

**PROBLEMS WITH EPA'S BROWNFIELDS CLEANUP
REVOLVING LOAN FUND PROGRAM**

HEARING
BEFORE THE
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTH CONGRESS
FIRST SESSION

NOVEMBER 4, 1999

Serial No. 106-86

Printed for the use of the Committee on Commerce



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 2000

61-041CC

COMMITTEE ON COMMERCE

TOM BLILEY, Virginia, *Chairman*

W.J. "BILLY" TAUZIN, Louisiana	JOHN D. DINGELL, Michigan
MICHAEL G. OXLEY, Ohio	HENRY A. WAXMAN, California
MICHAEL BILIRAKIS, Florida	EDWARD J. MARKEY, Massachusetts
JOE BARTON, Texas	RALPH M. HALL, Texas
FRED UPTON, Michigan	RICK BOUCHER, Virginia
CLIFF STEARNS, Florida	EDOLPHUS TOWNS, New York
PAUL E. GILLMOR, Ohio	FRANK PALLONE, Jr., New Jersey
<i>Vice Chairman</i>	SHERROD BROWN, Ohio
JAMES C. GREENWOOD, Pennsylvania	BART GORDON, Tennessee
CHRISTOPHER COX, California	PETER DEUTSCH, Florida
NATHAN DEAL, Georgia	BOBBY L. RUSH, Illinois
STEVE LARGENT, Oklahoma	ANNA G. ESHOO, California
RICHARD BURR, North Carolina	RON KLINK, Pennsylvania
BRIAN P. BILBRAY, California	BART STUPAK, Michigan
ED WHITFIELD, Kentucky	ELIOT L. ENGEL, New York
GREG GANSKE, Iowa	THOMAS C. SAWYER, Ohio
CHARLIE NORWOOD, Georgia	ALBERT R. WYNN, Maryland
TOM A. COBURN, Oklahoma	GENE GREEN, Texas
RICK LAZIO, New York	KAREN MCCARTHY, Missouri
BARBARA CUBIN, Wyoming	TED STRICKLAND, Ohio
JAMES E. ROGAN, California	DIANA DEGETTE, Colorado
JOHN SHIMKUS, Illinois	THOMAS M. BARRETT, Wisconsin
HEATHER WILSON, New Mexico	BILL LUTHER, Minnesota
JOHN B. SHADEGG, Arizona	LOIS CAPPS, California
CHARLES W. "CHIP" PICKERING, Mississippi	
VITO FOSSELLA, New York	
ROY BLUNT, Missouri	
ED BRYANT, Tennessee	
ROBERT L. EHRLICH, Jr., Maryland	

JAMES E. DERDERIAN, *Chief of Staff*

JAMES D. BARNETTE, *General Counsel*

REID P.F. STUNTZ, *Minority Staff Director and Chief Counsel*

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

FRED UPTON, Michigan, *Chairman*

JOE BARTON, Texas	RON KLINK, Pennsylvania
CHRISTOPHER COX, California	HENRY A. WAXMAN, California
RICHARD BURR, North Carolina	BART STUPAK, Michigan
<i>Vice Chairman</i>	GENE GREEN, Texas
BRIAN P. BILBRAY, California	KAREN MCCARTHY, Missouri
ED WHITFIELD, Kentucky	TED STRICKLAND, Ohio
GREG GANSKE, Iowa	DIANA DEGETTE, Colorado
ROY BLUNT, Missouri	JOHN D. DINGELL, Michigan,
ED BRYANT, Tennessee	(Ex Officio)
TOM BLILEY, Virginia,	
(Ex Officio)	

(II)

CONTENTS

	Page
Testimony of:	
Ahern, Thomas P., Senior Project Manager for Brownfields and Industrial Development, Boston Redevelopment Authority	98
Fields, Hon. Timothy, Jr., Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency; accompanied by Linda L. Garczynski, Director, Outreach and Special Projects Staff	6
Foss, Darsi, Wisconsin Department of Natural Resources	111
Malloy, Hon. Dannel P., Mayor, City of Stamford	104
Material submitted for the record by:	
Fields, Hon. Timothy, Jr., Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, undated letter to Hon. Fred Upton, enclosing response for the record	127

PROBLEMS WITH EPA'S BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM

THURSDAY, NOVEMBER 4, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2123, Rayburn House Office Building, Hon. Fred Upton (chairman) presiding.

Members present: Representatives Upton, Burr, Blunt, Bryant, Bliley (ex officio), McCarthy, and DeGette.

Staff present: Mark Washko, majority counsel; Eric Link, majority counsel; Amy Davidge, legislative clerk; and Edith Holleman, minority counsel.

Mr. UPTON. Good morning, everybody. Thank you for coming.

Today, the subcommittee will examine the EPA's Brownfields Cleanup Revolving Loan Fund Pilot Program. EPA created this program in 1997, selecting 21 local governments and three States to receive grants totaling more than \$8 million for the purpose of setting up revolving loan funds that would help finance brownfield cleanups.

Despite the fact that not a single one of these original pilots has been able to successfully make a loan under this program, EPA expanded the program fourfold in 1999—granting more than \$30 million to an additional 45 pilots. To date, only one loan, for \$250,000, has been made to facilitate cleanup under this program, and that loan was made just last month by a 1999 pilot city, Stamford, Connecticut, whose Mayor will testify today.

In simple terms, this program, which now accounts for more than a third of all EPA brownfields spending, is not achieving the desired results as quickly as anyone, including EPA, has imagined it would. While it is too soon to judge the performance of the 1999 pilots, it is certainly not too soon to begin an examination of the problems that so obviously are plaguing the original 24 pilots, so that we can make sure that the 45 new pilots have a greater chance of success. This hearing is all the more important in light of EPA's plans to double the number of pilots again next year, with an additional \$35 million in grants.

Today's hearing hopefully will shed some light on why this program so far has not had any measurable effect on brownfields cleanup and redevelopment, and how the program can be improved to speed progress.

Clearly, EPA did not do an adequate job of ensuring that its initial pilots had both the capability and commitment to run such a program, something that EPA now admits. Further, and as now EPA concedes, the Agency was more interested in getting the original grants out the door than making sure that it had a sound program in place to begin with. The result of the Agency's failures in these areas was that, and I quote from EPA's own testimony, many communities were uncertain as to the best way to proceed, end quote. Based on the record so far and what we will hear today, that could certainly be viewed as an understatement.

This program also clearly suffers from the fact that it is tied procedurally, substantively, and financially, to the Superfund program. I am pleased to note that this committee is moving to address the statutory concerns in its recently passed Superfund reform legislation, which de-links brownfields from the Superfund trust fund and its many onerous and unnecessary restrictions and requirements. But the administration opposes the bill; thus, we cannot count on these changes to improve the program in the short term.

That is why this is an oversight hearing, to examine how this program operates under current law and ways that it can be improved within the existing framework. Let's all remember that EPA created the program on its own, without statutory authorization or any mandate from the Congress. EPA always has had the power to modify its Superfund regulations for brownfields programs such as this one, if it had chosen to do so. As EPA staff now admit, EPA must take its own steps to streamline the rules and regulations it has chosen to impose on these grantees to ensure that cleanups are not delayed by unnecessary requirements. It is troubling that EPA did not do so prior to showering grantees with tens of millions of dollars, virtually all of which remains idle due, in part, to this failure.

Let me just say that I think that all of the members here want to improve the program so that these moneys result in real achievements for the American people. I look forward to the testimony today, and I yield to the chairman of the full committee, Mr. Bliley.

[The prepared statement of Hon. Fred Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON, CHAIRMAN, SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

Today the subcommittee will examine the Environmental Protection Agency's Brownfields Cleanup Revolving Loan Fund Pilot Program. EPA created this program in 1997 in order to facilitate the cleanup of some of the estimated 450,000 brownfield sites across the country. The Agency selected 21 cities or counties and three States to receive grants totaling more than \$8 million for the purpose of setting up revolving loan funds that would help finance cleanups and lead to the redevelopment of brownfields.

Despite the fact that not a single one of these original pilots has been able to successfully make a loan under this program, EPA expanded the program four-fold in 1999—granting more than \$30 million to an additional 45 pilots. To date, only one loan, for \$250,000, has been made to facilitate cleanup under this program, and that loan was made just last month by a 1999 pilot city, Stamford, whose Mayor will testify today.

In simple terms, this program—which now accounts for more than a third of all EPA brownfields spending—is not achieving the desired results as quickly as anyone, including EPA, had imagined it would. While it is too soon to judge the performance of the 1999 pilots, most of whom have just received the EPA grant money,

it certainly is not too soon to begin an examination of the problems that so obviously are plaguing the original 24 pilots, so that we can make sure that the 45 new pilots have a greater chance of success. This hearing is all the more important in light of EPA's plans to double the number of pilots again next year, with an additional \$35 million in grants.

Today's hearing hopefully will shed some light on why this program so far has not had any measurable effect on brownfields cleanup and redevelopment, and how the program can be improved to speed progress in these areas.

Based on the Committee's review of this matter so far, there appear to be several key reasons that explain why the 1997 pilots have not made any loans to date. The first reason is that EPA did not ensure that the pilots it selected had the necessary legal, technical, and administrative capability to establish and administer a brownfields cleanup revolving loan program. In other words, EPA did not rigorously apply its own criteria and standards—something EPA has admitted in meetings with Committee staff. For example, a common source of trouble among pilots has been acquiring the necessary legal authority from either State or other municipal entities to run such a program, while another has been identifying and funding a manager to oversee the loan fund. But both of these are threshold criteria under EPA's own selection guidelines, which means that if they were not satisfied, no grant should have been awarded in the first place.

Second, and as EPA apparently concedes in its own testimony today, the Agency was more interested in getting the original grants out the door than making sure it had a sound program in place to begin with. Thus, EPA admits that the administrative manual for this program—which details the program requirements and other important specifics about loans and cleanups—was not finalized until eight months AFTER the initial pilots were awarded. And it was not until October 1998—a full year after EPA awarded the grants—that EPA provided the pilots with model terms and conditions regarding further specific requirements of the program. The result of the Agency's failures in these areas was that, and I quote from EPA's own testimony, "many communities were uncertain as to the best way to proceed." Based on the record so far and what we'll hear today, that certainly is an understatement.

Indeed, several 1997 pilots have told us that EPA had to encourage them to apply because the pilots themselves did not understand the program requirements or thought that they could not properly run such a program. EPA simply told them to apply, and that all the specifics would be worked out later. Notably, the EPA Inspector General issued a report in March 1998 that made a similar finding, but in a letter to Chairman Bliley earlier this year, EPA denied having to encourage any pilot to apply for the grant.

Other 1997 pilots have told us that the program is simply not a priority for them, that they have other funding sources available for brownfields cleanup from both the State and Federal levels and are utilizing those programs. In such cases, I see little reason for EPA to permit the continued tie-up of the Agency's scarce brownfields funds, and the Agency should take action to de-obligate these monies.

It's been more than two years since these initial pilots were awarded, and while some have made substantial progress toward making their first loan, many others still are struggling just to get off the ground. EPA promises further workshops and conferences to assist these pilots better understand the program requirements and what needs to be done. But it seems to me that a well-thought-out program, from the beginning, would have provided these communities with sufficient information up front, and would have screened out those without the capability or commitment to run such a program.

Finally, the program clearly suffers from the fact that it is tied, procedurally, substantively, and financially, to the Superfund program. Most of the pilots—including Boston, who is here today—have blamed this fact for the delays in establishing an approved program, and finding appropriate sites and willing borrowers. While some of the substantive restrictions imposed on these grants—such as the bar on using Superfund money for the cleanup of petroleum-contaminated sites, for example—originate in statute, many of the onerous administrative and procedural requirements imposed on grantees and borrowers under this program are the result of EPA's administrative decision to apply its comprehensive National Contingency Plan regulatory regime virtually lock, stock and barrel to this very different program area.

I am pleased to note that Congress, and this Committee in particular, is moving to address the statutory restrictions that impede the redevelopment of brownfields. In particular, the bill recently passed by the full Committee—H.R. 2580—would delink brownfields from Superfund funding, and its accompanying restrictions and requirements, thereby eliminating the requirement that parties comply with the National Contingency Plan to qualify for a grant or loan. But the Administration op-

poses this legislation, and we thus cannot count on these legislative changes to improve the program in the short-term.

That is why this is an oversight hearing—to examine how this program operates under current law, and ways it can be improved within the existing statutory and regulatory framework. We should all remember that EPA created this program, on its own, without statutory authorization and without any mandate from Congress. EPA certainly has always had the power to modify its Superfund regulations for brownfields programs such as this one, if it had chosen to do so. As EPA staff recently acknowledged, the Agency must take its own steps to streamline the rules and regulations it has chosen to impose on grantees under this program, in order to ensure that cleanups do not continue to be delayed by inapplicable and unnecessary requirements. It is troubling that EPA did not do so prior to showering grantees with tens of millions of dollars, virtually of which remains idle due in part to this failure.

Today, the Subcommittee will hear from EPA and representatives of two pilot cities—Boston, which received grants in both 1997 and 1999, and Stamford, which received only a 1999 grant. We also will hear from one State's brownfields manager, a woman with experience in both State and Federal brownfields programs. I look forward to their testimony.

Unfortunately, the Subcommittee will not hear from any other 1997 pilot since several of them refused our invitations—particularly those that have done virtually nothing since being selected as a pilot more than two years ago. I must say that, while I can understand their reluctance to come before this Subcommittee and be held accountable for their lack of progress, I find it astonishing that recipients of taxpayer monies would refuse to appear before a Congressional committee conducting oversight of their grants.

Finally, let me just say that I think all of the Members, on both sides of the aisle, want to improve this program so that these tens of millions of dollars result in real achievements for the American people.

Chairman BLILEY. Thank you, Mr. Chairman.

Earlier this year, I released a report from the General Accounting Office on this administration's overall brownfields effort. This report found that, while the administration was good at handing out hundreds of millions of dollars for various programs designed to spur the cleanup and reuse of brownfields, the government was not good at tracking whether this money was being put to productive use. Even by the EPA's own numbers, the rate of progress has been painfully slow, and the Agency recently was forced to admit that even those meager numbers were probably inflated.

One of the programs surveyed in the GAO report was the program we are here to discuss today, the Brownfields Cleanup Revolving Loan Fund. This program, which began in 1997, is one of roughly 10 brownfields-related programs that EPA has created on its own initiative over the past several years. It is now the largest single brownfields program run by the Agency, and the largest one that provides funding for actual cleanup of contaminated brownfields sites. Unfortunately, it appears that this program is suffering from the same flaws that continue to impact the administration's overall brownfields effort.

The goal of this program is simple and worthy of praise. The Agency provides funds to local governments, which in turn use that money to make loans to private or public entities interested in cleaning up brownfields in their communities.

The problem with this program, however, is that virtually none of the roughly \$40 million obligated by EPA so far has made its way to the people in these communities who are actually working to clean up and redevelop these sites.

There will always be some startup problems in new programs, and many of the 1999 pilots just received funding several months

ago. But none of that explains why not a single 1997 pilot has been able to successfully make a loan in more than 2½ years, and I am concerned that EPA expanded this program so dramatically and so quickly, before any of its original pilots had successfully made it off the ground.

I will be interested to hear why the American people should be more confident that this new, larger round of pilots, and the proposed doubling of pilots for next year, will meet with greater success than their predecessors. I also want to hear how EPA plans to make sure that this growing pot of money is getting into the hands of people who will use it and actually get the job done.

The cleanup and redevelopment of brownfields can provide many economic, social and environmental benefits to communities. However, when the Federal money given to support these efforts sits idle, tied up for years without any productive use, more brownfields sites also remain idle, and other opportunities for progress are lost.

I want to thank you, Mr. Chairman, for holding this hearing so that we can explore the reasons for the lack of progress in this important program. Hopefully, we can make the program work better for the thousands of American communities marred by brownfields sites.

I want to thank all of the witnesses for their appearance here today, and I look forward to their testimony.

Mr. UPTON. Thank you, Mr. Chairman.

Mr. Bryant.

Mr. BRYANT. Thank you, Mr. Chairman. I, too, would commend you for holding this hearing.

I first want to associate myself with the remarks, both your remarks as well as our full committee chairman's remarks, and ask unanimous consent that any statement that I might want to submit be allowed, any written statement.

Mr. UPTON. Without objection.

I would note that all members will have the right to submit their full statement as part of the record.

Mr. BRYANT. Let me just quickly wind up, because I think we are all very interested in hearing from these witnesses and having some of these questions that have been raised in the opening statements answered. I, too, am very interested in hearing the answers to these questions. But I think we have, again from the perspective of the EPA, the ability to respond to these questions and, also, those witnesses on the second panel who are out in the field, so to speak. I really look forward to hearing their testimony.

I yield back the balance of my time.

Mr. UPTON. Thank you, Mr. Bryant.

Mr. Fields, welcome again to the subcommittee, as they say in Ann Arbor, the Big House. As you know, as you have testified before, we have a long tradition of taking testimony under oath. Do you have any problem with that?

Mr. FIELDS. No, sir.

Mr. UPTON. Also, under both committee rules and House rules, you are entitled to counsel if you so desire. Do you wish to have counsel?

Mr. FIELDS. No, sir.

[Witness sworn.]

Mr. UPTON. You are now under oath; and, as you know the rules, your entire testimony will be made a part of the record, and if you would so kindly limit your remarks to about 5 minutes with this little light that is down there and summarize it, that would be terrific.

The time is now yours. Thank you.

TESTIMONY OF HON. TIMOTHY FIELDS, JR., ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY; ACCOMPANIED BY LINDA L. GARCZYNSKI, DIRECTOR, OUT-REACH AND SPECIAL PROJECTS STAFF

Mr. FIELDS. Thank you, Mr. Chairman, and members of the subcommittee. I am pleased to present this testimony today about a very important part of EPA's brownfields agenda, the Brownfields Cleanup Revolving Loan Fund Pilot Program.

Virtually every community in the country, no matter what the size, is grappling with the problem of how to clean up brownfields. And, the Clinton administration has stepped forward. The brownfields assessment pilots have been very successful. More than 307 communities have leveraged \$1.6 billion in cleanup and redevelopment dollars, and more than 5,000 jobs. We want to emulate that success in the Brownfields Cleanup Revolving Loan Fund.

The U.S. Conference of Mayors, in a report last year pointed out that the lack of support for cleanup is the No. 1 impediment to redevelopment. It has been estimated that redeveloping brownfields could bring as much as \$1 billion to nearly \$3 billion in tax revenues annually as well as create jobs and preserve green space, forests and farmland. In that vein, just more than 2 years ago, EPA began the Brownfields Cleanup Revolving Loan Fund Program as yet another way to help cities and communities to meet brownfields needs across America. The Revolving Loan Fund program builds upon the success of the assessment pilots by being a second stage brownfields pilot program.

Mr. Chairman, 45 pilots were awarded in 1999, so now we have 68 of these pilot programs in place. The first round delays in issuing loans have been for several reasons: changes in personnel, the newness of the program, the fact that assessments takes 2 or 3 years, and getting personnel in place to implement this program. All new programs need startup time, and the Revolving Loan Fund program is not alone in that regard.

We believe, though, that as people have gained experience through the assessment process, they have learned more about Superfund, and more about our national contingency plan regulations. The market conditions are now ripe. We believe we are now at a point where we can begin to look at getting borrowers, developers, committed Mayors like Mayor Malloy and others together to make deals happen.

EPA believes we have turned a corner with this very important program. We are optimistic that more communities will be making loans in the very near future. In fact, as we will hear from Mayor Malloy this morning, he has been successful in making the first loan. We hope that this experience will be instructive for many

other pilot projects and will serve to demystify the process of making loans under this Revolving Loan Fund.

The Stamford pilot is also instructive because it shows how one pilot alone with one loan is going to leverage more than \$50 million in private sector investment, more than the entire amount of dollars we gave out for revolving loans for fiscal year 1999.

We will be doing more to encourage that type of commitment in other pilots. We have already heard from several of the original pilots, as well as one of the new pilots, that they are discussing and thinking about loans. We believe that there will be an increase in loans given out in this program during fiscal year 2000. To the extent we can, the Agency is making every effort to assist the pilot cities, and to demonstrate flexibility within the constraints of the existing program.

The Clinton administration strongly supports the passage of brownfields legislation. We believe that legislation like H.R. 1750, for example, which we have said we support, and which would help to make this program work in a more flexible and a faster way. In particular, one provision that we have supported in H.R. 1750 would modify the requirements under the National Contingency Plan regulations under which we conduct our Superfund and brownfields programs. It would change the requirements of the National Contingency Plan for brownfields to the extent these requirements are relevant and appropriate to the program. We think this type of provision has considerable merit. This provision would remove yet another barrier to the redevelopment of distressed properties in cities across America.

We at EPA are confident that the Brownfields Cleanup Revolving Loan Fund will be moving forward to make loans for brownfields cleanup, like the loan in Stamford, in many other pilot communities in the very near future. We are encouraged by the focus that Congress has given to this issue and to this program, and we remain committed to working with you to remove impediments, to make this program more efficient faster. We want to get cleanups done and, therefore, redevelopment occurring at many more of these brownfields properties. New brownfields legislation can help, and we want to work with Congress in that regard.

I thank you for your time. I will be happy to answer any questions on the brownfields program you might have.

Mr. UPTON. That was perfect timing. We appreciate—I am sure you rehearsed that all night long.

I will say, too, I very much appreciate you sending up the testimony in advance and complying with the committee rules. A number of witnesses over the years have not done so, and it makes it a lot easier for us to prepare.

[The prepared statement of Hon. Timothy Fields, Jr. follows:]

PREPARED STATEMENT OF HON. TIMOTHY FIELDS, JR., ASSISTANT ADMINISTRATOR,
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY

INTRODUCTION

Good morning, Mr. Chairman, and Members of the Subcommittee. I am pleased to have this opportunity to appear before you today to discuss the Brownfields Economic Redevelopment Initiative and, in particular, the Brownfields Cleanup Revolving Loan Fund Pilot program.

BROWNFIELDS ECONOMIC REDEVELOPMENT INITIATIVE

Today, through the Brownfields Initiative, EPA continues to promote the assessment, cleanup, and redevelopment of abandoned and contaminated properties across the country that were once used for industrial and commercial purposes ("brownfields"). While the full extent of the brownfields problem is unknown, the United States General Accounting Office (GAO-RCED-95-172, June 1995) estimates that approximately 450,000 brownfield sites exist in the United States. Virtually every community in the country, no matter what the size, is grappling with the challenge of problems associated with recycling older, mostly industrial and commercial properties. The presence of these properties fuels urban sprawl, luring investment and job development farther from city centers and inner suburbs.

The Administration believes that environmental protection and economic progress are inextricably linked, and what is good for the environment is also good for the economy. Cleanup of sites is only half of the equation. It is best pursued in tandem with redevelopment, to maximize community benefit both publicly and privately. The Brownfields Initiative exemplifies an effort to bring all parties to the table. The Initiative provides a framework which encourages stakeholders to seek common ground on a range of challenges—environmental, public health, economic, legal and financial, and it is a worthy challenge. The Agency's multifaceted brownfields initiative represents a significant step forward by the Administration and, according to Renew America, represents "a new paradigm in locally-based environmental protection that forges public-private partnerships, promotes innovation, and relies on market incentives and private sector actions."

To stimulate redevelopment and attract private-sector interest in the redevelopment and reuse of brownfields, there continues to be a need for government initiatives like the Brownfields program. According to the U.S. Conference of Mayors (USCM), our cities, towns and urban centers are sitting on hundreds of thousands of acres of brownfields. The Conference of Mayors surveyed 200 cities and determined that "the lack of cleanup funds" for brownfields is "the most frequently identified impediment" to the cleanup of brownfields. The report, *Recycling America's Land, (Volume II, April 1999)* estimates that developing brownfields could bring in almost \$1 billion to nearly \$3 billion in tax revenues annually, create nearly 700,000 new jobs, and take some of the development pressure off of our farms and forest lands.

EPA's brownfields assessment pilots are making a difference in shifting the balance of current incentives away from greenfields and to brownfields investment. Increasingly, private investment opportunities are being attracted to sites assessed by the pilot program. As the Agency has learned, to attract and leverage greater private investment to a broader spectrum of sites so that they, too, can become more marketable, support from the government beyond providing site assessments to fund support for cleanup is needed. In a recent study funded by EPA, the Council for Urban and Economic Development (CUED) reviewed 107 brownfields projects across the country. The projects examined involved both public and private sectors. The report concluded that for every \$1 the federal, state, and local governments put into revitalizing brownfields, \$2.48 in private investment is attracted. Stamford, Connecticut, while not a part of the CUED study, illustrates the report's point. Stamford recently made its first loan in the amount of \$250,000 from the Brownfields Cleanup Revolving Loan Fund to a private developer. This loan will leverage a \$30 million investment.

As part of the Brownfields Initiative, the Brownfields Cleanup Revolving Loan Fund pilot program is one aspect of a nationwide effort to grapple with the challenges associated with cleaning up abandoned or underutilized, and contaminated properties. It is an effort taking place in both rural and urban communities.

Let me briefly describe what we have accomplished in the almost five years since the initial Brownfields Action Agenda was announced on January 25, 1995.

Brownfields Assessment Demonstration Pilots

The Brownfields Assessment Pilots have served as an essential and important tool in a comprehensive strategy to promote the sustainable reuse of brownfields. Pilot activities are directed toward environmental response activities preliminary to cleanup, such as site assessment, identification, characterization, and site response or cleanup planning and design. To date, EPA has selected 307 pilots in states, communities and tribes, funded at up to \$200,000. These two-year pilots are intended to generate further interest in Brownfields redevelopment across the country. Many different communities are participating, ranging from small towns to large cities. In charting their own course toward revitalization, we are seeing many positive results. The assessment pilot effort, combined with our targeted state and EPA property as-

assessment efforts, has resulted in the assessment of 1,174 brownfields properties. Our assessment pilots have reported the related cleanup of 134 properties, and determined that more than 575 properties do not need additional cleanup. This has led to known redevelopment of 51 properties. The assessment pilots have provided information that they have leveraged more than \$1.6 billion in redevelopment funds and have been the catalyst for support for more than 5,000 jobs as a result of the EPA program.

Chosen through a competitive process, these pilots are helping communities articulate a reuse strategy that demonstrates model opportunities to organize public and private sector support, and leverage financing, while actively demonstrating the economic and environmental benefits of reclaiming brownfield sites. The Brownfield pilots enable recipients to take a unified approach to site assessment, environmental cleanup, and redevelopment, an approach that stimulates economic activity and the creation of jobs.

Stakeholders tell the Agency that many Brownfields redevelopment activities could not have occurred in the absence of EPA efforts. For example:

- In Chicopee, Massachusetts, an older manufacturing community, EPA funded an assessment on a 3.75 acre site which had become a haven for criminal activity. Combined with funds from the HUD Community Development Block Grant, the city demolished the old building on the property. A subsidiary of CNBC has begun construction of a state-of-the-art digital broadcasting station that is expected to leverage 100 new jobs.
- In Birmingham, Alabama, efforts are underway to transform a run-down industrial area into a 150-acre industrial park, with 75 acres reserved for heavy industry, a 50-acre distribution center, a business park, and a full-scale retail center. Work on the distribution center is already underway, and by the project's completion, more than 2 million square feet of industrial and commercial facilities could be in place. Planners believe that ultimately the area will see the creation of more than 2,000 jobs.
- In Somerville, Massachusetts, the construction of a \$14 million assisted living and neighborhood health center by the Visiting Nurses Association is being built as a result of the brownfields assessment grant and a combination of other federal funding support.

The Brownfields Assessment Demonstration Pilots have helped to lay a foundation for revitalizing communities. We speak often about involving key stakeholders, but for many communities, the first step is often from within, calling for inter-departmental coordination and collaboration among such entities as the city's redevelopment and environmental, public health, legal, business and finance departments and offices. This infrastructure and institutional modeling is critical to a sustainable community-based brownfields solution.

Brownfields Cleanup Revolving Loan Fund Pilots

As EPA worked to implement a comprehensive brownfields strategy, it became clear that we needed to build upon our experience with the assessment pilots through a "second stage" brownfields pilot award. The Brownfields Cleanup Revolving Loan Fund (BCRLF) pilots reflect this staged approach. To EPA, the previous award of an assessment pilot serves not only as one of EPA's possible pilot eligibility factors, but it also is a useful indicator of both the experience and the commitment a community has made to address its brownfields problems.

Through capitalization grants from EPA, the BCRLF pilots enable communities and coalitions of communities to fund the safe cleanup and sustainable reuse of brownfields through revolving loan funds. EPA's goal for these pilots is to develop revolving loan fund models in communities that can be used to promote coordinated public and private partnerships for the cleanup and reuse of brownfields.

Brownfields are not alike; instead they fall on a continuum. At one end are properties for which the market is strong enough to overcome environmental or other liabilities. Those sites are the proverbial "low hanging fruit," ripe for picking by developers and among the most easily supported by investors and lenders. Those sites that will not draw private redevelopment quite so easily are the very properties that we believe will benefit most from the BCRLF. These marginally viable properties are often characterized by weaker marketability, unknown or potential environmental contamination, and, often by location in distressed neighborhoods where property values are low and other social problems persist. For the transactions involving these properties to succeed, some measure of government intervention usually is required.

In fiscal year 1997, EPA used \$10 million of its brownfields budget for the award of BCRLF pilots at up to \$350,000 each. Twenty-three pilots are now in various stages of development. It is true that none of these original BCRLF pilots has made

a loan to date. I am confident that will soon change. Although EPA awards the BCRLF through cooperative agreements, the day-to-day operations and activities relating to loan applications are the responsibility of the BCRLF recipient. Many of the pilots have been delayed not only because of the newness of the program itself, but also because of such things as personnel turnover. Prior to making a loan, communities must develop the infrastructure necessary to ensure that loans will be in compliance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); the National Contingency Plan (NCP); and cross-cutting Federal authorities. The development of such an infrastructure requires a real commitment from pilot communities, as well as considerable sophistication and understanding. The importance of such a commitment cannot be overlooked in this equation. For some pilots, infrastructure development, requiring the establishment of both site manager and fund manager roles, has proven to be a difficult task. For others, the more difficult task is finding an eligible borrower.

EPA is working to overcome BCRLF pilot program start-up delays. Indeed, the establishment of these initial pilots in October 1997 preceded the publication of the BCRLF Administrative Manual (May 1998) by eight months. The Manual details the appropriate infrastructure to sustain, account, and report on loans and cleanup. It is intended to assist not only the pilots but also EPA regions in developing cooperative agreements and overseeing BCRLF pilots, as well as providing program participants with a description of the program requirements. In addition, the Agency also published in October 1998, model terms and conditions to further aid the understanding of the pilots regarding specific requirements of the BCRLF pilot program. Without the descriptions and explanations these materials could provide to the pilots, many communities were uncertain as to the best way to proceed. To further assist pilots, the Agency has planned a separate BCRLF Pilot-to-Pilot session to precede the Brownfields '99 Conference, December 6-8, in Dallas, Texas. This pilot session will be held on December 6th and is designed to provide opportunities for all of the BCRLF pilots to learn from one another, interact and network, and raise issues for discussion.

Finally, the Agency has been working on providing supplemental support for the BCRLF program in EPA Regions through the establishment of an Interagency Agreement with the U.S. Army Corps of Engineers. Through this agreement, the EPA will provide budget support for use of Corps personnel in each EPA regional office for a twelve-month period.

Developing a new program is not done in an instant. It is an evolutionary process, as we have discovered. Better understanding of the program has emerged from this process. We have educated ourselves as to the needs of our pilots, and the pilots have educated us as well as themselves as to the requirements of the program. We have stretched our capacity to the fullest to assure communication and education continue. As each piece of the puzzle has fallen into place, we find progress being made. A synergy has emerged from this effort that has already been evidenced by the quality, and quantity of applications received for the award of the 1999 BCRLF pilots. Representing more than 65 communities as single pilot communities or as coalitions of states and communities, forty-five (45) new BCRLF pilots were announced just this past May. In ten of the new pilots, states like Massachusetts, Illinois, Arizona, and California will assist cities in carrying out a variety of activities under the BCRLF. We were extremely pleased to see in the applications an increased level of understanding of program parameters and needs, as well as a sophistication in infrastructure planning. In addition, as a result of the dialogue with the first round of pilots, the Agency has determined that recipients of the most recent pilots would benefit from an increase in capitalization grants to \$500,000 per community.

The period following the announcement of this latest round of BCRLF pilots has been a busy one for both EPA regions and the new pilots. Over the last several months, pilots developed formal cooperative agreement application packages. The information in the BCRLF pilot proposals formed the basis for the cooperative agreement application. However, the cooperative agreement application requires, in most cases, more detailed information, including standard budget forms and a formal workplan. The 45 BCRLF pilot cooperative agreement negotiations were just completed on September 30, 1999. Since that time, each pilot is proceeding with the establishment of its BCRLF loan program, and procedures for day-to-day management of loans. The specific responsibilities of the cooperative agreement recipient include both environmental and financial management components of operating a loan fund. Two key roles must be in place prior to loans being made, the BCRLF site manager and the fund manager. In addition, loan documents and properties must be identified and processed.

Since my appearance before the Commerce Subcommittee on Finance and Hazardous Materials in August, I am extremely pleased to be able to report that the first BCRLF loan has been made. The loan was made on the 1st of October in Stamford, Connecticut, and will be used to help clean up the Stamford Harbor waterfront property. The \$250,000 loan was awarded by the City of Stamford to the Southfield Associates, LLC, through its managing member, Clearview Investment Management, Inc. Clearview Investment, which specializes in the management of waterfront redevelopment, will use these funds to restore the harbor area to a major economic and recreational resource. Restoration of the harbor will also provide a much-needed economic boost to Stamford's two lowest-income neighborhoods, Waterside and South End, which are located within a State Enterprise Zone. Waterside's population is 71% minority residents, with 25% of families living below the poverty level, while South End's residents are 80% minority residents, with a 16% poverty rate.

The 15.1 acre project area, which includes both the 2.88 acre Northeast Utilities Site and the 12.31 acre Hoffman Fuel Site, will be developed into a residential shore front community, called Southfield Harbor. The development will include approximately 320 residential units and a marina facility with approximately 68 boat slips. The development will also include an extensive boardwalk system, which will include seating areas, educational signs, and a public fishing pier.

The BCRLF loan to Stamford is expected to leverage \$30 million dollars of private development funds. The loan also is expected to generate between 100 and 200 construction jobs and 12 full-time, permanent administrative jobs.

Mayor Malloy from the City of Stamford is here today to share his perspective on the BCRLF, but let me tell you why I think Stamford was successful in making the first BCRLF loan. The Stamford pilot represents a very personal commitment by the Mayor to revitalize his city. He visited me in Washington several months ago and said at that time that it was his intention to make that first loan. I have no doubt that Stamford benefitted from the program development, education, outreach, and communication EPA has undertaken. The guidance manuals and materials are instructive and the efforts in EPA's regional offices are commendable, but the Mayor's energy and commitment to the program must not be overlooked or underestimated.

Building on the Stamford pilot experience, several of the new pilots have tentatively identified loan recipients, and we therefore anticipate that loans will be forthcoming from these pilots in the near future.

Within the next few weeks, the Agency will be publishing in the Federal Register a notice that applications are being accepted for a third round of BCRLF pilots. Applications will be due in February and grant recipients will be announced next Spring. EPA will again be awarding pilots to both individual entities and to coalitions. Because coalitions of varying numbers and funding needs are anticipated, it is somewhat difficult to predict the number of pilots that will be awarded. Awards will again be up to \$500,000 per eligible entity.

Other Brownfields Initiative Activities

Job Training Pilots—EPA initiated a third brownfields demonstration pilot program in 1998 to help local citizens take advantage of new jobs created by assessment and cleanup of brownfields. The Job Training and Development Demonstration Pilot program provides two-year grants of up to \$200,000 to applicants located within or near one of the existing assessment pilot communities. Colleges, universities, non-profit training centers, and community job training organizations, as well as states, Tribes and communities, were eligible to apply. Today, 21 job training pilots are in place. The first 11 were awarded last year, and the most recent 10 pilot awards were announced in May.

Brownfields Partnerships Build Future Solutions—The Brownfields Initiative is clearly about partnerships—with other Federal, State, and local agencies, and a diverse array of stakeholders. The EPA has undertaken partnership efforts with individual States as well as through broad organizational structures like the National Association of Development Organizations (NADO), the National Governors Association (NGA), the National Association of Local Government Environmental Professionals (NALGEP), the Conference on Urban Economic Development (CUED) and the U.S. Chamber of Commerce.

EPA continues to work closely with States and Indian Tribes as key partners in the cleanup and redevelopment of contaminated properties. The Administration supports the continued growth of the State and Tribal regulated and voluntary programs which have greatly expanded the number of sites cleaned up to protect human health and the environment. To date, 44 States have established voluntary cleanup programs. Recognizing the important role that State environmental agencies have in encouraging economic redevelopment of brownfields, EPA has provided

\$28.6 million in funding to States and Tribes to support the development of these programs since FY 1997. EPA will provide \$10 million, in FY 2000, to encourage the development or enhancement of State programs that encourage private parties to voluntarily undertake early protective cleanups of less seriously contaminated sites, thus accelerating their cleanup and redevelopment. EPA is also pleased with the progress it has made in signing MOAs with States. Twelve States have now signed MOAs with EPA regarding sites to be cleaned up under voluntary cleanup programs. The most recent state to sign an MOA with EPA is Oklahoma in Region 6. One additional MOA is now close to signature.

Brownfields National Partnership—Early in the development of EPA's Brownfields Initiative, the Agency realized that it needed to find ways to further identify, strengthen, and improve commitments to brownfields, while continuing efforts toward a comprehensive, community-based approach to clean up and redevelop contaminated property. We recognized the important contribution of many of our Federal partners to brownfields through their participation in the Brownfields National Partnership. Through the partnership, Federal departments and agencies can offer special technical, financial, and other assistance that can be of great benefit to brownfields communities. More than 20 national partners are committing resources and assistance to brownfields. The Federal Home Loan Bank Board, for example, is exploring ways to bring more private investment to redeveloping brownfields properties and, along with the U.S. Conference of Mayors, has selected 50 cities to participate in a project to research opportunities, impediments, and successes by both cities and lenders to address brownfields.

Showcase Communities—The Brownfields Showcase Communities project is an outgrowth of those early partnership efforts and now forms an important component of the Brownfields Initiative. It represents a multi-faceted partnership among federal agencies to demonstrate the benefits of coordinated and collaborative activity on brownfields in 16 Brownfields Showcase Communities. For example, through the Showcase Community in Glen Cove, New York, a revitalization plan to convert brownfields and Superfund sites into tourist destinations has been completed. State, Federal, and local agencies have played a crucial role in securing \$18 million in grants from various agencies. In addition, a prospective purchaser agreement was signed between EPA and the Glen Cove Industrial Development Corporation for the Li Tungsten and Captain's Cove Superfund sites. Proceeds from selling the property will go toward repaying response costs.

Redevelopment Barriers—Addressing Liability Concerns—The Agency also committed to addressing the fear of liability and other barriers impeding the cleanup and redevelopment of brownfields. Over the past several years, EPA has announced a variety of guidance and initiatives that have had a positive impact among Brownfields stakeholders in terms of removing uncertainties often associated with brownfields properties. The Agency also is pleased to see the inclusion of innocent and contiguous landowner defenses and protection for prospective purchasers as common elements of most brownfields legislative proposals. We believe these liability relief provisions—innocent landowner, contiguous landowner and prospective purchaser—will provide a great deal of certainty to homeowners, buyers, and developers involved in the purchase and sale, and cleanup and redevelopment of brownfields properties.

Lessons Learned

The Brownfields Economic Redevelopment Initiative has achieved much initial success. The continuing value of the Brownfields Initiative is its evolution and promise for the future. To build upon these successful first steps and launch others, we must not lose sight of our overall goal to revitalize communities. With the breadth and variety of activities and stakeholders converging on the brownfields issue, we have tried to establish a framework that articulates a complete and comprehensive brownfields program. Brownfields cleanup under the BCRLF pilot grant program, in particular, is a tool to help leverage opportunity for the revitalization of communities.

EPA recognizes that more must be done to provide flexibility to the brownfields cleanup and redevelopment process. As we hear from many of our pilots, and as I am sure Mayor Malloy would echo, compliance with the National Contingency Plan regulations when using Superfund Trust Fund monies while substantially less complex than those provisions applying to the Superfund remedial program, are nonetheless daunting to many.

