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REPORT
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BROWNFIELDS UTILIZATION, INVESTMENT, AND LOCAL DEVELOPMENT ACT OF 2015

JUNE 14, 2016.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 1479]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works to which was referred the bill (S. 1479) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to modify provisions relating to grants, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

GENERAL STATEMENTS AND BACKGROUND

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (also known as the "Superfund" law) was enacted to provide broad Federal authority to respond to releases or threatened releases of hazardous substances that may endanger public health or the environment, including provisions to help clean up the nation's worst contaminated sites and require responsible parties to pay for the cleanups. Currently, more than 1,300 contaminated sites are on the U.S. Environmental Protection Agency's (EPA) Superfund program's National Priorities List. Brownfields are properties where the presence, or potential presence, of a hazardous substance complicates the expansion or redevelopment of the property. EPA estimates there are more than 450,000 brownfield sites across the country. Concern over CERCLA's strict joint and several liability provisions is one factor that inhibited cleanup at brownfield sites where the extent of contamination may have been unknown and where there was no viable

party available to assess the site or pay for the cleanup. Many states and local governments operate voluntary programs to promote the cleanup and reuse of these properties. EPA administratively created its brownfields initiative in 1993. Congress began appropriating money specifically for the EPA brownfields grant program in fiscal year 1997. However, concerns remained about potential liability under CERCLA for brownfields cleanups.

In 2001, the Senate passed S. 350 by a vote of 99–0 to amend CERCLA to establish the brownfields program, authorize up to $250 million in funding for grants, and provide relief from CERCLA liability for certain parties who meet specified conditions, such as contiguous property owners, prospective purchasers, and innocent landowners. S. 350 was incorporated into Title II of the "Small Business Liability Relief and Brownfields Revitalization Act," which passed the House of Representatives by voice vote and the Senate by unanimous consent on December 20, 2001. President George W. Bush signed the bill into law (P.L. 107–118) on January 11, 2002.

Section 104 of CERCLA was amended to authorize EPA to provide grants and technical assistance to State and local governmental entities, and other stakeholders to assess, safely clean up, and sustainably reuse brownfields. Cleaning up and reinvesting in these properties protects human health and the environment, reduces blight, increases local tax bases, facilitates job growth, and often utilizes existing infrastructure. Definitions for "Brownfield site," "Bona fide prospective purchaser" and "Eligible response site" were also added to section 101 of CERCLA.

S. 1479 would reauthorize the EPA brownfields program at current funding levels through fiscal year 2018. The BUILD Act would improve the existing grant process by increasing the dollar limit for cleanup grants, authorizing EPA to make multi-purpose grants, expanding grant eligibility for certain publicly owned sites and nonprofit organizations, authorizing grants for waterfront brownfields properties located adjacent to bodies of water or in floodplains and sites that can be used for clean energy development. The bill would also allow grant recipients to use a portion of grant funds for administrative costs, provide technical assistance grants to rural areas, small communities, and disadvantaged areas, and authorize up to $2 million per fiscal year in targeted funding grants to States.

At a March 2, 3016, legislative hearing, the Committee heard testimony from a witness from the Northern West Virginia Brownfields Assistance Center in favor of S. 1479, including provisions that would increase the dollar amount for individual grants, create multi-purpose grants, and establish technical assistance grants for small communities and rural areas.

PURPOSE OF THE LEGISLATION

The bill authorizes the appropriation of $250 million annually through fiscal year 2018 for EPA to provide brownfields cleanup grants and programs, and would amend section 104(k) of CERCLA (42 U.S.C. 9604(k)) to improve the existing grant process by increasing the limit for cleanup grants, expanding grant eligibility, and prioritizing funding opportunities for certain brownfield sites, among other purposes.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the Act may be cited as the "Brownfields Utilization, Investment, and Local Development Act of 2015" or the "BUILD Act."

Section 2. Expanded eligibility for nonprofit organizations

Section 2 expands the eligibility for Brownfields grants for nonprofit organizations to include certain nonprofit organizations, limited liability corporations, limited partnerships, and community development entities.

Section 3. Multipurpose brownfield grants

Section 3 authorizes EPA to make multi-purpose grants up to $950,000, which provide greater certainty for long-term project financing. Limits all grants under this section to 15 percent of appropriations.

