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Superfund and the Brownfields Issue

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Mark Reisch
Analyst in Environmental Policy
Resources, Science, and Industry Division

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Summary

Congress has before it numerous bills to expand the Environmental Protection Agency's (EPA) brownfields program to help communities restore less seriously contaminated sites that have the potential for economic development. EPA defines brownfields as abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. A combination of potential environmental, economic and social benefits gives this program broad support among governments, environmentalists, developers, and communities.

The brownfields program was established administratively by EPA under the aegis of the Superfund program; without explicit authority for it in the law, it has been financed by the Superfund appropriation. The program has expanded to include 363 brownfields assessment grants (most for \$200,000 over 2 years); 106 \$350,000 revolving loan fund grants to help finance the actual cleanups; 47 job training grants; and 28 Brownfields Showcase Communities where technical and financial assistance from 20 participating federal agencies is being coordinated with state, local and non-governmental efforts.

FY1997 was the first year brownfields became a separate budgetary line item, at \$37.7 million. For FY2000 the appropriation was \$91.7 million. In the FY2001 budget, the Administration requested and was appropriated \$91.6 million.

The 106th Congress extended the brownfields cleanup tax incentive to December 31, 2003, and expanded it to make all brownfields certified by a state environmental agency eligible for the tax break. Other brownfield bills introduced in the 106th Congress appeared to confirm the general direction EPA has taken. Two Superfund reauthorization bills were reported in the House, each of which contained a title on brownfields. The Transportation and Infrastructure Committee reported H.R. 1300 on September 30, 1999 (H.Rept. 106-353, Part I), and the Commerce Committee ordered H.R. 2580 reported on October 13, 1999 (H.Rept. 106-775, part I). Negotiations on S. 1090 in the Senate Environment and Public Works Committee did not produce an acceptable bipartisan compromise and the committee agreed to end their deliberations on August 4, 1999.

This report provides the history, background, and operations of the brownfields program and briefly reviews its current status. For regularly updated information on legislative activity, see CRS Issue Brief IB10011, *Superfund Reauthorization Issues in the 106th Congress*.

Contents

Introduction	1
Voluntary Cleanups vs. Brownfields	2
Why Brownfields Is an Issue	3
Unclear Legal Authority	4
Expansion of the Program	4
The Brownfields Action Agenda	4
Pilots	5
Partnerships and Outreach	6
Jobs and Training	6
The Brownfields National Partnership	6
The Brownfields Showcase Communities	8
Effectiveness	8
Impact of Voluntary Cleanup and Brownfield Programs in the States	11
How Congress is Responding	13
Appropriations	13
Legislation	16
Brownfields Tax Incentive	16
106 th Congress Legislative Proposals	16

List of Figures

Figure 1. Brownfields Funding: FY1993 to FY2000	14
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List of Tables

Table 1. A Comparison of Agencies' Planned Investment in the Partnership Agenda, and Obligations and Loan Guarantees for Brownfields During Fiscal Years 1997 and 1998	7
Table 2. Brownfield and Voluntary Cleanup Program Benefits	13
Table 3. Brownfields Bills in the 106 th Congress	18
Table 4. Bills with Characterization Grants and Revolving Loan Fund Grants .	19

Superfund and the Brownfields Issue

Introduction

The Brownfields Economic Redevelopment Initiative is an effort begun in 1993 by the U.S. Environmental Protection Agency (EPA) to address sites that may be contaminated by hazardous substances,¹ but do not pose a serious enough public health risk to warrant cleanup under the Superfund program.² EPA defines brownfields as abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.³ They range in size from a corner gas station to abandoned factories and mill sites. Estimates of the number of sites range from the tens of thousands to as high as 450,000; they are often in economically distressed areas. Brownfield sites face a paradox: they are generally not eligible for remediation funding under the Superfund program because they pose a low public health risk while, at the same time, developers may avoid them because of cleanup costs, potential liability, or related reasons, thereby stalling economic development.

With bipartisan support, the 106th Congress considered a variety of bills, and the Clinton Administration adopted certain initiatives, which sought to remove disincentives that impede economic development of these sites. Brownfield issues have been the specific subject of hearings, and have been discussed in Superfund and appropriations hearings.⁴

Support for the brownfields concept comes from a wide array of states and localities, environmental groups, business, developers, and community activists. Proponents argue that the program has the potential to leverage federal, state, local and private funds to improve the environment by addressing low-level, low-risk contamination that otherwise might not be remediated. Once the environmental

¹The degree of contamination ranges from nonexistent to very contaminated but not serious enough to warrant listing on Superfund's National Priorities List.

²The Superfund program was created by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or the Superfund law).

³For an overview, see EPA's brownfields home page, available at: [<http://www.epa.gov/swerosps/bf/index.html>]

⁴See, for example: Senate. Committee on Environment and Public Works, Subcommittee on Superfund, Waste Control, and Risk Assessment. *Brownfield Liability and Resource Issues*. Hearing, 105th Cong., 1st sess. 1997; House. Committee on Commerce, Subcommittee on Finance and Hazardous Materials. *Field Hearing on Federal Barriers to Common Sense Cleanups*. (February 14, 1997, Columbus, Ohio), available at: [<http://www.house.gov/commerce/finance/hearings/021497/witness.htm>]

problems are remedied, the economic potential can be realized, they argue. This might include a wide range of economic uses, possibly creating jobs, recreational opportunities, and local tax revenues. From this, there may be positive social benefits for affected communities negatively affected by environmental contamination and economic decline. Environmental groups and EPA want assurance that EPA will retain the authority to intervene in cases of threats to public health or the environment, but otherwise objections to the brownfields legislation are primarily directed more at specific procedural matters, such as whether the program should go beyond characterizing sites (i.e., determining the degree and nature of any contamination) and fund cleanup as well, and whether legislation should be separate from Superfund amendments.

