



U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

April 19, 2016

TO: Members, Subcommittee on Environment and the Economy
FROM: Committee Majority Staff

RE: Hearing entitled “The EPA Brownfields Program: Empowering Cleanups and Encouraging Economic Redevelopment”

I. INTRODUCTION

On Thursday, April 21, 2016, at 10:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on the Environment and the Economy will hold a hearing entitled “The EPA Brownfields Program: Empowering Cleanups and Encouraging Economic Redevelopment.”

II. WITNESSES

- Mathy Stanislaus, Assistant Administrator for the Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency;
- Mead Anderson, Brownfields Program Manager, Virginia Department of Environmental Quality, *on behalf of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO)*;
- J. Christian Bollwage, Mayor, City of Elizabeth New Jersey;
- Clark Henry, Owner, CIII Associates, LLC;
- Amy Romig, Partner, Plews Shadley Racher & Braun, LLP; and,
- Veronica Eady, Vice President and Director, Conservation Law Foundation.

III. BACKGROUND

According to the Environmental Protection Agency (EPA) a brownfield is “a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”¹ It is estimated that there are more than 450,000 brownfields in the United States.² Brownfields are often abandoned, closed, or under-utilized industrial or commercial facilities, such as an abandoned factory in a town’s former industrial section, a closed commercial building or warehouse in a suburban setting, or former dry cleaning establishments and gas stations.³ Because of their prior

¹ <https://www.epa.gov/brownfields/brownfield-overview-and-definition>

² *Id.*

³ http://brownfieldaction.org/brownfieldaction/brownfield_basics

use, these sites often show evidence of contamination, which triggers regulatory issues and points to potentially high costs associated with remediation. The presence of contamination may inhibit the owner from selling the site because of uncertainty regarding liability for the contamination and may result in difficulty with securing financing in order to proceed with cleanup and reuse. Industrial properties that have even small amounts of environmental contamination, even though they often could easily be remediated, are placed at a considerable disadvantage in the real estate market, compared to clean locations. For example:⁴

- A property owner – unable to sell a contaminated property – may simply abandon it, undermining the local tax base;
- Vacant facilities deteriorate and invite abuse, including unsupervised stripping of parts or material, vandalism or arson, and “midnight” dumping;
- Unintended pollution may worsen and spread, further diminishing the property value and adding to its cleanup cost, as well as threaten the economic viability of adjoining properties; and
- The site becomes an unwanted legal, regulatory, and financial burden on the community and its taxpayers.⁵

As a result, these sites are often not cleaned up and they become a blight on the local community and depress real estate values and incentives for economic growth.⁶ This situation has posed a major challenge for localities seeking to revitalize distressed neighborhoods and attract new investment to sites with prior uses. Remediation and redevelopment of these brownfields is often the key to creating jobs, expanding the tax base, and revitalizing the economy of local communities.⁷ The lack of large tracts of empty land and the inability to annex adjacent areas is forcing some cities to look closely at reusing these old factory complexes and abandoned shopping centers.⁸ Older industrial and commercial buildings have the advantage of location in areas already developed, often close to town centers, and their reuse helps reduce suburban sprawl, with its land use and environmental impacts.⁹

Beginning in the mid-1990s, EPA began providing small amounts of seed money to local governments that launched hundreds of two-year brownfield “pilot” projects and developed guidance and tools to help States, communities, and other stakeholders in the cleanup and redevelopment of brownfield sites.¹⁰ The 2002 Small Business Liability Relief and Brownfields Revitalization Act (the “Brownfields Law”) codified many of EPA’s practices, policies, and

⁴<http://www.nemw.org/wp-content/uploads/2015/06/2006-Getting-Started-with-Brownfields.pdf>

⁵*Id.*

⁶http://brownfieldaction.org/brownfieldaction/brownfield_basics

⁷ http://brownfieldaction.org/brownfieldaction/brownfield_basics

⁸ <http://www.nemw.org/wp-content/uploads/2015/06/2006-Getting-Started-with-Brownfields.pdf>

⁹*Id.*

¹⁰ <https://www.epa.gov/brownfields/brownfield-overview-and-definition>

guidance.¹¹ The Brownfields Law expanded EPA's assistance by providing new tools for the public and private sectors to promote sustainable brownfields cleanup and reuse.¹² Brownfields grants continue to serve as the foundation of EPA's brownfields Program. These grants support revitalization efforts by funding environmental assessment, cleanup, and job training activities.¹³

WHAT DOES THE EPA BROWNFIELDS PROGRAM DO?

The EPA Brownfields program provides technical assistance, regulatory guidance, liability protection, tax incentives, loans, as well as funding for environmental site assessments, and cleanup in order to address contamination and return property to beneficial reuse.¹⁴ The EPA's brownfields program also works with State brownfields programs and provides direct funding for brownfields assessment, cleanup, revolving loans, and environmental job training.¹⁵ To facilitate the leveraging of public resources, EPA's Brownfields Program collaborates with other EPA programs, other Federal partners, and State agencies to identify and make available resources that can be used for brownfields activities. In addition to direct brownfields funding, EPA also provides technical information on brownfields financing matters.¹⁶

WHAT ISSUES ARE ASSOCIATED WITH THE BROWNFIELDS REDEVELOPMENT?¹⁷

- **Environmental Liability Concerns:** The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) has strict, joint and several retroactive liability provisions that make the purchaser of any real property potentially liable for any contaminants found on the property. Developers and property owners want to manage past and future liabilities associated with the property's environmental history. Even with liability clarifications for prospective purchasers and others put in place in the 2002 brownfield statute, uncertainty over liability remains a concern. The prospect of liability potentially drives prospective redevelopers away and keeps companies from being able to borrow enough to clean up properties and modernize operations.
- **Financial Barriers:** Private lenders are often reluctant to give loans for potentially impaired lands. In some cases, cleanup costs for a property may ultimately be more than the property's value. In most areas, adequate private financing to carry out both cleanup and redevelopment activities is simply not available, and even with lender liability addressed, financiers are still concerned about the impacts of contamination on collateral

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ <https://www.epa.gov/brownfields/types-brownfields-grant-funding>

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ https://www.epa.gov/sites/production/files/2015-09/documents/anat_bf_redev_101106.pdf

value and the ability of borrowers to repay their notes.¹⁸ These risks have made lenders reluctant to provide the resources needed to carry out site reuse projects.¹⁹

- **Cleanup Considerations:** A brownfields redevelopment timeline may take longer than typical real estate development due to environmental assessment and cleanup activities.
- **Reuse Planning:** A reuse plan based on community goals or sound economic and environmental information (e.g., market potential) may be lacking.

Revitalization of brownfields has become an important issue for Federal, State, and local governments, as well as for real estate developers, law firms, and banking and insurance interests and relies on strong coordination among stakeholders. Successful development of brownfields can be enabled or accelerated when these stakeholders work together to assess and clean up the property and pursue a common redevelopment goal.