Brownfield reforms made under CERCLA should be codified, and should reaffirm use of the Superfund Trust Fund to address the full range of brownfield issues including: technical assistance funding for brownfields identification, assessment and reuse planning, cooperative agreement funding to capitalize revolving loan funds for

brownfields cleanup, support for State development of voluntary cleanup programs, liability protection for bona fide prospective purchasers, innocent landowners of contaminated property and contiguous property owners, support for mechanisms for partnering with Federal, State, local and tribal governments and other non-governmental entities to address brownfields, and support and long-term planning for fostering training and workforce development.

LEGISLATION

The Clinton Administration strongly supports the passage of brownfields legislation and views it as an important step toward restoring hope, opportunities, and jobs to local communities and neighborhoods that are being held back by the presence of abandoned industrial sites. Through three rounds of administrative reforms, the Superfund program has made significant progress in cleaning up hazardous waste sites, protecting public health and the environment, as well as in the assessment and cleanup of brownfields sites.

In the past, the Administration supported brownfields legislation within the framework for comprehensive legislative reforms to the Superfund program. In light of the progress being made, the ever increasing need to meet and assist communities in their revitalization, as well as the apparent bi-partisan, and broad-based public support for brownfields reform, the Administration now supports a targeted legislative approach which addresses brownfields cleanup and redevelopment, and specific liability provisions necessary to support brownfields. In addition, EPA strongly supports legislation that would reinstate the expired Superfund taxes. These funds are needed for the ongoing Superfund cleanup effort and the brownfields program.

Among the legislative approaches introduced in this session, H.R. 1750, the "Community Revitalization and Brownfields Cleanup Act of 1999," was introduced by Representative Towns and is co-sponsored by 170 Members of Congress. As Administrator Browner stated in her letter of May 10, 1999, "this brownfield redevelopment legislation is an important step toward restoring hope, opportunities and jobs to local communities and neighborhoods that are being held back by the presence of abandoned industrial sites." Accordingly, Administrator Browner expressed the Clinton Administration's strong support for the approach taken in HR 1750, which would promote brownfields cleanup and redevelopment by providing grants and loans, and providing appropriate liability protection to prospective purchasers, contiguous property owners and innocent landowners; and preserves critical safeguards for communities by ensuring EPA has authority to protect human health and the environment.

A June 4, 1999, letter from President Clinton to the Honorable Deedee Corradini and the Nation's Mayors echoes the sentiments expressed in Administrator Browner's letter. Administrator Browner's letter notes the broad consensus of Congressional and public support enjoyed by brownfields reform proposals, and requests the opportunity to continue to work with Representative Towns on appropriate resource levels and other refinements to the bill. President Clinton's letter likewise remarks that HR 1750 offers the best prospect for broad public support, because it focuses on those proposals that reflect substantial consensus in Congress and among communities; and confirms his commitment to continue to work with Representatives Boehlert and Borski, as well as Senator Baucus, to achieve truly bipartisan brownfields legislation.

EPA has identified several provisions of H.R. 1750 that are of particular merit. The bill provides \$500,000 for brownfields assessment grants and \$500,000—up to \$1 million—for grants for the capitalization of revolving loan funds. Unique to the legislation, however, are provisions which (1) ensure grant funding support for local governments, consortiums, and regional councils; (2) provide opportunities to support projects and programs with particular significant environmental and economic benefits; (3) make awards to states as determined necessary to facilitate receipt of funds by one or more local governments and (4) simplify the grant application and review procedures conducted by the Agency.

H.R. 1750 also limits the procedural requirements of the NCP in brownfields "to the extent that those requirements are relevant and appropriate to the program..." To that end, the Agency would seek to continue to apply those provisions of the NCP that address the need for fully protective cleanups in compliance with State and Federal regulations. Refinements to the brownfields program, such as the provision in H.R. 1750, reflect and express the insights and experience we have gained from our brownfields pilots. H.R. 1750 removes yet another barrier to the redevelopment of properties in distressed urban areas and small towns. Other pending legislation does not address the procedural issues of Superfund and the NCP as they relate to

brownfields. We look forward to working with the Congress to address specific provisions and resources issues in this bill.

CONCLUSION

The federal attention directed at brownfields assessment, cleanup, and redevelopment over the past five years reflects a growing realization that yesterday's eyesore is today's opportunity. For EPA and the federal government, it is an opportunity to demonstrate that environmental protection can also promote economic development. For communities and cities, it is the opportunity to return a wasted asset to productivity, job creation and revenue generation. For local contractors and developers, brownfields redevelopment is an opportunity to expand their work, to clean up sites and to build new facilities. For local lenders, it is the opportunity to meet their community reinvestment needs, often at much less of a credit risk than they might otherwise anticipate. But the biggest opportunity is for the people who live with brownfields sites every day. Eyesores are cleaned up. Frequently, potential threats to health are substantially reduced, if not altogether eliminated. The value of property increases. And often brownfields redevelopment provides the neighborhood's residents with a new sense of hope.

We are confident that the BCRLF program has caught hold and will be moving forward to make more loans for brownfields cleanups in the future.

Finally, EPA is encouraged by the focus that Congress has given to the problems engendered by brownfields. We remain committed to working with you to generate a broad consensus among a variety of local, state and private sector stakeholders on brownfields legislation that can be enacted and signed into law.

Thank you. I would be happy to answer any questions on the brownfields program you may have.

Mr. UPTON. What we will do at this point is, as you know, is have 5 minutes of questions for each of us here on the subcommittee. I guess my time comes first.

As I look at the number of pilots that were initiated, I think what, 24 pilots the first year, this was, in essence, a 3-year program—24 the first year, 45 the second, and you are planning to almost double that again in the third year.

What has been most troubling to many of us is the fact that, despite this program getting out and starting up, that now, as we are just started into this third year, only one has been funded, the Stamford, Connecticut, project. And we are delighted to have the Mayor testify on the second panel. We are also delighted, too, that you are able to stay for the second panel to answer questions.

But I noted that, in listening to your testimony, you, quote, "would make every effort to reduce the impediments." you want to make this more flexible and to make sure that it really works. It is probably not a terrific track record that only one project has actually been funded as we now are beginning the third year.

As I looked at the testimony from the gentleman from Boston, who will be testifying on the second panel, and I quote from his testimony on page 4, "In fact, we have discussed the program with developers of two specific sites recently. The reality is such that if there are other opportunities, even if it is private lending at twice the rate for financing the cleanup without incurring CERCLA regulations, the developers, more times than not, will take the more expensive route. It just isn't worth the hassle."

That seems to be the problem with actually getting these funded. Would you not agree?

Mr. FIELDS. It is one of the issues. Complying with the Superfund and National Contingency Plan regulations is one of the impediments, that is correct.

Mr. UPTON. But it is my reading of your authority that, in fact, that these can be de-linked, that you have the right and authority

to write the regulations, not us, not Congress, and, therefore, you have the power and ability to change the regulations that were in place when this program was unveiled. Here we are now in the third year, and only 1 percent of the money has been obligated. The cities—we are going to hear from two cities later on this morning, but as we talked to a number of cities around the country that were unwilling to come and testify today, it seems to be the problem that they all raise, as they indicate, it is just not worth the hassle.

What concrete steps are you thinking about taking to try and reduce some of these regulations that otherwise mar what I think would be a pretty good idea, solving something on brownfields that we see support on both sides of the aisle for?

Mr. FIELDS. We agree with you 100 percent. You have to keep in mind, Mr. Chairman, that this program is only 2 years old. The first 23 were awarded in September 1997, 2 years ago. For the first 2 or 3 years of this program committee were focused on assessment. It took 2 or 3 years on the average to get the assessment job done. Now pilots are looking at cleanup. And, we think there will be a greater focus in many more cities like Stamford, Connecticut, on the cleanup process now that many of these brownfields properties have been assessed.

There was also a chilling effect and a legal cloud established during 1998, the second year of this program, because Congress had appropriation language that said that they didn't believe EPA had the legal authority to issue Revolving Loan Fund grants. Some of the 23 cities were concerned about whether or not Congress was going to continue to support this program.

In spite of that, we have agreed to provide 20 new Corps of Engineers personnel to our regions to assist these cities and brownfields. We have expanded eligibility coalitions with the States so that to help the States can help manage the revolving loan funds and service as the site manager for the local communities and cities in many of these pilot communities. We are providing training for all of our regions on how revolving loan funds can work better. We have heard from five or six cities, for example, among the 23 original that they intend very shortly to begin to issue loans under their Revolving Loan Fund. It took time. When the Clean Water Act Revolving Loan Fund was initiated in 1988, the first year of that program, only three loans were issued.

It takes some time to get these programs going, and for that momentum to begin. We believe that is going to occur. If the loan program does not work, we will fix it. But, right now, we believe that people are just beginning to focus on the cleanup part of this. The first several years of the brownfields initiative, which began almost 5 years ago, was primarily focused on assessment. We believe pilots will be much more focused on the cleanup now that the assessment process has been completed.

Mr. UPTON. Weren't these assessments, though, conducted before the cities applied and were given the brownfields status? Wasn't most of that work done before they were selected?

Mr. FIELDS. No. The pilots who have the brownfields cleanup revolving loan funds are typically cities or communities who have an existing brownfields assessment grant. The first several years of

that effort were devoted to conducting the assessments of contaminated properties or brownfields in those cities. That job typically takes 2 or 3 years. Now that that assessment job is completed, many of these communities, including particularly, the first 23, now are beginning to focus on cleanup. We are looking at ways we can work together with the States to focus on cleanup and issuance of loans to private entities who would be involved in cleanup in that community.

The Revolving Loan Fund part of this program has only been around for about 2 years, and only funded in fiscal year 1997, and again in fiscal year 1999. It was not funded, as you know, in fiscal year 1998.

Mr. UPTON. I will come back to you. My red light is on.

Ms. McCarthy.

Ms. MCCARTHY. Thank you very much, Mr. Chairman; and Mr. Fields, thank you for coming before us today on this very important issue.

My district of Kansas City has designated a number of sites, and we have applied once for help and not received a positive response, in part due to the biState nature of the Kansas City area and that difficulty, and we will try again. But I appreciate your willingness and your remarks today to consider changes to the law.

I wonder if you would reflect with me a little bit on the versions that are before this committee, not today but, hopefully, soon, House Resolution 2580 and House Resolution 1750, and give us some thoughts of how you would craft the ideal bill as we proceed as a subcommittee to do this in the future.

H.R. 1750, by the way, I am a cosponsor of, and it has a grant program that is freestanding. It is not an amendment to Superfund, unlike other bills on this subject, and I would like your thoughts on that as well as H.R. 1750 does contain language which de-links the NCP with the grant program. And, to my knowledge, this is unique in all of the bills that we would be considering, the only bill to do this. We share, of course, some of the same program changes like money from general revenues rather than the Superfund with other vehicles.

But would you, for this subcommittee's sake, give us some thoughts on provisions that you would absolutely like to see, and also clarify, as the chairman was pursuing with you, what you can do on your own so that we don't get in the way of that or in some ways undermine those activities which we know need to happen?

Mr. FIELDS. On the first part of your question, yes, we definitely support the types of provisions in H.R. 1750. The administration has endorsed that bill, as you know, and it does provide the type of flexibility and support for brownfields we would want. It de-links the National Contingency Plan from brownfields in terms of cleanup. It takes the dollars out of general revenues, as you point out. H.R. 1750 has a provision which allows the Agency to determine which requirements in the National Contingency Plan are not relevant or not appropriate for the brownfields program, we don't have to comply with them.

Those types of elements in H.R. 1750 would really help us create a more flexible and better approach to deal with cleanup under the Revolving Loan Fund program. And, that type of language is not

in H.R. 2580 or H.R. 1300, or any of the other bills that are being discussed in the House right now.

H.R. 1750 is definitely the type of legislation that would help us achieve what we all want to achieve for the Revolving Loan Fund program.

In terms of things that we are doing to make this program work better, we are trying to make sure that it operates under the existing flexibility under the National Contingency Plan. We are trying to make sure that we prepare a very short engineering evaluation/cost analysis, and an action memo. We are trying to minimize those types of requirements under existing Superfund regulations so that they are palatable and flexible for cities like Stamford and Boston and towns in Wisconsin that you will hear about later on the next panel.

We are trying to make sure that we provide support, resource support through the Corps of Engineers and through State coalitions who are operating the Revolving Loan Fund on behalf of communities within their States. We are trying to provide training on flexible ways in which people can comply with the Revolving Loan Fund provisions. Those are all steps EPA has taken to make this process work better.

We believe that, just like any program that is new, there are startup problems, and I am committed that we are going to make that Revolving Loan Fund program just as successful as the brownfields assessment program has been. But the brownfields assessment program has been around for 5 years. This program has only been around for 2 years.

Ms. MCCARTHY. May I pursue, Mr. Chairman, since the time has not expired?

Mr. UPTON. Yes.

Ms. MCCARTHY. I am aware—and I am glad you told us that the President has endorsed H.R. 1750, and it is my understanding that that is the only bill that the administration has endorsed.

Mr. FIELDS. That is correct. H.R. 1750 is the only bill that the administration has endorsed among those that are currently being discussed by the Congress.

Ms. MCCARTHY. Thank you very much.

Thank you, Mr. Chairman.

Mr. UPTON. Mr. Bryant.

Mr. BRYANT. Thank you, Mr. Chairman.

Mr. Fields, welcome. Tell me again for the record, what is your official relationship with this program, the Revolving Loan Fund program?

Mr. FIELDS. Yes, sir. I am the Assistant Administrator for Solid Waste and Emergency Response, and I am responsible for all the waste management and programs for EPA. The brownfields clean-up program is one of my responsibilities, it is one of seven offices that I have responsibility for at EPA, including Superfund, RCRA, hazardous waste management, underground storage tanks, et cetera.

Mr. BRYANT. How long have you been operating in this capacity with regard to the revolving loan program?

Mr. FIELDS. Since its inception, yes, sir.

Mr. BRYANT. One of the concerns I have, and I think it perhaps mirrors my chairman's concerns, I understand that there are always startup problems, but I don't understand why this program was started and apparently some of this money was put out without any guidance. In particular, this Revolving Loan Fund Administrative Manual, which describes the management standards, the recordkeeping and reporting requirements, was not put out until May 1998, which was about 8 months after the pilots were awarded; and the second document, the Model Terms and Conditions, was not issued until October 1998, more than a year after the first pilots were awarded.

What guidance did you expect the people to follow during this time? And it would to me and wouldn't it to you have made sense not to do the funding until you had guidance out there? It just seems like there was a rush out there to get this money out. It seemed like you made the situation even more complicated and difficult.

Mr. FIELDS. In hindsight, Congressman, you are right. I would have preferred to have the administrative manual out before we began to issue or award the initial 23 Revolving Loan Fund grants. We did not have all of our guidance in place for the brownfields assessment program when we initially began either. It evolved over time.

We must keep in mind that other Federal agencies do have programs like this. The Economic Development Administration within the Department of Commerce has operated a similar type of program that gives grants, and then they issue loans under those grants. So a lot of cities have experience with the Economic Development Administration model of implementing revolving loan funds for redevelopment activities.

Mr. BRYANT. And that is the guidance you assumed they used during this period?

Mr. FIELDS. No. We worked with those cities, helping them prepare their applications, helping them get revolving loan funds established. That was our role. We provided a major technical assistance role with communities prior to the administrative manual coming out 8 months after the initial awards.

Mr. BRYANT. Wasn't the EPA concerned at that time that you were tying up \$10 million on a program you weren't sure what would happen with?

Mr. FIELDS. We were not concerned. We felt the money would be well spent. It is money that is still available, and it is money that has been obligated in grants, but the money is still there to issue loans.

We believe, Mr. Congressman, that the \$10 million that was given out in September 1997, will be money well spent, and there will be multiple millions of dollars in private investment that will result from loans issued under those programs.

I know of at least 5 or 6 of those 23 now who are thinking about issuing loans, and I believe that those loans will leverage many millions of dollars in private sector investment. So I think that money will be proven to be well spent.

Mr. BRYANT. Let me ask you about a statement that was contained in some correspondence to Representative Oxley back in Oc-

tober, really just a couple of weeks ago. You listed 11 pilots that were not close to making loans. I have the list. Since they are not close to making a loan, what does the EPA plan to do with those? Is there a provision, a policy to extend the 3-year period for these 1997 pilots, or do you plan to deobligate the funds for nonperformance? What do you have in store for those?

Mr. FIELDS. The grants that were awarded in 1997 were actually 5-year grants. The money is only being drawn down to the extent loans are made.

We will look, Mr. Congressman, at those cities if they do not aggressively move out this year and begin to take action as necessary to facilitate issuing loans. We will look at whether we deobligate money under some of those pilot projects where no activity has occurred as we have communicated to Congressman Oxley.

But, that is something that I am encouraged about. I am having a meeting with all 68 of the brownfields Revolving Loan Fund pilot cities on December 6 in Dallas where we will be talking about how they can get their programs jump-started, how they can benefit from the lessons learned from Mayor Malloy in Stamford, Connecticut. And, I am hopeful that some of these cities like Detroit, like Baltimore, will start moving forward and working with developers, issuing loans and getting the job done. If they don't do so, we will look at taking the money back and reusing it for another purpose. But, I am optimistic that, just like the water program and which built on 16 years experience it started with three loans, it soon got up to 78 loans, and then later got up to 236 loans a year. I believe that the brownfields revolving loan program, although starting slow, will begin to pick up momentum now that we have gotten the effort started in Stamford, Connecticut; and I am hopeful that these 23 this year will begin to issue loans just like Stamford, Connecticut.

Mr. BRYANT. If I might just close with a statement.

Again, I appreciate very much the fact that you will have this meeting, and I am accepting your assurance that at that meeting you will build the appropriate fire under these people and to let them know that they need to begin moving quickly or else they are at risk for losing these obligations in one way or the other. I thank you for that commitment.

Mr. FIELDS. I thank you, Mr. Congressman, and I assure you that is my commitment.

Mr. UPTON. Thank you.

Mr. Burr.

Mr. BURR. Thank you, Mr. Chairman.

I apologize, Mr. Fields, for coming late. I have had an opportunity to read your testimony. If I cover ground that has already been gone over, let me apologize for that.

Is this a successful program?

Mr. FIELDS. The brownfields Revolving Loan Fund program?

Mr. BURR. Yes, sir.

Mr. FIELDS. I would not characterize that portion of the program as being successful. I would say that the brownfields assessment grant program has been successful with \$1.6 billion in private investment, and the creation of more than 5,000 jobs.

Mr. BURR. Aren't we here talking about the Revolving Loan Fund?

Mr. FIELDS. Right. I am talking about how I measure success. I measure success by what has been achieved under the assessment program. I do believe though, Mr. Congressman, as I said before, that the revolving loan program will soon demonstrate the same type of success as has been demonstrated under the assessment program.

Mr. BURR. Let me assure you, Mr. Fields, my wife and I measure success in different ways; and I go home euphoric some weeks when I think we have done something good, only to face the realities of somebody who judges success in a different way, a way that really more of America judges success than we have a tendency to in this town.

How many sites have you cleaned up under the Revolving Loan Fund?

Mr. FIELDS. We have only issued one loan, which Mayor Malloy will soon talk about. No cleanups have been done under the Revolving Loan Fund program.

Mr. BURR. No cleanups.

Mr. FIELDS. No cleanups to date under the Revolving Loan Fund program.

Mr. BURR. Why do you think that is? Critique the program for me.

Mr. FIELDS. Right. I think that there are several reasons this program got off to a slow start. There was turnover in city personnel. There is the newness of the program, it's only 2 years old. There are natural startup problems for any new program.

Mr. BURR. Did people come to you and beg you to participate in this program or did you go to people and beg them to participate in this program?

Mr. FIELDS. Once we awarded those assessment pilots beginning in 1995, the Mayors came to us and said the No. 1 priority need they had, was for brownfields, cleanup dollars to help facilitate cleanup of these properties that are being assessed. So the Mayors came to us.

We then tried to provide a vehicle, which turned out to be the Brownfields Cleanup Revolving Loan Fund, and that is the program we got started. I will be quite honest with you. There was a legal cloud established by the appropriations language that we got from the Hill. Congress passed appropriation language in 1998 which said they didn't believe we had the legal authority to issue those grants—those 23 grants to establish revolving loan funds. Many of those 23 cities came back to us and said, we are concerned about the legal authority. Fortunately, Congress, in 1999, in the appropriation language, endorsed these brownfields revolving loan funds and encouraged EPA to award more of those grants, which we did do.

Mr. BURR. And now we are to the point where we are assessing success, aren't we? Or is it too early?

Mr. FIELDS. I think for the Brownfields Cleanup Revolving Loan Fund, it is too early to assess success.

Mr. BURR. When do we do that?

Mr. FIELDS. I would say a year or 2 from now. We did not achieve early success with the assessment program either. We didn't have more than 5,000 jobs. We didn't have \$1.6 billion in private investment. That is something that just began to occur in the last year.

Mr. BURR. Shouldn't we wait to see the success of those before we expand?

Mr. FIELDS. No.

Mr. BURR. The Mayors understandably want brownfields cleaned up.

Mr. FIELDS. Yes.

Mr. BURR. I think I would get a nod if I knew which ones they were in the room. They want to clean brownfields up and pursue development.

Mr. FIELDS. Yes.

Mr. BURR. Do they want to do it under Superfund regulations, or would they rather do it some other way? Because the way that you fund the Revolving Loan Fund, they have to fulfill all the requirements of Superfund, don't they?

Mr. FIELDS. They obviously have to comply with the Superfund law.

Mr. BURR. But they are not required to unless they use the Revolving Loan Fund, am I correct?

Mr. FIELDS. Yes, when they use our Revolving Loan Fund functions under the removal authorities of the Superfund statute. We have tried to make those procedures very flexible in terms of how we implement them. We don't require what we do for a regular Superfund site.

Mr. BURR. Have you ever heard a witness come in here and tell us we were flexible under Superfund regulations? I don't think you have, and I don't think I have, so we can quit fooling ourselves on that.

Mr. Chairman, just 1 additional minute, if I could.

What timeframe do you need to come to this committee and say, here is the proof, this works? Is it 6 months? Is it 12 months? Is it 2 years? What is it?

Mr. FIELDS. Mr. Congressman, I believe it is going to be about 2 years. To be very honest and frank with this committee, it will be about 2 years.

I expect that we will see several more cities like Stamford, Connecticut, issue loans this year. And we know Las Vegas, Trenton, and Sacramento, are cities out there now who will be issuing loans. But I don't think we will see the big payoff until 2 years from now, just like we did with the brownfields assessment program. Two years from now, we will be able to see the jobs, the cleanups, the redevelopment that will be really occurring from this Revolving Loan Fund program.

Mr. BURR. Is that how you would define success, cleaned-up sites, development, jobs? Anything short of that?

Mr. FIELDS. Those are tangible measures of success.

Mr. BURR. Do we have to have something tangible for—

Mr. FIELDS. No, I don't think that is the only measure. I think there is great success when people, like this committee, are focused on the topic of brownfields, and are taking every step possible to

try to find ways to assess, clean up and develop these properties. I think the focus of Mayors, the focus of the Federal Government, the focus of State government on this issue, is going to pay dividends.

The measures I gave you just now were some of the quantitative measures of success. I think there is great success when people are working together to try to resolve these issues, looking at how we can work together to issue a loan and how we can resolve the impediments in these program. Those are all measures of success. But what I was giving to you were quantifiable dollars and jobs as measures.

Mr. BURR. Coming out of the business world, I would assure you that those do spell success for me. And I think that from the standpoint of the oversight responsibility that we have, one of the jobs is to make sure that, in fact, by design of your program, those who underperform or lack to perform, that rather than sit and say, we have done our job, we have supplied somebody a revolving loan, if they don't use it, so be it.

Now, it is also important for us to look further into it and see how long did it take you to approve their plan. There are a number of steps that require participation from you after the commitment to be a partner. Unfortunately, one-half of the partnership can't move without your okay.

It is my understanding you are going to stay around and allow us to ask some additional questions after the next panel.

Mr. FIELDS. Yes, sir.

Mr. BURR. With that, I will await anxiously.

Mr. UPTON. Your time has long, long expired.

We are going to have a second round. I know that a number of us have additional questions, and we will start that second round now.

I have to say, from my own district and the knowledge that I have, I am a very strong supporter of Superfund reform, brownfields. I have talked with a number of Mayors even yesterday and with some conversation about this as well. I have talked to sponsors of all of the different bills that we have had in the House as well—Mr. Boehlert, obviously Mr. Bliley, Mr. Oxley.

It is my understanding that the bill that we passed in committee 2 weeks ago here, in this committee, the Commerce Committee, that we de-link completely the brownfields grant program from the Superfund trust fund. And as I look at the testimony and anticipate questions and thoughts by my colleagues and the folks that are testifying on Panel II, that is their big concern. That is why they think that this program is not working to the full utilization that it could, because of the regulatory burden that EPA is imposing with this program. When you talk about flexibility, we will see with questions to them how flexible they think EPA has been.

But our legislation that we passed here and is now waiting for the full debate on the House floor does take that firewall out completely, it de-links the two, which would empower the EPA to deregulate this entire program so that we can see more success. Is that not your understanding?

Mr. FIELDS. That is not our understanding, Mr. Congressman. We have not read H.R. 1300 that way. The only bill we see that

de-links Superfund requirements for brownfields is H.R. 1750. You are talking about H.R. 1300, I am sure, right? H.R. 2580, that bill does not—we don't read H.R. 2580 to de-link the Superfund response requirements from brownfields. We would be happy to look at that again, but that is not the way we read it. The only bill that has the provision in it that we are referring to that creates that de-linkage is H.R. 1750.

Mr. UPTON. Well, we will provide you our analysis of H.R. 2580 showing that, in our view, it does de-link it, and we will look forward to your response on that.

Mr. FIELDS. I will be happy to respond.

Mr. UPTON. In your response last month to Congressman Oxley, and we have a copy of this letter here and we will put it into the record as well, you listed 11 pilots that were not close to making loans.

[The information referred to follows:]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 8 1999

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

The Honorable Michael Oxley
Chairman
Subcommittee on Finance and Hazardous Materials
Committee on Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Oxley,

Below are responses to the questions you have asked as a follow up to my testimony before the Subcommittee on Finance and Hazardous Materials on August 4, 1999.

- I. **Can Superfund liability under 107 and 113 of CERCLA and EPA enforcement authority under section 106 apply even after the site has had a response action approved under State law?**

Response

Issues of liability related to Superfund sections 107, 113, and 106 should not be of concern at a site that has been cleaned up properly through a response action approved under State law. Such a site is unlikely now or in the future to present an imminent and substantial endangerment to public health or the environment. Section 106 of CERCLA does not apply unless a site may be an imminent and substantial endangerment. Additionally, there would be no cause for EPA to take action under CERCLA section 104 at such a site, meaning EPA would have no need to pursue parties under CERCLA section 107. There would be no contribution issues under CERCLA section 113, unless EPA or other parties had incurred response costs prior to the State cleanup.

2. **Does EPA enforcement authority under sections 7003 of the Resource Conservation and Recovery Act apply even after the site has had a response action approved under State law?**

Response

Under the circumstances described in the response to Question #1, liability under 7003 of RCRA also should be of no concern because the site is unlikely to present an imminent and substantial endangerment to public health or the environment.

3. **Do citizens have authority under section 7002 of RCRA to challenge the sufficiency of a response action approved under State law?**

Response

Consistent with the responses to Questions #1 and #2 above, under §7002 of RCRA, citizens do not have the authority to challenge the sufficiency of a response action approved under State law if the "response action" refers to a fully protective cleanup at a site and does not allow for a situation which may present an imminent and substantial endangerment to health or the environment.

4. **Does H.R. 1750 restrict any authority under section 106 of CERCLA or section 7003 of RCRA to reopen cleanups at sites where States have approved a cleanup plan?**

Response

H.R. 1750 retains EPA's authority to secure such relief as may be necessary to address a situation which may present an imminent and substantial endangerment to public health or the environment because of an actual or threatened release of a hazardous substance. This bill preserves a federal safety net to ensure that sites do not present an endangerment and provides a mechanism for appropriate federal involvement.

5. **How many response actions have been conducted or are underway pursuant to the orders issued under section 106 of CERCLA or section 7003 of RCRA? How many Federal response actions have been conducted or are underway without the use of order authority under section 106 of CERCLA or section 7003 of RCRA?**

Response

1. Ongoing or Completed Response Actions Under Section 106 of CERCLA

Since the inception of the Superfund Program, 1,412 removal or remedial response actions have been completed by Potentially Responsible Parties at 935 NPL and non-NPL sites. Of those 1,412 completed removal or remedial actions, 440 (31%) were conducted pursuant to Unilateral Administrative Orders (UAO) issued under section 106 of CERCLA. The remaining 972 response action they must comply with the remedy selection requirements of Superfund. This requirement applies whether or not a given federal facility is on the Superfund National Priorities List. Superfund requirements, including those for remedy selection, also apply to the cleanup of Department of Defense installations under the Defense Environmental Response Program (DERP) for active and formerly utilized defense sites (FUDS) and under the Base Realignment and Closure (BRAC) Program for those bases identified under the recent four rounds of BRAC (1988, 1991, 1993, 1995).

8. **Section 113 and 107 of CERCLA and EPA's regulations provide that contributing parties are liable for costs of cleanup only if such cleanups are consistent with the National Contingency Plan (NCP). In turn, the NCP is promulgated consistent with the requirements of section 121 of CERCLA. Please explain your understanding of how remedy selection requirements apply in any situation where private parties are seeking compensation through contribution suits, including brownfields actions?**

Response

As stated in the response to #6 above, section 121 of CERCLA does not apply to cleanups done by State or local governments. The provisions of section 121 therefore do NOT apply to the hundreds of thousands of Brownfields sites that require only limited cleanup in order for redevelopment to occur.

Private parties seeking contribution toward Federally-incurred costs must show that the response was not arbitrary and capricious, based on the administrative record, pursuant to CERCLA section 113. The NCP provides that work performed pursuant to an order under section 106, or a consent decree pursuant to section 122, "will be considered 'consistent with the NCP.'" Private contribution claims for non-Federal actions need only show that the actions were "in substantial compliance" with the more limited requirements of Subpart H of the NCP.

9. **With respect to the statutory process to reopen EPA Records of Decision, the Administration previously argued that "re-openers" cause litigation. Now, the Administration argues that provisions that restrict re-openers for State cleanups will cause litigation. Why is there a bias for Federal finality but little respect for State finality. Would the Administration support provisions that allow States to reopen remedy selection decisions at federal sites where the State believes they have a more effective plan?**

Response

No change to CERCLA is needed. We work cooperatively with States to develop the most effective cleanup plan available, and through this partnership seek to implement plans that ensure protective and permanent remedies. Many States have the resources, capabilities and authorities to oversee protective cleanups. However, EPA recognizes the diversity among cleanup programs that exists around the country and the need for the federal government to guarantee some uniform level of protection to all citizens, wherever they may live. We are committed to continuing to work with States to define our respective roles at sites that may pose a threat to human health and the environment.

10. **In your written testimony, you state that Arizona and Idaho may not have certain remediation authorities. Isn't it true that the federal release in H.R. 2580 only applies where a State has taken action under appropriate state authorities? If a State does not take an action EPA is fully allowed to use all of its authorities?**

Response

H.R. 2580 limitations on Federal authorities apply to actions related to releases or threatened releases at a facility that is or has been the subject of a response action under a State program. While H.R. 2580 in essence provides that State programs act in lieu of federal programs, it fails to include any specific requirements that the State programs must meet. The three undefined criteria that are provided for State programs in the bill provide an insufficient basis for reasonably concluding that a program is adequate and ignore the public's role in remedial decisions.

Moreover, H.R. 2580 merely requires that the release be "the subject of a response action." There is no explicit requirement that the response action be a cleanup (e.g., as opposed to a study) or that the response action be implemented, enforced, or completed. Even in an extreme case (for example, in which a PRP had begun a study, but then failed to proceed to cleanup), EPA could expect that the PRP would challenge the Agency's authority under the vague language in H.R. 2580 if EPA were to take action to protect human health and the environment.

- 11(a). **As I read your testimony, the Administration's answer to the position of the National Governors Association, State cleanup agencies, mayors and the cleanup contractors concerning finality is that EPA has entered into 85 prospective purchaser agreements and issued over 250 comfort/status letters. This suggests that**

to achieve finality, EPA must provide review and agreements or comfort/status letters at numerous sites. How many such agreements or letters does EPA plan to issue and what is the process for obtaining EPA review and approvals? How many EPA employees are involved in reviewing State cleanup decisions, how many hours does it take, and how does EPA select which sites [sic] it will perform such review for?

Response

A "Comfort Letter" is one tool EPA has made available as an administrative mechanism for providing finality under the current CERCLA framework. H.R. 1750, which the Administration supports, would provide statutory finality to developers and other purchasers of contaminated properties, through prospective purchaser protections. This sort of statutory finality would remove any disincentives to clean up and redevelop property and eliminate the demand for comfort letters altogether.

Under the current law at sites on the National Priorities List (NPL), States have the opportunity to use State law to remediate hazards at a facility or may take the lead with EPA funding in overseeing cleanup. Since the program was enacted in 1980, this arrangement has occurred at less than 20% of sites on the NPL. When a State is working under their own law at NPL sites, there generally is an agreement to keep EPA informed about cleanup decisions the State intends to make. In these situations, EPA may comment during briefings or during the official comment period. When a State is using Federal Fund monies to address an NPL site, EPA must sign the remedy. EPA involvement therefore is greater at these sites. Finally, EPA reviews cleanup results for a State-lead NPL cleanup when the State proposes that it be deleted from the NPL. This review would examine the same issues as review for an EPA lead-site proposed for deletion. Although we do not specifically allocate personnel [i.e., Full Time Equivalent (FTE)] to this task, discussions with a few of EPA's Regional offices have indicated that smaller Regions may allocate one FTE across several sites each year to review State decisions, and a larger Region may allocate as many as 4 FTE.

11(b). Why should Congress have Federal employees reviewing state cleanup decisions when there is more than enough for EPA to do on the cleanup decisions where it is taking the lead? Can you tell me how this supposed safety net has made a difference? What sites has the EPA changed state remedy selection decisions?

Response

As noted above, EPA estimates that a very small number of FTE in the Superfund workforce each year are assigned responsibility for reviewing State cleanup decisions. In those situations where a State has taken the lead under State law at an NPL site, EPA's review, comment, and discussions have served to resolve the Agency's issues at the site. The Federal safety net does not function to replace or revise State decisions; rather, it provides the U.S. with the capability to supplement State actions in the event a State cannot fully address the threats presented by a site.

12. Under current law, under section 106 of CERCLA, EPA can take action where the President determines that there may be an imminent and substantial endangerment to the public health or welfare because of an actual or threatened release.

Does EPA need to show that anyone is actually exposed to a chemical under this standard? Is this the standard EPA applies for response actions taken under section 106?

Response

EPA believes that it would be irresponsible to wait until exposure actually occurs before taking action to address a threat. EPA believes it is important to prevent exposure to hazardous substances, and opposes restrictions that would require the harm, or exposure, to occur before EPA could respond. Recent enforcement orders under CERCLA 106, which seek to provide the

same protections, have involved addressing such significant threats as: 1,500 drums and three 6,000 gallon storage tanks of flammable and corrosive wastes; 22 drums of explosive paint waste materials; and PCE (perchloroethylene) detected in ground water beneath a site.

13. **Under H.R. 1750, EPA may reopen a state agreement where, among other re-openers:**

“The Administrator determines that the release or threat of release may present an imminent and substantial endangerment to the public health or welfare or the environment.”

This appears to be a more deferential standard to EPA than under section 106 since the phrase “[t]he Administrator determines” provides more deference to the Agency than under standard of section 106? Under such a provision what right would a State have to keep EPA from reopening State cleanup decisions?

Response

EPA believes that H.R. 1750 confers no rights upon the Agency or the President to “reopen” State agreements. H.R. 1750 allows the Federal government to ensure consistent and adequate cleanups in communities around the country, and retains the ability of EPA to address public concerns.

The use of “Administrator” in H.R. 1750, as opposed to “President” under section 106 of CERCLA should have little impact in the determination regarding imminent and substantial endangerment, in that the President generally has delegated section 106 authority to the Agency. Under both the provisions of H.R. 1750 and section 106 of CERCLA, if a site has been properly cleaned up by a State program, such a site should no longer be a site that may be an imminent and substantial endangerment to the public health, welfare, or environment.

14. **H.R. 1750 provides a federal re-opener where there is a proposed change in the use of the site. Is this a new re-opener that does not exist under current law?**

Response

Under current law, EPA can require necessary action when there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility. There are no express provisions in CERCLA related to how a response action may be affected by changes in land use. However, under current law, if a party has completed a response action and a proposed change in use of the site results in a determination that there may be an imminent and substantial endangerment to the public health, welfare, or environment, EPA does have the authority to require additional response action. If the cleanup is no longer adequate because of expected changes in use, it is appropriate to modify the cleanup so that substantial risks to the health and safety of citizens and environment are either removed or prevented.

15. **The witness from the National Association of Local Government Environmental**

Professionals recommended the following standard: “EPA should provide that it will not plan or anticipate further action at any site unless, at a particular site there is: (1) an imminent and substantial threat to public health or environment; and (2) either the state response is not adequate or the state request U.S. EPA assistance.”

Please provide the Agency’s viewpoint on this recommendation, including whether the Agency would or would not support it, why and how it differs from current law?

Response

The standard cited in this question, provided by NALGEP, was provided in the context of a detailed framework NALGEP outlined in their written testimony submitted for the August 4, 1999, hearing. NALGEP testified that they supported a framework which has:

“clear legal standards under which States that meet minimum criteria can assume the primary role for resolving liability and issuing no further action decisions at brownfield sites...”

“...At the same time, local officials are also concerned about too much cleanup authority too fast to states that have not clearly demonstrated the ability to play a primary role...NALGEP believes that the U.S. EPA has a role to play in ensuring that liability authority over brownfield sites should only be delegated to states that demonstrate an ability and commitment to ensure protection of public health and the environment in the brownfields redevelopment process.”

NALGEP’s proposal identifies the major components of a legislative framework that could be effective at addressing finality concerns, and comes close to a construct that could ensure protective cleanups to all citizens. Although NALGEP believes that only qualified states should have primary cleanup responsibility and that EPA is the appropriate entity to make the determination as to whether or not a State program is qualified, the reopener for Federal action used by NALGEP introduces the new term “imminent and substantial *threat*.” The current statutory language, “imminent and substantial endangerment” has the benefit of twenty years of case law and has not been abused by EPA. Making a modification to this term would only invite new and unnecessary litigation and delay at a time when the Superfund program is making great progress in cleaning up sites.

16. H.R. 2580 allows a number of re-openers including where there is:

“A release or threatened release for which response actions are immediately required to prevent or mitigate a public health emergency and for which the State is not responding in a timely manner.”

Can the Administration articulate the difference between the current standard and the public health emergency standard? In what situations does EPA believe it is appropriate to countermand a State cleanup decision?

Response

The current “may present an imminent and substantial endangerment” standard found in CERCLA section 106 has been applied by EPA and tested through litigation over the past 19 years of the Superfund program. The term “public health emergency” is not defined in the current law or in H.R. 2850. The term appears only in CERCLA 104(a)(4) in the context of an exception to the CERCLA limitations on our response authorities. EPA has never had to rely upon 104(a)(4) to justify a response action. As a result, there is no precedent to define the term. Additionally, it is not clear what documentation would be required to demonstrate that a situation constitutes a “public health emergency.” EPA believes that such a new standard would result in years of unnecessary litigation and delay while the courts try to resolve numerous issues.

EPA does not believe it is appropriate to countermand a State cleanup decision. Instead, EPA believes it is appropriate to retain the ability to ensure consistent and adequate cleanups in communities around the country. H.R. 1750 retains the ability of EPA to address these public concerns when needed.

17. EPA appears to read H.R. 2580 as an obstacle to using Superfund money under section 104 of CERCLA. Obviously, that would not be the case if the State asks for such money as is specifically provided. Can you provide an example of how this would work under current law, if the State disagreed with the action EPA is proposing?

Response

The current law, under CERCLA sections 104 and 121, provides several checks and balances that involve states in cleanup decisions throughout the process of cleaning up a National Priorities List site. From the point EPA determines the site warrants listing through the remedy selection (and beyond), there are several opportunities for the State to comment and be involved in EPA's decision making. State comments and involvement frequently lead to modification of EPA's direction at the site. As a consequence of working with States and integrating their concerns into site decisions, there are very few instances in which the State disagrees with an action EPA finally proposes. Historically, a Governor has objected to listing only one site on the NPL at which EPA has proceeded, and at this site there is now a State-lead cleanup underway.