Two major legislative issues in the congressional debate have been: (1) should the program be authorized explicitly, and if so how; and (2) should certain tax incentives be adopted to encourage more cleanups. There is also the strategic and political question of whether to treat the popular brownfields legislation within overall Superfund reform legislation or to consider it separately.⁵

One way states are dealing with contaminated sites is through voluntary cleanup programs, which had been adopted by 44 states as of the end of 1997. There are, of course, a variety of federal programs that target urban renewal,⁶ and the brownfields program is designed to supplement, not duplicate them. The program itself does not aim to perform the cleanups. It generally provides grants which are to serve as catalysts to bring together other resources in the communities to provide the environmental cleanup component of redevelopment efforts. Overall, the brownfields program is intended to fill a previously unmet need and to offer hope for a cleaner environment, new jobs, a stronger tax base, and economic recovery.

Voluntary Cleanups vs. Brownfields. Voluntary cleanup programs are state-sponsored programs that encourage owners or developers to work cooperatively with the state outside of the state's enforcement-driven cleanup program, and thereby avoid some of the costs and delays associated with that approach. Cleanup standards are usually identical to those used at state-lead enforcement sites, according to the Environmental Law Institute (ELI).⁷ Most states provide incentives for participating in the program, most commonly some form of liability release. Other incentives include a streamlined process, financial or tax incentives, and technical assistance. States created voluntary cleanup programs in the absence of federal legislation or standards, and these programs vary considerably.

⁵See CRS Issue Brief IB10011, *Superfund Reauthorization Issues in the 106th Congress*, updated regularly.

⁶For more information on urban development, see CRS Report RS20381, *Empowerment zone/enterprise communities program: information on Round II & III.*, by Bruce Mulock. Updated October 5, 2000, 6 p.

⁷ *An Analysis of State Superfund Programs: 50-State Study, 1998 Update.* Washington, 1998. p. 40.

States define brownfield sites in different ways, but they usually echo EPA's definition, encompassing "urban industrial or commercial facilities that are abandoned or underutilized due, in part, to environmental contamination or fear of contamination."⁸ ELI noted that a few states have different standards or cleanup approaches for brownfields and voluntary cleanup sites. Florida provides for site-specific cleanup levels based on risk, allowing institutional or engineering controls instead of the state-wide remediation levels otherwise required. North Carolina allows for alternative cleanup strategies focusing on removal of exposure pathways at certain brownfield sites. And Mississippi's standards were not set, but the statute requires that risk assessment be used.⁹ The difference in brownfields and voluntary programs in the states is often a matter of semantics. The Environmental Law Institute distinguished them thus:

Typically, ... voluntary programs do not focus on redevelopment nor do they target urban sites specifically. Rather voluntary programs are more often aimed at getting simple, less contaminated sites cleaned up regardless of whether they are reused. Brownfield programs, on the other hand, are more likely to focus on redevelopment and be part of a broader State strategy or set of social policies aimed at improving distressed urban areas.¹⁰

Why Brownfields Is an Issue

EPA's brownfields program has become a legislative issue for several reasons. First, EPA initiated the program administratively, using Superfund monies; this has raised the question of its legal authority as well as whether the funds have been expended in accordance with Superfund statutory criteria. Second, the program has proved generally popular and has expanded substantially; with the increasing financial commitment, questions have arisen about the effectiveness of the program and whether the assumptions underlying the use of the funds have proved valid. These two issues — legal authority, and program assumptions and effectiveness — have led to congressional interest in statutorily authorizing the program and articulating its authorities more clearly — and this comes at the same time other proposals for amending Superfund are being made. Brownfields legislation has become intertwined with Superfund proposals, and whether the two should be separated or not is a third issue. Twelve of the 28 brownfields bills that the 106th Congress considered, including the two that were reported, would have provided the statutory authority. The two were Superfund reauthorization bills: H.R. 1300 was reported by the House Transportation and Infrastructure Committee on September 30, 1999 (H.Rept. 106-353, Part I), and H.R. 2580 was ordered reported by the House Commerce Committee on October 13, 1999 (H.Rept. 106-775, part I).

⁸ Environmental Law Institute, p. 43.

⁹ Environmental Law Institute, p. 46.

¹⁰ Environmental Law Institute, p. 44.

Unclear Legal Authority

The Superfund program was created to address major threats to public health and the environment, and the authorized uses of Fund monies are specified in CERCLA Section 111. EPA administratively created the brownfields program under Superfund authority and financed it from its Superfund appropriation. Beginning in 1993 and for the first 4 years of the program, EPA drew on Superfund monies for the program without explicit statutory authority. However, beginning in FY1997, appropriations legislation included funding for brownfields activities. As the amount of funding rose and the nature of expenditures went beyond cleanup, some in Congress questioned EPA's authority for carrying out the program. This issue was specifically raised by House Appropriations Subcommittee Chairman Jerry Lewis at a hearing on EPA's FY1998 appropriations.¹¹ In response, EPA Administrator Carol Browner relied on opinions from the agency's General Counsel which said the brownfields pilots were legally acceptable under CERCLA section 104 if limited to pre-cleanup activities. Some of the other activities could be funded under the broad research authority of section 311(c).¹² EPA's Inspector General (IG) also considered this question of legislative authority and reviewed the General Counsel's legal opinions, but did not comment further.¹³ The lead IG investigator observed that Congress had appropriated funds for the brownfields program,¹⁴ implying that the appropriations represented tacit congressional acceptance of EPA's position.

Despite the questions about the program's statutory basis, congressional appropriators have acceded to the popularity of the program and have continued to recognize it with funding from Superfund. (The funding history and congressional specifications are discussed below.)

