



OFFICE OF INSPECTOR GENERAL

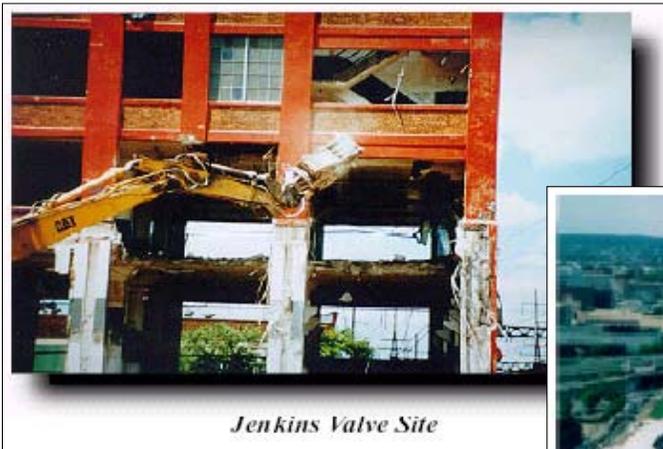
Catalyst for Improving the Environment

Evaluation Report

Substantial Progress Made, But Further Actions Needed in Implementing Brownfields Program

Report No. 2004-P-0020

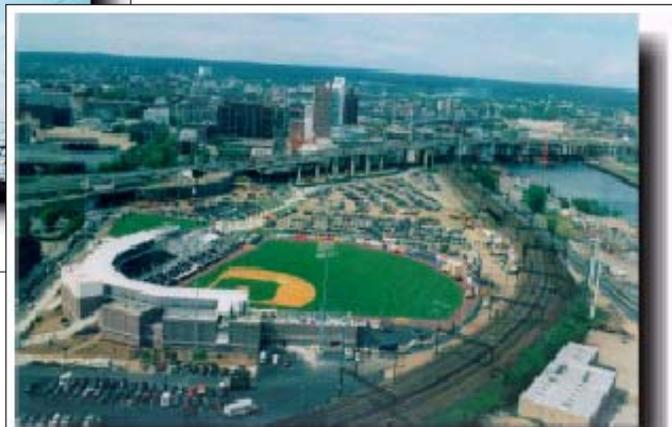
June 21, 2004



Jenkins Valve Site

Before

After



*Bridgeport's new stadium, home of
the Bridgeport Bluefish*

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Abbreviations

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CERCLIS	Comprehensive Environmental Response, Compensation, and Liability Information System
EPA	Environmental Protection Agency
FTE	Full-Time Equivalent
FY	Fiscal Year
OBCR	Office of Brownfields Cleanup and Redevelopment
OIG	Office of Inspector General
OTIS	Online Tracking Information System
PCB	Polychlorinated Biphenyls
RCRA	Resource Conservation and Recovery Act
RLF	Revolving Loan Fund

Cover Photo: In Bridgeport, Connecticut, a brownfields pilot grant helped leverage the resources needed to redevelop the former Jenkins Valve Site (left) into a baseball stadium (right). (*Photos courtesy of EPA.*)



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

OFFICE OF
INSPECTOR GENERAL

June 21, 2004

MEMORANDUM

SUBJECT: Substantial Progress Made, But Further Actions Needed in Implementing
Brownfields Program
Report No. 2004-P-0020

FROM: Nikki L. Tinsley
Inspector General

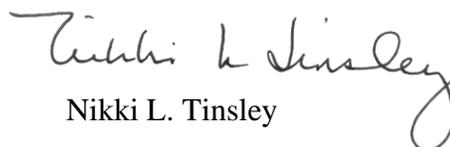
TO: Thomas Dunne
Acting Assistant Administrator
Office of Solid Waste and Emergency Response

This is our final report on the subject review conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and the findings contained in this report do not necessarily represent the final EPA position. Final determination on matters in the report will be made by EPA managers in accordance with established resolution procedures.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 days of the date of this report. You should include a corrective actions plan for agreed upon actions, including milestone dates. We have no objections to the further release of this report to the public.

If you or you staff have any questions, please contact Kwai Chan, Assistant Inspector General for Program Evaluation, at (202) 566-0827.


Nikki L. Tinsley

Executive Summary

Purpose

Under the Small Business Liability Relief and Brownfields Revitalization Act, signed in 2002, Congress mandated the Office of Inspector General (OIG) of the Environmental Protection Agency (EPA) to report on the management of the brownfields program, including allocation of funds. This mandate specifies the OIG focus on §104(k) (Subtitle A) of the Comprehensive Environmental Response, Compensation, and Liability Act, which authorizes increased funding to EPA to award brownfields assessment, cleanup, and revolving loan fund grants.

Brownfields are defined as real property, the expansion, redevelopment, or reuse of which may be complicated by a hazardous substance, pollutant, or contaminant. This can apply to a wide variety of sites, including industrial properties, former gas stations, warehouses, and residential buildings. While there has not been a precise count of the number of brownfields sites in the United States, estimates range from 450,000 to as many as a million. For this review, the first of two on the management of brownfields, we addressed the following questions:

- How has the brownfields program implementation effort proceeded during the first year and how effective has it been in instituting major program components? What process did EPA use to set up the brownfields program grants and what are the results to date?
- Has EPA identified or secured the necessary resources to effectively carry out the expanded brownfields program?

Results

Although stakeholders were generally pleased during the first year of the brownfields program, EPA experienced a number of problems in implementing the program. EPA announced over \$73 million in competitive assessment, revolving loan fund, and cleanup brownfields grants in Fiscal Year (FY) 2003. However, grant applicants and regions had the following concerns:

- Guidance to the regions was untimely and unclear.
- Grant applicants needed additional guidance.
- The grant process was too time consuming.
- The application review process limited regions' abilities to provide feedback.

The Office of Brownfields Cleanup and Redevelopment responded to and addressed these concerns in FY 2003 and made progress in these areas. In addition, we noted issues that may create challenges in the future if not addressed in a timely manner. Specifically:

- The applicant and site eligibility determination process lacked documentation.
- Deadlines for ownership of properties for some cleanup grant applicants were extended three times.
- Determining environmental performance of program remains questionable.
- Regions reported a lack of Brownfields travel funds, and one region made travel funds available for use in other programs.

We found that the Congressional authorizations to carry out the brownfields program fell short of EPA's requests in both FY 2003 and 2004. Further, the workload model prepared to estimate the resources needed to implement the new program in FY 2003 only included the regions' resource needs. EPA did not use a model to estimate resources needed at headquarters or other support offices. Also, the workload model has not been updated to reflect the resources needed to implement the program in FY 2004. This limited workload model may prevent EPA from determining where brownfields resources are most needed.

Recommendations, Agency Comments, and OIG Evaluation

We recommended that EPA require regions to clearly document the eligibility determination process, do not extend ownership deadlines, use data gathered from the Property Profile Form to establish performance goals, establish performance goals that separate the pilot and expanded program, and address issues related to travel funds. We also recommended that EPA develop a comprehensive workload model that reflects all staffing needs, and evaluate the sufficiency of the current workload model.

In the response to our draft, EPA agreed with most of our recommendations. Based on the Agency's comments, we made some revisions and clarifications to our report where appropriate. In addition, based on a followup meeting with the Agency to discuss its comments, agreements were reached to resolve and clarify recommendations where we did not have complete agreement. A summary of the Agency's response and our evaluation is included at the end of each chapter. The Agency's complete response is included in Appendix D.

Further Research Needed

During our evaluation, we identified several areas that need further research. These include the economic and environmental impacts of EPA's brownfields investments, the future adequacy of brownfields assessment and cleanup activities for all land uses, the extent to which Superfund liability clarifications versus brownfields grant funding impact brownfields redevelopment, the extent to which EPA can continue to meet legislative requirements, and the impact of brownfields investments on neighborhood gentrification and displacement of disadvantaged populations.

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Chapter 1

Introduction

Purpose

In January of 2002, the President signed the Small Business Liability Relief and Brownfields Revitalization Act. Under this Act, the Office of Inspector General (OIG) of the Environmental Protection Agency (EPA) has a mandate to report on the management of the brownfields program no later than 2005. This mandate specifies that the OIG evaluation focus on §104(k) (Subtitle A) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund), which authorizes EPA increased funding to award assessment, cleanup, and revolving loan fund (RLF) grants. This review is part of the EPA OIG's mandated review (see Appendix A). At the time we initiated our review, the brownfields grant application process had just begun, grants had not yet been awarded, and complete results from the first round of grants were not available for our review. Consequently, this report focuses on EPA's implementation of the Act, specifically Subtitle A. This is the first of two reports in response to the mandate; our second report will provide more information on the management of brownfields grants. These two reports represent, in entirety, EPA OIG's work in response to the mandate.