Section 4. Treatment of certain publicly owned brownfield sites

Section 4 allows government entities that acquired brownfields property prior to January 11, 2002, that do not qualify as a bona fide prospective purchaser under section 101(40) of CERCLA, to be eligible to receive grants so long as the government entity did not cause or contribute to a release or threatened release of a hazardous substance at the property.

Section 5. Increased funding for remediation grants

Section 5 increases funding limit for each site from the current $200,000 to $500,000 for each site. This section also authorizes the EPA to waive that limit, up to $650,000 for a site, based on the anticipated level of contamination, size, or ownership status of the site.

Section 6. Allowing administrative costs for grant recipients

Section 6 allows eligible entities to use up to 8 percent of their brownfield grant funding for administrative costs.

Section 7. Small or disadvantaged community technical assistance

Section 7 directs EPA to give priority in providing technical assistance grants of up to $7,500 to eligible entities in small communities, Indian tribes, rural areas, and disadvantaged areas. This section defines a "disadvantaged area" as an area with an annual median household income that is less than 80 percent of the Statewide annual median household income, as determined by the latest available decennial census. This section also defines a "small community" as a community with a population of not more than 15,000 individuals, as determined by the latest available decennial census. This section limits all grants under this section to $600,000.

Section 8. Waterfront brownfield grants

Section 8 directs EPA in providing brownfield grants to give consideration to waterfront brownfield sites located adjacent to bodies of water or federally designated floodplains.

Section 9. Clean energy brownfield grants

Section 9 requires EPA to establish a program to provide grants of up to $500,000 to eligible entities to locate clean energy projects at brownfield sites.

Section 10. Targeted funding for States

Section 10 authorizes EPA to use up to $2 million each fiscal year to provide targeted grants to States.

Section 11. Authorization of appropriations

Section 11 authorizes appropriations of $250 million annually through fiscal year 2018.

LEGISLATIVE HISTORY

Senators Inhofe, Markey, Rounds, Boxer, Crapo, and Booker introduced S. 1479, the "Brownfields Utilization, Investment, and Local Development Act of 2015" or the "BUILD Act," on June 2, 2015. The bill was read twice and referred to the Senate Committee on Environment and Public Works. The Committee met on May 18, 2016, and ordered S. 1479 favorably reported without amendment by voice vote.

An almost identical bill, S. 491, was favorably reported with an amendment by the Committee by voice vote on April 3, 2014, in the 113th Congress.

HEARINGS

The Committee on Environment and Public Works held a hearing entitled, "Economic Opportunities from Land Cleanup Programs and a Legislative Hearing on S. 1479, Brownfields Utilization, Investment, and Local Development Act of 2015, S. 2446, Improving Coal Combustion Residuals Regulation Act of 2016 and Discussion Draft of Good Samaritan Cleanup of Orphan Mines Act of 2016" on March 2, 2016.

ROLL CALL VOTES

The Committee on Environment and Public Works met to consider S. 1479 on May 18, 2016. The bill was ordered favorably reported without amendment by voice vote. No roll call votes were taken.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 1479 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the Committee notes that the Congressional Budget Office has found, "S. 1479 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments."

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

JUNE 13, 2016.

Hon. JIM INHOFE,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1479, the Brownfields Utilization, Investment, and Local Development Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jon Sperl.

Sincerely,

KEITH HALL.

Enclosure.

S. 1479—Brownfields Utilization, Investment, and Local Development Act of 2015

S. 1479 would authorize the appropriation of $250 million annually in 2017 and 2018 for the Environmental Protection Agency (EPA) to provide grants to clean up brownfields and support state brownfield programs. (Brownfields are properties where the presence, or potential presence, of a hazardous substance complicates the expansion or redevelopment of the property.) Assuming appropriation of the authorized amounts, CBO estimates that implementing S. 1479 would cost $500 million over the 2017–2021 period.

Pay-as-you-go procedures do not apply to this legislation because enacting the bill would not affect direct spending or revenues. CBO estimates that enacting S. 1479 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 1479 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1479 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2017	2018	2019	2020	2021	2017–2021
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	250	250	0	0	0	500
Estimated Outlays	13	212	230	37	8	500

Basis of estimate: For this estimate, CBO assumes that S. 1479 will be enacted near the end of fiscal year 2016, that the specified amounts will be appropriated in each year starting in 2017, and that outlays will follow historical spending patterns for the brownfields program.