IV. ISSUES

The following issues may be examined at the hearing:

- How grants from the EPA's Brownfields Program benefit states and local communities.
- Are there aspects of the current EPA Brownfields Program that could be improved upon?
- The role of property owners, public-sector stakeholders, and other parties such as developers, urban planners, attorneys, and regulators in brownfields cleanup and redevelopment efforts.
- What barriers exist for the cleanup and redevelopment of brownfields?
 - *Eligible entities* – Are there entities not currently eligible to receive brownfields grants that should be eligible?
 - *Liability issues* – Does the potential for liability deter municipalities and private entities from undertaking cleanup and economic redevelopment? What can be done to address this issue?
 - *Cleanup issues* – Redevelopment of Brownfields will likely take longer than a typical real estate development project because of the need for environmental assessment and cleanup. Is there a way to streamline the assessment and cleanup process?

¹⁸ <http://www.nemw.org/wp-content/uploads/2015/06/2006-Getting-Started-with-Brownfields.pdf>

¹⁹ *Id.*

- *Financial barriers* – Lenders are often reluctant to loan money for contaminated property, is there a way to alleviate the concerns of the lenders?
- How can brownfields grant money be leveraged most effectively.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Dave McCarthy or Tina Richards of the Committee staff at (202) 225-2927.

**TESTIMONY OF
MATHY STANISLAUS
ASSISTANT ADMINISTRATOR
OFFICE OF LAND AND EMERGENCY MANAGEMENT
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES**

April 21, 2016

Good morning Chairman Shimkus, Ranking Member Tonko, and Members of the Subcommittee. I am Mathy Stanislaus, Assistant Administrator for the U.S. Environmental Protection Agency's (EPA) Office of Land and Emergency Management (OLEM) that is responsible for the EPA's 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.

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 unemployment, 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. Most importantly the success of the brownfields program is that it's driven by local leaders identifying a vision, and establishing local partnerships for success with the federal government resources providing critical early resources for communities to advance their vision.

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 tracks information on more than 541,000 sites, almost 23 million acres. Using census data, the EPA found that approximately 104 million people live within three miles of a Brownfield site that received EPA funding, roughly 33% of the U.S. population. This includes 35% of all children in the U.S. under the age of five. While there is no single way to characterize communities located near our sites, this population

is more minority, low income, linguistically isolated, and less likely to have a high school education than the U.S. population as a whole. As a result, these communities may have fewer resources with which to address concerns about their health and environment. Preliminary analysis of the data near 48 brownfield sites shows that an estimated \$29 to \$73 million in additional tax revenue was generated for local governments in a single year after cleanup. This is two to six times more than the \$12.4 million the EPA contributed to the cleanup of those brownfields.

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

Reclaiming and repurposing brownfield sites can form the foundation for community revitalization. Achieving this opportunity 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 113,000 jobs have been leveraged and \$21.6 billion in cleanup and redevelopment has been leveraged through brownfields project funding since the inception of the Brownfields program. In FY

2016, Brownfields program grantees are projected to assess more than 1,400 properties, clean up more than 130 properties, leverage more than \$1.1 billion in cleanup and redevelopment funding, and help create at least 7,000 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 FY 2015 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.

Brownfields Grants

Area-Wide Planning Grants

The EPA's Area-Wide Planning Grant Program is a relatively recent innovation that emerged from economically distressed communities and at its heart is a strategy for inclusive economic development

with the provision of critical needed resources to develop a viable plan to turn around their communities. These critical resources enable communities to conduct inclusive research on community redevelopment priorities, study the degree to which the market can support those priorities, assess infrastructure needs that will help to reverse decline and decay, and propose feasible brownfields cleanup and reuse strategies that tie directly to meeting community needs. A key factor in the emergence of this tool is a community's 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.

Through our Brownfields Area-Wide Planning Grant 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 result in the development of area-wide plans that include 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 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. The EPA has competed three rounds of grants since we initiated the program in 2010, and we expect to open the next grant round in May of this year. Information provided by grantees so far, indicate the \$12 million in EPA grant investments has helped to leverage at least \$354 million in other public and private sector funding - plus additional EPA brownfields assessment and cleanup resources - all of which is helping communities achieve the revitalization goals identified in their area-wide plans.

To foster the implementation of these plans, the EPA has partnered with other agencies such as Housing and Urban Development (HUD) and Department of Transportation (DOT) to take a one government approach to redevelopment implementation resources. Specifically, we have advanced the “preference and priority” concept, under which federal funding to communities is more strategically delivered to benefit communities that have taken the time and effort to inclusively plan for what is wanted and needed by their residents. The approach can help address important issues of equity by ensuring that disadvantaged and small and rural communities get a fair chance to receive critically needed resources. The concept, if implemented properly, rewards those communities that authentically engage citizens through a process that considers the various and competing needs of everyone. The concept also maximizes the benefits to communities by ensuring that resources are layered to spur real revitalization. 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. In effect the concept of preference and priority begins to address the siloed funding of community development funding by linking implementation resources based on a holistic community based plan, rather than funding be based strictly on program criteria.

For example, the Ironbound Community Corporation (ICC) in Newark, New Jersey worked closely with the members of the East Ferry Street neighborhood to plan for the complete transformation of four co-located brownfields sites that together comprised a large superblock industrial barrier which disconnected the Ironbound community. The brownfields area-wide plan was used to develop feasible reuses for these catalyst sites which reflect the neighborhood priorities for more greening and growing, recreation space and markets that provide goods and services. With ICC leading the process and working hand-in-hand with the community and City, the East Ferry Street neighborhood now has new community garden spaces, an open-air market (including farmer’s market) and will soon have improved recreation opportunities including volleyball and basketball courts. As this area is now seen as a center

of new investment, one of the brownfield sites will soon become a large enclosed vertical garden and global headquarters property, with ICC handling job recruitment, certification, and training so that up to 78 jobs will be provided to locals. A variety of resources are being leveraged to support ICC's brownfields area-wide planning goals, including significant private funds, state economic development funds, a U.S. Department of Agriculture Farmer's Market Promotion Program grant, HUD Community Development Block Grant funds (provided via the City); two EPA environmental justice small grants and two EPA targeted brownfields assessments.

In Toledo, Ohio, the City is addressing challenges associated with the multiple brownfields sites located within the Overland Industrial Park and Cherry Street Legacy neighborhoods, including high poverty and unemployment rates, a high percentage of vacant parcels, limited access to healthy food and services, and difficult transportation access due to an outdated street layout. Through their brownfields area-wide planning process, the City of Toledo worked with local residents, community organizations, private sector entities, foundations, and non-profits organizations to develop a strategy to rebuild an impoverished and neglected area into one that is vibrant and vital. This effort has already resulted in the leveraging of new support from the Funder's Network Partners for Places initiatives, Vista volunteers from the Corporation for National and Community Service, the U.S. Forest Service, Groundworks USA, and brownfields assessment support from the State of Ohio. It has also created the excitement and momentum that can help drive the project forward in creating a revitalized area with a mix of industrial, commercial, and live/work spaces.

