



S. 350 – Brownfields Revitalization and Environmental Restoration Act of 2001

Calendar No. 19

Reported by the Committee on Environment and Public Works, with an amendment in the nature of a substitute, on March 12, 2001. S. Rept. 107-2; additional and minority views filed.

NOTEWORTHY

- By unanimous consent, the Senate will vote on final passage of S. 350 at 2 p.m. today. No amendments other than a managers' amendment is in order.
- S. 350 amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to promote the cleanup and reuse of brownfields and provides financial assistance for brownfields revitalization.
- S. 350 has 67 cosponsors, including 28 Republicans.
- The bill provides \$200 million annually in funds needed to assess and clean up abandoned and underutilized brownfields.
- A managers' amendment sets aside \$50 million for cleanup of relatively low-risk, petroleum-only brownfield sites.
- Provides legal protections for "innocent parties," such as contiguous property owners, prospective purchasers, and innocent landowners.
- The managers' amendment includes a requirement that the Environmental Protection Agency (EPA) consult with States in determining when new information presents a threat to human health or the environment, while preserving EPA's authority to take action.

HIGHLIGHTS

- S. 350, as reported, authorizes \$150 million for each of five years to inventory, investigate, assess, and clean up abandoned and underutilized brownfield sites, which will address potential human health and environmental threats, create jobs, increase tax revenues, and preserve and create open space and parks.
- The bill provides legal protections for “innocent parties” who meet specified conditions, such as contiguous property owners, prospective purchasers, and innocent landowners.
- The bill authorizes \$50 million for each of five years for the enhancement of State cleanup programs and limits, where appropriate, enforcement by the Federal Government at sites cleaned up under a State response program.
- It provides a balance of certainty for prospective purchasers, developers, and others while ensuring protection of the public health.
- The bill provides for States to create public records of brownfield sites and enhances community involvement in site cleanup and reuse of these sites.
- The bill provides for deferral of listing sites on the National Priorities List if the State is taking action at the site.

BACKGROUND

[The following text is from the Committee Report (S. 107-7)]:

As a nation, our industrial heritage has left us with numerous contaminated “brownfield” sites that are abandoned or underutilized. A brownfield site is a parcel of real property at which expansion, redevelopment, or reuse may be hindered by the presence, or potential presence, of hazardous substances, pollutants, or contaminants. The U.S. Conference of Mayors and others have estimated that there are more than 450,000 brownfield sites nationwide that blight our communities, pose health and environmental hazards, erode our cities’ tax base, and contribute to urban sprawl and loss of farmland. The cleanup and redevelopment of brownfield sites presents the opportunity to reduce the

environmental and health risks in our communities, particularly those which are disproportionately affected by these sites, capitalize on existing infrastructure, create a robust tax base for local governments, attract new businesses and jobs, and reduce the pressure to develop open spaces.

Many State and local governments have developed and implemented innovative and effective brownfield programs. State laws, however are unable to address Federal liability. More importantly, absent a specific statutory exemption, the Federal brownfields grant and loan program has been required to comply with the regulatory provisions of the National Contingency Plan, which is relieved under this legislation. By providing Federal funding, eliminating Federal liability for developers under Superfund, and reducing the regulatory burdens, State and local governments will improve upon what they are already doing.

The U.S. Environmental Protection Agency (EPA) administratively created the existing brownfield grant program in 1995 to provide additional incentives for brownfields redevelopment. The purpose of these grants is to investigate property for potential contamination to facilitate its reuse. In 1997, EPA also began providing grants to State and local governments to establish revolving loan funds to fund site cleanup. Because EPA's brownfields program was created administratively under Superfund, it has been legally required to apply the provisions of the National Contingency Plan (NCP) to the brownfields grants and loans programs. Because the NCP is intended to address the nation's worst hazardous waste sites, many of its requirements are not appropriate in the context of funding for brownfields assessment and remediation. Further, its application to the brownfield grant process has proven cumbersome and has become a significant barrier to greater participation in the program.

Notwithstanding concerns discussed above, States have taken a lead role in the redevelopment of lightly contaminated sites. Many States have developed programs, tailored to sites and conditions specific to their State, which promote a voluntary approach to site remediation.

While less than 1,500 sites have been listed on the National Priorities List (NPL), there are estimated to be more than 450,000 brownfield sites nationwide. Successful State programs have been so largely because of their ability to address larger numbers of sites, and their ability to waive State liability if a cleanup is performed in a manner acceptable to the State. Despite protection from State liability as an incentive to invest in these types of sites, testimony before the committee confirmed that the fear of incurring Federal liability sometimes drives developers and lenders toward open spaces. In addition, some States do not have fully developed State programs, and this legislation would provide funding and assistance to help develop these programs.

