels in line with BRERA at $50 million annually. State response programs provided important federal/state partnerships to ensure clean-up is tailored to specific conditions at each site and is done to an agreed-upon standard.

NGWA looks forward to continuing to work with you throughout the reauthorization of brownfields programs. Please contact Lauren Schapker, NGWA government affairs director, at lschapker@ngwa.org or 202-888-9151 with any additional questions.

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

"Helping *Revitalize American Communities Through the Brownfields Program.*" July 22, 2015 Subcommittee hearing.

Written Testimony of Vernice Miller-Travis, Vice Chair, Maryland Commission on Environmental Justice and Sustainable Communities, and former Chair of the Waste and Facility Siting Subcommittee of the National Environmental Justice Advisory Council, Federal Advisory Committee to U.S. EPA.

The Search for Authentic Signs of Hope Revisited

Thank you Chairman Gibbs and Ranking Member Napolitano for the invitation to be a part of this important conversation today. I have worked in partnership with U.S. EPA and communities across the country for the past twenty-two years to assess, envision and deliver the promise of community revitalization via successful Brownfields redevelopment. I also served on the All Appropriate Inquiry Federal Advisory Committee that wrote the implementing language for the Small Business Liability Relief and Brownfields Redevelopment Act passed by Congress and signed into law by President George W. Bush in 2002.

History and background:

The Northeast-Midwest Congressional Coalition and the Northeast-Midwest Institute -

In the early 1970's the Northeast-Midwest Coalition in Congress launched a research arm called the Northeast-Midwest Institute initially to explore how to drive the newly created Community Development Block Grant resources to their districts.

The emergence of Brownfields grew out of inquiries in the early 1990's from a number of the members of the Northeast-Midwest Congressional Coalition who were hearing that local redevelopment projects in their districts had ground to a halt because of fears of potential chain of legal liability under CERCLA due to concerns about possible hazardous substances left

behind at former industrial sites. A lot of the early thinking about Brownfields redevelopment was stimulated by a desire to see redevelopment happen in some of the most distressed areas of their districts reeling from the loss of manufacturing and industrial facilities in the Midwest and Northeast. Two Congressional leaders who led the effort to create the concept of Brownfields were Congressmen Ralph Regula (R) and Louis Stokes (D) of Ohio.

The Northeast-Midwest Institute was fortunate to have on its staff a brilliant researcher named Charlie Bartsch who began to explore the issue of Brownfields sites (as distinct from severely contaminated Superfund hazardous waste sites) and what policy instruments were needed to expedite the identification, classification and redevelopment of these lesser contaminated sites. Charlie Bartsch began meeting and talking with staff in the Office of Solid Waste and Emergency Response at U.S. EPA to see if he could interest them in this discussion and he found a willing audience who began to explore what they (U.S. EPA) could do to stimulate the redevelopment of these sites which they initially estimated to number at 450,000 to 500, 000 such sites across the country.

EPA was interested in creating a program that could drive environmental clean-up and improve public health conditions in communities plagued by the presence of vacant, contaminated (real or perceived), underutilized parcels of land that were not only an eyesore, but created real impediments to the economic revitalization of many of the nation's most distressed communities. EPA, in partnership with the Northeast-Midwest Institute began to explore a pilot program to support the identification and assessment of these vacant properties which they launched in 1995, called the Brownfields Economic Redevelopment pilot project.

The National Environmental Justice Advisory Council Federal Advisory Committee -

Also in 1995, the National Environmental Justice Advisory Council (NEJAC) Waste and Facility Siting Subcommittee under the chairmanship of Charles Lee, and the EPA Office of Solid Waste and Emergency Response co-sponsored a series of public hearings entitled, "Public Dialogues on Urban Revitalization and Brownfields: Envisioning Healthy and Sustainable Communities." The Public Dialogues were held in five cities: Boston, Massachusetts; Philadelphia, Pennsylvania; Detroit, Michigan; Oakland, California; and Atlanta, Georgia. They were intended to provide for the first time an opportunity for environmental justice advocates and residents of impacted communities to systematically provide input regarding issues related to the EPA's Brownfields Economic Redevelopment Initiative.

More than 500 persons from community groups, government agencies, faith groups, labor, philanthropies, universities, banks, businesses, and other institutions participated in a

"systematic attempt to stimulate a new and vigorous public discourse about developing strategies, partnerships, models, and projects for ensuring healthy and sustainable communities in America's urban centers and demonstrating their importance to the nation's environmental and economic future." Representatives from 15 federal agencies as well as state, local, and tribal governments participated.

Concerns were raised by members of the public about the Brownfields Initiative, i.e., whether or not the Brownfields issue was a "smoke screen" for gutting cleanup standards, environmental regulations, and liability safeguards. Heretofore, public policy discourse around the Brownfields issue has revolved around removing barriers to real estate investment transactions at sites where there exists toxic contamination concerns--real or perceived. There was hope twenty years ago that the Brownfields Initiative would provide an opportunity to (1) stem the ecologically untenable, environmentally damaging, socially costly, and racially divisive phenomenon of urban sprawl and Greenfields development; (2) provide focus to a problem which by its very nature is inextricably linked to environmental justice, for example, the physical deterioration of the nation's urban, rural and tribal communities; (3) allow communities to offer their vision of what redevelopment should look like; (4) apply environmental justice principles to the development of a new generation of environmental policy capable of meeting complex challenges such as Brownfields and its potential to help stem the severe disinvestment crisis in urban America; and (5) bring greater awareness and opportunities for building partnerships between EPA, local communities and a vast array of other stakeholders. As a result, EPA committed itself to supporting a sustained dialogue on Brownfields and environmental justice issues.

These stakeholder dialogues led to the publication in 1996, of a comprehensive report authored by the Waste and Facility Siting Subcommittee of the National Environmental Justice Advisory Council entitled "*Environmental Justice, Urban Revitalization, and Brownfields: The Search for Authentic Signs of Hope*. The original report can be found here: http://www.epa.gov/environmentaljustice/resources/publications/nejac/public-dialogue-brownfields-1296.pdf).

Brownfields Redevelopment Program Successes to date –

There is no question that by any objective measure the U.S. EPA Brownfields Redevelopment program has been a runaway success. Perhaps more so than any of us initially envisioned. The Brownfields Redevelopment program is rare within the pantheon of federal programs in that it drives environmental, public health and social benefits all at once. For every one dollar that

EPA has invested in Brownfields assessment grants, Revolving Loan Funds and Job Training grants, seventeen additional dollars of investment have been leveraged in local and tribal communities across the country.

The Brownfields Job Training program has trained over 14,100 individuals to become certified in a range of site remediation skills. The Brownfields Job Training program graduates include many unemployed and underemployed veterans, at risk young adults, and fifty percent of the graduates are Ex-offenders. Seventy percent of the Brownfields Job Training graduates have been placed in living wage jobs. The program's placement rate is to be highly commended, especially when one considers the target population of their trainees.

Other successes of the program to date include hundreds of examples of transformative brownfields redevelopment projects, including:

- The epic struggle to clean-up brownfields sites and restore the Los Angeles River.
- Atlantic Station where a former steel mill has been transformed into a brand new thriving community in Atlanta.
- The Spicket River Revitalization Project - featuring Groundwork Lawrence, in Lawrence, MA

The EPA Brownfields program has also spawned unique partnerships like the collaboration with the National Park Service Rivers, Trails and Conservation Assistance Program and Groundwork USA which works to transform Brownfields sites into urban green space in park poor communities. As well as the growing Urban Waters Federal Partnership where 14 federal agencies are collaborating with local communities and local governments to restore urban rivers and waterways as a driver of community revitalization.

The launching of the "Re-powering America" initiative that is working to turn brownfields sites into alternative energy sites for community-based solar and wind power is another creative avenue spawned by the EPA Office of Brownfields and Land Revitalization.

This is just a small sample of the hundreds of real life examples of community transformation wrought by successful Brownfields redevelopment over the past twenty years.

The Downside of Successful Brownfields Redevelopment –

Of all the promise I envisioned for distressed urban communities via successful Brownfields redevelopment, I did not envision the large scale gentrification and displacement of long-standing communities of color that Brownfields redevelopment has brought.

Communities that had experienced decades of residential and commercial discrimination, red-lining, economic disinvestment, crime, and other social ills have been transformed into urban oases as a result of successful Brownfields redevelopment projects across the country. This was certainly not EPA's intent, but conventional real estate market forces have many times overtaken the vision of broad-based community and economic revitalization where successful Brownfields redevelopment projects have occurred. Places like Bayview-Hunters Point in San Francisco, The Dudley Street community of Roxbury, MA, the ever expanding Baltimore Inner Harbor, and the Southwest Waterfront area here in the District of Columbia are but a few examples.

The hope was that these long suffering communities would experience public health improvements, expanded green space and waterfront access, commercial revitalization, grocery stores and pharmacies, transit oriented development opportunities, new affordable and moderate income housing options, and so much more. Instead, what many of these long-standing communities have experienced is increased cost of living beyond their reach and loss of community, cultural touchstones and neighborhood identity.

We must refocus our efforts if the hope of successful Brownfields redevelopment is to bring broad-based economic opportunity and community revitalization to all, especially those people living and working at the bottom of our economic strata.