Expansion of the Program

In keeping with Administrator Browner's reference to it as "a work in progress," the program has been redefined and expanded several times — the number of brownfields assessment pilots has been increased from the original 50 to more than 300, brownfields cleanup revolving loan fund grants and job training grants have been initiated, and the Brownfields National Partnership has been announced.

The Brownfields Action Agenda. In January 1995, Browner announced the Brownfields Action Agenda outlining EPA's activities and future plans to help states

¹¹ U.S. Congress. House. Committee on Appropriations. *Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 1998, Part 7: Environmental Protection Agency*. Hearings, 105th Cong., 1st Sess. 1997, p. 414.

¹² The General Counsel's memoranda may be found at *ibid.*, p. 416-425.

¹³ U.S. EPA. Office of the Inspector General. *Superfund — Brownfields: Potential for Urban Revitalization*. March 27, 1998. 31 p. (Audit Report No. E1SHF8-11-0005-8100091) p. 4.

¹⁴ Telephone conversation with Judy Vanderhoef, Office of the Inspector General, May 7, 1998.

and communities. The agenda grouped the activities into four broad and overlapping categories: the brownfields pilots, clarification of liability and cleanup issues, partnerships and outreach, and job development and training.

Pilots. The centerpiece of the Action Agenda is the Brownfields Pilot Projects which provide grants of up to \$200,000 over 2 years for site assessments and other pre-remedial activities. Browner said EPA would fund 50 of these. The first grant was made to Cleveland, Ohio, in November 1993 “to determine the best way to develop a national model for revitalizing these areas across the country,”¹⁵ and two more pilots were awarded in 1994. Through FY2000 EPA made 363 brownfield assessment pilot project grants of up to \$200,000 over 2 years, for a total of more than \$57 million. In FY 2001 the agency expects to award 35 new assessment pilots, and an additional \$50,000 may be awarded for sites used for greenspace purposes. EPA also expects to provide supplemental assistance of up to \$150,000 to previously awarded pilots to continue and expand their efforts.¹⁶

Clarification of Liability and Cleanup Issues. The second element of the Action Agenda is intended to relieve uncertainty over cleanup liability. Several of EPA’s actions relate to property transfer, as the sale of real estate is frequently a central element to redevelopment.

In a key move, Administrator Browner announced that 25,000 sites would be removed from the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS), the Superfund program’s database of sites suspected of being contaminated by hazardous substances. As required by law, the worst of the CERCLIS sites (which numbered about 38,000 at the time) are placed on the National Priorities List (NPL) to be cleaned up under the Superfund program. However, no procedures existed to remove less seriously contaminated facilities — many of them brownfields — from the registry, and the stigma of being associated with the Superfund program reputedly often prevented sale or development of CERCLIS-listed properties, even if they had never been contaminated in the first place. Since Browner’s announcement more than 32,000 CERCLIS sites have been archived. Procedures are now in place to remove from CERCLIS those sites where no further response action is planned.

EPA also issued guidances which addressed the liability status of prospective purchasers of contaminated property, and of property owners with groundwater contamination that originated on neighboring property. Other guidances addressed the transfer of federally owned property, aspects of the underground storage tank cleanup program, soil testing, and the RCRA corrective action program.¹⁷ In addition, EPA and the Department of Justice clarified enforcement policy regarding

¹⁵ *The Clinton Administration’s Brownfields Redevelopment Initiative*, EPA press release, June 13, 1996.

¹⁶ Further information is available from EPA at:
[<http://www.epa.gov/swerosps/bf/pilot.htm>]

¹⁷ This program of the Resource Conservation and Recovery Act (RCRA) exists to clean up currently operating hazardous waste treatment, storage, and disposal facilities.

lenders and governmental entities that acquire contaminated property involuntarily. (The 104th Congress enacted the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act¹⁸ in December 1996 which essentially incorporated the policy into law.)

Partnerships and Outreach. In addition to state, city, and community representatives, EPA has developed cooperative relationships with other federal agencies. Ultimately, in July 1996 EPA created the Interagency Working Group on Brownfields, with staff from more than 20 federal agencies, and the Interagency Steering Committee to share knowledge on economic redevelopment and environmental principles, and to develop a comprehensive, coordinated federal approach to local communities. These coordinating efforts subsequently led to the Brownfields National Partnership, and the Showcase Communities, discussed below.

EPA is also working to improve communication with minority communities, and to increase their involvement early and meaningfully in the brownfields effort. The Agency's National Environmental Justice Advisory Council (NEJAC) held a series of public hearings in five cities, and released a report containing a number of recommendations to incorporate the communities' own visions of the future and to identify ways to create healthy and sustainable communities.¹⁹ A June 1999 report found that "the quality and scope of community involvement conducted by the Pilots, as well as the fact that brownfields are not usually redeveloped into heavy industrial or other uses which would raise [concerns of discrimination under] Title VI [of the Civil Rights Act] ..., minimizes the likelihood that Title VI complaints would be raised at brownfield sites and hinder redevelopment of these areas."²⁰

Jobs and Training. Starting in FY1998, EPA created job training and development activities associated with brownfields grant recipients through 47 grants to community colleges, universities, cities, and non-profit organizations. The 2-year grants, at up to \$200,000 each, are intended to assure that residents of brownfields communities are trained for jobs that will allow them to benefit from the industrial and commercial activities associated with site cleanup. Ten more job training pilots are planned for FY2001.

The Brownfields National Partnership. On May 13, 1997, Vice President Gore announced an expansion of the program, termed the "Brownfields National Partnership," which involved a commitment of about \$300 million from "more than 15 federal agencies."²¹ According to EPA, it was "expected to leverage from \$5

¹⁸Public Law 104-208, Omnibus Consolidated Appropriations Act, 1997, §2504.