S. 1479 would authorize the appropriation of $250 million annually over the 2017–2018 period to EPA for activities to restore brownfields. The authorization for this program expired in 2006, but it has continued to receive appropriations each year; $152 million was appropriated for the program in 2016.

The bill would increase the limit for cleanup grants and expand eligibility for grants to certain publicly owned sites and nonprofit organizations. In addition, S. 1479 would allow grant recipients to use up to 8 percent of the grant to cover administrative costs.

Pay-As-You-Go considerations: None.

Increase in long-term deficit and direct spending: CBO estimates that enacting S. 1479 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

Intergovernmental and private-sector impact: S. 1479 contains no intergovernmental or private-sector mandates as defined in UMRA and would benefit state, local, and tribal governments by authorizing federal grants to support brownfield cleanup activities and programs. Any costs those governments might incur, including matching contributions, would result from participating in a voluntary federal program.

Estimate prepared by: Federal costs: Jon Sperl; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in **[**black brackets**]**, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

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COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980

* * * * * * *

SEC. 101. For purpose of this title—

(1)* * *

* * * * * * *

SEC. 104. (a)(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health

or welfare or the environment. When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 122. No remedial investigation or feasibility study (RI/FS) shall be authorized except on a determination by the President that the party is qualified to conduct the RI/FS and only if the President contracts with or arranges for a qualified person to assist the President in overseeing and reviewing the conduct of such RI/FS and if the responsible party agrees to reimburse the Fund for any cost incurred by the President under, or in connection with, the oversight contract or arrangement. In no event shall a potentially responsible party be subject to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any such arrangements as a response action contractor, or as a person hired or retained by such a response action contractor, with respect to the release or facility in question. The President shall give primary attention to those releases which the President deems may present a public health threat.

(2)* * *

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(k) BROWNFIELDS REVITALIZATION FUNDING.—

(1) DEFINITION OF ELIGIBLE ENTITY.—In this subsection, the term "eligible entity" means—

(A) a general purpose unit of local government;

(B) a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government;

(C) a government entity created by a State legislature;

(D) a regional council or group of general purpose units of local government;

(E) a redevelopment agency that is chartered or otherwise sanctioned by a State;

(F) a State;

(G) an Indian Tribe other than in Alaska; [or]

(H) an Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following) and the Metlakatla Indian community[.] *;*

(I) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code;

(J) a limited liability corporation in which all managing members are organizations described in subparagraph (I) or limited liability corporations whose sole members are organizations described in subparagraph (I);

(K) a limited partnership in which all general partners are organizations described in subparagraph (I) or limited liability corporations whose sole members are organizations described in subparagraph (I); or

(L) a qualified community development entity (as defined in section 45D(c)(1) of the Internal Revenue Code of 1986).

(2) BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT GRANT PROGRAM.—

(A) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to—

(i) provide grants to inventory, characterize, assess, and conduct planning related to brownfield sites under subparagraph (B); and

(ii) perform targeted site assessments at brownfield sites.

(B) ASSISTANCE FOR SITE CHARACTERIZATION AND ASSESSMENT.—

(i) IN GENERAL.—On approval of an application made by an eligible entity, the Administrator may make a grant to the eligible entity to be used for programs to inventory, characterize, assess, and conduct planning related to one or more brownfield sites.

(ii) SITE CHARACTERIZATION AND ASSESSMENT.—A site characterization and assessment carried out with the use of a grant under clause (i) shall be performed in accordance with section 101(35)(B).

(C) EXEMPTION FOR CERTAIN PUBLICLY OWNED BROWNFIELD SITES.—Notwithstanding any other provision of law, an eligible entity that is a governmental entity may receive a grant under this paragraph for property acquired by that governmental entity prior to January 11, 2002, even if the governmental entity does not qualify as a bona fide prospective purchaser (as that term is defined in section 101(40)), so long as the eligible entity has not caused or contributed to a release or threatened release of a hazardous substance at the property.

