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

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OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable John Shimkus
Chairman
Committee on Energy and Commerce
Subcommittee on Environment and Economy
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Subcommittee's questions for the record following the April 21, 2016, hearing titled "EPA's Brownfields Program: Empowering Cleanup and Encouraging Economic Redevelopment."

I hope this information is helpful to you and the members of the Subcommittee. If you have further questions, please contact me or your staff may contact Raquel Snyder in my office at Snyder.Raquel@epa.gov or (202) 564-9586.

Sincerely,

Nichole Distefano
Associate Administrator

Enclosure

U.S. Environmental Protection Agency
Responses to Questions for the Record
Following the Hearing: "EPA's Brownfields Program: Empowering Cleanup and Encouraging Economic Redevelopment"
Before the
Subcommittee on Environment and Economy
Committee on Energy and Commerce
United States House of Representatives
April 21, 2016

From Congressman Tim Murphy

1. **We understand that a number of people want to increase the amount of individual grants. What would be the impact of increasing the limit for remediation grants?**

   Response: Brownfields cleanup cooperative agreements typically provide seed money to assist in cleanup of brownfield sites and are intended to leverage other public and private funds for the remainder of the cleanup and redevelopment costs. Increasing the amount of funds for individual remediation grants would reduce the number of remediation grants that could be selected. This would reduce the number of communities benefiting from brownfield cleanups. For example, if the cleanup cooperative agreement amount were raised to $500,000 per award, rather than funding the 59 cleanup cooperative agreements in FY16, we would have only been able to fund approximately 22 cleanup agreements. This is approximately one-third the number of sites benefitting from our cleanup funding.

   A. **Would increasing the amount of remediation grants negatively affect the leveraging of federal brownfields money?**

   Response: We cannot predict the effect that increasing the individual amount of remediation grants would have on leveraging or if this would have a negative effect. Leveraging depends on many things including local leadership, location of the property and extent of available sources of capital, property ownership and current market/economic conditions. One might expect that if the total grant dollars are a significant percentage of the total cleanup costs, it may be easier to find leveraged dollars. However, it may also be that grantees will not feel the same pressure to secure as much leveraged funding if they receive more grant dollars.

2. **With all of the Administration's regulations affecting coal-fired electricity generation, has EPA analyzed the extent to which there are coal fired generating facilities that are closing and not converting to another fuel that will likely become sites that could be cleaned up and redeveloped under the Brownfields Program?**

   A. **What is EPA doing to address the issue that there will soon be all of these closed plants?**

Response: The EPA recognizes that communities who have recently experienced or will soon experience closure of a coal-fired power plant may need resources to help them research and plan for how to address the environmental and economic changes that occur within the vicinity of the plant closure. A closed/closing coal-fired power plant or related legacy site is likely to become a large, blighted area that the community needs to address. In an effort to help communities who struggle with how to revitalize areas affected by recently a closed/closing coal-fired power plant, EPA has opened the FY2017 Brownfield Area-Wide Planning (BF AWP) grant competition to eligible applicants who include a recently closed (2008 or later) or closing coal-fired power plant in their proposed brownfields project area.

The focus of the BF AWP grant assistance is help a community develop a plan to cleanup and reuse key brownfields within a designated project area, so that these sites can serve as catalysts that help bring about additional community redevelopment opportunities. With this grant funding, the recipient is able to conduct community involvement activities which will help identify development priorities, as well as research the type of development the market will support, the condition of infrastructure and known environmental conditions for the catalyst brownfield sites. By taking into account all this information, the community will develop feasible cleanup and reuse plans for the catalyst brownfields site(s) and identify promising revitalization strategies for the area. While a closed/closing coal-fired power plant may not be the focus of the BF AWP grant if it does not meet the brownfields funding definition as per CERCLA 101 (39) (see more information in response B, below), the community's brownfield area-wide plan can be developed in a manner that takes into consideration the overall effects of the nearby closed/closing coal-fired power plant sites.

B. Does EPA have any plans or ideas on how to manage these sites under the Brownfields Program?

Response: We believe that most closed coal-fired power plants will not be eligible for brownfields assessment, cleanup, or revolving loan fund (RLF) grants (including RLF sub grants and loans). We expect that many of these facilities will not meet the definition of a brownfield site or will be owned by private entities or public utilities that are responsible for the contamination at the property.

Many coal-fired power plants may be regulated under the Resource Conservation and Recovery Act or may have a permit issued under the Clean Water Act, and therefore be excluded from the definition of a brownfield. The definition of a brownfield at CERCLA section 101(39)(B)(iv) excludes "...a facility to which a permit has been issued by the United States or an authorized State under the Waste Disposal Act...the Federal Water Pollution Control Act...the Toxic Substances Control Act... or the Safe Drinking Water

Act…" In addition, CERCLA 101(39)(B)(v) excludes from the definition of a brownfield, a facility that " is subject to corrective action under RCRA, and a facility to which a RCRA corrective action permit or order has been issued.

In addition, the statute at section 104(k)(4)(B)(IV) prohibits the use of "any part of a brownfields grant or loan to cover response costs at a brownfields site for which the recipient of the grant is potentially liable under section 107" (of CERCLA). This statutory prohibition will preclude many entities that own a closed power plant from being eligible for a brownfields grant funding to cover the response costs at the site. The statutory exclusions from the definition of a brownfields site and the prohibition on the use of brownfields funding to address contamination at a site for which the grantee is the party responsible for the contamination will limit the use of brownfields funding to assist communities facing the closure of a coal-fired power plant.

However, communities may still be eligible for brownfields area-wide planning grants that may assist them in their brownfields cleanup and reuse efforts within the same vicinity of the closed/closing coal-fired power plant, provided that the catalyst brownfield site for the subject grant is not the power plant.

3. **There is a bill pending in the Senate right now on brownfields – S. 1479. Some of the changes in that bill require EPA to consider certain types of grants – for example, waterfront grants and clean energy grants. Rather than directing EPA to consider certain sites for brownfield funding, shouldn't local communities decide the best end use for a redevelopment project?**

   A. Does EPA already have authority to issue a grant to these types of projects?

   Response: The EPA has the authority to award assessment, cleanup, and revolving loan fund grants that can provide funding for brownfield sites which will ultimately be used for waterfront and clean energy reuses. While it is easy to identify waterfront reuse projects due to their location, it is not as easy to identify sites that will potentially be used for clean energy reuses at the time of the brownfield grant application. This is because at the assessment or cleanup stage, the site reuse is often still being determined.

   We believe the community is in the best position to know the needs of their community and what reuses best meet those needs. Rather than looking at specific end uses, our philosophy has been to look at whether the applicant has a clear plan and has engaged the community in developing that plan and the assessment, cleanup and reuse decisions affecting their communities.