



## CRS Report for Congress

# The Environmental Protection Agency's Brownfields Program: Scope, Authorities, and Implementation

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### Summary

The federal role in assisting states and communities to clean up brownfield sites — real property affected by the potential presence of environmental contamination — has been an ongoing issue for more than a decade. With the enactment of the Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118) in 2002, Congress provided specific authority for EPA to address brownfield sites.

In contrast to Superfund sites, environmental contamination present at brownfield sites is typically less of a risk to human health. With the primary motivation to aid cleanup efforts, the 2002 statute, among other things, authorized two grant programs: (1) a competitive grant program to address specific sites; and (2) a non-competitive grant program to support state cleanup programs.

While there appears to be broad consensus that a federal role in the cleanup and redevelopment of brownfields is desirable, issues regarding the degree of financial assistance and overall program effectiveness have been raised.

The federal role in assisting states and communities to clean up brownfields for productive use has been an ongoing issue for more than a decade. As defined by statute, brownfield sites are “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or *potential presence* of a hazardous substance, pollutant, or contaminant” (emphasis added).<sup>1</sup>

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<sup>1</sup> Section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, 42 U.S.C. § 9601(39)), amended in 2002 by the Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118).

The Environmental Protection Agency (EPA) addresses environmental contamination primarily through the Superfund and Brownfields Programs.<sup>2</sup> Although EPA's Superfund and Brownfields Programs are related, the programs are different in their objectives and the sites they address. The Superfund Program and its federal funding generally cover only the sites with the highest levels of contamination or those that present immediate risks. In contrast, EPA's Brownfields Program assists communities with the cleanup of abandoned, idled, or underutilized commercial and industrial properties. EPA estimates that there are more than 450,000 brownfields sites throughout the country.<sup>3</sup> As the brownfields definition indicates, whether contamination is present at all of these sites is uncertain. The environmental contamination at a brownfield site, *if it exists at all*, is not as serious or threatening as the contamination at Superfund sites.<sup>4</sup> Often, the mere perception of environmental contamination may hinder site reuse, because interested parties may be concerned they would face cleanup responsibilities. Thus, a primary objective of the Brownfields Program is site assessment.

This report describes the scope and purpose of EPA's Brownfields Program, reviews appropriation levels for the program, and highlights considerations for policymakers.

## EPA's Brownfields Program<sup>5</sup>

**Program History and Authority.** The Superfund and EPA Brownfields Programs are authorized by the same statute, but the programs were developed at different times and for different purposes. With the enactment of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, 42 U.S.C. §§9601-9675), Congress established the Superfund Program. This is the federal government's principal program for cleaning up the nation's contaminated waste sites and protecting public health and the environment from releases of hazardous substances.

Pursuant to the general response authorities of CERCLA, EPA developed the Brownfields Program in 1993. Initially, the program provided "seed money" in the form of grants and loans to communities to stimulate redevelopment and reuse of brownfield

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<sup>2</sup> Other EPA programs, including the Resource Conservation and Recovery Act (RCRA) Corrective Action Program, address contamination as well.

<sup>3</sup> See EPA's Brownfields Program website at [<http://www.epa.gov/swerosps/bf/about.htm>]. As the definition of "brownfield" is relatively broad, this estimate might be seen as more of a rough approximation.

<sup>4</sup> An additional difference between the programs regards their treatment of petroleum contamination. The Superfund Program does not address petroleum contamination, whereas a brownfield can include sites contaminated by petroleum. Petroleum is specifically excluded from the definition of hazardous substance under CERCLA (Section 101(14)); other federal statutes provide authorities for responding to petroleum releases.

<sup>5</sup> By EPA's count, there are nearly two dozen federal agencies that have programs developed specifically for brownfields and other programs with financing or technical assistance suitable and applicable to a brownfield situation. Perhaps the most prominent non-EPA brownfields activity is within the Department of Housing and Urban Development (HUD). For a description of these different programs and their funding, see EPA, *2005 Brownfields Federal Program Guide* (2005), at [[http://www.epa.gov/brownfields/partners/bf\\_fed\\_pr\\_gd.htm](http://www.epa.gov/brownfields/partners/bf_fed_pr_gd.htm)].

properties.<sup>6</sup> Funding originally came from the Superfund Program appropriations. Between FY1998 and FY2001, the program received approximately \$90 million each year, accounting for about 5% of annual Superfund appropriations.

In 2002, Congress provided specific statutory authority for EPA to address brownfields with the enactment of the Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118). Among other things,<sup>7</sup> the statute (hereinafter the “Brownfields Act”) authorized a grant program, similar to the one EPA had established administratively under general CERCLA authority in the mid 1990s. The stated purpose of the 2002 act was “to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purpose.”