The NCP provides a mandate to modify proposed plans for remedy selection as a result of State or community comments offered. This type of modification of a proposed plan is a routine element of remedy selection. In addition, the requirement that States share in the cost of remedial action (a requirement eliminated under H.R. 2580), also provides a check on EPA's decision making. If a State were to oppose a proposed action, they would also be able to prevent the action from being funded by withholding their cost share assurances required under CERCLA section 104. If a State were to oppose a selected action and withhold their cost share, EPA would be compelled to select another remedy or to halt the project.

18(a). You state in your testimony that other environmental laws envision a role for EPA review and a determination that a state program is adequate. Is that what you are asking for – an opportunity to review and approve or disapprove of existing state remediation and voluntary cleanup programs? Obviously these programs in existence today are cleaning up sites. Are you arguing for an expanded federal presence in these programs?

Response

No, EPA is not seeking an expanded federal presence in existing state remediation and voluntary cleanup programs. Under the current law, EPA and the States have worked diligently to develop mechanisms for defining our respective roles, sharing responsibility for cleaning up sites, and working together to support our complementary efforts and we believe this current role should be maintained.

To support the development, management, and implementation of State response programs, EPA provides about \$140 million to States each year. For example, in FY 1999 the budget provided for about \$10 million for development and management of state voluntary cleanup programs and close to \$20 million was provided for management and infrastructure development of other State response programs. In addition, \$50-60 million was provided for States to do site assessments and participate in NPL response activities. Finally, \$40-60 million for NPL site-specific remedial action was to be provided to States who assumed lead responsibility for cleanup.

Currently, EPA and States may choose to negotiate agreements such as Memoranda of Agreement (MOAs) concerning State Voluntary Cleanup Programs, agreements for deferral of NPL caliber sites for State action, and agreements for assessing and determining priorities for State and EPA response action. In these agreements, EPA and a State describe how they will work together to determine priorities for action and to support protective cleanups.

For example, once a MOA is signed concerning a State Voluntary Cleanup Program, EPA does not generally anticipate taking removal or remedial actions under CERCLA at those sites included within the scope of the MOA except under limited circumstances. By promoting effective State voluntary cleanup programs through MOAs and infrastructure support funding, the states are provided tools for converting a significant portion of the brownfields sites in this country into areas that offer the public both protection of their health and environment, and sustainable reuse of these sites.

EPA is also exploring ways to enhance the State role in CERCLA through nine pilots with interested states. States identify phases of the program for which they would seek a lead Agency role and identify any training, financial support, infrastructure development issues and other program management needs necessary to assume the activities associated with the program.

18(b). How many resources are needed to review State program approvals under RCRA or the Clean Water Act?

Response

The 1998 Information Collection Request (ICR) required under the Paperwork Reduction Act documents 4,843 hours per year dedicated by EPA to state authorization applications required by RCRA.

18(c). The Administration's budget document for FY2000 and many of Administrator Browner statements repeat an argument which is not consistent with our understanding of the pace of cleanup. Please articulate EPA's interpretation of the pace of cleanups at NPL sites and how that differs from GAO's assessment.

Response

EPA believes we have made significant improvements in the Superfund program which have accelerated cleanups and shortened their durations by approximately 20%. In fact, more Superfund sites have been cleaned up in the last five years than in all the prior years of the program combined. During this Administration, the number of Superfund sites that have cleanup construction completed has increased from 65 to 85 per year.

19. GAO wrote Carol Browner on January 28, 1998, responding to EPA criticism on a GAO report about the current times for listing and moving a site through the cleanup process. GAO states that site completions are not evidence of the pace of cleanups.

The GAO response to EPA claims states:

"[This] is not evidence of decreased processing times; rather, it is an indication that the program, now more than 15 years old, has been around long enough for a substantial number of sites to have had remedies constructed. Given the long cleanup times for many sites, it is not surprising that more sites, most listed years ago, are now reaching the end of cleanup."

Do you agree or disagree with EPA on this point?

I believe it is misleading to suggest that the completion rate is an indicator of pace without any reference to starting times. This is like saying more people crossed the finish line in the last hour of a marathon than the first two hours. Do you agree that the pace of cleanup should be measured by a reference to the start of the project and the completion of the project or at least the completion of intermediate tasks within the project? Do you agree that only stating the number of completions simply does not tell you whether there is a faster pace?

In 1992, the last year of the Bush Administration, there were 87 construction completions. In the next four years of the Clinton Administration there were 68, 60, 62, and 62 construction completions, respectively. Under the Administration's logic, did the Clinton Administration reduce the pace of cleanups by 27% from the last year of the Bush Administration?

20. A March 1997 report of the General Accounting Office entitled Superfund: Times to Complete the Assessment and Cleanup of Hazardous Waste Sites (GAO/RCED-97-

20) points out that the assessment and cleanup times for completed sites have generally increased over the life of the program. To assess the non-federal sites, it added to the national Priorities List in 1996, EPA took an average of 9.4 years. In contrast, the assessment of non-federal sites listed in 1986 through 1990 took an average of 5.8 years. Non-federal cleanup projects completed in 1996 took an average of 10.6 years, while the projects completed from 1986 through 1989 averaged 3.9 years. This would mean it took an average of 20 years to walk from discovery to construction complete. It takes even more time before it is finally cleaned up. I understand the EPA disagrees with GAO on this matter. Please walk through the pipeline from discovery of a site to final listing. Please answer the following questions, theorizing that a site is discovered after 2001:

- A. First, let's start with the steps from discovery to listing. What are the steps, and what is the record for how long it takes on average to go from discovery to listing? What year does that take us to?
- B. Second, let's go through the time from listing to construction complete. What are the steps? What is the record for how long it takes on average to go from listing to construction complete? What year does that take us to?
- C. Now let's go through the steps to get from construction complete to delisting. What are the steps and what is the record for how long it takes on average to go from construction complete to delisting
- D. One of the arguments EPA has made is that the earlier cleanups were easy and the later ones are harder. Does this point argue that the time frames are likely to increase for some of the sites on the N.L.?
- E. Does the fact a site is in construction complete mean that litigation has ended? Does the fact a site is delisted mean the litigation among all of the parties has ended? For a site on the NPL or delisted do you have a time frame when all of the litigation will end and all liability issues resolved?

Response to 19 and 20

In addition to the response to #18 above, a number of documents are enclosed (please see list below) concerning the duration of Superfund projects. These documents provide a more detailed discussion of the Superfund pipeline. Enclosed are the following:

- 1) Chart of Superfund Construction Completions by Fiscal Year
 - 2) December 23, 1996, letter to Mr. Peter F. Guerrero
 - 3) December 23, 1996, letter to Mr. Stanley J. Czerwinski with attachments
 - 4) December 3, 1997, letter to Mr. Lawrence J Dyckman with attachments
21. Last Congress, we showed charts developed from answers EPA provided to the Subcommittee concerning the progress of actual groundwater cleanup after 18 years of the programs. The answers were quite disappointing. Of the over 1300 sites which have been listed on the NPL, there was only 71 sites where EPA had largely restored groundwater plumes and 18 sites where EPA had entirely restored groundwater plumes. Your letter estimated that by year 2001 there would only be 119 sites where groundwater is expected to be substantially or completely restored. This made it clear to me that a construction complete was not a final cleanup. After 19 years, less than half of the sites have "construction completes." But after 19 years a much smaller group has met groundwater goals. Has this data changed or is EPA still only expecting 119 sites where EPA will have either substantially or entirely restored groundwater?"

Response

A more recent update of estimated progress of Superfund ground water remedies indicates that, at 124 sites, ground water is expected to be completely or substantially restored by the year 2001. At an additional 103 sites, Superfund actions have prevented nearby water supplies from becoming contaminated. Once the construction of the remedy is completed ("construction complete"), the remedy may need to operate for some period of time before cleanup goals are attained. (See also the response to # 22, below)

22. **We recently reviewed EPA's website that shows that, as of January 1998, there were only 39 sites where all cleanup goals were met for groundwater and only 42 sites where all cleanup goals were met for surface water. Please update this information? Why does the fact that cleanup goals are not met mean that the term "construction complete" is not the same as a completed cleanup?**

Response

The EPA web page under Superfund Accomplishments lists 39 site areas (not sites) as having "all cleanup goals met" for ground water (<http://www.epa.gov/superfund/accomp/ei/progress>). One site may have several "operable units," which are portions of a Superfund site, or a portion of the final remedy. For a portion of the remedy, the goal may not be to restore ground water. Other goals could include completing an alternate water supply, completing a containment system, or implementing use controls, and these actions may be implemented as in a separate decision document. The information provided in the web page table entitled: "Indicator: Environmental Progress Toward Cleanup Goals from 1980 to June 1997" has not yet been updated. When this information is updated, the Agency will be pleased to provide it to the subcommittee staff.

In the Superfund program, the term "construction complete" means that physical construction of all components of the remedy has been completed for all portions (operable units) of the site. "Construction complete" is a significant milestone because many Superfund sites have numerous contamination problems. Once the construction of the remedy is completed, the remedy may need to operate for some period of time before cleanup goals are attained. Thus, "construction complete" does not mean that cleanup goals have been attained for the site.

23. **In your May 23, 1995 testimony before this Subcommittee you stated:**

"That was a miscommunication that we sent out in April where we said that the problems at Superfund sites resulted in certain diseases. That was a miscommunication and we have subsequently corrected the assertion."

In her recent editorial to the Washington Post, Assistant Attorney General Lois Schiffer said that "babies born near Superfund sites are four times more likely to be born with serious heart defects" This would suggest that Attorney General Schiffer has evidence that Superfund sites cause and increase heart defects. Do you agree with statement and, if so, what is the factual basis for this assertion of causation? Can the Agency explain the difference between association and causation.

The statement quoted in your question represents a portion of a response more than four years ago by me to a question posed by Representative Bilbray at a congressional hearing. In that response, I was describing an apparent connection of certain diseases and certain types of cancer to areas where Superfund sites were located and that Federal agencies were working to document that relationship.

The Agency for Toxic Substances and Disease Registry (ATSDR) now has studies that show a variety of health effects that are associated with certain Superfund sites, including birth defects, reductions in birth weight, changes in pulmonary function, changes in neurobehavioral function, infertility, and changes in blood cells that are associated with chronic lymphocytic leukemia.

24. **GAO's testimony and its recent report indicate its recent survey of other federal and state officials characterized 17% of potentially eligible sites as posing high risk to human health and the environment, 32% were characterized as posing unknown risks and the remaining sites were characterized as potentially high, average or low risk. GAO also notes that 73% of these sites have been in EPA's inventory for over 10 years.**

Does EPA agree with these findings and why hasn't it acted more quickly to prioritize and address these risks? Why are so many sites characterized as "unknown risks this late into the program?"

Response

EPA agrees in general with the findings, although the characterization of the sites is GAO's, based on limited and in some cases quite dated information. When GAO first presented its survey results, EPA identified 539 sites that warranted file reviews to determine if removal actions were necessary. Based on those file reviews, 47 sites were determined to warrant an on-site removal assessment. Most of those assessments have been completed, and all will be completed by the end of the calendar year. Removals will then be undertaken (prioritized along with other removals), if the assessments show they are necessary. Thus, EPA is confident it is addressing any emergency or time-critical needs.

For longer-term risks noted by GAO, EPA is working with States to assess the sites and determine appropriate cleanups. The major reason why sites GAO identified as posing unknown risks have been in the pipeline for a long period is because EPA has not actively been involved at these sites; rather, States are working on these sites. EPA leaves such sites in its database until they have been cleaned up. Many States prefer that these sites remain in CERCLIS (EPA's database of sites) to provide leverage in dealing with responsible parties conducting the cleanups. Following the GAO survey, States indicated they may not have the resources to address all the sites, and negotiations between EPA and States are ongoing to determine who will be evaluating which sites in the GAO survey universe. Neither EPA nor the States has sufficient resources to drop all other site assessment work (States still are entering 500 sites a year into CERCLIS) to concentrate exclusively on the GAO sites.

At the same time EPA recognizes that States have many resource demands in addition to those at the GAO survey sites, EPA has until very recently devoted its available resources to achieve construction completions. This focus has contributed to the site assessment backlog. EPA anticipates that most of the GAO survey sites will have completed assessments and cleanup plans over the next two years. However, in order to focus resources on the highest priorities of EPA and States, some of these sites will not be addressed for an additional year or two.

- 25(a) **The U.S. Conference of Mayors in their August 4, 1999 testimony state:**
"...that H.R. 2580 provides authority for RCRA waivers to allow states to integrate this law's permit requirements with cleanups of brownfields. I understand that this provision does not diminish or alter RCRA requirements; but it is intended to give states some flexibility in delivering a more responsive and coordinated regulatory program in addressing brownfields. This or some variant of this provision would be very helpful to those of us at the local level who often find ourselves confronting increased complexity at specific sites as we work to return them to productive use."

The cleanup contractors state:

"The permit waiver for on-site response actions that is contained in H.R. 2580 would remove the barriers to actual on-site cleanup and significantly increase the pace of Brownfields cleanups."

Your testimony appropriately recognizes that the permit waiver provision in H.R. 2580 is similar to the one in CERCLA for federal cleanups. Your main objection appears to be that CERCLA requires public participation and that the permit

provision does not require that. You also appropriately note that some states do not have the authority to provide a one-stop shop for permits because of the few that do not have federal authorization for a particular program. Of course, states do have public participation requirements.

I'm sure the specifics can be worked on. Indeed, H.R. 2580 gives EPA rulemaking authority to figure out the best way to ensure proper reporting from this one-stop shopping. Do you agree with the objective of one-stop shopping for cleanup related activities and the need to have statutory changes to accomplish this objective.

Response

We support streamlining regulatory requirements, while maintaining the proper safeguards to ensure protection of human health and the environment. The Administration has investigated for several years ways to streamline the permitting process, and will continue to do so. However, the "one-size-fits-all" approach of H.R. 2580 neither incorporates adequate environmental protections nor provides for proper public participation.

25(b). In your testimony you claim that changing the standard for preferring treatment to the maximum extent practical by removing the word maximum is a change you do not support. Can you explain why treatment to the maximum extent practical isn't just treatment for treatment sake — exactly the thing that the legislative record says we should get away from?

Response

Treatment to the maximum extent practicable is not treatment for treatment's sake. The current mandate in CERCLA for permanent solutions and a preference for treatment reflects the public concern that cleanups be protective over the long term. Treatment provides the only truly permanent response for the most highly toxic or highly mobile contaminants (principle threat sources), and EPA focuses treatment on these wastes. The less material that has to be managed over time, and the less hazardous it is, the more protective the remedy will be over time. As the Superfund program has matured, EPA has become much better at determining when and how to treat.

26. Your testimony also appears to state opposition to regulators being allowed to set "reasonable points of compliance" based on site specific factors. Do you believe points of compliance can be set in Washington D.C. or should points of compliance be reasonably set based on site-specific factors?

Response

The language in H.R. 2580, in calling for protecting of groundwater at its "reasonable points of compliance" may delay site cleanups as a result of disputes and litigation. Setting the "point of compliance" determines where cleanup requirements will be attained, and, conversely, where such requirements will not be met. Under current law, EPA has a clear expectation that cleanup standards should be met in the aquifer, throughout the plumes of contamination (except for areas, e.g., a landfill, where wastes will be managed in place at the completion of the remedial action). Adding this new language to the law will be interpreted by polluters as altering EPA's current policies on the protection of groundwater. By confusing this well-established expectation, the language in H.R. 2580 may give rise to disputes from PRPs who will try to establish other points of compliance, such as allowing the contamination to remain or migrate and only meeting the drinking water standard "at the tap." Alternately, the PRP may assert that groundwaters should only be cleaned up at the facility boundary, in essence writing off future use of the groundwater under their facility and removing a potential resource for future generations.

27. Your testimony takes issue with the provision in H.R. 2580 which states that the preference for treatment should not override risks to the community or workers. Do

you believe that the preference for treatment should allow remedies which increase risks to public health and to workers?

Response

A new, separate, and unnecessary test for treatment remedies only would invite additional litigation and thus delay the clean up of sites. Under the current law, EPA already accounts for protection of the community and workers in four different ways: (1) the NCP remedy selection criteria of protection of human health and the environment; (2) the NCP remedy selection criteria of short-term effectiveness; (3) the ARAR waiver of greater risk to human health and the environment, and; (4) the requirement to meet worker protection standards.

28. **In your testimony, you indicate that the Brownfields Assessment Pilots have provided information on the number of properties cleaned up, the number of properties redeveloped, the amount of redevelopment money that has been leveraged and the number of jobs that have been created. Has EPA ever independently verified these numbers provided by the pilots?**

Response

We have verified these numbers in several ways, consistent with the legal and regulatory limitations placed on the government's ability to request or to verify pilot data by the Paperwork Reduction Act (PRA) and EPA's assistance agreement regulations. The Brownfields Management System does track the reported number of "properties" cleaned up and redeveloped. It also tracks the reported funding that has been leveraged, as well as the reported number of jobs created. It is important to note that while many of your questions ask for information about "acres" assessed, cleaned up and redeveloped, we can only provide that information to you if cities have voluntarily reported this information to EPA. We recognize the need to not overly burden the pilots with reporting requirements.

As quarterly reports are received by the Regions and analyzed, certain key numbers are verified with the pilots, on an individual basis, if they appear out of the ordinary range of results for that measure. In early 1998, all Brownfields Assessment Demonstration Pilots were notified that we were extracting information from their cooperative agreement quarterly reports. We provided them management summary reports of key information prior to the use of this information in testimony to Congress. Under guidance from our Office of General Counsel, their verification of the data was voluntary. In addition, as demonstration pilots, our cooperative agreement recipients let us know about key accomplishments of their pilots. We work with a contractor to identify key lessons learned from their pilot experience, verify the information and document the success story or lesson learned.

Finally, for third party verification, we issued a cooperative agreement with the Institute for Responsible Management to research, with the assessment demonstration pilots, the identification of the type of pilot activities they were demonstrating and the identification of the methods of documenting these lessons learned. We have contracted with ISSI to assist EPA in measuring the results of the Brownfields National Partnership. We have established a cooperative agreement with the International City/County Management Association to research the results of the Brownfields Showcase Communities project, as well.

29. **GAO, in its April 1999 report, *Agencies Have Made Progress in Implementing the Federal Brownfield Partnership Initiative*, reported that EPA does not require recipients [of brownfields grants] to submit economic data and "cannot verify the accuracy of these estimates," How then, can EPA claim the economic benefits (e.g., job creation, money leveraged) from the brownfields program, if it cannot independently verify the data submitted by the pilot programs?**

Response

As mentioned in our response to Question #28, we have verified these numbers in several ways, consistent with the legal and regulatory limitations placed on the government's ability to request or to verify data by the Paperwork Reduction Act (PRA) and EPA's assistance agreement regulations.

It is important to note that the 16 Brownfields Showcase Communities are not reported on or tracked separately from the assessment pilots; they are in fact assessment pilots that have received designation from the White House as "Showcase Communities". The Showcase Communities serve as models of federal coordination and collaboration through funding, technical expertise, and Federal staff support. The progress and accomplishments of all assessment pilots are reported in the Brownfields Assessment Demonstration Pilots' quarterly reports and are tracked through the Brownfields Management System. Data collected from the quarterly reports is reviewed by EPA's regional offices and certain key numbers may be verified with the communities if the numbers appear out of the ordinary results for a particular measure.

Under guidance from EPA's Office of General Counsel, the verification of data is voluntary. In addition, EPA does not track or compile results for brownfields activities of other departments, agencies, or organizations. In addition to the quarterly reports, as demonstration projects, our cooperative agreement recipients often inform us of key accomplishments. We often use these accomplishments as examples of the effectiveness of the brownfields initiative when preparing Agency testimony and when responding to Congressional inquiries about brownfields.

30. **In your testimony, you indicate that Glen Cove, New York has "secured \$18 million in grants from various agencies." However, according to EPA's Brownfields Management System, the Glen Cove, New York Showcase Community has not leveraged any money for cleanup, has not leveraged any jobs, and has begun only one assessment. Is this accurate?**

Response

The information provided by EPA for the testimony referred to in your question reflects the information in the Brownfields Management System as of May 7, 1999. Based on additional, subsequent information provided by the City, Glen Cove has secured \$18 million in federal, state and local grants to support the overall goals of the Glen Cove Waterfront Revitalization Project.

Permanent local jobs have not yet been created, however Pilot funds are being used for site investigations which has generated work for Long Island environmental firms. Additionally, other funds leveraged for investigation, cleanup, development and infrastructure improvements seek to contract local firms whenever possible.

Glen Cove has begun site assessments at 7 sites.

31. **According to EPA's Brownfields Management System, as of May 1999, the Seattle/King County Showcase Community has not leveraged any money for cleanup, has not targeted any acres for cleanup and has leveraged 0 jobs. Is this accurate?**

Response

Based on additional, subsequent information provided by the City of Seattle/King County since the May 1999 Brownfields Management System report, \$75,000 has been leveraged for cleanup. The City also reports that 40 properties have been assessed and additional properties are being targeted for assessment. The City is not reporting any leveraged jobs at this time.

32. **According to EPA's Brownfields Management System, the Portland, Oregon Showcase Community, which was announced in January 1996, has not leveraged**

any money for cleanup, has not targeted any acres for cleanup and has not leveraged any jobs. Is this accurate?

Response

Since the May 1999, Brownfields Management System report, the City of Portland has not leveraged any money for cleanup, but has targeted 5 properties for assessment. The City is not reporting any cleanups performed to date, and has no current data to support leveraged jobs.

33. **According to EPA's Brownfields Management System, the East Palo Alto, Showcase Community, which was announced in May 1997, has not leveraged any money for cleanup nor has leveraged any jobs and has begun only one property assessment. Is this accurate?**

Response

Since May 1997, the City of East Palo Alto is reporting the completion of one comprehensive assessment covering at least 42 properties of a target area of 59 properties. An additional targeted property assessment was conducted using EPA's targeted brownfields assessment funds.

Cleanups, funded by the responsible parties, have been conducted or are underway under local, state or federal oversight. All properties have had significant assessment. With the exception of a few properties and a railroad easement which are in the process of cleanup, all properties within the brownfields site (making up over 60 parcels) are ready for development. Final assessment and cleanup appropriate to the development will occur during the development process.

The East Palo Alto Brownfields Job Training Program leveraged funds by partnering with other organizations and since the job training program's inception, 113 students have completed training and 102 have been placed.

34. **According to EPA's Brownfields Management System, the Los Angeles Showcase Pilot, announced in July 1998, has not leveraged any money for cleanup, has not leveraged any jobs, has not targeted any acres for cleanup and has not begun any assessments. Is this accurate?**

Response

Since July 1998, the City of Los Angeles reports to have leveraged over \$26.5 million in grants and loan authorities for cleanup. The City also reports that approximately 50 students completed the city's job training program funded by NIEHS. While cleanups will be funded through leveraged funds, not pilot funding, Los Angeles reports that 64 acres are currently targeted for cleanup. In addition, 4 properties have either begun or had assessments completed.

35. **According to EPA's Brownfields Management System, the St. Paul, Minnesota Showcase Community has not leveraged any money for cleanup, has not begun any assessments and has not leveraged any jobs. Is this accurate?**

Response

The St. Paul Port Authority currently reports that through an in-depth community process, the neighborhood groups selected six Properties for investigation and possible redevelopment. Five of those six properties have a started and completed phase I assessment. Three of those five properties have been selected by the community for further (Phase II) assessments.

To date, there have been no clean ups, nor redevelopment on properties where US EPA funding has been spent since St. Paul received its Showcase Community designation. In addition, the City is not reporting any leveraged jobs at this time.

36(a) In your testimony, you state, "Passage of the 1997 Brownfields Tax Incentive has enabled the federal government to level the playing field between brownfield and greenfield sites."

A. How many sites have applied for the Brownfields Tax Incentive?

B. How many times has the Brownfields Tax Incentive been used since 1997?

C. How many applications are pending at present?

Response

The Brownfields Tax Incentive legislation (Section 198 of the U.S. Tax Code) did not include provisions by which states would report approval statements issued by the state under the statute. Therefore, no such data have been sought or compiled by EPA. A survey to determine the number of applications, approvals, and project dollar values would require an Information Collection Request under the Paperwork Reduction Act.

The program manager for the Brownfields Tax Incentive is the U. S. Department of Treasury. There is no requirement that the IRS report annually on the use of the brownfields tax incentive. Indeed, since there is no specific line on a tax form that must be completed to receive the brownfields tax incentive, it is difficult to use tax data to track the use of this incentive.

Additionally, the Association of State and Territorial Solid Waste Management Officials completed a survey of state programs in their "Tax Incentive Check." This check showed that hundreds of information phone calls have been received, 52 formal requests have been received by states, and 29 requests have been granted by 34 states which responded. The report is available at www.astswmo.org.

36(b). In your testimony, you indicate that "Twenty-three pilots are in various stages of development" and that many are expected to make their first loan soon." When will the first loans be made under this program?

Response

The original 23 Brownfields Cleanup Revolving Loan Fund (BCRLF) pilots are in various stages of development. These early pilots are the Agency's pioneers. Each pilot has unique and individual aspects of the BCRLF program tailored to their area. Although EPA awards the BCRLF through cooperative agreements, the day-to-day operations and activities relating to loan applications are the responsibility of the BCRLF recipient.

The first brownfields revolving loan was awarded this week in Stamford, CT, to help clean up the Stamford waterfront and to restore the harbor area as a major economic and recreational resource. The \$250,000 loan is expected to assist in leveraging a \$25 million redevelopment for the City. The loan was awarded to Southfield Associates, LLC, through its managing member Clearview Investment Management, Inc. The City of Stamford will ensure that the environmental cleanup is undertaken in compliance with all applicable laws and regulations.

37. In a June 16, 1999 staff briefing, EPA officials indicated that, of the initial 23 pilots under the Brownfields Cleanup Revolving Loan Fund Program, 10 will ask for additional funding (\$150,000 in addition to the \$350,000 already received) and that 13 "aren't close" to making any loans and that EPA will not give them additional funding.

A. Which pilots are "not close" to making loans?

B. Why are these pilots not close to making loans?

C. You stated in testimony that, "We are confident that the program has caught hold and can move forward to make loans for brownfields cleanup." Please explain the basis for this statement given that no loans have been made to date.

Response

A. Baltimore, MD; Birmingham, AL; Cuyahoga County, OH; Detroit, MI; New Orleans, LA; Philadelphia, PA; Pittsburgh, PA; Richmond, VA; St. Louis, MO; West Central Municipal Conference, IL; and West Jordan, UT

B. The original 23 BCRLF pilots are in various stages of development. Although EPA awards the BCRLF through cooperative agreements, the day-to-day operations and activities relating to loan applications are the responsibility of the BCRLF recipient. Many of the pilots have been delayed due to turnover in key city personnel, combined with the newness of the program. Also relevant is that, prior to making a loan, pilots must develop the infrastructure necessary to ensure that loans will be in compliance with Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); the National Contingency Plan (NCP); and cross-cutting Federal authorities. Additionally, the original 23 pilots were awarded prior to the development of EPA's BCRLF Administrative Manual, which details the appropriate infrastructure to sustain, account for, and report on loans and cleanup.

C. In 1997, EPA awarded 23 BCRLF pilots \$350,000 each. Of the 1997 BCRLF pilots, seven pilots have been selected to receive supplemental funding awards of \$150,000 each. Eligibility for supplemental awards was based upon approval by EPA regional offices that significant progress had been made by the pilot toward development of loan documentation and marketing. Pilots that have been selected to receive additional funding are: Boston, MA; Bridgeport, CT; Louisville, KY; Rochester, NY; Sacramento, CA; Sand Creek Corridor, CO; and Trenton, NJ

In addition, the quality of proposals received in the latest round of BCRLF pilot award indicates a level of sophistication and understanding about the program parameters, needs, and infrastructure planning that supports the Agency's belief that the program has caught hold and is moving forward. Many of the latest BCRLF pilot recipients have expressed an interest in becoming the first to make a loan.

38. "Your testimony indicates that 45 new Brownfields Revolving Loan Fund Pilots were announced in May of this year. When will these new pilots make their first loans?"

Response

The second round of 45 BCRLF pilots was announced on May 25, 1999. Upon selection and notification, these new pilots were required to submit formal cooperative agreement application packages to the Regional EPA offices. The information in the BCRLF pilot proposal forms the basis for this cooperative agreement application. However, the cooperative agreement application requires, in most cases, more detailed information including standard budget forms and a formal workplan.

The 45 BCRLF pilot cooperative agreement negotiations are required to be completed by September 30, 1999. After September 30th, each pilot will proceed with the establishment of the day-to-day operations of its BCRLF loan program.

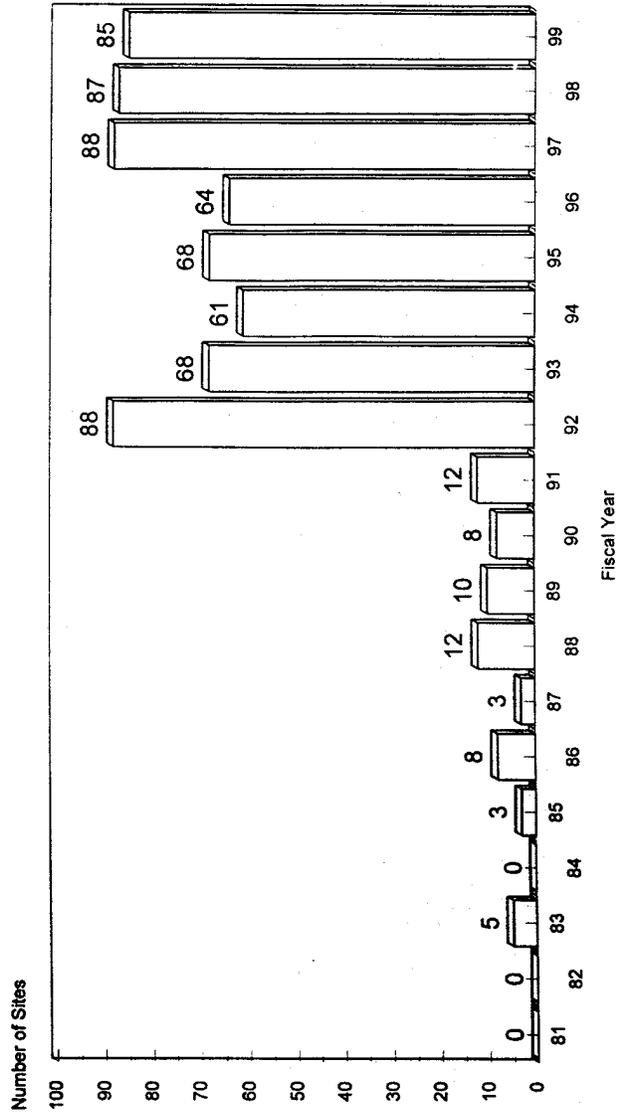
The specific responsibilities of the cooperative agreement recipient include both environmental and financial management components of operating a loan fund. Two key roles must be in place prior to loans being made: the BCRLF site manager and the fund manager. In addition, loan documents and properties must be identified and processed. Several of the new pilots had tentatively identified loan recipients, even prior to the final award of EPA funds, and we therefore anticipate that loans will be forthcoming from these pilots in the near future.

I hope these responses help to clarify my testimony. If you have further questions, please contact me or Cliff Rothenstein, OSWER Deputy Assistant Administrator, at 202-260-4610.

Sincerely,
Timothy Fields, Jr.
Timothy Fields, Jr.
Assistant Administrator

Enclosures

Superfund NPL CCs by Fiscal Year



Mr. UPTON. The cleanup Revolving Loan Fund administrative manual at page VIII-3 clearly states, and I quote. It says, "Each cooperative agreement has 3 years from the cooperative agreement start date," so that is September, 1997, for most of the 1997 pilots, "to obligate all funds awarded. The schedule of obligation should be no less than 50 percent of the amount awarded with 18 months, 80 percent within 2 years, and 100 percent within 3 years."

Will any of the 11 pilots that you listed make a loan before the 3-years lapse? In other words, where are we with those 1997 pilots? I guess the terms of the agreement were that they were supposed to do this.

Mr. FIELDS. Right. By September of 2000.

Mr. UPTON. Two thousand.

Mr. FIELDS. That is why we are going to have this meeting on December 6 that I talked about. I am not aware of any on that list that are issuing loans right now. There are others among the 23, as I mentioned earlier, like Sacramento, Trenton, Birmingham, Louisville, and Boston, that are thinking about loans. But, regarding the ones you list there and the ones that I provided my written response on, I am not aware of their consideration of loans.

We will try to as I mentioned to Congressman Bryant earlier, we will try to light a fire under those that are not currently negotiating or discussing loans and try to see what we can do to get others to issue loans. If they don't do so, we will have to consider deobligating funds, as I said earlier.

Mr. UPTON. Okay.

Ms. DeGette, I will yield to you.

Ms. DEGETTE. Thank you, Mr. Chairman.

To follow up on one issue that was just being discussed, I thought I heard the chairman saying that H.R. 2580 was de-linked, but I guess I would like you to comment on how that could happen if, in fact, it is an amendment to the Superfund statute.

Mr. FIELDS. Well, as I shared with the chairman, we don't read H.R. 2580 as de-linking the requirements from Superfund for brownfields cleanup.

Ms. DEGETTE. And why is that, Mr. Fields? I know you said that.

Mr. FIELDS. The way we read H.R. 2580, it would require that the response provisions of the Superfund statute and the National Contingency Plan be complied with in conducting brownfields cleanups. The only bill we have seen that has specific language which says that the cleanup provisions of the National Contingency Plan could be modified would be H.R. 1750. It is the only legislative vehicle we have seen that has that type of language. We are willing to look at H.R. 2580, but we don't read it to have that de-linkage.

Ms. DEGETTE. And you may have said this before I got here, and I apologize. I had another meeting, and this hearing was moved to 9:30, too late for me to change this other meeting. But why is it important that these concepts be de-linked?

Mr. FIELDS. You will hear more of this from the next panel. We think it is important to create flexibility. Right now, the cities that issue loans have to prepare an engineering evaluation and cost analysis. They have to prepare an action memo. They have to have

a governmental employee to serve as the site manager. We believe some of those requirements could be changed by statute.

The language in H.R. 1750 says that you don't have to comply with those requirements if they are not necessary to doing brownfields cleanup. We believe that language in H.R. 1750 is what we need here, and that would allow Mayor Malloy and others to do things in a much more flexible way. They don't have to prepare a decision document. They don't have to do an engineering evaluation cost analysis. Those requirements could be eliminated with the language that is in H.R. 1750.

Ms. DEGETTE. Right, okay.

Now, I think you pointed out, at least in your written testimony, that some problems exist right now with the Revolving Loan Fund because it is still in its infancy; and, in fact, the majority in this Congress has prohibited the EPA from making any grants in fiscal year 1998, which was only the second year of the program. Of course, funding still remains tenuous.

I guess my question to you would be, has the uncertainty of funding and the history in the last couple of Congresses inhibited the success of the revolving loan funds? In other words, do you think there is a chilling effect on cities to move forward under this program because they are not sure it will still be around when the cleanup time comes?

Mr. FIELDS. That is a good question, Congresswoman DeGette. There was definitely a chilling effect on the initial 23. When the 23 were awarded in September 1997 and then Congress in the fiscal year 1998 appropriations said we do not believe the legal authority is there, I heard from several cities and several Mayors that they were concerned about whether they would be able to continue the Revolving Loan Fund under the grants we had answered. When Congress in 1999 came back and said we endorse and support the revolving loan funds being awarded, that removed some of that legal cloud.

But during fiscal year 1998, that whole year, there was a legal cloud created because of the appropriation language that came from Congress in the budget about the legality of awarding Revolving Loan Fund grants to municipalities. It definitely had an effect. I believe it is one of the factors, not the only one, that has caused some slowness in the initiation of the Revolving Loan Fund program.

Ms. DEGETTE. Okay. I am wondering if, based on that cloudy, as you said, experience, you can let us know what you think the prognosis for success of this program is and what you think the future holds.

Mr. FIELDS. I believe that the prognosis for the Revolving Loan Fund is very good. I have said it for several reasons. The success we have had in the assessment program, which has been around for almost 5 years now, in creating jobs and leveraging \$1.6 billion in investment is one reason. I have heard from 6 or 7 cities now, in addition to the great effort that is led by Mayor Malloy in Stamford, that intend to issue loans in the very near future. And, third, this program has now reached a stage where the 2- or 3-year phase of assessment is done, the Mayors and community leaders are now beginning to focus on cleanup. Finally, the legal cloud has been lift-

ed by the fiscal year 1999 appropriation language which clearly said Congress supports and gives us the mandate to do this job of implementing cleanup through the revolving loan funds. That is what gives me an optimistic prognosis that the future is good and that we will see a great expansion in the number of loans issued under this program in the very near future.

Ms. DEGETTE. Thank you.

Thank you, Mr. Chairman.

Mr. UPTON. Thank you.

I would just like to make, before I yield to Mr. Bryant, three quick points with regard to our interpretation of H.R. 2580.

One, there is no requirement in the bill to tie the program to the National Contingency Plan. It is our belief that we de-link the program from the National Contingency Plan by the use of general revenues rather than Superfund dollars. In that provision, the bill says there is authorized to be appropriated and carried out in this section such sums as may be necessary. Such funds shall remain available until expended.

It is my understanding that H.R. 1750, in fact, allows EPA to require the use of the National Contingency Plan when it wants to. So in terms of a clear reading of de-linking, H.R. 2580 goes much further than does H.R. 1750.

Mr. FIELDS. I will go back, Mr. Chairman.

Mr. UPTON. I will be anxious to get your formal response from your legal counsel in terms of whether we are right or not. But as we talked to the authors of the bill and to our counsel, it is our belief that there is a greater distinction of de-linking in this bill than in H.R. 1750. We will be anxious to hear back from you.

Mr. FIELDS. We will respond in writing. We will go back and read that again. That is not how we had read it, but we will go back and look at it and give you some written comments on that point. We see a clear de-linkage in H.R. 1750. We will go back and look at H.R. 2580 again and give you our written response as to whether or not we think a clear de-linking from the Superfund response requirements is provided in that bill.

Mr. UPTON. You may be right on your first point that you go toward that, but I think our bill goes further.

I yield to Mr. Bryant.

Mr. BRYANT. Mr. Fields, thank you.

Would you clarify in my mind a statement you made about there being a 5-year commitment involved here? Because when our chairman questioned you before in follow-up to what we were talking about, these 11 cities, he referenced the administrative manual, Roman numeral 8-3, which states that each cooperative agreement recipient has 3 years from the cooperative agreement start date, and it goes on and talked about that.

Am I talking apples to oranges here? Is it 3 years or 5 years?

Mr. FIELDS. No, it is a 5-year grant that we issue. We award the grant for 5 years.

What is reflected in the administrative manual that you are reading from is that they have 3 years to draw down money. We give a \$500,000 grant under the cooperative agreement to a city or a municipality or a State. They have 3 years under our guidance to begin to draw funds down out of that grant. That is the commit-

ment that is made in the administrative manual. We want to provide some impetus, as the chairman said, to encourage people to try to move out quickly and begin to issue loans. But the actual award is a 5-year grant.

Mr. BRYANT. Okay. So for those 11 cities that haven't really done anything and are not likely to do anything, unless you can again get them excited during December—

Mr. FIELDS. They will get excited, I assure you. This is a high priority for us, and we are not going to just let money sit there if communities and cities are not taking action to move forward to implement the Revolving Loan Fund grant we have given them. We are not going to wait 3 years. We want to start action right away to encourage people to take action as necessary to begin to issue loans. Otherwise, we need to be taking the money back, as you said earlier.

Mr. BRYANT. To sort of change direction here, in some written testimony, Ms. Foss from the Wisconsin Department of Natural Resources advocates letting the Revolving Loan Fund participants conduct their cleanup in accordance with the respective State's own voluntary cleanup regulations instead of the National Contingency Plan. Would the EPA seriously consider such a change? And if not, why not?

Mr. FIELDS. We cannot make that change now under the current statute. Under the Superfund and the regulations thereof, the National Contingency Plan, these brownfields cleanup actions are done as non-time-critical removals. We don't have the flexibility now to deviate and say that we will allow these cleanups for brownfields to be done under a State-voluntary cleanup program that ignores the NCP when we give them dollars, Federal dollars to do that work.

I support what Ms. Foss is saying. I support the fact that we want a more flexible construct for these cleanups. We don't think that we should do these brownfields cleanups the same way we do the Superfund or national priorities list sites.