For this review, we addressed the following questions:

- How has the brownfields program implementation effort proceeded during the first year and how effective has it been in instituting major program components? What process did EPA use to set up the brownfields program grants and what are the results to date?
- Has EPA identified or secured the necessary resources to effectively carry out the expanded brownfields program?

Background

EPA Brownfields Work Prior to 2002 Act

EPA established the Brownfields Initiative in 1995 with the goal of enabling States and communities to work together to assess, safely clean up, and sustainably reuse brownfields. EPA had defined brownfields as abandoned, idle, or underutilized industrial or commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination. While there has not been a precise count of the number of brownfields sites in the United States, estimates range from 450,000 to as many as a million. Under the

initiative, EPA awarded 554 grants for assessing brownfields and assessed over 4,000 properties. As an EPA report to stakeholders indicates, "Since 1995, EPA's investment, nearly \$700 million, in the Brownfields Program has leveraged \$5.09 billion in brownfields cleanup and redevelopment funding from private and public sectors, and helped to create more than 24,920 new jobs for citizens in brownfields communities."

Liability provisions in CERCLA have complicated redevelopment of brownfields. Uncertainty about cleanup liability is a disincentive to property developers, and has halted many brownfields efforts.

Small Business Liability Relief and Brownfields Revitalization Act

The Small Business Liability Relief and Brownfields Revitalization Act amended CERCLA, created a new environmental program that fosters brownfields redevelopment, and authorized Congress to appropriate up to \$250 million per year through Fiscal Year (FY) 2006 to implement the new program. Congress also changed the definition of brownfields to "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."

The Small Business Liability Relief and Brownfields Revitalization Act has three subtitles. Each of the subtitles, their primary provisions, and some benefits of each are shown in Table 1-1.

Table 1-1: Benefits of Small Business Liability Relief and Brownfields Revitalization Act		
Subtitle A Brownfields Funding	Subtitle B Liability Clarifications	Subtitle C State Response Programs
<p>Increases funding authority up to \$200 million per year for grants and technical assistance programs</p> <p>Provides grants for assessments, Revolving Loan Funds (RLFs), and direct cleanups</p> <p>Expands the entities, properties, and activities eligible for the brownfields grants</p> <p>Provides authority for brownfields training, research, and technical assistance grants</p>	<p>Clarifies Superfund liability for prospective purchasers, innocent landowners, and contiguous property owners</p> <p>Provides liability protection for certain small volume contributors, and contributors of municipal solid waste</p>	<p>Authorizes up to \$50 million per year for building and enhancing State and Tribal response programs, and expands activities eligible for funding</p> <p>Provides protection from Superfund liability under sites cleaned up under State program</p> <p>Preserves the Federal safety net by detailing circumstances where EPA can revisit a cleanup</p> <p>Clarifies State role in adding sites to the Superfund National Priorities List</p>

Scope and Methodology

We conducted our evaluation from March 2003 to February 2004, in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. We reviewed Subtitles A and C of the Act, but concentrated on Subtitle A because the Act's mandate specifies an OIG review of Subtitle A. Our review included the assessment, cleanup, and RLF grants issued under Subtitle A. Our review did not examine the job training grants or training, research, and technical assistance grants awarded under Subtitle A, or State and Tribal Response grants awarded under Subtitle C. Appendix B notes the quantity and dollar value of the grants award in these areas. We interviewed a range of individuals within EPA. We interviewed the Office of Brownfields Cleanup and Redevelopment (OBCR), which is EPA's lead office for the brownfields program, part of EPA's Office of Solid Waste and Emergency Response. We also selected for review and interviewed Regions 5, 8, and 9, based on the number of grant applications received in FY 2003 and the number of brownfields full-time equivalents, both indicators of the size of the regional brownfields program.

In addition, we interviewed applicants from the FY 2003 grant process who were successful in getting a grant, applicants who withdrew from the process, and applicants who did not get a grant, to get their perspective on the grant application process. We also interviewed interested stakeholders to get their perspectives, including the National Association of Home Builders, National Association of Local Governmental Environmental Professionals, and Association of State and Territorial Solid Waste Management Officials.

We tested how EPA determined the eligibility of grant applicants by judgmentally selecting six of the approved FY 2003 grants. We reviewed EPA databases and other publicly available information sources to determine eligibility. We did not review the full grant application files for each applicant tested.

We reviewed the Office of Management and Budget's Program Assessment Rating Tool assessments for the 2005 Budget (as of February 2004). Using this tool, the Office collaborated with other Federal agencies to assemble criteria on program performance and management, and establish high standards of performance for government programs. The brownfields program was reviewed for the FY 2004 Budget and received an overall rating of "adequate."

Areas Needing Further Research

During our evaluation, we identified several areas that we were unable to review but which we nonetheless believe need to be researched further. These include:

- **Economic and environmental impacts of EPA's investments in newly awarded brownfields grants.** While EPA has some data on pilot projects, not enough information has been obtained to date to determine the extent to which investments in brownfields have protected human health and the environment or are achieving desired results.
- **Future adequacy of brownfields assessments and cleanup activities for all land uses.** Environmental assessments and cleanup activities performed under brownfields grants may only restore land to a limited environmental quality, adequate for the then current redevelopment plan. It is unknown if the level of effort is adequate for future changes in land uses.
- **Extent to which Superfund liability clarifications versus brownfields grant funding contribute to redevelopment.** In the Small Business Liability Relief and Brownfields Revitalization Act, Congress authorized millions of dollars in grant funding and provided liability clarifications to reduce the legal and financial risks of redeveloping brownfields. We do not know if similar redevelopment levels would occur with only the liability clarifications and without grant funding or a specified level of grant funding.
- **Extent to which EPA can continue to meet legislative requirements.** The Small Business Liability Relief and Brownfields Revitalization Act requires EPA to award 25 percent of the available funding for assessments and cleanups to petroleum-contaminated sites. However, as such work progresses, it is uncertain if EPA will be able to continue to meet the 25 percent petroleum requirement.
- **Impact of brownfields investments on neighborhood gentrification and displacement of disadvantaged populations.** Gentrification involves new investments in deteriorated or aging parts of a city that raise property values, typically displacing existing disadvantaged populations. Some stakeholders were concerned that brownfields redevelopment may cause gentrification.

Chapter 2

Improvements Needed to Better Implement Brownfields Program

Although stakeholders were generally pleased during the first year of the brownfields program, EPA experienced a number of problems in implementing the program. EPA announced over \$73 million in competitive assessment, RLF, and cleanup brownfields grants in FY 2003. However, grant applicants and regions noted the following concerns:

- Guidance to the regions was untimely and unclear.
- Grants applicants needed additional guidance.
- The grant process was too time consuming.
- The application review process limited regions' abilities to provide feedback.

OBCR, the lead office for implementing the brownfields program, responded to and addressed these concerns in FY 2003 and made progress in those areas. In addition, our review noted the following additional issues with the program that may create challenges in the future if not addressed in a timely manner:

- The applicant and site eligibility determination process lacked documentation.
- Deadlines for ownership of properties for some cleanup grant applicants were extended three times.
- Determining environmental performance of program remains questionable.
- Regions reported a lack of Brownfields travel funds, and one region made travel funds available for use in other programs.

EPA Announced Over \$73 million in Brownfields Grants in FY 2003

EPA announced over \$73 million in brownfields assessment, cleanup, and RLF grants in FY 2003, as shown in Table 2-1:

Type of Grant	Quantity	Value (millions)
Assessment	117	\$30.7
Cleanup	69	12.0
RLF	28	30.4
	214	\$73.1

Appendix B contains more detailed results from the brownfields program by including the job training grants; the training, research, and technical assistance grants; and the State and Tribal Response Program grants.

The number of brownfields grants announced in FY 2003 varied by EPA region and State. Region 5 received the most grant dollars and Region 6 the fewest. Michigan and California both received over \$5 million in grant funding, more than any other State. Figure 2-1 illustrates the distribution of assessment, cleanup, and RLF grant dollars by region, and Figure 2-2 shows distribution of grant dollars by State.