¹⁹National Environmental Justice Advisory Council. *Environmental Justice, Urban Revitalization, and Brownfields: The Search for Authentic Signs of Hope*. November 1996.

²⁰ U.S. EPA. OSWER. *Brownfields Title VI Case Studies: Summary Report*. June 1999. p. 23. (EPA 500-R-99-003). Available at: [<http://www.epa.gov/swerosps/ej/pdf/Report.pdf>]. See also: [<http://es.epa.gov/oeca/main/ej/nejac/index.html>]

²¹See: U.S. EPA. OSWER. *Brownfields National Partnership*. Available at:

billion to \$28 billion in private investment, support up to 196,000 jobs, and protect up to 34,000 acres of ‘greenfield’ areas outside of cities”²² by encouraging development in brownfield areas instead of locating in rural or previously undeveloped areas. The National Partnership also included the Brownfields Showcase Communities.

Table Table 1. A Comparison of Agencies’ Planned Investment in the Partnership Agenda, and Obligations and Loan Guarantees for Brownfields During Fiscal Years 1997 and 1998 ²³

Federal Agency	Planned Brownfield Assistance as Stated in the Partnership Agenda (\$ millions)	Obligations and Loan Guarantees Agencies Made for Brownfields (\$ millions)
EPA	\$125	\$128
Dept. Of Housing and Urban Development	\$155	\$26 ^a
Economic Development Administration	\$17	\$114
Other Federal Agencies ^b	\$7	\$4
Subtotal	\$304	\$272
HUD’s loan guarantees ^c	\$165	\$141
Total	\$469	\$413

^a The primary reason for the difference between the planned and actual financial assistance for HUD is that about \$100 million of the planned assistance for brownfield-related activities was from HUD’s Community Development Block Grant program. Under this program, communities have wide discretion in how they use their funds and while the agency does track communities’ use of funds, it does not track whether funds were specifically spent on brownfields. Therefore, HUD could not report an amount of obligations made for brownfields under its block grant program.

^b The other federal agencies are the Departments of Energy, Health and Human Services, and Transportation, the National Oceanic and Atmospheric Administration (Department of Commerce), and the General Services Administration.

^c Under HUD’s Section 108 loan guarantee program, the agency may guarantee loans to local governments to conduct large-scale economic revitalization projects. Local governments must pledge Community Development Block Grants funds that they have received as partial security for financing these projects.

GAO’s sources: Documentation supporting the Partnership Agenda and agencies’ brownfield managers.

(...continued)

[<http://www.epa.gov/swerosps/bf/html-doc/97aabref.htm>]

²²U.S. EPA. Office of Outreach and Special Programs. *Brownfields National Partnership Action Agenda*. May 1997. 3 p. (pub. no. EPA 500-F-97-090)

²³ GAO 1999 report. p. 5.

The General Accounting Office (GAO) reported on the status of the Partnership in an April 1999 report.²⁴ It stated that the agencies came close to their goals, obligating \$272 million of the planned \$304 million (89%), and guaranteeing \$141 million of loans compared to the planned \$165 million (85%). (See **Table 1.**) GAO said the apparent \$129 million shortfall in the Department of Housing and Urban Development's (HUD) obligations was due to HUD's inability to discern whether Community Development Block Grants were spent on brownfields or on other authorized activities. (See table footnote a.)

The agencies were not able to measure economic outcomes of their brownfield programs, GAO said. The benefits of new jobs, more private investment, and protected greenfields "were estimates of potential long-term benefits, generated from economic models, that might result from the federal support for redeveloping brownfields. They were not goals that the agencies could measure and achieve within the 2-year period of the Partnership initiative."²⁵

The Brownfields Showcase Communities. One element of the Brownfields National Partnership is the Showcase Communities program, under which 28 different types of communities (such as urban, rural, coastal) have been selected to demonstrate how federal support could be applied successfully to redevelop their brownfields properties. GAO reported that the 10 federal agencies they reviewed had improved their coordination of brownfield activities both within their own agency and between agencies. The showcase communities also acknowledged improvement: "They are now better aware of the federal resources available ... to support brownfield redevelopment and how to access them and are getting more technical and financial help from agencies.... [A] major reason for this success is that EPA loaned a staff person to each city under the Intergovernmental Personnel Act, for 2 years."²⁶ Four professional associations involved with brownfield issues agreed with this assessment.²⁷

Effectiveness

This expansion of the program into new activities brought to the fore the question of whether the funds for it were being expended in accord with the statutory criteria in Superfund.

²⁴ U.S. GAO. *Environmental Protection: Agencies Have Made Progress in Implementing the Federal Brownfield Partnership Initiative*. April 1999. 20 p. (GAO/RCED-99-86) Hereinafter cited as GAO 1999 report.

²⁵ GAO 1999 report. p. 13.

²⁶ GAO 1999 report, p. 9-12.

²⁷ The professional associations are the Association of State and Territorial Solid Waste Management Officials, the National Association of Counties, the National Association of Local Government Environmental Professionals, and the U.S. Conference of Mayors. GAO 1999 report, p. 11.

GAO reported in April 1998 on EPA's use of its appropriations in FY1997 and FY1998.²⁸ The majority of the funds went to state, local, and tribal governments for assessing brownfields, for seed money to establish revolving loan funds, and for supporting state voluntary cleanup programs. The audits showed that, overall, the three recipients "were spending the funds in accordance with OMB's guidance"²⁹ on the Superfund law.