Recommendations for Improvements to the Brownfields Redevlopment program -

Increase the appropriation for the U.S. EPA Office of Brownfields and Land Revitalization.

Clearly ongoing financial support via Congressional appropriation is the lynchpin of the EPA Brownfields Redevelopment program. Current funding levels allow EPA to fund one out of every four Brownfields Job Training applications, and one out of seven Brownfields Assessment applications they receive. As stated earlier EPA's Brownfields dollars leverage an additional seventeen dollars of investment in local communities for every one dollar they spend on Brownfields Assessment, Revolving Loan and Job Training grants. EPA's financial assistance has been catalytic across the country, and without their resources we would still be stuck trying to figure out what to do with the thousands of sites, and millions of acres of underutilized and vacant land that proliferated across our communities twenty years ago. Much has been accomplished but with increased appropriations to this program even more can be done.

Please do not reduce the appropriated amount Congress makes available to the EPA Brownfields program. Please do not reduce funding in other areas of EPA's budget. We need a

fully funded U.S. EPA to provide the environmental protections all Americans expect and are entitled to.

Additional Recommendations for improving the U.S. EPA's Brownfields Redevelopment Program -

Recently, the EPA Office of Brownfields and Land Revitalization held a stakeholder forum in April of this year to gather recommendations for how to improve the Brownfields Redevelopment program. Listed here are some of the recommendations that emerged from this forum:

Promoting Economic Development and Community Revitalization:

- Increase technical assistance to distressed urban communities and small, disadvantaged, rural and tribal communities.
- Continue to invest in the Area-Wide Planning Grant program.
- Provide technical assistance to communities regarding how to find interim uses for brownfields.
- Promote networking among stakeholders and continue the National Brownfields Conference.
- Develop guidance on state Voluntary Clean-up Programs and how property owners / developers and Non-profit groups can obtain No Further Action letters under each state program.

Leveraging Resources beyond the EPA Brownfields Grant:

- Strengthen the connections with other EPA grant / funding programs (e.g., Clean Water State Revolving Fund).
- Explore opportunities for brownfields Supplemental Environmental Projects.
- Develop real estate training for EPA staff and state officials.
- Explore opportunities to dovetail EPA brownfields funding with other federal agency funding programs (e.g., HUD, EDA, DOE, DOT).
- Reach out to Department of Treasury to explore opportunities to encourage greater use of New Market Tax Credits and the Low-Income Housing Tax Credits, and opportunities to promote the issuance of tax-exempt industrial revenue bonds.
- Conduct lender forums to encourage lenders to provide financing for brownfields projects.

Boosting Manufacturing and Technology Innovation on Brownfields Sites:

- Conduct community roundtables and offer technical assistance in the form of toolkits and published case studies.

- Provide technical assistance and guidance on funding options to assist communities in addressing infrastructure challenges.

Here are some additional recommendations for how to improve the Brownfields program provided by attendees post the forum:

- To encourage the redevelopment of former manufacturing sites: link New Market Tax Credits (NMTC) to certain census tracts: Explore with Treasury a potential pilot program where NMTC geographic criteria could be modified for some subset of industrial projects. For example allow NMTC in additional census tracts that are adjacent to currently eligible census tracts if the project is: 1) manufacturing; 2) on a brownfields site; 3) served by public transit.
- In regard to manufacturing and technology innovation on brownfields: the National Network for Manufacturing Innovation (under NIST) presents an interesting (if limited) means to reusing brownfields in some locations. There are only a handful of NNMI institutes in the country so far, but the leader of the center based in Detroit chose to locate in and repurpose an abandoned property in the downtown area. Perhaps future Extension Partnership program under NIST consists of about 60 centers across the country that provide assistance to small and mid-sized manufacturers and they may be a useful network to reach out to on brownfields reuse challenges and opportunities.
- To promote brownfields redevelopment in rural areas: EPA's Brownfields Program should consider working closely with the Natural Resources Conservation Service (NRCS), which is part of USDA, to promote brownfields redevelopment in rural areas. NRCS has the federal responsibility for the National Cooperative Soil Survey, and their strength is technical assistance in natural resource disciplines.
- To promote the leveraging interagency funding: EPA should connect with two other offices that do not often surface in the Brownfields discussion--the Office of Economic Adjustment at the Department of Defense, and the Brownfields and Community Health Initiative under the CDC's ATSDR.

After twenty-two years I remain committed to the promise of successful Brownfields redevelopment and I still think of this multi-dimensional program as the harbinger of Authentic Signs of Hope for the many distressed, marginalized and environmentally over-burdened communities across our nation who long for revitalization and economic opportunity where they live, work, and play.

Again, thank you Chairman Gibbs and Ranking Member Napolitano for inviting me to address you today.

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July 20, 2015

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

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

The Honorable Bob Gibbs
Chairman
Water Resources and Environment
Subcommittee
U.S. House of Representatives
Washington, DC 20515

The Honorable Grace Napolitano
Ranking Member
Water Resources and Environment
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Dear Chairman Shuster, Ranking Member DeFazio, Chairman Gibbs and Ranking Member Napolitano:

It is our understanding that your offices are developing legislation that would reauthorize the U.S. Environmental Protection Agency (EPA) Brownfields Program. We applaud you for this effort and hope that you will include reforms that strengthen the program to support brownfields redevelopment efforts in cities and towns across the county. We write to share some ideas and guiding principles that we wish to see in brownfields reauthorization legislation.

The EPA Brownfields Program is vital for local governments in aiding their redevelopment efforts and supporting the productive reuse of property, which otherwise remains a blight on the community, but much work remains to be done. NLC urges Congress to make the following changes to the EPA Brownfields Program to have a greater impact on communities: increase the overall funding authorization level; increase the cap on the assessment grant amounts, whether site-specific or community wide; increase the technical assistance offered to communities; authorize funding for multipurpose grants to provide greater financing certainty for large, complex projects; and allow eligible entities to use a portion of their grant funding for administrative costs.

Additionally, one of the greatest challenges that local governments face in brownfields redevelopment is liability concerns and the disincentives created by the potential liability that exists for local governments to acquire contaminated property. We urge Congress to clarify and expand liability protections for public entities that acquire contaminated brownfields sites where the public entity had no involvement in the contamination. This proposal is of great interest to the many local governments that are, out of necessity, taking ownership of brownfields properties. Some brownfields sites are unlikely to be redeveloped through private investment. If these sites are blighting influences that prevent neighborhood revitalization, the only option that will work is public acquisition.

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Through a variety of means including tax liens, foreclosures, purchase, and the use of eminent domain, local governments can take control of brownfields in order to clear title, consolidate multiple parcels into an economically viable size, conduct site assessments, remediate environmental hazards, address public health and safety issues, and otherwise prepare the property for development by the private sector or for public and community facilities.

Although property acquisition is a vital tool for facilitating the development of brownfields, many local governments have been dissuaded by fears of incurring liability for contamination they had no role in creating or releasing. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) includes liability defenses and exemptions that may protect local governments that "involuntarily" acquire brownfields. However, the majority of the sites acquired by local government are either unprotected (which is the case for voluntary acquisition), or are subject to widely varying interpretations of what is meant by "involuntary acquisition." Even properties acquired through tax delinquency (one of the examples cited in the law and often presumed to be protected) may not necessarily be exempt if the local government took affirmative ("voluntary") steps in the tax delinquency process.

This lack of clarity and certainty has a chilling effect on strategic acquisition-redevelopment activities. In some cases, local governments have reacted by adopting conservative policies that strictly limit the acquisition of contaminated properties. These policies keep cities and towns out of the courtroom, but they also leave many contaminated sites as neglected blighting influences on their surrounding communities. In other cases, local governments have taken a risk by acquiring properties, essentially "rolling the dice" in favor of community revitalization.

A secondary problem is that many potential brownfields projects on publicly-owned sites have been ruled ineligible for EPA funding because the local government cannot satisfy the requirements to establish "involuntary acquisition." Aside from the loss of funding, local governments rightly fear that if EPA has determined them to be ineligible for funding, that is tantamount to a determination that the local government is a potentially responsible party.

To address these liability issues and provide greater clarity and a higher level of protection for acquisition activities that clearly serve public purposes, we recommend that the legislation:

- Eliminate the term "involuntary" in describing the protected activities;
- Add a plain language exemption for local governments that acquire contaminated properties for redevelopment purposes, as long as the governmental entities have not created or released the contamination;
- Modify and expand the current protections under the category of "rendering care and advice" to include actions taken by local government to address public health and safety issues at sites, so long as the governmental entity acts responsibly in doing so;
- Allow government entities to be eligible to receive grants so long as the government entity did not cause or contribute to the contamination of the site.

We thank your for your leadership to reauthorize and reform the EPA Brownfields Program and encourage you to make these important changes to the program that will allow local governments to attract jobs and investment to distressed communities, reposition vital assets for environmentally-responsible economic growth and address public health and safety concerns. We look forward to working with you to advance this legislation this year.