Figure 2-1: Regional Distribution of FY 2003 Brownfield Grant Dollars

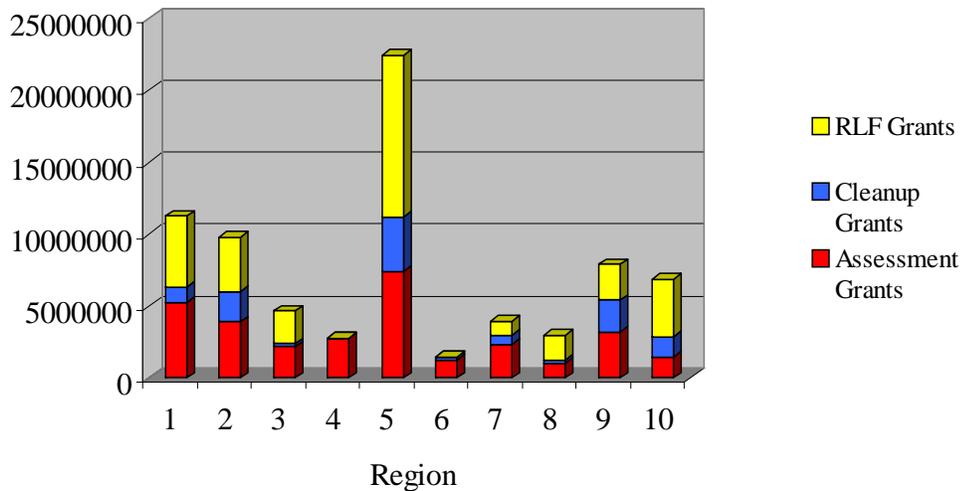
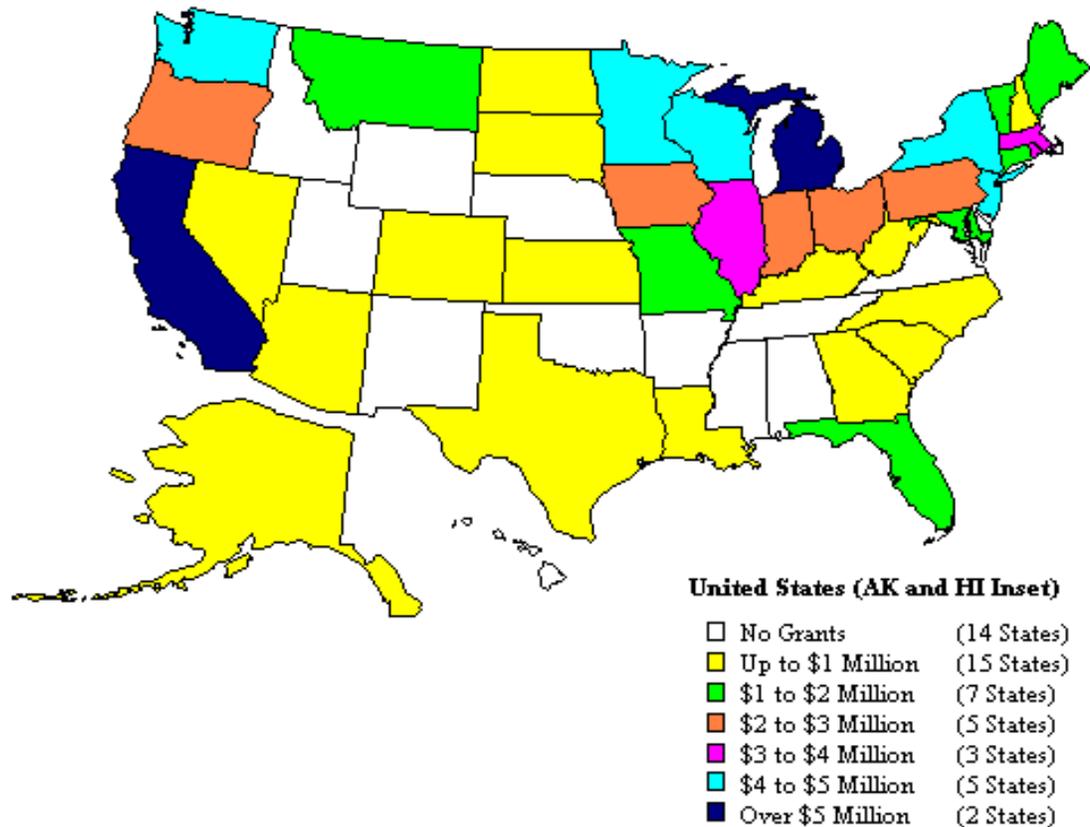


Figure 2-2: State Distribution of Brownfields Assessment, Cleanup, and RLF Grant Dollars in FY 2003



EPA Expanded the Brownfields Program

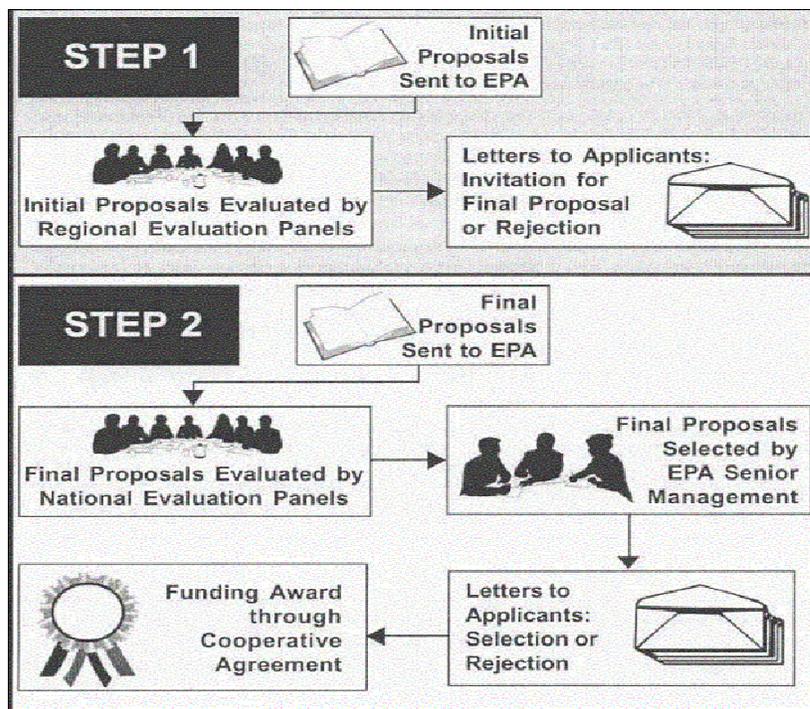
EPA created OBCR in July 2002 to take the lead in implementing the brownfields program. The new legislation expanded EPA's previous efforts in the brownfields arena, offering new opportunities for grant funding, expanding the assistance available to States and tribes for brownfields response programs, and offering new liability protections for contiguous property owners and prospective purchasers of brownfields properties. Accordingly, OBCR created the programmatic framework to establish the expanded brownfields program, including:

- Guidelines for the new grant application process.
- Guidance for EPA regions concerning the new legislation.
- Guidance on various legal issues raised by the new legislation.
- Performance measures for the new program.

A full contingent of cross-agency representatives, including OBCR, created nine workgroups that were responsible for developing 35 guidelines, guidance documents, and actions to implement the legislation. By December 2003, the workgroups had completed all but five of the steps to implement the legislation. Appendix B is a listing of the policies created and actions taken to implement the Small Business Liability Relief and Brownfields Revitalization Act, including those policies that have not yet been completed.

OBCR used a two-step application process (initial and final) to award assessment, RLF, and cleanup grants in FY 2003, as shown in Figure 2-3.

Figure 2-3: Grant Application Process in FY 2003



The grant applicants and stakeholders we interviewed were generally pleased with the implementation of the brownfields program in FY 2003. The grant applicants found EPA staff both accessible and helpful during the application process. We also interviewed representatives from the National Association of Home Builders and the National Association of Local Governmental Environmental Professionals, who were both impressed with the implementation of the brownfields program. The representative from the latter stated that assessment and cleanup funding

Stakeholders interviewed generally pleased

available through EPA's brownfields program is a "tremendous" benefit for communities, enabling them to jumpstart redevelopment in areas from which the representative said developers traditionally strayed.