Both the GAO report and an EPA Inspector General report found instances of a lack of focus and misdirected efforts. GAO determined that \$3.7 million (38.5%) of the total \$9.6 million awarded in the outreach and job training categories was for brownfield-specific activities. And the Inspector General reported that —

While the enthusiasm for EPA's Brownfields Initiative was readily apparent in all of the cities we visited, the impact of EPA's grant funds on redevelopment was less evident. Of the \$1 million awarded for the five site assessment pilot projects we visited, less than \$150,000 was spent on actual site assessments. If we exclude from this figure the funds used on sites not meeting the definition of a Brownfield, only \$65,000 has been spent on actual site assessments.³⁰

From the perspective of the beneficiaries of the brownfields program, however, the broader use of the funds beyond site assessment is appropriate. A U.S. Conference of Mayors (USCM) survey of their membership in April 1999 indicates a strong perception of need. Of USCM's 1,050 member cities, 223 responded. Among their findings were the following:³¹

- ! 180 cities estimated they had 19,236 brownfield sites.
- ! 176 cities estimated that brownfields occupied 178,376 acres of land.
- ! 113 respondent cities (51%) have populations less than 100,000; they accounted for 2,890 brownfield sites totaling over 89,020 acres.

Regarding potential benefits of brownfield redevelopment, the survey reported that:

- ! Of those cities estimating potential additional tax revenues, the "conservative estimate" totaled \$955 million annually for the 153 cities responding, while the "optimistic estimate" totaled nearly \$2.7 billion annually for the 155 cities responding.
- ! 168 cities estimated that more than 675,000 jobs could be created if their brownfields were redeveloped.

²⁸ U.S. GAO. *Superfund: EPA's Use of Funds for Brownfield Revitalization*. March 1998. 28 p. (GAO/RCED-98-87) Hereinafter cited as GAO 1998 report.

²⁹ GAO 1998 report. p. 1.

³⁰ Inspector General's report. p. 9.

³¹ U.S. Conference of Mayors. *Recycling America's Land: A National Report on Brownfields Redevelopment, Volume II*. April 1999. 76 p. Not all respondents answered all questions. An additional 28 cities responded to the questionnaire, but indicated that, according to their definition, they had no brownfields. p. 9-11.

These statements speak to the perceived size of the problem and the potential benefits of redevelopment in the sample cities. The survey also asked the mayors about impediments to development, and the responses were consistent with earlier reports. The three most frequently cited impediments to redevelopment were:

- ! a lack of cleanup funds (204 cities, or 91% of 223 respondents),
- ! liability issues (175 cities, 78%), and
- ! the need for environmental assessments (139 cities, 62%).

However, a joint HUD/EPA study³² raised some questions about whether the program was meeting those needs and being effective. The study challenged some of the original assumptions of the program, suggesting that part of the effort might be misdirected. In particular, it suggested that the prospect for redevelopment was probably more affected by the underlying economics of any proposed development of a brownfield site than by the liability risk arising from the possible contamination.

Overall, the study indicated that a brownfield site has to be ripe for development from an economic perspective before improvements to its environmental situation will make a difference. (This is not in conflict with the Mayors' report; 76% said they would need additional subsidies or resources, such as infrastructure upgrades and demolition of obsolete buildings, in order to attract private investment.) Many of the HUD/EPA study's findings had to do with state efforts, but there were implications for the federal program.³³

- ! If a state employs land-use-based cleanup standards and institutional controls (which can bring faster, cheaper redevelopment) the federal government must ensure protection of health and the environment.
- ! Inasmuch as economic development agencies are generally developers' point of entry to the environmental arena, training is needed for the agencies' staffs on environmental standards, remediation technologies, and liability issues, particularly in rural and smaller urban areas.
- ! Similar technical education for lenders, especially smaller lenders and those in areas with little past history in redevelopment, holds promise of increased credit availability.

These two studies highlight different perspectives on the importance of liability in constraining brownfields development. Writings about brownfields often assume that the threat of triggering Superfund liability has a chilling effect on redevelopment. In the U.S. Conference of Mayors study 78% of the respondent cities cited liability issues as an impediment. But the HUD study concluded that "liability concerns were never the sole 'critical' environmental obstacle to redevelopment" (critical being defined as a make-or-break factor). Actual cleanup costs (including assessment, remediation, and legal expenses) relative to the total project costs "dominates all other

³²The Urban Institute, Northeast-Midwest Institute, University of Louisville, and University of Kentucky. *The Effects of Environmental Hazards and Regulation on Urban Redevelopment*. (Jointly sponsored by U.S. Dept. of Housing and Urban Development, and EPA) Washington, February 1998. 86 p. Hereinafter cited as HUD/EPA study.

³³HUD/EPA study. p. vii-xi.

factors as an investment deterrent,” the report said.³⁴ Possible future liability due to previously unknown contamination, possible litigation, and other uncertain events never constituted the sole significant environmental obstacle affecting site redevelopment.

In any event, the importance of the liability threat has most often commanded attention. For example, in *Superfund: Barriers to Brownfields Redevelopment* (June 1996),³⁵ GAO concluded that CERCLA’s liability provisions are a serious obstacle to development that discouraged lenders, developers, and property owners from participating in renewal projects. Both federal and state cleanup liability laws can apply at any site, not just those on Superfund’s National Priorities List. GAO noted that there are other barriers to development, however, such as the actual cleanup costs and high urban property taxes. And in March 1997 the agency said that most of the state voluntary cleanup program managers in the 15 states it surveyed judged that fear of federal Superfund liability discouraged some people from initiating a cleanup.³⁶

One’s view of the importance of the liability constraint on brownfields development has consequences for how one would support efforts to achieve development. To the extent liability is a key constraint, attention to reducing liability is important. It is being addressed both through EPA guidances in the Brownfields Action Agenda, as discussed previously, and by funding risk characterization and remediation. On the other hand, to the extent that liability is a subordinate issue compared to the basic community economic situation, attention and funding might more appropriately focus on such activities as research, partnerships and outreach, and job development and training, along with site assessment. Thus the elements of the program necessary for effectiveness depend on an accurate understanding of the true impediments to development of brownfields.