Sincerely,

Clarence E. Anthony
CEO and Executive Director

CC: Members of the House Transportation and Infrastructure Committee

ASTSWMO. Providing Pathways to Our Nation's Environmental Stewardship Since 1974

August 6, 2015

The Honorable Bob Gibbs
Chairman, Subcommittee on Water Resources and Environment,
House Transportation and Infrastructure Committee
Washington, D.C. 20515

Re: July 22, 2015 Hearing: "Helping Revitalize American Communities Through the Brownfields Program"

Dear Congressman Gibbs:

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) is submitting this letter for the record for the hearing held by the House Subcommittee on Water Resources and Environment on July 22, 2015 entitled, "Helping Revitalize American Communities Through the Brownfields Program".

ASTSWMO is a non-profit association representing the waste management and remediation programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes State program experts with individual responsibility for the regulation and management of solid and hazardous wastes, including day-to-day cleanup and redevelopment of Brownfields.

ASTSWMO is a strong supporter of the Brownfields Program. For the past thirteen years, this program has contributed greatly to the economic development of the country. State and Territorial programs help ensure that the programs are run effectively, provide significant support to localities, such as small and rural communities that apply for grants, and that the funding is implemented and leveraged with additional resources to maximize revitalization of sites. The vast majority of cleanups are managed under State programs, which are typically supplemented by 128(a) funds.

Since the Brownfields Law was signed in 2002, funding to States, Territories and Tribes, via the 128(a) Brownfield Grant, has been essential for States to build and maintain successful State brownfield programs. The funding that States receive each year provides an incredible number of benefits to local units of government, corporations, and other organizations, who oversee the day-to-day cleanup and redevelopment of blighted, underutilized, and contaminated properties.

Some of these benefits include:

- Providing funds to complete environmental assessments of properties to meet all appropriate inquiry (AAI), as well as Phase II sampling and asbestos and lead inspections and, in some cases, ecological assessments, as needed;
- Supporting community officials in the preparation of grant applications for Brownfield assessments, cleanups or revolving loan funds;

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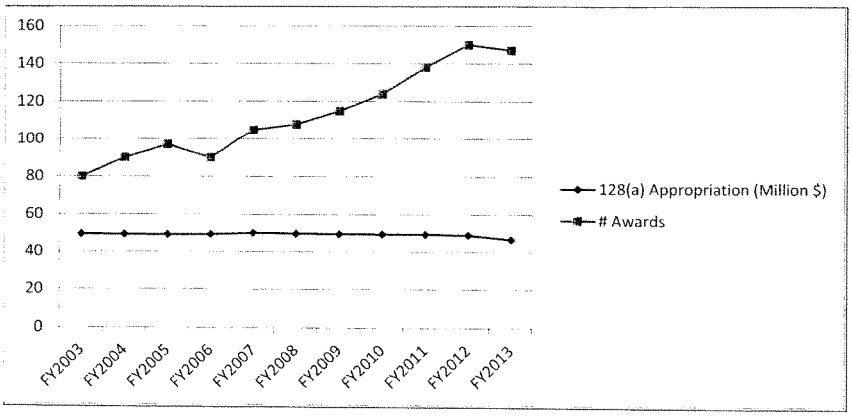
- Providing workshops for organizations, communities and others in order to educate them about the many Brownfield issues and the incentives that are available at the State and Federal level;
- Meeting with community officials and others to assist them in working through assessment and cleanup of Brownfield properties, as well as providing technical support and recommendations; and
- Supporting Voluntary Cleanup Programs (VCP), which provide the foundation for setting remediation goals and institutional controls.

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

Since the Brownfields Law's beginnings, 128(a) funding has been provided to States, Territories and Tribes with the national funding level remaining at just under $50 million for over 14 years, whereas the number of applicants has continued to rise to nearly double. The graph below illustrates the changes in funding awards, from a static pot of funding over the years. In FY2003, 80 States, Territories and Tribes received funding from a total appropriation of $49.4 million. By FY2013, 150 entities requested funding including 50 States, 4 Territories, the District of Columbia and 95 Tribes, 3 of which were new applicants. The total funding requested in F20Y13 was $54.8 million and the total budget allocated in FY2013 was $48.08 million. The awards in FY2003 averaged $618,000, however, by FY2013 the average award had dropped to $318,000, nearly half of what had been awarded in FY 2003. This dramatic decrease in award amounts is directly attributable to the steadily increasing demand and competition for these essential funds.



As a result of this increasing demand on 128(a) funds, the vast majority of States are receiving less funding each Federal fiscal year. Although most States do not rely solely on 128(a) funding alone to support their Brownfields and State response programs, 128(a) funds are an essential component of each State's program. The additional funding many States utilize includes program fees, special cleanup funds and, in some cases, general revenue funds; however, most of these sources have either decreased or remained flat, particularly during the recent recession. Few of the States receive sufficient State funding to cover all program costs. As a result, States have had to resort to cost saving measures, such as reducing staff dedicated to Brownfield functions, cutting or eliminating the amount of assistance provided to local communities and reducing the number of 128(a) funded assessments. We want to stress the importance of protecting the already stretched 128(a) funds. Adding additional applicants and program areas would threaten an already limited funding source.

ASTSWMO believes a robust brownfields program, at all levels of government and working in concert with the private sector, is essential to the nation's environmental, economic and social health, and without adequate funding for State, Territorial and Tribal Brownfield and Voluntary Cleanup Programs, Brownfield program goals cannot be achieved. While the current funding level is inadequate, we want to ensure that it is protected.

Thank you for your consideration of our views. If you have any questions, please contact me at (412) 442-4120 or Dania Rodriguez, ASTSWMO Executive Director at (202) 640-1061.

Sincerely,

Michael Forbeck (PA), P.E.
ASTSWMO President

cc: ASTSWMO Board of Directors
Mathy Stanislaus, Assistant Administrator, EPA OSWER
David Lloyd, Director, EPA OBLR
Alexandra Dunn, Executive Director, ECOS
ASTSWMO Brownfields Focus Group

STATEMENT

OF

JONATHAN PHILIPS

Managing Director
Anka Funds

TO

THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

OF THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

OF THE

UNITED STATES HOUSE OF REPRESENTATIVES

REGARDING

HELPING REVITALIZE AMERICAN COMMUNITIES THROUGH THE BROWNFIELDS PROGRAM

July 22, 2015

10:00 a.m.
2167 Rayburn House Office Building

Contact Information:

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Prologue

Thank you for this opportunity to provide testimony to the Committee. I have been privileged to provide testimony on 4 previous occasions before various Congressional committees on the issues of distressed real estate, brownfields and ways our government can further the public interests to encourage the private activity and investment in the betterment of our national communities.

I would like to preface my statement regarding revitalizing America's communities through the Brownfields Program by emphasizing that since the real estate crash in 2008, the redevelopment of brownfields sites came to a screeching halt in our nation. Brownfields are complicated and messy and laden with liability and, in a post-crash world where budgets tightened, the real estate market contracted many magnitudes and even the carrying costs of holding "clean" land were often considered too high by many, brownfields, not surprisingly, have been virtually ignored by private investors and developers for the past 7 years. Given that almost no new public investment (and even less new private investment) has been deployed in brownfield reclamation and redevelopment since the market crash in 2008, three things are clear: 1) the real estate market has as much or more to do with the acceleration or deceleration of brownfield cleanup and redevelopment as any government policy; 2) now that real estate market movements are starting to trend toward a healthier period, this is a very fine time to begin to examine the nation's brownfield program infrastructure and implement improvement and reauthorization to further reduce barriers to site development. We hope expect market forces in the future to begin to make redevelopment economical for more brownfield sites across the nation; and 3) there are very few case studies and data over the past 7 years that one can call upon to produce a sample size of meaningful analysis and I encourage the Members of this Committee to examine the larger data sample prior to 2008 when crafting legislation. My comments in this testimony necessarily draw upon the period of activity (pre-2008) rather than the relatively dormant last 7+ years.

I applaud this Committee's foresight in re-igniting the discussion of brownfields to plan for a future that can allow more site redevelopment to occur with fewer impediments. Your timing is excellent and we look forward to lending our resources to assist you, as

called upon.

Before I begin, I would like to provide a little background about our experience as private sector investors in distressed properties.

Anka Funds – Overview
Anka Funds (www.ankafunds.com) is an investment firm headquartered in Raleigh, NC focused on niche, underserved opportunities that produce strong returns for its stakeholders and have a positive social or environmental impact. Anka Funds' platform includes a family of managed private equity funds, including Anka Residential Real Estate Dividend Fund I, Anka Residential Real Estate Dividend Fund II and Anka Residential Real Estate Dividend Fund III which actively acquire, pool and manage attractive properties which produce dividends for Anka investors, the Anka Sustainable Ventures Fund, which invests in the acceleration of companies with innovative products and technologies with central attributes that are environmentally or socially sustainable, the Anka Real Estate Opportunity Fund, which invests in undercapitalized, challenged or governmentally prioritized real estate assets during times when the market is supportive of such strategies.

Anka Funds – History
The principals of Anka have worked together since 2002, helping Cherokee Investment Partners and its affiliates invest opportunistically in, and sustainably manage distressed investments for, their various private equity funds. Cherokee is a real estate private equity family of funds focusing on the acquisition of distressed real estate that grew from $250mm to $2bn during the tenure of Anka's principals. At the time, Cherokee was the largest investor in the reclamation of brownfields sites and pioneered a new sector by applying expertise, creativity and resolve to sustainable redevelopment of properties after remediation. Following the market collapse, Anka principals spun out and formed Anka Funds, an independent company, in 2008 to invest in attractive niche opportunities that fell beyond Cherokee's permitted investment criteria.

