

CRS Report for Congress

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Brownfields in the 109th Congress

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Summary

The Brownfields Act, which authorizes the Environmental Protection Agency (EPA) to award grants for the assessment and cleanup of sites that pose a less serious threat to human health and the environment than sites addressed by the Superfund program, expires on September 30, 2006. A reauthorization bill, H.R. 5810, was reported from the House Committee on Transportation and Infrastructure on July 28, 2006 (H.Rept. 109-608, Part 1), and now awaits action by the House Energy and Commerce Committee. The bill would renew the authorization through FY2012 at the current level of \$200 million annually. It also reauthorizes provisions that provide financial assistance for state and tribal cleanup programs at the current level of \$50 million per year (for a total authorization of \$250 million). Appropriations in the last four years have been between \$165 million and \$171 million. The Department of Housing and Urban Development also has a small Brownfields Program, which may be eliminated, and approximately 20 other agencies have programs or activities that foster cleanup and development.

For more information on the origins and development of the Brownfields Program, see CRS Report RL30972, *The Brownfields Program Authorization: Cleanup of Contaminated Sites*, and CRS Report 97-731, *Superfund and the Brownfields Issue*, both by Mark Reisch.

The Superfund Program is the federal government's main effort to clean up abandoned, accidentally spilled, and illegally dumped hazardous waste that poses current or future threats to human health or the environment. It focuses on the worst spills and other releases of hazardous substances, whereas the Brownfields Program is designed to assist local governments with the cleanup of abandoned, idled, or underutilized commercial and industrial sites where the contamination, if any, is not as serious. Amendments to the Superfund Act¹ in 2002 (P.L. 107-118, known as the Brownfields Act) gave statutory authority to the Environmental Protection Agency's (EPA's)

¹ Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, 42 U.S.C. 9601-9675).

Brownfields Program, which EPA initiated administratively in 1993 under Superfund's authority.

The Brownfields Act authorizes a \$200 million per year grant program to assess and clean up contaminated sites, limits and clarifies the Superfund Act's stringent liability scheme to encourage reuse of brownfield sites, and provides assistance of \$50 million per year to state and tribal cleanup programs. The authorization to make brownfield grants expires at the end of FY2006, on September 30. On July 28, 2006, the House Committee on Transportation and Infrastructure reported H.R. 5810, which would extend the funding authority through FY2012 (H.Rept. 109-608, Part 1). The bill was also referred to the Energy and Commerce Committee, where it awaits action.

EPA Program. Entities eligible to receive grants include local, state, and tribal governments and certain quasi-governmental authorities; private persons or corporations are not eligible. There are four types of competitive brownfields grants:

- *Assessment grants* provide funding for a grant recipient to inventory, assess, and conduct planning and community involvement related to brownfield sites. The grants are typically for \$200,000 over two years, but may be higher.²
- *Revolving Loan Fund (RLF) grants* of up to \$1 million are made to capitalize RLFs to provide no-interest or low-interest loans for brownfield cleanups. An RLF grant recipient may also make cleanup subgrants that do not have to be repaid of up to \$200,000 per site.
- *Cleanup grants* of up to \$200,000 per site provide funding for the recipient to carry out cleanup activities.
- *Job training grants* are available to certain educational and other non-profit organizations, as well as the eligible entities noted above. These grants of up to \$200,000 are to create local environmental job training programs in an effort to ensure that the economic benefits derived from brownfields revitalization efforts remain in local neighborhoods.³

The Brownfields Act authorized \$200 million per year through FY2006 to carry out these grant programs.

CERCLA has stringent liability provisions that impose strict, joint and several, and retroactive liability on all past and present owners of contaminated or polluting facilities, as well as on those who transported the hazardous substances to a facility, and on those who "arranged for disposal or treatment" of hazardous substances at a facility owned or

² In some circumstances, grants may be made for \$350,000 or \$400,000. For details, see U.S. EPA, *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants*, October 2005, at [http://www.epa.gov/brownfields/pg/fy06_arc_final.pdf], pp. 6-12.

³ "Brownfields Job Training Grants," RFA# EPA-OSWER-OBCR-06-06. Available at [<http://www.epa.gov/oswer/docs/grants/06-06.pdf>].

operated by another.⁴ Concern over the possible applicability of this strict liability scheme to owners and developers of brownfield properties was identified as a deterrent to their cleanup and reuse in many cases, because CERCLA had no provisions for relaxing the liability, even for the socially desirable goal of upgrading contaminated real estate. The Brownfields Act helped in this regard by exempting from liability (1) owners of land contaminated by a source on contiguous property and (2) prospective purchasers of property known to be contaminated. It also explained in detail what constitutes “all appropriate inquiry,” a phrase used in the Superfund Act as a prerequisite to a land buyer’s “innocent landowner” liability defense.⁵ Also, even before enactment of the Brownfields Act, EPA revised its system of tracking sites⁶ suspected of contamination with hazardous substances to clarify when no further action by the agency was planned at the site and to remove the stigma of being associated with the Superfund program.

