

Brownfield Appropriation: Moving with Efforts to Lift Prohibition on Administrative Costs

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Update: Congress appropriated FY 2006 funds for the Brownfields program in August 2005. See LUCs.org for the results.

EPA's Brownfields Program has enabled thousands of cities and towns across the country, large and small, to cleanup and redevelop blighted brownfield properties. The resulting private investment, environmental improvement, and enhanced public amenities created by EPA's Brownfields Program has far exceeded the public money put into program. But with as many as 1 million brownfield properties around the country, the work has just begun and efforts are underway in Congress to continue the work.

The fiscal 2006 appropriations process for EPA programs, including brownfields, is moving towards a conclusion. Both House and Senate have approved bills for Interior and related agencies (which includes EPA). The conference committee for the Interior bill (HR 2361) is scheduled to begin on Monday evening, and conferees hope to complete their work by the end of the week.

Both House and Senate have approved \$165 million in Brownfields Program funding for fiscal 2006, consistent with last year's appropriation (although \$45 million less than the President requested). So funding levels will not likely be an issue in conference. This year, though, the Senate -- led by Sen. Jack Reed (D-RI) -- has included two technical corrections to the Brownfields Program in its appropriations bill which, if adopted by conferees and included in appropriations language, will enhance access to program resources and make it more effective. The two technical corrections are:

allowing brownfield grants and loans to be used at sites that cities and other eligible entities acquired before the new Brownfield Revitalization Act became effective on January 11, 2002, so that more pro-active and aggressive cities, non-profits, and other public or quasi-public entities who acquired brownfield sites before the effective date with the intent to clean them up and put them back into use are not punished; and

lifting the prohibition on administrative costs (making it consistent with virtually all other federal assistance programs), so that cities and non-profits with little or no capacity to administer grants are not shut out of the process, and can take full advantage of development opportunities provided by brownfield grants.

Conferees have been asked, via letter sent on July 22, from half a dozen key local government and redevelopment organizations -- including the US Conference of Mayors, the International City/County Management Association, and the National Brownfield Association -- to agree to these two Senate positions during the conference.

Allow innocent property owners to compete for and receive brownfields funding

The brownfield law punishes non-polluting property owners -- including the more pro-active local governments, development authorities, and non-profits -- who acquired brownfields with the good intentions of cleanup and reuse, by making them ineligible for federal brownfields grants and loans if the party acquired a property before the statute took effect on January 11, 2002. More than 200 worthwhile brownfield grant applications by local governments and non-profit groups were rejected by EPA for this reason in fiscal 2003, and many other applications were never submitted, because of this poorly conceived technicality in the law.

Last year, the fiscal 2005 Omnibus appropriations bill provided a one year temporary fix to this problem by allowing non-polluting owners who acquired properties prior to enactment to apply for EPA brownfield funding in fiscal 2005. Due to the late passage of the omnibus bill, EPA was only able to provide a limited 30-day application period to accommodate this new group of applicants. Even during this limited period, EPA received about 32 applications in 2005 from localities and non-profits who qualified as a result of the temporary fix. There are likely hundreds, if not thousands, of brownfield properties across the country that would be eligible for funding if this problem were addressed.

The Senate, in its Interior appropriations bill, addressed this by extending funding eligibility for fiscal 2006 and future years, to enable non-polluting property owners who purchased before January 2002 to access brownfields grants and loans. Such a clarification will help local governments better plan for and carry out brownfield revitalization efforts, as well as increase the federal return on its brownfield investment.

Allow Grant Recipients to Cover Reasonable Administrative Costs

Similarly, the current brownfields law contains language -- CERCLA Section 104(k)(4)(B)(III) -- that prohibits brownfield funds from being used to pay for reasonable administrative costs of grantees, such as rent, utilities and other costs necessary to carry out a project. This limitation makes it extremely difficult for local governments, community organizations and non-profit entities to effectively develop and implement brownfield projects, because they can not stitch together the capacity they need to manage and carry them out. In practice, what this means in many cases is that small cities, tribes, and non-profits in particular, with little or no capacity to administer grants, are shut out of the process, and redevelopment opportunities are lost. All other EPA programs (Clean Water Act, Safe Drinking Water Act, Superfund, Resource Conservation and Recovery Act, etc.) and virtually all federal grant programs allow a portion of grant funds to be allocated to cover reasonable administrative costs. In contrast, state agencies that receive brownfield funding from EPA are permitted to pay administrative costs with their grants. Only local governments and non-profit organizations are penalized by this prohibition.

As a result, many localities and organizations will be unable to effectively use brownfields funds unless reasonable administrative costs are allowed. A number of cities -- especially small and rural communities -- have indicated that they are unable to apply for EPA brownfield funding due to the prohibition on the use of funds for administrative costs. For example, in the small town of Shelby, Montana, the part-time mayor, who is also a full-time optometrist, is being forced to manage the town's brownfield cleanup grant because Shelby can not use any grant funds to pay for additional administrative support. The South Central Oklahoma Council of Governments (ASCOG) is typical of many COGS that are well-suited to oversee brownfield grants and revolving loan funds in the regional areas in which they operate, but are discouraged from seeking funding because most COGS do not generate their own revenue which could be used for administrative purposes.

Allowing brownfield grant recipients to use a small portion of their awards to more efficiently and effectively carry out their projects will only result in greater benefits to the program, and the communities themselves.

In short, EPA's brownfield funding is making a tremendous difference to communities across the country, and implementing these two technical fixes would open the doors to hundreds of additional communities who could apply for a brownfield grant and see the benefits of a redeveloped brownfield.

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