To address these existing problems, the Brownfields Revitalization and Environmental Restoration Act of 2001 (BRERA) was introduced on February 15, 2001 by Senators Chafee, Bob Smith, Reid, Boxer, Warner, Baucus, Specter, Graham, Campbell, Lieberman, Grassley, Carper, Clinton, Corzine, and Wyden. BRERA seeks to revitalize communities through the investigation, assessment, and remediation of brownfield sites across the nation, making them suitable for redevelopment or other beneficial reuse. The intent of the bill is to direct more public and private

resources toward restoring contaminated properties that are not likely to be addressed by the Federal Government.

**BILL
PROVISIONS**

(The following is the summary prepared by the Legislative Information System, and addresses the bill as reported.)

Title I: Brownfields Revitalization Funding -

Amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) to provide for grants to eligible entities (including local government units, redevelopment agencies, States, and Indian tribes) for inventorying, characterizing, assessing, remediating, and conducting planning related to brownfield sites. Defines a “brownfield site,” with exceptions, as real property, the expansion, redevelopment, or reuse of which is complicated by the presence or potential presence of a hazardous substance or pollutant. Includes within such definition a site contaminated by a controlled substance or mine-scarred land. Authorizes appropriations.

Title II: Brownfields Liability Clarifications -

Exempts from liability under CERCLA certain owners of real property contiguous to property on which there has been a hazardous substance release or threatened release that is not owned by such persons.

(Sec. 202) Absolves from liability for response actions bona fide prospective purchasers to the extent liability at a facility for a release or threat thereof is based solely on ownership or operation of a facility. Gives a lien upon a facility to the United States for unrecovered response costs in any case for which the owner is not liable by reason of this section and the facility's fair market value has increased above that which existed before the action was taken.

(Sec. 203) Deems a person, with respect to defenses to liability of an owner of after-acquired property, to have undertaken appropriate inquiry into the property's previous ownership and uses if the person demonstrates that inquiries were undertaken in accordance with specified requirements (for property purchased after May 31, 1997, compliance with an American Society for Testing and Materials standard until standards are issued by the Administrator of the Environmental Protection Agency). Deems the appropriate inquiry requirements to be satisfied by a facility inspection and title search that reveal no basis for further investigation in the case of property for residential or similar use purchased by a nongovernmental or noncommercial entity.

Title III: State Response Programs -

Adds CERCLA provisions authorizing the Administrator to award grants to States or Indian tribes to establish or enhance response programs comprised of elements including survey and inventory of

brownfield sites, public participation opportunities, oversight and enforcement authorities, and certification mechanisms. Authorizes appropriations.

Restricts authority to take enforcement actions under CERCLA in cases of hazardous substance releases addressed by a State response plan. Authorizes the President to bring enforcement actions in certain instances, including cases where a State requests assistance, there is migration of contamination across State lines or onto Federal property, or there is an imminent and substantial endangerment to public health or welfare or the environment and additional response actions are likely to be necessary.

Makes restrictions on the President's authority to take such actions applicable only at sites in States that maintain, update at least annually, and make publicly available a record of sites at which response actions have been completed in the previous year and are planned to be addressed under the State response program in the upcoming year. Applies enforcement action requirements only to response actions conducted after February 15, 2001.

(Sec. 302) Requires the President to defer final listing of an eligible response site on the National Priorities List if the State is conducting a response action in compliance with a State response program that will provide long-term health and environmental protection or is actively pursuing an agreement to perform such an action with a capable person. Requires reasonable progress toward completion of actions for deferral of listing. Permits the President to decline to defer, or discontinue a deferral if: (1) deferral would be inappropriate because the State, as an owner, operator, or significant contributor is a potentially responsible party; (2) the criteria under the National Contingency Plan for issuance of a health advisory have been met; or (3) the other conditions under this section for deferral are no longer being met.

ADMINISTRATION POSITION

At press time, the Office of Management and Budget had not issued a Statement of Administration Policy on S. 350. However, on February 27, 2001, EPA Administrator Christine Todd Whitman, said the following while testifying before the Subcommittee on Superfund, Waste Control, and Risk Assessment of the Environment and Public Works Committee: "I am pleased to report that the Administration supports S. 350. As we continue a more thorough review of the legislation, we would appreciate the opportunity to offer refinements that would be consistent with the President's principles and budget."

COST

The Congressional Budget Office (CBO) estimates that implementing S. 350 would cost \$680 million over the 2002-2006 period. CBO also estimates that provisions affecting the liability of certain property owners would reduce net offsetting receipts (a form of direct spending) by \$2 million a year beginning in 2002, or a total of \$20 million over the next 10 years. In a letter, Senator Smith has expressed concern that CBO's cost estimate does not reflect the potential availability of private cleanup funds and has asked that CBO revise its estimate.

OTHER VIEWS

A number of Environment and Public Works Committee members filed views differing with the legislation as reported by the Committee (See pp. 23-32 of the report). The managers' amendment alleviates most of those concerns.

POSSIBLE AMENDMENTS

The unanimous consent agreement provides for no amendment other than the managers' amendment.

Staff contact: John Peschke, 224-2946