

Analysis of Division N – Brownfields Utilization, Investment, and Local Development (BUILD) Act of 2018

Issues Area	FY18 Omnibus Appropriations Bill	Comments
<p>Redevelopment Certainty for Governmental Entities</p>	<p>Amended Section 101(20)(D) of the 1980 (42 U.S.C. 9601(20)).</p> <p>The bill states that the term ‘owner or operator’ does not include a unit of State or local government which acquired 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 function as sovereign.</p>	<p>The bill clarifies removes the “involuntary acquisition” language of CERCLA with respect to the definition of an “owner or operator” for Potentially Responsible Parties (PRP) status.</p> <p>This change is consistent with National Brownfields Coalition priorities.</p>
<p>Alaska Native Village and Native Corporation Relief</p>	<p>Amended Section 101(20) of the 1980 (42 U.S.C. 9601(20)).</p> <p>The bill explicitly states ‘owner or operator’ does not include, with respect to a facility conveyed to a Native village or Native Corporation under the Alaska Native Claims Settlement Act—“(I) the Native village or Native Corporation that received the facility from the United States Government; or “(II) a successor in interest to</p>	<p>The bill adds a new exclusion from the definition of “owner or operator” for Alaska Native villages or Alaska Native Corporations or their successors that received a contaminated facility from the U.S. government under the Alaska Native Claims Settlement Act. Without this exclusion the villages and corporations could be held liable for contamination</p>

	<p>which the facility was conveyed under section 14(c) of such Act.</p> <p>The exclusion provided under this subparagraph shall not apply to any entity described in clause (i) that causes or contributes to a release or threatened release of a hazardous substance from the facility conveyed as described in such clause.</p>	<p>caused by the U.S. government and are not eligible for brownfields grants.</p>
Petroleum Brownfield Enhancement	<p>Amended Section 101(39)(D)(ii)(II) of the 1980 (42 U.S.C. 9601(39)(D)(ii)(II)).</p> <p>The bill amends the definition of a "brownfield site" to include "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;</p>	<p>The bill allows the cleanup of sites contaminated by petroleum for which there is no viable responsible party.</p>
Prospective Purchases and Lessees	<p>Amended Section 22 101(40) of 1980 (42 U.S.C.24 9601(40)).</p> <p>The bill defines the term 'bona fide prospective purchaser', with respect to a facility as a person who—</p>	<p>This section of the bill extends the defense from liability for bona fide prospective purchasers (BFPPs) to lessees, whether or not the owner is BFPP, consistent with current EPA enforcement discretion guidance, and makes conforming changes.</p>

	<p>“(I) acquires ownership of the facility after January 11, 2002; and “(II) establishes by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B); and</p> <p>“(ii) a person— “(I) who acquires a leasehold interest in the facility after January 11,2002; “(II) who establishes by a preponderance of the evidence that the leasehold interest is not designed to avoid liability under this Act by any</p> <p>8 person; and “(III) with respect to whom any of the following conditions apply:</p> <p>“(aa) The owner of the facility that is subject to the leasehold interest is a person described in clause (i).</p> <p>“(bb)(AA) The owner of the facility that is subject to the leasehold interest was a person described in clause (i) at the time the leasehold interest was acquired, but can no longer establish by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B) due to circumstances unrelated to any action of the person who holds the leasehold interest; and</p> <p>“(BB) the person who holds the leasehold interest establishes by a preponderance of the evidence each of</p>	
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	<p>the criteria described in clauses (i), (iii), (iv),(v), (vi), (vii), and (viii) of subparagraph (B).</p> <p>“(cc) The person who holds the leasehold interest establishes by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B).</p> <p>“(B) CRITERIA.—The criteria described in this subparagraph are as follows: “(i) DISPOSAL PRIOR TO ACQUISITION.—All disposal of” (b) LIMITATION ON LIABILITY.—Section 107(r)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(r)(1)) is amended by striking “purchaser’s” and inserting “bona fide prospective purchaser”.</p>	
<p>Expanded Eligibility for Nonprofit Organizations</p>	<p>Amended Section 104(k)(1) of 42 U.S.C. 9604(k)(1)).</p> <p>The bill expands eligibility for nonprofit organizations. Eligible organizations include:</p> <p>(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;</p> <p>(J) A a limited liability corporation in which all managing members are organizations described in subparagraph (I) or limited liability</p>	<p>The bill clarifies which entities are eligible to receive brownfields assessment, cleanup, revolving loan fund, and job training grants.</p> <p>This is consistent with National Brownfields Coalition priorities.</p>