Anka Funds -- Track Record
Anka has sourced, separately acquired and managed approximately 700 properties since its inception, in addition to its non-real estate investments. Most of these properties were distressed properties upon acquisition. The Principals of Anka have a long history working alongside mayors, governors and other officials on redevelopment projects that incorporate sustainable elements. The Anka team has collectively worked on well over $10 billion of transactions across a wide array of industries. Anka's expertise is in buying housing from distressed sellers in areas and situations where there is little or no competition from institutional capital. Anka's ability to systematically source and manage the buying, rehabbing and management process in these underserved areas has led to superior results, including, in core markets, 9% unlevered cash-on-cash yields

(16%+ levered tax-equivalent yields) from rental operations[1] and 40% annual unlevered returns on investment on sold/realized investments[2] in core market.

Anka Funds -- Mission and Philosophy
Anka's mission is to create positive outcomes for both our investors and the communities and stakeholders that are touched by our projects and companies. Our investment philosophy is straightforward. We target transactions with significant upside potential but take a conservative approach with respect to making sure that our investors' capital and resources are protected in a downside situation. In doing so, we make sure that environmental responsibility, integrity and strong stakeholder relations are a vital part of everything we do. We set high standards for businesses in the area of environmental responsibility and believe that private entities can work in tandem with public institutions to reduce environmental impacts and efficiently accomplish both public and private objectives.

Our corporate philosophy is also straightforward. Anka believes that conducting business ethically and with integrity is vital to the success of the company. We are proud to steward the resources with which we are entrusted and embrace the role of fiduciary for our stakeholders. Our management team is constantly striving to uphold the highest professional standards, provide sound advice and align our interest with our partners. Our integrity builds trust and collaboration and creates a culture of openness and candor. Our reputation is our greatest asset and is molded by the way we act with partners, colleagues and the communities we serve. We strive not only to implement with our partners and stakeholders the best strategic decisions and investment of resources, but also aim to strengthen our relationships by promoting open communication. We value our stakeholders and understand that our business relationships provide us with important sources of proprietary investments.

Introduction

Historically, owners of contaminated real estate often focused resources on avoiding liability rather than site cleanup. The consequence was stagnating properties, economic malaise, eyesores, and conditions hazardous to health in otherwise growing urban neighborhoods. Secondary effects have been documented to include increased crime, lower tax revenues, job loss and surrounding blight.

Among the most historically popular tools used by sellers to avoid liabilities included variations on what has been termed "mothballing." Corporate mothballing typically involved a legal team talented in producing endless delays, a chain-link fence, and techniques to continue token and inefficient "operations" with the objective of avoiding requisite environmental assessments and attendant regulatory scrutiny and enforcement actions. Owners have perceived that it is economically and "reputationally" preferable to

[1] As of 2014
[2] As of 2015, in core markets

avoid environmental testing and investigation, so as to delay the greater liability of having been legally "put on notice." This pattern of owner response to environmentally contaminated properties ensured that the nation's brownfield inventory ballooned.

As the true costs of these delays and mothballed sites have become apparent, the public and private sectors have worked together to create regulatory and financial mechanisms to revitalize brownfield sites. These stakeholders have effectuated important changes in court rulings, environmental laws, regulations and enforcement action, urbanization, insurance and availability of financing vehicles to address the cleanup and reuse of these brownfield properties. Both the public and private sectors maintain a strong interest in the cleanup of brownfields and their restoration to productive use.

Just as our nation required both sectors, working together, to produce the important brownfield reforms of the past several years, a similar partnership will continue to be important to ensure an acceleration of the rate of brownfield cleanups across the county.

My predecessor company was the nation's largest and most experienced brownfield investor. We believed that without public-private partnerships, there could be little hope of reclaiming most of the sites that languish today.

Only those sites that are both trivially contaminated and situated in the most attractive real estate locations are sure bets to receive the attention of developers who may be willing to tackle projects with marginally increased risks and substantial rewards. Unfortunately, we believe the vast majority of US brownfield sites are both more complicated and less economically attractive; it is this majority that are unlikely to be addressed under current market forces…even if market forces continue an upward trend of increased demand for urban land.

I believe that the environmentally contaminated sites most plaguing this country are more often than not either those which would produce net losses for the investors, or those with a risk-reward ratio that is significantly unattractive relative to commonplace, sprawl-producing greenfield development.

In either case, the problem stems from rational economic decisions based upon local market forces of supply and demand. If we are to concede that a wholesale, publicly funded cleanup of every contaminated site in the nation is not resource-feasible or easily implemented, we must innovate better ways to combine public and private resources to effectuate more cleanups more quickly.

The problem of brownfields can be greatly alleviated by creating a rational economic framework in which the private sector may operate, respond and be guided by well-considered, typically local, public decisions for prioritization of private-sector driven site cleanup. In an unsubsidized setting, market economics drive the cleanup decisions of these challenging sites. With public guidance, private forces can operate efficiently to produce revitalization in places where communities most need it, but where without such public incentive, revitalization may not occur.

Municipal officials and urban residents increasingly fight suburban sprawl by encouraging development of urban sites. Communities support redevelopment of in-fill sites they previously avoided due to uncertain or complicated environmental issues. Although challenges remain, federal, state and local governments and private groups have collaborated historically to explore creative ways to remediate environmentally impaired sites. I am proud to have participated actively in many such efforts.

Companies whose core business is not real estate asset management and remediation or brownfield redevelopment can maximize shareholder value and redeploy resources elsewhere by selling underutilized and environmentally impaired properties to brownfield developers with proven and successful track records. By carving out underutilized and environmentally impaired properties, companies improve their liquidity and reduce their liabilities, thereby strengthening both the left- and right-hand sides of their balance sheets.

When companies want to maintain the use of such property pending cleanup, sophisticated buyers can use structures such as sale-leaseback agreements, though these structures have not been fully vetted by the courts. Despite the risks, I see sale-leasebacks as a preemptive tool useful in the fight against what might otherwise become tomorrow's abandoned brownfields. By allowing non-intrusive cleanup to occur during a pre-determined lease-term, we are able to ensure that if the ongoing operation on the site were to depart, the site would have already been environmentally assessed, substantially remediated and in the hands of a community-friendly entity that is interested in seeing property revitalized for a future highest and best use. Best of all, the communities in which these "future brownfield sites" reside are benefited by locking in for the host communities the jobs and tax rates associated with the ongoing concern, in addition to the obvious and instant community and environmental benefits associated with the cleanup of a polluted site.

Background - The Brownfield Market

Even more so than the broader real estate market, the brownfield market is disaggregated and local in nature. Lack of reliable information makes it difficult to estimate accurately participants and market size. According to the Environmental Protection Agency ("EPA") and the Office of Housing and Urban Development ("HUD"), approximately 500,000 industrial and commercial brownfields were estimated to exist in the United States. The EPA's definition of brownfields includes only properties that have both environmental contamination and certain socioeconomic characteristics. Based on George Washington University research using EPA and HUD databases prior to the real estate crash, the value of this impaired real estate in the US exceeded $600 billion in its then current condition.

Corporations own many brownfield sites. Many companies are consolidating operations and closing facilities, while mergers and acquisitions produce additional surplus sites.

Government agencies, individuals and financial institutions that unknowingly purchased or foreclosed on brownfield sites also own these properties. Still, there are those sites that were acquired by entities aware of the existing environmental conditions and inspired by the prospect of an attractive return on investment, only to discover that the properties challenges were too difficult to overcome, given the entity's limited track record in dealing with such properties.

Despite the significant increase in the number of brownfield redevelopments since the early 1990s (even considering the slowdown in redevelopments since 2008, as I mentioned earlier) the brownfield market continues to experience excess supply (National Brownfield Association – Market Report). The imbalance between supply and demand results from several factors, including brownfield redevelopment economics, environmental liability potential, capital source limitations available for redevelopment (especially for large redevelopment), capital cost, transaction complexity and market inefficiencies in matching buyers and sellers.

Brownfield Redevelopment Economics

Brownfield redevelopment is a unique real estate development type. The economic drivers are generally similar to those found in typical real estate/greenfield development, but environmental contamination introduces several hurdles to successful economic redevelopment.

On the revenue side, the future sale price (i.e., exit price) of the land is a function of the highest and best use of the "clean" real estate parcel. Highest and best use values the real estate in accordance with the use that, at the time of appraisal, is likely to produce the highest economic return. On the cost side, the expenses associated with brownfields redevelopment include the purchase price, closing costs, remediation and risk management costs, capital expenditure (e.g., infrastructure, building improvements), soft costs (e.g., legal, rezoning, engineering and consulting) and sales costs (e.g., marketing and/or commissions).