By working closely with grantees, we have identified 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 1,391 properties, and another 6,373 sites were found not to require cleanup. Data provided by the EPA-funded site assessments indicates that about 27 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 2,466 assessment grants to small and large communities, usually for \$200,000 each, for a total of \$589.2 million.

In many communities, the EPA's brownfields assessment and cleanup programs address critical site preparation needs that have made the EPA program the first step in the economic redevelopment process. For example, in November 2015, a groundbreaking ceremony was held in Pittsburgh to initiate construction of the Foundry at 41st, a \$35 million residential development that will turn part of a former 19th-century foundry into a place featuring 182 apartments, an outdoor pool, a rooftop terrace, a dog park and a public park along Willow Street in Lawrenceville, the East End neighborhood of the City. The property was previously used to manufacture and service mill equipment. The site was assessed using EPA brownfields assessment funding which paved the way for the eventual cleanup and

redevelopment of the site. The centerpiece of the project is Bay 4, the hulking remnant of the former mill building, a football field in length, which will be used for community public space.

Likewise, EPA assessment, cleanup and revolving loan fund grant funding were a critical part of the City of Brea, CA's Rails-To-Trails project. 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 \$2.7 million toward the project, including brownfields assessment (\$200,000), cleanup grants (\$800,000) and revolving loan funds (\$1.7 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.

Additional examples include Van Buren County, Michigan that used funding from three EPA brownfields assessment grants (\$600,000) to conduct 29 Phase I Environmental Site Assessments, 19 Phase II Environmental Site Assessments, and 19 Supplemental Assessments. This resulted in making 25 properties (136 acres) ready for reuse, leveraging 51 jobs and leveraging nearly \$3.2 million in redevelopment. The most notable achievement was leveraging a Meijer Superstore in South Haven which created local jobs and brought in \$2 million of private investment. Similarly, the Indiana 15 Regional Planning Commission has used two EPA assessment grants (\$400,000) to complete 28 Phase I ESAs, 25 Phase II ESAs, five supplemental assessments and made three properties (2.17 acres) ready for reuse, leveraging \$1,278,450 in private funds. Danville, Illinois, a small community in Illinois (population 33,000) also used a \$400,000 EPA assessment grant to complete 17 Phase I ESAs, eight

Phase II ESAs, and three supplemental assessments making two properties (1.33 acres) ready for reuse, leveraged 11 jobs and \$220,000 in redevelopment.

In Homestead Borough, Pennsylvania, the Voodoo Brewing Company recently announced that it will open a new craft beer brew pub on a brownfield site. Funds from an EPA brownfields assessment grant were used for Phase I environmental assessments to evaluate environmental concerns at several properties, including the Borough's former municipal building and adjacent properties. Voodoo Brewing purchased, renovated and redeveloped the land and buildings of the former municipal building. The environmental assessments were funded through a \$600,000 Brownfields Coalition Assessment Grant awarded to the Turtle Creek Valley Council of Governments. Since award of the grant, Turtle Creek has assessed more than 12 Brownfields properties in the coalition area, which includes 42 municipalities in southeastern Allegheny County and a portion of Westmoreland County in southwestern Pennsylvania. These and other communities across the country have made significant progress in assessing and cleaning up their brownfield properties, but continue to need additional brownfield assessment funding due to the number of brownfields sites in their communities.

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 \$214.9 million. In Fairborn, Ohio, a former cement plant was 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.

In Luzerne, Pennsylvania, the EPA has been working with the Earth Conservancy as they work on parcel by parcel recovery of coal mines and coal storage areas among the 16,500 acres acquired from the bankrupt estate of the Blue Coal Company in the mid-1990s. Since 2003, Earth Conservancy has received 12 EPA cleanup grants totaling \$2.4 million which coupled with other investments has leveraged \$42.8 million in mine waste recovery and acid mine drainage controls and treatment that has helped reclaim nearly 2,000 acres. This has resulted in creation of green space and recreational trail and road development as well as commercial, industrial and residential redevelopment that includes a college dormitory and the return of some land to agriculture and farming.

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.

The EPA 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. 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 2002 Brownfields Law, the EPA has awarded 330 RLF grants totaling \$320.2 million. A Brownfields Revolving Loan Fund grantee, Downriver Community Conference (DCC), made a \$2.2 million loan to a developer to clean up a former industrial waste landfill at the Port of Monroe, Michigan. The site is now home to a fully operational green energy manufacturer. The company is a full-service fabricator and supplier of industrial scale wind turbine towers. 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.

Another example of how a modest investment of EPA assessment and RLF funding has made a big economic difference is in Newport, Oregon. The Port of Newport's terminal was assessed and cleaned up using a \$200,000 EPA assessment grant and \$1,793,151 of EPA revolving loan funds provided by a loan from the Oregon Business Development Department and now is completely rehabilitated. The new terminal was constructed in the same place, but covering a smaller footprint than the original Port. The new, award-winning terminal provides a modern cargo dock for commercial import/export and more accessible offices and buildings. The project has already leveraged \$23.4 million in redevelopment.

Not only are loans important, but also the ability of RLFs to provide sub-grants for worthy community projects. For example, the Redevelopment Authority of the County of Washington, Pennsylvania

provided a \$100,000 sub-grant to Tri-County Patriots for Independent Living, Inc. (TRIPIL) for remediation of asbestos-containing materials at the former YWCA building in Washington, Pennsylvania. The sub-grant was provided through the Redevelopment Authority's Brownfields RLF Grant. The former YWCA building is a 27,000 sq. ft. three-level stone masonry structure in the classic Elizabethan Revival style. The project was conducted in close consultation with the Pennsylvania State Historic Office to ensure that the remediation work did not impact the building's historic resources. The site is intended to be the future home of TRIPIL's offices and their Southwestern Pennsylvania Disability Services/Training Community Center. The renovated building and a new addition will include three stories which will incorporate the existing façade and performance area to preserve the historic features of the structure.

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 brownfield 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 RLFs and assessment and technical assistance 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 14,700 individuals have completed training, of which, approximately 10,600 have obtained employment in the environmental field with an average starting hourly wage of \$14.34. This equates to a cumulative placement rate of approximately 72% since the program was created in 1998.

