

EPA's Brownfields Program and the BUILD Act



Brownfields and BUILD ACT



- Historic overview of Brownfields Law
- BUILD Act Implementation – Immediate (FY18 grantees)
- BUILD Act Implementation – Future (FY19 grantees and beyond)
- Next Steps

Definition: “Brownfield” (federal)

A Brownfields site is 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.

Brownfields... how it started

- 1993: Mayors meet w/EPA Administrator re: impacts of brownfields
- Superfund’s strict and several liability made it difficult for municipalities to manage contaminated properties left behind after pesticide, sugar, industrial and manufacturing operations closed



Brownfields link to Superfund?

- **Superfund History** – Congress established CERCLA in 1980 in response to growing concern over health and environmental issues posed by hazardous waste sites
- Superfund's liability procedure is to ensure Potentially Responsible Parties (PRPs) and property owners are held accountable for their actions and properties

How did Superfund Liability help create the Brownfields Challenge?

- Potential purchasers or developers did not want to be named as PRPs
- Scared lenders from investing on these projects (e.g, bankers, developers)
- Timeframe associated with resolving liability issues

Federal Brownfields Law

H.R. 2869 - "Small Business Liability Relief and Brownfields Revitalization Act"

– Signed January 11, 2002

- Basically relieves an owner from CERCLA liability if the property was purchased **after Jan. 2002** AND
- The owner conducted an "All Appropriate Inquiry"
 - requirements for assessing the environmental conditions prior to acquisition

Biggest Impacts of Law

- Bona Fide Prospective Purchaser provision assists with liability fear
- Developed guidance on what constitutes due diligence - All Appropriate Inquiries made final November 1, 2006
- Developed a grants program and set aside annual funding (up to \$200M a year)
- Funds could be spent on sites with **petroleum** contamination

EPA's Brownfields Program

- NOT an Enforcement Program
- Grants and technical assistance
- Liability protection to increase certainty and encourage private investment



Deconstruction,
Demolition, and
Removal

Cleanup,
Remediation, and
Waste Management

Design and
Construction for
Reuse

Sustainable Use
and Long Term
Stewardship

2002 Brownfields Amendments



Subtitle A – Brownfields Revitalization Funding

Subtitle B – Brownfields Liability Clarifications

Subtitle C – State Response Programs

Recently Amended by the Brownfields Utilization, Investment, and Local Development Act (**BUILD Act**) - enacted on March 23, 2018

BUILD Act Amendments – Ownership and Liability



- Removed “involuntarily” providing certainty to governmental entities that took control of a site by virtue of its function as sovereign
- Provide relief for Alaska Native Villages and Native Corps
- Added exemption of certain publicly owned sites for grant eligibility
 - Receive assistance for sites acquired prior to 1/11/02 so long as did not contribute/cause contamination
- Revised Bona Fide Prospective Purchaser definition to include tenancy or leasehold interests

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BUILD Act Amendments – Competitive Grant Programs



- Expanded Eligibility for Nonprofit Organizations and LLCs
 - 501(c)(3) nonprofits to receive assessment and RLF grants
- Increased Funding for Cleanup Grants (up to \$500k per site)
- Established a Multi-Purpose Grant (up to \$1M) for assessment & cleanup
- Added two new Ranking Criteria for grant programs
- Removed Administrative Cost Prohibition (allowing for up to 5% on administrative costs)
- Re-authorized level funding at \$200 M each FY 2019 - 2023

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BUILD Act Amendments – State & Tribal Response Programs



- Authorized new grant program available to 128(a) recipients to provide training, technical assistance or research for small and disadvantaged communities (15,000 pop or less)
 - Use 104(k) funding, max of \$20k per community, no more than \$1.5M total can be awarded
 - Will count towards overall 15% Technical Assistance cap on 104(k) appropriations
- Re-authorized funding at \$50 M each FY 2019 - 2023

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BUILD Act Implementation: immediate provisions



Following provisions will be implemented immediately and are available to FY18 grant recipients and future grant recipients.

- recipients may use up to 5% of award on administrative costs
- petroleum sites no longer will be evaluated as “relatively low risk as compared to other petroleum sites in the State”

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BUILD Act Implementation: future provisions



FY19 grant guidelines (Fall 2018):

- New eligibility: 501(c)(3) entities are eligible for all grant types
- Cleanup Grants – up to \$500k; max of one grant per entity
- New statutory ranking criteria - extent the grant would:
 - address a site adjacent to body of water or federally-designated flood plain
 - facilitate location of a facility generating renewable electricity from wind/solar/geothermal, or any energy efficiency improvement project at a brownfield site

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BUILD Act Implementation: future provisions cont'd



Multi-Purpose Grant – (Policy decisions under consideration)

- Carry out inventory, characterization, assessment, planning and remediation activities for 1 or more sites
 - Grant max up to \$1M
 - 5-year period of performance
 - no more than 15% of the total appropriation for this grant
 - Developed an overall plan for revitalization
 - Demonstrate capacity to conduct range of eligible activities
 - Must meet needs of the 1 or more sites in the proposed area
- Entity **must own the site** for cleanup

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BUILD Act Implementation Timeline



- **August 2018:** Policy decisions on cleanup grant funding amounts, small community technical assistance grants and the multi-purpose grant option are made
- **Fall 2018:** Issue FY19 assessment, cleanup and 128(a) State and Tribal Program allocation guidance
- **Spring 2019:** EPA announces new FY19 grant recipients

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Contact Information

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Solicited Stakeholder Input on EPA's BUILD Act Implementation



- **Cleanup Grant Amount Policy**
 - How would your community meet the 20% cost share?
 - How long does the average cleanup take?
 - What are the barriers your community experiences to getting a site ready for reuse?
- **Multipurpose Grant**
 - Within a target area, which resources does your community need the most – *inventory, planning, assessment or cleanup*?
 - Provide brief example of a target area in your community that would benefit from a multipurpose grant
 - What complications and barriers could affect your community's ability to complete the grant accomplishments within a 5-year grant period?

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Solicited Stakeholder Input on EPA's BUILD Act Implementation



128(a) Small Grants

States and Tribes may provide a variety of activities to small and disadvantaged communities

- what other types of activities might be proposed under this grant?
- Evaluation criteria would likely include:
 - community description, demonstration of community support, project purpose, expected outcomes, leveraged resources & timeline
 - What other types of evaluation criteria are useful to select proposals?

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	<p>Bigger cleanup grants Now up to \$500,000.</p>		<p>Publicly owned sites acquired prior to Jan 11, 2002 can apply as long as the entity is not responsible for the contamination.</p>
	<p>Non-profits can now apply for assessment and RLF grants, as well as LLCs and community development entities that are non-profit.</p>		<p>New ranking criteria focusing on renewable energy or energy efficiency projects and waterfront developments.</p>
	<p>Administrative costs can be funded by up to 5% of the grant award.</p>		<p>More certainty of liability protection for local or state governments that take control of contaminated sites. No longer has to be "involuntary" acquisition.</p>
	<p>Multi-purpose grants (assessment and cleanup combination) up to \$1M can be offered.</p>		<p>For petroleum Brownfield sites, removed the language and requirement that they be "of relatively low risk" in order to be eligible for funding.</p>
	<p>Authorized new grant program available to states to provide training, technical assistance or research for small communities (population $\leq 15,000$). Maximum of \$20,000 per community.</p>		