(3) GRANTS AND LOANS FOR BROWNFIELD REMEDIATION.—

(A) GRANTS PROVIDED BY THE PRESIDENT.—**[**Subject to paragraphs (4) and (5)**]** *subject to paragraphs (5) and (6)*, the President shall establish a program to provide grants to—

(i) eligible entities, to be used for capitalization of revolving loan funds; and

(ii) eligible entities or nonprofit organizations, where warranted, as determined by the President based on considerations under subparagraph (C), to be used directly for remediation of one or more brownfield sites owned by the entity or organization that receives the grant and in amounts not to exceed **[**$200,000 for each site to be remediated**]** *$500,000 for each site to be remediated, but not to exceed a total of $650,000 for each site, based on the anticipated level of contamination, size, or ownership status of the site*.

(B) LOANS AND GRANTS PROVIDED BY ELIGIBLE ENTITIES.—An eligible entity that receives a grant under subparagraph (A)(i) shall use the grant funds to provide assistance for the remediation of brownfield sites in the form of—

(i) one or more loans to an eligible entity, a site owner, a site developer, or another person; or

(ii) one or more grants to an eligible entity or other nonprofit organization, where warranted, as determined by the eligible entity that is providing the assistance, based on considerations under subparagraph (C), to remediate sites owned by the eligible entity or nonprofit organization that receives the grant.

(C) CONSIDERATIONS.—In determining whether a grant under subparagraph (A)(ii) or (B)(ii) is warranted, the President or the eligible entity, as the case may be, shall take into consideration—

(i) the extent to which a grant will facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

(ii) the extent to which a grant will meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

(iii) the extent to which a grant will facilitate the use or reuse of existing infrastructure;

(iv) the benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation; and

(v) such other similar factors as the Administrator considers appropriate to consider for the purposes of this subsection.

(D) TRANSITION.—Revolving loan funds that have been established before the date of the enactment of this subsection may be used in accordance with this paragraph.

(4) MULTIPURPOSE BROWNFIELDS GRANTS.—

(A) IN GENERAL.—Subject to subparagraph (D) and paragraphs (5) and (6), the Administrator shall establish a program to provide multipurpose grants to an eligible entity based on the considerations under paragraph (3)(C), to carry out inventory, characterization, assessment, planning, or remediation activities at 1 or more brownfield sites in a proposed area.

(B) GRANT AMOUNTS.—

(i) INDIVIDUAL GRANT AMOUNTS.—Each grant awarded under this paragraph shall not exceed $950,000.

(ii) CUMULATIVE GRANT AMOUNTS.—The total amount of grants awarded for each fiscal year under this paragraph shall not exceed 15 percent of the funds made available for the fiscal year to carry out this subsection.

(C) CRITERIA.—In awarding a grant under this paragraph, the Administrator shall consider the extent to which an eligible entity is able—

(i) to provide an overall plan for revitalization of the 1 or more brownfield sites in the proposed area in which the multipurpose grant will be used;

(ii) to demonstrate a capacity to conduct the range of eligible activities that will be funded by the multipurpose grant; and

(iii) to demonstrate that a multipurpose grant will meet the needs of the 1 or more brownfield sites in the proposed area.

(D) CONDITION.—As a condition of receiving a grant under this paragraph, each eligible entity shall expend the full amount of the grant not later than the date that is 3 years after the date on which the grant is awarded to the eligible entity unless the Administrator, in the discretion of the Administrator, provides an extension.

[(4)] *(5)* GENERAL PROVISIONS.—

(A) MAXIMUM GRANT AMOUNT.—

(i) BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT.—

(I) IN GENERAL.—A grant under paragraph (2) may be awarded to an eligible entity on a community-wide or site-by-site basis, and shall not exceed, for any individual brownfield site covered by the grant, $200,000.

(II) WAIVER.—The Administrator may waive the $200,000 limitation under subclause (I) to permit the brownfield site to receive a grant of not to exceed $350,000, based on the anticipated level of contamination, size, or status of ownership of the site.

(ii) BROWNFIELD REMEDIATION.—A grant under paragraph (3)(A)(i) may be awarded to an eligible entity on a community-wide or site-by-site basis, not to exceed $1,000,000 per eligible entity. The Administrator may make an additional grant to an eligible entity described in the previous sentence for any year after the year for which the initial grant is made, taking into consideration—

(I) the number of sites and number of communities that are addressed by the revolving loan fund;

(II) the demand for funding by eligible entities that have not previously received a grant under this subsection;

(III) the demonstrated ability of the eligible entity to use the revolving loan fund to enhance remediation and provide funds on a continuing basis; and

(III) such other similar factors as the Administrator considers appropriate to carry out this subsection.

