



# Brownfield Issues in the 110<sup>th</sup> Congress

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## Summary

The Brownfields Act 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. The authorization expired on September 30, 2006. In the 109<sup>th</sup> Congress, a reauthorization bill, H.R. 5810, was reported (H.Rept. 109-608, Part 1), but went no further. Appropriations in the last four years have been between \$163 million and \$170 million. The Department of Housing and Urban Development (HUD) also has a small Brownfields Program, and approximately 20 other agencies have programs or activities that foster cleanup and development. In the 110<sup>th</sup> Congress, the House passed H.R. 644, a bill making HUD brownfields grants more accessible to smaller communities. Because reauthorization was not enacted in the 109<sup>th</sup> Congress, it may be an issue for the 110<sup>th</sup>.

For more background 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 (name redacted).

## **Contents**

EPA Program .....	1
EPA Appropriations.....	3
HUD Program and Appropriations .....	3
Other Federal Brownfield Programs .....	4
Congressional Action in the 109 <sup>th</sup> Congress.....	4
Congressional Action in the 110 <sup>th</sup> Congress.....	5

## **Tables**

Table 1. Administration Request and Enacted Appropriations (After Rescissions) for Brownfield Programs Administered by EPA and HUD: FY2001-FY2007 .....	3
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## **Contacts**

Author Contact Information .....	6
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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 Act<sup>1</sup> in 2002 (P.L. 107-118, known as the Brownfields Act) gave statutory authority to the Environmental Protection Agency's (EPA's) Brownfields Program, which the 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 authorizes assistance of \$50 million per year to state and tribal cleanup programs. The law's authorization expired 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 have extended the funding authority through FY2012 (H.Rept. 109-608, Part 1). The bill was also referred to the Energy and Commerce Committee, which did not act on it.

This report provides a description of the brownfield programs of EPA and the Department of Housing and Urban Development (HUD), reviews their recent appropriations, takes note of other federal brownfield programs, and summarizes congressional activity in the 109<sup>th</sup> and 110<sup>th</sup> Congresses.

## EPA Program

Entities eligible to receive grants include local, state, and tribal governments and certain quasi-governmental authorities; private persons and 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.<sup>2</sup>
- *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 nonprofit 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

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

<sup>2</sup> 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*, August 2007, at <http://www.epa.gov/swerrims/docs/grants/epa-oswer-obcr-07-09.pdf>, pp. 6-12.

ensure that the economic benefits derived from brownfields revitalization efforts remain in local neighborhoods.<sup>3</sup>

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

According to the EPA, since the beginning of the brownfields program, the agency has awarded 1,067 assessment grants totaling \$262 million, 217 revolving loan fund grants totaling \$201.7 million, and 336 cleanup grants totaling \$61.3 million. The EPA states that this \$527 million of assistance has leveraged more than \$9.6 billion in private investment, helped create more than 43,029 jobs, and resulted in the assessment of more than 10,504 properties and the cleanup of 180 properties.<sup>4</sup> The agency says that it has awarded more than \$22 million in brownfields job training grants, approximately 3,000 people have completed training programs, and more than 1,800 have obtained employment in the environmental field, earning an average wage of \$13.26 per hour.<sup>5</sup>

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 operated by another.<sup>6</sup> 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.<sup>7</sup> Also, even before enactment of the Brownfields Act, the EPA revised its system of tracking sites<sup>8</sup> 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,

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<sup>3</sup> “Brownfields Job Training Grants,” RFA# EPA-OSWER-OBCCR-07-10. Available at <http://www.epa.gov/swerrims/docs/grants/epa-oswer-obcr-07-10.pdf>.

<sup>4</sup> “EPA Awards \$71 Million to Help Brownfields Bloom into Productivity,” EPA press release, May 14, 2007. Available at <http://yosemite.epa.gov/opa/advpress.nsf/e87e8bc7fd0c11f1852572a000650c05/c7251cab903bd8b9852572db0064a83d!OpenDocument>.

<sup>5</sup> “\$2.3 Million for Environmental Jobs Training,” EPA press release, November 13, 2006. Available at <http://yosemite.epa.gov/opa/advpress.nsf/4a5be1c25fb55afa8525702100566bbb/3c2c0c364f5ff62f852572250067ce69!OpenDocument>.

<sup>6</sup> CERCLA § 107(a)(1)-(4).

<sup>7</sup> For further discussion, see CRS Report RL31911, “*Innocent Landowners*” and “*Prospective Purchasers*” Under the *Superfund Act*, by (name redacted).

<sup>8</sup> The Comprehensive Environmental Response, Compensation, and Liability Information System, or CERCLIS.

and technical assistance. The Brownfields Act authorizes \$50 million per year in grants to states and tribes to support their programs.

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 (CERCLA § 101(39)).

## EPA Appropriations

Since passage of the Brownfields Act in 2002, appropriations have been as follows, after rescissions: FY2003, \$166.6 million; FY2004, \$169.9 million; FY2005, \$163.2 million; FY2006, \$162.5 million; and FY2007, \$163.0 million. For FY2008, the Administration has requested \$162.2 million. The House-passed appropriations bill for FY2008 would provide \$172.9 million (H.R. 2643, H.Rept. 110-187), and the bill reported by the Senate Appropriations Committee would provide \$162.5 million (S. 1696, S.Rept. 110-91) (See **Table 1** for additional information.)

