



May 5, 2016

The Honorable Fred S. Upton  
Chairman  
Energy and Commerce Committee  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Frank J. Pallone, Jr.  
Ranking Member  
Energy and Commerce Committee  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Bill Shuster  
Chairman  
Transportation and Infrastructure Committee  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Peter DeFazio  
Ranking Member  
Transportation and Infrastructure Committee  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Upton, Ranking Member Pallone, Chairman Shuster and Ranking Member DeFazio,

On behalf of the nation's mayors, cities, counties and regions, we strongly encourage you to reauthorize and strengthen the U.S. Environment Protection Agency (EPA) Brownfields program. We are pleased the Senate has taken steps to address the current challenges with the Brownfields program, and we encourage you to build upon these efforts to strengthen this vital program, which is key for both economic development and job creation in communities across the country.

Since its creation, the EPA Brownfields program has provided crucial assistance to local governments for reuse of hazardous, polluted and underutilized properties. To date, there have been over 24,000 brownfields assessments and 1,200 brownfields cleanups nationally, which has led to over 113,000 jobs. Each of the \$22 billion federal dollars that has been invested since the program was established in 2002 has leveraged approximately \$18 in other investments, close to \$400 billion in total.

While many communities have benefited from brownfields redevelopment efforts under this program, the U.S. Government Accountability Office estimates there are between 400,000 and 600,000 remaining brownfields sites throughout the United States. To build upon these past successes and assist in the cleanup, reuse and redevelopment of remaining sites, some key improvements to the program are needed.

## Increase Overall Grant Funding to Allow Communities to Cleanup More Difficult Sites

As cleanup at less complicated sites has been completed, communities now turn to address cleanup challenges at more complex sites. As more sites are reclaimed, it highlights those contaminated properties that are more complex in nature, and thus will require more resources to clean up. We suggest the following:

- **Increase Total Brownfield Grant Program Funding** – Congress should increase the overall authorization level for the EPA Brownfields program.
- **Increase Cleanup Grant Amounts** – Congress should recognize the complexity of the cleanup process for larger or more complicated sites by increasing the funding limit for cleanup of a single site to \$1 million. Under special circumstances, EPA could waive the limit, up to \$2 million per site.
- **Establish Multi-Purpose Brownfields Grants** – Congress should allow eligible entities to have the option to apply for multi-purpose grants that can be used for the full range of brownfields-funded activities (assessment, cleanup, reuse planning, etc.) on an area-wide or community-wide basis. Applicants should be required to demonstrate a plan and the capacity for using this multi-purpose funding within a set timeline in order to qualify for such funding.
- **Allow Funding for Reasonable Administrative Costs for Local Brownfields Programs** – Congress should allow brownfields grant recipients to use a small portion (10 percent) of their grant to cover reasonable administrative costs such as rent, utilities and other costs necessary to carry out a brownfields project.

## Brownfields Liability Concerns are a Disincentive for Local Governments

Local governments face enormous challenges in brownfields redevelopment. One of the most significant challenges is the potential liability for local governments, which creates a disincentive to acquire contaminated property. We encourage Congress to revise the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) to encourage and protect local communities who choose to take ownership of blighted properties for the purposes of brownfields redevelopment where the local government had no role in creating the contamination. These changes should include:

- **Clarify Eligibility of Publicly-Owned Sites Acquired Before 2002** – Congress should allow local governments to be eligible for grant funding for properties that were acquired prior to the January 11, 2002 enactment of the Brownfields Revitalization Act—when there was no required standard for “all appropriate inquiries”—provided that the applicant did not cause or contribute to the contamination and performed “appropriate care.” For these sites, applicants would not have to demonstrate that they performed all appropriate inquiry.
- **Remove Barriers to Local and State Governments in Addressing Mothballed Sites** – Congress should exempt local and state governments from CERCLA liability if the government unit (a) owns a brownfields property 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. We

suggest language to amend section 101(20) (D) that clarifies that properties acquired through eminent domain qualify for the CERCLA exemption for local governments involved in “Involuntary Acquisitions.” Alternatively, we would suggest language that establishes a simplified and clear exemption from CERCLA liability for local governments that acquire brownfields sites.

- **Eliminate Eligibility Barriers for Petroleum Brownfields Sites** – Grantees that seek to use assessment, cleanup or multi-purpose grants on sites with petroleum contamination should not be required to make the difficult demonstrations that the site is “low risk” and that there is “no viable responsible party” connected with the site. We recommend replacing the “No Viable Responsible Party” language in section 101(39) (D) with a prohibition on using funds to pay for cleanup costs at a brownfields site for which the recipient of the grant is potentially liable under the petroleum statutes. This would parallel the language for non-petroleum brownfields sites.

### Reauthorize Federal Brownfields Tax Incentives

While we understand that your committees do not have jurisdiction over tax policy, we would be remiss not to advocate for renewal of Internal Revenue Service (IRS) section 198, the federal brownfields tax incentive. The tax deduction, which allows for the expensing of all cleanup costs in the year incurred, is a powerful tool to promote the cleanup of brownfields. Congress let the deduction lapse in 2011 and its renewal would accelerate the cleanup of contaminated sites across the nation.

We thank you for your leadership in reforming the EPA Brownfields program and look forward to working with you to develop legislation this year that will allow local governments to increase investment in blighted communities through economic development and job creation, while addressing important public health and safety concerns.

If you have any questions, please contact Judy Sheahan at USCM ([jsheahan@usmayors.org](mailto:jsheahan@usmayors.org)), Carolyn Berndt at NLC ([berndt@nlc.org](mailto:berndt@nlc.org)), Julie Ufner at NACo ([JUfner@naco.org](mailto:JUfner@naco.org)), or Leslie Wollack at NARC ([leslie@narc.org](mailto:leslie@narc.org)). Thank you for your consideration.

Sincerely,



Tom Cochran  
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The U.S. Conference of Mayors



Matthew D. Chase  
Executive Director  
National Association of Counties



Clarence E. Anthony  
CEO and Executive Director  
National League of Cities



Leslie Wollack  
Executive Director  
National Association of Regional Councils

Cc: Members of the House Energy and Commerce Committee  
Members of the House Transportation and Infrastructure Committee