Opportunity Advancement Innovation, Inc. (OAI, Inc.) in Chicago, Illinois, has trained more than 360 unemployed residents, and of those, 325 were placed in full-time employment in the environmental field, including brownfields assessment and cleanup work. OAI, Inc. recruits and trains individuals from underserved populations, including formerly incarcerated individuals, minorities, and veterans. Working closely with their partner, Greencorps Chicago, OAI, Inc. trains graduates in environmental health and safety, ecological restoration, and green infrastructure installation. Graduates of the program have gone on to work for local contractors and environmental firms involved in environmental remediation, mixed industrial and commercial corridor revitalization, and green space restoration.

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.

An example of the valuable role that TBAs play in the redevelopment of brownfields is the Owensboro Riverfront project. The Owensboro Riverfront project in Kentucky is an ambitious revival of the parks and public areas sitting on the Ohio River. Both federal and state TBA monies were used to perform preliminary assessments on properties in and around the riverfront. It is now home to a new convention center, several new hotels and public areas that host community events.

Technical Assistance

An important aspect of the Brownfields program is providing technical assistance to communities that may not have the capacity to successfully compete for a brownfields grant. 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) Communities grants support technical assistance providers in every region of the country who 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 assist in preparing 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. It is important to note that even the general brownfields information provided by TAB trainings, workshops and seminars can have 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 across the country.

Cross-Agency Partnerships

For nearly seven 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 the 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.

As I mentioned before in my testimony, the Administration has undertaken the IMCP, that designated its first areas in May, 2014. This initiative supports communities to develop integrated, long-term economic development strategies to take advantage of emerging manufacturing investment opportunities stemming from re-shoring and expanding economic activity. IMCP involves a dozen federal agencies, ranging from Commerce and DOT to USDA and DOL. The EPA plays a lead role in IMCP's design and initial implementation. Of the 24 community consortia designated to date, more than half have identified an environmental component as integral to their future manufacturing success - about half of the designated IMCP communities are considering a focus on brownfields as a location for new facilities.

The EPA strongly supports new manufacturing investment consistent with other goals related to brownfield reuse and sustainability. It makes the most sense to promote new manufacturing in areas which have been used for industrial purposes before, thus green space is saved; infrastructure (and sometimes structures) can be reused, typically at lower cost than new installations; and jobs are created in proximity to people and supportive services. But reusing property almost always triggers an

assessment to determine what legacy from past uses might remain, and how it can be addressed to minimize future liabilities - in other words, an environmental overlay on the economic redevelopment process. As we have experienced during the years implementing the Brownfield program, developers, investors, and lenders often will not consider previously used properties unless they are comfortable that risk can be defined and managed and this includes environmental risk.

Over the past decade, many manufacturing projects have been kick-started with EPA brownfield resources, and continued through to completion with other federal resources - with the most common programs leveraged being HUD's Community Development Block Grants, EDA's public works grants, DOT TIGER grants, and USDA rural development grants and loans. Federal agencies involved in community economic development, including the EPA and its Brownfields program, have worked and will continue to work through the IMCP process to enhance the ability of communities to promote manufacturing.

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. Since 2006, CERCLA 128(a) grantees reported that an average of more than 37,800 properties were enrolled in state and tribal response programs and more than 1,228,000 acres were made ready for reuse. Additionally, since 2006, state and tribal response programs provided technical assistance at more than 40,300 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 2016, the EPA received \$54 million in requests for cleanup programs from states, tribes, and U.S. Territories. However, requests for funding were limited to no more than \$1 million so this is not fully representative of the state and tribal response program funding needs. A majority of brownfields cleanups across the country are being conducted under the supervision of these programs. These funds complement state funds to help administer their programs.

The EPA awards funds to states and tribes through a national allocation process. The funding allocation takes into consideration the proposed activities that help ensure effective planning and development of response and voluntary cleanup programs, activities that provide the public with access to information on site cleanups, create an environment for meaningful public participation, and the remaining balance of funds available to the grantee from prior years' grant awards. The EPA has reemphasized the importance of these resources being used for capacity building of state and tribal programs. 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. Other states, such as Colorado, use the funds to support cleanup revolving loan funds, while some states, such as Pennsylvania and Kentucky, provide support for communities to address brownfields. Many, such as Texas and Ohio use a portion of the funds to conduct site specific

activities, such as the assessment and cleanup of brownfields sites. States' programs provide oversight of cleanups enrolled in their cleanup programs, such as New York, which provided oversight in the City of Albany as they completed an important phase of its South End Revitalization Project. Since fiscal year 2003, states and tribes have reported the completion of more than 2,700 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, supporting 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.



ASTSWMO, Providing Pathways to Our
Nation's Environmental Stewardship Since 1974

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Environment and the Economy

Hearing

**"EPA's Brownfields Program: Empowering Cleanup and Encouraging Economic
Redevelopment"**

April 21, 2016

Testimony of

J. Meade R. Anderson, CPG

On Behalf of the

Association of State and Territorial Solid Waste Management Officials

Main Points

- Since the Brownfields law's beginnings in 2002, 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 more than double. The awards in FY2003 averaged \$618,000, however, by FY2016 the average award had dropped to approximately \$293,000, nearly half of what had been awarded in FY2003.
- Funding has been used to assist local government, community officials and others to assist with technical support, environmental assessments, and recommendations.
- Funding supports Voluntary Cleanup Programs (VCP), which provide the foundation for setting remediation goals and institutional controls.
- The remaining brownfield sites are the more challenging sites whose redevelopment may be hampered by complex issues such as contamination and challenges related to the community as a whole. These more challenging sites require a unique collaborative approach of stakeholders working in partnership with the community, local, State, and federal governmental organizations, business partners, non-governmental organizations (NGOs), and individuals from the community itself.
- The University of Delaware's economic study found that every nominal dollar spent through the brownfield program generates a \$17.50 return on the State's initial investment providing further evidence of the vital role brownfields funding plays in the States.

Good morning Chairman Shimkus, Ranking Member Tonko, Members of the Subcommittee.

My name is Meade Anderson, and I am the Chair of the Brownfields Focus Group of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). I am here today to testify on behalf of ASTSWMO.

ASTSWMO is an 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 or management of wastes and hazardous substances, including remediation, tanks, materials management and environmental sustainability programs.

I would like to preface my remarks with commenting that our organization does enjoy a positive working relationship with the U.S. Environmental Protection Agency. Our collaborative efforts and problem solving approaches to brownfield issues with the EPA Office of Brownfields and Land Revitalization should not be underestimated.

ASTSWMO is a strong supporter of the Brownfields Program. For the past fourteen years, this program has contributed greatly to the economic development and revitalization of the country. State and Territorial programs provide significant support to localities, such as small and rural communities that apply for grants, and these programs also help to ensure that the funding is leveraged to maximize revitalization of sites. The vast majority of cleanups are managed under State voluntary cleanup 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.