So, I support what Ms. Foss is saying. We need a more flexible cleanup approach, and that is why we support legislation that would allow us to exclude or eliminate certain parts of the National Contingency Plan requirements from brownfields cleanups. We don't think you should have to prepare an action memorandum. You should not have to prepare an engineering evaluation and cost analysis for brownfields cleanups.

We support those things being eliminated. But under the current statute, the way we read it, we don't have a choice but to at least require some modified version of those types of elements.

Mr. BRYANT. All right. Mr. Fields, how do we get from here to there on those issues? Is it our job as Congress to give you that flexibility, or is it your job to change the regulations, or is it your job to come to us to ask for that? That is common sense, I agree with you. How do we do that?

Mr. FIELDS. We have supported some legislation that has not been voted out of committee. H.R. 1750 has some language that would create that flexibility. It says very clearly that those parts of the National Contingency Plan that are not relevant do not need to be complied with for brownfields cleanups. That is the type of

legislative provision that we would support, and that is how Congress could help us legislatively.

In the meantime, on the administrative front, I am trying to do things with the policy and guidance under the current law to provide cities and States more flexibility to be able to do this in a more flexible way.

Mr. BRYANT. So specifically on those areas you have enumerated that there could be more flexibility, you are assuring me that only we have the authority as Congress to change that, and these are not regulations that belong to EPA that EPA can in and of themselves change? Those items you mentioned?

Mr. FIELDS. No, no. Let me be very specific. Your question was, how can Congress help us? Well, you can pass some legislation that would allow changes to be made in the law.

Mr. BRYANT. On those you enumerated previously, can in fact EPA change its own regulations?

Mr. FIELDS. EPA could change its regulations. We are exploring that option. We would hope that Congress would pass legislation. We think that would be a lot faster. If Congress does not pass legislation, we will have to examine making changes to the National Contingency Plan regulations to eliminate some of those requirements that currently apply to brownfields cleanups. That process is likely to take at least 2 years. But, if legislation is not enacted in an expeditious fashion, the Agency will have to consider regulatory modifications to effectuate those types of changes.

Mr. BRYANT. So you say regulation changes would take longer than legislation?

Mr. FIELDS. Well, I think Congress could pass new legislation. I know it has been 6 years, but Congress can pass legislation.

Mr. BRYANT. I have been up here 5 years, and I know better than that.

Mr. FIELDS. To do it by regulation, we estimate will take about 2 years.

Mr. UPTON. Ms. McCarthy.

Ms. MCCARTHY. Thank you, Mr. Chairman.

Mr. Fields, I very much appreciate your last remarks, because I too think that taking up H.R. 1750, which has such broad-ranging, bipartisan support, and the administration's support would be the way to go. The other attempts that are being made are slower and more tenuous, particularly when we get into Superfund reform. So I hope your wishes are carried out, and I support them.

In anticipation of the second panel, those of us who have read the testimony from the witnesses, in particular Stamford, Connecticut, I think we are going to be very pleased with the progress being made there. They loaned money almost immediately, as you know, and I wonder if you would just share with the committee why you think they were so successful and whether or not other cities will learn from this very positive experience.

I am not sure that everyone on the committee is aware that the money is not transmitted to the city. I heard concerns by members that—what about this money that is sitting around, but, rather, it is a letter of credit that is given to the city.

Mr. FIELDS. Right.

Ms. MCCARTHY. And the letter or the grant expires after 5 years, so the money is not forever lost if the city doesn't use it immediately, and I think that is an important point to make. And I wonder if you would just reflect on the success of Stamford and what we might expect in the future, because I think there is a very positive story going on there.

Mr. FIELDS. I can't tell the story like Mayor Malloy is going to tell the story in a moment, but Stamford has been a great success. When you asked me why I believe it has been a great success, I think it is because of Mayor Malloy personally; having a Mayor who is committed, who is dynamic, and who is very concerned about brownfields. Where redevelopment cleanup issues in his city are a critical element, having a developer who is ready, willing and able to participate in the program with him like Seth Weinstein, the chairman of Clearview Investment Management, Incorporated, and having property that is very viable and that has great redevelopment potential is also major factors.

I hope that we can use that effort in Stamford and the property redevelopment that will be occurring through the loan as a great springboard for many more cities. I hope more cities will use that example to look at how they can issue loans and leverage millions of dollars in private sector investment in their communities as well.

I think Stamford is a great example. I think it will help break the logjam of getting more revolving loan funds fully implemented and more loans being issued. When we look back on the history of this program and we begin to measure success, we may see Stamford, Connecticut, and the work of Mayor Malloy as what really got this program going.

Ms. MCCARTHY. I thank you very much.

I will await the Mayor's testimony.

Thank you, Mr. Chairman.

Mr. BURR [presiding]. The gentlewoman's time has expired.

The Chair would recognize himself, though he did say he would wait until the next panel. You have stimulated some additional questions in my mind.

Mr. FIELDS. Sure.

Mr. BURR. Mr. Fields, how many brownfields sites are there in the United States?

Mr. FIELDS. We use the estimate of the General Accounting Office. They estimate that there are more than 450,000 brownfields sites across America. We have seen estimates as large as 600,000, but somewhere in that ballpark, 450,000 to 600,000 brownfields sites exist across America.

Mr. BURR. And we have only cleaned up one of them?

Mr. FIELDS. No. We have only made one loan under the Revolving Loan Fund. Many more brownfields have been cleaned up.

Mr. BURR. There were brownfields that were cleaned up without the use of the Revolving Loan Fund?

Mr. FIELDS. Yes, sir.

Mr. BURR. How were those done?

Mr. FIELDS. They were done through private sector investment and other public sector investment.

As I indicated, the brownfields assessment program has been around for more than 4 years now. It has leveraged \$1.6 billion in

private sector investment for cleanup and redevelopment. The private sector is coming forward. For example, \$50 million has been leveraged cleanup in Dallas, Texas, and throughout America. The private sector has come forward, and put up cleanup dollars to get properties developed and some of those properties have been assessed through the EPA brownfields grants.

Mr. BURR. They have been successful?

Mr. FIELDS. Yes. But there are many other properties that don't have the private sector coming forward, and that is what the Brownfields Cleanup Revolving Loan Fund program is designed for. There are other properties that you need a public sector seed to be planted to help facilitate cleanup. We think that is what the Revolving Loan Fund program is designed to do.

Mr. BURR. You said that one of the reasons that we might be slow at experiencing success was that actions of Congress had a chilling effect on these participants.

Mr. FIELDS. That is one of the 5 or 6 factors, yes.

Mr. BURR. But isn't the truth that those 23 original participants receives their grants? They are not in line for any additional grants? So it is not a question of whether they were going to be approved or get their money, they had already been approved and had their letter of credit. How could our actions have a chilling effect on those 23?

Mr. FIELDS. Well, I assure you, Mr. Congressman, it did initially. It does not now because in fiscal year 1999 Congress changed their position.

Mr. BURR. Why would they be concerned with what we did if they had their letter of credit, they had their approval?

Mr. FIELDS. They had their letter of credit. They were concerned about whether or not this program was going to be abolished in fiscal year 1998 when Congress said we don't think the EPA has the legal authority to do this, and they thought their money would be deobligated.

Mr. BURR. That seems like that would have stimulated them to move quicker rather than to delay in fear that we would revoke it.

Mr. FIELDS. My staff tells me, for example, that when the fiscal year 1998 appropriation language came out, several cities indicated that they feared they would be required to send their money back to EPA because they were concerned about the legality of even being able to implement this program.

Mr. BURR. Share with us or your staff share with us which cities those were, would you, please?

Mr. FIELDS. I don't know the names.

This is Linda Garczynski, who works on my staff.

Mr. BURR. And if you would, you alluded to earlier that you said several Mayors expressed concern. I would like to know which Mayors those were.

Ms. GARCZYNSKI. We heard from the city of Dallas staff. We also heard from the Assistant to the Mayor of the city of Detroit. We heard from the city of Bridgeport staff. We heard from a number of the cities.

Mr. BURR. Share the rest of them with us, if you would.

Ms. GARCZYNSKI. I can't remember them all by heart, but we had a lot of telephone calls.

Mr. BURR. Would you be kind enough to submit that list to the committee in writing?

Ms. GARCZYNSKI. Yes.

Mr. FIELDS. We would be happy to do that.

Mr. BURR. Let me ask you, Mr. Fields, the EPA Inspector General issued a report in March, 1998—and I would ask unanimous consent to enter that report into the record. Without objection, so ordered.

[The information referred to follows:]



Office of Inspector General
Report of Audit

SUPERFUND

Brownfields: Potential for Urban Revitalization

E1SHF8-11-0005-8100091

March, 27, 1998

**Inspector General Division(s)
Conducting the Audit**

**Headquarters Audit Division
Washington, DC**

Region(s) covered

1, 3, 4, 6, 9

Program Office(s) Involved

Office of Solid Waste and Emergency Response

MEMORANDUM

SUBJECT: Brownfields: Potential for Urban Revitalization
Audit Report No. E1SHF8-11-0005-8100091

FROM: Elissa R. Karpf
Deputy Assistant Inspector General
for External Audits

TO: Timothy Fields Jr.
Acting Assistant Administrator
for Solid Waste and Emergency Response

Attached is our final report entitled, "Brownfields: Potential for Urban Revitalization." A draft of this report was issued to you on February 20, 1998, and comments were received from your office on March 17, 1998. The comments provided describe the specific actions along with the milestone dates for completion in accordance with EPA Order 2750. Therefore, we are closing this report in our Prime Audit Tracking System upon issuance.

This report describes findings and corrective actions the Office of Inspector General recommends to help improve and strengthen the Brownfields program. As such, it represents the opinion of the OIG. Final determinations on matters in the report will be made by EPA managers in accordance with established EPA audit resolution procedures. Accordingly, the findings described in this report do not necessarily represent the final EPA position and are not binding upon EPA in any enforcement proceedings brought by EPA or the Department of Justice.

Again, we would like to express our appreciation for the cooperation and helpful insight provided by your Outreach and Special Projects Staff as well as regional staff during our review. Should your staff have any questions, please have them contact Norman E. Roth, Divisional Inspector General for Audit, Headquarters Audit Division on (202) 260-5113.

Attachment

EXECUTIVE SUMMARY

PURPOSE

To help the nation address environmental concerns associated with idled, underutilized or abandoned urban industrial and commercial properties, EPA announced the Brownfields Economic Redevelopment Initiative (Initiative). The overall purpose of the Initiative is to help put urban Brownfield facilities back to sustainable and beneficial reuse.

Using information gathered in the survey phase of this audit, along with input from the Outreach and Special Projects Staff (OSPS), and a written request from the Acting Assistant Administrator for Solid Waste and Emergency Response, we developed the following audit objectives: 1) determine whether pilot funds were used for activities authorized under CERCLA §104; 2) determine whether pilot funds have impacted Brownfields redevelopment; 3) determine whether EPA quality assurance requirements were adhered to; and 4) determine whether the terms and conditions governing the revolving loan fund will permit its effective use.

RESULTS IN BRIEF

Overall, the Initiative has generated considerable attention from cities, states, tribes, other federal agencies, and congressional leaders. EPA has awarded 121 site assessment and 24 revolving loan fund grants to cities and states. EPA has been instrumental in bringing together numerous federal agencies to work cooperatively toward removing barriers to the redevelopment of Brownfields. Our review also showed that cities have been able to leverage millions in private Brownfields investment. The number of Brownfield assessment demonstration pilots as well as the Initiative's budget has grown steadily. Within the next three years, EPA plans to fund a total of 300 assessment demonstration projects. The Agency has accomplished a great deal in a relatively short time. Our report identifies actions the Agency can take to strengthen the Initiative and continue to move the program forward.

A Better Focus Could Lead to More Successful Pilot Projects

The five cities that we visited were using EPA funds to conduct site assessments, develop inventories, conduct community involvement activities, and develop Brownfield work groups and forums. While these activities are authorized under CERCLA §104, we found that some have had relatively little impact on actual redevelopment. We believe there is a need for the Agency to improve the focus of future pilots as well as a need to assist cities in developing technical expertise to continue the Brownfields program after pilot funds have been expended. Maintaining the Brownfields momentum and leveraging private Brownfield investments require successful redevelopments. Because success breeds success, EPA should encourage cities to focus their efforts on those activities which have the greatest potential for promoting rapid site redevelopment. This could be achieved by revising EPA's evaluation criteria used for the selection of pilot projects to focus on those activities designed to bring about timely redevelopment.

Quality Assurance at Brownfield Sites

Because the underlying goal of the Brownfields Initiative is to see facilities put back to sustainable and beneficial reuse, cleanup must be sufficient to protect the health and safety of those that will be occupying the former industrial property. To ensure that environmental data collected as part of a site assessment is of a known quality and that decisions made as a result of the data collected are defensible, EPA developed a planning tool known as the Quality Assurance Project Plan (QAPP). Two cities in our sample did not develop site-specific QAPPs as required by the National Contingency Plan and Agency policy. Uncertainties as to the amount of quality assurance needed for Brownfield sites led the Agency to form a work group to address this issue. The work group has drafted a Quality Assurance (QA) guidance document for Brownfield site assessments and plans on finalizing it during fiscal year 1998.

Brownfields Cleanup Revolving Loan Fund

City officials indicated that many of the sites that have the greatest potential for redevelopment may not be redeveloped due to the restrictions placed on the use of the funds by CERCLA and the requirements of the National Contingency Plan. Most notably, recipients pointed to the restrictions CERCLA places on using funds to cleanup asbestos, lead based paint, and petroleum. These restrictions, rather than the administrative terms and conditions of EPA's grants, may limit the usefulness of the revolving loan funds.

RECOMMENDATIONS

We recommend that the Acting Assistant Administrator for Solid Waste and Emergency Response:

- ▶ Revise EPA's proposal evaluation and ranking criteria to give credit and higher ranking to those cities whose work plan: identifies sites; proposes to conduct site assessments; contains the largest number of components of a successful redevelopment effort; contains specific objectives and milestones; and contains in-house technical expertise or a commitment from the city to obtain or develop technical expertise.
- ▶ Remind project officers and assistance recipients of the need for EPA-approved QAPPs prior to beginning field work.
- ▶ Issue the Brownfields QA guidance to the regional offices and provide copies of the guidance to current and future pilot recipients.
- ▶ Explore legislative and regulatory alternatives to help cities address the restrictions and requirements placed on the Revolving Loan Fund by CERCLA and the National Contingency Plan.

Agency Response & OIG Evaluation:

The Office of Solid Waste and Emergency Response agreed with each of the recommendations in the draft report and provided planned corrective actions as well as milestone dates for completion. The specific corrective actions planned are included after each chapter's recommendations and the response is included in its entirety as Appendix A.

We believe the corrective actions underway and planned by the Agency address the report's recommendations, therefore, we are closing this report upon issuance. No further response by the Agency is necessary.

TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY	i
CHAPTERS	
CHAPTER 1	1
Introduction	1
Purpose	1
Background	2
Scope and Methodology	3
CHAPTER 2	5
Impact of EPA Grant Funds and Future Concerns	5
Pilot Funds Were Generally Spent for CERCLA Activities	5
A Better Focus Could Lead to More Successful Pilot Projects	7
Helping Cities Develop Technical Expertise	10
Recommendations	12
CHAPTER 3 Quality Assurance at Brownfield Sites	15
Quality Assurance Project Plans	15
Quality Assurance Guidance for Brownfield Sites	16
Recommendations	17
CHAPTER 4 The Brownfields Cleanup Revolving Loan Fund	19
Recommendations	21
APPENDIX A Agency Response	23
APPENDIX B Distribution of Report	29
APPENDIX C Abbreviations	31

CHAPTER 1

Introduction

Purpose

To help the nation address environmental concerns associated with the redevelopment and reuse of industrial and commercial properties, EPA announced the Brownfields Economic Redevelopment Initiative. EPA defines Brownfields as abandoned, idled or underutilized industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. EPA's Brownfields Initiative is designed to empower states, local governments, tribes, communities and other stakeholders to work together in a timely manner to prevent, assess, safely cleanup, and sustainably reuse Brownfields.

Using information gathered in the survey phase of this audit, along with input from the Outreach and Special Projects Staff (OSPS), and a written request from the Acting Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER), we developed the following audit objectives:

- 1) determine whether pilot funds were used for activities authorized under CERCLA §104;
- 2) determine whether pilot funds have impacted Brownfields redevelopment;
- 3) determine whether EPA quality assurance requirements were adhered to; and
- 4) determine whether the terms and conditions governing the revolving loan fund will permit its effective use.

Background

CERCLA §104(a) gives EPA broad authority to take response action to address releases and threatened releases of hazardous substances, pollutants, and contaminants. CERCLA §104(b) authorizes EPA to undertake a variety of studies and investigations, including monitoring, surveys, testing, planning and information gathering in connection with response actions taken under CERCLA §104(a). As specified in CERCLA §104(a), these response activities must be undertaken by EPA consistent with the National Contingency Plan (NCP) and may be taken at sites at which a release or threatened release occurred, regardless of whether those sites are listed on the National Priority List (NPL). EPA's Office of General Counsel (OGC) has determined that EPA may address Brownfields using CERCLA §104 authorities and fund Brownfield activities by the authority granted under §111 (a)(1) of CERCLA.

EPA's efforts under the Brownfields Initiative can be grouped into four broad and overlapping categories: 1) providing grants¹ for Brownfield pilot projects; 2) clarifying liability and cleanup issues; 3) building partnership and outreach among federal agencies, states, municipalities and communities; and 4) fostering local job development and training initiatives.

Brownfield pilot projects are divided into two categories, 1) Brownfield assessment demonstration pilots, and 2) Brownfields cleanup Revolving Loan Fund (RLF) pilots. Both types of pilot activities are funded via a grant between EPA and a state, city, or county. (Most Brownfield pilot projects have been awarded to cities.) Assessment pilots are funded up to \$200,000 each and were designed to assist with environmental activities preliminary to cleanup, such as site identification, site assessment, site characterization and cleanup planning and design. The RLF pilots, each funded up to \$350,000, provide funds from which low interest rate loans can be made for the cleanup of Brownfield sites. The fund is replenished through repayment of principal and interest, so that future loans can be made for cleanup activities.

¹ We use the term synonymously with cooperative agreement throughout this report.

To receive an assessment grant, an applicant must go through a competitive award process administered by EPA. EPA has set up panels consisting of personnel from a number of federal agencies to review each application in accordance with a predetermined set of criteria established by EPA. Final determination for award is made by the OSWER Assistant Administrator. To receive a RLF grant the applicant must have previously been awarded an assessment grant and must submit an application addressing evaluation criteria established by EPA. As of September 1997, a total of 121 assessment pilots and 24 RLF pilots were awarded.

There has not been a precise count of the Brownfield sites in the United States. We have seen estimates from 21,000² to 400,000 sites. The U.S. Conference of Mayors, in their publication, "Impact of Brownfields on U.S. Cities - A 39 City Survey," gives an indication of why there is such a disparity in the number of sites when they state, "...respondents identified either individual properties and/or sites, many of which contain multiple properties." With such a variance, determining the costs associated with environmental assessment and cleanup is difficult. The General Accounting Office estimated that the cost of individual site assessment averages between \$61,000 and \$85,000.³ Using the lowest numbers for both sites and cost, Brownfield site assessment costs could reach into the billions. EPA's budget for Brownfield activities has increased nine fold over the past three years, rising from \$10 million in fiscal year 1996, to \$85 million for fiscal year 1998.

Scope and Methodology

On January 23, 1997, the Office of Inspector General (OIG) began a survey of the Brownfields Initiative to obtain background information and identify areas that would benefit from additional audit work. On April 29, 1997, the Acting Assistant Administrator, OSWER requested that the OIG review five site assessment demonstration pilot projects awarded to cities in EPA Regions 1, 3, 4, 6, and 9, to determine if funds were spent for CERCLA §104

² The 21,000 figure represents only 39 cities, therefore the actual number of Brownfield sites may be much higher.

³ GAO RCED-96-125, June 17, 1996 - "Superfund: Barriers to Brownfield Redevelopment"

activities. We agreed to incorporate this objective into the audit and use as its sample the five cities named by the Acting Assistant Administrator.

To accomplish our objectives we discussed the Initiative with regional Brownfields coordinators, Brownfields project managers, and grants specialists. We reviewed the pilot cities project officer files for each of the five pilot cities, obtained and reviewed financial information from selected pilot cities and discussed the pilot projects with city representatives. We visited the five pilot cities and the Brownfield sites within those cities. We reviewed quality assurance information for those pilot sites where EPA funds were used to conduct site assessments. We reviewed OGC legal opinions with respect to EPA's authority to conduct Brownfields activities. We compared EPA's pilots with a similar state program.

We reviewed the Outreach and Special Projects Staff (OSPS) 1996 Federal Managers' Financial Integrity Act assurance letter regarding management controls for the Brownfields Initiative. We also reviewed the OSPS proposal to be included as a demonstration project under the Government Performance and Results Act.

Our audit fieldwork was conducted from October 1997, through December 1997. Except as noted below, this review was conducted in accordance with Generally Accepted Government Auditing Standards (Government Auditing Standards, 1994 Revision). The five pilot cities selected by OSWER had projects that had been in process for at least two years. We used the same pilots to complete all of our audit objectives. As agreed with Agency management, we did not complete a detailed financial audit of these pilots. Rather, we reviewed the pilot activities to determine if those activities were allowable under CERCLA §104.

To determine if the terms and conditions governing the revolving loan fund would permit its effective use, we discussed the fund with EPA and pilot city representatives. Because the RLF pilots had just recently been awarded and no funds had been used, we relied upon the testimonial evidence of the participants to draw our conclusions.

Prior Audit Coverage

No previous OIG reports have been completed on the Brownfields Initiative.

CHAPTER 2

Impact of EPA Grant Funds and Future Concerns

The number of Brownfield assessment demonstration pilots as well as the Initiative's budget has grown steadily since the Initiative began, and the Agency has been able to accomplish a great deal in a relatively short time. Within the next three years, EPA plans to reach a total of 300 assessment demonstration pilot projects and continue efforts to identify mechanisms to fund cleanups. While the activities that we reviewed were authorized under CERCLA, we believe there are areas where additional focus and technical direction could help strengthen the Brownfields Initiative and continue to move the program forward.

Pilot Funds Were Generally Spent for CERCLA Activities

The review of five pilot grants to determine if funds were spent for authorized CERCLA §104 activities showed that, with the exception of activities at one pilot city, funds were used for CERCLA activities. The activities performed at each pilot city varied. For instance, the Region 1 city focused mainly on creating an inventory of Brownfield sites, while the Region 3 city focused on site selection and site assessment. The following chart presents the major activities performed by the five pilot cities in our sample.

Region	Major Activities Funded by EPA	Activities authorized under CERCLA
1	- Identification of sites - Development of a Geographic Information System of sites	Yes
3	- Identification of Brownfield sites and site assessments	Yes, however two sites did not meet the Brownfield Definition
4	- Identification and inventory of potential Brownfield sites	Yes
6	- Identification of sites, site assessments - Funding an EPA employee under an IPA	Yes
9	- Conducted community involvement activities and developed an Environmental Oversight Authority	Yes

Because CERCLA §104 is so broad, all of the activities performed under the various pilots were authorized. However, while site assessments are allowable under CERCLA, we found that EPA funds were used on two sites in Region 3 that did not qualify as Brownfields. (i.e., "abandoned, idled or underutilized industrial and commercial facilities.") At these two sites (totaling nearly 90 acres) there were no facilities and no evidence of prior development, nor did it appear that there had ever been any. In fact, the sites consisted mainly of trees.

The phase 1 site assessment report for one of the two sites in question stated, "the site has been mostly wooded and no structures have been present on the site since at least 1922." According to city officials, this property was the largest contiguous property (60+ acres) within the city limits with development potential. From the documentation we obtained from the city files it seems clear that the city fully intended to develop this site for industrial use. In 1994, before EPA's grant was awarded, the city paid an engineering contractor to review the site for development potential. According to city records, the engineering firm reported that the site "is primarily thick woods" and that "these woods are primarily mixed deciduous trees with heavy undergrowth. Clearing operations should include consideration to sell wood to interested parties." Such comments clearly indicate that the property was not previously used for commercial and industrial practices.

The approved work plan for this city, as well as others, did not identify specific sites to be assessed at the time the city was awarded the grant. The OSPS Director told us that not all approved work plans have identified the specific sites for assessments. Therefore, it is not possible to ensure that sites meet the definition of a Brownfield at the time of award. When we discussed the above situation with her, she agreed that it would be beneficial for the project officers to receive and review additional site-specific information once the city had chosen sites for assessment. The project officer would then be able to determine whether the site meets the definition of a Brownfield before the city spends EPA funds on it.

**A Better Focus Could
Lead to More
Successful Pilot
Projects**

CERCLA provides EPA with broad authority to conduct a wide variety of actions under the Brownfields Initiative. The "Application Guidelines for Brownfield Assessment Pilots" state that pilot projects are to focus on EPA's primary mission of protecting human health and the environment. Assessment pilots were instituted to fund those activities preliminary to site cleanup, primarily site assessments and other assessment-related activities. Pilot cities we visited have engaged in numerous activities including conducting site assessments, funding community involvement activities, developing inventories, conducting Brownfield forums and work groups, and developing creative financing solutions for Brownfield problems, to name but a few. While EPA has determined that these individual activities are authorized under CERCLA, we found that in some cases they have had little impact on actual redevelopment of Brownfield pilot sites.

In Region 9, EPA funds were used to conduct community involvement activities at two state superfund sites. These sites encompass nearly 350 acres, have viable responsible parties and are under state superfund enforcement orders for conducting the cleanup. EPA pilot funds were used, in part, to pay for a technical consultant to develop a land use plan with the responsible party and to participate in community meetings regarding the sites. While EPA approved these activities, city officials estimate that the cleanup and redevelopment efforts at one of these sites will not be completed for about 50 years. Given these time frames, the actual impact of EPA's grant funds may not be known for quite some time. City officials we spoke with stated that they have identified other sites that have redevelopment potential, however, they need additional funding to conduct site assessments at these sites. They also told us that while the funding has helped at the two large sites, they believe it could have had more impact had they focused on smaller, less complex sites.

In Region 1 we found that the city spent approximately \$180,000 of its \$200,000 EPA grant to hire a contractor to develop an inventory and Geographic Information System of potential Brownfield sites. Once the inventory was completed however, there was no one on the city staff to maintain and update the system. (The city's contractor estimated that keeping the system current would cost approximately \$25,000 per year.) Moreover, according to city officials, the six sites that the automated system

identified as having the greatest potential for development were already known by the city staff. EPA staff and the city project manager both came away with the same "lessons learned." They stated that in retrospect they would rather have spent less on developing the inventory and more on completing site assessments.

Another reason why the impact of EPA's grant money is not more readily apparent is that some pilot projects are not clearly focused from the outset. The city's submitted proposal, which is the basis for the EPA-approved work plan, is sometimes very general—speaking more to the goals of the Brownfield program, rather than addressing the city's specific needs. Therefore, work plans do not always contain well defined project objectives and milestones for completion. We found this to be the case especially when the pilot grant was awarded before specific sites had been identified. While not a mandatory factor in awarding a pilot grant, having cities present, in their proposal, potential Brownfield sites they intend to pursue, may provide a clearer link to the activities that need to be performed under the pilot.

Pilot participants told us that getting a clear focus on what to do and how to do it has taken longer than they originally envisioned. As a result, every pilot was extended beyond the two year time frame and approximately three years later, many of the pilots have not used the funds awarded.

A need for better focus was also reflected in the quarterly reports. Information contained in the reports was often interwoven with other Brownfield-related activities the city was performing, making it difficult to determine what activities were being funded by EPA and whether those activities were within the scope of the grant. Quarterly progress reports could be streamlined if they were to address only those activities funded through the grant. If more specificity were required in a city's work plan, reports could be further simplified by having the city address the objectives and milestones accomplished during the reporting period.

There are three basic components to a successful and rapid redevelopment effort—a prospective developer, an owner willing or anxious to sell, and a city committed to making it happen. Theoretically, the award of the Brownfield grant is indicative that the third component is in place. In fact, all of the cities we visited were aggressively pursuing urban redevelopment. However, some

pilot projects were undertaken when one or both of the other two components were absent. One pilot city used the bulk of its EPA funds on a site which had neither a prospective developer nor an eager seller. We later found that this site had previously been turned down by a state program, similar to EPA's Brownfield Initiative, because they did not have an interested developer.

We do not intend to imply that each site must have a formal agreement for transfer of the property, rather we believe that EPA funds should be directed to those sites where there is the greatest potential for successful redevelopment. This type of focus would favor a commitment or at least an expressed interest from a potential developer. A similar approach is currently being applied by EPA regional offices in determining whether to fund Brownfields targeted site assessments. In addition to EPA's Brownfields pilot assessments, EPA regional offices also have funding for conducting their own targeted site assessments at Brownfield sites. We found that regional Brownfields coordinators developed a list of criteria for prioritizing and performing these assessments. One of the criteria for using these funds is whether there is a commitment in place for the cleanup and redevelopment of the site. We believe similar criteria in the pilot application guidance would result in EPA selecting future pilots which have the greatest potential for rapid success.

Maintaining the Brownfields momentum and leveraging private Brownfield investments require successful redevelopments. While the enthusiasm for EPA's Brownfields Initiative was readily apparent in all of the cities we visited, the impact of EPA's grant funds on redevelopment was less evident. Of the \$1 million awarded for the five site assessment pilot projects we visited, less than \$150,000 was spent on actual site assessments. If we exclude from this figure the funds used on sites not meeting the definition of a Brownfield, only \$65,000 has been spent on actual site assessments. Without site assessments, properties will not be ready for cleanup (if necessary) and reach the ultimate goal of productive reuse. Because success breeds success, EPA should encourage cities (through the grant award process) to focus their efforts on those activities which have the greatest potential for promoting rapid site redevelopment.

**Helping Cities Develop
Technical Expertise**

From discussions with pilot participants and EPA officials, as well as reviewing the pilot projects, it became clear that for cities to continue conducting Brownfields activities beyond EPA funded pilot projects, they need to develop the necessary technical expertise and find additional funding sources. City representatives and several EPA officials stated that experience with the pilot projects has shown a need to have in-house technical expertise available or have a city committed to developing it.

The pilot projects which we reviewed were managed by the city's economic development department or similar office. While this is an appropriate office, Brownfield redevelopment projects require experience in a number of different fields including environmental, legal, financial, city planning and design among others. While the cities we visited had the legal, financial, and city planning expertise, some did not have staff with background in environmental issues, a key component in Brownfields redevelopment. As a result they relied upon EPA or state environmental offices for assistance. In two of the cities we visited, EPA provided employees using Intergovernmental Personnel Act (IPA) assignments. According to city officials we spoke with, these employees were instrumental in the success of the pilot projects. The main reason given was their familiarity with environmental cleanup issues and knowledge of EPA processes. In other cities where EPA employees were not available, cities tended to rely heavily on contract support, or support from EPA labs or state environmental agencies.

In Region 6, EPA provided an experienced manager to the city to help get the pilot started. According to city officials, once the city realized the potential benefits of the program, they invested in it by providing funding and technical staff to keep the program moving forward. When we spoke with city officials in December 1997, they told us that additional funding for conducting cleanup activities had been provided by the city for the program and they believe the program will continue to grow. City officials estimated that approximately \$53 million in Brownfields investment had been leveraged and an estimated 984 jobs were either retained or were being created as a result of the city's Brownfield program.

In contrast, at two of the pilot cities we visited, the cities relied heavily on EPA funding and contract support to conduct

Brownfield activities. While these cities were able to conduct a limited number of site assessments and develop an inventory of potential Brownfield sites, they will need to seek additional funding assistance to maintain the program once the EPA funding is expended. Moreover, because these cities did not have technical staff, most of the technical decisions were either directed by the contract support, or the city turned to EPA for assistance. For instance, in one city a contractor was hired to complete the site assessments at the selected sites. Once the site assessment reports were completed, the city did not have technical staff on hand to review them. As a result, they had to request assistance from one of EPA's laboratories to review the results of site assessment and suggest alternatives. While such assistance may be possible with a limited number of pilots, the number of pilots has been increasing each year. Providing such assistance to a large number of pilots may not be feasible. Early successes will promote growth of a city's Brownfield program. To sustain this growth, the city will need to have ready access to high-caliber environmental expertise.

Conclusions

The five cities that we visited were using EPA funds to conduct site assessments, develop inventories, conduct community involvement activities, and develop Brownfield work groups and forums. While these activities are authorized under CERCLA §104, some have had relatively little impact on actual redevelopment. We believe there is a need for the Agency to provide increased focus to future pilots as well as a need to assist cities in developing technical expertise to continue the Brownfields program after pilot funds have been expended. Maintaining the Brownfields momentum and leveraging private Brownfield investments require successful redevelopments. Because success breeds success, EPA should encourage cities to focus their efforts on those activities which have the greatest potential for promoting rapid site redevelopment. This could be achieved by revising EPA's evaluation criteria used for the selection of pilot projects to focus on those activities designed to bring about timely redevelopment.

Recommendations

We recommend that the Acting Assistant Administrator for Solid Waste and Emergency Response:

- 2-1 Revise EPA's proposal evaluation and ranking criteria to give credit and higher ranking to those cities whose work plan:
 - a. identifies sites;
 - b. proposes to conduct site assessments;
 - c. contains the largest number of components of a redevelopment effort;
 - d. contains specific objectives and milestones; and
 - e. contains in-house technical expertise or a commitment for obtaining or developing technical expertise.
- 2-2 Develop special grant conditions which require recipients to:
 - a. Submit site-specific information to the EPA project officer when sites have not been identified in the approved work plan. Require the EPA project officer to review this information to determine that the site meets the definition of a Brownfield. Require the EPA project officer's approval of the site before the city is authorized to spend EPA assessment funds on it.
 - b. Clearly delineate in quarterly reports those activities which were undertaken with EPA funds during the reporting period.

Agency Response

Recommendation 2-1

The Agency agreed to revise the pilot application criteria to include all of the elements mentioned. This action is scheduled to be completed for the Fiscal Year 1999, pilot application review process.

Recommendation 2.2

OSWER agreed to work with EPA's Grants Administration Division and OGC to develop terms and conditions for selection of future pilot sites. These terms and conditions will be incorporated into pilot workplans and will be developed in time for the Fiscal Year 1999 application review process. OSWER also agreed to direct project officers to clarify with grant recipients the need to clearly delineate in quarterly reports those activities undertaken with EPA funds. This activity will be completed by May 31, 1998.

**OIG Evaluation of
Agency Response**

The proposed corrective actions will address the recommendations and no further action is required.

CHAPTER 3

Quality Assurance at Brownfield Sites

Quality Assurance Project Plans

We found that two cities in our sample did not develop site-specific Quality Assurance Project Plans (QAPPs), as required by the National Contingency Plan and Agency policy. As a result, the reuse decisions made regarding these sites may not be based on data of known quality.

Unlike NPL sites which are cleaned up but not always reused, the underlying goal of the Brownfields Initiative is to have facilities put back into sustainable or beneficial reuse in a timely manner. Cleanup, therefore, must be sufficient to protect the health and safety of those that will be occupying the former industrial property. To ensure that environmental data collected as part of the Brownfield site assessments is of a known quality and that decisions made as a result of the data collected are defensible, EPA developed a planning tool known as the Quality Assurance Project Plan. The purpose of the QAPP is to document planning results for environmental data collection and to provide a project specific "blueprint" for obtaining the type, quality, and quantity of environmental data needed for decision making regarding cleanup.

In Region 3, we found that EPA funds were used to pay for a Phase II assessment which included environmental sampling. However, a QAPP was not developed for these sampling activities. In discussions with the Brownfields project manager, he stated that he was not aware that a QAPP was required. Similarly, city officials were not aware that a QAPP was required for the site. However, the terms and conditions of the grant clearly stated that a QAPP was required before any field work was initiated.

In Region 4, we found that a QAPP was developed but contained no site-specific information. Rather it was developed as a generic quality assurance plan. When the document was forwarded to the Region 4 Office of Quality Assurance for review, there were numerous comments regarding the adequacy of the plan. The QA office comments stated that "the QAPP provided for review followed the format established by EPA for QAPPs.

However since it is not [site specific], the QAPP contains no details on data quality objectives." The comments also stated that the QAPP did not contain a sampling and analysis plan. The sampling and analysis plan takes the data quality objectives and formulates them into a specific design that shows where, what type, how, and how many samples are to be taken as well as how they should be stored, transported, and what analytical methods should be used for analysis. The QA office requested that the QAPP be reconciled to address the inadequacies. However, Region 4 officials did not require the city to revise the plan. Nevertheless, sampling and analysis took place on the site, removal activities occurred, and the site is currently occupied by the prospective owner.

**Quality Assurance
Guidance for
Brownfield Sites**

During our review we discussed the quality assurance concerns with the Outreach and Special Projects Director, the Office of Research and Development's Quality Assurance Division, as well as EPA Brownfields project managers. We found that, in general, there were uncertainties about the amount of quality assurance needed for Brownfields field work activities. These uncertainties centered around the need versus the cost of quality assurance. As a result, a Brownfields Quality Assurance work group was established to research what QA requirements were necessary for Brownfields projects.

In January 1998, we met with the work group leader to discuss what had transpired since the group was formed and what had resulted. The work group was comprised of both regional and Headquarters staff from OSWER, the Office of Research and Development and regional quality assurance specialists. According to the work group leader, there were and continues to be differences of opinion as to what level of QA is required by the different parties. However, he also stated that work group members realize that QA is an important part of the decision-making process. The work group has drafted a guidance document on quality assurance requirements for conducting Brownfield assessments, which tries to balance the need for quality data with the limitations on funding for Brownfields assessments. The document is slated to be finalized during fiscal year 1998.

Recommendations

3-1 We recommend that the Acting Assistant Administrator for Solid Waste and Emergency Response:

- Remind project officers and assistance recipients of the need for EPA-approved QAPPs prior to conducting field work.
- Issue the Brownfields QA guidance to the regional offices and provide copies of the guidance to current and future pilot recipients.

Agency Response

The Acting Assistant Administrator agreed to issue a memorandum to all Brownfield pilot project officers which will emphasize that when pilot funds will be used to conduct environmental sampling activities, recipients should have an EPA-approved site specific sampling and analysis plan in place prior to beginning fieldwork. The Acting Assistant Administrator also agreed to issue the Brownfields Quality Assurance Guidance to the regions and project officers as well as pilot recipients. These activities will be completed by the end of the first quarter of Fiscal Year 1999.

OIG Evaluation of Agency Response:

The proposed corrective actions will address the recommendations and no further action is required.

CHAPTER 4

The Brownfields Cleanup Revolving Loan Fund

As a follow-on to the Site Assessment pilots, EPA established the Brownfield Cleanup Revolving Loan Fund (RLF) pilots. These were initiated to provide cities, states, and Indian tribes loan funds to conduct environmental cleanup of Brownfield pilot sites. It was originally envisioned that EPA funds would be used to capitalize RLFs. The funding in the RLF would then be loaned out by pilot cities to interested developers at low interest rates for the purpose of site cleanup. The fund would be replenished for future loans by the repayment of principal and interest on the existing loans. On April 25, 1997, EPA's Office of General Counsel provided the Director, OSPS a legal opinion advising OSPS that EPA could legally provide financial assistance to capitalize Brownfields revolving loan funds. As of September 1997, 24 RLF pilot projects have been awarded.

We reviewed the terms and conditions governing the revolving loan fund to determine if they would permit its effective use. Because many of the pilots had either just recently been awarded or were still awaiting approval, and because none of the pilot funds had been used for cleanup, our review consisted mainly of testimonial evidence gathered from EPA officials and pilot recipients.

Discussions with EPA officials and RLF recipients revealed that the terms and conditions, as stated in the assistance agreement, governing the revolving loan fund were complex and somewhat burdensome, but were feasible. However, both EPA and pilot recipients expressed concern regarding the restrictions and requirements placed on the use of the fund by CERCLA and the National Contingency Plan (NCP). Nearly all RLF recipients and several EPA officials we spoke with stressed that the Brownfields program should not be tied to CERCLA. They told us that the provisions of CERCLA and the NCP are overly restrictive and present barriers to effective cleanup of Brownfield sites. For instance, many Brownfield sites contain old facilities which often contain materials such as asbestos, lead based paint, and many

have underground storage tanks. However, because CERCLA restricts the use of funds to address asbestos, lead based paint and petroleum products, recipients believe that many potential Brownfield facilities will not be addressed. Beyond these specific restrictions, we were also told that the requirements of the NCP, such as addressing community concerns, holding community meetings, and setting up and maintaining administrative records require a great deal of resources to carry out. Because the grants are set at a total of \$350,000 and intended to address multiple sites, many participants believe that the funding is not sufficient and the administrative requirements to the lender are burdensome. As a result, city representatives told us that they did not want to get involved with the RLF pilots. In fact, in a few instances EPA had to encourage cities to apply for the pilots.