Impact of Voluntary Cleanup and Brownfield Programs in the States.

Another perspective is offered by the third survey of the 50 states conducted by the Northeast-Midwest Institute in 2000. It revealed that there is increasing activity, with new state programs being put in place and others being modified to accommodate their particular situation and needs. The information in **Table 2** on page 12, which does not distinguish between brownfield and voluntary cleanup accomplishments, was compiled from the Institute’s state-by-state listings. One should be aware that significant differences exist among the states’ programs, and that eligibility requirements for participation in voluntary programs vary. The authors also note that, “Most states have yet to gather hard economic information on their programs. Many programs are still too new to gain a handle on impacts; other states have not yet been able to find the resources to collect any data beyond the number of sites in their programs.”³⁷

³⁴ HUD/EPA study. p. 44-46.

³⁵ GAO/RCED-96-125. June 17, 1996. 15 p.

³⁶ U.S. GAO. *Superfund: Proposals to Remove Barriers to Brownfields Redevelopment* (Testimony). March 4, 1997. 5 p. (GAO/T-RCED-97-87)

³⁷ Charles Bartsch and Bridget Dorfman. *Brownfields “State of the States – 2000”* (continued...)

Accordingly, the “economic impact” figures in Table 2 should be regarded as minimum numbers that provide a glimpse of the order of magnitude of the states’ accomplishments. Thirty states are not currently tracking economic impacts, and another three have no brownfields or voluntary cleanup program in place (North Dakota, South Dakota, and Wyoming).

³⁷(...continued)

Report: What’s Happened in the 50 States This Year? Washington, Northeast-Midwest Institute, October 2000. p. iii.

Table Table 2. Brownfield and Voluntary Cleanup Program Benefits

<i>Cleanup Activity</i>	<i>Quantity</i>	<i>No. of States Reporting</i>
Sites entering the brownfield program	13,187	42 (All except IA, MA, NV, NC, ND, SD, WV, WY)
Sites completing the program	5,212	35 (All except DE, GA, ID, IA, LA, MA, MI, MN, NV, NC, ND, SD, VT, WV, WY)
Acreage of affected sites	7,227 acres	8 (AR, CA, CO ID, MD, OH, RI, SC)
<i>Economic Impact</i>		
Jobs created	91,600	17 (CA, CO, CT, DE, FL, HI, KY, LA, MI, MN, MO, NH, OH, PA, RI, TX, WI)
Housing units developed	9,441	6 (CA, CO, DE, MI, OH, TX)
Tax revenues added	\$482 million	3 (CA, ME, RI)
Tax base increased	\$582 million	4 (CT, MN, TX, WI)
Businesses created and retained	242	11 (CO, DE, FL, HI, KY, LA, MD, OH, NH, RI, WI)
Amount of private investment	\$2,095.2 million	5 (DE, FL, MI, MN, NH)

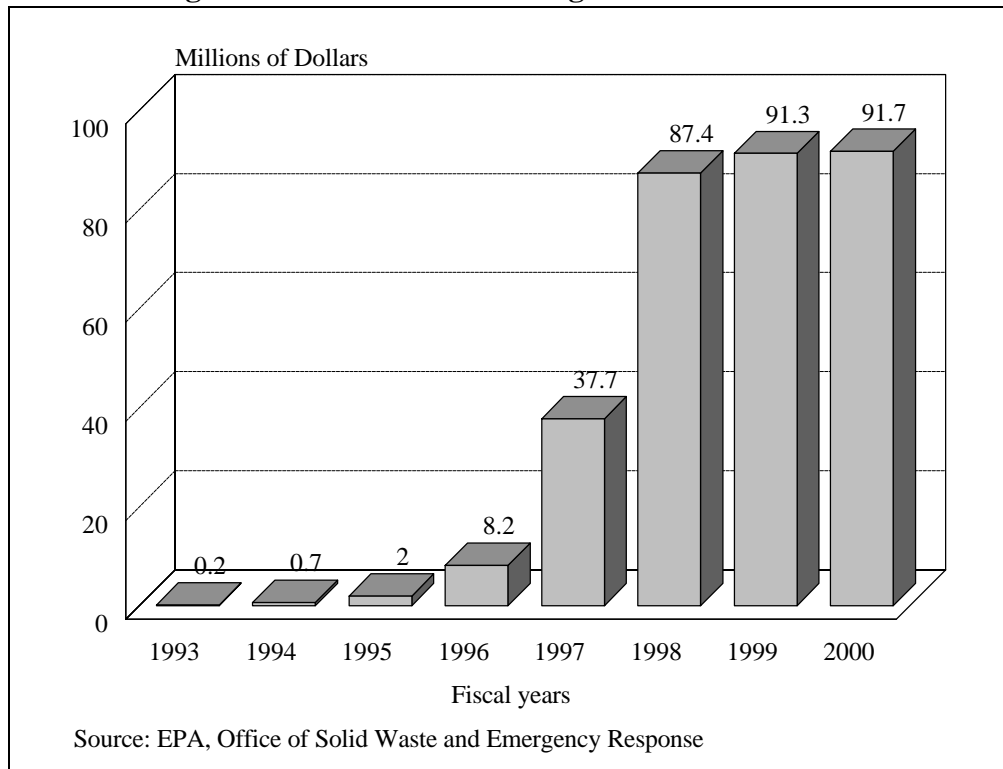
How Congress is Responding

With the brownfields program's administrative origin and its subsequent expansion, it has increasingly attracted Congress' attention. This has been manifest both in oversight of the funds by the appropriations committees and in proposals for specifying elements of the program through amendments to CERCLA.³⁸ The committee report accompanying EPA's FY1999 appropriation directed the agency to examine long-term funding options for brownfields, indicating a recognition of its popularity and the likelihood of its continuation, but also questioning the use of Superfund moneys to finance brownfield activities.