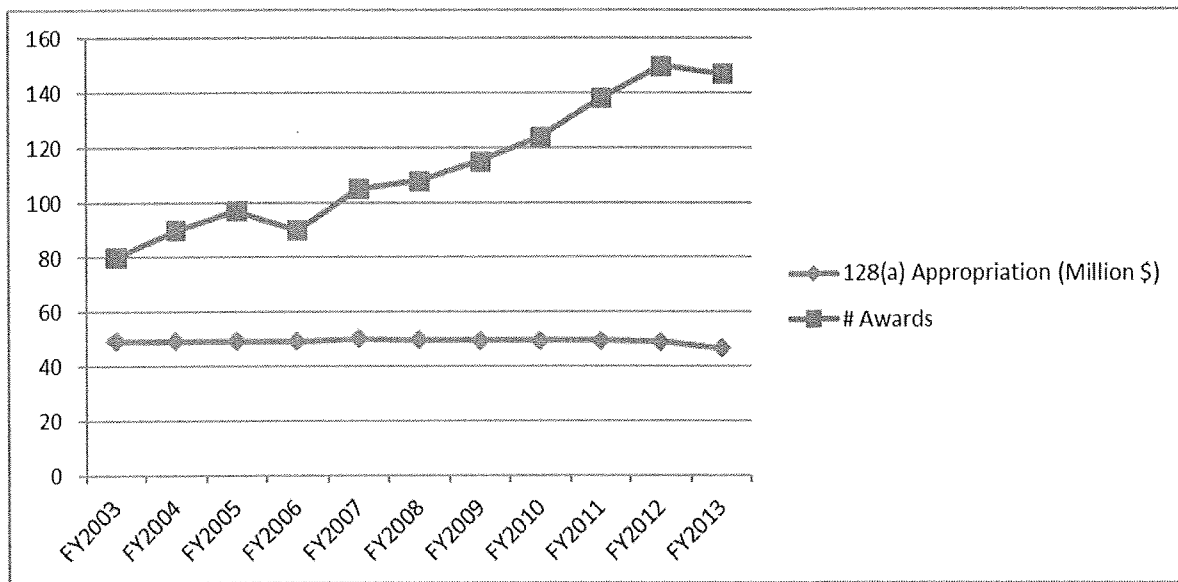
Some of these benefits include:

- 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 local community officials in the preparation of grant applications for Brownfield assessments, cleanups or revolving loan funds;
- 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 much needed 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 more than 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 FY2016, 164 entities requested funding including 50 States, 4 Territories, the District of Columbia and 109 Tribes, 8 of which were new applicants. The total funding requested in FY2016 was \$54.2 million and the total budget allocated in FY2016 will be approximately \$48.1 million. The awards in FY2003 averaged \$618,000, however, by FY2016 the average award had dropped to approximately \$293,000, 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 and to provide adequate support for EPA 104(k) Brownfield Grants. 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.

Over the last 10 years many brownfield properties have been cleaned up and revitalized, bringing tremendous benefits to the States and communities. However, what remains are the more challenging sites whose redevelopment may be hampered by complex issues such as contamination and challenges related to the community as a whole. These properties are often financially upside down due to the suspected environmental contamination, yet many of these sites are situated at key locations in our small cities, towns, and communities. These more challenging sites require a unique collaborative approach of stakeholders working in partnership with the community, local, State, and federal governmental organizations, business partners, non-governmental organizations (NGOs), and individuals from the community itself. The State's Brownfields Program plays a significant role by providing technical support, recommendations, and funds the State voluntary cleanup programs to ensure sites are cleaned up to standards which are safe for the intended reuse.

The University of Delaware has published two well respected studies: the first *Economic Impact of Delaware's Economy: The Brownfields Program* dated January 5, 2010; and *Beyond Natural and Economic Impact: A Model for Social Impact Assessment of Brownfields Development Programs and a Case Study of Northeast Wilmington, Delaware* dated February 2013. The economic study found that every nominal dollar spent through the brownfield program generates a \$17.50 return on the State's initial investment. These two documents provide additional evidence of the vital role brownfields funding plays in the States.

To summarize, 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 at a minimum. I would like to also point out the *ASTSWMO Position Paper 128(a) "Brownfields" Grant Funding*, which was approved by the ASTSWMO Board on April 22, 2014, provides additional detail on the Association's support of brownfields funding. The position paper is provided with this testimony.

Thank you for this opportunity to offer testimony. I would be pleased to answer any questions you may have.



**Written Testimony of Elizabeth Mayor J. Christian Bollwage
For The U.S. Conference of Mayors
Before the House Energy and Commerce
Subcommittee on Environment and the Economy
on EPA's Brownfields Program: Empowering Cleanup and Encouraging Economic
Redevelopment**

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 EPA's brownfields program, its national and local impact, including the impact on my community, and the vital importance of reauthorizing the brownfields law with some improvements that would make the program 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 whose redevelopment is hindered due to real or perceived environmental contamination.

Developers and business owners were unwilling to touch these properties out of fear of liability. These concerns were 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, which made an innocent developer just as responsible for the cost of cleanup as the actual polluter. As a result, these potential businesses would develop on greenfields rather than take a risk on a brownfield property. This has contributed to urban sprawl and left abandoned sites in just about every community in the United States.

As former 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 bipartisan appeal of this issue. And you can understand why - this is a win for the community, the environment, and the business community.

NATIONAL IMPACT OF BROWNFIELDS

The Brownfields Law and the EPA Program that resulted has had a very positive impact on many communities throughout the nation. According to EPA, since the inception of the program, they have awarded nearly \$600 million in assessment money which has resulted in over 24,000 brownfield assessments. They have also awarded about \$215 million for cleanup grants resulting in over 1,200 cleanups completed. This has created over 113,000 jobs and nearly \$22 billion dollars leveraged. In fact, for every EPA dollar spent leverages approximately \$18 in other investments.

However, EPA has had to turn away a lot of highly qualified applicants due to lack of funding. EPA estimates that for the past 5 years, over 1,700 requests for viable projects were not awarded money because of limited funding. EPA estimates that if they were able to provide funding to those turned away applicants, an additional 50,000 jobs would have been created along with \$12 billion of leveraged funding.

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.

These new developments have 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, it should be noted that 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 (1,700 construction jobs and almost 4,000 permanent jobs), assisted in the stabilization of property taxes (\$2.5 million in revenue for the City of Elizabeth in its first 8 months of operation) 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 2017. 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 marketplace situations. 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 sometimes will not bother to even apply for these grants due to the cost burdens associated with taking a federal grant.

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-labile 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. Groups such as Ducks or Trout Unlimited have wanted to clean up properties and restore them to their natural habitat but because they have no protection under the law, they could be held as liable as the person who polluted the property. We need more, not less, people and organizations to help clean up these sites.