Section 201 of the Brownfields Act authorized \$200 million annually for a grant program to support site assessment and cleanup activities at brownfield properties. Section 231 of the act authorized an additional grant program in the amount of \$50 million annually to assist state and tribal cleanup programs. The *funding authority* for both grant programs expired at the end of FY2006; program authority is permanent unless repealed by subsequent legislation. Regardless of expired authorization, Congress has continued to provide a consistent funding level for both grant programs (provided in **Table 1**, below).

**EPA Brownfields Grant Program.** The grants awarded from EPA’s Brownfields Program can be divided into two categories: (1) competitive grants awarded to communities, which are often referenced by the CERCLA section — Section 104(k) — that authorizes them;<sup>8</sup> and (2) non-competitive grants — authorized by Section 128, and thus often described as Section 128 grants — awarded to states and Indian tribes to support their response programs.

**Competitive (Section 104(k)) Grants.** Section 104(k) grants comprise the core of EPA’s Brownfields Program, receiving the bulk of the annual appropriation. In general, eligible grant recipients include state, local, and tribal governments, and certain quasi-governmental authorities. In some cases (identified below), other parties may receive grants. However, private persons and corporations are not eligible in any case. 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 brownfields sites. Site assessment is a primary component of the EPA Brownfields Program. The mere perception of contamination at brownfield sites often hinders redevelopment. Assessment grants help

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<sup>6</sup> See EPA’s Brownfields Program website at [<http://www.epa.gov/swerosps/bf/about.htm>].

<sup>7</sup> The 2002 statute also included changes to CERCLA liability, clarifying who is eligible for innocent landowner status as a defense to liability and codifying from EPA guidance a “bona fide prospective purchaser” defense to liability. See CRS Report RL31911, “*Innocent Landowners*” and “*Prospective Purchasers*” Under the Superfund Act, by Robert Meltz.

<sup>8</sup> The 2002 Brownfields Act added Section 104(k) to CERCLA.

address these information gaps and determine whether cleanup may be needed to make a property suitable for its intended use. As required by statute, grants are limited to \$200,000, but the statute allows EPA to waive that limitation and award a grant up to \$350,000.<sup>9</sup> In addition, eligible parties may apply for separate grants to address hazardous substances and petroleum at a brownfield site.<sup>10</sup>

- *Cleanup grants* provide funding for remediation activities that may be needed to address contamination at a brownfields site. As directed by the statute, grants may be awarded for up to \$200,000. Grant recipients must provide a 20% cost share, which may include money, labor, material, or services. In addition to the eligible entities listed above, nonprofit organizations are eligible for cleanup grants.
- *Job training grants* are available to certain educational and other nonprofit organizations, as well as the eligible entities above.<sup>11</sup> EPA awards grants of up to \$200,000 (a threshold not based on statutory limitations)<sup>12</sup> to create local environmental job training programs.<sup>13</sup> EPA maintains that the job training grants, which were first awarded under general CERCLA authority in 1997, complement the funding for brownfields sites by encouraging local citizens to take advantage of the growing market for environmental cleanup activities.
- *Revolving Loan Fund (RLF) grants* are awarded to state, local, or tribal governments to capitalize RLFs, which can provide no-interest or low-interest loans for brownfield cleanups. The statute limits these grants to \$1 million. RLF grant recipients may also award cleanup subgrants, not requiring repayment, of up to \$200,000 per site. Like the general cleanup grants, RLF cleanup subgrants may be awarded to nonprofit groups.

**Non-Competitive (Section 128) Grants.** The Brownfields Act added Section 128 to CERCLA. Subsection 128(a) created a non-competitive grant program to support state and tribal response programs. The funding authority for this program — authorized

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<sup>9</sup> CERCLA Section 104(k)(4).

<sup>10</sup> For more 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.

<sup>11</sup> The 2002 Brownfields Act (adding CERCLA Section 104(k)(6)) authorized EPA to provide funding for “training, research, and technical assistance” to facilitate brownfield assessments and remediation.

<sup>12</sup> The statute does not prescribe grants as the means of funding, nor does it set funding limits for individual projects. The statute does stipulate that EPA cannot expend more than 15% of the annual Brownfields Program appropriation for this type of funding.

<sup>13</sup> EPA, *FY09 Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants* (2008), available at [<http://www.epa.gov/swerrims/docs/grants/epa-oswer-obcr-07-10.pdf>].

at \$50 million annually from FY2002 through FY2006 — is separate from the competitive grant program under Section 104(k).