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

Fiscal Year	EPA		HUD	
	Requested <sup>a</sup>	Enacted <sup>b</sup>	Requested <sup>a</sup>	Enacted <sup>b</sup>
FY2001	\$91.6	\$91.6	\$50.0	\$25.0
FY2002	\$97.7	\$97.7	\$25.0	\$25.0
FY2003	\$200.0	\$166.6	\$25.0	\$25.0
FY2004	\$210.8	\$169.9	\$0.0	\$25.0
FY2005	\$208.5	\$163.2	\$0.0	\$24.0
FY2006	\$210.1	\$162.5	\$0.0	\$9.9 <sup>c</sup>
FY2007	\$163.3	\$163.0	\$0.0	\$15.0
FY2008	\$162.2	Not yet enacted	\$0.0	Not yet enacted

**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.
- 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.

## HUD Program and Appropriations

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. HUD and EPA have a long-standing Memorandum of Understanding to maximize the coordination of community development and environmental expertise; each agency, for example, provides representatives to serve on the

other's review panels to select grantees. According to HUD, between 1998 and 2006, the department awarded 164 Brownfields Economic Development Initiative (BEDI) grants to 122 public entities, of which 154 went to Community Development Block Grant (CDBG) entitlement cities or counties, and 10 to small cities. Grant awards have ranged from \$80,000 to \$2.5 million, with the average being \$1.1 million. BEDI projects have typically been large-scale and often complex undertakings, averaging more than \$40 million in total development costs, with the BEDI component averaging 2.3 % of total development costs. On average, BEDI projects have five public and private sources of financing, and leverage an average of \$28 million in private funds and \$12 million in other public funds.<sup>9</sup>

Beginning with the FY2004 budget request, the Administration has not asked for any funding for this program. Congress, however, appropriated \$25 million, \$24 million, \$10 million, and \$15 million for FY2004, FY2005, FY2006, and FY2007, respectively, prior to applicable rescissions. For FY2008, the House bill would fund brownfields at \$9.9 million, and the Senate-passed version would provide \$10.0 million (H.R. 3074). The conference report, H.Rept. 110-446, provides \$10 million. The House adopted it by 270-147 on November 14, 2007; the Senate has not voted yet. (See **Table 1** for additional information.)

### **Other Federal Brownfield Programs**

As early as 1996, the 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](http://www.epa.gov/brownfields/partners/2005_fpg.pdf).

### **Congressional Action in the 109<sup>th</sup> Congress**

As noted above, the authorization of the Brownfields Act expired on September 30, 2006.<sup>10</sup> 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 have extended the grant authority through FY2012 at the current level of \$200 million annually. In addition, it would have required the EPA Inspector General to report to Congress every four years on the management of the Brownfields Program and the allocation of grants. The bill also would have eliminated a requirement currently 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. It also added a factor for the 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 have codified the agency's current practice. The bill also would have renewed through FY2012 assistance to states and tribes at the current level of \$50 million annually.

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<sup>9</sup> HUD. Chief Financial Officer. *Congressional Justifications for [Fiscal Year] 2008 Estimates, Part I*. At <http://www.hud.gov/offices/cfo/reports/2008/cjs/toc1.cfm>. Additional information on the program can be found at <http://www.hud.gov/offices/cpd/economicdevelopment/programs/bedi/>.

<sup>10</sup> 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.

In addition to brownfields reauthorization and appropriations, the 109<sup>th</sup> Congress enacted two laws 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, which included a pilot program to support planning activities for highway and public transportation projects, including brownfields redevelopment planning.

Also enacted was an extension of the brownfields tax incentive, which allows a taxpayer to deduct cleanup costs at a brownfield site in the same year the costs are incurred (called “expensing”), rather than deducting the costs over a period of years (“capitalizing”). This tax break had expired at the end of 2005, but the provision was made retroactive to then and was extended to December 31, 2007, in the Tax Relief and Health Care Act of 2006 (P.L. 109-432, H.R. 6111), signed by the president on December 20, 2006. (See CRS Report RL34184, *The Section 198 Brownfields Tax Incentive: 2007 CRS Survey*, by (name redacted).)

A bill that passed the House but went no further would have made HUD brownfields grants more accessible to smaller communities. At least 20 other brownfield bills were introduced but did not receive committee action.

### **Congressional Action in the 110<sup>th</sup> Congress**

As of November 29, 2007, six brownfields bill have been introduced. The Brownfields Redevelopment Enhancement Act, H.R. 644, is the only one to receive action. It passed the House under suspension of the rules on February 27, 2007, and is now before the Senate Banking, Housing, and Urban Affairs Committee. The bill allows HUD to make brownfield grants under its existing program without utilizing the Section 108 loan guarantee program, which make the grants more accessible to smaller communities. It also authorizes appropriations of “such sums as may be necessary” for FY2008-FY2012. An identical bill, H.R. 280 (H.Rept. 109-138), also passed the House in the 109<sup>th</sup> Congress.

A second bill in the 110<sup>th</sup> Congress is Representative Nydia Velazquez’s H.R. 43, the Brownfields Housing and Community Renewal Development Act. It would establish a program of grants for up to \$1 million within HUD for redevelopment activities at brownfield sites. Unlike HUD’s current program, grants would not be required to be used in conjunction with loan guarantees. The bill authorizes appropriations of \$25 million for FY2008, \$50 million for FY2009, and \$75 million for FY2010.

Representative Michael Turner’s H.R. 3080 would allow a business tax credit for 50% of the expenditures for the abatement or control of hazardous substances, the demolition of structures, the removal and disposal of property, and the reconstruction of utilities at brownfield sites.

Three bills would make permanent the brownfields tax incentive that is discussed above, and that expires at the end of 2007: Representative Jerry Weller’s H.R. 1753, Representative Joe Donnelly’s H.R. 3897, and Representative Jason Altmire’s H.R. 3984. The Weller bill would also repeal the tax break’s recapture provision. See CRS Report RL34184, *The Section 198 Brownfields Tax Incentive: 2007 CRS Survey*, for more information on the provision.

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