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 and I urge you to pass a reauthorization bill. Thank you again for this opportunity.

Attachment

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 411,000-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.

Written Testimony to the US House of Representatives Committee on Energy and Commerce 114th Congress; Subcommittee on Environment and the Economy

Witness: Clark Henry (CH Associates LLC)

First, I wanted to say thank you for hearing my testimony about the EPA Brownfields program. It is an honor to address this committee and do so alongside the other witnesses. I have been working on brownfield redevelopment for the past 15 years. I have done so as a public servant with a local municipality (City of Portland, Oregon), a consultant, and a citizen. This includes working very closely with the EPA Office of Brownfields and Land Revitalization (OBLR), local municipalities, property owners, developers, lenders, and community based organizations across the country.

As the manager of the City of Portland Oregon Brownfield program I oversaw the administration of approximately \$2 million of EPA Brownfield Assessment and Cleanup grants resulting in a cleaner environment, new jobs, increased tax revenue and reactivating once derelict land. Now as a consultant I work with municipalities, property owners, developers, and community based organizations nationally.

Where brownfields represent obstacles to making our towns and cities environmentally, economically, and culturally stronger the EPA Brownfield Program provides financial and technical resources that reverse that effect. Land that once sat contaminated and vacant now accommodates employment, housing, commercial space, industrial land, parks, public facilities, and helps stitch communities back together.

Brownfields are often mistaken as a large urban or industrial problem but this is a misperception. I have provided technical assistance and conducted brownfield area wide planning activity in very small rural communities like the Village of Sutherland, Nebraska to cities such as Boston, Massachusetts. This is a national issue that deserves attention in every congressional district

I cannot overstate the positive impact that this program has had on revitalizing properties, leveraging investment, and improving environmental quality in urban and rural communities alike. The funding made available to local municipalities is of course a greatly valued and highly effective tool used to put properties on track to redevelopment. However, when coupled with technical guidance and advocacy from the local municipalities the outcomes are even more compelling.

If there is a theme in this testimony it is to highlight ways in which the federal and local governments can best serve as partners with the private sector and facilitate land revitalization, job creation, investment and improve environmental quality. The following ideas are presented as ways in which the federal government and local governments can serve as compliment to and more closely operate at the speed of private business and investment for the mutually beneficial outcomes of a stronger economy and environment. They are based on my experiences and voiced by other brownfield professionals around the country.

1. **Area Wide Planning** – The introduction of Brownfield Area Wide Planning as a part of the EPA Brownfield Program is a strong indication that the EPA Brownfield Program is adapting to market demand and reflects an intimate understanding of factors that the real estate market responds to. It is used as another method of putting properties, corridors and districts on track for investment, redevelopment, employment, and efficient tax revenue generation. I strongly encourage its formal adoption through statute and made a permanent feature of the EPA Brownfield Program.
2. **Nonprofit eligibility** - Under the current program, the Brownfield assessment grants are available only to units of local government. Nonprofit organizations are not eligible. It is my professional opinion that by making nonprofit organizations eligible entities, it will greatly

increase the capacity of local communities to successfully partner with private investment and development interests to deliver redevelopment products that revitalizes land, creates jobs, housing, and other opportunity that would otherwise not occur. Not only have nonprofit organizations demonstrated their capability to successfully administer grants like this but they are able to do so without the reliance of a local municipality to drive investment and redevelopment.

3. **Administrative costs** - The current program does not include administrative costs as eligible expenses under a grant. I understand there is a slippery slope here and that the purpose of the grant program is not to pay for overhead costs that should be covered by the grant recipient. However, without some administrative costs allowed the result is that there can be insufficient direct assistance and advocacy provided by the local municipality, thereby limiting the effectiveness of the grant resources. Allowing some level of administrative costs provides support for City staff to spend time working more directly with developers and property owners serving as their advocate as they navigate state regulatory programs. As the Program Manager for the City of Portland Brownfield Program I was able to broker relationships, make lenders comfortable with lending on Brownfields, expedite regulatory review processes and as a result see investment and development implemented.

4. **Renewable energy on brownfield properties** – Using brownfield properties to host renewable energy facilities, especially solar facilities, makes sense from multiple perspectives. In terms of land use planning many cities across the country (even primary markets) have large areas of former industrial land that has no foreseeable redevelopment scenario. Even landfills fall into this category. This is due to multiple factors such as a lack of demand for such land by industry;

its location is not suitable for commercial or housing; or that addressing its environmental conditions are cost or technically prohibitive to accommodate other uses. These sites sit vacant, potentially threatening human and environmental health, are financial liabilities to their owners and provide little if any tax revenue. Renewable energy facilities such as solar farms provide the owner with financial benefits and help reduce our dependence on fossil fuels; are compatible with technical and regulatory restrictions; improve community health, the economy, and reduce stigma of entire districts simultaneously. These facilities can even be considered an interim use, making the land available to accommodate more intensive uses as our towns and cities grow. This is an area in which technical assistance best serves this purpose rather than creating a specific allocation for such projects within the EPA Brownfield grant program. Renewable energy projects are already eligible projects within the program. Creating specific carve out of funding for specific types of development represents a slippery slope that begins to federally prescribe how the grant funding will be spent at the local level. It is widely desired by local brownfield efforts that they have the flexibility to direct their grant resources where they are most in demand.

5. **Liability concerns for municipal ownership** – Under the Comprehensive Environmental Response and Liability Act (CERCLA) municipalities who involuntarily acquire property through foreclosure are considered protected against federal enforcement for contamination they did not cause. However, these protections do not extend to municipalities in cases where the properties are acquired voluntarily, such as through traditional sale and purchase agreements as part of public facility expansion, urban renewal activity, etc. To further increase the capacity of local government to leverage investment in brownfield properties, the liability protections provided through involuntary acquisition should be extended to voluntary acquisition. A

potential precedent for such protections at the state level can be found in liability protection provisions in California's Polanco Act.