Further, as mentioned earlier, because some cities do not have the technical expertise on environmental programs and legislation (CERCLA, The Resource Conservation and Recovery Act, Leaking Underground Storage Tanks) they were not always familiar with specific provisions and restrictions of the programs, and some had never managed an environmental cleanup. As a result, some of the cities did not want the responsibility of providing oversight for Brownfield cleanup actions.

We also found, however, that some cities are working on innovative ways of handling the administrative and legal barriers which the RLF presents. In Region 4, a RLF recipient is working with a community development bank, which was established using funding from the Department of Housing and Urban Development, to issue and manage low interest rate loans for city development project funding. The city believes that teaming up with the community development bank presents a low cost option to administer and manage the RLF. In Region 6, the success achieved under the site assessment pilots has allowed the city to leverage additional funding which can be used to help address those substances which are restricted under CERCLA. Nevertheless, even with these innovative approaches, EPA and city officials we spoke with believe that changes are needed in order to make the program operate effectively. While they believe that addressing administrative requirements is feasible, there is continuing concern regarding the legal restrictions.

During our review, Congress was examining the Agency's Fiscal Year 1998, budget request. While the Congress provided the Agency with \$85 million for Brownfields activities, concerns were expressed regarding the "Agency's legal authority to utilize Superfund dollars to establish revolving funds which in turn would be used to clean up sites which are neither emergency in nature nor eligible for NPL listing." As a result, language was added to the appropriation bill prohibiting the use of Superfund dollars for the establishment of Brownfield revolving loan funds unless specifically authorized by future legislation. As a result, EPA has not awarded any further RLF pilots.

While there remains uncertainty as to whether there will be future RLF pilots, 24 have been awarded. This presents the Agency with an opportunity to monitor a small number of pilots to test the revolving loan fund methodology and explore alternatives to the restrictions on the use of the funds.

Recommendations

We recommend that the Acting Assistant Administrator for Solid Waste and Emergency Response:

- 4-1. Explore legislative and regulatory alternatives to help cities address the restrictions and requirements placed on the Revolving Loan Fund by CERCLA and the National Contingency Plan.
- 4-2. Provide RLF cities with training on the provisions of CERCLA, as they apply to removal actions.

Agency Response

Recommendation 4-1

The Acting Assistant Administrator responded that more detailed legislative language clarifying the appropriateness of using the Superfund for supporting RLFs for cleanup could be helpful. He also stated that the Brownfields program did not exist at the time the 1989 NCP was promulgated and recognized the current version places restrictions on the use of the RLF. He agreed to explore clarification in the form of revisions to the NCP to better

support the Brownfields program goals in the context of CERCLA. These activities are scheduled for completion during Fiscal Year 1999.

Recommendation 4-2

The Acting Assistant Administrator responded that on March 10-12, 1998, a Brownfield Coordinators Meeting was held where a draft administrative manual was provided. The manual discusses the provisions of CERCLA relevant to the RLF. The manual will be used to facilitate training of EPA regional staff and assistance recipients. Additionally, he responded that OSWER is working toward contractual support to provide technical assistance.

**OIG Evaluation of
Agency Response**

We believe the proposed corrective actions will help the Agency address the recommendations. No further corrective actions are required.

APPENDIX A**Agency Response**

March 17, 1998

MEMORANDUM

SUBJECT: OIG Draft Audit Report No. E1SHF8-11-0005
Brownfields: Potential for Urban Revitalization

FROM: Timothy Fields, Jr. /s/
Acting Assistant Administrator

TO: Elissa R. Karpf
Deputy Assistant Inspector General for External Audits

The Office of Solid Waste and Emergency Response (OSWER) has reviewed the subject draft audit report, and we concur with each of the recommendations stated therein. We are proud of the accomplishments made by our Outreach and Special Projects Staff (OSPS) and Regional Brownfields Coordinators working with other EPA offices and our federal, state, and local partners. We agree that the recommended actions will help to continue moving the Brownfields program forward. Our responses to specific recommendations, contained in the attachment to this memorandum, indicate our planned corrective actions and milestone dates for their completion.

As we take steps to improve the Brownfields program per the findings stated in the report, we wish to stress the experimental nature of our assessment demonstration pilots. The awards that have been made in the past five years are intended to foster a climate of change for renewed interest in urban revitalization and the remediation of environmental contamination. We view these pilots as 'living, learning laboratories' from which we draw lessons that can be applied in the continuing effort to put idled and abandoned commercial and industrial land into sustainable and beneficial reuse.

For the most part, the lessons learned from the five cities reviewed in this report, all early pilot award recipients, have already been incorporated into our current work processes. For example, we changed from a non-competitive to a competitive selection process as a means of ensuring fairness; we have revised the pilot selection criteria/guidelines numerous times, as we learned more about just what it is we hope the pilots will accomplish; and, we learned to emphasize the importance of strong, well-

negotiated cooperative agreements that clearly identify the type of sites and proposed activities for each pilot. We will continue to apply the lessons we have learned in our ongoing efforts to make the Brownfields program as effective as possible.

Thank you for the opportunity to review and comment on this draft report, and for the cooperation of your staff throughout the course of this review. If you have any questions, please contact Linda Garczynski, Director of the Outreach and Special Projects Staff, at 202-260-4039.

Attachment

cc: Mike Shapiro
Linda Garczynski
Ann McDonough
Earl Salo
Johnsie Webster
Mike Hurd

Dev Barnes
Marjorie Buckholtz
Andrew Kreider
Karen Kraus
Liz Harris

Recommendation 2.1

- Revise EPA's proposal evaluation and ranking criteria to give credit and higher ranking to those cities whose work plan:
 - a. identifies sites;
 - b. proposes to conduct site assessments;
 - c. contains the largest number of components of a redevelopment effort;
 - d. contains specific objectives and milestones; and
 - e. contains in-house technical expertise or a commitment for obtaining or developing technical expertise.

Response

In the five years since the first Brownfields pilots were awarded, we have continually updated and revised our award criteria based on lessons learned from ongoing pilots. The increased sophistication of these criteria has given priority to applications which indicate understanding and consideration of the many components necessary for the successful assessment and sustainable reuse of Brownfields sites. Throughout, we have continued to stress the need for replicability and innovation in the proposals as a means of laying the foundation for a Brownfields program that can outlive the Federal role.

Our January, 1998 review of pilot applications emphasized the importance of committing pilot funds directly to site assessments, and gave credit to those applicants who had already targeted specific geographic corridors for use of the funds. While we will not require applicants to identify specific sites and will not set a minimum financial level for funds committed to site assessments, we fully expect these elements to be appropriately emphasized in future panel reviews.

Beginning in the summer of fiscal year (FY) 1998, we will revise the pilot application criteria for the FY1999 application review, giving higher ranking to cities whose proposals include all of the elements recommended above. These revised criteria will be finalized prior to the first FY1999 review, by 10/31/98.

Recommendation 2.2

- Develop special grant conditions which require recipients to:
 - a. Submit site-specific information to the EPA project officer when sites have not been identified in the approved workplan. Require the EPA project officer to review this information to determine that the site meets the definition of a Brownfield. Require the EPA project officer's approval of the site before the city is authorized to spend EPA assessment funds on it.

OSWER Response to OIG Draft Report No. E1SHF8-11-0005 - Brownfields: Potential for Urban Revitalization

- b. Clearly delineate in quarterly reports those activities which were undertaken with EPA funds during the reporting period.

Response

The 'lag time' between the announcement of a pilot award and the actual submission of the recipient's workplan has traditionally been a critical time for project officers to work closely with pilot award recipients to ensure that they have considered all necessary elements as they construct their workplans. It is during this period that specifics are developed and necessary adjustments to the proposed workplans are made. We will continue to emphasize this time as a crucial opportunity to narrow a pilot's focus to a specific site or geographic corridor.

The draft report states on pages 6 and 7 that two sites in Region 3 did not qualify as Brownfields. However, while visiting the pilot sites, the project officer viewed an abandoned, unregulated dump and a number of abandoned drums of questionable content. These observations raised concerns about possible groundwater and soil contamination. Based on this evidence, he concluded that the site was environmentally stressed by past activity that may have led to contamination, and therefore met the definition of a brownfield despite currently consisting mainly of trees.

We believe that the Region 3 situation is a unique case but we also agree that project officers should have input into a pilot's site choice. During FY1998, we will consult with EPA's Grants Administration Division (GAD) and the Office of General Counsel (OGC) to develop appropriate terms and conditions so that EPA project officers review and approve project phases, including selection of pilot sites, in accordance with the substantial involvement guidance contained in EPA Order 5700.1. These terms and conditions will be incorporated in the final workplan agreements, and will be crafted in time for the first FY1999 application review process, by 10/31/98.

We will also issue a memorandum directing project officers to clarify with recipients that their quarterly reports should more clearly delineate activities undertaken with EPA funds, and we will work with them to ensure that these reports reflect appropriate changes. This memorandum will be issued by 5/31/98.

Recommendation 3.1

- Remind project officers and assistance recipients of the need for EPA-approved QAPPs prior to conducting site assessments.
- Issue the QA guidance to the regional offices and provide copies of the guidance to current and future pilot recipients.

Response

It is important to note in Chapter 3 of the draft audit report that Subpart O of the Code of Federal Regulations (CFR) only specifies that an EPA-approved *non-site-specific* Quality Assurance Project Plan (QAPP) be in place prior to beginning field work (40 CFR §35.6055(b)(2)(ii)). We understand that a generic QAPP is generally appropriate when cooperative agreement recipients may be taking the lead on similar activities at multiple sites and/or conducting minimal sampling activities. If, however, the scope of an assessment pilot includes more than minimal environmental sampling on a site-specific basis (e.g., pilot funds used to conduct a Phase I/Phase II-type assessment which includes environmental sampling), we agree that a site-specific sampling and analysis plan should be in place, and approved by EPA, prior to such sampling taking place.

We will issue a memorandum to all Brownfields pilot project officers emphasizing that when pilot funds will be used to conduct environmental sampling activities, recipients should have an EPA-approved site-specific sampling and analysis plan in place prior to conducting field work. We will also issue the Brownfields Quality Assurance Guidance to the regions and project officers and will provide copies to all current and future pilot award recipients. This memorandum and the Brownfields QA Guidance will be issued together, by the end of the first quarter of FY1999.

Recommendation 4.1

- Explore legislative and regulatory alternatives to help cities address the restrictions and requirements placed on the Revolving Loan Fund by CERCLA and the National Contingency Plan.

Response

We agree that CERCLA does present challenges that we are continuously addressing. For example, while CERCLA does limit the use of funds to address asbestos, lead-based paint, and petroleum products, cities do have alternative sources of funding to address these concerns at Brownfield sites. EPA recently worked closely with the U.S. Department of Housing and Urban Development (HUD) to amend the lead abatement grant to include provisions for Brownfields and Superfund. This source of funding, in addition to the Leaking Underground Storage Tank (LUST) Trust Fund, is available to cities, who should be encouraged to discuss use of these funds with their state governments.

While we do agree that the procedural requirements in the National Contingency Plan (NCP) can be an obstacle to the use of the Revolving Loan Fund (RLF), we do not think that the legislative and regulatory authorities are inherently flawed. However, more detailed legislative language clarifying the appropriateness of using the Superfund for supporting RLFs for cleanup could be helpful. Because the

Brownfields program did not exist at the time the 1989 NCP was promulgated, we recognize that the NCP, as it is currently written, places restrictions on the use of the RLF. We will explore clarification in the form of revisions to the NCP to better support the Brownfields program goals in the context of CERCLA. We will undertake and complete this process during FY1999.

Recommendation 4.2

- Provide RLF cities with training on the provisions of CERCLA, as they apply to removal actions.

Response

At the Headquarters-Regional Brownfields Coordinators meeting held March 10-12, 1998 in Washington, DC, we distributed a draft administrative manual that discusses the provisions of CERCLA relevant to the RLF. The draft manual, which was given to all Regional Brownfields Coordinators, will be a tool for them to use in facilitating training of Regional staff and assistance recipients. In addition, we are continuing to work toward securing contractual support to provide technical assistance.

APPENDIX B

Distribution of Report

Inspector General
Deputy Inspector General for Audit
Divisional Inspectors General
Assistant Administrator, Office of Solid Waste and Emergency Response
Director, Outreach and Special Projects Staff
Director, Grants Administration Division
Agency Followup Coordinator, Attn: Director, Resource
Management Division
Audit Coordinators, Regions 1, 3, 4, 6, 9
Audit Coordinator, Office of Solid Waste and Emergency Response
Regional Administrators, Regions 1-10

APPENDIX C**Abbreviations**

CERCLA	The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.
EPA	United States Environmental Protection Agency
NCP	National Oil and Hazardous Substances Pollution Contingency Plan
NPL	National Priority List
OIG	Office of Inspector General
OGC	Office of General Counsel
OSPS	Outreach and Special Projects Staff
OSWER	Office of Solid Waste and Emergency Response
RLF	Brownfields Cleanup Revolving Loan Fund
QA	Quality Assurance
QAPP	Quality Assurance Project Plan

Mr. BURR. They reviewed several of the EPA brownfields initiatives. They interviewed several of the pilot programs for the report. And the report basically stated that several—that city representatives told them that they did not want to get involved in the pilot program. In a few instances, the IG said the EPA had to encourage cities to apply for the pilots.

Now, I know I talked about did you encourage earlier; and you said, no, you didn't. And I know that on April 20, 1999, the chairman of the full committee, Mr. Bliley, sent a letter to the EPA, which I would also ask unanimous consent to enter into the record. That is the EPA response.

[The information referred to follows:]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D. C. 20460

MAY 17 1999

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

The Honorable Thomas J. Bliley
Chairman, Committee on Commerce
U.S. House of Representatives
Washington, DC 20515-6115

Dear Mr. Chairman:

This letter transmits additional documents responsive to your April 20, 1999 letter to U.S. Environmental Protection Agency (EPA) Administrator Carol Browner requesting information about EPA's Brownfields program. These documents, responsive to questions II.B.1., III.D.1.-4., III.G., and V.B., are enclosed as provided by EPA's Regional offices. Our updated response to Question V.B. is the result of cross-program discussions with our Regional offices

Again, please note that some of the enclosed documents may be deliberative in nature, enforcement confidential, and/or attorney-client/attorney work product privileged. In providing these documents, we are not waiving the Agency's ability to invoke any exemptions under the Freedom of Information Act (FOIA) or the deliberative and/or work product/attorney-client privileges in general. We, therefore, request that you preserve the confidentiality of any documents marked privileged by refraining from providing copies of these documents, or from otherwise communicating the contents of these documents, to persons other than those with a need to know as part of this Congressional oversight review.

Some documents included in this response contain statements regarding a position taken by a Federal government office. Such statements may or may not have received approval from the management of the organizations in question and, therefore, may represent only the view of the person who prepared the document. If you have any questions about the documents or information provided with this response, please call me at (202) 260-4610.

Sincerely,

Timothy Fields, Jr.
Acting Assistant Administrator

Enclosures

Copy: The Honorable John D. Dingell

Answers to Questions Proffered by
THE HONORABLE TOM BLILEY
Chairman, Committee on Commerce
U.S. House of Representatives

I. Provide the following information for EPA's brownfield programs generally:

A. I understand that EPA generally relies on the General Accounting Office's estimate that 450,000 brownfields sites exist in the United States. Has EPA undertaken any independent effort to count or estimate the number of brownfields nationwide or State by State? If so, summarize the Agency's efforts in this area, including an estimate of when this task will be completed (if it has not yet been completed).

Answer: In the past, EPA has often relied on the General Accounting Office's (GAO) estimate of the nationwide number of brownfields sites. Since GAO released its original estimate of contaminated sites in 1987 (restated in a 1995 report), several other organizations have also estimated the number of brownfields sites across the country. These estimates have ranged from under 100,000 to as high as 600,000.

In July, 1997, given a broader national understanding of brownfields issues and the growth of State brownfields and voluntary cleanup programs, EPA contracted with Kensington Systems, Inc. (KSI) to establish a more reliable estimate of the nationwide number of sites meeting EPA's definition of "brownfields."

KSI was first tasked to identify and catalog available national, state, and local brownfields data sources, including brownfields site inventories and databases to estimate a nationwide number of brownfields sites being tracked. They have completed this task and have compiled the results of their work in a draft "Data Collection Sources Report." This report was submitted to EPA on March 15, 1999. A copy is enclosed.

KSI was then tasked to develop a methodology to extrapolate data from three representative states to estimate the number of underutilized and abandoned sites across the U.S. that are not currently being tracked in inventories or databases. On March 29, 1999, KSI submitted their draft methodology, which is currently under review by EPA. A copy of this deliverable, "Methodology to Estimate the National Number of Abandoned and Underutilized Properties," is enclosed. Pending approval of the methodology by EPA and input from State environmental agencies, KSI will proceed to implement the methodology and estimate the number of untracked brownfields sites across the country.

Using the combination of actual numbers provided from databases or inventories and the extrapolated estimate of untracked sites determined during the second part of the project, KSI will estimate the total number of brownfields sites across the country.

Activity on this project began in September, 1998. To date, two draft deliverables have been submitted to EPA, as described above. EPA will continue to oversee this project and coordinate as appropriate with our State partners to ensure the most reliable and useful national estimate of brownfields sites. We expect this project to be completed in July, 1999.

Enclosures: KSI Data Collection Sources Report and KSI Methodology to Estimate the National Number of Abandoned and Underutilized Properties

B. For each of the Fiscal Years 1995 through 1999, identify the number of EPA employees (or full-time equivalents) working in whole or in part on brownfields-related projects (broken out by EPA headquarters and regional offices), and state the total annual salary of these employees. Please include an estimate of this same information for Fiscal Year 2000, based on EPA's budget submission to Congress.

Answer: See enclosed table, "Estimated FTE and Compensation in Support of the Brownfields Initiative by Fiscal Year."

C. For each of the Fiscal Years 1995 through 1999, identify the total amount of grants or other financial assistance EPA has provided to third parties for brownfields-related purposes.

Answer: Total funding provided through cooperative agreements to grant recipients by Fiscal Year are estimated as follows

FY 1995:	\$ 4,858,000
FY 1996:	\$ 8,355,500
FY 1997:	\$27,152,777
FY 1998:	\$43,784,301
FY 1999 (Projected):	\$58,600,000

D. Identify the total number of brownfield sites that have been cleaned up as a result of the financial assistance and grants EPA has provided since Fiscal Year 1995.

Answer: While EPA's funds cannot be used directly for clean ups, through voluntary reporting, we have identified 83 properties that have been cleaned up, as the result of the 855 brownfields assessments conducted or underway by our Assessment pilots, as of April 7, 1999. A portion of these were not contaminated at levels requiring cleanup. 136 properties have redevelopment activities underway.

II. Brownfields Cleanup Revolving Loan Fund Program

A. Provide the following general information regarding the BCRLF program:

1. A description of whether any States or other local government entities have

communicated to EPA any legal, technical, or practical impediments to their ability to participate in this program, to establish operating revolving loan funds, and/or to attract third parties to participate in the loan program.

Answer: The National Association of Local Government Environmental Professionals (NALGEP) conducted conference calls with the BCRLF applicants to discuss guidelines and implementation of the BCRLF. NALGEP's summary of these conference calls is enclosed.

2. A brief description of the measures used by EPA to evaluate or audit the performance of each BCRLF grant, and the frequency with which the BCRLF grants are evaluated or audited.

Answer: EPA evaluates the BCRLF program on an on-going basis. Evaluation activities include monitoring the progress recipients are making as part of the Agency's substantial involvement in the performance of the BCRLF cooperative agreements, through analysis of quarterly reports and by tasking Agency contractors to visit recipients. See enclosed materials prepared by Arthur Anderson.

3. A description of whether EPA has ever revoked funding, in whole or in part, for any of these BCRLF grants, and if so, a description of the circumstances relating to each instance in which EPA has revoked such funding.

Answer: No, EPA has not revoked funding in whole or in part for any BCRLF grants.

B. Provide the following information for each of the Fiscal Year 1997 BCRLF grant applications and awards:

1. A copy of each of the BCRLF program applications.

Answer: See enclosed.

2. All records relating to the evaluation of and final decision on each application.

Answer: See enclosed.

3. On March 27, 1998, the EPA Inspector General issued a report entitled: "Brownfields: Potential for Urban Revitalization." In Chapter 4, which covers the BCRLF program, the report states, "In fact, in a few instances EPA had to encourage cities to apply for the pilots." Provide a list of those applicants EPA encouraged to apply and which of these, if any, received funding from the BCRLF program.

Answer: EPA is aware of no instances in which it had to encourage cities to apply for pilots. The 1997 BCRLF Proposal Guidelines listed all eligible applicants for

BCRLF pilots. EPA Headquarters and NALGEP participated in a number of conference calls with eligible applicants to address questions concerning the BCRLF program. See enclosure for question II, A. 1, NALGEP summary.

4. A copy of the status reports provided by each of the 24 demonstration pilot grantees, and all records relating to EPA's evaluation of those reports and the grantees' progress or use of funds.

Answer: EPA's Regional Offices are the administrators of these grants and we are in the process of obtaining these files from the those offices. We have included eight status reports we have on file at Headquarters for four BCRLF pilots. See the enclosed status reports. Additional submissions will be provided by May 14, 1999.

5. A list of all loans made by grant recipients to third parties under the BCRLF program.

Answer: No loans have been made by grant recipients to third parties under the BCRLF program to date.

C. Provide the following information for each of the Fiscal Year 1999 grant applicants:

1. A list of applicants. For those applications that include multiple local government entities, please identify each such entity.

Answer: See enclosed "Brownfields Cleanup Revolving Loan Fund Pilot Applicants for Fiscal Year 1999" list.

2. A list of the Fiscal Year 1997 BCRLF program participants that requested additional funding for Fiscal Year 1999.

Answer: Seven requests for additional funding have been made: State of Indiana; State of Minnesota; Sacramento, California; Sand Creek Corridor, Colorado; New Orleans, Louisiana; West Central Municipal Conference, Illinois and Detroit, Michigan. EPA has not made any determination on these requests to date.

3. A description of the revisions, if any, made to the criteria for evaluation of applicants and selection of grant recipients since the Fiscal Year 1997 award cycle.

Answer: Revisions were made to the 1997 BCRLF proposal guidelines in three areas:

- Award support. Award support changed from \$350,000 to \$500,000.
- Eligibility. Eligibility was expanded. Eligible entities for FY 99 BCRLF pilots, as in 1997, are entities that had been awarded Brownfields Assessment Demonstration Pilots prior to FY99. In addition, political subdivisions with

jurisdiction over sites that have either (1) been the subject of a targeted brownfields assessment (formerly called targeted site assessments), or (2) been selected by the U.S. EPA prior to January 1, 1999, to be the subject of a targeted brownfields assessment.

- Coalitions. Proposals from coalitions, formed among eligible entities, are permitted to apply.

Initial review and evaluation of applicants will be made in each of the ten EPA regions. Selection of grant recipients remains the responsibility of Senior EPA management (acting Assistant Administrator for OSWER).

4. The date by which EPA expects to announce the grant recipients for Fiscal Year 1999.

Answer: EPA anticipates an announcement of new BCRLF pilots in late May/early June 1999.

III. Provide the following information about the Brownfields Assessment Demonstration Pilots:

Note: Responses from EPA Region IX were received in a consolidated package which includes answers to III.D. and III.G. This consolidated response is enclosed under a general question III. header.

A. The total number of applications for this grant program, by fiscal year, since its inception.

Answer: The number of assessment pilot applications by fiscal year are as follows:

FY 1995: 104 applications (Round 1, 63; Round 2, 41)

FY 1996: 251 applications (Round 3, 89; Round 4, 162)

FY 1997: 107 applications (Round 5, 107)

FY 1998: 231 applications (Round 6, 85; Round 7, 146)

FY 1999: 150 applications (Round 8, 35; Round 9, 115)

Note: The initial three assessment pilots were not selected through an application process, so there were no applications prior to FY95.

B. A list of the Brownfields Assessment Demonstration Pilots awarded through Fiscal Year 1999, and state whether each one is a National Pilot or a Regional Pilot.

Answer: See enclosed list of "Brownfields Assessment Demonstration Pilots Awarded Through FY99."

C. The amount of money awarded to each of the grant recipients listed in subpart B above.

Answer: See enclosed list of "Funding to Brownfields Assessment Demonstration Pilots."

D. A list of the brownfield site assessments that have been completed or are underway by grant recipients through Fiscal Year 1999.

Answer: EPA's Regional Offices are the Grant's administrators on these grants and we will need additional time to obtain these files from the those offices. The cooperative agreements signed with these pilot communities do not require reporting to this level of detail. All property specific reporting is considered voluntary. We have attached a report, by cooperative agreement recipients, with the "Total Number of Properties with Property Assessments Started (853) and Completed (469)" for each recipient. See enclosed Report. Please note that the Regional input for this question reflect raw data which may not have gone through quality assurance/quality control and may not have been entered in the Brownfields Management System.

1. For each site assessment that has been completed, state whether it has served as the basis for any actual site cleanup (either completed or currently underway), and if not, describe the reasons therefor.

Answer: The cooperative agreements signed with these pilot communities do not require reporting at this level of detail. All property specific reporting is considered voluntary. We have attached a report, by cooperative agreement recipients, with the "Total Number of Properties with Cleanup Activities Started (107) and Completed (83)" for each recipient.

2. For each site assessment that has been completed, state whether any Federal or State agency has rejected or disapproved of reliance on such assessment for actual cleanup activity, and if so, describe the flaws in the assessment that led to such rejection or disapproval.

Answer: EPA provides technical assistance to grant recipients throughout the site assessment process. This assistance does not rise to the level of a rejection or disapproval. Therefore, no rejections or disapprovals have been lodged to date by EPA. Regional offices, however, have provided comments to grantees as part of the technical assistance efforts. Additionally, State programs may choose to accept or reject a site assessment.

3. Provide all records relating to EPA evaluation of completed site assessments under this program.

Answer: Records/responses to this request are enclosed from most EPA Regions. The records from the remaining Regions will be forthcoming by May 14, 1999.

4. Identify those brownfield site assessments, if any, that had to be performed more than once due to deficiencies in the initial assessment.

Answer: Based on Regional information, no site assessments have been performed more than once due to deficiencies in the initial assessment.

E. The number of applications EPA received by the March 22, 1999, deadline for the second installment of Fiscal Year 1999 grants.

Answer: The number of proposals postmarked/received for the March 22, 1999 round of assessment pilots was 116.

F. The number and dollar amount of pilots that EPA expects to award during the remainder of Fiscal Year 1999, and the date by which EPA expects to announce the awarding of these additional grants.

Answer: EPA plans to award 50 additional assessment pilot grants by the end of FY 1999, at a total of approximately \$10,000,000. We plan to announce the awarding of these grants in mid- to late-June 1999.

G. A description of the processes and performance measures used by EPA to evaluate or audit the performance of each Assessment Demonstration Pilot, and the frequency with which these pilots are evaluated or audited.

Answer: The measures EPA uses to evaluate or audit performance of assessment grants are negotiated in the work plan for each pilot. EPA requires that quarterly reports are submitted by grantees and the information gathered from these reports will be entered into the Brownfields Data Management System that tracks the progress of each pilot. The quarterly reports can be made available to the public upon request. Additionally, Regional offices have provided additional information regarding pilot-specific efforts in the enclosed documents.

H. A description of the circumstances relating to each instance, if any, in which EPA has revoked funding, in whole or in part, for a Brownfields Assessment Demonstration Pilot.

Answer: EPA has not revoked funding, in whole or in part, for any brownfields assessment demonstration pilot.

I. According to the Proposal Guidelines for Brownfields Assessment Demonstration Pilots, "EPA's goal is to select a broad array of assessment pilots that will serve as

models for other communities across the nation." EPA already has funded 227 pilots through Fiscal Year 1998 and expects to fund another 100 pilots in Fiscal Year 1999. List and explain which of the 227 pilots funded through Fiscal Year 1998, if any, have been used, or currently are being used, as models by other communities across the nation, and identify those brownfield assessment and cleanup efforts that have been based on these model pilots.

Answer: EPA has funded a cooperative agreement with the Institute for Responsible Management (IRM) to conduct and disseminate research relating to the effects and risks of hazardous substances and detection of hazardous substances in the environment, with a specific focus on issues encountered by communities with active Brownfields Assessment Pilots. As part of the work conducted under this agreement, IRM has developed and maintains a matrix of information to assist Brownfields Pilots and other communities resolve common operational problems by sharing the lessons learned by their peers involved with assessment and cleanup projects.

In order to develop this matrix, IRM has visited and/or corresponded with more than 100 EPA Assessment Pilots to determine the type of activities undertaken at the Pilot, the methods used to perform these activities, and the lessons learned from their experiences. IRM disseminates this information to other Pilots and interested communities, and provides updates on their research through quarterly publications. Ongoing research results are also posted on their public website at www.instrm.org. IRM is currently in the process of finalizing a research book that will summarize the national lessons learned from their Pilot research.

The information collected from the examination of the experiences of these 100 Pilots has been helpful to new Pilots, especially those struggling with particularly difficult issues, as they work toward successful redevelopment of their brownfields sites. The information is widely shared and the communities who have benefitted from this exchange are too numerous to name individually. A copy of the most up-to-date IRM Brownfields Pilot matrix, which includes an entry for each Pilot studied by IRM, is attached.

In addition, we have funded a cooperative agreement with the International City/County Management Association (ICMA), a portion of which supports their local government Brownfields Peer Exchange research. The ICMA Peer Exchange project pairs up six different Brownfields Assessment Pilot communities with different levels of experience in brownfields redevelopment. The goal is to collect and disseminate replicable information on the best practices of the "mentor" communities for the benefit of the communities who have less experience or face similar impediments to brownfields redevelopment.

In Fiscal Year 1998, the first year of the program, the participants were:

Pomona, CA, Charlotte, NC, Kalamazoo, MI, Covington, KY, High Point, NC, and Lehigh Valley, PA. A final report on this project is expected during Fiscal Year 1999.

In addition, EPA has compiled summaries on some successful redevelopment projects on our web page (www.epa.gov/brownfields) to provide data to other pilots on potential models for successful redevelopment.

Enclosure: IRM Brownfields Pilot Matrix

IV. Provide the following information about the Brownfields Job Training and Development Demonstration Pilot Program:

A. The number of applications received by the March 1, 1999 deadline.

Answer: The total number of applications received is 35.

B. The number and dollar amount of awards EPA expects to make during Fiscal Year 1999, and the date by which EPA intends to make these grant awards.

Answer: We expect to announce 10 new pilots, to be funded at up to \$200,000 each, for a total of \$2 million. These grants will be announced by mid-June 1999.

C. A description of the measures and criteria EPA will use/is using to evaluate applicants and select grant recipients under this program.

Answer: A detailed description of the criteria EPA uses to evaluate the Brownfields Job Training Proposals is outlined in the *Proposal Guidelines for Brownfields Job Training and Development Pilots*, dated December 1998. The Job Training pilots are administered on a competitive basis. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff and other Federal agencies evaluate the proposals based on the criteria outlined in the *Proposal Guidelines*.

The six evaluation criteria that the evaluation panels use to rank the proposals are as follows: 1) Budget - describing a detailed proposed budget for the applicant's training pilot; 2) Problem Statement and Needs Assessment - examining and demonstrating the need for environmental training; 3) Community Involvement and Partnerships - detailing efforts to involve community-based organizations and describing how local businesses and potential employers have been involved in the project; 4) Institutional Capacity - ensuring that the pilot has capacity and the ability to implement the project; 5) Training Program Objectives and Plans - describing how the project will be implemented and managed and detailing how people in the community will be trained; and, 6) Measures of Success - describing how success will be quantified and how reports and deliverables will be supplied to EPA.

- D. A description of the processes and performance measures EPA plans to use to evaluate or audit the performance of each grant made under this program, and the frequency with which these grants will be evaluated or audited by the Agency.

Answer: The measures EPA uses to evaluate or audit performance of job training grants are negotiated in the work plan for each pilot. EPA requires that quarterly reports are submitted by grantees and the information gathered from these reports will be entered into the Brownfields Data Management System that tracks the progress of each pilot. The quarterly reports can be made available to the public upon request.

EPA also has a Cooperative Agreement with the Hazardous Materials Training Institute to help job training pilots with curriculum development.

- V. Provide the following information about EPA involvement in State voluntary cleanup programs for brownfields:
- A. At the March 23, 1999, Subcommittee on Finance and Hazardous Materials Hearing on Superfund, Mr. Tim Fields, Assistant Administrator, Office of Solid Waste and Emergency Response, stated that EPA has signed Memoranda of Agreement with 11 States regarding voluntary cleanup programs and that EPA is "working on agreements with eight additional states." Provide a list of these eight States, the date on which EPA began negotiations with each State, the date by which EPA expects to have signed an MOA with each State, and a summary of the negotiations between each State and EPA from their inception until the present, specifying those areas or topics over which EPA and the State have disagreed or have been unable to reach agreement

Answer: On April 20, 1999, EPA signed a Voluntary Cleanup Program Memorandum of Agreement (MOA) with the State of Oklahoma. The Oklahoma MOA is the first to be finalized since 1997. On November 26, 1997, EPA withdrew its final draft voluntary cleanup guidance and has been relying on the November 14, 1996-memorandum, *Interim Approaches for Regional Relations for State Voluntary Cleanup Programs*, as the framework for negotiating MOAs with the states. The November 1996 memorandum identifies six baseline criteria that EPA uses to evaluate state Voluntary Cleanup Programs.

As exemplified below, negotiations between the States and the Regions are at varied stages and often stop and start pending state priorities, staff availability and the types of issues being discussed. Because of these variables, it is difficult to predict an accurate time in which a given MOA will be signed.

There are two categories of states identified below: 1) states in which there is a draft Voluntary Cleanup Program Memorandum of Agreement (VCP MOA) being negotiated or there is substantial discussion taking place; and 2) states that are beginning preliminary discussions with the Agency about the possibility of drafting VCP MOAs with EPA.

States Undergoing Negotiation With EPA

1. Utah: EPA Region 8 began discussions with the State of Utah on proposed Voluntary Cleanup Legislation and a related MOA in October 1996. Initial EPA technical comments centered on the proposed legislation. Draft MOAs were exchanged between the agencies in early 1997. Negotiations slowed when new EPA VCP MOA guidance was being proposed.

Negotiations are active once again, and EPA and Region 8 are focused on the issue of site eligibility under the MOA. Region 8 proposes Regional review and concurrence on NPL-caliber sites before they are covered by the MOA. Utah wants all sites with a voluntary party to be eligible for the VCP and automatically covered by the MOA. EPA Region 8 and Utah are trying to develop an approach acceptable to both parties. There is ongoing, active dialogue, however, there is no anticipated date for signing the MOA.

2. Montana: EPA Region 8 began discussions with the State of Montana around December 1996. Since that date, periodic negotiations were put on hold due to changes in Montana's staff. Both Region 8 and Montana intend to finalize the MOA.

The remaining issue with the Montana MOA is the assurance language regarding EPA's intent to take action should there be an "imminent and substantial endangerment to public health." This language is a part of EPA's Model Language provided in the 1996 Memorandum. Montana would like to limit the scope of EPA's ability to respond to areas not covered by the voluntary cleanup plan. We do not have any anticipated date for resolution and signing of a MOA, but there is active dialogue.

3. Kansas: EPA Region 7 and Kansas began negotiations on a VCP MOA on March 7, 1997. The MOA negotiations regarding low risk sites are almost complete, and signatures of the MOA are expected within two months.

Kansas and Region 7 are considering whether to include within the MOA, cleanup actions pursuant to the state's Cooperative Program, which manages high risk sites. If these sites are included, Kansas and Region 7 will have to agree on the type and form of recognition and assurance EPA can provide for those sites.

4. Iowa: EPA Region 7 and Iowa began negotiations on a VCP MOA on February 1, 1999. Currently, Region 7 is determining whether the Iowa Voluntary Clean Up Program meets the six baseline criteria outlined in the previously-mentioned November 1996 Memorandum. Region 7 has drafted a MOA which has been sent to Iowa for review and comment. The signature of the MOA is expected in summer of 1999.

5. South Dakota: South Dakota sent its first draft of its MOA to EPA in

October 1996. Since that time, a variety of issues have arisen that have prolonged the development of MOA, including: assurance language; process for verifying whether a site has been remediated properly; community involvement requirements; and public notification prior to finalizing the MOA.

All of the above issues have been resolved by EPA and the State. The remaining issue is that the State is asking for indemnification from EPA for State cleanup activities under the VCP program. If the State insists on indemnification from EPA, the MOA will not be finalized because EPA cannot legally provide this type of protection.

6. Florida: EPA Region 4 has been working with the State of Florida on a VCP MOA since August 1998. The main issues with this MOA have been resolved. EPA and Florida have now agreed as to the range of sites to be covered under the MOA. The State of Florida has agreed to ensure that the higher-risk sites are remediated in coordination with EPA and will meet federal standards. The Region expects to finalize the MOA by June 1999.

7. West Virginia: Region 3 and the State of West Virginia have begun discussions at the management level and the State has asked EPA to review their Voluntary Cleanup Program. West Virginia has expressed an interest in a MOA which would allow the use of their voluntary program to address RCRA facilities. EPA has made a technical review of their program and has some comments on their approach to RCRA sites. At this time, there is not a draft MOA being negotiated.

States Showing Interest in Developing a MOA (too early in the process to identify any issues): The following is a list of states that are beginning preliminary discussions with the EPA Regions on the development of a VCP MOA.

1. Pennsylvania
2. Louisiana
3. New Mexico
4. South Carolina
5. North Carolina
6. Puerto Rico
7. Hawaii

- B.** Identify each State voluntary cleanup program cleanup site or activity in which EPA has intervened in any way, including through requests for information, taking enforcement or administrative actions (or threatening to take such actions), or any similar such action, and describe the reasons for EPA intervention.

Answer: EPA is aware of two instances in Texas which the Agency requested that the State not allow a particular site into the State Voluntary Cleanup Program (VCP) because of ongoing federal enforcement actions with the private party. Texas is

one of the twelve states that have a VCP Memorandum of Agreement with EPA. Generally, EPA and the states agree, in the MOAs, to exclude sites from participating in the VCPs if they are under a federal enforcement order.

We are in the process of gathering information to determine whether there have been other instances in which EPA has intervened in a state VCP. If additional information becomes available, we will provide it in the May 14, 1999 addendum response.

- VI. Provide the following information about the Brownfields Tax Credit Program:
- A. The total number of applicants that have sought to claim the Federal brownfield tax credit since its inception.
 - B. The total number and dollar value of tax credits that have been approved for brownfields-related uses.

Answer: The Brownfields Tax Incentive legislation (Section 198 of the U.S. Tax Code) did not include provisions by which states would report approval statements issued by the state under the statute. Therefore, no such data has been sought or compiled by EPA. The program manager for the Brownfields Tax Incentive is the Treasury Department (Cliff Kellogg, (202) 622-5732). EPA has developed two case studies which demonstrate the successful use of the tax incentive using information voluntarily disclosed by the taxpayer involved. Copies of these case studies are enclosed.

Mr. BURR. And in that, the chairman asked you if, in fact, pilots had been encouraged, and the response to that, dated May 17, 1999, was that the EPA is aware of no instances in which it had to encourage cities to apply for pilots. I would give you one new opportunity to tell me, did the EPA have to encourage any of the participants of this revolving fund?

Mr. FIELDS. Mr. Chairman, our response stands as it is.

Mr. BURR. Have you seen the IG's report?

Mr. FIELDS. Yes.

Mr. BURR. Did you sit down with the IG and express any concern over the conclusions that he found?

Mr. FIELDS. My staff did discuss the IG's draft report with the IG's staff. I did not talk personally to the IG about this report.

Mr. BURR. Did the IG revise their report based upon their conversations with you or your staff?

Mr. FIELDS. Well, they made some modifications, but they reflected on our comments in preparing their final report.

Mr. BURR. So if any one of the 21 participants in the program that were interviewed by the staffs of this subcommittee suggested that the EPA had encouraged them in any way to participate in the fund, they would be lying to us?