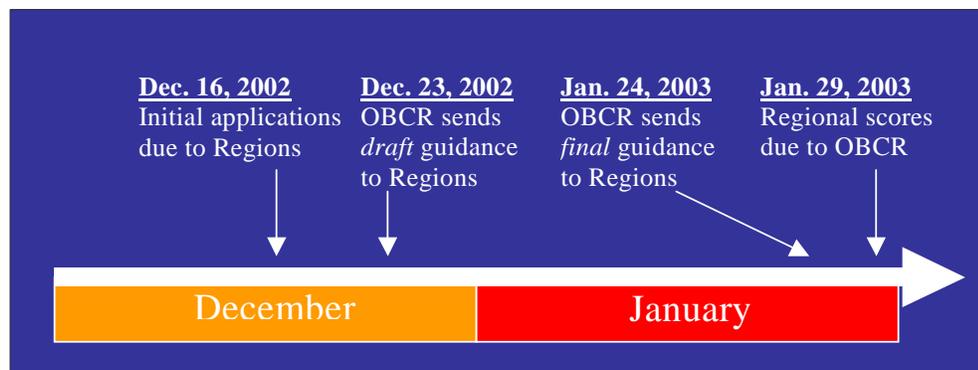
OBCR Addressed Several Stakeholder Concerns

Although OBCR experienced problems in implementing the Small Business Liability Relief and Brownfields Revitalization Act in FY 2003, they addressed many of the concerns of grant applicants and regions for FY 2004. Details follow.

Guidance to EPA Regions Untimely and Unclear in FY 2003

Brownfields staff from Regions 5 and 9 noted that guidance regarding the review of brownfields grant applications was late in FY 2003. The regions did not receive final guidance on the application review process until 5 days before the reviews were due to OBCR, as shown in Figure 2-4.

Figure 2-4: Untimeliness of FY 2003 Application Review Guidance



Regional staff also stated that their roles and responsibilities in the grant application review process were unclear in FY 2003. For example, while the Small Business Liability Relief and Brownfields Revitalization Act restricts funding for petroleum sites to those that are of low risk and have no viable responsible party, Region 5 counsel said they were unsure who had the primary responsibility of determining the eligibility of such sites. Staff at Region 8 who were contacted by a grant applicant for clarification of "viable responsible party" were unable to assist the applicant.

In addition, Region 5 counsel said that they were uncertain of their role in the brownfields program in FY 2003 and needed more guidance from OBCR. The FY 2003 application review guidance did not specify when regional counsel should be involved in the review process, only that they participate in a "timely and appropriate manner." Region 5 waited until late in the review process to involve

regional counsel and, as a result, counsel had only 10 days to review approximately 100 grant applications.

OBCR improved the timeliness and clarity of the guidelines and guidance issued for EPA regions for FY 2004. In contrast to guidance published in FY 2003, the final FY 2004 grant application review guidelines were issued the same day that grant applications were due to the regions, giving the regions adequate time to use the guidance while reviewing applications. OBCR also clarified the FY 2004 application review guidance to better define the roles of EPA regions in making petroleum eligibility determinations and the roles of regional counsel in the application review process.

Grant Applicants Needed Additional Guidance in FY 2003

Seven of the nine grant applicants interviewed had questions about the application process that were not answered in the application guidelines or guidance. Issues for which the grant applicants needed additional clarification included site eligibility, site control, community notification, viable responsible parties, and administrative costs. For example, as noted above, a grant applicant for a petroleum site in Region 8 was unclear on what was a "viable responsible party."

OBCR clarified and expanded the guidance in the FY 2004 application guidelines. Table 2-2 shows expanded guidance regarding community notification.

Table 2-2: Comparison of Guidance on Community Notification Requirements	
FY 2003	FY 2004
"Describe how the community was notified of the preparation and submission of this proposal."	"Describe how the targeted community(ies) was/were notified of the preparation and submission of this grant proposal and provided opportunity for public comment prior to submitting this proposal. This may include putting a notice of availability in the local newspaper or other widely available/accessible local media asking for public comment. Notifications must be current and related to this specific proposal being submitted for consideration. Failure to demonstrate community notification will result in failure of this application. Applicants who are submitting more than one proposal may opt to have a single community notification. However, all targeted communities must receive the notification and be provided an opportunity to comment on the proposal(s) relevant to their community."

While we cannot determine whether the expanded guidance helped grant applicants better understand the application process in FY 2004, we believe the effort was appropriate. It should be noted that our review of OBCR's efforts to improve the guidelines and guidance for brownfields grants in FY 2004 was limited to anecdotal evidence provided; we did not comprehensively review every action taken by OBCR.

FY 2003 Grant Process Too Time Consuming

Nearly all of the individuals we spoke to (OBCR, the three regions, and seven of nine applicants) reported that the grant application and review process was too time consuming in FY 2003. OBCR reported that EPA was overwhelmed during the application and review process. The regions we visited indicated that reviewing two separate proposals was time-consuming and diverted time and resources from other staff responsibilities. Applicants also said the two-step process was too time-consuming. Based on feedback from regions and other stakeholders, OBCR streamlined the application process, requiring only one application in FY 2004.

Review Process Limited Regions' Abilities to Provide Feedback

In FY 2003, two of the three regions were unable to provide informed feedback to grant applicants. Regions did not perform the final review of applicants from their regions; these reviews were performed by other regions, to provide fairness in scoring. However, while some reviewers identified the strength and weaknesses of applications, others only provided a numeric score. Consequently, the regions were not always able to provide applicants with informed feedback. The one-step application process initiated in FY 2004 permits regions to review applications from their own regions. In addition, in December 2003, OBCR held training for all regional brownfields staff on how to provide meaningful comments on evaluation sheets, and noted the need to identify strengths and weaknesses to assist regions in providing feedback to unsuccessful applicants.

OBCR Needs to Address Additional Program Issues

Although OBCR responded to and addressed many region and applicant concerns in FY 2003, additional challenges need to be addressed to improve the implementation of the Small Business Liability Relief and Brownfields Revitalization Act. Details follow.

Eligibility Determination Process Lacked Documentation

The process used to determine site and applicant eligibility in the three regions reviewed was neither transparent (clearly defined) nor sufficiently documented. Moreover, a cursory review of six grantees indicated that some of the properties may be ineligible according to the exclusions of the Small Business Liability Relief and Brownfields Revitalization Act. Personnel in the three regions reviewed were not able to clearly define the process that they used to determine site and applicant eligibility or the sources of information they used to make the determinations.

The Small Business Liability Relief and Brownfields Revitalization Act specifies that only certain entities and properties are eligible to receive brownfields grants (see Table 2-3). OBCR provided regions with multiple forms of guidance to help

in determinations, but does not require regions to identify or document the sources used to make eligibility determinations. The guidance included a memo on the review process, a list of entities eligible to receive funding, and a flow chart to help determine site eligibility. The guidance directed the brownfields staff to work with regional counsel in making eligibility determinations. In addition, the Office of Enforcement and Compliance Assurance performed an enforcement screen of over 600 grant applicants to provide data regarding the applicant's general environmental compliance history.

Table 2-3: Applicants Eligible and Special Property Considerations

Eligible Applicants	Eligible for Funding with a Property-Specific Determination	Not Eligible for Funding
General purpose unit of local government	Facilities subject to planned or ongoing removal action under CERCLA	Facilities listed or proposed for listing on the National Priorities List
Land clearance authority or other quasi-governmental authority	Facilities to which a permit has been issued by United States or authorized by a State under the Resource Conservation and Recovery Act (RCRA), Federal Water Pollution and Control Act, Toxic Substances Control Act, or Safe Drinking Water Act	Facilities subject to a unilateral administrative order, administrative order, court order, administrative order on consent, or a judicial decree issued or entered into by parties under CERCLA
Government created by the State	Facilities subject to RCRA orders requiring corrective action	Facilities subject to the jurisdiction, custody, or control of the U.S. Government, except for land held in trust by the United States for an Indian tribe
Regional council or general purpose units of local government	Land disposal units that have submitted a RCRA closure notification or that are subject to closure requirements specified in a closure plan or permit	
Redevelopment Agency chartered or otherwise sanctioned by a State	Portions of facilities where there has been a release of Polychlorinated Biphenyls (PCBs) and is subject to Toxic Substances Control Act remediation	
State	Facilities receiving monies for cleanup from the Leaking Underground Storage Tanks trust fund	
Indian Tribe other than in Alaska		
Alaskan Native Regional Corporation, Alaskan Native Village Corporation, and Metlakatla Indian Community		
Nonprofit organization (cleanup only)		

We reviewed the eligibility of six judgmentally selected grantees. We used EPA databases, including the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) and the Online Tracking Information System (OTIS), as well as other publicly available information sources, to search enforcement and compliance data for site and applicant eligibility information. The databases allowed an initial screen on some eligibility exclusions. CERCLIS is a Superfund database that also contains information on existing and potential hazardous waste sites. OTIS is an EPA enforcement database that allows States and Federal Agencies to search enforcement and compliance data. Based on our review, it appeared that some of the properties may be ineligible according to the

exclusions listed in the Small Business Liability Relief and Brownfields Revitalization Act. Table 2-4 summarizes the results of our review. Four of the applicants received cleanup grants for hazardous substances, while the other two (Nome and Multnomah County) received cleanup grants for petroleum.

