

THE BUILD ACT AND EPA'S BROWNFIELDS PROGRAM

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BROWNFIELDS UTILIZATION, INVESTMENT, AND LOCAL DEVELOPMENT ACT (BUILD ACT)



- **Division N** of the Omnibus Spending Bill passed in March 2018
 - Page 1768
- Amends CERCLA, as amended by the Small Business Liability and Brownfields Revitalization Act of 2002
 - Liability certainty for state, tribal and local governments
 - Tenants and Leasehold Interests including in the BFPP liability defense
 - New Brownfields Grant provisions

SECTION 2: REDEVELOPMENT CERTAINTY FOR GOVERNMENT ENTITIES



- Section 101(20)(D) of CERCLA is amended to state:
 - *“ownership or control through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its power as sovereign.”*
 - **Exemption** from definition of “owner/operator;” exemption from CERCLA liability (no longer have to make affirmative defense)
 - Amendment deleted “involuntary” from Section 101(20)(D).

SECTION 3: ALASKA NATIVE VILLAGE AND NATIVE CORPORATION RELIEF



- Section 101(20) is amended to provide relief for Alaska Native Villages and Native Corporations.
- Section 101(20)(E) **excludes Alaska Native Villages and Native Corporations from the definition of “owner / operator”** with respect to a facility conveyed to them under the Alaska Native Claims Act (either they received it directly, or they are a successor to the interest in the facility).
- The exclusion does not apply to any entity that causes or contributes to the release or threatened release of a hazardous substance from the facility.



SECTION 4: PETROLEUM BROWNFIELD ENHANCEMENT

- Section 101(39)(D)(ii)(II)(bb) (brownfield petroleum definition) is amended to state *“is a site for which there is no viable responsible party and that is determined by the Administrator or the State, as appropriate, to be a site that will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site under this Act or any other law pertaining to the cleanup of petroleum products; and ...”*
- Note: amended language **deletes 101(39)(D)(ii)(II)(bb)(AA) of the current language** (“of relatively low risk, as compared with other petroleum-only sites in the State”)



SECTION 5: PROSPECTIVE PURCHASERS AND LESSEES

- Section 101(40) Bona Fide Prospective Purchaser definition is amended to include language related to those who have **tenancy or leasehold interests** in the facility.
- Limitation on Liability – Section 107(r)(1) is amended to state “... based solely on the *bona fide prospective purchaser*...”

SECTION 6: EXPANDED GRANT ELIGIBILITY FOR NONPROFIT ORGANIZATIONS



- Section 104(k)(1) is amended to add **nonprofits with an IRS 501(c)(3) designation to the list of eligible entities for all CERCLA 104(k) grants.**
- The list of eligible entities also is expanded to include limited liability corporations where all managing partners are 501(c)(3) nonprofits, limited partnerships where all general partners are 501(c)(3) nonprofits, and qualified community development entities.

SECTION 7: TREATMENT OF CERTAIN PUBLICLY OWNED BROWNFIELD SITES



- Sections 104(k)(2) and 104(k)(3) are amended to add **an exemption for certain publicly owned brownfield sites for grant eligibility**
- Eligible entities may receive grant funds for properties acquired **prior to** January 11, 2002, even if such eligible entity does not qualify as a bona fide prospective purchaser, so long as the eligible entity did not cause or contribute to the contamination.
- Potentially affects governmental entities applying for assessment and remediation (RLF and cleanup) grants.



SECTION 8: INCREASED FUNDING FOR REMEDIATION GRANTS

- Section 104(k)(3)(A)(ii) is amended to **increase the cleanup grant funding amount to \$500,000 per site**;
- Eligible entities can also request a waiver of up to \$650,000 per site, based on the anticipated level on contamination, size, or ownership status of the site.