Remediation cost (i.e., cleanup cost) is not the only hurdle associated with contaminated real estate; as important for the developer is the potentially larger environmental liability and the difficulty of finding debt project financing. Brownfield developers have difficulty using financial leverage (e.g. debt) because brownfield appraised value is generally low, and banks require lower loan-to-value ratios to protect themselves from the risk of having to own and manage stigmatized properties. As a result, the equity requirement for brownfield redevelopment is high. High equity requirements combined with increased expenses due to remediation costs often lead to greater risk with a possibility of lower return on investment. In 1998, the Urban Land Institute reported that average rate of return for brownfields was less than three percent, well below the rate of return for greenfields projects, which averaged at that time between 10 to 30 percent. Higher site development and financing costs, along with often significantly longer periods of time during which capital is invested (creating a riskier illiquid investment),

are seen as factors contributing to the lower brownfields return rate. Low rates of return on investment combined with high project risk and complexity requiring niche areas of expertise constitute a significant impediment to private sector brownfield development financing.

Another hurdle specific to brownfield transactions is that other dilapidated sites frequently surround individual brownfield sites. Successful redevelopment of an individual brownfield site is often contingent upon developing a master plan for an entire area, which may require the development team to buy adjacent sites from multiple owners. The complexity of dealing with multiple sellers adds to the risk inherent in brownfield development projects. In some cases, buying additional surrounding parcels is the only way for the project to offer the potential to generate, on a blended basis, enough gain to offset the risks and costs associated with the core contaminated parcel(s). However, as more property is acquired on the perimeter of a contaminated site, the investor assumes greater assembly and market risks. For example, with a smaller, core contaminated parcel, a revitalization effort hinging on future market acceptance and absorption is less risky than investing in a geographic so large that the future transformed region would need to be significantly deeper to accommodate the newly created supply in the marketplace.

In spite of these challenges, our success in having cleaned up pollution on so many sites and those activities of others serves to strongly evidence that brownfield sites still have potential if broad community support exists to restore them, and creative development teams can structure the transactions to maximize the customarily low return. Brownfield investors and developers must think creatively about ways to complete a transaction that appears upside-down (i.e., higher cost than potential sale/exit value), using tools such as private equity funding, environmental insurance, public-private partnerships, Tax Increment Financing ("TIF") and other public financing components. Public financing helps lower the capital cost and thereby increase returns. Simply put, public incentive for private activity is necessary to remediate and revitalize most of the thousands of brownfield sites nationwide. Together, a private company can shoulder the investment and liability of clean up, while the host community receives the environmental benefits of a cleaned site and the community and economic benefits of revitalization.

Financing Brownfield Redevelopment

Significant barriers prevent the remediation and redevelopment of the vast majority of this nation's brownfields. While Congress has made strides to address this problem with the passage of the Section 198 tax provisions in 1997, the passage of the 2002 brownfield law, the passage of the tax provisions waiving the unrelated business income tax penalties on qualified brownfield transaction to reduce unintended tax barriers for large tax-exempt institutions from investing in brownfield redevelopment (an idea I personally dreamed up soon after testifying before Congress in a prior year. I personally helped architect, write and win passage of this idea into federal law), there is still much that can and should be done.

In this section of my testimony, I will briefly address the underlying causes of the brownfield problem and the market dynamics that currently inhibit remediation and redevelopment.

I will then focus on two areas where I believe that Congress (as well as states and local governments) can have the biggest impact in encouraging brownfield revitalization: 1) creation of new financial incentives, and 2) other actions to encourage deployment of additional capital.

Finally, in this section of the testimony, I will provide a list of criteria that brownfield investors use to determine whether to remediate and redevelop a particular site. This list is critical since, I believe, it provides some insight to the direction the markets will head if Congress, the states, and/or local governments reauthorize the Brownfields Program and/or provide additional financial incentives and/or other actions to encourage deployment of additional investment capital in this field.

Capital Sources and Cost

Background
The last stock market decline contributed to an increase in capital flow to the real estate market asset class in 2002 - an increased rate that, while stunted starting in 2008, has continued to some extent to present day. Both individual and institutional investors (e.g., pension funds, endowments and foundations) have increased their portfolio real estate allocation target. The real estate allocation is largely comprised of class A office, hotel and development opportunities in strong markets. On the other side of the spectrum, "distressed" real estate receives significantly less allocation. Environmentally contaminated real estate is, for all practical purposes, non-existent in the division of the traditional, conservative, institutional real estate allocation.

Foreign institutions, particularly in Germany, have been increasing their investment in the U.S. real estate market (PricewaterhouseCoopers, 2003). As of September 2002, the total global real estate capital market was about $4.63 trillion. Non-institutional and institutional investors represented about $2.39 trillion and $2.24 trillion respectively. Out of the $2.24 trillion from institutional investors, $402.8 billion (18%) was equity and $1,841.4 billion (82%) was debt. The ability to attract such capital for a category of brownfield investments is driven by several factors, including the category's ability to diversify an institution's holdings, the possibility, if successful, to generate returns at least commensurate with what ordinary real estate investments might yield, there is a defined market in which here is no foreseeable shortage of deal flow and, perhaps in certain situations, an investor's particular interest in engaging in what may be deemed as "socially responsible" investing.

Equity
A very small portion of the $402.8 billion of real estate equity capital represents brownfield investment, due in part to the risk and illiquidity inherent in that investment class. When assessing the risk-return relationship for different types of real estate investment (e.g., core real estate, real estate securities, mezzanine investment, opportunistic investment, and brownfield redevelopment) brownfield redevelopment clearly falls within the upper range of the risk-return spectrum. One of the lessons of this data is that, if we wish to foster a more active private sector participation in the cleanup of our nation's polluted land, we have two levers to adjust. Either one can either lower the risk associated with tackling a brownfield project or increase the potential project return. Absent one or both of these factors, developers across America will follow the easy road: remaining content to make sizeable returns converting the next farmstead to suburban sprawl on that proverbial 'edge of town.' However, as my presence before this distinguished body suggests, there are successful and experienced brownfield equity investors with long track records that have developed the necessary risk management skills to navigate this otherwise risky business environment. Buyer track records and reputation are especially important when sellers seek a transfer of environmental risk and liability.

For small transactions, the number of brownfield equity investors is still limited, though it has been growing in recent years as regulatory changes have encouraged more redevelopment. For large transactions, the universe of brownfield equity players is even smaller, though legislation enacted last October served to promote the formation of larger pools of capital dedicated to the investment in brownfields (I will discuss this legislation in Part IV of my testimony). The main incentives for a seller to transact with equity players with large pools of institutional capital are easy to understand: the wherewithal and credibility, the ability to close without financing contingencies and the experience and track record of the equity investors experienced with large and complex transactions. When unforeseen liabilities arise, or costs spiral out of control (as they so commonly do), our experience is that such unbudgeted events have never been less than 200%. The ability to stand behind a project and write a check to cover such unforeseen events is something that can be reassuring to sellers, communities and investors alike. On the other hand, institutional investors have fairly rigid return expectations, structural requirements and limited investment horizons, which are often hard to satisfy in many transactions.

The cost of investment equity for brownfields is higher than for greenfields due to the additional time, cost and legal risks assumed for brownfield redevelopment. To achieve a targeted internal rate of return (IRR), the longer the time horizon between the date of purchase and the date of sale of the property, the larger the required spread between the purchase and exit price. Historically, depending on the prevailing interest rate environment, prudent brownfield investors underwrite transactions to yield an IRR between 5-10% greater than a typical greenfield investor. By targeting a higher IRR, brownfield investors attempt to compensate for the historically lower rates of return actually realized on brownfield investments.

Debt
Traditional redevelopment projects rely heavily on the use of debt to enhance investor IRRs and sometimes make seemingly economically unviable projects doable by virtue of time compression effect that use of debt affords an equity investor. Brownfield projects do not have this same luxury. The use of debt in the capital structure reduces the "blended" cost of capital and increases both project risk and the return on equity. Typically, development teams use debt when the project can generate a certain amount of cash flow (e.g., from existing building lease) to service interest payments. Debt cost varies from project to project and is highly dependent on the overall capital market at the time when debt financing is needed.

Conventional lenders are generally unwilling to provide debt during the times when it is needed most: i.e., before cleanup, rezoning and leasing or sale activity has been achieved. On occasion, certain lending groups have warmed to conditional participation in brownfield projects if there is sufficient equity in the project (the amount of equity depends on the overall risk profile of the project), the critical path to environmental closure is known and, perhaps, accomplished or nearly accomplished, and the equity partners/developers have the reputation, track record and risk management capabilities necessary to limit the downside risk. Without these conditions, lenders have been reluctant to lend funds on contaminated sites due to the potential liability, the relatively limited income stream in the short and medium term and the lack of marketability. In the construction lending context, where principal repayment takes months or a few years, lenders chiefly worry about the borrower's collateral relative to contingencies in the construction budget for unknown site costs and whether the project has or can readily obtain takeout financing. Permanent lenders primarily worry about the borrower's defaulting, which may require them to assume ownership of a stigmatized asset with questionable value.

Government Funding & Incentives
As I will discuss more extensively in Parts III and IV of this testimony, government incentives can provide the necessary additional funding to encourage additional brownfield redevelopment. Local governments usually shy away from direct grants; instead, tending to favor property tax incentives and Tax Increment Financing (TIF), especially for infrastructure costs like roads and utilities. Under TIF, the increased tax revenues generated by the redevelopment are used to pay off part of the redevelopment expenses. Federal and State Brownfield funds are sometimes available. More recently, some states are considering, or have passed, laws that authorize the establishment of a capital pool, drawn from future tax revenues, to serve as reimbursement of certain qualified remediation expenditures. Other programs offer low or zero interest debt financing for brownfield redevelopment. Occasionally, it may be worth exploring a special State or Federal appropriation to kick-start a remediation project. If the Federal Government is a responsible party for onsite contamination, then such appropriations are more likely.