Table 2-4: Selected Sites Eligibility Review		
Site / Applicant	Grant	Potential Eligibility Issues
Canton, Illinois International Harvester Site	\$200,000	Subject to planned or ongoing removal action under CERCLA
Trenton, New Jersey Magic Marker Site	\$200,000	Subject to planned or ongoing removal action under CERCLA Subject to a unilateral administrative order, administrative order, court order, administrative order on consent, or a judicial decree issued or entered into by parties under CERCLA
Gloucester, New Jersey Vanguard Vinyl Site	\$200,000	Subject to planned or ongoing removal action under CERCLA Subject to an administrative order on consent, under CERCLA
Nome, Alaska Block 21 of the Nome Airport	\$193,692	Subject to the jurisdiction, custody, or control of the U.S. Government, except for land held in trust by the United States for an Indian tribe
Oakland Redevelopment Agency, California Uptown Site	\$200,000	Facility to which a permit has been issued under RCRA, which requires a property specific determination
Multnomah County, Oregon Grocery/market Site	\$200,000	Facility receiving monies for cleanup from the Leaking Underground Storage Tanks trust fund, which requires a property specific determination

Deadlines for Ownership of Cleanup Grants Were Extended

EPA extended the ownership deadlines for cleanup grants because 20 of the 69 selected grantees were not able to gain site ownership by the end of FY 2003. The FY 2003 Proposal Guidelines stated that cleanup grant applicants must have ownership of the site "by time of award," but no date was specified. Twenty cleanup grant recipients did not own the site by the end of FY 2003; therefore, the Associate Assistant Administrator for the Office of Solid Waste and Emergency Response extended the ownership deadline three times.

Opportunities for other eligible applicants may be reduced if money is held for some selected applicants to gain title. The funds could have gone to other qualified applicants who could have used the money immediately to clean up brownfields. Also, extending the ownership deadlines is a drain on brownfields resources, since staff must continue to communicate with the grantees to ensure they are doing everything they can to obtain ownership. OBCR recognized the problems created by extending the deadlines and explicitly stated a deadline date (September 30,

2004) for property ownership in the FY 2004 guidelines, but OBCR could not ensure that the deadlines would not be extended in the future.

Determining Environmental Performance of the Brownfields Program Remains Questionable

In an OIG May 2002 memorandum on Brownfields performance measures, we noted that EPA's brownfields performance measures did not indicate EPA's progress in reducing or controlling risks to human health and the environment. We stated that EPA could identify short-term or intermediate outcome measures of the environmental benefits of brownfields, including the acres remediated, acres redeveloped, and population protected by cleanup actions.

In August 2003, the Office of Management and Budget approved EPA's Property Profile Form, which will enable OBCR to report the environmental results of brownfields grants. OBCR developed the form to collect data on the progress made in the assessment, cleanup, and redevelopment of brownfields properties through EPA brownfields grants issued under the expanded program. Using the data from this form, EPA could report the following environmental results of brownfields grants:

- Acres of brownfields assessed and cleaned up (including dates).
- Levels of site assessments completed.
- Types of contaminants found.
- Media affected by the contamination (water, groundwater, soil, etc.).
- Classes of contaminants removed during cleanup (petroleum products, PCBs, etc.).

OBCR has begun to collect environmental performance data for brownfields grants, but the environmental data are not reflected in EPA's current and future objectives for the brownfields program. In addition, EPA's performance measures for brownfields do not distinguish between results from grants issued under the pilot program and grants issued under the expanded program. Details follow.

Unclear if EPA Will Use Data Collected to Report Environmental Performance. Despite developing environmental performance data for the expanded brownfields program, EPA does not appear to plan to use them to measure the program's performance. The current objectives for the brownfields program are, by 2008, to:

- Assess, clean up, and redevelop 9,200 properties.
- Leverage 33,700 jobs.
- Leverage \$10.2 billion in cleanup and redevelopment funding.

These objectives are almost identical to the 2003 brownfields performance measures, which previously led us to observe that, "brownfields performance

measures do not contribute to understanding EPA's role in protecting human health and safeguarding the environment." OBCR has made progress to collect environmental data, but this is not incorporated in the current performance objectives for the program.

Impacts of Pilot and Expanded Program Indistinguishable. EPA's performance measures for brownfields combine results from grants issued under the pilot program and grants issued under the expanded program. As seen in Table 2-5, the 2008 performance goals are not solely from the expanded program, but a combination of results from the pilot program and expected results from the expanded program. Combining results from the expanded program and the pilot program is not a transparent or reliable method for determining the impact or effectiveness of either program.

Table 2-5: 2008 Brownfields Performance Goals			
	Results from Pilot Program¹	Expected Results from the New Program, including Remaining Pilots	2008 Performance Goals
Assess, clean up, and redevelop properties	4,300	4,900	9,200
Leverage jobs	24,900	8,800	33,700
Leverage cleanup and redevelopment funding	\$5.0 billion	\$5.2 billion	\$10.2 billion

¹ The results from the Pilot Program are as of 2nd quarter FY03.

We believe that the environmental data collected under the newly authorized program will help EPA show the performance of the program, and should be reflected in the current performance goals of the expanded program. The Small Business Liability Relief and Brownfields Revitalization Act marked a significant change in the program, substantially increasing the Government's investment in brownfields and clarifying potential environmental liability issues. EPA should be able to determine the added benefit achieved by the expanded program when compared to the much less comprehensive brownfields' pilot program.

Regions Reported a Lack of Travel Funds

Regions 5 and 8 both reported that they had insufficient travel funds to carry out the brownfields program in FY 2003, although for different reasons. Region 8 lacked the travel funds needed to conduct site visits because the region is large and

lacks convenient transportation networks. Region 5 Brownfields officials, on the other hand, were unsure how many travel dollars were available for brownfields-related travel during FY 2003 and were unable to conduct site visits.

OBCR distributed \$59,300 to Region 5 in FY 2003 for brownfields-related travel, but only \$21,000 of that amount was spent for brownfields activities. Region 5 pooled the remainder of the funds into a corporate account for use by other Region 5 programs. This Region 5 action appear to be inconsistent with OBCR's FY 2003 Brownfields Budget Guidance, which notes that the \$27 million allocated for the brownfields program:

. . . are available only for administering the Brownfields program. . . . The travel resources allocated for Brownfields are considered part of the \$27 million set aside for the Brownfields program in the appropriations bill and should therefore not be moved out of the Brownfields account or used for any other program's travel."

The OIG issued a memo to OBCR in December 2003 recommending that OBCR determine the degree to which Region 5 and other regions may be in violation of OBCR policies regarding use of brownfields travel dollars, and implement any necessary corrective action as expeditiously as possible. Further review of the issue by OIG Counsel determined that it is unclear whether OBCR has the authority to direct that the travel funds be used solely for brownfields activities and that clarification of that authority would be needed.

Conclusions

EPA announced over \$73 million in competitive assessment, RLF, and cleanup brownfields grants in FY 2003. Although the stakeholders we interviewed were generally pleased with EPA's expanded brownfields program in FY 2003, EPA encountered problems implementing the program. EPA addressed a number of those problems by improving the timeliness and clarity of its guidance and guidelines, streamlining the application process, and providing training. However, we found several issues that present challenges to the effective management of the program:

- EPA needs better documentation of the applicant and site eligibility determination process, to ensure transparency and that sites are eligible for funding.
- EPA should not extend ownership deadlines like it did in FY 2003, since it has at least the appearance of being unreasonable and potentially biased, and could have resulted in the unnecessary elimination of fully qualified applicants from the process.

- EPA's ability to report on the environmental performance of the brownfields program remains questionable. EPA is making progress by collecting environmental performance data for brownfields grants, but the environmental data are not reflected in EPA's current performance goals for brownfields, nor are results of the expanded program separate from the results of the Pilot program.
- Since insufficient travel funds were reported in two of the three regions we spoke to, OBCR needs to clarify its authority and guidance regarding appropriate and inappropriate uses of allocated Brownfields travel funds.