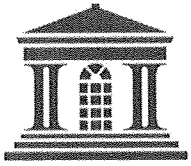
6. **Make federal tax incentive permanent** - Reinstating the federal tax incentive that expired in 2011 will help bridge financial gaps in project feasibility and result in property redevelopment, jobs, a stronger economy and environment. Brownfield projects are inherently more risky than other development and the tax incentive helps mitigate that uncertainty and as a result leverages private investment.
7. **Multi-Purpose grants** - Under the current program, grants for environmental assessments and for cleanup are awarded to local municipalities separately. Creating multipurpose grants where the recipient can conduct environmental assessments immediately followed by cleanup/remediation can effectively close the gap between assessment, cleanup and redevelopment which often occur.
8. **Expand partnerships to leverage community wide investment and equitable development** – Brownfield development and revitalization is an essential element to creating a strong local and national economy, providing opportunity for entrepreneurship, and improving the lives of communities who live with them. Unfortunately revitalization efforts do not always take advantage of local innovators, investors, and assets. In these cases decision making and financial benefit are held by relatively limited number of interests outside of the communities themselves. Demand for revitalization is far greater than the amount of capital and organizations who currently conduct it. This can change through expanding partnerships between community interests, developers, and local talent using the rapidly expanding world of

crowdsourcing and crowdfunding. This is especially true with recent innovations in the Securities Exchange Commission (SEC) stemming from the JOBS act of 2012. In May 2016 (next month), recent changes to SEC regulations will allow any community investor to make equity based financial investment in local development projects through online portals. This has never been allowed before. Until now only Accredited Investors (those with over \$200k of income and more than \$1million of net worth) have been allowed to make investments through these portals. After 15 years of working on initiatives to integrate local assets into brownfield development projects, this is the most promising innovation I have encountered. In the interest of full disclosure I have started one of these portals and this testimony might be perceived as self-serving but to limit this perception I will not name the portal/company. I strongly encourage EPA and its partners to explore ways in which local grant recipients identify and partner with equity and reward based crowdfunding portals to harness the financial and idea generating power of the crowd and local communities in which they work.

In conclusion, the EPA Brownfield Program is a critical asset used by local municipalities with a proven track record of resulting in jobs, private investment, public benefit, improved environmental quality, and more resilient communities. I encourage you to continue supporting the program by funding the program to the maximum appropriation allowed under the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA) and to also support its continued evolution into an even more effective vehicle to achieve economic, environmental, social gains and a stronger United States of America.

Sincerely,

Clark Henry



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**Testimony of Amy E. Romig
Partner, PLEWS SHADLEY RACHER & BRAUN LLP,
Indianapolis and South Bend, Indiana**

**Before the House of Representatives Committee on Energy and Commerce,
Subcommittee on Environment and the Economy**

**Hearing on “EPA’s Brownfields Program: Empowering Cleanup and
Encouraging Economic Redevelopment.”**

Mr. Chairman and Members of the Subcommittee, I am pleased to be invited to present my views on how the U.S. Environmental Protection Agency (“EPA”) Brownfields program impacts private stakeholders who are vital to the sustainable redevelopment, reuse, and investment in brownfields. The Brownfields Program is critical to reducing blight and converting these properties into productive, tax-revenue-generating properties for the communities in which they are located.

I am an attorney with the law firm of Plews Shadley Racher & Braun, LLP. I represent several private businesses, non-profit entities, and other private shareholders who are interested in property development. My firm also represents the Indiana Petroleum Marketers and Convenience Store Association, several towns and cities within Indiana, and economic development associations. The municipalities and businesses my firm represents are concerned with the continued funding of the Brownfields revitalization program, and they are also interested in any changes to the program that will reduce transactional costs in terms of both time and money. However, I am not presenting this testimony directly on my clients’ behalf. Rather, my advice to the to the Subcommittee today is drawn from



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my fifteen years of work on environmental issues and redevelopment projects and my overall desire to improve the Brownfields programs both as a legal practitioner and as a citizen who lives in a community that has been assisted by the program. I have personally seen the positive impact brownfields redevelopment can have on a community.

Why the Brownfields Program is Important to Private Shareholders

The program supports the initial phases of site investigation that may prevent private redevelopment. While the typical American pictures a “brownfield property” as a large abandoned industrial site, in reality most brownfields properties are small properties such as former gas stations or drycleaners that may have low levels of environmental contamination and are interspersed throughout communities. Often, very little is known about these smaller properties since the businesses previously operating were small in size, somewhat unsophisticated and did not always keep extensive records.

Private developers are wary of such properties because the general lack of knowledge about the prior operations increases the potential risk for high cleanup costs, a concern about potential liability to neighboring property owners, and the potential for lengthy cleanup processes. All of these issues increase the transactional costs and the overall risk that developers face when they seek to acquire such properties.



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When a business is looking for opportunities to develop within a community, they intend and plan to do so in a financially positive manner. Adding the risk of the unknown makes brownfield properties undesirable since businesses may not realistically assess the potential costs and downsides associated with unknown environmental conditions. When communities use brownfield grants and funding to investigate such sites in their brownfields inventory, they're filling in knowledge and information gaps that allow private developers to realistically assess risk and the potential for successful reuse, growth, and consequently, profit. While providing some initial site investigation information about a possibly contaminated site does not completely remove the impediment that site has compared to greenfield development, it may be just enough incentive to increase the chance of reuse and redevelopment.

For example, our firm has been involved in the development of commercial real estate in economically disadvantaged areas of Indianapolis. The initial knowledge generated by the city gave the developer some comfort in acquiring the site for redevelopment purposes. Knowing that the primary contaminant of concern was gasoline and assessing the geology of the site allowed the developer to know that although construction costs would be increased due to how potentially contaminated soil had to be handled; such additional costs would be worth it given the central location of the property for the intended commercial use. Furthermore, having some initial information about the environmental conditions of the site



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allowed the developer to work with its environmental consultants to assess the likelihood of obtaining an environmental restrictive covenant (“ERC”) which would dramatically lower cleanup costs. This information also allowed the developer to understand long-term costs associated with the development of the property, such as the maintenance of a parking lot as an institutional control. Knowing this allowed the commercial developer to make an educated calculation whether or not the potential risks were outweighed by the favorable location and benefit of developing this property.

Similarly our firm assisted in the redevelopment of a large abandoned brownfield site along an interstate in Indiana into a large and successful truck stop and travel plaza. This redevelopment never would have been completed without the assistance of the brownfield program and a partnership with both city and state environmental agencies. The petroleum marketer was willing to make a large investment both in acquiring the property as well as completing any necessary environmental work and maintenance in part because the city and state were willing (and had the funding available) to assist in the site assessment and response. A property which had sat vacant for years was returned to the tax rolls, improved the neighborhood (and hence surrounding property values), and provided much needed jobs in a struggling economy. None of these benefits to the community would have happened without the Brownfields programs.



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The Brownfields Program is Not a Windfall to Private Businesses

When I describe what I do to my neighbors or in social settings, I'm often asked why the government should provide funding for private businesses to develop properties. This is a fundamental misunderstanding about how the Brownfield program works. Developers are not paid to develop these blighted properties – they're investing private money for development. Rather, any grants or money that helps with the development of the property acts as seed money to help overcome the impediments that come with contaminated properties. Make no mistake – the development of these properties is often more expensive and time-consuming than the development of a property without the stigma of environmental contamination. Lenders are less likely to provide loans for contaminated property, especially without extensive and detailed information regarding the scope of contamination and the extent of any necessary remediation. Insurance companies may be less likely to write policies to cover such properties. Lessees may be wary of leasing such properties because of concern over possible liability. Furthermore, building and development may be delayed while dealing with government agencies and getting permission to complete the development due to environmental risks. Developers often have to provide additional money up front to deal with these hardships, while experiencing a delay in profiting from the development due to the delays added in dealing with the potential environmental liabilities. Furthermore – these investments are rarely a sure thing. During construction additional



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contamination or other contingencies may be encountered that drive up the cost of development. Thus, these projects always come with a higher risk that can cripple a business. Developers can often only complete these projects by cobbling together various sources of funding, such as loans and insurance proceeds, all while walking the tight-rope of hoping that they correctly anticipated and planned for the environmental risks and costs. Rarely does brownfield money provide the sole source of funding necessary for these projects and rarely are these projects completed precisely as planned.