Mr. FIELDS. Well, I can't say that the IG is lying. I am just telling you, Mr. Chairman, that the extent of my knowledge and what I was told by my staff, I am not aware of us encouraging pilots to apply.

I think you have to be careful about the word and how "encourage" may be interpreted. For example, and you will hear this from the next panel, we work all the time with cities to help them to apply. We provide technical assistance. We work with them to help

fill out applications, to fill out government forms. Some could say that that is encouraging them. I see it as providing technical assistance.

When a community calls you, or a Mayor or a city calls you and says, can you help me prepare an application for this government assistance, we do that in a lot of our programs, not just brownfields. I don't see that as "encouraging" someone to apply. You are helping someone to fill out the government paperwork who has an interest in applying for Federal assistance.

Some would read that as encouragement. I read it as providing technical assistance. And, we do that in lots of communities across America. We provide technical assistance to those who have an interest in applying for brownfields assessment grants, revolving funds, and training grants. That is done every year.

We have many more applications for this program than we could ever respond to. We can't give people all of the assistance they need. We are not out there trying to beat the drums and say please apply for this program. We have many more people who are applying than we could ever fulfill the need. We do help them when they call upon us to assist them in figuring out how to comply with the government application procedures. That is done all the time.

That is the only thing I am aware of.

Mr. BURR. Trust me when I tell you that this Congress understands that there are two meanings for every word. We have learned that this year for the first time.

You alluded to earlier that we just haven't had enough time for this revolving fund to be successful. I took the opportunity to look back at the Drinking Water Revolving Loan Fund. It was created—or appropriated in September 1996 for the fiscal year 1999. From April 1999 through June 30, 1999—excuse me, April 1997 through June 1999, there had been 637 loans for a total value of \$1.3 billion. We have had one for \$250,000. What is the difference?

Mr. FIELDS. Well, I think that there are differences in these programs. The brownfields Revolving Loan Fund program is complex, and is used for hazardous waste removal situations. Brownfields may have many chemicals. You are focused on providing loans to private entities primarily who are involved in trying to clean up brownfields.

Mr. BURR. Most of this stuff you have talked about is structural.

Mr. FIELDS. Right. There are great differences. There has been an infrastructure there for a much longer period of time under the Safe Drinking Water Act Fund or the Clean Water Act Revolving Loan Fund. The infrastructure has been around for many years.

The Brownfields Cleanup Revolving Loan Fund has only been around for 2 years, since September 1997. That is when we started this program. I don't think you can measure a program that has been around for a much longer period of time and say that this program has been given a fair shake. When someone comes back and talks to you 2 years from now, I think we will begin to share with you the same kinds of results that we are achieving for the brownfields assessment program. Many jobs, many private cleanup investment dollars will be provided.

Mr. BURR. I think you misunderstand the intent of this committee and the members on it. I think that, in fact, we are going

through, hopefully, a thorough process of determining what it is we should use to evaluate success.

Mr. FIELDS. I agree.

Mr. BURR. Clearly, the tools at hand are minimal today, because we have only had one loan. When you compare nothing to nothing, it is very difficult to assess whether that is success. I would expect most individuals who participate in a program where the seed money exists and where we have a liberal administrative reimbursement, I think it is 25 percent under your program that can be used for administrative—am I correct?

Mr. WASHKO. Fifteen percent to the grantees and 10 percent to the borrowers.

Mr. BURR. Which is a total of 25 percent, I think.

Mr. FIELDS. Okay.

Mr. BURR. That will set your staff into a little bit of a disagreement. Clearly, we would like to know in the future what we should compare it to for success. Clearly, you have said it is unfair to compare it to the Drinking Water Revolving Fund. If success is these 23 initial participants actually having cleaned up sites 2 years from now, which is the timeframe that you gave us, so be it. It doesn't mean that this committee won't look at the process along the way, suggest and offer our help, look for new ways to streamline and make it more successful. Because I will assure you on both sides of the aisle of this committee, our interest is in one thing: Cleaning up brownfields. And given that more of them have been cleaned up outside of this revolving fund than inside this revolving fund, personally, if there is a pot of money, I would like to see it seed the outside effort versus the Revolving Loan Fund, just simply because of the success, and success defined as sites cleaned up.

The Chair at this time will adjourn the first panel.

Mr. FIELDS. Thank you very much.

Two quick points in closing, Mr. Chairman.

Mr. BURR. Yes, sir.

Mr. FIELDS. On the points you have just made the cleanups that have been done outside of this program, keep in mind, many have been through or, as a result of the brownfields assessment program.

Second, look at one brownfields loan under this program in Stamford, Connecticut, there a \$250,000 loan is resulting in \$50 million in private investment. That is just one loan, and many more will be issued during fiscal year 2000, and 2001. That \$50 million that Stamford is getting in private sector investment from that one loan is in excess of the \$35 million we gave out for all of the Revolving Loan Fund grants in fiscal year 1999 alone, one loan. That just tells you the magnitude of the success someone will be reporting to you 2 years from now.

Mr. BURR. Well, I look forward to not only the other 23 coming before us and talking about the size of it, but I am anxious to hear the gentleman from Connecticut, because he has done an amazing thing of leveraging a mere \$250,000 into a huge amount of development, and I wish him nothing but success and look forward to his testimony.

Thank you, Mr. Fields.

Mr. FIELDS. Thank you.

Mr. BURR. The first panel is adjourned.

The Chair would take this opportunity to call up the participants of the second panel.

The Chair would like to welcome all three of our witnesses on the second panel and make everybody aware of the fact that, for the question-and-answer portion, I think we have made arrangements for you to be joined again by Mr. Fields so that we will have an opportunity to ask everybody.

At this time, the Chair would like to pass over Mr. Malloy in hopes that Mr. Shays, who has asked to introduce you, can make it back from the vote.

The Chair at this time would introduce the Senior Project Manager for Brownfields and Industrial Development of the Boston Redevelopment Authority, Mr. Thomas Ahern.

TESTIMONY OF THOMAS P. AHERN, SENIOR PROJECT MANAGER FOR BROWNFIELDS AND INDUSTRIAL DEVELOPMENT, BOSTON REDEVELOPMENT AUTHORITY

Mr. AHERN. Thank you, Mr. Chairman.

My name is Thomas Ahern, and I am the Senior Project Manager for Brownfields and Industrial Development for the Boston Redevelopment Authority. We are the city's planning and economic development agency.

I am here today to talk about what Boston is doing on brownfields development under the leadership of Mayor Menino, what programs we use to spur development and cleanup of contaminated property, and to share our thoughts about the Revolving Loan Fund and its efforts.

Boston is a compact city with few developable acres available for new growth. Since we cannot grow new land, we are required to look to sites such as brownfields for new development opportunities. While Boston grows into the new millennium, we are also faced, like many northern industrial cities, with cleaning up the by-products of our 20th century economy.

Since 1987, over 1,400 spills of oil or hazardous material in Boston have been reported to our State Department of Environmental Protection. Many of these spills have been cleaned up, yet many still continue to pollute our soil, our groundwater and our neighborhoods.

What is Boston doing to assist with private brownfields development? Under Mayor Menino, Boston has tried to develop a "menu" of options for developers, community development corporations, nonprofits and private property owners to solve their brownfields problems. A typical approach to developing a financing plan would be to "cherry pick" at several different city, State and Federal initiatives and attempt to combine them with private financing or developer equity.

We use city initiatives such as tax abatement, public takings of property, community development block grant funds and debt financing through agencies like the one I work for, the Boston Redevelopment Authority.

We offer assistance in gaining access to State initiatives such as the new, in-State Massachusetts brownfields law program. This State effort, which just recently began after passing the legislature

in August 1998, provides tax credits and \$30 million in loans and grants toward the cleanup of brownfields. The law also provides new liability protections for lenders, tenants and new innocent owners. Because this program is relatively new, however, it is difficult to accurately assess its effectiveness at this time. However, we believe it will be a critical tool in the future.

The City and the BRA also seek Federal assistance for brownfields through redevelopment. Some of our neighborhoods hard hit by brownfields are located in an Empowerment Zone, which can bring significant financial assistance. Tax credits are also available for projects located in the Zone. The City can also elect to use some of its Section 108 loan guarantees to help with the development, something Boston is doing right now to encourage development in areas of economic hardship.

We are also using the HUD Brownfields Economic Development Initiative, which awards grants for cleanup along with additional Section 108 loan guarantees for redevelopment. We recently received an award of \$7 million under this program for our top brownfields site, the Modern Electroplating facility in Roxbury. An additional Federal incentive is the Federal Home Loan Bank, which provides financing, letters of credit and financing for brownfields projects that are having trouble locating capital.

Boston was selected for a Brownfields Pilot Assessment under the EPA in 1995, for which we received a \$200,000 grant. The funds were used to hire a brownfields coordinator and to identify brownfields sites in several neighborhoods of the city. The City worked with numerous community organizations in a 3-year effort to identify, map and assess brownfields development opportunities in the community. Today, 4 years after the grant was awarded, Boston is well on its way to cleaning up and developing three of the primary sites that we identified through this grant.

In 1997, we were awarded a \$350,000 Revolving Loan Fund by the EPA. The intent of the program was to continually offer a financing mechanism for cleaning up brownfields sites. One of the main impediments to successful redevelopment has been the lack of money available for cleanup work. This program has offered Boston the opportunity to finally provide access to critical funds.

However, a funny thing happened on the way to the landfill. The more we learned of the program, the more problematic it became to administer the funds.

From the time the City agreed to accept the funds in October 1997 through January 1999, we were engaged in the process of negotiation with EPA Region One regarding several difficult issues.

Among the primary concerns we had were: selection of an on-scene coordinator to oversee the cleanup activities; development of an application packet; CERCLA regulations; the requirement that the City secure a site if a loan is defaulted upon; and the types of properties and contaminants for which the funds could be used.

Without a doubt, the two most difficult issues for the City have been CERCLA regulations and the OSC requirements. These factors have been major impediments to carrying out the RLF program in Boston.

May I continue, Mr. Chairman?

Mr. UPTON. As you know, your statement is made complete in the record, but if you could summarize it, it would be fine.

Mr. AHERN. I would like to.

What we are trying to do in Boston is use the Revolving Loan Fund to help spur cleanup of our most problematic sites. The program has been difficult to administer over the last 2 years, but, recently, we received an application to use these funds. We are very excited about making a loan sometime within the next few months on one of our top brownfields sites. And I believe that one of the sites, actually, that we could be using this loan money for within the next 6 to 8 months is actually one of the sites that we used our EPA Brownfields Pilot Assessment money for.

So, as Mr. Fields mentioned, the money is being used, at least in the city of Boston. We are planning on using it as the natural projection line, the pilot assessment which we received in 1995 now through 1997.

But we have had difficulty with the program, although we believe we are in a position to now be making a loan sometime within the next 6 to 9 months.

[The prepared statement of Thomas P. Ahern follows:]

PREPARED STATEMENT OF THOMAS P. AHERN, SENIOR PROJECT MANAGER FOR BROWNFIELDS AND INDUSTRIAL DEVELOPMENT, BOSTON REDEVELOPMENT AUTHORITY

Mr. Chairman and members of the Committee: My name is Thomas Ahern, and I serve as the Senior Project Manager for Brownfields and Industrial Development at the Boston Redevelopment Authority (BRA). The BRA operates as the City of Boston's planning and economic development agency, responsible for overseeing development in both our downtown as well as our neighborhoods. Within this structure, the City has also placed the responsibility for developing and carrying out an aggressive brownfields strategy. I am here today to talk about what Boston is doing on brownfields development under the leadership of Mayor Thomas Menino, what programs we use to spur cleanup and revitalization of contaminated property, and to share our thoughts about the EPA Revolving Loan Fund and its role in our efforts.

Boston is a compact city with few developable acres available for new growth. Since we cannot grow new land, we are required to look to sites such as brownfields for new development opportunities. While Boston grows into the new millennium, we are also faced, like many northern industrial cities, with cleaning up the by-products of our 20th Century economy.

Since 1987, over one thousand four hundred spills of oil or hazardous material in Boston have been reported to the Massachusetts Department of Environmental Protection. Many of these spills have been cleaned up, yet many still continue to pollute our soil, groundwater and neighborhoods.

The Boston Approach—

What is Boston doing to assist with private brownfields development? Under Mayor Menino, Boston has tried to develop a "menu" of options for developers, community development corporations, non-profits and private property owners to solve their brownfield problems. A typical approach to developing a financing plan would be to "cherry pick" at several different city, state and federal initiatives and attempt to combine them with private financing or developer equity.

We use city initiatives such as tax abatements, public takings of properties, Community Development Block Grant funds and debt financing through city agencies like the BRA.

We offer assistance in gaining access to state initiatives such as the new Massachusetts Brownfields law program. This state effort which just recently began after passing the Legislature in August of 1998, provides tax credits, loans and grants towards cleanup of brownfields. The law also provides new liability protections for lenders, tenants and new innocent owners. The law will not only open up new opportunities for private parties to purchase brownfield sites, but will also encourage banks to open up their lending practices to contaminated sites. \$30M was set aside for loans and grants towards assessments and cleanup and an additional \$15M was

appropriated to purchase environmental insurance for these sites. Because this program is relatively new it is difficult to accurately assess its effectiveness at this time, however we believe it will prove to be a critical tool.

The City and the BRA also seek federal assistance for brownfields redevelopment. Several of our neighborhoods hard hit by brownfields issues are located in an Empowerment Zone, which can bring significant financial assistance. Tax credits are also available for projects located in the Zone. The City can also elect to use some of its Section 108 loan guarantees to help with the development, something Boston is doing right now to encourage development in areas of economic hardship.

Boston is also using programs like HUD's Brownfields Economic Development Initiative, which awards grants for cleanup along with additional Section 108 loan guarantees for the redevelopment. Boston recently received an award of \$7M under this program for our top brownfields site, the Modern Electroplating facility in Roxbury. An additional federal incentive is the Federal Home Loan Bank, which provides low-cost financing, letters of credit and bridge financing for brownfields projects that are having trouble locating capital.

Boston and EPA Brownfields Programs.

Boston was selected for a Brownfields Pilot Assessment in 1995, for which we received a \$200,000 grant. The funds were used to hire a brownfields coordinator and to identify brownfields sites in several of the neighborhoods of the city. The City worked with numerous community organizations in a three-year effort to identify, map and assess brownfields development opportunities in the community. Today, four years after the grant was awarded, Boston is well on its way to cleaning up and redeveloping three of the five primary sites selected through the grant.

In 1997, Boston was awarded a \$350,000 Revolving Loan Fund by the EPA. The intent of the program was to continually offer a financing mechanism for cleaning up brownfields sites. One of the main impediments to successful redevelopment of brownfields has been the lack of real money available for cleanup work. This program offered Boston the opportunity to finally provide access to these critical funds.

However, a funny thing happened on the way to the lined landfill. The more we learned of the program, the more problematic it became to administer the funds.

From the time the City agreed to accept the funds in October 1997 through January of 1999, we were engaged in a process of negotiation with EPA Region One regarding several difficult issues. Among the primary problems were:

- Selection of a "On-Scene Coordinator" (OSC) to oversee the cleanup activities;
- Development of an application packet;
- CERCLA regulations;
- Requirement that the City "secure" a site if a loan is defaulted upon;
- Types of properties and contaminants for which the funds could be used;

Without a doubt, the two most difficult issues for the City of Boston have been the CERCLA requirements and the OSC requirements. These factors have been major impediments to carrying out the RLF program in Boston and elsewhere.

A typical Boston brownfield is not a Superfund site. In fact, Boston does not have any sites currently operating under CERCLA. However, if a developer secures a loan under the EPA Revolving Loan Fund, their cleanup is now governed under CERCLA regulations, which are immeasurably more onerous than the Massachusetts regulations. It has proven to be extremely difficult to convince private property owners and developers that it is in their best interest to willingly subject themselves to these additional regulations. Some attorneys will say that the requirements, in practice, are not terribly difficult. However, perception is reality in this case.

Some of the developers of larger brownfield sites, which may fall under the strictest of cleanup regulations under the state law, will consider the program. In fact, we have discussed the program with developers of two specific sites recently. The reality is such that if there are other opportunities, even if it is private lending at twice the rate, for financing the cleanup without incurring CERCLA regulations, the developers more times than not will take the more expensive route. It just isn't worth the hassle. In the case of a typical site owner, I can not see a reason why they would take this loan, under these conditions, unless every other resource has been exhausted.

Massachusetts employs a privatized cleanup system, whereby an owner hires an environmental professional to assess the site, report it to the state regulators, then undertake a cleanup effort within a certain period of time. To administer the EPA Revolving Loan Fund, the City is required to employ an On-Scene Coordinator to oversee the cleanup efforts. This employee must, according to regulations, be a public employee, meaning that the City can not contract with a private individual to perform these services. While the BRA employs many individuals who specialize in planning, development, design and finance, we do not have a person who could sat-

isfy the requirements of an OSC. Imagine what smaller cities and towns must be faced with.

EPA Region One, to their credit, identified that this would be a serious impediment to making loans. They suggested an innovative approach: have the EPA contract with the state DEP to serve as the OSC, paid for with a portion of each Massachusetts Pilot's funds. A great idea, except for one problem. Again, under the more progressive state privatized cleanup system, an owner of a site hires his or her own environmental professional. The state DEP does not oversee or approve of cleanup plans except for the most contaminated properties. We would be forced to require a private property owner to accept a state regulator as their On-Scene Cleanup Coordinator, essentially negating the concept of a privatized cleanup system. As you might imagine, the BRA saw this as creating one impediment to solve another, and we declined the offer.

Recently though, the City of Boston hired an individual who can satisfy both the state and federal requirements of a cleanup coordinator. We hope that this effort on the City's behalf will solve this problem. But one must again consider what many of the smaller cities and towns must do to satisfy this requirement.

A Better RLF—

So, what can be done to reform the brownfields programs, most specifically the Revolving Loan Fund, to best suit to the needs of cities like Boston?

First, the time has come to finally pass meaningful brownfields legislation which separates the Superfund regulations from programs like the Revolving Loan Fund. The City of Boston has a host of programs and options to help bring about a successful assessment, cleanup and redevelopment of a contaminated site without having to resort to over-regulation. The truth is that I do not recommend the RLF program to the vast majority of people who come to us looking for help because it simply has shown to be more trouble than it is worth. Additionally, the RLF is competing with other debt programs in the market. My rate may be lower, but on a \$25,000 loan amortized over five years, is it really worth the lower rate when I have to hire three new attorneys just to ensure I am satisfying the regulations?

Legislation, modeled upon many recent efforts at the state level such as Massachusetts and Pennsylvania, which creates specific cleanup guidelines for brownfields sites, and recognizes the wisdom of liability protections for innocent owners, will help us to better administer these programs.

Secondly, sites which are primarily contaminated with oil products need to be eligible for this program. In Boston, a recent review of all brownfield sites found that over 70% were contaminated with oil. Each of these sites would have a difficult time passing current regulations under this program. A developer of one site, upon finding out that the RLF program can not be used for oil sites, had his environmental professional go back out and take further samples to see if they could find any other problems. They actually were hoping to find something worse. Luckily for them, they did, as lead and other hazardous materials were found on the site.

We also need to recognize that market conditions, which today allow for private construction financing of some brownfields cleanups, will not always be as favorable to difficult brownfield projects. Many of the brownfields projects in Boston currently underway are financed primarily through construction loans. This is due in part because the state passed lender liability reform in its brownfields bill. But as the market changes, so too will the availability of private capital. In two years time, this program may be critical not only to the toughest projects, but to the typical ones as well. Cutting off the RLF program, rather than reforming it to suit the needs of the cities which manage the funds, will eliminate an important tool out of our menu of options.

Lastly, I would like to make the case for more direct grant programs like the HUD Brownfields Economic Development Initiative. Without the BEDI grant Boston recently received, our top priority site, Modern Electroplating, would be nothing but a faint dream. The economics of the project just do not support having a private developer pay the assumed \$5M cleanup cost for a property valued at \$500K. The grant will pay for 35% of the cleanup, with the developer responsible for the additional equity. The additional \$5M in Section 108 loans will finance 35% of the development costs. State and federal tax credits and the possible access to state funds may pay for an additional 25% of the cleanup costs.

Now, where we once said, "Wouldn't it be great if...", the community is saying, "Isn't going to be great when...".

Mr. Chairman, you may be asking why we continue to pursue the RLF program in light of all the other incentives that are available to us and developers. I would like to call to your attention two critical brownfields projects that, without the infusion of RLF funds, would not be able to succeed.

The first is a development whereby a local arts organization will partner with a local developer to construct 100 new units of housing, two new performing arts theaters, artist work space and galleries and specialty retail shops. It is a proposal at this stage, and the finances of the project are complex, without adding in the difficulties I have discussed. But for this project, there are no other options. The menu of options has been exhausted, with many of the tools being utilized for this project.

The cleanup costs are \$1.8M, of which \$500K is coming from the developer and \$500K will come from the new state brownfields fund. \$300K is presumed to come from equity in the property in the form of a price break in the purchase price. Tax credits do not work because the arts agency is a non-profit, and has no tax liability. It is not in the Empowerment Zone, and other City CDBG and Section 108 funds have been exhausted on other projects. While, the EPA Revolving Loan Fund is the option of last resort in this case, without the funds, the project will die.

Another project is the aforementioned Modern Electroplating project. Although up to 60% of the cleanup costs may be covered by the HUD grant, tax credits and the Massachusetts brownfields program, we will still be saddling a developer with at least \$2M in cleanup costs. This price may be even higher after testing on groundwater is complete. The use of the EPA Revolving Loan Fund could well be a deciding factor in our ability to attract qualified developers. Again, most of the other options have been exhausted, and we will still face a shortfall. This property is not in an area where bankers come running to lend on severely contaminated sites, so we must be there to ensure the success of the project.

The menu approach to brownfields redevelopment works if the right tools are available. Today, with our menu of options from the state and federal government, we are on the right track. But much more can and should be done. EPA programs like the Revolving Loan Fund can be catalysts in moving a project from dream to the reality. But only if the program can shed its unnecessary regulatory restrictions.

I ask that as you examine this and other EPA-administered programs that you consider the effects of combining Superfund with brownfields, and the restraints it places on cities like Boston. We need the Revolving Loan Fund, just as we need the EPA Pilot and Assessment programs, the HUD programs and the state-sponsored programs to make a difference. But we also need Congress to finally pass meaningful brownfields legislation that creates its own set of rules and unshackles the sites from continued community blight.

Thank you, Mr. Chairman, for this opportunity.

Mr. UPTON. Thank you very much.

For purposes of introduction, I would like to recognize my colleague, Mr. Shays, from Connecticut.

Mr. SHAYS. Thank you, Mr. Chairman.

Mr. Chairman, it is really nice to be in front of this committee. As Mr. Bryant said to me as I came in, he said, welcome to the Big Leagues, so it is nice to be in the Big Leagues.

Mr. UPTON. We refer to it as the Big House, too.

Mr. SHAYS. But I did notice that on the mike it says, "switch forward to activate, switch off when not in use." We didn't feel in our committee we needed an explanation of the switch.

I just wanted to say to you, Mr. Chairman, and to members of the committee, that it really is a very sincere honor to be given the opportunity to be in your committee to welcome Dannel Malloy, who is the Mayor of Stamford, and, frankly, just an outstanding Mayor.

For those of you who don't know, Stamford is a community of about 105,000 to 110,000, depending on which census we use, and is an extraordinarily successful city. It ranks second only to Chicago in terms of the number of corporate headquarters. There are 11 economic bases in the city, in large measure due to the work of this Mayor. In other words, we don't just have banking, we have a large insurance industry, and the list goes on.

It is just an amazing place, but it is also a place that is an old-time city. The Mayor was instrumental in helping to rebuild the City's public housing and attracting businesses. He also acknowl-

edged we have a lot of old industry that has left, and he took the initiative to be a part of the brownfields program. It is really the only city to date that has moved forward with the Revolving Loan Fund application. I think you turned it around, Mayor, the next day.

He anticipates problems before they occur, he plans for the future, and I consider it the best-run city in the country with an outstanding Mayor. It is wonderful to have you here.

Mr. MALLOY. Thank you, Chris.

Mr. UPTON. Thank you very much. You are welcome to 5 minutes as well. Thank you for coming before the subcommittee.

TESTIMONY OF HON. DANNEL P. MALLOY, MAYOR, CITY OF STAMFORD

Mr. MALLOY. Thank you, Mr. Chairman. Particularly thank you to my Congressman and my friend, Chris Shays, for his introduction.

Good morning to all of the members of the subcommittee. I am Dannel Malloy, Mayor of Stamford, Connecticut, as you have heard.

Today I will describe how Stamford has sparked a revitalization of brownfields on its waterfront and explain why Federal assistance and resources for these efforts, including through the Brownfields Cleanup Revolving Loan Fund, has been important to our initiatives. I will also point out some areas of the EPA brownfields loan program that Congress should streamline to make the tool more viable and workable for local communities and the private sector.

I hope that you understand from my testimony that the brownfields problem requires the contribution and resources of many partners, including the Federal Government, and that programs like the brownfields RLF program should be continued and improved.

The city of Stamford is located on Long Island Sound, just 35 miles from New York City. While Stamford is an old industrial city settled in 1641, most of the historic manufacturing companies have left Stamford, leaving behind their contaminated industrial sites. We call them brownfields.

The South End and Waterside neighborhoods of Stamford along the community's waterfront are blighted with several large brownfields sites. Stamford is leading innovative efforts to revitalize brownfields with the support of the Federal Government under the Brownfields Showcase Community Initiative and with the assistance of the State of Connecticut and the private sector. However, many barriers remain to our revitalization, and more help is needed in Stamford.

One tool that has made a difference in Stamford is the U.S. EPA Brownfields Cleanup Revolving Loan Fund, or RLF program. Stamford recently obtained \$500,000 EPA funding to capitalize a RLF. Stamford is the first community in the Nation to make a loan to a private sector developer that will help turn waterfront brownfields into new housing, new jobs, new recreational opportunities and new life for Stamford's south side neighborhoods.

Stamford developer Seth Weinstein has borrowed \$250,000 in low-interest bridge funding for the Stamford RLF to redevelop a

12.6-acre former fuel oil depot and an adjacent 3.3-acre parcel, a former location of a shipbuilding operation. The proposed Southfield Harbor Residential Community will be a waterfront development consisting of approximately 320 rental apartment units, a 68-slip marina, and a publicly accessible harbor walk, next to a city park. The development will bring over \$50 million of private investment and is expected to generate 200 construction jobs, 12 full-time permanent jobs. This development is cleaning up a former industrial site, creating housing and opening up the waterfront to the City's residents for the first time in more than 60 years.

This project shows that the EPA's brownfields RLF program can work for communities. Stamford's staff has set up an effective program that meets the EPA criteria and developers' needs. Indeed, developer Seth Weinstein has reported that the loan arrangement was as simple, straightforward and reasonable as any he has seen in the development financing industry.

I am also happy to report that Stamford is now in discussions with a motorcycle dealership that wishes to locate on a Stamford brownfields site and is seeking RLF funds to help that deal. In fact, we anticipate loaning them \$200,000.

It is nice being first, but I will be second as well, if need be.

At the same time, I can tell you that local governments have concerns about several aspects of the EPA brownfields RLF program which stem from its unnecessary connection, unnecessary in my opinion, to the Superfund program and which this Congress can fix easily. Because EPA RLF funds are taken from Superfund moneys, these funds are tied to the requirements of the Superfund National Contingency Plan, many of which are quite burdensome and inappropriate for brownfields' redevelopment.

For example, brownfields' RLF funds cannot be used to address contamination from petroleum or remediate buildings contaminated with asbestos or lead paint. However, these contaminants are the cause of a vast number of brownfields, including a large number in my community.

In addition, the Superfund restrictions on the brownfields RLF program requires that cities designate a government employee as a site manager to oversee the cleanup at particular brownfields sites. Many cities do not have qualified staff who can serve this role. In our case, the State of Connecticut was not able to provide—may I continue?

Mr. UPTON. Go ahead. If you could summarize.

Mr. MALLOY. It will move quickly—to provide this service, and we were forced to turn to the Army Corps of Engineers. The nearest office where we could obtain this help is Portsmouth, New Hampshire. And, quite frankly, we should be allowed to hire a licensed professional to oversee this aspect of the project; and we could hire that person in Stamford. We wouldn't have to be paying a government employee to drive from Portsmouth, New Hampshire.

I have other examples which I would be happy to share with you.

In conclusion, cities like Stamford are demonstrating that tools like the EPA brownfields RLF program are making a difference in revitalization of our communities. I would like to work with Congress to help streamline this program and make it a stronger program for the future. Thank you very much.

[The prepared statement of Dannel P. Malloy follows:]

PREPARED STATEMENT OF HON. DANIEL P. MALLOY, MAYOR, CITY OF STAMFORD

Good morning Mr. Chairman and Committee Members. Thank you for the opportunity to speak before you today in reference to the U.S. EPA Brownfields Cleanup Revolving Loan Fund (BCRLF) Program, and the City of Stamford's successful participation in this program.

This morning, I plan to focus on three areas. First, I will talk about how the City of Stamford is successfully using Brownfields Cleanup Revolving Loan funds to facilitate the cleanup of a former industrial site that has been a serious blight on the community for many years. Our first BCRLF loan is helping to transform the site into a \$50 million private development that is creating new housing and jobs, and opening up our waterfront to City residents for the first time in 60 years.

Second, I will talk about how the BCRLF Program is helping to fill the critical, ongoing need of local governments for federal brownfields cleanup funds. Finally, I want to urge Congress to work closely with EPA to make critical changes needed to streamline this BCRLF program so that localities can more easily set up RLFs and get the funds to the private borrowers who will clean up and redevelop these sites.

BACKGROUND ON STAMFORD REVITALIZATION

The City of Stamford is located on Long Island Sound, just 35 miles from New York City. Its diverse population consists of 111,000 people. We have a strong corporate base, with four corporations from the Fortune 500 and thirteen Fortune 1000 corporations headquartered in Stamford. While Stamford is an old industrial city, settled in 1641, most of the historic manufacturing companies have left Stamford, leaving behind their contaminated industrial sites.

The brownfields problem calls for creative approaches by local governments, and the partnership and resources of federal and state governments and the private sector. Stamford has demonstrated how local leadership can result in revitalization and, as described below, why the contributions of federal, state and private sector partners are so critical.

Stamford has shown that it is a city that works in community revitalization. A Mayor's job is to bring funding and new programs to his City. I am a Mayor who makes things happen in my City. I feel it is not enough just to bring grant funds to Stamford, but to make those funds work by committing staff and resources to make these programs a part of the City structure that produces results.

I have made changes in City government to provide a more citizen-friendly organization and have established and maintained open lines of communication between myself and Stamford citizens as well as between myself and over 3,000 City employees. I maintain open office hours and have established a Citizen's Services Bureau to handle citizens' complaints on an ongoing, daily basis. I also hold a monthly Mayor's Night Out to give citizens an opportunity to meet with me to discuss issues important to them. Through these avenues, I have been able to understand the concerns of Stamford residents, and have been able to find programs and funding that will provide solutions.

I have worked closely with the U.S. Department of Housing and Urban Development to reconstruct various areas of our City. Stamford was awarded a \$26 million Hope VI grant to redevelop a blighted public housing complex in the Waterside neighborhood, the area with the greatest level of poverty in the City. This is also the neighborhood in which our first Brownfields Cleanup loan was made.

The City of Stamford is seeking Congressional support for \$17 million in Federal Transit Administration appropriations, which has been authorized for the design and construction of the Stamford Urban Transitway. This Transitway is necessary to open up Stamford's South End to brownfields redevelopment, and alleviate traffic in and around our Transportation Center, the second busiest rail station in the Northeast--second only to New York's Grand Central Station. Our Transportation Center is undergoing a \$100 million expansion.

In 1998, the City of Stamford became one of 16 communities nationwide to be designated a Brownfields Showcase Community. This EPA designation is in keeping with my plans for revitalization of older, industrial areas, and the preservation of open space for our community. In addition, it furthers my efforts to partner with federal and state agencies on projects to benefit the citizens of our City.

However, there are still areas that continue to need funding in order to see this revitalization effort through to completion. One of those areas of need is the clean up and redevelopment of contaminated sites, especially in our South End and Waterside neighborhoods. South End has a population that is 80% minority, with 18%

living below the poverty line. Waterside has a population that is 71% minority, with 25% living below the poverty line.

STAMFORD'S FIRST RLF LOAN

In 1999 Stamford applied to EPA for an allocation under the Brownfields Cleanup Revolving Loan Fund Program. On June 1, 1999 EPA announced that Stamford received preliminary approval of a \$500,000 allocation to establish a Revolving Loan Fund. In October, 1999, Stamford made its first brownfields cleanup loan to a private developer, who will borrow \$250,000 in low interest funding to support the development of housing on Stamford's waterfront. Let me tell you why I think the City of Stamford succeeded in making the first loan in the country under the Brownfields Cleanup Revolving Loan Fund Program.

I am proud to say that with my strong staff in my Grants Office, I was able to bring the Brownfields Cleanup Revolving Loan Fund to Stamford. With the committed support of the experienced staff in my Community Development Office, Stamford developed its Brownfields loan program. The Stamford Community Development Office, which routinely handles loans to property owners developing housing using HUD's CDBG and HOME funds, used their experience in HUD loan programs and housing development to establish the Stamford's Brownfields loan program in an expedient manner.

The months of July and August were devoted to preparing a cooperative agreement application, model loan documents and creating the loan process. The loan documents were designed to meet all obligations of the EPA program but at the same time be fair to participating developers.

First and foremost, any proposed site cleanup and redevelopment must be economically feasible. The brownfields loan must be repaid to the revolving fund so that the dollars may be reused to clean up other sites. Stamford has a strong economy and real estate market so that the cost of environmental cleanup can usually be supported by the land value once a site is clean.

However, the economic feasibility and the after-cleanup land value do not necessarily mean that a project can proceed without assistance of the Brownfields Revolving Loan Fund. Private lenders are wary of lending on a site that has environmental contamination. If the Brownfields funds can be used as a bridge loan for the cleanup, private lenders will commit to financing the redevelopment including repayment of the Brownfields loan.

To provide an incentive to developers to use Brownfield loan funds to remove environmental contamination, redevelop sites and quickly repay the loans, Stamford structured its loan program as follows: developers may borrow up to \$250,000 for a period of up to 15 months at an interest rate of 6%. If the developer repays the loan in 12 months, the interest will be forgiven. If the loan is not repaid upon maturity, the interest rises to 12%. Brownfields loans are secured by a first mortgage.

To jump start the program, we did not wait until we had a signed assistance agreement with EPA for the Brownfields Cleanup Revolving Loan Fund before we marketed the program. In August, at the same time that we were designing our Brownfields loan program documents, we publicly advertised the anticipated availability of EPA loan funds for the cleanup of redevelopment sites. The legal notice announced that applications would be accepted on a rolling basis.

Stamford had a developer, Seth Weinstein, who was experienced in brownfields redevelopment and has a keen vision of what brownfields sites can become. We were well aware that he had been working for the past two years on a plan to redevelop a 12.6-acre former fuel oil depot and the adjacent 3.3-acre parcel, which was a former location of a shipbuilding operation. Since the planned environmental cleanup of the site met all of the requirements of EPA's Brownfields Cleanup Revolving Loan Fund program, the City of Stamford encouraged the developer to apply for participation in the program and potentially become the first developer in the country to utilize a Brownfields loan.

The proposed Southfield Harbor Residential Community will be a waterfront development consisting of approximately 320 rental apartment units, a 68-slip marina, and a publicly accessible harborwalk. It is adjacent to a City park and across the street from an affordable housing condominium with 75 units. The development will bring over \$50 million of private investment and is expected to generate 100-200 construction jobs and 12 full-time permanent jobs. This development is cleaning up a former industrial site, creating housing, and opening up this waterfront to City residents for the first time in over 60 years.

Prior to the announcement of the RLF program, the developer had the subject property under contract for purchase. He had already completed his Phase I and Phase II environmental assessments. His architectural plans were complete. He had

obtained most of his local approvals from Stamford's land use boards. He had his development team assembled and was putting his financing in place.

Since the developer had been in close consultation with the residents of the neighborhood throughout his planning process, he had already met many of the EPA requirements for community involvement. On August 31st we held a public hearing in the neighborhood to discuss the plans for cleanup and redevelopment of the site. Approximately 60 residents attended the meeting and showed support of the proposal.

In the month of September, Stamford completed its negotiation of the final loan terms with EPA and the developer. On September 15th EPA issued their Assistance Agreement to the City, which I signed on September 23rd. On October 4th the developer and I signed the Brownfields Loan Agreement.

It was through a dedicated team of city staff, working together with EPA and a developer with Brownfields expertise, that my City was able to issue the first loan. We are fortunate in Stamford to have a developer who not only is astute in business matters, experienced in brownfields redevelopment, but also is very aware of the need to engage neighbors early in his planning process. The EPA's Region I and headquarters staff are also to be praised for their hard work and timely responses to the many and various questions posed by the City of Stamford.

In bringing this loan program to life in Stamford, I am able to make real things happen. We are able to complete the cleanup of a 15-acre waterfront parcel, adjacent to a City park. We will bring a new residential area to life, to be woven into an established and stable residential area just across the street. We are tying communities and people together and bringing long time residents back to Long Island Sound through publicly accessible walkways along the waterfront.

I am happy to share with you that Stamford is now studying the feasibility of its second loan under the Brownfields program. In this case the developer, the proprietor of a motorcycle dealership, has a contract to purchase the site. He has completed his Phase I, II and III environmental assessments. He has received approvals from the land use board, and his financing for the redevelopment is in place. The site was a former machine shop and engraving operation which was the source of contamination. The environmental cleanup will cost approximately \$200,000. He has had an initial meeting with the neighborhood, and the residents support the proposal.

CONGRESS SHOULD STREAMLINE THE BCRLF PROGRAM

Having gone through the process of establishing a local RLF and issuing our first brownfields cleanup loan, we believe that there is a critical need for Congress to work with EPA to streamline the Program. We understand that because RLFs are funded with Superfund dollars, EPA believes that it must require all RLF-funded cleanups to meet the requirements of the Superfund National Contingency Plan, many of which are quite burdensome and inappropriate for brownfields sites.

For example, Superfund funds cannot be used for petroleum sites, or the cleanup of buildings contaminated with lead and asbestos. However, the lack of funding to remediate these contaminants is often an impediment to the redevelopment of many brownfield sites.

Another burdensome requirement is that each participating City must hire a Brownfields Site Manager to monitor the cleanup. The Brownfields Program requires that the Site Manager must be a governmental agency employee. In Stamford, like most cities of its size, we do not have such on-staff expertise. This requirement forces us to engage the Connecticut Department of Environmental Protection or the U.S. Army Corps of Engineers to perform this function. The Connecticut DEP has declined to serve as the Site Manager due to its own staffing issues. Having no alternative, we have been forced to engage the Army Corps, which has assigned personnel in the distant location of Portsmouth, NH to provide the Site Manager services. We prefer to hire a private licensed environmental professional to provide Brownfields Site Manager services including daily on-site monitoring activities. The Program requirements prohibit this. Instead, the law should provide that the City is able to use an existing qualified staff person, or a qualified private licensed environmental professional to fill this function.

Congress can fix these impediments to effective brownfields cleanup loans by separating the BCRLF program from unnecessary Superfund restrictions and requirements. These changes do not require comprehensive legislative reform, but merely a technical fix that is necessary to remove a barrier to the effectiveness of this program for local communities.

CONCLUSION

As I said in the beginning of my testimony, cities across the country need resources to help fund the cleanup and redevelopment of brownfields. The U.S. Conference of Mayors' recent report on the status of brownfields sites in 223 cities nationwide indicates that the lack of cleanup funds is the major obstacle to reusing these properties. While EPA's Brownfields Cleanup Revolving Loan Fund Program has hurdles to overcome, it is one program that attempts to address this critical funding need.

In conclusion, while EPA has provided leadership on brownfields issues, it is clear that the time has come for Congress to enact brownfields legislation to ensure an ongoing source of funding for brownfields cleanup and redevelopment, and to eliminate Superfund requirements from the Revolving Loan Fund Program. Cities all over the country need the commitment and financial support of the federal government to help continue the cleanup of Brownfields sites. Cities across America need public funds to provide the financing for the higher risk cleanup phase. This will help leverage the private financing needed for the redevelopment of Brownfields sites.

Thank you again for this opportunity to testify today. I will be happy to answer any questions you may have.

CLEARVIEW

INVESTMENT MANAGEMENT, INC.