Recommendations

We recommend that the Acting Assistant Administrator for the Office of Solid Waste and Emergency Response:

- 2-1. Develop a process for sampling a portion of applicants to conduct a more detailed evaluation of the eligibility of the applicant for a Brownfields grant.
- 2-2. Do not extend the ownership deadlines for cleanup grants in FY 2004 beyond the specified date of September 30, 2004.
- 2-3. Use the environmental data gathered from the Property Profile Form to establish performance goals for the expanded brownfields program that will allow EPA to report, at a minimum, the impact of the program on protecting human health and the environment.
- 2-4. Report performance goals and measures for the grants awarded under the expanded program that are separate from the results of the pilot program.

Agency Comments and OIG Evaluation

The Agency generally agreed with the recommendations. In both its response and a followup meeting, the Agency agreed that documentation of applicant eligibility is important, but that based upon resource and time constraints, the regions could not extensively document eligibility determinations. During the followup meeting, the Agency agreed to a recommendation to develop a process for sampling a portion of applicants or sites to conduct a more detailed evaluation of their eligibility. Also, the Agency provided necessary clarifications regarding our questions on the eligibility of six grantees, and in one instance, agreed that more documentation was needed regarding site eligibility.

The Agency stated that it does not intend to extend ownership deadlines for cleanup grants beyond the specified date of September 30, 2004. Also, in our meeting with the Agency, the Agency clarified that the Brownfields Management System can report program performance data separately for both the expanded brownfields program and the Pilot Program. We encourage the Agency to use this feature to report the performance of the expanded brownfields program apart from the Pilot Program.

Our draft report included a recommendation that the Agency provide the source authority regarding the use of Brownfields travel funds, determine whether Region 5's use was appropriate, and the extent to which this practice occurred in other regions in FY 2003. The Agency provided the source authority in its response and indicated that it is addressing Region 5's use of travel funds, and will examine the extent to which this practice occurred in other regions in FY 2003. Based on this response, we dropped our recommendation.

Chapter 3

Information Not Sufficient to Determine Whether EPA Identified and Secured Necessary Resources

The funding and staffing resources given to EPA to carry out the brownfields program for FY 2003 fell short of its request. OBCR and the regions reported greatly increased workloads in implementing the program. The workload necessary to select grantees and award grants reduced EPA's ability to oversee existing brownfields projects. EPA did not receive the brownfields resources requested in the President's Budget request for FY 2003, and according to an EPA official, the Agency did not receive the resources requested in President's Budget request for FY 2004. Further, EPA's workload analysis is not comprehensive or complete. To determine where brownfields resources should be placed, EPA prepared a regional workload model for FY 2003, but it did not include staff needed at headquarters or other support offices. Also, the model has not been updated for FY 2004. These limitations may prevent EPA from reliably determining where brownfields resources will be needed.

OBCR and Regions Reported Increased Workloads

EPA was resource constrained and "overwhelmed" when implementing the program in FY 2003. While EPA received a significant increase in funding and full-time equivalents (FTEs) for carrying out the brownfields program in FY 2003 compared with FY 2002, the amount was still significantly less than what was requested in the President's Budget request. There was also a significant shortfall in what was received versus requested in FY 2004. Details are in Table 3-1:

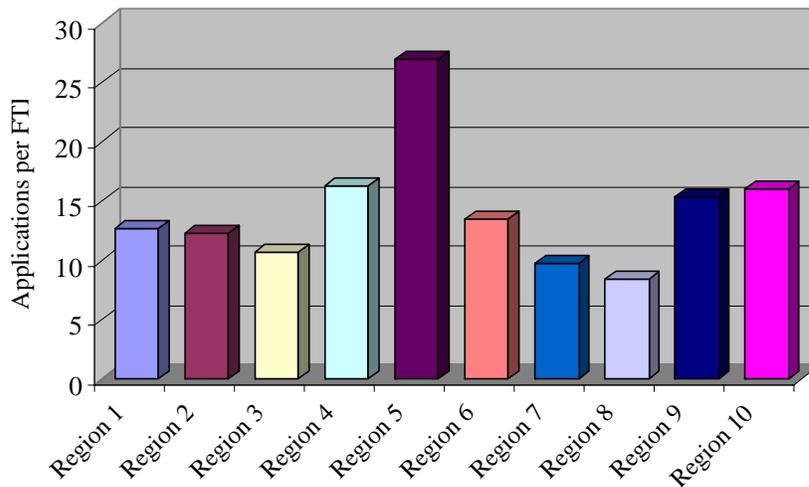
Table 3-1: Resources Received for Brownfields Program (funding in millions)						
Year	Requested		Received		Shortfall	
	Funding	FTEs	Funding	FTEs	Funding	FTEs
FY 2003	\$200	150	\$166	127	\$34	23
FY 2004	\$210	150	\$170	127	\$40	23

At the regional level, Regions 5 and 8 reported that they did not have sufficient resources to carry out the brownfields program in FY 2003 and, in fact, had to borrow staff from other program areas (RCRA, underground storage tanks, and environmental justice). Region 9 also reported that their program was stretched in FY 2003 and that they too had used other staff to carry out the program. The

FY 2003 regional staff requested was 107.2, but the regions received 89.2, a 17 percent reduction.

Also, workloads were not the same in every region. Each region receives a different number of grant applications and manages differing numbers of brownfields pilots. Figure 3-1 illustrates one aspect of the workload variation: the distribution of regional brownfields staff was not proportional to the number of initial grant applications the regions reviewed in FY 2003.

Figure 3-1: Initial Grant Applications Reviewed Per FTE in FY03



EPA Workload Analysis Not Comprehensive or Complete

The staffing workload model that EPA used to estimate the FTEs needed to implement the Small Business Liability Relief and Brownfields Revitalization Act only included regional staff needs and did not include the staff needed at headquarters (OBCR) or other offices that assist in implementing the expanded program (i.e., Office of General Counsel, Office of Enforcement and Compliance Assurance). OBCR was not able to identify the methods used to determine the number of FTEs needed at OBCR and other headquarters offices to implement the program. These FTEs represent 29 percent of the total FY 2003 request.

In addition, EPA used the FY 2003 staffing workload model as the basis for staff requests in FY 2004. That model was based on data from the pilot program and not the expanded program, where more and additional kinds of grants were awarded. The FY 2003 workload model estimated staffing needs using factors such as the number of assessment, job training, and RLF pilots per region and the number of States per region. Since the workload analysis is mostly based on the pilot program,

it does not include the new components of the expanded brownfields program. EPA has awarded more grants and new types of brownfields grants (i.e., cleanup grants) under the Small Business Liability Relief and Brownfields Revitalization Act. These changes are not accounted for in the model.

Conclusions

It is unclear whether EPA's brownfields program is optimally staffed. EPA needs a comprehensive workload model that includes regional, headquarters, and support office staff to determine the appropriate number of FTEs and the appropriate distribution. EPA's workload model estimates only regional needs and does not account for the staff needed at headquarters (OBCR) and other support offices, even though the headquarters offices represent 29 percent of the FY 2003 FTE request. In addition, EPA's current workload model is based on assumptions from the brownfields pilot program rather than current information based on the requirements of the expanded program.

Recommendation

We recommend that the Acting Assistant Administrator for the Office of Solid Waste and Emergency Response, in cooperation with EPA regions:

- 3-1. Evaluate the current workload model to determine whether the new demands and responsibilities of the expanded program require an updated workload model. Implement the updated workload model as needed.

Agency Comments and OIG Evaluation

The Agency agreed to revisit the issue of adjusting the regional workload model and include the number of grant applications received by each region, if more FTE resources become available in the future. In the followup meeting, the Agency did not address the need to include the new responsibilities of the expanded brownfields program in the workload model. The Agency should consider the impact of the new responsibilities of the expanded brownfields program (i.e., cleanup grants) when revising the regional workload model.

Our draft report included a recommendation that the Agency include estimates of staffing needs for all brownfields program headquarters activities. In its response, the Agency said that coordination with the Office of the Chief Financial Officer is necessary to determine brownfields resources not distributed by the Office of Solid Waste and Emergency Response. Based on this response and the fact that we are addressing broader issues related to Agency workload models in ongoing work, we dropped our recommendation.

OIG's Letter to the Chairman of the Committee on Energy and Commerce



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460**

**OFFICE OF
THE INSPECTOR GENERAL**

January 30, 2004

The Honorable W. J. Tauzin
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman,

The 2002 Small Business Liability Relief and Brownfields Revitalization Act (PL 107-118) requires that the Environmental Protection Agency (EPA) Office of Inspector General (OIG) report on the management of EPA's Brownfields program no later than 3 years after enactment (January 2005). This letter provides a status report of our progress to date and anticipated future actions.