Appropriations

For the first years of the program, FY1993 - FY1996, EPA funded it from money appropriated for the Superfund program. (See **Figure 1.**) In FY1997, proposing major expansion of the program, the agency requested and received \$37.7

³⁸ For ongoing legislative activity, see CRS Issue Brief IB10011, *Superfund Reauthorization Issues in the 106th Congress*, updated regularly.

Figure 1. Brownfields Funding: FY1993 to FY2000

million specifically for brownfields. That amount was 2.6% of the Superfund appropriation, from which all the funds for the brownfields program have come. In addition to continuing the grants for site assessment and other pre-remedial activities, EPA used FY1997 appropriations to support revolving loan funds (RLFs) to help finance actual cleanups. Through these RLFs EPA funded 24 \$350,000 grants to communities.

The FY1998 appropriation (P.L. 105-65) increased EPA's brownfields program by \$50 million, to \$87.4 million³⁹ (5.8% of the Superfund appropriation). It also provided \$25 million for HUD's Brownfield Economic Development Initiative (BEDI), the amount requested by the Administration. However, questioning EPA's authority to use Superfund monies for revolving loan funds (RLF) "to clean up sites which are neither emergency in nature nor eligible for NPL listing,"⁴⁰ the conference committee denied the request unless RLFs were specifically authorized in subsequent legislation.

For FY1999 Congress approved the \$91 million requested by the Administration for the brownfields program, which included funds to capitalize RLFs in 100 communities. HUD's request to double its brownfields funding to \$50 million was rejected; it remained at \$25 million. For FY2000 Congress appropriated the full \$91.7 million EPA requested.

³⁹ This appropriated amount differs from the amount in Table 1, which shows obligations.

⁴⁰H.Rept. 105-297, Conference report to accompany H.R. 2158. p. 121.

Legislation

Brownfields Tax Incentive. A tax incentive allowing the costs of redeveloping brownfields to be deducted in the current year was enacted in the 105th Congress as part of the Taxpayer Relief Act of 1997.⁴¹ Good for 3 years, until December 31, 2000, in the 106th Congress, the tax break was extended to the end of 2003 and expanded to include all brownfields certified by the appropriate state agency.

The 1997 act limited eligibility for the tax break to the 76 brownfields pilots announced prior to February 1, 1997, areas with a poverty rate of 20% or more, adjacent industrial or commercial areas, and Empowerment Zones and Enterprise Communities (EZ/ECs). The Tax Extenders Act of 1999⁴² added a year to the life of the incentive to December 31, 2000, and the Consolidated Appropriations Act, 2001⁴³ extended the brownfields tax incentive for an additional 2 years, to December 31, 2003, and broadened eligibility for the tax break to include any site containing a hazardous substance that is certified by the appropriate state environmental agency; Superfund sites are excluded.

This provision resolved an issue that arose from the tax treatment of costs of cleaning up contaminated land. In general, costs incurred for new buildings or for permanent improvements to increase the value of a property must be *capitalized* (that is, the cost must be deducted over a period of years). Some expenses, such as repairs, are *currently deductible* (that is, deductible in the year in which the cost is incurred — this is also called *expensing*). It is a considerable financial advantage to be able to fully deduct an expense in one year rather than many.

The issue arose as a result of a 1994 ruling by the Internal Revenue Service, holding that the costs of cleaning up contaminated land and groundwater are currently deductible, but only for the person who contaminated the land.⁴⁴ Also, the cleanup would have to be done without any anticipation of putting the land to a new use. Further, any monitoring equipment with a useful life beyond the year it was acquired would have to be capitalized. On the other hand, a person who acquired previously contaminated land, such as a brownfield site, would have to capitalize his cleanup costs, spreading them out over a number of years. Cleanup costs are a major barrier to redevelopment, and the IRS ruling made a challenging situation even more difficult for developers. The Taxpayer Relief Act thus had the effect of overturning the ruling and allowing developers who had not caused the contamination to deduct cleanup costs in the current year, rather than to have to capitalize them.

106th Congress Legislative Proposals. In the 106th Congress 27 brownfields bills, including six broader Superfund reauthorization bills, were introduced. The bills largely reflected the general approach that EPA has adopted, and differed primarily in what additional features they included, such as liability protection and tax

⁴¹ P.L. 105-34, H.R. 2014/S. 949, H.Rept. 105-220.

⁴² P.L. 106-170, H.R. 1180, H.Rept. 106-478.

⁴³ P.L. 106-554, H.R. 4577, H.Rept. 106-1033.

⁴⁴Revenue Ruling 94-38.

incentives. They fell into three groups. Twelve of the bills (including all the reauthorization measures) would have given statutory authority to the brownfields program, and most of these also would have provided some degree of relief from Superfund liability. Nine did not address the issue of establishing the program, but would have provided different combinations of liability protection and/or tax incentives.

The other six bills would have made funds available for brownfields in agencies other than EPA. H.R. 1776 (a bill to expand home ownership in the U.S.) would have provided statutory authority for the HUD brownfields program, authorizing the use of Community Development Block Grants for “environmental cleanup and economic development related to brownfields;” it passed the House but went no further. S. 1408 would have made funds available for brownfields under a program in the Small Business Administration, and S. 1573 would have provided funding via a proposed Environmental Stewardship Fund that would have used receipts from Outer Continental Shelf revenues. Three bills would have authorized the U.S. Army Corps of Engineers to undertake brownfield cleanups. One of the Superfund reauthorization bills in the first group, H.R. 2956, also would have provided funds to the HUD brownfields program.

The lists of sponsors and co-sponsors show bipartisan support, and the testimony at hearings has been generally favorable, at least with regard to the program and its objectives. The provisions of the bills of the 106th Congress are summarized in **Table 3**, and the features of the bills authorizing characterization grants and revolving loan fund grants are presented in **Table 4**.