Fred Upton, Chairman
Sub-Committee on Over-Site and Investigation
Committee on Commerce
US House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

October 29, 1999

Dear Chairman Upton:

I am writing you this letter as the recipient of the first approval in the country for a Brownfields Cleanup Revolving Loan. Clearview Investment Management specializes in the redevelopment and predevelopment of unique commercial properties. We are proud of the quality of our portfolio and especially proud to live and work in Stamford, Connecticut. I greatly appreciate the opportunity to share my experiences with you with regards to this program.

As you probably know, Stamford was selected as one of sixteen Brownfields Showcase Communities in the United States. Subsequently, Stamford qualified to become part of the Brownfields Clean-up Revolving Loan Fund and was awarded Five Hundred Thousand Dollars to fund loans under this program. We were approved for a Two Hundred and Fifty Thousand Dollar loan to clean up a 3 acre parcel which is part of a 15.5 acre site on the west branch of Stamford Harbor in the Waterside neighborhood. The 3-acre parcel was previously used as a boat construction facility and was primarily polluted with metallic industrial residue. The balance of the 15.5-acre site was a former fuel oil storage depot, which is being cleaned with private funds at a cost of well over one million dollars.

The 15.5 acre site will, of course, be brought into compliance with Connecticut Residential Environmental Standards prior to construction. Clearview has obtained General Plan Approvals for a new rental residential community of 327 apartments covering in excess of 390,000 square feet with substantial waterfront public amenity access. The total cost of the development will be in excess of Fifty Million Dollars all provided by private funds. This is obviously a very large development that will not only convert a Brownfields site, but also improve the entire neighborhood and hopefully start a wave of positive development in the community.

The development will include a 68 slip marina, a public access walkway along the entire length of the waterfront, and a public fishing pier. Not only will this new residential community provide additional needed rental housing units for the city, it will also open access for the public to the waterfront and form a new and important link to the city's harbor walk plan. A public parking lot will be built on the site to facilitate access to the waterfront. We will also build a new sidewalk on Southfield Avenue along the entire length of the property. In addition, provisions are being considered for a bus or trolley service to the Stamford railroad station.

It should be noted that this development is a substantial and potentially risky undertaking for this company especially given the additional costs associated with the site cleanup. There are a large number of public amenities designed into the site. The City has, in addition, requested that the development pay for improvements to neighborhood roads and sewer lines. Furthermore, there are major geo-technical site costs including extensive requirements for piles and fill.

From the beginning, we worked with community groups in the Waterside neighborhood to design the site plan. Initial meetings were organized with as many as 200 interested neighbors to give us input on our plans so that we would submit a program to the City that had full community support. We modified our initial concept for a mixed residential, office and commercial program to a 100% residential plan based on these initial meetings. As a resident of Stamford, I have been fortunate to work with the diverse population of this city. The Waterside neighborhood is home to a mix of people from across the economic, racial, religious and political spectrum. Waterside is one of Stamford's poorest neighborhoods. It contains a population that is 71% African-American and Hispanic with 25% living below the poverty level. It is a tribute to them and to Stamford that they have organized to work effectively together to improve their community.

Because of our extensive involvement with the community, the specific nature of the pollution, and the defined cost of the cleanup we felt that we could qualify under the revolving loan program for the 3 acre parcel. We submitted our Phase III Environmental survey and remediation plan to Linda C. Marinilli Kristal, the Brownfield's Showcase Community Coordinator for Stamford. Ms. Kristal's position was created as part of the Showcase Community program. She has been enormously helpful, not only in walking us through the loan process, but in helping us in numerous ways with our development and remediation plans.

Once our remediation plan was approved, various members of the Stamford City Government, including Tim Beeble, the Director of Community Development, Sandy Dennies of the Grants Office and Guy Farina of the Law Department, worked with the required Federal agencies in the region and in Washington to produce loan documents that met the Federal Criteria and were satisfactory to me and to our house counsel. The process was extremely smooth and simple from our point of view because of the dedicated work of all the City workers involved. I had the great pleasure to meet with Carol Browner, Linda L. Garczynski, and Barbara Bassuener of the EPA on a recent trip to Washington, D.C. and was most impressed with their dedication to environmentally sensitive development. They are all extremely talented, dedicated and practical people.

Every program and plan is in need of periodic review. The Brownfields program must, of course, be evaluated and improved on an ongoing basis. In this regard it is important to realize that Brownfields sites are most often located in former industrial areas surrounded by poorer neighborhoods. The essential infrastructure in these neighborhoods is often inadequate and deteriorated. Federal agencies must cooperate in coordinating programs that can not only directly encourage Brownfields cleanup but also improve neighborhood infrastructure to allow and encourage development. For example, although we were successful in obtaining the Cleanup Loan, an application by the City in July for a Transportation and Community and System Preservation Program Grant was not approved. This Grant would have been used to improve the main access road in the neighborhood to further encourage not only our project but other community improvement. Some progress was noted in this regard at the Brownfields meeting in Washington, which brought together several Federal Departments to share program ideas. However, with a project as complex as ours, a more focused approach to the infrastructure issues, harbor issues (involving the Army Corps of Engineers), and park revitalization issues in the neighborhood would make a big difference. In many projects dealing with these issues it is just as important as jump starting the clean up process.

Cleaning Brownfields sites in Cities across America so they can be re-deployed productively to new residential and commercial uses is extremely important as we move forward as a nation. Concentration of business and residential growth in the downtown core and the redevelopment of former industrial sites is the essence of good planning for not only Stamford but for cities all over America. If properly conceived, it is one of the keys to environmental preservation and intelligent development.

As a company, we are extremely proud to be participating in the Brownfields Revolving Loan program. I hope that this letter and the testimony of Mayor Dannel Malloy, who is committed to the quality of life in Stamford and redevelopment of Brownfields sites, will help you favorably evaluate the Brownfields Cleanup Revolving Loan program and its' administration.

Most sincerely yours,



Seth G. Weinstein
Chairman

Mr. UPTON. Thank you very much.
Ms. Foss.

TESTIMONY OF DARSI FOSS, WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Ms. FOSS. Good morning and thank you for the opportunity to be here, Mr. Chairman and members of the subcommittee. When I woke up on Monday morning, this is not where I thought I would be spending my Thursday, but I do appreciate the opportunity.

I am the chief of the Brownfields Section at the Wisconsin Department of Natural Resources. I have been the chief point of contact since we passed our first State legislation on brownfields. I am working with the city Mayors, county treasurers and a lot of local governments, lenders and private developers to make sure their sites in Wisconsin get cleaned up.

Today I find myself in a very changed situation. Tim Fields and Linda Garczynski are the reason why our Wisconsin program is where it is today, for their support and financial assistance. But I am also here today to talk about a program that I don't think has met all of our expectations, and I think everyone in this room would like to make this a better program.

With those thoughts, I would like to talk a little bit about my experience working with local governments, and how that shapes the testimony I am going to give today. In my 5 years, we spent about 9 months critiquing our own State program with the Mayors, businesses, environmentalists and provided a report to our legislature, what was working well in Wisconsin and what wasn't. So some of my experience was from that. That comes into play. Wisconsin really thinks we need to increase the amount of Federal money available for brownfields cleanup. For the next 2 years, we will have \$35 million in our State alone, and we think the \$40 million is a good start federally, but I think there is a need for more money.

The second point I would like to make is the consideration of the issuance of grants, especially to local governments. It is very difficult for local governments on some of these properties that the private sector is not interested in to turn those over, and they can't do that oftentimes with loans because they count against their pub-

lic debt and they go against their expenditure authority. So time and time again in Wisconsin and other places I hear we need grants, and that is what I have heard.

No. 3 is considering broadening the eligibility. It is really hard for me to go to the little town of Stettin, Wisconsin and look at their 40-acre, former EPA removal site that no one is interested in and tell them why they are really not eligible for these kinds of funds, where the city of Milwaukee is eligible. So we think there is some real need out there in all kinds of urban and rural communities.

I think, as mentioned before, and I think people are in agreement, we need to streamline the technical cleanup requirements on this program. I talked to a number of people when we were considering as a State applying for this money, and they really felt uncomfortable running through an NCP-type process. Most of our consultants in our State are familiar with our State regulations. They don't do EPA removal cleanups. That is something that they just are not familiar with. Our Mayor and our county treasurers and businesses are finally getting comfortable with our State regulations, and I think that would make the Federal funds more attractive.

Point five is consider the consolidation of the administration of the program. I think what we heard from the communities that were eligible for this money but did not choose to apply is they really did not have the technical expertise and the horsepower to apply and operate this kind of program, but they felt like the State could do it, and we just said we couldn't do that right now for them.

No. 6 is something we learned from our own State process and our own State loan program, people really want you to, "run it like a bank." We heard that time and time again. Streamline the administrative requirements. What you are going to find is there are several doors available to people who are looking for money, and there will be local grants and State grants and there will be lots of people standing in front of that door. It is really hard to get people to stand in front of the door for either a State or a Federal loan. The more attractive and simple you make it, the more you are going to have customers waiting to get those loans.

I think the last point is we need to provide more flexibility to folks to make this work based on the needs out there of the people that I deal with, to make this money available and streamlined and simple and a process that they understand. I think there is a real need, urban and rural, for this money, and I look forward to working with you folks and the folks at EPA to get these things going and improving the program. Thank you.

[The prepared statement of Darsi Foss follows:]

PREPARED STATEMENT OF DARSİ FOSS, BROWNFIELDS SECTION CHIEF, BUREAU FOR REMEDIATION AND REDEVELOPMENT, WISCONSIN DEPARTMENT OF NATURAL RESOURCES

INTRODUCTION

Mr. Chairman and distinguished members of the Subcommittee, my name is Darsi Foss, and I am the Chief of the Brownfields Section of the Wisconsin Department of Natural Resources. The Wisconsin Department of Natural Resources (WDNR) is the primary environmental protection agency for brownfields in Wis-

consin, and I have been working on Brownfields issues for the Department since the inception of Wisconsin's Brownfields Initiative in 1994. I am here today to talk about my thoughts and experiences with EPA's Brownfields Initiative, particularly focusing on the Brownfields Cleanup Revolving Loan Fund program.

Brownfields continue to be a serious concern of many rural and urban communities, and there is a significant need for public financial incentives on the federal, state and local levels. The Wisconsin DNR believes that EPA should be applauded for providing financial assistance to States, such as Wisconsin, and local governments to address this very real social concern. Without the EPA's assistance, we could not have started our brownfields initiative, and would be several years behind in the development and implementation of our brownfields efforts if not for that support.

As the EPA may tell you, the State of Wisconsin has been very creative in developing its brownfields initiative. We have been involved with almost every EPA Brownfields initiative, with the exception of the Brownfields Cleanup Revolving Loan Fund (BCRLF) program. After much analysis and discussion, the WDNR chose not to participate in this effort. However, our lack of participation in this initiative should not be construed as non-support for EPA's efforts. With some further flexibility on how the EPA can use this money, we believe this could be a very attractive program.

Summarized below are the WDNR's recommendations for the type of changes that could be made to the Brownfields Cleanup Revolving Loan Fund program to improve its attractiveness to parties looking for cleanup funds:

INCREASE THE MONEY AVAILABLE.

We believe that the amount of money available nationwide should be substantially increased to enhance the attractiveness of this initiative. Currently, there is only \$35 million available nationwide for this program and the maximum grant amount is \$500,000. It is likely that a very small number of projects could be funded with this amount of money. In contrast, the State of Wisconsin has \$20 million in the Land Recycling Loan program, a zero-interest loan program for local governments for brownfields and landfill cleanups. This state program is funded using money repaid to the state from the federal Clean Water Fund Program (CWFP).

CONSIDER GRANTS, NOT LOANS

The DNR believes that the purpose of the government providing public funds for brownfields is to fill the gap left by the private sector. Where the private sector is not interested in a brownfields property, the public sector, such as a city or county will likely need to play a major role in the initial or full revitalization of that property. Local governments and private parties are looking for and often need grants, not loans, due to the economics of that brownfields project. Where a state has a brownfields grant program, you will likely see diminished interest in any type of loan program, whether it is state or federally funded loan programs.

BROADEN ELIGIBILITY

The DNR estimates that there are approximately 10,000 brownfields properties in Wisconsin. However, based on current eligibility limitations, the DNR could not loan this money out to needy communities, businesses or individuals in the state. We could only loan it out in communities that have received brownfields pilot grants from the EPA. Given this, DNR recommends that the loans be made available more broadly, not just to pilot communities.

STREAMLINE CLEANUP REQUIREMENTS

The DNR recommends that the person receiving a loan be allowed to conduct her or his cleanup in accordance with the state's voluntary cleanup regulations, not the National Contingency Plan (NCP) requirements for non-time critical removal. Using the state cleanup approach will likely result in cost and time savings to the person undertaking the cleanup. More parties may be interested in the loans if the cleanup process is one that they and their environmental consultant are familiar with, is less costly and saves them valuable time.

CONSOLIDATE ADMINISTRATION OF PROGRAM

The DNR recommends that the EPA consider the consolidation of these loans into one administrative entity, such as a state agency or the Regional Office of EPA. Efficiencies could be gained by having a limited number of entities administering a larger number of loans, and wider public outreach could be conducted to market

these funds. Presently, the recipient can use up to 15% of the funds for administrative expenses. Based on our experience, that would not be enough to manage the loan program, and for the technical oversight that would be necessary for the long-term administration of this program. The WDNR would need at least one full time employee annually for several years to manage the financial side of this program

STREAMLINE ADMINISTRATIVE REQUIREMENTS

The simpler you make the loan program to apply for and administer, the more attractive it will be. Especially where it is competing with a local or state grant program. Presently, the administrative requirements are daunting to many entities interested in some form of brownfields financing.

PROVIDE EPA FLEXIBILITY

In order to most effectively use this money and make some of the needed changes for this program, EPA needs greater flexibility on how they can use these funds. It is no secret that the use of Superfund moneys for this initiative is the one of the greatest challenges to implementing an effective and efficient brownfields program.

In closing, I would like to thank you, Mr. Chairman and members of the Subcommittee, in allowing me to present to you today some of the recommendations we believe would help strengthen and improve the attractiveness of the Brownfields Cleanup Revolving Loan Fund program. We believe that there is a serious and demonstrated need for federal funding for the cleanup of brownfields properties. The lack of activity concerning the BCRLF program is not representative of the real need in urban and rural communities for financial assistance with these contaminated properties. This important initiative needs some fine-tuning in order to make it more attractive to communities, businesses, and individuals. We look forward to working with you and the EPA to make this program a more effective tool to assist in the cleanup of the estimated 600,000 brownfields properties nationwide.

Mr. UPTON. Thank you very much.

I want to say a couple of things.

First of all, as with Mr. Fields, we appreciated getting your testimony so that we could review it last night. That was very helpful. Thank you very much.

Mr. Shays had the added—he bounced off of us on the House floor during the last couple of days to encourage us that you were coming.

Mr. Fields, we also appreciate your willingness to stay for this panel, and if you would come back to the table. I appreciate you being back at the table.

I appreciate all of your experiences and thoughts and testimony. And really all of you have talked about flexibility and the need to try and make this program accountable to your own city and reflect, I think, common sense in a lot of ways.

I guess, Mr. Malloy, as I listened to your testimony as you talked about the Corps of Engineers actually having to go to New Hampshire—not to campaign for President—I know when I went to New Hampshire, I flew to Boston to go there, so it helped some friends up there.

But did you go back to the EPA to try and get some waiver or some understanding with regard to this particular requirement?

Mr. MALLOY. I personally did not. I believe there was discussion about it. But because of the link, as I understand it and represent this to the best of my knowledge, because of the link to the Superfund statute, it has to be a government employee. Quite frankly—

Mr. UPTON. There is nobody in Connecticut that can go to some other place.

Mr. MALLOY. Well, Mayors don't lend employees to one another, and we don't have an employee on staff in Stamford who met the

requirements. We did ask the State, and the State refused to participate, I think to their embarrassment at this point. And I am hopeful that when we make the second loan, at least in Stamford, if not nationally, that the State will then provide that service to that applicant.

Mr. UPTON. And what department from within the State would you seek—

Mr. MALLOY. We have a State EPA department. We asked them initially. They refused to participate at the time. Again, I think they were embarrassed by that, not because of these proceedings, but it just doesn't make any sense when you are in business to improve the environment not to participate and help a municipality.

Mr. UPTON. So do you view that as more of your own problem with your own State, or EPA by not allowing—

Mr. MALLOY. Well, I think the rule itself is silly. If we go through a licensing process for a professional and we grant a license, then why not allow me to hire the person that we licensed for that purpose to oversee what is relatively a small loan, a \$250,000 loan? We have lots of people in our community—in fact, we are engaged in a training program to get people the license that would allow them to do this type of work. So I think that that is an important change that could be made.

Mr. UPTON. As you know, you have the distinction of being the only pilot that actually received and cashed the check allowing this program to go. And as we reviewed the history of your application, it looked like it was fairly quick order.

Mr. MALLOY. Well, I don't apply for things for political reasons or publicity. If I apply for something or authorize my city to apply for it, I take it very seriously. And as we were going through this application process, Mr. Weinstein's site was one that we specifically indicated we would be desirous of making a loan on. We had done our work. We had been working with Mr. Weinstein for a series of years. This is a site that had previously been sought to be developed in the last economic boom, so we were ready.

On June 1, when we received the preliminary award that we would participate in this, we moved, continued to move actively. On August 31, before we had actually received the final EPA contract, we held our public hearing. We had over 60 people attend that public hearing in this relatively difficult neighborhood. September 15, I got the agreement forwarded to me. On September 23, I signed the agreement; and October 4, we made the first loan.

I am very proud of my people. I have good people working for me. And if they are not good people, they don't work for me much longer.

Mr. UPTON. Mr. Ahern, you indicated in your testimony, and I read part of it to Mr. Fields, at the beginning where you write, "it just isn't worth the hassle." Have you had some discussions with EPA to try and alleviate some of these regulations?

Mr. AHERN. A great deal. Actually, EPA Region One, which covers New England, has been quite helpful to us, and they have tried immeasurably to try to assist the city of Boston. And I imagine from my discussion with other cities like Bridgeport, actually, who I have spoken to about this program, that EPA has tried very hard to try to find some ways around this problem.

The OSC problem, for instance, we tried to solve it in much the same manner as Mayor Malloy did. And what happened is that we have a system in Massachusetts of a privatized cleanup system. And what would happen, if our State EPA, who, by the way, our State agreed to participate and serve as the onscene coordinator through a contract with EPA, not specifically through the city of Boston.

But I was concerned because, under the privatized cleanup system which many States have nowadays, you would have—I would be put in a situation—the City would be in a position where we would be telling a private property owner who would be interested in taking this loan that I know you hired this private person to perform your cleanup and do your assessments and so on and so forth, but I am going to put a person from the State Department of Environmental Protection on your site as your onscene coordinator. And I spoke to several people who were interested and who were looking for loans and who were looking for help on this site, and several of them were like, I don't think that is the way I want to go. I have a tier two site. It is a simple process. If I can find the money, the guy comes in, he does the assessment, he does the cleanup, he files the paperwork, we are done. I don't need EPA—or, excuse me, DEP on my site every day.

So for that purpose, we declined the offer of the State.

Now, recently, the city of Boston made a commitment and hired a person to serve that role of OSC. The person is a licensed waste site cleanup professional in the State of Massachusetts. Our hope is that she will also satisfy the requirements of the OSC. They are different, so it is not as simple as just going and hiring a Massachusetts-licensed professional as it would be in Connecticut, as well the same thing. There are very different requirements that you have to hit. So we are hoping that she will be able to serve that role.

But for all intents and purposes EPA was very helpful for us. It is just that what they can do was not helpful for us.

Mr. UPTON. Mr. Bryant.

Mr. BRYANT. Thank you, Mr. Chairman.

Welcome again, Mr. Fields, back to the panel and our very distinguished panel. As I described in my brief opening statement, the people out in the field who I think bring a very good perspective to this entire oversight hearing.

Mayor, welcome. Congratulations to you. I spent a long time running a 15K there about 20 years ago in the streets of Stamford when I was running in those days, but it is a beautiful city.

Mr. MALLOY. Thank you.

Mr. BRYANT. I had a slow tour of it.

Mr. Ahern, let me apologize. I came in a little bit late after voting and missed the majority of your testimony today. But I wanted to ask you, in preparation for this hearing, you talked to our committee staff here of this oversight subcommittee in recent weeks. And during the discussions you indicated there were several sites in Boston where your office suggested to the parties who were redeveloping the sites that they should consider the Revolving Loan Fund. In those cases, the parties actually opted to obtain funding through private loans instead. In your written testimony you say

that this is the case, even though the terms of the private loan are more expensive. Can you explain to us a little bit more about why those particular people you referred to selected the private funding route over this EPA program?

Mr. AHERN. Primarily because of the restrictions and the problems that we have described, all three of us, really, here, and actually Mr. Fields as well.

Primarily it is an issue of CERCLA regulations, something that I am sure that this committee has heard ad nauseam. But for the people on the ground—and I will give you just one example.

There is a gentleman in the Jamaica Plain neighborhood of Boston. It is an up and coming neighborhood, but it is primarily a working class neighborhood that has brownfields located right next door to homes because, you know, you would have foundries that were located for 50, 60, 70 years and up around this neighborhood as it has grown, homes have grown.

And this one gentleman who, early in my tenure—and I should add that I have been in this job since August 1998, so some questions you may ask predate my involvement.

However, this gentleman, he was in dire need and has been in dire need of specific funds to clean up a site because he was building artists' lofts and artists' working space, and he was taking this foundry down. He had TCE on his site, he had PCBs, he had oil, lead, arsenic, you get the message. He pretty much had everything you could find.

When we discussed this program, as we discussed—as I noted in my testimony, we discussed really the menu of options. We could go through the City, what the City can do, discussed what the State program can do. We talked about tax credits, talked about loans. Debt for him was something of a problem but something that he could undertake. He was essentially eating up his development budget with the cleanup costs because the cleanup costs were skyrocketing. He was going to need more money.

What he elected to do after we discussed this program and after I gave him the application book that describes, you know, what CERCLA is and what the program is going to require, he elected instead to actually take the contamination and move it to another portion of the site where he wasn't going to be doing the development immediately, and he started with his first part of his development on the portion that isn't as contaminated. In fact, he just contacted me again the other day through a letter and said, is the State program up and running yet? Because I really need some more money to take care of this problem.

Mr. BRYANT. All right. Thank you, Mr. Ahern.

Ms. Foss, I made a reference to you and one of your statements in examining Mr. Fields earlier, but as I have reviewed your testimony and State, you indicate that Wisconsin chose not to participate in this program. And without casting aspersions on it, you made some very positive suggestions listed in your statement and you have testified those today.

Specifically, you mentioned one of the latter recommendations being the efficiencies that could be gained by having a limited number of entities administering a larger number of loans such as a State agency or regional office of the EPA. Is it your suggestion

perhaps that EPA should award these revolving loan funds to the States and that the States could administer those—could administer this program better?

Ms. FOSS. Well, I think one of the things we have heard time and time again is the problem of people maybe not applying who were eligible. And the communities that I work with said the reason they didn't is they just did not have the horsepower to get the application in and then to operate the program. But they really looked to us to do that, because we had done it for the Clean Water Fund and the Safe Drinking Water Fund money and some other moneys. So, oftentimes, the local governments do look to the State to do that and probably more efficiently than them running the little grants.

So I don't know if this is a DNR recommendation per se, but I think one of the things we are seeing time and time again is folks are having trouble keeping the infrastructure going in their communities, and it might be helpful to have it consolidated.

Mr. BRYANT. Thank you, Mr. Chairman.

Mr. UPTON. Thank you.

Mr. Burr.

Mr. BURR. Thank you, Mr. Chairman; and welcome to each one of you.

I have to say congratulations to you, Mayor, and I am sure that not only the comments of Mr. Fields but the comments of my colleague, Chris Shays, are very deserving, and I will share with you that I would never run for Mayor. You might say, I would never run for Congress. But you are certainly close to the problem, and I think that that is why this panel is so special.

I truly meant it when I said to Mr. Fields earlier that the intent of everybody up here is to clean up sites, to develop the property that is there, to make sure that by whatever means we accomplish that as productive parts of the areas that we come from, whether it is looking at it from a State standpoint, like Ms. Foss, or the local, city of Boston or Stamford. I guess the question that I have to ask you is, would this project have gone forward without the involvement of the Revolving Loan Fund?

Mr. MALLOY. I anticipated that question. We were working with this developer on a number of sites, so the answer might be that it would go forward without this one, but another project would have been put on hold that we are pursuing with the same developer.

And when I applied for the Showcase Community designation 2 years ago, without this site having been designated as one of the sites and without holding out to banks its designation when it came in in March 1998, this project would not be moving forward.

So if you are talking about a package of EPA benefits that are available, I think the overall answer is that it would not be moving forward. If you are talking about would this large project, having moved through all of the approval process, have gone forward, I think the truthful answer is it probably would have, but other things would have been put on hold.

Now, my next loan is a motorcycle shop. I don't know whether you have one, but the gentleman is going to sell hogs, and he has to buy a building that is a former machine shop, and the ground

is contaminated with the residue of that process. And I can give you my word that that project would not move forward without this loan.

And I would say, finally, that many of these smaller sites have to be cleaned up before a bank will loan to a guy who runs a hog shop, because they are not going to make a loan based on his good name or his existing business in a rental building to a site that requires cleanup. It scares the bejesus out of banks. And we have to help these people. This guy is going to employ—this big complex is going to employ 12 people. This little deal is going to employ four.

Mr. BURR. I think all three of you have expressed concerns about the program as structured, that if you had a pen and a blank sheet of paper and could design the Revolving Loan Fund, it would look different.

I guess the first question—and I will let anybody answer that would like to—is, have you shared that with Mr. Fields? Did he listen?

Mr. MALLOY. Well—

Mr. BURR. And what would it look like?

Mr. MALLOY. Let me answer that.

I am not—I am pretty direct about my criticism of Federal agencies. I have had run-ins with EPA. I have had run-ins with HUD. I have to tell you that I have discerned in these organizations a desire to reshape themselves and to work with municipalities—I am talking the Mayor's side—municipal government.

There are 222 municipalities in the United States with a population of 100,000 or more, and I suspect that the Mayors of those cities are getting a better listening to over the last couple of years than we experienced prior to that time, and I would say that EPA and HUD are two of the agencies that have turned around most directly.

Having said that, why can't I use this to clean up petroleum? Why can't I use this to clean up asbestos? Why can't I use this to clean up lead? Why can't I hire an inspector?

When I have answers to those questions, then I think we will have a package that makes a lot more sense.

Mr. BURR. Mayor, you and Mr. Ahern I think both alluded to a concern as it related to the regulation of an on-scene coordinator. That is a requirement. Now, who is that on-scene coordinator and what do they do and how much does it cost?

Mr. FIELDS. I will start.

Mr. AHERN. Why don't you start?

Mr. FIELDS. The reason for the on-scene coordinator requirement is that we want to have someone there to provide oversight for cleanups at Superfund sites.

Mr. BURR. Who is that person? Is it a Federal employee?

Mr. FIELDS. It could be a Federal employee, State or local government employee. It has to be a government employee.

Under the regulations for Superfund, it has to be a governmental employee. It could be any level of government, but it requires a governmental entity to oversee and assure that environmental rules are complied with for cleanup.

Right now, that is the problem. We agree that there needs to be some fixes, but, right now, that is why a governmental person has to be there to oversee cleanup activity.

Mr. BURR. What does that cost, Mr. Ahern?

Mr. AHERN. In the State of Massachusetts, a newly licensed waste site cleanup professional that is versed in the State laws would cost \$65,000 a year.

Mr. BURR. You don't need to have this person until you have had a site approved; am I correct?

Mr. AHERN. That is correct.

Mr. BURR. Once you have a site approved and you are making a loan to that site, then, out of the Revolving Loan Fund, you can use up to 10 percent, 15 percent—

Mr. AHERN. Fifteen.

Mr. BURR. [continuing] to fund that individual and any other administrative cost with the program, correct?

Mr. AHERN. That is correct.

Mr. BURR. Do you need that person?

Mr. AHERN. We need that person for a lot of different reasons, not just for the Revolving Loan Fund. I mean, it is a person who, from a city's perspective, could serve a lot of uses.

However, for this particular project, I think it is in the best interests to have somebody working for the city whose responsibility it is to ensure the proper cleanup of the sites, since we are effectively making the loan. However, does that person need to be a government employee? I disagree. I don't believe that it does. I believe that the Massachusetts' system—

Mr. BURR. When they say onsite, does that just mean somebody available to look at the progress that is being made?

Mr. AHERN. Yes. Somebody to oversee.

Mr. BURR. They don't have to be out there every day?

Mr. AHERN. No, sir.

Mr. BURR. Okay.

Mr. MALLOY. Well, it is a little more technical than that, because each plan requires—there are steps in each plan and, frequently, each step has to be certified. So a person will have to make multiple trips—

Mr. BURR. Certified by whom?

Mr. MALLOY. By the individual who is required to be a government employee. So, for instance, you have to reveal the substance that has to be removed. Well, that process has to be inspected. So there are a number of items, but it would be a lot easier for me just to contract—I mean, I do it for city work, so why shouldn't I be able to do it for this work—to contract with a private entrepreneur who is licensed to do that.

Mr. BURR. The chairman is getting a little impatient with me. Let me ask one last question, because I see we have other members here.

I want to understand the process, Mr. Ahern, that Boston went through relative to their selection. I would take it that you filled out an application, sent it to EPA. You wanted to be—

Mr. AHERN. I do have to tell you, Congressman, that I came to the Boston Redevelopment Authority in August of last year, August 1998. So the actual application, in applying to EPA for this pro-

gram, predates my involvement with the program. I worked for the Commonwealth of Massachusetts.

Mr. BURR. So by the time you got in, they had applied, they had been approved, they were a participant in the program, you would have had administrative manuals?

Mr. AHERN. By the time I started, sir, the administrative manual had been released just a few months earlier, in May, and I started in August. So I came on—

Mr. BURR. You came in August 199—

Mr. AHERN. 1998.

Mr. BURR. But the Revolving Loan Fund started in 1997.

Mr. AHERN. That is correct, sir.

Mr. BURR. And the administrative manual wasn't ready until May 1998?

Mr. AHERN. That is correct.

Mr. BURR. Let me ask you, Mr. Fields, could people proceed forward without an administrative manual?

Mr. FIELDS. Yes, sir, Mr. Congressman. We implement programs without guidance sometimes. You don't necessarily have to have guidance.

Mr. BURR. How does one know how to proceed without guidance?

Mr. FIELDS. As I said earlier, in the National Contingency Plan Regulators response activities. We use removal authority to oversee and conduct brownfields cleanups. We have statutes. We have regulations.

Mr. BURR. I just heard Ms. Foss talk about a larger scope of brownfields cleanup, and I agree with you totally. Tell me how that small town in Wisconsin, without an administrative manual, could have proceeded.

Mr. FIELDS. Our people in Chicago at Region Five were providing a lot of hands-on assistance to people, interpreting our regulations, interpreting the law, and explaining how this process would proceed. The administrative manual codified evolved over several months' discussion about how this program would proceed and that is not unusual.

Mr. BURR. I see the chairman is going to cut me off, but with that much—with that much help from everybody in the EPA, I am amazed that Mayor Malloy was the only one to actually make a loan.

I would yield back, Mr. Chairman.

Mr. UPTON. Well, before you yield back, I want to use 1 minute of your time—

Mr. BURR. I am happy to yield to you.

Mr. UPTON. [continuing] before I yield to Mr. Blunt just to ask this question.

As we explore further this onsite coordinator that you had to take from New Hampshire to come down from Connecticut, we, the Congress, didn't write these regulations, the EPA did. It was EPA's requirement that that happened. Is there not a provision, Mr. Fields, that you could write that would have allowed some waiver or some agreement with some of the comments made by both Mr. Malloy and Mr. Ahern that it doesn't necessarily—

Obviously, you do have to have someone there. Someone that the cities or the municipality trusts is going to make the right decision.

But it isn't us that passed down that requirement, it was you all. And I would like to think as we are all seeing on this flexibility page song sheet that you would be in tune with everybody else, that we could get some waiver or some agreement so that they don't have to go to this pretty large expense to get someone to come down from New Hampshire to go to Connecticut or from North Carolina to Michigan.

Mr. FIELDS. There is two ways to fix this. One is to pass the legislative provision, as I mentioned earlier, which would allow us to only apply those things from the NCP that are appropriate and relevant. That is something Congress can fix. It is in H.R. 1750.

Second, as I indicated, we would have to go back and amend our regulations that EPA has promulgated. We would have to amend them to eliminate the application of an engineering evaluation cost analysis, require an action memorandum, or the 12-month requirement for brownfields cleanup. There are things we can do, but that would have to be done through regulatory change on the EPA side.

Congress could also enact legislative fixes that would solve some of the problems that have been pointed to by all three of these speakers.

Mr. BURR. Reclaiming my time—

Mr. UPTON. Would the gentleman yield further?

Mr. BURR. Is the gentleman from the EPA suggesting his willingness to go back and change those administrative things that he can address?

Mr. FIELDS. Congressman, we are hopeful that the Congress and the administration can agree on appropriate legislative change. We think that is faster. Regulatory change is going to take a minimum of 2 years to make change. We will go back and look at whether we can do some streamlined regulatory changes. But, I think Congress can act faster than we could within EPA to make those changes.

Mr. BURR. I have learned in the short life I have been here, Mr. Fields, that the process that we go through is one where we legislate and then agencies change the regulations to reflect the intent of the legislation. And what you have done is you have added a step in there. When you can change the regulation within the process at EPA, why wait for us to pass legislation that we all agree on for you to rewrite the regulation, when you can do it to start with?

Mr. FIELDS. We will go back, Congressman, and look at that option, particularly if the prognosis for legislative change does not look like that is going to occur within a 2-year window.

Mr. BURR. My hope is that we will judge it based upon our outlook for possible cleanups.

Would the chairman like me to yield any more time?

Mr. UPTON. The gentleman's time now has finally expired, and I will yield to Mr. Blunt.

Mr. BLUNT. Thank you, Mr. Chairman.

I want to apologize for not being here to hear the testimony, but I have looked at the testimony submitted. And I have a couple of questions, and they may even tend to be repetitive, but I wouldn't know that. And if they are repetitive, I guess you will know when

you go back, Mr. Fields, that these are issues that have some resonance here.

Really, the first question is, Ms. Foss in her testimony indicated the significant ability to expand the cleanup effort if you use the various State voluntary cleanup program regulations instead of the national plan, and I want to ask Mr. Fields to comment on that.

Ms. Foss, before he does, would you give me just a little more of your thought on that? What would you see as the expansion in Wisconsin? I mean, I am prepared to take the facts you are most familiar with if, in fact, the voluntary plan could be used as opposed to the national plan, the State voluntary plan.

Ms. FOSS. Thank you very much.

First of all, we have a brownfields memorandum of agreement with EPA that recognizes our program as something that they agree with and think does good cleanup. So I think that is one of the strong points in our favor.

I think when we talked to our local governments and the lenders and businesses, they are using this process on a daily basis. This is what they feel comfortable with. It has been in place since 1994. This is what the consultants in Wisconsin use at any kind of site. Whether it is petroleum or hazardous waste or just hazardous substances, they are using our one regulation to clean up these properties.

I think it would make the loan program more attractive if they had something that they felt comfortable with. It is one less thing that they had to deal with. They could just go hire the XYZ consulting firm to go out and do the cleanup and not have to look around for somebody who is familiar with the Federal regulations, because we just don't have that familiarity in Wisconsin.

Mr. BLUNT. Mr. Fields, do you want to comment on your sense of whether or not we could move in that direction where you had more flexibility but, obviously, some ability for input from your Agency?

Mr. FIELDS. Yes, Congressman.

I agree that more flexibility needs to be provided. I agree with Ms. Foss that we need to have a more flexible system than the National Contingency Plan for brownfields cleanups. I believe that certain requirements in the National Contingency Plan should be eliminated as they apply to these types of cleanups. We should not have to prepare an action memo, prepare an engineering evaluation/cost analysis, or comply with the Superfund specific grant regulations.

A lot of those elements should be eliminated, and I agree with that. As I have said, we either do it through regulatory change or through legislative change. Those are the two options.

We are going to work with Congress to see if legislative change can be effectuated. If not, we will have to pursue some targeted, quick regulatory changes to make sure that we can eliminate some of these hoops.

We will try to do it administratively, but we agree with Ms. Foss that a more flexible approach for brownfields cleanups is needed and that the National Contingency Plan does create, we believe, unnecessary hurdles. But right now, under the current statute and

regulations, there are impediments in our ability to deviate very much from those current requirements.

Mr. BLUNT. Are the greater impediments in the current regulations or in the current statutes?

Mr. FIELDS. Well, one of the issues that has been brought up by both Mayor Malloy and Mr. Ahern was the discussion we had about the on-scene coordinator being a government employee. The statute requires that the on-scene coordinator be a government employee. That is something in the law.

I can change by regulation the requirement to eliminate the action memorandum, the engineering evaluation cost analysis, the requirement to comply with Superfund-specific grant regulations. I cannot change the requirement that the person who oversees those cleanups be a government employee. That is something that is in the statute, not in the regulations.

So there are some parts of this I can fix possibly through regulatory change. Other parts of it Congress would have to fix through legislative change.

Mr. BLUNT. If you started fixing your part right now, how long would that take?

Mr. FIELDS. We project that it would take up to 2 years. We would try to go as quickly as we can.

The last time we changed the National Contingency Plan, it took us 4½ years. Ms. Garczynski was the person who headed up the last rewrite of the National Contingency Plan, and it took almost 5 years to do it.

We would try to beat that and do something more quickly, but, still, you are talking about a couple-year process.

Mr. BLUNT. Is there anything in the current legislation that is out there that would make these kinds of changes?

Mr. FIELDS. Yes, one piece of legislation that we talked about earlier, I think before you came in. Language in H.R. 1750, one bill that has been introduced in Congress that the administration supports for brownfields, would include a provision that would say that the procedural requirements of the national contingency plans, as applicable to brownfields, would be limited to only those requirements that are relevant and appropriate for brownfields. That type of language in the statute, we believe, would allow EPA to have apply only certain Superfund cleanup requirements to brownfields cleanups. That is consistent with what I think Ms. Foss was indicating regarding a more flexible, targeted type of approach for brownfields cleanups as compared to Superfund cleanups.

Mr. BLUNT. Ms. Foss, do you agree with that characterization of where you think—where you are on this?

Ms. FOSS. Absolutely. I do agree with Mr. Fields.

Mr. BLUNT. And do you see a problem if we eliminate the requirement for a government employee to supervise in these defined brownfields areas?

Ms. FOSS. You know, I don't, sir. Because the fact is, even if somebody is cleaning up in the State of Wisconsin according to the Federal requirements, the State of Wisconsin also has its own law and is going to be interested in making sure that they are going to follow our law. So they are going to have to come in and either ask for some kind of no further action letter at the end, or they

may be going through what is called our voluntary cleanup program, wanting some kind of liability release where we would be reviewing the project anyway. But they would have to comply with State law as well.

Mr. BLUNT. Mr. Chairman, based on the time zone that Mr. Burr was in, could I ask one more question, assuming the clock continues to run in my favor here?

Mr. UPTON. Go ahead.

Mr. BLUNT. My other question would be on another point in trying to broaden the efforts to get this done with greater flexibility. It was the question about making loans to communities that weren't in the pilot project category. Is there any way to go back and do that, Mr. Fields?

Mr. FIELDS. We have—and I agree with Ms. Foss that we do want to consider in terms of being eligible for Brownfields Cleanup Revolving Loan Fund some communities who are not brownfields assessment pilots, and we have done that. Some communities in Massachusetts, some communities in Minnesota, some in Indiana, they are part of the Brownfields Cleanup Revolving Loan Fund program, but they did not have an existing brownfields assessment grant. So I agree with Ms. Foss that—and EPA has tried to expand the program beyond brownfields pilots to include those communities where some targeted assessment work has been done, either through a State or through an EPA grant contract. So I agree that we don't necessarily have to have a community that is a brownfields assessment pilot to be eligible for brownfields cleanup revolving loan funds.

Mr. BLUNT. Are there examples of communities who didn't have pilot programs who have gotten loan funds yet?

Mr. FIELDS. Yes, those I just mentioned. Communities in Massachusetts and Minnesota and Indiana have gotten brownfields Revolving Loan Fund assistance, even though they were not a brownfields assessment pilot project.

Mr. BLUNT. Are you aware of that in Wisconsin, Ms. Foss, that that is possible?

