Brownfields Update: The Reform of the Brownfields Economic Redevelopment Initiative

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This journal first reported on the U.S. EPA’s Brownfields Initiative in the summer 1995 edition of Remediation. At that time, the initiative was only about 15 months old, most of the state programs were in proposal stages, and little federal legislation addressing brownfields had been proposed. Today, brownfields has become such a common term that almost every environmental professional is familiar with it. The EPA has placed extremely high priority on the Brownfields Initiative and it has become a politically hot issue. This article provides an update on the current status of EPA’s Brownfields program and also discusses recent legislation proposed by Congress to promote brownfields redevelopment. © 2001 John Wiley & Sons, Inc.

INTRODUCTION

Since 1993, the U.S. Environmental Protection Agency (EPA) has focused on its Brownfields Economic Redevelopment Initiative (Brownfields). Considerable progress has been made, but at times the program has been criticized. This article provides an update on the EPA’s Brownfields Initiative and also discusses proposed legislation.

Although the EPA has recorded numerous successes with the Brownfields programs, legislators, environmental activists, and local officials have been calling for legislative and guidance reform to clarify liability for states and property owners. EPA, along with the Clinton and Bush administrations, continue to increase funds available for Brownfields programs. However, liability barriers appear to scare off prospective grant awardees. Government reports, sworn testimony, and even the recent comments of President Bush to the U.S. Conference of Mayors continue to applaud the ideals of the Brownfields programs, but they all continue to call for better guidance, higher accountability of how funds are implemented, and a removal of legislative “red tape” to make the programs a true success. © 2001 John Wiley & Sons, Inc.

HISTORY

In 1993, the EPA launched the Brownfields program to empower states, cities, tribes, communities, and others in economic redevelopment. The EPA administers the Brownfields program under the Comprehensive
Environmental Response, Compensation and Liability Act (CERCLA). Brownfields are defined as “abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.” The EPA estimates there are approximately 425,000 brownfield sites in areas once used for industrial and commercial purposes. Many of these brownfield sites cause economic distress in surrounding neighborhoods, which can result in traditional inner-city social, health, and safety problems. The Brownfields Initiative was designed to prevent, assess, clean up, and reuse brownfields in a timely manner, such that brownfield sites will be developed before undeveloped lands or “greenfields,” which have no threat of perceived contamination. The cleanup and redevelopment of brownfields provides many environmental, economic, and community benefits. The benefits of the Brownfields program include the expedited cleanup of thousands of contaminated sites; the renewal of local urban economies by stimulating redevelopment; the creation of jobs and enhancement of the vitality of communities; and the limiting of sprawl and associated environmental problems, such as air pollution, traffic, and development of rapidly disappearing open spaces.

In 1997, Vice President Gore announced the formation of the Brownfields National Partnership Action Agenda. The Action Agenda, which was a two-year project led by the EPA, brought together the resources of various federal agencies to revitalize at least 5,000 brownfield sites, by leveraging up to $29 billion in additional private investments, supporting up to 196,000 new jobs, and protecting up to 34,000 acres of undeveloped greenfield areas. The Action Agenda designated 16 “Brownfields Showcase Communities” in 1997, and awarded these communities with nearly $28 million in federal assistance in 1998. In October 2000, the EPA announced the selection of 12 new Brownfields Showcase Communities.

CURRENT STATUS

Progress to Date

Since the Brownfields Initiative began in 1993, approximately $162 million has been granted to local communities dedicated to the cleanup and reuse of abandoned commercial property leveraging approximately $2.9 billion in redeveloped land, new jobs, and local economic boosts. Congress approved a combined budget of $92.6 million for FY2001 for all of the Brownfields programs. In April 2001, newly appointed EPA Administrator Christine Todd Whitman, former governor of New Jersey, announced the addition of 36 new Brownfields Assessment Pilot grants ($7 million), additional funds to expand current brownfields assessments ($5 million), and the addition of 46 communities in the Brownfields Cleanup Revolving Loan Fund (BCRLF) program ($26 million). Currently there are 28 Brownfields Showcase Communities, which were allocated $5 million in FY 2001. The EPA estimates that 116 properties have been cleaned up and 228 sites have redevelopment activity underway under the Brownfields Pilot Programs.
For FY 2002, the EPA has requested approximately $97 million for all of the Brownfields programs and pilots. This is the largest amount requested for Brownfields programs to date. In the overall budget request to Congress, totaling $3.7 billion, the EPA continued to show its support for Brownfields as a major initiative in FY 2002.