Two of the Superfund reauthorization bills were reported — H.R. 1300 from the Transportation and Infrastructure Committee, and H.R. 2580 from the Commerce Committee. At the request of Speaker Dennis Hastert the two committees tried to merge the bills in time to bring a Superfund reauthorization bill to the floor before the first session adjourned, but reportedly encountered difficulties in discussions with the Ways and Means Committee over reauthorizing the Superfund taxes. There was no further action. Both bills would have essentially codified the existing brownfield program, authorized RLFs, and addressed liability issues. H.R. 1300 also would have provided assistance for state voluntary cleanup. (Further discussion of the bills can be found in CRS Issue Brief IB10011, *Superfund Reauthorization Issues in the 106th Congress*.)

Table Table 3. Brownfields Bills in the 106th Congress

Program or Activity	S. 20 (Lautenberg)	S. 23 (Specter)	S. 1090 (J. Chafee) *	S. 1105 (Baucus) *	S. 1537 (J. Chafee) *	S. 1792 (Roth)	S. 2334 (L. Chafee)	S. 2436 (Abarham)	S. 2590 (Voinovich)	S. 2700 (L. Chafee)	H.R. 1300 (Boehert) *	H.R. 1391 (Regula)	H.R. 1537 (Quinn)	H.R. 1630 (Coyne)	H.R. 1750 (Towns)	H.R. 1756 (Franks)	H.R. 2264 (N. Johnson)	H.R. 2574 (J. Maloney)	H.R. 2580 (Greenwood) *	H.R. 2956 (Pallone) *	H.R. 3579 (Andrews)
Brownfields Characterization Grants	X	X	X	X	X				X	X	X				X	X			X	X	
Brownfields Cleanup Revolving Loan Fund Grants	X	X ^a	X ^a	X	X ^a				X ^a	X	X				X	X			X	X	
Establish/Expand/Certify State Voluntary Cleanups			X	X	X				X	X	X	X			X						
No Federal Liability if Released from State Liability ^b		X	X ^c		X ^c				X ^c	X ^c	X ^c	X	X		X				X ^c		
Liability Relief for Contiguous Property	X		X	X	X				X	X	X	X			X				X	X	
Liability Relief for Prospective Purchasers	X		X	X	X				X	X	X	X	X ^d		X				X	X	
Liability Relief for Innocent Landowners	X		X	X	X				X	X	X	X			X				X	X	
Tax-exempt Bonds; Tax Credit for Bonds																X					X
Extend/Expand Current Year Tax Deduction of Cleanup Costs						X	X	X						X			X	X			
Tax Credit Taken Over 5 Years																X					
Brownfields “IRA”													X			X					
Workforce Training Program	X																			X	

Notes: * These six bills would reauthorize the Superfund program.

^a Grants are for cleanup, not for establishing a revolving loan fund.

^b Or no federal enforcement action allowed.

^c With exceptions.

^d Also, liability relief for lenders, developers, and local governments.

Bills making funds available for brownfields in agencies other than EPA: H.R. 2956 (Department of Housing and Urban Development); S. 1408 (Small Business Administration); S. 1573 (Interagency Environmental Stewardship Fund); S. 2335, S. 2437, and H.R. 4411 (U.S. Army). In addition, H.R. 1776 and S. 2590 provide statutory authority for the HUD brownfields program.

Table Table 4. Bills with Characterization Grants and Revolving Loan Fund Grants

Bill (Sponsor)	Number of Years Authorized	\$200,000 Characterization Grants		Revolving Loan Fund Grants		
		Annual Authorization (\$ million)	Are States Eligible Recipients?	Program Authorization (\$ million)	Maximum Grant	Eligible Recipients
S. 20 (Lautenberg)	5	\$35	Yes	\$50	\$500,000	State & Local Governments
S. 23 (Specter)	3	\$50-\$55-\$60 ^a	Yes	\$50-\$55-\$60 ^a	\$200,000 ^b	State & Local Governments
S. 1090 (J. Chafee)	5	\$100 for both programs	Yes	\$100 for both programs	\$350,000 ^b EPA may waive limit	State & Local Governments
S. 1105 (Baucus)	5	\$35	Yes	\$60	\$500,000 ^c	State & Local Governments
S. 1537 (J. Chafee)	5	\$100 for both programs	Yes	\$100 for both programs	\$350,000 ^b EPA may increase to \$600,000	State & Local Governments
S. 2590 (Voinovich)	not stated	amount of grants and authorization not stated	Yes	not stated	\$350,000 ^b	State & Local Governments
S. 2700 (L. Chafee)	5	\$150 for both programs	Yes (grants may be up to \$350,000)	\$150 for both programs	\$1,000,000	State & Local Governments
H.R. 1300 (Boehlert)	5	“such sums as may be necessary”	Yes	“such sums as may be necessary”	\$1,000,000	State & Local Governments
H.R. 1750 (Towns)	5	\$35	Yes (grants are for \$500,000)	\$65	\$1,000,000	Local Governments
H.R. 1756 (Franks)	3	\$15	Yes	\$30	\$500,000	State & Local Governments
H.R. 2580 (Greenwood)	5	“such sums as may be necessary”	Yes	“such sums as may be necessary”	\$1,000,000	State & Local Governments, Site Owners or Developers
H.R. 2956 (Pallone)	5	\$40	No	\$80	\$500,000 EPA may waive limit	Local Governments ^d

Notes: ^a S. 23's authorization increases each year; the amount shown is for both programs.

^b The grants are for cleanup, not for revolving loan funds.

^c Also provides for \$200,000 cleanup grants to local applicants.

^d States may receive grants to facilitate the transfer of funds to local governments that do not have the capabilities to manage grants.