Our office plans to issue the first of two reports in April 2004. Our April report will describe and evaluate EPA's implementation of the program, including discussion of grants awarded, completeness of implementation, and adherence to eligibility criteria. For the second report we will perform an in-depth review of the competition process used to award the grants during the first year of the program. Release of this report is planned for September 2004.

The General Accounting Office (GAO) has notified EPA that it is doing work, requested by Chairman Davis and Representative Turner of the House Committee on Government Reform, which may also be of interest to you. The information we have indicates that GAO will be evaluating the overall effectiveness of the Brownfields program, including the grant program for cleanup, as well as other facets of the program. Their work started in September 2003.

We appreciate the opportunity to inform you of our progress. If you have any questions you may call me or Eileen McMahon, Assistant Inspector General for Congressional and Public Liaison, at 202-566-2391.

Sincerely,

/s/

Nikki L. Tinsley
Inspector General

cc:

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
U. S. House of Representatives
Washington, DC 20515

***Brownfields Grants
Announced in FY 2003***

Type of Grant	Quantity	Value (millions)
Assessment	117	\$30.7
Cleanup	69	12.0
Revolving Loan Fund	28	30.4
Job Training	10	2.0
Training, Research, and Technical Assistance	19	2.2
State and Tribal Response	83	49.7
Totals	326	\$127.0

Brownfields Workgroups

Workgroup	Deliverables for 2003
Grants Funding Workgroup (K2 & K3 grants) (OBCR Lead)	Public Meetings on 2003 Grant Funding Guidelines Final 2003 Grant Guidance Final RLF Funding Transition Guidance Final 2003 Job Training Guidelines Final 2003 Guidance to Regions on Selection Process 2003 Grant Selection
Brownfields Definitions and Exclusions Workgroup (OBCR, OPPTS Lead)	Guidance on Definitions Draft Guidance for Remediating PCBs and Brownfields <i>Final Guidance for Remediating PCBs and Brownfields</i>
Training, Outreach, and Technical Assistance Grants Workgroup (K 6 grants) (OBCR Lead)	Request for Proposals Public Meeting Grant Selection
Enforcement/Liability Exemption Workgroup (OSRE Lead)	Guidance on Bona Fide Prospective Purchasers Final De Micromis Guidance Interim Guidance on Common Elements Interim Windfall Lien Guidance Interim MSW Exemption Guidance Revised <i>De Minimis</i> Settlement Models <i>Contiguous Property Owners Guidance</i> <i>Interim Guidance De Minimis Settlement (122(g)) Revisions</i> <i>Administrative Procedures for Windfall Liens</i>
State and Tribal Funding Workgroup (OBCR Lead)	Final Funding Guidance for State & Tribal Response Programs Cooperative Agreement Negotiation
All Appropriate Inquiry Workgroup (OBCR, OERR, OSRE Lead)	Convening Report Public Meeting FACA Regulatory Negotiation Committee Established Final Rule on Interim Standards Regulatory Negotiation to Develop the Proposed Rule <i>Development of Proposed Rule</i>
Eligible Response Site Workgroup (OBCR, OSRE, OERR Lead)	Final Guidelines on Eligible Response Site Exclusions
Delegations/Executive Orders Workgroup (OBCR, OSRE, OERR, OGC Lead)	Executive Order Delegations Package
Data Quality/Management GPRA Workgroup (OBCR Lead)	Performance Measures Meeting Information Collection Request Environmental Indicators/Performance Measures

Note: Data from EPA, Brownfields Legislation Workgroup Milestones, 12/17/03. Deliverables in *italics* are not yet completed.

Agency Response to Draft Evaluation Report

May 7, 2004

MEMORANDUM

SUBJECT: OSWER Comments on OIG Draft Report "Substantial Progress Made, But Further Actions Needed in Implementing the Brownfields Program"
Report No. 2003-708

FROM: Marianne L. Horinko /s/
Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Carolyn Copper
Director of Program Evaluation, Hazardous Waste Issues
Office of Program Evaluation

We appreciate the spirit of openness and cooperation that led to the creation of this report. We thank you for the opportunity to work together on this report. The Office of Solid Waste and Emergency Response (OSWER) worked closely with the Office of Site Remediation Enforcement, which assists OSWER in the implementation of CERCLA liability provisions, brownfield grant and loan eligibility, and related aspects of the Small Business Liability Relief and Brownfields Revitalization Act of 2002, P.L. 107-118, in the development of comments on the draft report.

In accordance with EPA Manual 2750, we are submitting the attached written response to the findings and recommendations presented in the draft OIG report, *Substantial Progress Made, But Further Actions Needed in Implementing the Brownfields Program* (Report No. 2003-708). Where appropriate we have identified corrective actions taken and/or planned in response to the draft findings and recommendations.

If you or your staff have any questions regarding our response, please contact Linda Garczynski at (202) 566-2731 or Johnsie Webster, OSWER Audit Liaison, at (202) 566-1912.

Attachment

OSWER Response to OIG Draft Report "Substantial Progress Made, But Further Actions Needed in Implementing the Brownfields Program"

The following document is organized with the IG's draft finding by chapter highlighted in bold, followed by Office of Solid Waste and Emergency Response's (OSWER) comment.

General Comments

The report refers throughout to the Brownfields Revitalization Act. The full title of the law is the Small Business Liability Relief and Brownfields Revitalization Act. Also, the report refers throughout to Title A. The correct citation for the competitive grant program is CERCLA §104(k).

Chapter 1 – Areas Needing Further Research

- **Economic and environmental impacts of EPA's investments in newly awarded brownfields grants. While EPA has some data on pilot projects, not enough information has been obtained to date to determine the extent to which investments in brownfields have protected human health and the environment or are achieving desired results.**

Comment: EPA is interested in obtaining data on the economic and environmental impacts of the brownfields grants, and to this end, created and received OMB approval of the Property Profile Form. As noted by OIG, this is the first year that the Brownfields Program is using the Property Profile Form to collect data from grant recipients. The Property Profile Form will provide EPA with more detailed information on the direct economic and environmental impact of EPA activities on a property-specific basis. Data will be collected on the Property Profile Form regarding common contaminants and property size (e.g., acreage), which will inform EPA on environmental effects from brownfields activities. The Office of Brownfields Cleanup and Redevelopment (OBCR) anticipates that this data will provide a better measurement of program results. We anticipate further evaluation after a full year of data collection to determine whether and how to form environmental indicators.

Additionally, work is being done under EPA's brownfields training, research, and technical assistance grants program under CERCLA §104(k)(6), which may yield information about economic and environmental benefits derived from the assessment, cleanup, and Revolving Loan Fund (RLF) grants programs. Projects currently underway in this grants program include: research on area-wide approaches to brownfields redevelopment; training and technical assistance to economic development officials; training and technical assistance workshops to small and rural communities; and research and technical assistance related to environmental insurance and the redevelopment of brownfields.

- **Future adequacy of brownfields assessments and cleanup activities for all land uses. Environmental assessments and cleanup activities performed under brownfields grants may only restore land to a limited environmental quality, adequate for the**

then current redevelopment plan. It is unknown if the level of effort is adequate for future changes in land uses.

Comment: EPA is very concerned that brownfields assessments and cleanup activities are adequate for future land uses, and that appropriate measures are in place to document any restrictions on future land use. EPA is involved in a few distinct efforts to promote land use controls as mechanisms for protecting human health and the environment for all future land uses. For example, through the CERCLA 128(a) response program grants, States are required to track institutional controls. Such tracking promotes viable long term stewardship for properties entering State response programs. Also, EPA is including within the Brownfields Management System (BMS) database information from §104(k) grantees to indicate where institutional controls are put in place on brownfields properties. Lastly, EPA is negotiating a financial assistance agreement with the International City/County Management Association (ICMA), which competed successfully under the CERCLA 104(k)(6) competitive grant program, to manage a web site on land use controls (LUCs.org), to make general information on land use controls available to the non-Federal community.

- **Extent to which Superfund liability clarifications versus brownfields grant funding contribute to redevelopment. In the Brownfields Revitalization Act, Congress authorized millions of dollars in grant funding and provided liability clarifications to reduce the legal and financial risks of redeveloping brownfields. We do not know if similar redevelopment levels would occur with only the liability clarifications and without grant funding or a specified level of grant funding.**

Comment: The Office of Site Remediation Enforcement (OSRE) works closely with OBCR to assist in the implementation of the CERCLA liability, brownfields grant and loan eligibility, and related aspects of the Small Business Liability Relief and Brownfields Revitalization Act of 2002, P.L. 107-118. OSRE is coordinating with OBCR on the development of the BMS database to track, among other things, information on how the Superfund landowner liability protections are affecting the ownership of brownfield properties. OSRE has also recently established data fields in CERCLIS to track the use of comfort status letters (including "reasonable steps" letters) and windfall lien filings and resolutions to better understand the impact of these documents on redevelopment. We appreciate the draft report recommendation for further research on this topic, and OSRE will work to more fully evaluate additional ways of measuring the impacts of the landowner liability protections on brownfield redevelopment.