It is unquestionably paradigmatic that the largest and, arguably, most important, brownfield projects in our nation require true public-private partnerships, allowing all

stakeholders to leverage each another's resources to produce a winning result for all parties. I can think of several projects that would never have generated attention were it not for the willingness of public and private entities to brainstorm together creative ways to accomplish a shared goal.

Impact of Court Rulings and Legislation

U.S. Supreme Court rulings, as well as federal and state legislation, have helped private and institutional investors become more comfortable with investing capital to redevelop environmentally impaired properties. In 1998, the U.S. Supreme Court in United States v. Bestfoods (528 U.S. 810; 120 S. Ct. 42) clarified the Superfund liability for corporate parents. This case held a corporate parent responsible under CERCLA when (i) the corporate veil is pierced under traditional corporate law doctrines, or (ii) the corporate parent or shareholder directs the workings of, manages or conducts the affairs of a polluting facility. In 2002, the Small Business Liability Relief and Brownfields Revitalization Act increased funding and tax incentives to promote the cleanup and reuse of brownfield and helped clarify and limit the Superfund liability of owners and purchasers under certain conditions.

Furthermore, existing federal legislation has sought to utilize the nation's tax structure to provide incentives for the privately funded cleanup of brownfields. For example, Section 198 of the IRS Code, initially passed in 1997, and subsequently amended, provided a framework to encourage the cleanup of qualified contaminated sites by allowing an eligible taxpayer to immediately expense, rather than amortize, the costs of remediation. Other contaminated site tax legislative proposals have recently passed or are on the horizon.

Brownfield Investment Key Criteria

Location and real estate market are critically important. Ideal brownfield sites are in growth corridors within tier 1 or 2 urban markets with good access from a main highway, complemented by good visibility and strong demographics. In addition to the environmental impairment, a primary brownfields site has all the attributes of a good real estate development site. Due to prior use, many brownfield sites have industrial zoning, and the potential to rezone them for mixed-use residential/retail often increases their development value. To analyze whether a real estate transaction has potential for a private brownfield investment group, the starting point is a thorough understanding of the site's real estate fundamentals. Two of some of the most important analytical elements are the site's underlying market value (its value without the contamination and stigma) and time required/complexity involved to achieve a revitalized site (and hence, a financial exit). Typical brownfield site screening criteria are as follows:

Capital Commitment
The "ideal" size of capital commitment by private brownfield investors depends on the size of their available capital pool. Brownfield investors would prefer to commit amounts of capital in each transaction that reduces overall overhead. Well-capitalized brownfield investors often seek transactions that allow them to employ $10 million or more, realizing that smaller projects can often require as much overhead as larger projects. The site size (number of acres or square feet) is irrelevant if the location does not dictate sufficient value. Multiple sites with a common owner sold as a portfolio can provide the desired critical mass of dollar value. On the flip side, smaller, more moderate site redevelopments can mitigate risk by freeing an investor from the political perils often associated with extremely large projects of any time – contaminated or not. Some of the most financially successful brownfield projects that I know are smaller and midsized projects that were less complicated politically and from a zoning perspective.

Market
Brownfield developers prefer properties in primary urban markets because they represent potentially higher real estate values and because market demands in those areas are more likely to enable prompt (or less risky) redeployment of the asset after cleanup.

Location
Location, despite the cliché into which it has evolved, is still a dominant factor in analyzing a site. Access to highways and infrastructure, visibility and future-use possibilities all combine to increase the value of sites.

Environmental Cost, Schedule and Path to Closure
By studying existing environmental documents including soil-boring results and groundwater well test results and by conducting other standard types of environmental and land use due diligence with the help of experienced and well-qualified technical and legal consultants, the brownfield investor usually can make a well-educated guess as to the extent of the required environmental clean-up. An added challenge is mapping out a remedial closure path that dovetails with future redevelopment plans for the site. In some cases, a seller does not know (and does not wish to know) whether, and to what extent, contamination is present on its property. Former manufacturing sites, for example, are still contracted for sale without the benefit of accompanying Phase I and Phase II assessment reports.

The Historic Preservation Model:

I'd like to take a brief moment to comment on the tremendous success of historic preservation efforts in this country and to suggest that it could help inform our current discussion if we look to the underpinnings of that success.

In 1976, Congress created the Historic Preservation Tax Credit a tax credit equal to 20% of the amount spent by a taxpayer in a certified rehabilitation of a certified historic structure.

According to the National Park Service, since 1976, this tax credit and a related 10% historic rehabilitation tax credit have produced impressive results including:

- Rehabilitation of more than 32,000 historic properties
- Stimulation of more than $33 billion in private investment
- Rehabilitation of more than 185,000 housing units and creation of 140,000 housing units of which over 75,000 are for low and moderate income families.

National Park Service, *Federal Historic Preservation Tax Incentives: Revitalizing America's Older Communities Through Private Investment* (2005).

While this federal model, on its own, deserves attention, I believe that one of the reasons that this model has been so successful is because of the synergy and complementary nature of the state historic preservation incentives and this federal tax credit.

If our goal is to encourage private developers to undertake projects that are underwater from a development perspective but that are above water from a public perspective, then it makes sense to me that we would look to create federal brownfield incentives that can complement state brownfield incentives that already exist.

In the field of historic preservation, our nation has seen great results by coupling a uniform federal tax credit with individual state initiatives tailored to meet local needs.

If we wish to enjoy a similar measure of success in the brownfield arena, I believe we should look to the historic preservation model as we examine the interplay between state and federal programs.

Brownfield Solutions

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

A friend once told me that for every complex, difficult problem, there's usually a simple solution – and it's usually wrong.

I think that's true for the brownfield issue, generally. If there were one simple solution, we probably would have found it and enacted it long ago.

On the one hand, the problem seems clear-cut: the costs associated with remediating and redeveloping a brownfield site must be outweighed, when adjusted for risk, by the potential economic reward from that transaction.

Viewed on that level, the solution becomes one of reducing costs and risks or increasing potential income.

On the other hand, the problem is much more complex. A few brownfield sites may be already economically "above water" – that is to say that without additional incentives, those sites will likely be revitalized at some point in time. Fear of unknowns or other risks may still drive most prospective developers of those sites away, but an objective analysis would suggest that the project is economically viable. Other sites are marginally "under water." That is to say that with some coordinated efforts, focus, creativity and a modest economic push, the sites would likely be redeveloped within a reasonable period of time. And then there are sites in less attractive real estate markets and/or those with more substantial contamination. Those sites may be substantially under water and, without significant help, may never be cleaned up.

Viewed on this level, the solution becomes more multifaceted, requiring a mix of federal, state and local incentives to thoroughly attack the problem. Policymakers need to increasingly understand that the problem of brownfields is nuanced and solutions must be nuanced and targeted, as well. Some would prefer to focus attention on the graphical intersection of the most polluted sites and those with the lowest intrinsic real estate value, as these are the ones that most need the help of the public sector for reclamation to occur. Others would prefer to target sites that fall within the graphical intersection of the sites with both the most economic development potential and those that are most easily, quickly and cheaply revitalized. Perhaps the answer is a combination of those two views. Regardless of one's view, we would be doing our country a disservice by not understanding the market factors driving cleanups and crafting policies and programs that target those sites that are determined to be in most urgent need of redevelopment.

If we, as a country, really want to attack the brownfield issue on a nationwide basis, it is clear that we must create policies that will truly move the meter well beyond assessment assistance and expensing provisions—though such programs have been important and will continue to help move sites back into productive use. But, by now, it should be clear to everyone involved that these programs are simply insufficient to drive most of the 500,000 to 1 million brownfield sites into revitalization.

The United States Environmental Protection Agency, in an analysis conducted with George Washington University, concluded that the remediation "costs for all of the brownfields located within the United States have been estimated to exceed $650 billion," and that, consequently, "*it is imperative that private capital be attracted to the redevelopment of brownfields.*"

I believe that it is on this front that the federal government can have the biggest impact. The challenge to the federal government should not be to create a new program that helps better characterize brownfield sites or that tries to create a larger role for federal agencies. The federal government's challenge should be to look for bold, innovative ways to reduce barriers and create incentives to attract significant volumes of private capital to help remediate and redevelop our nation's brownfields. The H.U.D. BEDI program, one of the focal points of past Administration's efforts in brownfield economic incentives, is a creative, albeit currently defanged and in need of streamlined guidelines, example of the federal government's creative path to leveraging private capital to clean-up and recycle America's lands.

Given all of these tools at the state level, one might mistakenly think that we have the brownfield problem solved.

This brings us to the second main point that I would like to make here today: As critical as these state efforts are, federal assistance is essential if we are to see a significant portion of america's brownfield sites revitalized in our lifetime.

In previous testimony to other distinguished Congressional bodies that I have been privileged to have been invited to address, I provided a detailed analysis of the economics that drive brownfield transactions and surveyed some of the barriers that exist that are preventing the remediation and redevelopment of the vast majority of this nation's brownfields.

