



## CRS Report for Congress

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

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### Summary

The Brownfields Act authorizes the Environmental Protection Agency (EPA) to award grants for the assessment and cleanup of sites that pose a less serious threat to human health and the environment than sites addressed by the Superfund program. The authorization expired on September 30, 2006. In the 109<sup>th</sup> Congress, a reauthorization bill, H.R. 5810, was reported from the House Committee on Transportation and Infrastructure on July 28, 2006 (H.Rept. 109-608, Part 1), but went no further. The bill would have renewed the authorization through FY2012 at the current level of \$200 million annually. It also would have reauthorized provisions that provide financial assistance for state and tribal cleanup programs at the current level of \$50 million per year (for a total authorization of \$250 million). Appropriations in the last four years have been between \$165 million and \$171 million. The Department of Housing and Urban Development also has a small Brownfields Program, and approximately 20 other agencies have programs or activities that foster cleanup and development. Because reauthorization was not enacted in the 109<sup>th</sup> Congress, it is likely to be an issue for the 110<sup>th</sup>.

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

The Superfund Program is the federal government's main effort to clean up abandoned, accidentally spilled, and illegally dumped hazardous waste that poses current or future threats to human health or the environment. It focuses on the worst spills and other releases of hazardous substances, whereas the Brownfields Program is designed to assist local governments with the cleanup of abandoned, idled, or underutilized commercial and industrial sites where the contamination, if any, is not as serious. Amendments to the Superfund Act<sup>1</sup> in 2002 (P.L. 107-118, known as the Brownfields

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<sup>1</sup> Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA,  
(continued...)

Act) gave statutory authority to the Environmental Protection Agency's (EPA's) Brownfields Program, which the EPA initiated administratively in 1993 under Superfund's authority.

The Brownfields Act authorizes a \$200 million-per-year grant program to assess and clean up contaminated sites, limits and clarifies the Superfund Act's stringent liability scheme to encourage reuse of brownfield sites, and authorizes assistance of \$50 million per year to state and tribal cleanup programs. The law's authorization expired at the end of FY2006, on September 30. On July 28, 2006, the House Committee on Transportation and Infrastructure reported H.R. 5810, which would have extended the funding authority through FY2012 (H.Rept. 109-608, Part 1). The bill was also referred to the Energy and Commerce Committee, which did not act on it.

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

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

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

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<sup>1</sup> (...continued)  
42 U.S.C. 9601-9675).

<sup>2</sup> In some circumstances, grants may be made for \$350,000 or \$400,000. For details, see U.S. EPA, *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants*, October 2006, at [<http://www.epa.gov/oswer/docs/grants/epa-oswer-obcr-07-01.pdf>], pp. 6-11.

derived from brownfields revitalization efforts remain in local neighborhoods.<sup>3</sup>

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

According to the EPA, since the beginning of the brownfields program, the agency has awarded 883 assessment grants totaling \$225.4 million, 202 revolving loan fund grants totaling \$186.7 million, and 238 cleanup grants totaling \$42.7 million. The EPA states that this \$454.8 million of assistance has leveraged more than \$8.2 billion in private investment, helped create 37,525 jobs, and resulted in the assessment of 8,374 properties and the cleanup of 93 properties.<sup>4</sup> The agency says that it has awarded more than \$22 million in brownfields job training grants, approximately 3,000 people have completed training programs, and more than 1,800 have obtained employment in the environmental field, earning an average wage of \$13.26 per hour.<sup>5</sup>

CERCLA has stringent liability provisions that impose strict, joint and several, and retroactive liability on all past and present owners of contaminated or polluting facilities, as well as on those who transported the hazardous substances to a facility, and on those who “arranged for disposal or treatment” of hazardous substances at a facility owned or operated by another.<sup>6</sup> Concern over the possible applicability of this strict liability scheme to owners and developers of brownfield properties was identified as a deterrent to their cleanup and reuse in many cases, because CERCLA had no provisions for relaxing the liability, even for the socially desirable goal of upgrading contaminated real estate. The Brownfields Act helped in this regard by exempting from liability (1) owners of land contaminated by a source on contiguous property and (2) prospective purchasers of property known to be contaminated. It also explained in detail what constitutes “all appropriate inquiry,” a phrase used in the Superfund Act as a prerequisite to a land buyer’s “innocent landowner” liability defense.<sup>7</sup> Also, even before enactment of the Brownfields Act, the EPA revised its system of tracking sites<sup>8</sup> suspected of contamination with hazardous substances to clarify when no further action by the agency was planned at the site and to remove the stigma of being associated with the Superfund program.

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

<sup>4</sup> “\$70 Million in Grants Brings Blighted Property Back to Life,” EPA press release, May 12, 2006. Available at [<http://yosemite.epa.gov/opa/admpress.nsf/a8f952395381d3968525701c005e65b5/708921c271c50e7d8525716c004e5530!OpenDocument>].

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

<sup>6</sup> CERCLA § 107(a)(1)-(4).

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

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

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

In addition, the 2002 law expanded the definition of what is considered a brownfield for purposes of grants, so communities may now receive funding for mine-scarred lands, sites contaminated by petroleum, and buildings or sites that were used for the manufacture of illegal drugs (CERCLA § 101(39)).

