
SMALL BUSINESS LIABILITY PROTECTION AND BROWNFIELD REVITALIZATION ACT

PREPARED FOR THE NBA
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H.R. 2869 – SUMMARY OF KEY BROWNFIELD PROVISIONS,
AS PASSED BY CONGRESS AND
SIGNED BY PRESIDENT BUSH ON JANUARY 11
(INCORPORATES PROVISIONS OF S.350)

Title II – Brownfield Revitalization and Environmental Restoration

SUB-TITLE A – FUNDING

- \$200 million per year (thru '06) for grants to states, local governments, and tribes, as well as entities such as quasi-public redevelopment agencies and authorities
- money to be used for (1) site assessment grants—typically, up to \$200,000, but the EPA has discretion to bump this to \$350,000 under some circumstances); and (2) grants for cleanup—both for direct remediation grants, up to \$200,000, to governments or non-profits (requires 20 percent match), as well as capital for RLFs, up to \$1 million (with less burdensome requirements)
- funding criteria include the extent to which the money will be used to protect human health and the environment; spur redevelopment and create jobs; preserve open space and parks; represent a “fair” distribution between urban and rural areas; and involve the local community
- up to \$50 million (25 percent of appropriation if less than \$200 million) may be used for sites with petroleum contamination
- insurance premiums are now an eligible use of funds
- authorizes the EPA to operate a brownfield program that includes training, research, and technical assistance activities

SUB-TITLE B – LIABILITY CLARIFICATIONS: PROVIDES SUPERFUND LIABILITY RELIEF TO:

- contiguous property owners, who provide cooperation and access for the cleanup
- prospective purchasers, who are not responsible for contamination at the site, and who do not impede its cleanup (bill includes windfall lien provisions for sites where the government pays for cleanup, thus enhancing the fair market value of the property)
- innocent landowners

SUB-TITLE C – STATE RESPONSE PROGRAMS

- authorizes \$50 million per year (thru '06) for grants to states and tribes to establish and enhance state VCPs/response programs
- states must maintain a “public record of sites” addressed through their programs, and update it annually
- provides for deferral of listing sites on NPL list if a state is taking action
- establishes **FINALITY**—sites addressed thru state programs are protected from EPA enforcement and cost recovery actions under CERCLA—*except...*
- in the case of **RE-OPENERS**—situations in which EPA can come back with an enforcement action, are preserved in specifically defined situations, including:
 - migration of contamination across state lines or onto federal property, if releases of threat of releases present an imminent and substantial endangerment; new information shows that a cleanup is no longer protective; or a state requests intervention
- EPA must consult with the state on re-opener situations
- citizens may request a state to conduct an assessment at a specific site, and a state must “appropriately” respond