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

If we are to concede that a wholesale, publicly-funded cleanup of every contaminated site in the nation is not resource-feasible or easily implemented, we must create better ways to combine public and private resources to effectuate more cleanups more quickly.

The problem of brownfields can be greatly alleviated by creating a rational economic framework in which the private sector may operate, respond and be guided by well-considered, typically local, public decisions for prioritization of private-sector driven site cleanup.

In an unsubsidized setting, market economics drive the cleanup decisions of these challenging sites. With public guidance, private forces can operate efficiently to produce revitalization in places where communities most need it, but where without such public incentive, revitalization may not occur.

If one recognizes that public-private partnerships represent one of the only realistic hopes this country has to solve its brownfield problem, and if one recognizes the importance of the various state programs already in effect, the question then becomes: "Is the federal government a necessary partner on the public side of the equation?"

The answer to this question must be "yes."

It was published that of the between 450,000 and one million abandoned or underutilized brownfield sites in this country, only 16,000 sites (less than 4%) had been redeveloped or were in the process of redevelopment through state voluntary cleanup programs as of 2005.

In 2005, 2006 and 2009 I encouraged Congressional committees to think about sites as being "under water" or "above water." A site that is under water is a site that the marketplace will not redevelop on its own given the cost of cleanup, the value of the property in a clean state, and various other factors (*e.g.*, risk, difficulty/cost of securing capital, cost of development, likely rate of return). A site that is above water is a site where the economics of redevelopment indicate that the site is likely to be cleaned up and revitalized by the private sector without government assistance.

Along this continuum there are some sites that are barely below water. These are sites that may be redeveloped during a favorable economic upturn or with a slight nudge from a state or local incentive program.

Unfortunately, most of the sites we think of as brownfields are further underwater – many considerably so. Without significant public assistance, these sites are unlikely to be remediated anytime soon by the private sector.

Which raises a critical point. These terms – under water and above water – take into account only what I'll call for lack of a better term, "internal" costs of a developer. On the benefits side, they do not reflect the various public benefits that development would bring, such as reduced risk from pollution, more jobs, a more pristine environment, or even increased property tax revenues. One mission of government, then, must be to focus particularly on those properties that are under water when looking at the internal costs, and above water when the externalities are considered. In this band of sites, government must do what it can to see that the external benefits are realized and that, if possible, the recipients of those benefits (*e.g.*, the municipality that would get increased property tax or sales tax revenue) help defray some of the costs (*e.g.*, through a TIF that will be paid off through those increased revenues). With less than 4% of the nation's brownfields having been cleaned up in the decade since EPA coined the term, "brownfield" and increased its focus in spurring brownfield development, it is clear that more needs to be done. And that increase needs to come not just at the state and local level, but federally as well.

Yet even with all of the state programs and even with the benefits that we have in this market place, the vast, vast majority of sites that I reviewed each year when market

conditions allowed us to focus on brownfield investments showed that sites are still so far under water that, even in at the absolute peak of the real estate market boom in 2006, it was uneconomic to invest in most of their remediation and redevelopment.

In past years, my predecessor organization conducted an internal assessment to determine the number of sites that we had reviewed the two years prior and the number of sites that we had ultimately acquired. What we found was that we had reviewed over 450 sites for investment and that in the intervening two years, we had been able to invest in only 10. Critically, we had also reviewed publicly available information to determine whether others had invested in the sites that we had been forced to pass by. What we found was that other entities had invested in another 10 of the original 450 sites.

Consider these numbers for a moment. We reviewed 450 sites. In the next two years, we were able to invest in only 10 of the sites and other entities across the world opted to invest in only an additional 10 sites. That leaves 430 sites that were unable to attract investment because, from an "internal cost" perspective, they were too far underwater. And this is despite the state and federal Brownfield Programs that then existed at the time.

Given this, I think it is safe to assume that there are many hundreds of thousands of brownfield sites in America that will not be revitalized in our lifetimes even with the existing federal, state, and local programs working in tandem with the private sector to bring them back into productive use.

Clearly we must do more if we are to redevelop the hundreds of thousands of brownfield sites that blight our communities. Without additional federal involvement, these contaminated sites will continue to cause health and environmental problems, discourage economic development and encourage sprawl into the countryside.

An analysis prepared by the U.S. EPA and George Washington University in September of 2001 concluded that, "unfortunately, the cost of restoring brownfields to economic viability may be beyond the capability of many state and local governments. Though remediation costs are always site-specific, total remediation costs for all of the brownfields located within the United States have been estimated to exceed $650 billion." U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response and The George Washington University, *Public Policies and Private Decisions Affecting the Redevelopment of Brownfields: An Analysis of Critical Factors, Relative Weights and Areal Differentials* (Sept. 2001).

Clearly, this is a challenge that is beyond the capacity of state and local governments. If we are to be successful, the federal government simply must be an active and significant partner in this effort to attract private investment to solve this problem in our lifetime.

Again, I thank you for your invitation to provide testimony to the distinguished Members of this Congressional committee and I repeat our interest and willingness to continue to serve as a resource to you and your colleagues as you do your good work.

BIOGRAPHY OF JONATHAN PHILIPS

Jonathan Philips is a Managing Director and founding partner of Anka Funds, an investment platform that, through a family of managed private equity fund vehicles, opportunistically invests discretionary capital and expertise in niche real estate and sustainable venture programs. Mr. Philips helps oversee the management of Anka's portfolio of real estate assets and operating companies. While at Anka, Mr. Philips has sourced, underwritten, helped closed and managed over 650 separate transactions. Prior to Anka, was a Partner at Cherokee Investment Partners, a real estate private equity family of funds focusing on the acquisition of distressed real estate that grew from $250mm to $2bn during his tenure. In 2008 Anka spun out as an independent company of Cherokee Investment Partners so that Anka could take advantage of attractive niche opportunities that fell beyond Cherokee's permitted investment charter. Mr. joined Cherokee as one of a small handful of senior investment professionals during the deployment of $250mm Fund II and assisted in catalyzing expansion of the Cherokee platform over the next 6+ years with Fund III ($620mm), Fund IV ($1.24b), CSS ($200mm+), New Market Tax Credit vehicle ($92mm) and the creation of the not-for-profit CGB entity. Mr. Philips helped lead the multi-award winning National Homebuilder Mainstream GreenHome, www.mainstreamgreenhome.com, a national educational showcase and the first LEED Platinum home in the Southeast home and helped establish the US Conference of Mayors — Community Revitalization Initiative, a first-of-its-kind national public-private partnership to fast-track the revitalization of property in cities and towns across America. Mr. Philips has provided expert testimony on distressed real estate and revitalization on five occasions in his career before the United States Congress and has served on a number of nonprofit boards. While living in New York City, Mr. Philips founded and ran several companies and spent time as a mergers and acquisitions and capital markets attorney with Davis Polk. He received his JD from the Yale Law School, where he was an Olin Fellow in Law and Economics, and his BA from the University of Virginia, where he graduated an Echols Scholar and with what was possibly the first double Highest Distinction awarded by the University. University of Virginia (BA); Yale Law School (JD). Bars: NY, NJ, NC

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
Hearing Entitled "Helping Revitalize American Communities Through the Brownfields Program"
July 22, 2015

STATEMENT OF SCOTT A. THOMPSON
EXECUTIVE DIRECTOR
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

Good afternoon Chairman Gibbs, Ranking Member Napolitano, and members of the Subcommittee. Thank you for the opportunity to enter a statement for today's hearing. My name is Scott Thompson and I serve as the Executive Director of the Oklahoma Department of Environmental Quality. I am submitting this statement in support of the Brownfields Program and its effectiveness in revitalizing America's communities.

Since the 1980s, the Oklahoma Department of Environmental Quality has provided voluntary options for conducting environmental cleanups. The state of Oklahoma created a formal Brownfields Redevelopment Program in 1996. After many years of working with both enforcement and voluntary programs, I have found that working collaboratively through a voluntary process provides the best results. There is a definite need for enforcement programs, but if a participant is motivated to conduct a cleanup, the outcome is more beneficial to all parties: the agency, the participant, and most importantly, the local community.

The Oklahoma Department of Environmental Quality has had great success with the voluntary cleanup of a variety of sites, from small moderately contaminated sites to large complex sites such as abandoned oil refineries. The state Brownfields law and the federal Brownfield Amendments to CERCLA enhance the value of the remediated property by providing participants a release from legal liability from historical and perceived environmental contamination.

When a property in a blighted area is remediated and redeveloped, there is often a burst of economic activity in the community. The current metrics used to measure success at Brownfields sites do not fully capture this activity. I would like to highlight the benefits from three specific Brownfield projects in Oklahoma, and how the Brownfield Program supports the Oklahoma Department of Environmental Quality's mission.

In the early 1990s, Oklahoma City invested in its future, by turning a blighted area of town into a vibrant entertainment district called "Bricktown." The area, which once was the Oklahoma City Oil Field, became the centerpiece of the planned urban redevelopment. Oklahoma City consolidated properties and voluntarily conducted environmental cleanups and received Brownfield Certificates which made the properties more desirable to private developers. Since 1993, the total economic impact of Oklahoma City's renaissance has been immense, as the total economic investment (public/private) is $5 Billion and growing. This does not begin to capture the reinvigoration of this community's spirit.