The Act also included provisions to establish and enhance state and tribal response programs, particularly for brownfields. These programs include the traditional enforcement-driven cleanup approaches, as well as newer “voluntary cleanup” programs that avoid some of the costs and delays of that line of action and offer incentives for participating. Most states provide some sort of liability release, and other incentives include a streamlined process, financial or tax incentives, and technical assistance. The Brownfields Act authorizes \$50 million per year in grants to states and tribes.

In addition, the 2002 law expanded the definition of what is considered a brownfield for purposes of grants, so communities may now receive funding for mine-scarred lands, sites contaminated by petroleum, and buildings or sites that were used for the manufacture of illegal drugs.

According to EPA, since the beginning of the brownfields program, the agency has awarded 883 assessment grants totaling \$225.4 million, 202 revolving loan fund grants totaling \$186.7 million, and 238 cleanup grants totaling \$42.7 million. EPA states that this \$454.8 million of assistance has leveraged more than \$8.2 billion in private investment, helped create 37,525 jobs, and resulted in the assessment of 8,374 properties and the cleanup of 93 properties.⁷ EPA has awarded more than \$20 million in brownfields job training grants, more than 2,600 people have completed training programs, and more than 1,600 have obtained employment in the environmental field, earning an average wage of \$13 per hour.⁸

⁴ CERCLA § 107(a)(1)-(4).

⁵ For further discussion, see CRS Report RL31911, “*Innocent Landowners*” and “*Prospective Purchasers*” Under the Superfund Act, by Robert Meltz.

⁶ The Comprehensive Environmental Response Compensation and Liability Information System, or CERCLIS.

⁷ “\$70 Million in Grants Brings Blighted Property Back to Life,” EPA press release, May 12, 2006. Available at [<http://yosemite.epa.gov/opa/admpress.nsf/a8f952395381d3968525701c005e65b5/708921c271c50e7d8525716c004e5530!OpenDocument>].

⁸ “EPA Announces \$2 Million in Brownfields Job Training Grants,” EPA press release, December 22, 2005. Available at [<http://yosemite.epa.gov/opa/admpress.nsf/d9bf8d9315e942578525701c005e573c/354601a5988960e0852570df0065d4d7!OpenDocument>].

Appropriations in the last four years have been as follows: FY2003, \$167.7 million; FY2004, \$171.0 million; FY2005, \$165.0 million; and FY2006, \$165.0 million. As noted above, the law authorizes \$250 million per year. (See **Table 1** for additional information.)

HUD Program. The Department of Housing and Urban Development (HUD) also has a brownfields program, which emphasizes economic development projects and the increase of business and job opportunities for low- and moderate-income persons. Beginning with the FY2004 budget request, the Administration has not asked for any funding for this program. Congress, however, appropriated \$25 million, \$24 million, and \$10 million in FY2004, 2005, and 2006,⁹ respectively. See **Table 1** for additional data.

Table 1. Administration Request and Enacted Appropriations for Brownfield Programs Administered by EPA and HUD: FY2001-FY2007
(in millions of dollars)

Fiscal Year	EPA		HUD	
	Requested ^a	Enacted ^b	Requested ^a	Enacted ^b
FY2001	\$91.6	\$91.6	\$50.0	\$25.0
FY2002	\$97.7	\$97.7	\$25.0	\$25.0
FY2003	\$200.0	\$167.7	\$25.0	\$25.0
FY2004	\$210.8	\$171.0	\$0.0	\$25.0
FY2005	\$208.5	\$165.0	\$0.0	\$24.0
FY2006	\$210.1	\$165.0	\$0.0	^c \$10.0
FY2007	\$163.3	—	\$0.0	—

Sources: Prepared by the Congressional Research Service with the following information.

- Requested amounts are from agency annual congressional budget justifications.
- Enacted amounts are from the conference reports on annual appropriations bills that fund EPA and HUD, prior to the application of across-the-board rescissions in certain years. Appropriations for FY2007 are not yet enacted.
- Congress appropriated \$10 million for HUD's brownfields program for FY2006 but rescinded \$10 million in unobligated balances from prior years' appropriations, in effect resulting in no additional funding available for FY2006 beyond amounts already appropriated through FY2005.

For FY2007, however, the appropriations bill for HUD and other agencies that passed the House and was reported by the Senate Appropriations Committee does not provide any funding for the HUD Brownfields Program (H.R. 5576, H.Rept. 109-495, S.Rept. 109-293). In its report, the House Appropriations Committee stated that HUD

⁹ The FY2006 \$10 million appropriation was accompanied by a rescission of \$10 million in unobligated balances from prior years, resulting in no additional funding for the year.

funding for brownfields is no longer “essential or appropriate” because of “recent dramatic increases in funding” for EPA’s program, and indicated the House had already provided \$2.34 billion “in the fiscal year 2007 appropriations bill for the EPA program.”¹⁰ However, this reference would be to EPA’s entire Environmental Management and Programs account in EPA’s appropriation bill (H.R. 5386), which covers a variety of environmental activities, including \$24.6 million for the administrative expenses of EPA’s brownfields program. As passed by the House, the total appropriation for EPA brownfields is actually \$163.3 million. However, the elimination of HUD’s program does raise questions regarding the adequacy of EPA’s funding and authority to meet both cleanup and redevelopment needs.