The Brownfields National Partnership

The Brownfields National Partnership, formed by Vice President Al Gore in 1997, is a multi-agency task force with an action agenda to clarify regulatory roadblocks and educate community residents as well as other government employees and agencies. The partnership includes 29 agencies, boards, and commissions, such as the EPA; the Department of Defense (DOD); the Department of Agriculture (USDA); and the General Services Administration (GSA). Action agenda items include tasks such as establishing a brownfields coordinator in each agency; conducting studies to evaluate current brownfields projects; evaluating federally owned properties eligible for brownfields funding (such as military Base Realignment and Closure Community [BRAC]); training local emergency planning commissions about the Brownfields Initiative; and removing certain sites from the Superfund inventory of potentially hazardous sites. Currently, little information is available on the progress of the action agenda initiatives; however, initiatives such as the removal of sites from the Superfund inventory have allowed sites to be cleaned up using Brownfields funds rather than money under the more arduous Superfund program. The Brownfields National Partnership is also responsible for the designation of Brownfields Showcase Communities.

Brownfields Showcase Communities are model communities that demonstrate the benefits of focused, coordinated attention on brownfields sites by the multi-agency partnership. The goals of the program include linking federal, state, local and non-government support efforts to restore and reuse brownfields sites; developing national models demonstrating public and private collaboration in addressing brownfields challenges; and promoting environmental protection and restoration, economic redevelopment, and job creation.

The partnership initiated 16 showcase communities in 1998:

- Baltimore, MD
- Chicago, IL
- Dallas, TX
- East Palo Alto, CA
- Eastward Ho! Corridor, FL
- Glen Cove, NY
- Kansas City, MO/KS
- Los Angeles, CA
- Lowell, MA
- Portland, OR
- Providence, RI
- St. Paul, MN
- Salt Lake City, UT

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Each community is assigned a federal employee to assist in coordination efforts. According to an October 2000 EPA update, these showcase communities, which have been granted approximately $28 million, have leveraged over $900 million in economic redevelopment funds. This means that, on average, a brownfields grant of $1.75 million has resulted in approximately $56 million in redevelopment value for each showcase community. Also in October 2000, the partnership announced the designation of 12 additional showcase communities, which include nine federally designated Empowerment Zones/Enterprise Communities, four rural communities, two Indian tribal lands, and one former military base.

### Brownfields Assessment

#### Demonstration Pilots

Although the Assessment Demonstration Pilot represents only one part of the Brownfields Initiative, it is the integral part under which communities test assessment models and facilitate coordinated assessment and cleanup efforts between federal, state, local, and tribal agencies. Other programs such as the Brownfields Cleanup Revolving Loan Fund (BCRLF) (awards of up to $500,000 over five years), and the Job Training Pilot (awards of up to $200,000 over two years) give support to findings from the assessment pilots and allow communities to clean up the sites. Funds are authorized under Section 104(d)(1) of CERCLA, as amended (also known as Superfund). To date, the demonstration pilot program includes approximately 400 sites, which are eligible for a grant of up to $200,000 each. In FY 2001, a greenfields grant of $50,000 was made available to each site. Greenfields grants are awarded to sites that will potentially be or are already used as, but not limited to, parkland, playgrounds, and other such non-commercial applications. To date, 49 assessment pilot sites have been awarded greenfields grants.

The EPA lists approximately 40 success stories on its Brownfields Assessment Pilot Web site. As examples, sites in Bridgeport, Connecticut; Dallas, Texas; and Buffalo, New York have achieved total reuse of lands that had been idle before the $200,000 grant from the assessment pilot program. However, as discussed below, the total success of the program has been a recent topic of debate in political circles.