	<p>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).'</p>	
<p>Treatment of Certain Public Owned Brownfields</p>	<p>Amended Section 104(k) of the 1980 (42 U.S.C. 9604(k)).</p> <p>The bill provides exemptions for certain publicly owned brownfield sites. Eligible entities may receive a grant for property acquired prior to January 11, 2002, even if the eligible entity does not qualify as a bona fide prospective purchaser, so long as the eligible entity has not caused or contributed to a release or threatened release of a hazardous substance at the property.</p>	<p>The bill allows eligible entities (including non bona fide prospective purchaser) that acquired brownfields property prior to January 11, 2002 to be eligible to receive grants. This is consistent with National Brownfields Coalition priorities.</p>
<p>Increased Funding for Remediation Grants</p>	<p>Amended Section 104(k)(3)(A)(ii) of the 1980 (42 U.S.C. 9604(k)(3)(A)(ii)).</p> <p>The bill increases funding for each site to be remediated from \$200,000 to \$500,000. Also, the limit may be waived by the Administrator, but not to exceed a total of</p>	<p>The bill increases the limit for site remediation from \$200,000 to \$500,000 for each site. Also, the limit may be waived by the Administrator, but not to exceed a total of \$650,000.</p>

	<p>\$650,000 for each site, based on the anticipated level of contamination, size, or ownership status of the site.</p>	<p>This National Brownfields Coalition supports this change.</p>
<p>Multipurpose Brownfields Grants</p>	<p>Amended Section 104(k) of the 1980 (42 U.S.C. 9604(k)).</p> <p>The bill requires the Administrator to establish a program to provide multipurpose grants to an eligible entity based on the criteria under subparagraph (C) and the considerations under paragraph (3)(C), to carry out inventory, characterization, assessment, planning, or remediation activities at 1 or more brownfield sites in an area proposed by the eligible entity.</p> <p>Individual Grant Amounts – awarded under this paragraph shall not exceed \$1,000,000.</p> <p>Cumulative Grant Amounts – The total amount for cumulative grants awarded for each fiscal year under this paragraph may not exceed 15 percent of the funds made available for the fiscal year to carry out this subsection.</p> <p>Criteria – In awarding a grant, the Administrator shall consider the extent to which the eligible entity is able 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; to demonstrate a capacity to conduct the range of eligible activities that will be funded by the multipurpose grant; and to demonstrate</p>	<p>The bill includes the establishment of a new multi-purpose brownfields grants program that can be used for the full range of brownfields funded activities, including assessment, cleanup, reuse planning, as well as on a area-wide and community-wide basis.</p> <p>This change is consistent with National Brownfields Coalition’s priorities.</p>

	<p>that a multipurpose grant will meet the needs of the 1 or more brownfield sites in the proposed area.</p> <p>Condition—As a condition of receiving a grant under this paragraph, each eligible entity shall expend the full amount of the grant by not later than the date that is 5 years after the date on which the grant is awarded to 6 the eligible entity, unless the Administrator provides an extension.</p> <p>Ownership —An eligible entity that receives a grant under this category may not expend any of the grant funds for the remediation of a brownfield site unless the eligible entity owns the brownfield site.</p>	
<p>Allowing Administrative Costs for Grant Recipients</p>	<p>Amends Paragraph (5) of section 104(k) of the 1980 (42 U.S.C. 9604(k)) (as redesignated by 21 section 9 of this Act).</p> <p>The bill states that no part of a grant or loan under this subsection may be used for the payment of— a penalty or fine; a Federal cost-share requirement; a response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under section 107; or 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.</p>	<p>The bill allows grant recipients to use a percentage of EPA funds to cover administrative costs.</p> <p>This change is consistent with National Brownfields Coalition’s priorities.</p>