(B) PROHIBITION.—

(i) IN GENERAL.—No part of a grant or loan under this subsection may be used for the payment of—

(I) a penalty or fine;

(II) a Federal cost-share requirement;

[(III)] an administrative cost;

[(IV)] *(III)* a response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under section 107; or

[(V)] *(IV)* a cost of compliance with any Federal law (including a Federal law specified in section 101(39)(B)), excluding the cost of compliance with laws applicable to the cleanup.

[(ii) EXCLUSIONS.—For the purposes of clause (i)(III), the term "administrative cost" does not include the cost of—

[(I) investigation and identification of the extent of contamination;

[(II) design and performance of a response action; or

[(III) monitoring of a natural resource.]

[(iii)] *(ii)* EXCEPTION.—[Notwithstanding clause (i)(IV)] *Notwithstanding clause (i)(III), the Administrator may use up to 25 percent of the funds made available to carry out this subsection to make a grant or loan under this subsection to eligible entities that satisfy all of the elements set forth in section 101(40) to qualify as a bona fide prospective purchaser, except that the date of acquisition of the property was on or before January 11, 2002.*

(C) ASSISTANCE FOR DEVELOPMENT OF LOCAL GOVERNMENT SITE REMEDIATION PROGRAMS.—A local government that receives a grant under this subsection may use not to exceed 10 percent of the grant funds to develop and implement a brownfields program that may include—

(i) monitoring the health of populations exposed to one or more hazardous substances from a brownfield site; and

(ii) monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance from a brownfield site.

(D) INSURANCE.—A recipient of a grant or loan awarded under paragraph (2) or (3) that performs a characterization, assessment, or remediation of a brownfield site may use a portion of the grant or loan to purchase insurance for the characterization, assessment, or remediation of that site.

(E) ADMINISTRATIVE COSTS.—

(i) IN GENERAL.—*An eligible entity may use up to 8 percent of the amounts made available under a grant or loan under this subsection for administrative costs.*

(ii) RESTRICTION.—*For purposes of clause (i), the term 'administrative costs' does not include—*

(I) investigation and identification of the extent of contamination;

(II) design and performance of a response action; or

(III) monitoring of a natural resource.

[(5)] *(6)* GRANT APPLICATIONS.—

(A) SUBMISSION.—

(i) IN GENERAL.—

(I) APPLICATION.—An eligible entity may submit to the Administrator, through a regional office of the Environmental Protection Agency and in such form as the Administrator may require, an application for a grant under this subsection for one or more brownfield sites (including information on the criteria used by the Administrator to rank applications under subparagraph (C), to the extent that the information is available).

(II) NCP REQUIREMENTS.—The Administrator may include in any requirement for submission of an application under subclause (I) a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection.

(ii) COORDINATION.—The Administrator shall coordinate with other Federal agencies to assist in making eligible entities aware of other available Federal resources.

(iii) GUIDANCE.—The Administrator shall publish guidance to assist eligible entities in applying for grants under this subsection.

(B) APPROVAL.—The Administrator shall—

(i) at least annually, complete a review of applications for grants that are received from eligible entities under this subsection; and

(ii) award grants under this subsection to eligible entities that the Administrator determines have the highest rankings under the ranking criteria established under subparagraph (C).

(C) RANKING CRITERIA.—The Administrator shall establish a system for ranking grant applications received under this paragraph that includes the following criteria:

(i) The extent to which a grant will stimulate the availability of other funds for environmental assessment or remediation, and subsequent reuse, of an area in which one or more brownfield sites are located.

(ii) The potential of the proposed project or the development plan for an area in which one or more brownfield sites are located to stimulate economic development of the area on completion of the cleanup.

(iii) The extent to which a grant would address or facilitate the identification and reduction of threats to human health and the environment, including threats in areas in which there is a greater-than-normal incidence of diseases or conditions (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, or contaminants.

(iv) The extent to which a grant would facilitate the use or reuse of existing infrastructure.