### BROWNFIELDS REFORMS

#### Governmental Agency Reviews of the Brownfields Initiative

In March 1998, both the EPA’s Office of Inspector General (OIG) and the U.S. General Accounting Office (GAO) reported on the progress of EPA’s Brownfields Initiative. The OIG and GAO identified activities from 1993 to 1997 that the EPA supported with funds targeted with Brownfields activities. The GAO reported that $3.6 million of the $9.6 million awarded to Brownfield Pilot Programs were used for tasks other than assessing brownfield sites or...
other functions that would lead directly to cleanup or reuse of these sites. The OIG also concluded that significant portions of the monetary awards were used for tangential activities, not site assessments. The OIG concluded that the EPA had failed to establish effective quality assurance programs to ensure that award funds were being used for site assessments and that these assessments were of sufficient quality to fulfill cleanup requirements.

The GAO reported on the progress of the Action Agenda in April 1999. The findings demonstrated that the federal partners were not tracking the outcome of projects or were not collecting data specific to brownfields to measure their progress. The Action Agenda responded in a November 1999 progress report, indicating that 102 of the 129 goals that were set for the Action Agenda, in 1997, had been accomplished and 19 other items were in progress.

In September 2000, the OIG conducted a follow-up review to its March 1998 evaluation. It reported that the quality of grant proposals had improved and that more of the proposals indicated significant amounts of funding would be used for site assessments. The report also highlighted the continuance of several issues with the Brownfields programs. The OIG suggested that requiring milestones, timetables, and identification of specific sites or locations in proposals would assist in the tracking of projects. The OIG also reported that consistent quality assurance methods had not been instituted and the quality of assessments was inconsistent between and within regions of the EPA. Although project tracking was required for all proposals submitted for funding after September 1999, a December 2000 report from the GAO continued to identify the need for a better tracking system.

Communities

As early as 1995, the National Association of Local Government Environmental Professionals (NALGEP) suggested several reforms to the Brownfields Initiative. NALGEP recommended that Congress enable the EPA to delegate authority to limit liability and issue no further action decisions for sites in states that have cleanup programs. They suggested that local communities receive increased funding to ensure long-term brownfields success, including grants, loans, tax incentives, and financing partnerships. NALGEP also modifying existing federal laws and policies to provide incentives for developing brownfields rather than greenfields.

In June 2000, the U.S. Conference of Mayors, represented by Mayor J. Christian Bollwage (Elizabeth, New Jersey), who leads the Conference’s Task Force on Brownfields, supported the Brownfields Revitalization and Environmental Restoration Act of 2000 (Senate bill S.2700). Similar to S.350, this bill addressed three key issues: resources, liability relief, and further clarification of state and federal roles at brownfields sites. As the bill was not passed in 2000, the Mayors have continued to lobby for Brownfields reform.

House Committee on Energy and Commerce

On March 7, 2001, the House Committee on Energy and Commerce held a session entitled “A Smarter Partnership: Removing Barriers to Brownfields Cleanups.” Testimony was received from a diverse group of professionals such as EPA Administrator Christine Whitman; George Meyer, president of...
the Environmental Council of States and special assistant to the secretary of the Wisconsin Department of Natural Resources; and Grant Cope, a staff attorney with the U.S. Public Interest Group (PIRG). Each person’s testimony focused on the need to reform legislation to ease the brownfields process.

Administrator Whitman gave testimony reinforcing the Bush administration’s commitment to strengthen federal and state brownfields programs through legislative reforms and brownfields partnerships. As an indicator that the brownfields programs work, she gave promising statistics, such as the existence of 360 pilot programs, $2.8 billion in leveraged funds, and over 11,000 new jobs; however, the expediency needed in brownfields programs continue to be hindered by “uncertainty over federal liability and enforcement issues.”

George Meyer’s testimony focused on the positive efforts ongoing in Wisconsin’s Brownfields Initiative. He stated that although Wisconsin is not a “Brownfields rich state” they have made progress on over 14,000 cleanups under the state program, and liability reform would help Wisconsin clean up an estimated 2,000 “challenging sites under Federal and State brownfields programs.”