	<p>An eligible entity may use up to 5 percent of the amounts made available under a grant or loan under this subsection for administrative costs.</p> <p>The term ‘administrative costs’ does not include— investigation and identification of the extent of contamination of a brownfield site; design and performance of a response action; or monitoring of a natural resource.</p>	
<p>Grant Applications</p>	<p>Amends Paragraph (6)(C) of section 104(k) of the 1980 (42 13 U.S.C. 9604(k)) (as redesignated by section 9 of this Act).</p> <p>The bill includes consideration for Waterfront Brownfields Grants, i.e. grants that would address a site adjacent to a body of water or a federally designated flood plain; and Clean energy on brownfield sites, i.e. the location at a brownfield site of a facility that generates renewable electricity from wind, solar, or geothermal energy; or any energy efficiency improvement project at a brownfield site, including a project for a combined heat and power system or a district energy system.</p> <p>Not later than September 30, 2022, the Administrator shall submit to Congress a report regarding the Administrator’s use of the ranking criteria described in subparagraph (C) in awarding grants under this subsection.</p>	<p>The bill directs EPA to give consideration to waterfront brownfield sites including federally designated flood plains; and any energy efficiency improvement project at a brownfield site.</p> <p>This policy is consistent with National Brownfields Coalition’s priorities.</p>

<p>Audits</p>	<p>Amends Paragraph (8) of section 104(k) of the 1980 (42 U.S.C. 9604(k)) (as redesignated by section 9 of this Act).</p> <p>Not later than September 30, 2022, the Administrator 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).</p>	<p>The bill requires an audit of the program on September 30, 2022.</p>
<p>Brownfields Funding</p>	<p>Amended Paragraph (13) of section 104(k) of the 1980 (42 U.S.C. 9604(k)) (as redesignated by section 9 of this Act).</p> <p>The bill authorizes brownfield funding to be appropriated to carry out this subsection \$200,000,000 for each of fiscal years 2019 through 2023.</p>	<p>The bill reauthorizes the Brownfields program for 4-years.</p> <p>This is consistent with National Brownfields Coalition’s priorities.</p>
<p>Small Community Technical Assistance Grants</p>	<p>Amended Section 128(a)(1)(B) of the 1980 (42 U.S.C. 9628(a)(1)(B)).</p> <p>The bill includes provisions to assist small communities, Indian tribes, rural areas, or disadvantaged areas in carrying out activities described in section 23 104(k)(7)(A) with respect to brownfield sites.</p> <p>To make grants to States or Indian tribes, the Administrator may use, in addition to amounts available</p>	<p>The bill directs EPA to provide technical assistance grants to assist small communities, Indian tribes, rural areas, or disadvantaged areas. This section of the bill defines a “disadvantaged area” as well as a “small community”.</p> <p>This section of the bill limits all grants under this section to \$20,000, and not more that \$1,500,000 in each fiscal year.</p>



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	<p>to carry out this subsection, not more than \$1,500,000 of the amounts made available to carry out section 104(k)(7) in each fiscal year. Each grant may be not be more than \$20,000.</p> <p>The Administrator may, at the request of a State or Indian tribe, include a grant under this clause in any other grant to the State or Indian tribe made under this subsection.</p> <p>The bill also defines ‘disadvantaged area’ as a community with an annual median household income that is less than 80 percent of the statewide annual median household income, as determined by the President based on the latest available decennial census.</p> <p>The bill defines ‘small community’ as a community with a population of not more than 15,000 individuals, as determined by the President based on the latest available decennial census.</p>	<p>This is consistent with National Brownfields Coalition’s priorities.</p>
<p>State Response Program Funding</p>	<p>Amended Section 128(a)(3) of the 1980 (42 U.S.C. 9628(a)(3)).</p> <p>Funding is authorized to be appropriated to carry out this subsection \$50,000,000 for each of fiscal years 2019 through 2023.’</p>	<p>The bill authorizes EPA to use up to \$50 million each fiscal year for the next 4 years to provide targeted grants to States.</p> <p>This change is consistent with National Brownfields Coalition’s priorities for increased funding.</p>



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