During consideration of H.R. 5576 on the House floor, Members agreed to an amendment offered by Representative Gary Miller (H.Amdt. 1013) to increase the HUD Community Development Fund by \$15 million, coupled with a \$15 million offset to another HUD account. Supporters of the amendment stated that the funds would allow the HUD brownfields program to continue, but the bill’s language does not explicitly state the purpose of the increase.

If Congress ultimately eliminates funding for HUD’s brownfields program, owners of brownfield properties still may be eligible to compete for economic redevelopment assistance provided through other HUD programs (e.g., the Community Development Block Grant Program). Moreover, the House report also earmarked \$700,000 in HUD’s appropriation for two specified brownfield sites, and the Senate report earmarked \$1,450,000 for seven named brownfield sites, despite the lack of funding for a comprehensive program to address such needs.

Other Federal Brownfield Programs. As early as 1996, EPA developed cooperative relationships with other federal agencies to share knowledge on economic redevelopment and environmental principles, and to find ways of applying federal support to brownfields redevelopment in many different types of communities. *The Brownfields Federal Program Guide* lists 22 agencies that have programs developed specifically for brownfields, and other programs with financing or technical assistance suitable and applicable to a brownfield situation. The guide is available at [http://www.epa.gov/brownfields/partners/2005_fpg.pdf].

Congressional Action. As noted above, the authorization of the Brownfields Act expires on September 30, 2006.¹¹ To reauthorize the provisions, the Committee on Transportation and Infrastructure reported H.R. 5810 on July 28, 2006 (H.Rept. 109-608, Part 1). The bill would extend the grant authority through 2012 at the present level of \$200 million annually. In addition, it requires the EPA Inspector General to report to Congress every four years on the management of the Brownfields Program and the

¹⁰ U.S. Congress, House, Committee on Appropriations, *Departments of Transportation, Treasury, and Housing and Urban Development, the Judiciary, District of Columbia, and Independent Agencies Appropriations Bill, 2007; report ... to accompany H.R. 5576*, 109th Congress, 2nd session, H.Rept. 109-495, p. 145.

¹¹ An authorization is not necessary for appropriations; authorization for a number of environmental programs has expired, but Congress continues to appropriate funds for them, thus assuring their continuation.

allocation of grants. The bill also eliminates a requirement presently in the law that 25% of available funding be used for sites where petroleum is the cause for site contamination. Such sites would still be eligible for funding but would have to compete with other brownfield sites for priority and funding.

The bill also would renew through 2012 assistance to states and tribes at the current level of \$50 million annually. Finally, it adds a factor for EPA to use in ranking brownfield grant applications — the extent to which the grant would implement green building standards and energy efficient building standards. This would codify the agency's current practice.

The committee report also makes two non-legislative recommendations. One is that EPA award the competitive grants more than once a year, if practicable. The other urged the agency to award several multiple purpose grants each year, not solely for assessment or cleanup, but for both. H.R. 5810 was also referred to the House Committee on Energy and Commerce, where it now awaits action.

The FY2007 Interior, Environment, and Related Agencies appropriations bill (H.R. 5386, H.Rept. 109-465), which passed the House on May 18, 2006, approved the President's request of \$163.3 million for EPA's Brownfields Program, a slight increase above the prior year's \$162.5 million (after rescissions). The version of H.R. 5386 reported by the Senate Appropriations Committee (S.Rept. 109-293) provides the same amount; it awaits action by the full Senate.

In addition to brownfields reauthorization and appropriations, the 109th Congress has considered other bills addressing the cleanup and redevelopment of brownfields. In the first session, P.L. 109-59 (H.R. 3) reauthorized funding for federal surface transportation programs and authorized a pilot program to support planning activities for highway and public transportation projects, including brownfields redevelopment planning. As passed by the House at the end of the first session, H.R. 280 (H.Rept. 109-138) would make HUD brownfields grants more accessible to smaller communities; it is now before the Senate Banking, Housing, and Urban Affairs Committee.

In the second session, Congress passed budget reconciliation legislation that was signed by the President on May 17, 2006 (P.L. 109-222, H.R. 4297). The House and Senate versions of this legislation would have extended (for two years and one year, respectively) tax incentives (expired as of January 1, 2006) meant to encourage the redevelopment of brownfields. However, the bill agreed to in conference, which subsequently passed both chambers, did not include these tax incentives. Separate tax legislation (H.R. 5970, the Estate Tax and Extension of Tax Relief Act of 2006) that passed the House July 29, 2006, would have reinstated the tax incentives until 2007, but it failed on a Senate procedural vote on August 3, 2006. At least 20 other brownfield bills have been introduced but have not received committee action.