(v) The extent to which a grant would facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

(vi) The extent to which a grant would meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community.

(vii) The extent to which the applicant is eligible for funding from other sources.

(viii) The extent to which a grant will further the fair distribution of funding between urban and non-urban areas.

(ix) The extent to which the grant provides for involvement of the local community in the process of making decisions relating to cleanup and future use of a brownfield site.

(x) The extent to which a grant would address or facilitate the identification and reduction of threats to the health or welfare of children, pregnant women, minority or low-income communities, or other sensitive populations.

[(6)] *(7)* IMPLEMENTATION OF BROWNFIELDS PROGRAMS.—

(A) ESTABLISHMENT OF PROGRAM.—[The Administrator may provide,]

(i) DEFINITIONS.—*In this subparagraph:*

(I) DISADVANTAGED AREA.—*The term 'disadvantaged area' means an area with an annual median household income that is less than 80 percent of the State-wide annual median household income, as determined by the latest available decennial census.*

(II) SMALL COMMUNITY.—*The term 'small community' means a community with a population of not more than 15,000 individuals, as determined by the latest available decennial census.*

(ii) ESTABLISHMENT OF PROGRAM.—*The Administrator shall establish a program to provide grants that provide,* or fund eligible entities or nonprofit organizations to provide, training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfield sites, site assessments, remediation of brownfield sites, community involvement, or site preparation.

(iii) SMALL OR DISADVANTAGED COMMUNITY RECIPIENTS.—

(I) IN GENERAL.—*Subject to subclause (II), in carrying out the program under clause (ii), the Administrator shall use not more than $600,000 of the amounts made available to carry out this paragraph to provide grants to States that receive amounts under section 128(a) to assist small communities, Indian tribes, rural areas, or disadvantaged areas in achieving the purposes described in clause (ii).*

(II) LIMITATION.—*Each grant awarded under subclause (I) shall be not more than $7,500.*

(B) FUNDING RESTRICTIONS.—The total Federal funds to be expended by the Administrator under this paragraph shall not exceed 15 percent of the total amount appropriated to carry out this subsection in any fiscal year.

[(7)] *(8)* AUDITS.—

(A) IN GENERAL.—The Inspector General of the Environmental Protection Agency shall conduct such reviews or audits of grants and loans under this subsection as the Inspector General considers necessary to carry out this subsection.

(B) PROCEDURE.—An audit under this subparagraph shall be conducted in accordance with the auditing procedures of the General Accounting Office, including chapter 75 of title 31, United States Code.

(C) VIOLATIONS.—If the Administrator determines that a person that receives a grant or loan under this subsection has violated or is in violation of a condition of the grant, loan, or applicable Federal law, the Administrator may—

(i) terminate the grant or loan;

(ii) require the person to repay any funds received; and

(iii) seek any other legal remedies available to the Administrator.

(D) REPORT TO CONGRESS.—Not later than 3 years after the date of the enactment of this subsection, the Inspector General of the Environmental Protection Agency shall submit to Congress a report that provides a description of the management of the program (including a description of the allocation of funds under this subsection).

[(8)] *(9)* LEVERAGING.—An eligible entity that receives a grant under this subsection may use the grant funds for a portion of a project at a brownfield site for which funding is received from other sources if the grant funds are used only for the purposes described in paragraph (2) or (3).

[(9)] *(10)* AGREEMENTS.—Each grant or loan made under this subsection shall—

(A) include a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection, as determined by the Administrator; and

(B) be subject to an agreement that—

(i) requires the recipient to—

(I) comply with all applicable Federal and State laws; and

(II) ensure that the cleanup protects human health and the environment;

(ii) requires that the recipient use the grant or loan exclusively for purposes specified in paragraph (2) or (3), as applicable;

(iii) in the case of an application by an eligible entity under paragraph (3)(A), requires the eligible entity to pay a matching share (which may be in the form of a contribution of labor, material, or services) of at least 20 percent, from non-Federal sources of funding, unless the Administrator determines that the matching

share would place an undue hardship on the eligible entity; and

(iv) contains such other terms and conditions as the Administrator determines to be necessary to carry out this subsection.

(11) WATERFRONT BROWNFIELD SITES.—

(A) DEFINITION OF WATERFRONT BROWNFIELD SITE.—In this paragraph, the term 'waterfront brownfield site' means a brownfield site that is adjacent to a body of water or a federally designated floodplain.