Assisting Communities will Assist Businesses and Redevelopment

In my experience the most successful Brownfield redevelopment happens in well-organized and well-funded communities. This occurs because these cities can afford to hire knowledgeable and qualified staff to assess their inventory of brownfields and to develop and collect information about the businesses previously operated on those properties. These staff members also often assist smaller businesses in their interactions with environmental regulators and make the successful redevelopment of a property more likely.

Quite simply, those communities that have the most knowledge about their properties and can help with the navigation of the regulatory system make their sites more attractive for redevelopment. As I discussed above, knowledge allows businesses to realistically assess the risks and benefits to acquire and develop a



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property, and the existence of this knowledge often is the critical factor in whether an impacted property will be developed or not.

To level the playing field for smaller and economically distressed communities will require providing those communities with the resources that large cities have to develop this type of information. I support any changes to the Brownfields revitalization program that improves the technical assistance available to small and distressed communities, or provides funding to help these communities hire qualified and sophisticated staff. These changes will enhance how the Brownfields program works in these communities.

Conclusion

The EPA's Brownfields Program is working to develop blighted properties, improve the communities in which these properties are located, and to make a property work again by providing tax revenues and jobs through redevelopment. I have seen it work in both my practice and my community.

While contaminated properties will always present inherent risks to private businesses looking to develop them, the existence of the Brownfields program helps level the playing field and provides some seed money to overcome the risks of environmental contamination. But for this funding, much of this development would never happen. Providing additional resources to small and distressed communities can only improve the program.



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The Brownfields revitalization program is a wonderful asset in the arsenal of communities focusing on improving the economic vitality and quality of life for their citizens. I want to thank the Committee for taking the time to see how they can make the program work even better.



**Written Testimony of Veronica Eady on
“EPA’s Brownfields Program: Empowering Cleanup and
Encouraging Economic Redevelopment” before the
Congress of the United States
House of Representatives
Committee on Energy and Commerce
April 21, 2016**

My name is Veronica Eady, and I offer testimony today on behalf of the Conservation Law Foundation (CLF). I am Vice President and Director of CLF’s Massachusetts office.

Founded in 1966, Conservation Law Foundation is a member-supported environmental advocacy organization headquartered in Boston, Massachusetts. CLF protects New England’s environment for the benefit of all people. We use the law, science, and the market to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy.

I want to thank the Committee on Energy and Commerce for this opportunity to provide testimony during this hearing entitled “EPA’s Brownfields Program: Empowering Cleanup and Encouraging Economic Redevelopment.” We support, without reservation, the funding and implementation of EPA’s Brownfields Program.

Across the country, cities and towns are pockmarked with blighted properties that have been largely avoided because of real or perceived contamination and the uncertain legal liability arising from that contamination. Many brownfields sites in Massachusetts have contamination that pre-dates the Industrial Revolution, creating an acute challenge to remediating and returning brownfields properties into productive reuse.

Non-profit environmental organizations have long played a critical role in facilitating the cleanup of brownfields sites. My own organization, CLF (through our sister organization, CLF



Ventures), has convened community planning charettes to help residents articulate their vision for the redevelopment of longstanding contaminated sites. We have also provided technical assistance to cities and towns seeking to remediate sites and return them to economic activity, helping them to understand their legal options under state and federal brownfields laws. A founding member of the Massachusetts Smart Growth Alliance, we are working in broad coalition with other stakeholders to secure funding that would replenish the Massachusetts Brownfields Redevelopment Fund.

Last year CLF undertook a comprehensive investigation into the nature and extent of contamination in New Bedford, Massachusetts and what potential exposure residents might be subject to. We focused on an environmental justice analysis, which involved studying census and other demographic data to determine whether low-income communities and communities of color bear a disproportionate environmental burden. We spoke with nearly two dozen residents, city officials, environmental regulators, and others. Although New Bedford has received state and federal brownfields funding in the past, one city official commented that the biggest environmental justice issue challenge facing New Bedford today is continues to be the lack of funding available to identify more unaddressed contaminated sites.

New Bedford has pollution that dates back to the mid-1700s when the economy shifted to whaling and whaling-related industries, such as whale oil processing, soap-making, and ship-building. These early industries likely emitted into the environment oils, arsenic, mercury, cyanide, biological wastes, polycyclic aromatic hydrocarbons (PAHs), and other caustic substances that were disposed of directly into soils and waterways. When the whaling industry left, textiles manufacturers moved in a century later. And after the departure of the textile industry came the electronics industry with its own spectrum of pollution. Layer upon layer of



pollution in New Bedford, one of the nation's oldest and most iconic small cities, has led to a blighted city that is struggling to survive in today's economy.

Some of New Bedford's poorest residents live literally across the street from sites that have been mothballed because the industrial operations have been long gone for decades, and the city has been left holding the bag. In other cases, scores of households have been relocated due to migrating pollution from nearby brownfields. New Bedford also has two public schools sitting on a brownfields site. In response to a petition by teachers, staff, and faculty at one school, the state Department of Public Health undertook an investigation into possible exposure to PCBs – highly toxic polychlorinated biphenyls – that resulted in some classrooms being sealed off to protect against toxic gases that have entered the school through the building's ventilation system.

New Bedford is only one of many similarly situated cities and towns in Massachusetts and in the nation. Brownfields redevelopment is for many cities and towns the only form of developable property because of very limited inventories of undeveloped properties. And in order to develop these brownfields sites, cities and towns need access to funding to identify, assess, and clean up contaminated properties. Access to further federal brownfields funding would be a major step in assisting these communities, ultimately bringing jobs and revenue that would stimulate – and in cases like New Bedford could be a cornerstone of – local economies.

In conclusion and on behalf of the Conservation Law Foundation, I would like to thank the House Committee on Energy and Commerce for holding this hearing on EPA's Brownfields Program. A strong, fully funded brownfields program will give an invaluable leg-up to cities like New Bedford and bolster its local economy while advancing a safe and healthful environment.



Once again, I thank you for this opportunity to provide testimony before the House
Committee on Energy and Environment.

For further information, please contact:

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