

**ECOS Waste Committee Comments on Brownfields Coalition Proposal
Regarding
Reauthorization of the Federal Brownfields Law**

Funding that Meets America's Brownfields Needs

Establish Multi-Purpose Brownfield Grants

- States support the coalition's proposal to make the grants more flexible, by letting them be used for a number of very important brownfields activities, such as demolition, assessment, and cleanup. However, only demolition work that is required as part of state-approved cleanup activities should be completed using Brownfield grant funds.
- Also, states recommend that the new legislation include a provision that makes this change retroactive to the grants that have been previously awarded by EPA.

Making Brownfields Grants Work Better at the Local Level

Facilitate Petroleum/UST Brownfield Cleanups

- States endorse this idea.

Grants for Publicly-owned Sites Acquired before 2002

- States support the coalition's proposal to fix the eligibility requirements for local governments to be more realistic to the historic types of acquisition situations. However, states recommend that the new legislation include a provision that makes this change retroactive to the grants that have been previously awarded by EPA.

Assessment and RLF Grants for Non-Profits

- Although states believe that having non-profits addressing some sites would be helpful, states do not support this provision at this time because of the funding shortfall that exists within the current pool of eligible grantees.

Streamlining Funding Approvals by Reducing Redundant EPA Reviews

- States believe that this idea makes sense.

Reasonable Administrative Costs

- Given that this has been a major political issue with some members of Congress, and given all the other provisions being pursued in this proposal, states would not encourage pursuit of this issue.

Clarify Eligible Brownfields Remedial Activities

- States do not believe that the funding should be eligible for activities beyond cleanup.
- However, states would like cleanup of contamination that has migrated off-site to be an allowable remedial activity under federal brownfields grants. Currently, these activities are only allowable if the grantee also owns the property to which the contamination has migrated.

Tools to Help Free the Mothballed Brownfield Sites

Promoting State Institutional Control Programs

- This item would impose significant resource burdens on States to meet the federal provision. Also, this provision would discourage, not promote, use of institutional controls at brownfield sites for two reasons. First, by raising this issue to Congressional oversight, the provision implies that this is an area in which States and institutional controls cannot be trusted. Second, any brownfield site owners that would use institutional controls would be subjecting themselves to perpetual review under a federally mandated program.
- States do not believe that we need the federal intervention with this issue.

Promoting State and Local Environmental Insurance Programs with Federal Support

- States do not support this provision.

Encouraging RCRA and UST Voluntary Cleanups

- This provision looks to change the definition of an UST owner/operator. Because of the fundamental nature of this definition to State UST programs, this provision would have significant effects on other regulatory provisions that would impact State UST programs.

Encouraging TSCA PCB Voluntary Cleanups

- While the goal of eliminating duplicative federal reviews for brownfield sites in State programs is a sound one, how imposing a federal enforcement bar under the brownfields law accomplishes that objective is unclear. The provision creates a situation in which the existing federal TSCA program would still be in place, but it would no longer be enforceable. As a result, this approach appears to be setting up an inherent conflict between federal laws that would require significant untangling by States in the implementation phase.

Assistance for High Priority Communities and Sites

Encouraging Brownfield Cleanups by Good Samaritans

- States believe this provision is very controversial and is being addressed elsewhere so would suggest that it be left off of the proposal.

New Items

Increase STAG Funding for Brownfields

- States would like for STAG funding for brownfields programs to be increased. This increase would help states clean up brownfield sites as some local governments do not have the ability to manage their own grants.

Allowing Flexibility in the Use of 128a Funding by States

- Congress should provide additional clarification regarding the use of 128a funding by states. The statute currently states that a state or tribe may use the 128a grant to establish or enhance the response program of the state or Indian tribe. Congress did not provide a definition for “establish or enhance”. While this language appears to be very broad, EPA headquarters has interpreted the statute to mean that no more than 50% of 128a grant funds may be utilized for assessment and remediation activities. This interpretation severely limits states ability to provide assistance. The statutory language should be amended to grant states greater flexibility in utilization of the 128a grants. This flexibility would

enable states to utilize the grant funding in the way that best serves the response program and brownfield needs in their state. States would like the 50% rule eliminated.

New Item – Clarification of Local Government Relief from Federal Liability

- The bona fide prospective purchaser and involuntary acquisition protections in CERCLA have gone a long way to helping local governments feel comfortable with the notion of owning contaminated properties. And in many states, local governments that acquire land by specific methods such as condemnation, slum clearance, back taxes, etc are not considered liable for environmental contamination under state cleanup laws. However, while a local government may be exempt from state liability and federal CERCLA liability at a state or CERCLA site, there could be areas of contamination that are subject to RCRA Subtitle C, RCRA Subtitle I, and TSCA (PCBs). EPA's enforcement program could take action under federal law at these involuntarily acquired or bona fide prospective purchaser sites. Therefore the states would like further clarification of a local government's federal liability upon involuntarily acquiring a property or acquiring a property through using bona fide prospective purchaser.

New Item – Definition of Involuntary Acquisition

- As recommended in a recent National Association of Local Government Environment Professionals report, new legislation should include clear statutory authority for EPA to clarify in federal regulations, the definition of "involuntary acquisition". The adoption of regulations could clarify and update the 60+ pages of guidance that EPA has provided on this topic.