**EPA Appropriations.** Since passage of the Brownfields Act in 2002, appropriations have been as follows: FY2003, \$167.7 million; FY2004, \$171.0 million; FY2005, \$165.0 million; and FY2006, \$165.0 million. The 109<sup>th</sup> Congress adjourned without finalizing FY2007 appropriations for EPA and many other federal agencies. The continuing resolution (CR; P.L. 109-383, H.J.Res. 102) that is providing appropriations through February 15, 2007, provides that the rate of annual funding shall be at the lower of the House-passed FY2007 amount, the Senate-passed FY2007 amount, or the actual FY2006 appropriation. The CR does not comment on whether the “FY2006 appropriation” means before or after the rescission that was applied that year. Also, the CR allows the Office of Management and Budget a certain amount of flexibility to adjust these amounts. For EPA’s brownfields program, the FY2006 appropriation was \$165 million; after the rescission, it was \$162.5 million, and the FY2007 House-passed amount was \$163.3 million. (See **Table 1** for additional information.)

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

In the 109<sup>th</sup> Congress, the HUD FY2007 funding bill that was reported from the House Appropriations Committee (H.R. 5576, H.Rept. 109-495) acceded to the Administration’s request and zeroed out the HUD program. During consideration of H.R. 5576 on the House floor, however, Members agreed to an amendment offered by Representative Gary Miller (H.Amdt. 1013) to increase the HUD Community Development Fund by \$15 million, coupled with a \$15 million offset to another HUD account. With regard to the continuing resolution, this House-passed amount compares with an FY2006 appropriation of \$10 million and a post-rescission amount of \$9.9 million. (Although the language of H.R. 5576 does not explicitly state the purpose of the \$15 million increase, supporters of the amendment stated that the funds would allow the HUD brownfields program to continue. See *Congressional Record*, June 13, 2006, p. H3845-3847, H3886-3887.) Additional information on the program can be found at [<http://www.hud.gov/offices/cpd/economicdevelopment/programs/bedi/>].

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

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

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

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

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

**Congressional Action in the 109<sup>th</sup> Congress.** As noted above, the authorization of the Brownfields Act expired on September 30, 2006.<sup>9</sup> To reauthorize the provisions, the Committee on Transportation and Infrastructure reported H.R. 5810 on July 28, 2006 (H.Rept. 109-608, Part 1). The bill would have extended the grant authority through FY2012 at the current level of \$200 million annually. In addition, it would have required the EPA Inspector General to report to Congress every four years on the management of the Brownfields Program and the allocation of grants. The bill also would have eliminated a requirement currently in the law that 25% of available funding be used

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<sup>9</sup> An authorization is not necessary for appropriations; authorization for a number of environmental programs has expired, but Congress continues to appropriate funds for them, thus assuring their continuation.

for sites where petroleum is the cause for site contamination. Such sites would still be eligible for funding but would have to compete with other brownfield sites for priority and funding. It also added a factor for the EPA to use in ranking brownfield grant applications — the extent to which the grant would implement green building standards and energy efficient building standards. This would have codified the agency's current practice. The bill also would have renewed through FY2012 assistance to states and tribes at the current level of \$50 million annually.

The committee report also made two non-legislative recommendations. One was that the EPA award the competitive grants more than once a year, if practicable. The other urged the agency to award several multiple purpose grants each year, not solely for assessment or cleanup, but for both. H.R. 5810 was also referred to the House Committee on Energy and Commerce, which took no action on it.

The FY2007 Interior, Environment, and Related Agencies appropriations bill (H.R. 5386, H.Rept. 109-465), which passed the House on May 18, 2006, approved the President's request of \$163.3 million for EPA's Brownfields Program, a slight increase above the prior year's \$162.5 million (after rescissions). As noted previously, the 109<sup>th</sup> Congress did not complete work on FY2007 appropriations for EPA, among other agencies. The continuing resolution, P.L. 109-383, presumably funds the program through February 15, 2007, at an annual rate of either \$162.5 million or \$163.3 million.

In addition to brownfields reauthorization and appropriations, the 109<sup>th</sup> Congress considered other bills addressing the cleanup and redevelopment of brownfields. In the first session, P.L. 109-59 (H.R. 3) reauthorized funding for federal surface transportation programs, which included a pilot program to support planning activities for highway and public transportation projects, including brownfields redevelopment planning.

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

A bill that passed the House but went no further, H.R. 280 (H.Rept. 109-138), would have made HUD brownfields grants more accessible to smaller communities. At least 20 other brownfield bills were introduced but did not receive committee action.

**Congressional Action in the 110<sup>th</sup> Congress.** As of January 17, 2007, one brownfields bill has been introduced: Representative Nydia Velazquez's H.R. 43, the Brownfields Housing and Community Renewal Development Act. It would establish a program of grants for up to \$1 million within HUD for redevelopment activities at brownfield sites. Unlike HUD's current program, grants would not be required to be used in conjunction with loan guarantees. The bill authorizes appropriations of \$25 million for FY2008, \$50 million for FY2009, and \$75 million for FY2010.