Another great benefit of the Brownfields Program is EPA's grants to states to create and enhance their Brownfield Programs. This funding allows DEQ to provide one-on-one technical assistance and expertise to small rural communities across the state. Small rural communities do not have the resources to compete for federal grants like EPA's Brownfield Assessment, Revolving Loan Fund and Cleanup Grants, but their environmental problems are just as challenging. Through our state Brownfield Programs, DEQ is able to help these communities understand and address their environmental issues related to development.

The Brownfields Program allows small communities to dream big. For example, the rural community of Seiling (population of 829) was undergoing a highway expansion project, which meant the loss all its downtown parking. Without parking, many downtown businesses

were worried about a loss in clientele and revenue. A concerned citizen wished to donate an old building for the construction of a new parking lot. Unfortunately, the building was contaminated with asbestos, which had to be removed prior to demolition. Using state Brownfield funding, DEQ was able to assess the property before the town accepted the gift. DEQ also encouraged the town to apply for a DEQ Brownfield subgrant for cleanup. Seiling was successful and received the funds necessary to remove the asbestos allowing its development project to move forward. A parking lot may not garner much national attention; however, to the town, this was of great importance.

The Village (population of 8,900) is an independent city within the Oklahoma City urban area. The Village had a twenty-seven acre, fifty building apartment complex which had just been foreclosed. The complex had many obstacles which frustrated redevelopment including asbestos contamination. The Village had a desire to see the area redeveloped, but had no funding to resolve the asbestos issue. The Brownfields Program stepped in and provided much needed funding for the asbestos removal through a zero interest Brownfields Revolving Loan. The former complex is now a vibrant community asset which has resulted in $40 million in new investment, and is expected to provide the city with over $1 million in sales tax each year. DEQ's Brownfield Program is dedicated to helping small communities across our state achieve their redevelopment goals, and the EPA Brownfield Program helps make this possible.

A great benefit of the Brownfield Program is providing funding for states to develop expertise in the reuse of contaminated properties. Over the years, we have found that the environmental unknowns associated with contaminated property are often the obstacle to most development deals, not the actual contamination. Developers and communities can access DEQ's expertise to safely and efficiently redevelop contaminated areas. This expertise helps

developers understand the complexity of the environmental issues they face which allows them to better estimate the cost of a project. This allows redevelopment to move forward in the most timely and cost-effective manner.

In closing, I would like to reiterate the value of the Brownfield Program. The Brownfields Program is a tremendous example of the success that results from the cooperation of Federal, State, and local partners. Everyone benefits when derelict property is cleaned up and reused. This program truly invests in rebuilding America by protecting the environment and revitalizing communities.

Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

Christopher P. Bertram, Staff Director

Katherine W. Dedrick, Democratic Staff Director

August 31, 2015

Vernice Miller-Travis
Vice Chair, Maryland Commission on Environmental Justice and Sustainable Communities
Member, National Environmental Justice Advisory Council to U.S. EPA
104 Jewett Place
Bowie, MD 20721

Dear Ms. Miller-Travis:

The House Subcommittee on Water Resources and Environment held a hearing entitled "Helping Revitalize American Communities Through the Brownfields Program" on July 22, 2015. We indicated in the hearing that we would submit questions for the record.

Attached are questions for the record from members of the House Subcommittee on Water Resources and Environment. Please provide written responses within 30 days of the date of this letter. If you or your staff have any questions or need further information, please contact [redacted] at [redacted] of the House Committee on Transportation and Infrastructure at [redacted].

Sincerely,

Bob Gibbs
Chairman
Transportation and Infrastructure Committee

QUESTIONS FOR THE RECORD

HOUSE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
HEARING ON

"Helping Revitalize American Communities Through the Brownfields Program"

July 22, 2015

QUESTIONS for Ms. Vernice Miller-Travis
(Vice Chair, Maryland Commission on Environmental Justice and Sustainable Communities; Member, National Environmental Justice Advisory Council to U.S. EPA)

A. Submitted on Behalf of Congressman Gibbs:

Q1 - How successful are the areawide planning grants in furthering the assessment and clean up of Brownfields sites?
ANSWER: Response was not received at the time of publication.

Q2 - You support developing real estate training for EPA staff and state officials. Please explain what sorts of "real estate training" you envision, and for which officials?
ANSWER: Response was not received at the time of publication.

Q3 - Brownfields often have the stereotype of being sites in populous urban areas. To what degree are brownfields found in rural areas? How are we using federal brownfield program funds at a variety of site types, such as rural locations or abandoned mines?
ANSWER: Response was not received at the time of publication.

Q4 - How has the liability relief provided in the Small Business Liability Relief and Brownfields Revitalization Act increased the pace of brownfield property redevelopment and cleanup?
ANSWER: Response was not received at the time of publication.

Q5 - In addition to assessment, cleanup, and revolving loan fund grants, EPA has begun trying different types of grants such as area-wide planning grants and multi-purpose grants. How are these other grant programs working? Are there ways they can be improved? Are they diluting the core mission of the brownfields program?
ANSWER: Response was not received at the time of publication.

Q6 - In cases where state or local governments involuntarily acquire brownfields by bankruptcy, abandonment, etc., how do they protect themselves from liability? What about cases where they voluntarily acquire these sites?
ANSWER: Response was not received at the time of publication.

Q7 - Some states allow responsible parties to receive state funding under their Brownfields programs. Should we amend the federal program to allow potentially responsible parties to receive federal funding?
ANSWER: Response was not received at the time of publication.

Q8 - The Brownfields Law requires that 25% of the site assessment and cleanup grant awards be directed to sites with petroleum contamination. What are the pros and cons of this annual set aside?
ANSWER: Response was not received at the time of publication.

Q9 - What recommendations would you give to improve the Small Business Liability Relief and Brownfields Revitalization Act?
ANSWER: Response was not received at the time of publication.

Q10 - What would be the best ways to attract additional private capital into the Brownfields Program?
ANSWER: Response was not received at the time of publication.

Q11 - Are there any process related changes that could be made to speed up assessments and cleanups? Can we reduce some paperwork requirements?
ANSWER: Response was not received at the time of publication.

Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

Christopher P. Bertram, Staff Director

Katherine W. Dedrick, Democratic Staff Director

July 24, 2015

Ms. Vernice Miller-Travis
Vice Chair
Maryland Commission on Environmental Justice
& Sustainable Communities
104 Jewett Place
Bowie, MD 20721

Dear Ms. Miller-Travis:

Thank you for your testimony before the Subcommittee on Water Resources and Environment on July 22, 2015, concerning "Helping Revitalize American Communities Through the Brownfields Program." I am pleased you appeared and testified on behalf of the Maryland Commission on Environmental Justice and Sustainable Communities. The Subcommittee gained valuable insight from the information you provided at the hearing.

Enclosed, please find questions for written responses for the record that were requested at the hearing. The Subcommittee appreciates your written responses to these questions no later than August 7, 2015. Please note that we will allow members to submit additional questions for written responses, and will send them separately. Please provide an electronic version of your responses via email to [redacted].

If you have any questions related to the Member questions, please contact [redacted] of the Subcommittee on Water Resources and Development at [redacted].

Sincerely,

Grace F. Napolitano

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

Enclosure

Questions for the Record

- In your testimony, you advocate for leveraging resources beyond EPA's Brownfield grant program by exploring opportunities to dovetail EPA brownfields funding with other federal agency programs, including those administered by the U.S. Department of Housing and Urban Development, the U.S. Department of Energy, the U.S. Department of Transportation, etc.
    - In your view, what has the Administration done to encourage inter-agency partnerships and inter-agency dialogues?
      Answer: Response was not received at the time of publication.
    - Please describe for us your recommendations for how the Subcommittee could further encourage and incentivize these types of federal partnerships.
      Answer: Response was not received at the time of publication.
- During the question and answer portion of the hearing, you noted that Congress should encourage and incentivize the awarding of Brownfield grants to economically distressed communities by involving the U.S. Department of Treasury. Please elaborate on this point and provide for the Subcommittee your recommendations for the prioritization of brownfield redevelopment in economically distressed communities.
  Answer: Response was not received at the time of publication.
- The Brownfields Revitalization and Environmental Restoration Act of 2001 (Pub. L. 107-118) authorized $200 million annually in Federal appropriations for brownfields site assessment and remediation, and $50 million annually for state response programs. Federal appropriations for these authorities have typically been below the fully-authorized amount, such as the fiscal year 2015 appropriations for these authorities being $80 million and $47.7 million, respectfully.
    - As Congress considers legislation to reauthorize appropriations for EPA's brownfields authorities, what is your opinion on the recent Federal appropriations for these authorities?
      Answer: Response was not received at the time of publication.
    - Have recent Federal appropriations been too high, too low, or about right?
      Answer: Response was not received at the time of publication.
    - Has funding EPA's brownfields authorities at levels below their traditional authorized levels had an impact on the overall effectiveness of the program, and if so, can you describe this impact as it pertains to your entity?
      Answer: Response was not received at the time of publication.
    - If you were to recommend a target for Federal appropriations for these authorities in the upcoming reauthorization bill, what level would you recommend for brownfields site assessment and remediation grants?
      Answer: Response was not received at the time of publication.
    - What appropriations level would you recommend for state response programs?
      Answer: Response was not received at the time of publication.

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