SECTION 9: MULTIPURPOSE BROWNFIELDS GRANTS

- Section 104(k)(4) is amended to provide EPA with the authority to award **multi-purpose grants** for up to \$1,000,000.
- Criteria for multipurpose grants shall also consider how entities are able -
 - To provide an overall plan for revitalization of one or more brownfields in a proposed area in which the multipurpose grant will be used;
 - Demonstrate capacity to conduct the range of eligible activities funded by the multipurpose grant; and
 - Demonstrate that a multipurpose grant will meet the needs of one or more brownfields in the proposed area.
 - Entity **must own the site to expend any grant funds for remediation**
- No more than 15% of the total appropriation can be awarded to multi-purpose grants.



SECTION 10: ALLOWING ADMINISTRATIVE COSTS FOR GRANT RECIPIENTS

- Section 104(k)(5) is amended to:
 - Remove the administrative cost prohibition on 104(k) grant funds.
 - Entities will now be able to use **up to 5% of grant awards on administrative costs.**

SECTION II: NEW RANKING CRITERIA



- Section 104(k)(6)(C) is amended to add **new statutory grant ranking criteria** for the competitive grants to:
 - Prioritize grant funding to **sites adjacent to a body of water or a federally designated flood plain.**
 - Prioritize grant funding for sites that would **facilitate renewable electricity from wind, solar, or geothermal energy; or any energy efficiency improvement** project at a brownfield site.



SECTION 14: SMALL COMMUNITY TECHNICAL ASSISTANCE GRANTS

- Section 128(a)(1)(B) is amended to authorize a new grant program using CERCLA 104(k) funding for states and tribes to provide training, technical assistance, or research for small communities (15,000 or less), Indian tribes, rural areas, and disadvantaged areas.
 - A maximum of \$20,000 per community and no more than \$1,500,000 total of technical assistance funding can be used for these grants.
 - Disadvantaged Area definition – a community with an annual median household income that is less than 80% of the statewide annual median household income, as determined by the most recent census
 - Small Community definition – a community with a population of not more than 15,000 individuals, as determined by the most recent census.
- Conforming Amendment: Davis Bacon applies to these activities.
- This will be funded with 104(k) funding and that can be included / rolled into state and tribal 128(a) grants.

SOLICITING STAKEHOLDER INPUT TO INFORM EPA'S IMPLEMENTATION OF BUILD ACT



- **Federal Register Notice** with six questions posed to brownfields stakeholders
 - **Questions already posted on EPA Website at: www.epa.gov/brownfields**
- Two week comment response period following publication of FR notice; stakeholders may submit responses electronically (BUILDAct@epa.gov)
- EPA will review comments and use input
- EPA will **not post or respond to comments**

SOLICITING STAKEHOLDER INPUT ON EPA'S BUILD ACT IMPLEMENTATION

Federal Register Notice or www.epa.gov/brownfields



- **Cleanup Grant Amount Policy**

- How would your community meet the 20% cost share requirement?
- How long does the average brownfield cleanup in your community take? What are the barriers your community experiences to getting the site 'ready for reuse'?

- **Multipurpose Grant**

- Within a target area, which resources does your community need the most – *brownfields inventory, planning, site assessment or site remediation?*
- Please give a brief example of a target area in your community that would benefit from a multipurpose grant.
- What complications and barriers could affect your community's ability to complete these accomplishments within the five-year grant period?

- **128(a) Grants to Support Small and Disadvantaged Communities**

- EPA anticipates that states and tribes may provide a variety of activities to small and disadvantaged communities under this grant. Besides the ones listed, what other types of activities might be proposed under this grant program?
- EPA proposes to include evaluation criteria for proposals submitted under this grant program to include a community description and demonstration of community support, project purpose, expected outcomes, existing leveraged resources, and timeline. What other types of evaluation criteria are useful for EPA to use to select proposals?

NEED ADDITIONAL INFORMATION ?



- **U.S. EPA Brownfields Website:**
 - **www.epa.gov/brownfields**
- **Patricia Overmeyer**
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