The testimony of Grant Cope focused on the need for EPA to ensure its role in state-supported cleanup efforts. He gave examples of state cleanup programs, such as those in Ohio and New York, that are based on good intentions but often fall short of the protection of human health and the environment. His conclusion, however, supported the recurring theme of the need for legislative reform to enable both state and federal programs to more easily continue the redevelopment and reuse of brownfields.

State Voluntary Cleanup Programs

In the 1990s, to encourage brownfields redevelopment, many states amended their cleanup laws and rules to encourage parties to clean up sites without enforcement action. Currently, 35 states have voluntary cleanup programs (VCPs) under which parties voluntarily remediate contaminated sites in exchange for a “no further action” or “certificate of completion” issued by the state agency. According to CERCLA, these programs do not supercede federal authority; however the EPA has given states an opportunity to employ a Superfund Memoranda of Agreement (SMOA). The SMOAs define a division of labor between the EPA region and the state by defining which sites fall under the SMOA. This guidance provides language from EPA pertaining to the intended treatment of VCP sites as if they were under Superfund. The intended outcome was to reduce duplicative treatment of sites under state and federal programs. Currently, the EPA SMOA guidance has been withdrawn because it was proven to be confusing for the states. Sixteen states have MOAs for their VCPs.

Administrator Whitman, in her testimony on March 7, 2001, spoke of the importance of the utilization of properly implemented state programs for the success of the Brownfields Initiative. She asked that legislation not only encourage EPA to work with state VCPs but to ensure that new Brownfields legislation does not interfere with the implementation of state voluntary programs that have been approved.
Senate Bill S.350

One of the goals of the Brownfields Initiative is to reduce the regulatory barriers that impede or prevent the reuse of contaminated properties. The initiative was introduced in 1993 as a part of CERCLA with funds available through Superfund legislation. Reportedly, regulatory issues and fear of enforcement action by EPA continued to hinder brownfields progress. In April 2001, Senate bill S.350 was introduced by Senator Lincoln Chafee (R-Rhode Island) to amend CERCLA. The bill, called the Brownfields Revitalization and Environmental Restoration Act of 2001, would update CERCLA to revitalize funding to brownfields sites, clarify liability issues for participants in the brownfields programs, and structure the relationship between federal regulation and state response programs (voluntary action/cleanup programs).

The proposed brownfields funding revitalization legislation states that a brownfields 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.” Sites that meet the definition are considered eligible sites, and the proposed legislation provides descriptions of how federal grants can be used. For example, grants from the federal government, considered issued by the president, can be issued to eligible entities, such as communities, for revolving loan funds, or directly to operators of an eligible site. The bill also places limits on grant amounts and how the grants may be used.

The proposed legislation also amends CERCLA by adding language that more clearly defines the liability of parties either directly involved with, adjacent to, or unknowingly a party to cleanup actions under brownfields. This section of the proposed act is in three subsections, Contiguous Properties, Prospective Purchasers and Windfall Liens, and Innocent Landowners. Each of these subsections clarifies current legislation by redefining each of these topics specifically for brownfields-related activities and selectively protects eligible entities from Superfund liability.

The Senate passed the bill on April 25, 2001, with a 99-0 yea vote, and passed the bill on to the House of Representatives. As of publication of this article, the bill is being reviewed by the House Committee on Energy and Commerce.

SUMMARY AND CONCLUSIONS

The Brownfields Initiative is a high priority for the current administration, cities, and other local governmental entities, as well as Congress and the states. Since the inception of the initiative, communities, governmental agencies, Congress, the state VCPs, and the EPA have experienced the successes of the programs, but continue to petition for reform. If passed, the legislation currently in Congress is expected to improve the efforts to obtain funding for eligible sites, and provide new incentives and statutory reforms to speed the assessment, cleanup, and redevelopment of brownfield sites. The proposed bill provides $150 million annually over the next five years for site assessments, and $50 million annually over the next five years for the cleanup of petroleum-contaminated sites (not eligible for Brownfields grants). Most importantly, the bill includes reforms to clarify Superfund liability in cases of Brownfield grant

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recipients, and gives more certainty on the authority of the states to make decisions affecting the cleanup of these sites.

REFERENCES