(B) REQUIREMENTS.—In providing grants under this subsection, the Administrator shall—

(i) take into consideration whether the brownfield site to be served by the grant is a waterfront brownfield site; and

(ii) give consideration to waterfront brownfield sites.

(12) CLEAN ENERGY PROJECTS AT BROWNFIELD SITES.—

(A) DEFINITION OF CLEAN ENERGY PROJECT.—In this paragraph, the term 'clean energy project' means—

(i) a facility that generates renewable electricity from wind, solar, or geothermal energy; and

(ii) any energy efficiency improvement project at a facility, including combined heat and power and district energy.

(B) ESTABLISHMENT.—The Administrator shall establish a program to provide grants—

(i) to eligible entities to carry out inventory, characterization, assessment, planning, feasibility analysis, design, or remediation activities to locate a clean energy project at 1 or more brownfield sites; and

(ii) to capitalize a revolving loan fund for the purposes described in clause (i).

(C) MAXIMUM AMOUNT.—A grant under this paragraph shall not exceed $500,000.

[(10)**]** *(13)* FACILITY OTHER THAN BROWNFIELD SITE.—The fact that a facility may not be a brownfield site within the meaning of section 101(39)(A) has no effect on the eligibility of the facility for assistance under any other provision of Federal law.

[(11)**]** *(14)* EFFECT ON FEDERAL LAWS.—Nothing in this subsection affects any liability or response authority under any Federal law, including—

(A) this Act (including the last sentence of section 101(14));

(B) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(D) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

(E) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

[(12)**]** *(15)* FUNDING.—

(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection

$200,000,000 for each of fiscal years 2002 through [2006] *2018*.

(B) USE OF CERTAIN FUNDS.—Of the amount made available under subparagraph (A), $50,000,000, or, if the amount made available is less than $200,000,000, 25 percent of the amount made available, shall be used for site characterization, assessment, and remediation of facilities described in section 101(39)(D)(ii)(II).

(C) TARGETED FUNDING.—*Of the amounts made available under subparagraph (A) for a fiscal year, the Administrator may use not more than $2,000,000 to provide grants to States for purposes authorized under section 128(a), subject to the condition that each State that receives a grant under this subparagraph shall have used at least 50 percent of the amounts made available to that State in the previous fiscal year to carry out assessment and remediation activities under section 128(a).*

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SEC. 128. STATE RESPONSE PROGRAMS.

(a) ASSISTANCE TO STATES.—

(1) IN GENERAL.—

(A) STATES.—The Administrator may award a grant to a State or Indian tribe that—

(i) has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements, listed in paragraph (2); or

(ii) is a party to a memorandum of agreement with the Administrator for voluntary response programs.

(B) USE OF GRANTS BY STATES.—

(i) IN GENERAL.—A State or Indian tribe may use a grant under this subsection to establish or enhance the response program of the State or Indian tribe.

(ii) ADDITIONAL USES.—In addition to the uses under clause (i), a State or Indian tribe may use a grant under this subsection to—

(I) capitalize a revolving loan fund for brownfield remediation under section 104(k)(3); or

(II) purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State response program.

(2) ELEMENTS.—The elements of a State or Indian tribe response program referred to in paragraph (1)(A)(i) are the following:

(A) Timely survey and inventory of brownfield sites in the State.

(B) Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that—

(i) a response action will—

(I) protect human health and the environment; and

(II) be conducted in accordance with applicable Federal and State law; and

(ii) if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed.

(C) Mechanisms and resources to provide meaningful opportunities for public participation, including—

(i) public access to documents that the State, Indian tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;

(ii) prior notice and opportunity for comment on proposed cleanup plans and site activities; and

(iii) a mechanism by which—

(I) a person that is or may be affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfield site located in the community in which the person works or resides may request the conduct of a site assessment; and

(II) an appropriate State official shall consider and appropriately respond to a request under subclause (I).

(D) Mechanisms for approval of a cleanup plan, and a requirement for verification by and certification or similar documentation from the State, an Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response is complete.

(3) FUNDING.—There is authorized to be appropriated to carry out this subsection $50,000,000 for each of fiscal years 2002 through [2006] *2018*.

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