A 2004 Government Accountability Office (GAO) report found that all 50 states have some type of response (or cleanup program), although these programs vary considerably in scope and breadth.<sup>14</sup> In general, these state programs address contaminated properties that are not covered by the federal Superfund Program. EPA states that Section 128 funding is not intended to supplant, but instead “supplement,” state or tribal funding for their response programs. However, the 2004 GAO report noted that in some states, their programs would not exist without EPA’s funding.<sup>15</sup>

Section 128 identifies one general and two specific uses of funding. Regarding the former, the statute prescribes that funding can be used to “establish or enhance” a state or tribal response program. EPA interprets<sup>16</sup> this phrase to include:

- developing legislation, regulations, procedures, or guidance;
- creating and maintaining relevant public records; and
- conducting limited site-specific activities, such as assessment or cleanup.<sup>17</sup>

The statute also identifies two specific uses of the Section 128 funding:

- financing a revolving loan fund for brownfield cleanups; and
- purchasing environmental insurance or developing an insurance mechanism to provide financing for cleanup actions under the program.

## Appropriations for EPA’s Brownfields Program

Congress funds EPA’s Brownfields Program with appropriations from two large accounts: the State and Tribal Assistance Grants (STAG) Account and EPA’s Environmental Programs and Management Account. From within these large accounts, the Brownfields Program is funded by three line-items (**Table 1**). The STAG account funds two line-items: Section 104(k) and Section 128 grant programs. The management account includes a line-item for the administrative expenses of the Brownfields Program. Since the enactment of the 2002 Brownfields Act, appropriations for the aggregate of these three brownfields line-items have been relatively consistent, with total funding ranging from \$163 million to nearly \$170 million (**Table 1**).

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<sup>14</sup> GAO, *Brownfield Redevelopment: Stakeholders Report That EPA’s Program Helps to Redevelop Sites, but Additional Measures Could Complement Agency Efforts* (2004), GAO-05-94 (hereinafter “2004 GAO report”).

<sup>15</sup> *Ibid.*

<sup>16</sup> EPA, *Funding Guidance for State and Tribal Response Programs Fiscal Year 2008* (2007).

<sup>17</sup> EPA stated that such activities must be an “incidental part” of a state’s use of Section 128 funds. *Ibid.*

**Table 1. Enacted Appropriations for EPA’s Brownfields Program by Program Activity (FY2003-FY2008)**

(\$ in millions)

Fiscal Year	State and Tribal Assistance Grants Account		Environmental Programs and Management Account	Total
	Section 104(k) Competitive Grants	Section 128 Non-Competitive Grants	Administrative Expenses	
2003	est. \$89.9	est. \$49.7	est. \$27.0	est. \$166.6
2004	est. \$92.9	est. \$49.7	est. \$27.3	est. \$169.9
2005	\$89.3	\$49.6	\$24.3	\$163.2
2006	\$88.7	\$49.3	\$24.5	\$162.5
2007	\$88.7	\$49.3	\$25.0	\$163.0
2008	\$93.5	\$48.7	\$23.7	\$165.9

**Sources:** Prepared by CRS using information from the following sources: FY2003 and FY2004 enacted amounts are estimates calculated by CRS, based on the line item amounts in the conference reports on the appropriations bills for those fiscal years and adjusted by CRS to factor in applicable rescissions. FY2005 and FY2006 enacted amounts are prior year amounts specified in House or Senate Appropriations Committee reports on subsequent year appropriations bills. FY2007 and FY2008 enacted amounts are as reported to CRS by the House Appropriations Committee. All enacted amounts reflect rescissions.

## Considerations for Policymakers

There appears to be broad consensus that a federal role in the cleanup and redevelopment of brownfields is desirable. However, issues regarding the degree of financial assistance and overall program effectiveness have been raised. Since the enactment of the Brownfields Act in 2002, Congress has funded the program below its initial authorized level. Total appropriations (in **Table 1**) represent approximately 66% of the initial funding authorization — \$250 million each year, between FY2002 - FY2006. Some states and communities would argue that the demand for funding far exceeds what has been made available by Congress.<sup>18</sup> On the other hand, the program has arguably struggled to demonstrate its effectiveness. What are federal funding levels achieving: environmental risk reduction, economic redevelopment, or some combination thereof? The 2004 GAO report found that “the agency has not yet developed measures to determine the extent to which the Brownfields Program helps reduce environmental risks.” This concern raises the question as to whether the program should be evaluated by its ability to reduce threats to human health or whether the program should be assessed with different metrics, such as economic redevelopment. If this is the case, some may question whether EPA is the most appropriate agency to administer this program.

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<sup>18</sup> EPA points out that it received over 800 proposals for grants in FY2008, awarding 314 grants in that fiscal year. (EPA, *Brownfield Grant Guidelines: Frequently Asked Questions* (2008), at [http://www.epa.gov/brownfields/applicat.htm].) However, it is not clear what percentage of these proposals met the eligibility requirements for funding. The dollar value of the 800 proposals is also unknown.