Ms. FOSS. I think the distinction Mr. Fields may be making is those communities that got the Revolving Loan Fund did get some Federal assistance, and it may have been through the State. But it isn't, I don't think—and correct me if I'm wrong, Mr. Fields—broadly applicable to all communities. It is for those that got Federal funds somehow for brownfields, so it is still I think a little limited.

Mr. FIELDS. She is correct. It does not include every community across America, but it does go beyond the brownfields assessment pilots to a universe of people who have had assessment activities. We think that having assessment work done does help facilitate identifying properties for a cleanup by having that assessment phase done first.

Mr. BLUNT. Thank you, Mr. Chairman.

Mr. UPTON. Well, thank you. Those buzzers indicate that we have a vote on the floor, which will coincide with the end of this hearing.

I just want to say in conclusion that we appreciate all of you coming to Washington and testifying today. Again, your testimony

is very helpful. We all have brownfields sites, and we want a brownfields program that works, and we want one that can be as flexible as possible to take the local input from our Mayors and county and State officials so that we can assure the taxpayers in fact that the work is getting done. We appreciate your willingness to try, as we all do, to achieve that goal at the end of the day.

And I guess just from my side here, it seems like there is some frustration in that we all believe that you, Mr. Fields, have more flexibility than you have shown.

I talked to Mr. Greenwood on this last vote on the floor, who is the sponsor of H.R. 2850. We intend to get a letter to you very soon pointing out that you do, in fact, have the authority to move forward.

It would be nice to know, as we hear from cities both that have received funds, maybe a city that has received funds, but certainly others that expect to, that, in fact, you are willing to bend over backwards to make sure that common-sense solutions really can work. And the idea of someone commuting from New Hampshire to Connecticut I would bet doesn't make sense in most people's eyes. And if that is just one example, there have to be others. And your willingness to proceed on that front I think would be appreciated by all of us.

Thank you very much.

I might say that all members will have the opportunity to provide questions for the record, and obviously you will respond with regard to that one issue that we have raised.

Thank you very much.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

The Honorable Fred Upton
Chairman
Subcommittee on Oversight and Investigations
Committee on Commerce
U.S. House of Representatives
Washington, DC 20515-6115

Dear Mr. Chairman:

This is in response to your letter of November 19, 1999, requesting responses to questions submitted following the hearing on November 4, 1999, on the EPA Brownfields Cleanup Revolving Loan Fund program.

Enclosed are the responses requested. If you have any questions about the information provided in these responses, please call me at (202) 260-4610.

Sincerely,

A handwritten signature in cursive script that reads "Timothy Fields, Jr.".

Timothy Fields, Jr.
Assistant Administrator

Enclosure

Copy: The Honorable Ron Klink

Questions for the Record Submitted to
The Honorable Fred Upton
Chairman
Subcommittee on Oversight and Investigations
Following the Hearing Held
November 4, 1999

1. In your written testimony, you stated that, "it became clear that we needed to build upon our experience with the assessment pilots through a 'second stage' brownfields pilot award," and that the Brownfields Cleanup Revolving Loan Fund (BCRLF) program reflects this staged approach

- A. Is it the case, then, that the BCRLF program was designed to facilitate cleanup and redevelopment of sites that were assessed under the assessment pilot program?

Answer: EPA believes that assessment pilot activity is beneficial to BCRLF pilot success. In setting up the BCRLF pilots, however, the agency did not anticipate a one-to-one correlation between the sites assessed under the Brownfields Assessment Demonstration Pilot and the BCRLF.

The Brownfields Assessment Demonstration Pilots have helped to lay a foundation for revitalizing communities, establishing brownfields infrastructure and for the BCRLF in particular. The development of community interdepartmental coordination and collaboration including such entities as the city's redevelopment and environmental, legal, business, and finance departments is key to both the Assessment and the BCRLF pilot success. This infrastructure and institutional modeling is critical to a sustainable community-based brownfields solution.

- B. Are BCRLF pilots targeting for cleanup sites that were assessed under the assessment pilot program? If not, please explain.

Answer: Same as above. EPA is not directly involved in the BCRLF pilot's prioritization of loan recipients or the day-to-day management of the loan program.

2. You testified that the first year of the Clean Water State Revolving Fund ("CWSRF") program, "only three loans were issued" and that "it takes time to get these programs going." The Clean Water SRF Program Summary indicates that 10 loans were made during the first year of the program. 82 loans were made during the second year and 228 loans were made during the third year. In addition, the Drinking Water State Revolving Fund ("DWSRF"), which was authorized in August 1996, made the first capitalization

grant in March 1997, and the first loan was made in April 1997. Between March 1997 and June 30, 1999, 637 loans were made under the DWSRF program. By comparison, only one loan has been made under the BCRLF program which is in its third year.

- A. Please indicate the number of loans that you expect to be made during this year, the third year of the BCRLF program (i.e., through September 2000).

Answer: EPA is not directly involved in the BCRLF pilot's prioritization of loan recipients or the day-to-day management of the loan program. However, since the hearing, Stamford, CT, has made another loan using the BCRLF. Las Vegas, NV, made its first loan on November 17, 1999, and is working on a second loan. In addition, possible loans are being discussed in Boston, MA; Clearwater, FL; Portland, ME; Louisville, KY; St. Louis, MO; Long Beach, CA; East Palo Alto, CA; Emeryville, CA; Trenton, NJ; Rochester, NY; Chicago, IL; the State of Illinois; Hennepin County, MN; and Columbus, OH.

- B. Please indicate the number of pilots that you expect will issue loans during the third year of the BCRLF program.

Answer: As EPA is informed by BCRLF pilots of loans being made, EPA will provide that information to the committee.

- C. When EPA created the BCRLF program in 1997, how many loans did the Agency project would be made during the first year? During the second year? During the third year?

Answer: EPA did not make projections as to the number of loans that would be made.

- D. What do you think accounts for the differing results between the BCRLF on one hand, and the CWSRF and the DWRSF on the other? Do you believe that the fact that these two earlier programs were run through the States attributed to their greater success, as opposed to the BCRLF that mostly targeted municipalities for pilots?

Answer: Comparing programs administered under separate environmental statutes with differing provisions and goals are not parallel comparisons. However, both the Safe Drinking Water State Revolving Funds (DWSRF) and Clean Water State Revolving Funds (CWSRF) are primarily construction oriented projects, which are not necessarily comparable to complex hazardous substance cleanup activities. In addition, liability concerns associated with CERCLA may also be considered a factor. The BCRLF is a cleanup program geared to redevelopment – many players and factors are involved – BCRLF is a **cleanup** program and must follow the NCP, CERCLA, and other local and state regulatory requirements.

As to the second part of the question, EPA recognizes the important role that State environmental agencies have in encouraging redevelopment of brownfields. Moreover, it is important to note that States are playing an important role in many of the BCRLF pilots. Among the 45 new BCRLF pilots, for example:

- Four States are serving as Lead Agency:
Arizona Department of Environmental Quality
Colorado Department of Public Health and Environment
Illinois Environmental Protection Agency, Bureau of Land
New Hampshire Department of Environmental Services
- Five States are providing Site Manager assistance:
California, Maine, Massachusetts, Minnesota, and South Carolina

Finally, two of the 1997 pilots were awarded to States -- Minnesota and Indiana -- neither of which have made loans to date.

As is noted above, EPA does have States managing BCRLFs for local communities. States participate, as part of coalitions, or in the role of site manager for coalitions of communities. Some cities are receptive to that approach, and we expect it to work well. In other cases, local governments are managing the BCRLFs themselves, and our program has the flexibility to accommodate both approaches.

EPA does not believe the Brownfields Initiative has to be viewed as State-managed vs. local government-managed. EPA's approach to Brownfields is a partnership approach that allows each stakeholder to contribute its strengths toward helping solve the Brownfields problem. For example, local governments have expressed concern that they are often better acquainted with local redevelopment needs or properties available. EPA is being responsive to local governments in its approach to the BCRLF program. However, that fact does not diminish EPA's level of support to States, nor take away from the important contributions States make toward solving the Brownfields problem.

3. You testified that "when the fiscal year 1998 appropriation language came out, several cities indicated that they would be sending their money back to EPA because they were concerned about the legality to even being able to implement the program." Linda Garczynski, a member of your staff identified three cities that indicated they would be sending money back to EPA: Dallas, Texas, Detroit, Michigan, and Bridgeport, Connecticut. Please identify each BCRLF pilot that contacted EPA about returning its BCRLF money, whether such money was in fact returned and provide for the record any

related documentation supporting the assertions made by you and Ms. Garczynski at the hearing.

Answer: During 1997, multiple meetings and phone calls were held with pilot communities but after careful inspection of records, we find that no documentation of individual conversations exist regarding the BCRLF. After the 1998 appropriations hearings in the spring of 1997, the issue of the legality of the BCRLF was raised by House and Senate Appropriations Committee staff and by House Authorizing Committee staff. EPA provided at that time, copies of its legal opinion, clarifying the legal basis in CERCLA for the BCRLF. Pilot project officers from Dallas, TX; Portland, OR; Cuyahoga County, OH; Detroit, MI; and Bridgeport, CT expressed concern to Linda Garczynski personally on the issue of whether the funds in the BCRLF pilots were being provided legally. Copies of the EPA legal opinion were provided to EPA Regional offices so that the Regional personnel might reassure the pilots as to the legality of the BCRLF. When the subcommittee language on the 1998 appropriation became available, it was also shared with the EPA regional offices and the National Association of Local Government Environmental Professionals (NALGEP). Pilot communities were reassured that the 1998 language did not affect the award of 1997 funds; however, many questions remained on the part of the 1997 pilots. During this time, the development of the administrative manual was underway and draft copies of the manual were provided to both the regions and the pilots to answer questions with regard to the legal requirements.

4. You testified that EPA would have to consider de-obligating funds from some of the 1997 pilots "if they don't take actions to begin the initiation of loans."
- A. Please explain what you meant by "take actions to begin the initiation of loans." What types of action would EPA consider sufficient to avoid the de-obligation of funds?

Answer: EPA is seeking affirmation that the Pilot is moving forward to structure its loan program and is actively undertaking marketing strategies and outreach to inform potential borrowers about the BCRLF program.

- B. Please identify the pilots whose funds EPA would consider de-obligating under this standard?

Answer: EPA will consider de-obligating funding to pilots that take no action as indicated above. However, it is also important to recognize the nature of a financial obligation. Funds are obligated for BCRLF cooperative agreements upon the execution and recording on the agency's accounts of an instrument which creates a definite liability against the appropriation available for the assisted activity. See

31 USC 1501(a)(5)(B); See also 39 Comp. Gen. 317 (1959); 37 Comp. Gen. 861 (1958); 31 Comp. Gen. 808 (1952). A "de-obligation" is a cancellation or downward adjustment of a previously recorded obligation. EPA must extinguish the liability before it de-obligates funding. However, EPA can unilaterally extinguish an obligation only when circumstances are warranted.

The regulations require that recipients comply with all terms and conditions of the agreement. 40 CFR 35.6760. If the recipient fails to materially comply with terms and conditions of its BCRLF agreement, the Agency can take a number of enforcement actions. These actions can include temporarily withholding payments, disallowing costs, suspending or terminating the agreements, annulling the agreements, withholding future awards for the program or "taking other remedies that may be legally available." 40 CFR 31.43(a). Nonetheless, the Agency must exercise its enforcement authority fairly and in a manner consistent with both its stewardship duties and the rights of the recipient.

C. When would EPA initiate de-obligation procedures against the pilots listed in (B)?

Answer: EPA will consider deobligation at the end of a BCRLF pilot's third fiscal year. In addition, an alternative to termination for cause or annulment would be to negotiate a mutual "termination for convenience" with the BCRLF recipient under 40 CFR 31.44(a). Again, the termination can be in whole or in part. It has the effect of extinguishing the Agency's liability for the agreement, or a portion of the agreement, and funds can be de-obligated. Unlike contracts, an assistance agreement can be terminated for convenience unilaterally by the recipient but not by EPA. 40 CFR 31.44(b).

D. Please explain what would happen to the money that is de-obligated from existing pilots.

Answer: The funds deobligated would be returned to the Superfund Trust Fund account. BCRLF funds are "no year" funds and available until expended. Once the agreement is terminated and the remaining funds de-obligated, as a legal matter the agency does not "lose" the de-obligated funds because the period of availability has expired. However, Agency funds control policy requires that deobligated Superfund monies be returned to the Superfund trust account following de-obligation and "recertified" by the Annual Planning and Budget Division. Annual reprogramming restrictions contained in the advice of allowance letters issued each year are also applicable. EPA Funds Control Manual at pp. 3-23-3-24.

5. In March 1998, the EPA Inspector General (IG) issued a report, entitled *Brownfields: Potential for Urban Revitalization*, that reviewed several of EPA's brownfields

initiatives, including the BCRLF program. The report stated that "city representatives told us they did not want to get involved with the RLF pilots. In fact, in a few instances, EPA had to encourage cities to apply for the pilots." In a letter dated April 20, 1999, Chairman Bliley asked EPA to provide a list of pilots that had been encouraged to apply for the BCRLF program. You responded in a letter dated May 17, 1999, that stated "EPA is aware of no instances in which it had to encourage cities to apply for pilots."

When Committee staff met with the Inspector General's office, they were told that Region 9 had to encourage Sacramento to apply for the program, and that the cities of Bridgeport, Connecticut, and Dallas, Texas, also were encouraged to apply. Further, during an interview with Bridgeport representatives, Committee staff was told that EPA headquarters wanted all 29 eligible entities to apply to be pilots in 1997, and the ones that hesitated were called by EPA personnel to encourage such applications. In addition, representatives from the West Central Municipal Conference ("WCMC") told Committee staff during an interview that they did not want to participate because they did not have the in-house resources to administer the program, but Region 5 encouraged them to apply anyway.

- A. Did EPA headquarters contact any of the 29 eligible entities regarding their participation in the BCRLF program and/or to encourage them to apply? If so, which ones were contacted by headquarters? If necessary to fully answer this question, please survey the relevant headquarters personnel prior to providing a response, as a statement to the effect that you are unaware of such contacts will not be deemed a satisfactory answer.

Answer: Based on surveying EPA headquarters personnel who either worked on, or are currently working on, the BCRLF program, we found no specific recollection of EPA headquarters personnel initiating direct contact with the 29 eligible entities on a one-on-one basis for the purpose of encouraging eligible entities to participate in the BCRLF program and/or to encourage them to apply. Headquarters personnel did respond to questions received from pilots prior to their applying to the BCRLF program. Headquarters personnel do recall participating in NALGEP sponsored conference calls (led by Ken Brown, NALGEP) with the pilots during which EPA headquarters personnel did answer pilot questions about the BCRLF program. Lastly, EPA headquarters did ask all Regions to approach eligible pilots to talk with them about the BCRLF program, in order to: (1) let the pilots know about the program's availability, and (2) make sure that the pilots' questions about the program were answered. Ultimately, eligible projects that did not want to be involved with the BCRLF program in 1997 did not submit an application to EPA headquarters. (See response to question 5B below for EPA Regional responses.)

- B. Did any EPA regional office contact any of the 29 eligible entities regarding their

participation in the BCRLF pilot program and/or to encourage them to apply. If so, which ones were contacted by their regional office? If necessary to fully answer this question, please survey the relevant regional personnel prior to providing a response, as a statement to the effect that you are unaware of such contacts will not be deemed a satisfactory answer.

Answer: As described above, EPA Headquarters did ask all Regions, as the EPA staff in the field, to approach eligible pilots to talk with them about the BCRLF program in order to: (1) let the pilots know about the program's availability, and (2) make sure that the pilots' questions about the program were answered. In response to your inquiry, EPA Headquarters staff provided the ten EPA Regions with copies of your November 19, 1999 letter to Assistant Administrator Timothy Fields, Jr., and did survey relevant personnel in the EPA Regions per your request. The EPA Regions provided the following information.

Region 1

EPA, Region 1, contacted both the City of Boston, MA and the City of Bridgeport, CT regarding their eligibility to apply for BCRLF program. The nature of the discussions with each of these Cities is summarized below.

Boston, MA - Dennis Davis, from the City of Boston, MA was contacted by Bob Cianciarulo, from EPA -Region 1's Brownfields program. Bob discussed the City's eligibility and the substantial requirements associated with administering the BCRLF program. The City was also reminded that application for the BCRLF program was not mandatory and that the City could decline. However, Dennis made it clear to Bob that the Mayor would be disappointed if the City were to decline any offer of funding from EPA. Therefore, although the City was concerned about the complexities of the program, the City proceeded with their application.

Bridgeport, CT - Mike Freimuth, Director of Bridgeport's Office of Planning and Economic Development, was initially contacted by John Podgurski, EPA-Region 1's Brownfields Coordinator, to discuss the BCRLF program and Bridgeport's potential interest in applying for the funding. During this and subsequent conversations, Mr. Podgurski and Mr. Freimuth discussed various issues relating to the BCRLF's applicability to Bridgeport and possible implementation issues. Certain key statutory requirements and limitations were among the topics covered. Mr. Podgurski believes he also discussed these issues with Jennifer Schwarzman, a Bridgeport staff person. Based in part on these discussions, Mr. Freimuth expressed reservations about the BCRLF, particularly with respect to the type and number of potentially eligible properties and the resources needed for Bridgeport to manage the loan program. Mr. Freimuth and Mr. Podgurski discussed ways that EPA could assist the city in working through these issues. Mr. Freimuth apparently continued to have lingering concerns about the BCRLF and on

one occasion pointedly asked Mr. Podgurski whether EPA felt it was important that Bridgeport apply for the funds, and whether failure to apply would affect its likelihood of receiving future EPA brownfields funds. Mr. Podgurski indicated that although EPA management would like to have all the eligible pilots apply, Bridgeport should only do so if the BCRLF program makes sense for the city. Mr. Podgurski repeatedly assured Mr. Freimuth that the regional brownfield's office would fully support a decision by Bridgeport to not apply and expressed confidence that EPA-HQ (specifically Linda Garczynski and Tim Fields) would not penalize Bridgeport in future funding decisions. Bridgeport was encouraged to arrive at its own conclusion regarding the BCRLF and respond accordingly.

Region 2

Staff from Region 2 did not encourage pilots to apply for the BCRLF. No EPA employee from Region 2 contacted the 29 eligible Brownfields Pilots to encourage or coax them to apply for the RLF. In fact, several of the pilots contacted Region 2 staff inquiring about the program and informing the Region of their intentions to apply, and asked for regional assistance in helping them understand what was required of them.

Region 3

Per use of the term "encourage" as defined in this question, Region III personnel did not encourage any of its applicants to apply for the BCRLF pilots. The BCRLF program was explained to the pilots and they subsequently applied for the funding.

Region 4

EPA contacted all eligible entities to make them aware of the benefits afforded by the BCRLF Grant. Region 4 then assisted interested parties in the proposal and application process. Also, Region 4 held a BCRLF Workshop to educate the pilots and outline the benefits of the BCRLF Grants.

Region 5

We have identified the Region V personnel who were working on the BCRLF program during the time leading up to the receipt of the proposals from WCMC, IL; the State of Illinois; the State of Indiana; the City of Indianapolis, IN; the State of Minnesota; Cuyahoga County, OH; and the City of Detroit, MI. There were five individuals who worked with these pilots, we polled three of those individuals. The other two individuals have left the Agency and were unavailable for questioning. Of the individuals polled, there were no specific recollections of contact with or conversations that could be characterized as "encouraging" eligible pilots to apply. One polled individual acknowledged that it is our policy to provide information on the availability of funding to

all eligible entities in the Region.

Region 6

There is no specific recollection of letters sent encouraging pilots to apply for the BCRLF funding, but Region 6 staff did make phone calls letting the eligible pilots know about the availability of the BCRLF funding.

Region 7

St. Louis was the only assessment pilot in Region 7 eligible to apply for a BCRLF pilot during the initial round of BCRLF competition. The three regional personnel that either worked with St. Louis on their assessment pilot or that were involved in the fiscal year 1997 BCRLF proposal review were consulted regarding this question.

Two of these staff have limited recollections of conversation(s) with the City's pilot project manager regarding then new BCRLF pilot program prior to the proposal due date of June 9, 1997. While they do not remember the specifics of these conversations, it is likely that we discussed the BCRLF pilot program in general, the potential ways the City could use the BCRLF funding, limitations on the uses of the funding, and answered questions relative to their draft BCRLF proposal and the proposal guidelines. The third staff member does not recall any conversations with the City regarding their participation prior to their selection as a BCRLF pilot.

Region 8

Region 8 did contact the cities of West Jordan and Sand Creek to inform them about the RLF program and answered questions that arose. The two cities had an interest in applying and proceeded to prepare proposals for the RLF.

Region 9

In 1995, EPA Region 9 staff recall contacting staff from the City of Sacramento by telephone to inform them about the availability of BCRLF funding and the application deadline. This Regional staff member also informed City staff that the BCRLF was the only source of funding available from EPA's Brownfields program to assist cities in cleaning up eligible Brownfields properties. This Regional staff member believes that he may have also suggested that City staff and management meet to discuss this program and determine their level of interest in EPA's BCRLF program; further, that if the City was both interested and that there was a demonstrated need for BCRLF funding in Sacramento, he would encourage the City to apply for BCRLF funding.

Region 10

Region 10 made significant efforts to distribute information and inform eligible entities in its Region about the availability and requirements of the BCRLF in 1997 and 1999. In 1997 and 1999 EPA staff contacted all the eligible entities by mail and, in 1999, also by phone to inform them about the program's availability and deadlines, to encourage them to consider applying for the BCRLF if it would meet their needs, and to confirm that the BCRLF is the only source of BF cleanup funding available from EPA.

- C Do you still deny the statement in the Inspector General's report that, "EPA had to encourage cities to apply for the pilots?" Please explain your answer in light of the IG's report, your previous response to Chairman Bliley, and what these pilots told Committee staff. If necessary to fully answer this question, please survey the relevant personnel prior to providing a response, as a statement to the effect that you are unaware of such contacts will not be deemed a satisfactory answer.

Answer: Surveying the EPA Regions revealed that some EPA Regional staff did "encourage" some eligible entities located in their Region to apply. However, none of the Regions' answers provided in response to question 5B above indicate that EPA "had to encourage cities to apply for the pilots" (emphasis added). The majority of the Regions indicate that their conversations with their Regions' eligible entities were to share information about available funding for which these entities were eligible, and/or to answer specific questions raised by eligible entities.

6. The initial BCRLF pilots were announced in September 1997, yet the BCRLF Administrative Manual was not issued until May 1998 and the BCRLF Model Terms and Conditions were not issued until October 1998. What official, written Agency guidance, if any, did the 23 initial pilots receive between September 1997 and May 1998?

Answer: No official, written Agency guidance (other than the Proposal Guidelines for Brownfields Cleanup Revolving Loan Funds (EP 500-F-97-147) made available in April 1997) was provided to the initial 23 pilots between September 1997 and May 1998. However, EPA Headquarters and Regional staff do recall sharing draft versions of the BCRLF Administrative Manual with these pilots during the September 1997-May 1998 time frame so that the pilots would be aware of EPA's thoughts on these issues at that time. As discussed in question 5 above, Headquarters personnel also responded to questions received from pilots prior to their applying to the BCRLF program. Headquarters personnel also participated in NALGEP sponsored conference calls (led by Ken Brown, NALGEP) with the pilots during which EPA headquarters personnel did answer questions about the BCRLF program. In addition, EPA headquarters personnel spoke with the pilots at Brownfields '97, in Kansas City, MO, September 3-5, 1997, about the BCRLF

program.

7. You testified that EPA does not read H.R. 2580 as de-linking the requirements of Superfund and the National Contingency Plan (“NCP”) from brownfields cleanups. You also testified that EPA sees a “clear de-linkage” in H.R. 1750. You further testified: “We will go back and look at H.R. 2580 again and give you our written response as to whether or not we think a clear de-linking from the Superfund response requirements is provided in that bill.
- A. Please provide a written response that explains the “clear de-linkage” in H.R. 1750. Specifically, do you believe that the language in H.R. 1750 would prohibit EPA from applying Superfund and/or NCP requirements to brownfields cleanups?
- Answer: H.R. 1750 provides the clearest de-linkage of the requirements of Superfund and the NCP from brownfields RLF cleanups. It is freestanding (i.e., does not amend CERCLA), thus CERCLA requirements would only apply to the extent they are explicitly required by H.R. 1750 itself. Section 103(a) authorizes EPA to provide grants to local governments to establish revolving loan funds for the “cleanup of brownfields sites.” Section 103(b)(1)(C) permits, but does not require, the Administrator to include requirements of the NCP “to the extent that those requirements are relevant and appropriate to the program.”
- B. Please provide a legal analysis for the record as to whether H.R. 2580 would de-link brownfields cleanups from the requirements of Superfund and the NCP. In particular please explain how, given that H.R. 2580 authorizes brownfields spending from general revenues rather than from Superfund monies, EPA still could be required or permitted to impose Superfund and/or NCP requirements on brownfields cleanups.
- Answer: H.R. 2580 does not provide as clear a de-linkage of the requirements of Superfund and the NCP from brownfields RLF cleanups because H.R. 2580 would be an amendment to CERCLA, rather than a freestanding provision. Thus, irrespective of the source of funding, people would argue that CERCLA requirements would generally apply to the RLF grants. For this reason, EPA prefers the explicit de-linkage provided by H.R. 1750.
8. You testified that EPA could change its regulations pertaining to brownfields cleanups without reform legislation, and stated that EPA is “exploring that option.” You further testified: “If Congress does not pass legislation, we will have to examine making changes to the National Contingency Plan regulations to eliminate some of those requirements that currently apply to brownfields cleanups.” You identified several potential changes to the regulations that EPA could fashion without legislation, such as not requiring an engineering evaluation cost analysis, not requiring an action memorandum, and

eliminating the 12-month requirement.

- A. Please identify and explain what other specific regulatory changes EPA could make in order to make the BCRLF program more attractive and speed its progress, and which of these are under consideration within the Agency.

Answer: EPA is currently reviewing several mechanisms to streamline and enhance the BCRLF program's effectiveness. Potential options include developing guidance documents or amending the NCP. The focus of NCP review is on several areas cited as most problematic. Those target areas include the process by which loans are made and the role of the site manager. However, EPA believes that it is too early in the review process to provide specific examples of potential changes to the NCP, beyond those enumerated in Assistant Administrator Fields' testimony. Also, some issues cited as problematic are statutory requirements that, therefore, fall beyond the scope of EPA's authority to make administrative or regulatory changes. For example, after further review, it was determined that the 12-month limitation on removals is a statutory requirement (CERCLA § 104(c)(1)) and, therefore, could not be changed without legislative action.

- B. Please identify how much time it would take EPA to enact those regulatory changes, and whether it makes sense to grant additional awards to new pilots prior to resolving these regulatory obstacles.

Answer: EPA is currently reviewing possible mechanisms to streamline and enhance the BCRLF program's effectiveness, which include developing guidance or amending the NCP. EPA anticipates that this process will take approximately 2 years.

As Assistant Administrator Fields stated in his testimony, EPA believes that the BCRLF program has "turned the corner," despite the problems cited with the NCP, and is on its way to becoming a successful tool in brownfields redevelopment efforts. EPA is committed to working through existing issues with the existing pilots, as well as future pilots. With the award of the first three BCRLF loans, the development of model loan documents, and the availability of the "lending to yourself" option (a new procedure by which a pilot loans funds to another agency within the pilot's governmental structure to cleanup pilot-owned brownfields properties), EPA is confident that additional loans will follow.

9. You testified that you were hopeful that cities like Baltimore will "start moving forward and working with developers, issuing loans, and getting the job done." However, in an interview with Committee staff, the Project Director for the Brownfields Initiative from the Baltimore City Planning Department stated that the BCRLF program was not a priority, and that it was, in fact, "down on the bottom of his 'B' list." Committee staff also was told that Baltimore has not yet signed a cooperative agreement with EPA

regarding the BCRLF program.

- A. Is it true that Baltimore has not signed a cooperative agreement with EPA regarding the BCRLF program? If not, why not, and when does EPA expect to sign a cooperative agreement with the City of Baltimore?

Answer: EPA and the City of Baltimore entered into a cooperative agreement on October 21, 1999.

- B. Please explain whether it is possible for Baltimore to issue loans without a signed cooperative agreement with EPA, and if it is not, please explain your testimony as quoted above, namely that Baltimore will start issuing loans sometime soon.

Answer: A cooperative agreement must be in place before any loans are issued under the Brownfields Cleanup Revolving Loan Fund program.

- C. At what point in time will EPA take steps to de-obligate the \$350,000 that was awarded to Baltimore under the BCRLF program because of the city's failure to make significant progress toward making a loan?

Answer: At the end of the three-year period, EPA would begin the process of evaluating whether or not the City of Baltimore had made significant progress toward making a loan, and whether deobligation of the BCRLF award is warranted. See response stated in 4A and 4B above.

10. The West Central Municipal Conference, a 1997 BCRLF pilot, as of the end of October of this year, did not have an EPA-approved work plan in place, without which, it cannot make any loans.

- A. Why has it taken more than two years for this pilot to write and receive EPA approval for its work plan? Does this pilot have the in-house resources to administer the BCRLF program?

Answer: The following answer is based upon a response provided by EPA Region 5 staff.

There are a several reasons why this pilot has been slow to start; they include the complexity of the program, as well as the program's restrictions on funding. Additionally, the West Central Municipal Conference (WCMC) lost a key player when Dave Bennett left the organization in May of 1996. After this occurrence, WCMC had a student intern complete the brownfields assessment pilot and start up the revolving loan fund program. The current program manager for WCMC has grown into his position.

Staff turn-over and reorganization in EPA Region V also made monitoring this pilot, as well as other BCRLF pilots, more complicated. For a period of about eight months, no Brownfields staff person was specifically assigned to the WCMC pilot. Significant changes and improvements have occurred in Region V. Staff time from six additional individuals has been allocated to the management of the 12 BCRLF pilots located within EPA Region V.

EPA Region V believes that WCMC has established the necessary in-house resources to administer the BCRLF pilot.

- B. In retrospect, did EPA err in encouraging the West Central Municipal Conference to become a BCRLF pilot?

Answer: The following answer is based on a response provided by EPA Region V staff.

EPA Region V received a draft work plan for West Central Municipal Conference in late November of 1999. The Region anticipates approving it in the near future. The Region believes that lessons were learned from its experience with the West Central Municipal Conference BCRLF pilot and that the changes being made will have a positive impact on this pilot.

11. BCRLF pilots, as Federal grant recipients, are required to submit quarterly reports to EPA concerning their activities and use of grant funds. Documents provided to the Committee indicate that more than one-third of the pilots have not filed the required quarterly progress reports.

- A. Please explain why each of the following pilots has not submitted the required quarterly reports, and what actions EPA has taken with respect to each one to ensure future reporting:

1. Trenton
2. Rochester
3. Baltimore
4. Pittsburgh
5. Cuyahoga County
6. Dallas
7. New Orleans
8. St. Louis

Answer: The following answer is based upon responses received from EPA regional staff.

Trenton: It is true that Trenton has not submitted quarterly reports for their BCRLF program, but that does not mean that Region 2 staff have not been

keeping track of the city's progress in developing the program. In fact we have been working very closely with the city to develop a method whereby the city can loan money from the fund to itself to perform cleanup activities. Through its Brownfields Pilot program, the city has acquired a number of brownfields sites and has, or is in the process of, performing site assessments on them. This gives the city a significant number of candidates for BCRLF loans. EPA Regional staff and the city have worked out most of the issues that would enable them to use the fund in this manner and there is only one hurdle left to overcome. We met with Trenton to discuss some comments on their financial plan. They will submit a revised financial plan that incorporates our comments by the end of December. The city has a number of sites lined up that they can move right into the program and they expect to issue their first loan before February 2000.

The Region has assigned a project manager to work directly with the city to keep track of their progress and to provide whatever assistance is needed. Because of this close relationship between EPA and Trenton, the Region did not feel it was necessary to enforce the Quarterly Report requirement at this time. The EPA project manager and the Trenton Intergovernmental Personnel Act (IPA) staff have been submitting monthly reports to the Project Officer (Brownfields Coordinator) so the Region felt comfortable that we were adequately tracking the progress of the Pilot. Furthermore, the Region felt that to require the pilot to prepare quarterly reports at this phase of the project would be expending project funds that would be needed later on for other administrative activities (e.g. Fund Manager and Site Manager costs.) At the meeting the Region had with Trenton on 11/22/99 to discuss the Financial Plan we informed Trenton that they are now required to submit the Quarterly Reports including the past due reports. The region spoke with them on 12/1/99, and they told us they will have the past due reports to the Project Officer by the first week of January, 2000.

Rochester: The circumstances surrounding the Rochester Pilot are similar to that of Trenton. The Region has been working with Rochester to develop a RLF type program for their site assessment grant. This would enable the city to provide resources so potential developers can assess the sites they wish to develop. The City of Rochester would have its contractors perform a site assessment at the particular site. The developer would have the option of: one, developing the site and paying back the cost of the investigation to the city (fee for service), or second, not developing the site after which the city would not obligate them to repay the investigation costs. Developers that go through this process would then be eligible for a Brownfields Revolving Loan.

Working out the dynamics for the "Fee for Service" program for the Rochester Site Assessment Demonstration Pilot took a considerable amount of time and effort. The resources of both the City and Region were involved in making this

portion of the project work prior to concentrating on the BCRLF program. Similar to Trenton, the Region has assigned a Project Manager to work with Rochester. The duties of the Project Manager include providing monthly reports to the Project Officer (Brownfields Coordinator) and providing assistance to the city. It is true that Rochester, like Trenton, has not submitted quarterly reports for the BCRLF program. For the same reasons described above with Trenton, the Region did not feel it necessary to enforce Rochester's quarterly report requirement at this time. The Region 2 Brownfields Team, working closely with the EPA Grants Specialist, Region 2 Office of Regional Counsel, and EPA headquarters, more than adequately tracked the progress of Rochester's BCRLF program.

Baltimore: The Region has had verbal communications with the pilot. However, the City does not have any progress to report. Consequently, no progress reports have been submitted. Region III has informed Baltimore that its award may be rescinded.

Pittsburgh: The Region has had verbal communications with the pilot. However, the City does not have any progress to report. Consequently, no progress reports have been submitted. Region III is considering the appropriate course of action.

Cuyahoga County: The pilot has not submitted regular progress reports because little progress has taken place. To ensure adequate tracking in the future, additional resources have been allocated to provide for more input and direction by the Region. Region V staff have been checking draw-downs periodically, and are in the process of establishing a specific cooperative agreement process for the brownfields program, which should be in place by the first of the year.

Dallas: The Dallas BCRLF has had no significant activity occurring with the BCRLF program to report. Some BCRLF activity has been reported in the more recent quarterly reports. The Region will remind pilots to report BCRLF activity on a quarterly basis.

New Orleans: New Orleans had been behind in turning in any quarterly reports to the Regional office. Also, there was no significant activity occurring with the BCRLF at the time due to internal city issues, which included a change in management. Since then, the Regional Project Manager and Project Officer have visited with the City Brownfields managers and the City has turned in back quarterly reports. The City is currently working on finding a fund manager to assist with the BCRLF management.

St. Louis: The City of St. Louis has not filed quarterly reports, nor drawn any

funds from their BCRLF grant. In a letter dated February 13, 1998, St. Louis Development Corporation (SLDC) stated that they had "signed the agreement with the understanding that we have questions and concerns that, if not resolved, may result in our canceling the programmatic agreement". Shortly thereafter, SLDC's director, deputy director and the project manager for the BCRLF were dismissed, and the BCRLF was tabled for a period of time until a new director and project manager were established. On August 18, 1998, SLDC sent EPA a letter requesting answers to a list of 14 questions which they wanted answers to in order to determine whether they could implement a BCRLF program. EPA replied to those questions on September 24, 1999 after a great deal of consultation with the Brownfields National Program Office and EPA's Office of General Counsel on a number of questions of national significance that were not just issues distinct to St. Louis.

The City also does not yet have a State Agreement. During the last 6 months, SLDC has made progress in reaching an agreement with the Missouri Department of Natural Resources on the operation of the BCRLF program in concert with the State's Voluntary Cleanup Program. The State has now shared a draft letter with the City; resolution and a final letter are imminent.

Finally, SLDC has worked to establish the internal infrastructure for loan processing and management. Once the BCRLF work plan has been revised to reflect current operating procedures and received EPA approval, and once SLDC gets its State Agreement, SLDC will be able to make a loan and to consider the programmatic agreement to be "in place" - thus invoking all the terms and conditions of the agreement, including reporting. They expect to complete the revised work plan by January 2000.

- B. Please explain whether EPA can adequately track the progress of the BCRLF pilots if they are not reporting on their activities.

Answer: The primary method for tracking pilot progress is through the submission of quarterly reports. However, as is evidenced in the Regional responses to question 11A above, other mechanisms for tracking pilot progress are used to supplement the quarterly reporting process. EPA recognizes the importance of timely quarterly reporting for tracking purposes and, as is indicated above, Regions are developing measures to improve reporting compliance rates for the BCRLF pilots.

- C. Please explain why these pilots have not had their funding suspended or revoked for non-compliance with the reporting requirements.

Answer: Although EPA has the discretion to withhold payments, suspend, or terminate funding to pilots for non-compliance with reporting requirements, the Agency

believes that assistance to communities to cleanup brownfields sites is best served by continued encouragement to the pilots to develop their BCRLF programs, as well as, cooperative efforts to secure required reports. 40 CFR 31.43(a). However, enforcement actions of the type specified in 40 CFR 31.43(a) are not "automatic" or mandatory. The Agency can legally exercise discretion to forgo enforcement actions in situations in which the recipient has not technically complied with a requirement that is, in the judgement of the responsible officials, not sufficiently important to warrant an enforcement. In doing so, agency officials are cautious not to take actions which imply that EPA is waiving the quarterly reporting requirement or is otherwise implicitly relieving recipients of their responsibility to provide quarterly reports.

The agency continues to make, and document, efforts to encourage compliance by recipients. EPA agrees that systematic reporting to EPA is necessary for the Agency to effectively monitor recipients progress towards making BCRLF loans, as authorized by the substantial involvement provision of 31 USC 6305(2) and EPA Order 5700.1. It should also be noted that although reports were not filed for several pilots, regional staff maintained regular contact with the pilots and addressed concerns, questions, and issues raised by the pilots.

12. In your testimony, you stated that brownfields fall on a continuum, and "at one end are properties for which the market is strong enough to overcome environmental or other liabilities." You refer to these sites as "'low-hanging fruit,' ripe for picking by developers and among the most easily supported by investors and lenders. You then say: "Those sites that will not draw private development quite so easily are the very properties that we believe will benefit most from the BCRLF."

Which category better describes the Stamford, Connecticut redevelopment project -- "low hanging fruit," or a site that will not draw redevelopment so easily? And how does EPA ensure through its grants that Federal monies will be used primarily for the latter?

Answer: Cooperative agreement recipients have the primary responsibility for managing and administering the BCRLF program in their jurisdictions. As such, they are responsible for prioritizing and selecting the projects that will provide the most benefit to their communities. EPA does not require pilots to identify sites as to whether they are "low hanging fruit" or not, nor does the Agency require loans be made only for the purpose of cleaning up such sites. In the case of the Stamford project, the waterfront had not been accessible to the residents adjacent to the property for more than 60 years, and for the last 30 years the owner allowed the site to remain idle. Restoration of this harbor area has been sought by the City to provide a much-needed economic boost to Stamford's Waterside neighborhood which is located within a State Enterprise Zone and has the highest poverty level in the City.

The borrower under the BCRLF loan is a developer who has substantial ties to the City, and has demonstrated experience working with other environmentally contaminated properties. EPA has been told that the City had considerable confidence that the developer could successfully handle a project of this nature. In summary, the City selected a project that would provide them with a good example of how the BCRLF program could work while also providing benefits to the City. This loan is enabling the borrower and the City of Stamford to bring a redevelopment concept sought by the City to fruition.

13. You have testified that one of the more onerous requirements EPA imposes on grantees – the need to have a government employee serve as an “on-scene” coordinator to oversee BCRLF funded cleanups – is required by statute. Please provide a legal analysis supporting your testimony on this point, citing the relevant statute(s).

Answer: Although not in statute, the National Contingency Plan defines an “on-scene coordinator” as, “the government official designated by the lead agency to coordinate and direct removal actions” (40 CFR §300.5). As Assistant Administrator Timothy Fields, Jr., testified, the Agency is evaluating administrative and regulatory options to address issues raised by the BCRLF Pilots regarding their current implementation of the “on-scene coordinator” requirement.