- **Extent to which EPA can continue to meet legislative requirements. The Brownfields Revitalization Act requires EPA to award 25 percent of the available funding for assessments and cleanups to petroleum-contaminated sites. However, as such work progresses, it is uncertain if EPA will be able to continue to meet the 25 percent petroleum requirement.**

Comment: EPA witnessed strong interest in the use of brownfields grant funding for assessment and cleanup of petroleum-contaminated sites in the first two years of implementing the brownfields law. In Fiscal Year (FY) 2003, 102 of the 214 proposals selected for funding

contained a petroleum component. There were 194 requests totaling \$38M for petroleum-related funding in FY 2004, far exceeding the 25 percent set-aside for funding. This is a result of the continued outreach efforts by OBCR, the Office of Underground Storage Tanks (OUST), and the EPA Regions to state and local authorities.

In addition to reaching potential applicants at various meetings and conferences held throughout the year, several regional revitalization symposiums, including discussions focusing on petroleum brownfields, are scheduled for the upcoming months. A few examples include: 'Distressed Properties Forum', April 29 and 30, Kansas City; 'Restoring Greenspace Conference', June 23 and 24, Philadelphia; and the 'Western Brownfields Workshop', July 13 thru 15, Seattle. Additional outreach forums planned include: the Arizona Brownfields Conference, to be held in late summer; the Region 5 Petroleum Brownfields Symposium, tentatively scheduled for late June in Columbus, Ohio; and a Utah Symposium, whose date and location have yet to be determined.

EPA has been promoting the availability of materials of interest to potential applicants such as EPA's "Partnership Initiative for Reusing Petroleum Brownfields" (available on the EPA web) and the City of Los Angeles' *"Guide to Resolving Environmental and Legal Issues at Abandoned and Underutilized Gas Station Sites."* We anticipate these outreach efforts will promote continued interest in grant funding for petroleum-contaminated brownfields and will allow EPA to continue to meet the 25 percent petroleum requirement. OSWER will continue to monitor the situation closely.

- **Impact of brownfields investments on neighborhood gentrification and displacement of disadvantaged populations. Gentrification involves new investments in deteriorated or aging parts of a city that raise property values, typically displacing existing disadvantaged populations. Some stakeholders were concerned that brownfields redevelopment may cause gentrification.**

Comment: OSWER shares the concern with other stakeholders that brownfields redevelopment may cause unintended impacts and believes that further research into this issue is warranted. The EPA National Environmental Justice Advisory Council (NEJAC) is a federal advisory committee that provides significant input from affected stakeholders on environmental justice issues. The Unintended Impacts Workgroup of the NEJAC Waste and Facility Siting Subcommittee began gathering information in the summer of 2002 to properly evaluate and weigh the impacts of cleanup and redevelopment activities on communities. The Workgroup selected six communities that have been examples of successful EPA sponsored/supported relocation, redevelopment, or revitalization activities to determine, among other things, how "displacement" and/or "gentrification" may be associated with brownfields redevelopment. Two of the communities examined by NEJAC are brownfields grantees. Work on the draft report of the subcommittee is underway, and is expected to be final by the end of 2004.

Chapter 2 General Comments

- **p.7, Figure 2-1: Regional Distribution of FY 2003 Brownfield Grant Dollars**

Comment: Figure 2-1 correctly lists the quantity of grants announced in FY 2003, and contains the correct value, in millions of dollars, for Assessment and Cleanup grants. The dollar figure for RLF, however, is overstated by one million dollars, the correct total value of the 28 new RLF grants announced in FY 2003 being \$30.4 million. The total value for the 214 new grants announced in FY 2003 was \$73.1 million. Additional references to the overstated total announced figure of \$74 million also appear on pp. i, iii, 6 and 18.

- **pp. 9, EPA Expanded the Brownfields Program**

Comment: The report states that "OBCR created nine workgroups that were responsible for developing 35 guidelines, guidance documents, and actions to implement the legislation." The workgroup process was broader than just OBCR. A full contingent of cross-agency representatives, not just OBCR, formed a steering committee of senior Headquarters and regional offices and created nine workgroups. Attached is the most recent milestones information for appendix B. New developments include the completion of contiguous property owner guidance by OECA and the completion of agency review of the All Appropriate Inquiry rule. Please note the activities on the chart span the time frame of 2002 - present and are grouped by the lead workgroup on a particular activity/deliverable.

- **pp. 10- 11, Guidance to Regions Untimely and Unclear in FY 2003**

Comment: We would note that, despite the late issuance of guidance in 2003, weekly conference calls were held between the Regions and Headquarters offices over the course of several months prior to and following the issuance of the guidance. The purpose of the conference calls was to respond to questions and to discuss issues related to threshold and ranking criteria, regional and national panel reviews, providing technical assistance, and several other topics that were addressed in the guidance. The FY 2003 guidance summarized many of these discussions held through November and December 2002.

OSWER and OECA agree with the general finding that, although the FY 2004 process memo was an improvement over the previous year's effort, there are additional opportunities for clarifying the roles and responsibilities in the brownfield grant and loan review and award process. In addition to expanding and clarifying the guidance in the FY 2004 application guidelines, as referenced on p. 11 of the draft report, several continuing activities are now in place to ensure there is consistent and current dialogue within the program. For example, Regional counsel, along with headquarters policy, legal and enforcement staff, continue to hold periodic calls to discuss brownfields grant implementation issues.

Prior to issuing the FY 2004 guidance, we held a training session for the regions. We also held a brownfields grants panel session at the Brownfields 2003 conference in Portland, OR. Prior to

the national review of the FY 2004 proposals, we held a conference call training session for all national reviewers.

In addition, for FY 2004, the Office of Underground Storage Tanks (OUST) conducted outreach to regional underground storage tank (UST) staff regarding the petroleum eligibility determination process during regular calls with the regional tank revitalization coordinators. OUST also developed a fact sheet outlining the changes to the FY 2004 process. In turn, several regional tank programs, in conjunction with their Brownfields and ORC counterparts, conducted outreach conference calls with state staff to answer questions regarding the revised petroleum eligibility determination process. For example, after the Region 5 outreach call, a member of the UST staff developed a template for state staff to use to clearly and consistently document all necessary petroleum eligibility determinations, that was distributed to all the regions. In addition, OUST addressed the petroleum eligibility criteria during meetings with Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and EPA Regional UST management. OBCR and OUST worked together to clarify any petroleum eligibility issues that were subsequently raised by the regions (e.g., lack of timely state determinations).

OECA and OSWER will continue to work together to clarify the roles and responsibilities, and clearly state the expectations of headquarters in implementing the consultation requirement, including the consultation requirements related to the determinations of petroleum site eligibility, in subsequent versions of agency guidance.

- **p. 14, Table 2-4: Selected Sites Eligibility Review**

OSWER and OECA consulted with the Regions regarding the specific issues of site eligibility raised in your report. Further clarifications are referenced below. While we agree that documentation of site eligibility is important, the Agency's resources are limited. In cases in which EPA has determined that the applicant has supplied adequate documentation of eligibility, the value added by more extensive EPA generated documentation of eligibility is outweighed by the administrative costs of developing that additional documentation. The first part of the response below details the various site eligibility issues raised in your report and references the sections in the grant guidelines that discuss these issues. These sections expand on the eligibility summarized in Table 2-3 on page 13 of your draft report. The second part of the response below describes the site eligibility issues surrounding the 6 sites included in Table 2-4 of the report.

Lastly, we would note that Chapter 2 of the draft report refers to the OECA enforcement screen conducted as part of the FY 2003 grant process. The report incorrectly indicates that the enforcement screen was conducted to ensure that applicants and sites were eligible for brownfield grants and loans (page 13). The enforcement screen only provided data regarding the applicant's general environmental compliance history and was intended to inform the decision to award a grant or loan to an otherwise eligible applicant or site.

Facilities subject to CERCLA Removal Actions

Section 3.4.1 of Appendix 3 of the "Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants," outlines when properties subject to CERCLA removal actions

are and are not eligible for brownfields funding. Properties that are subject to planned or on-going removal actions may not receive funding, unless EPA makes a property-specific determination of funding eligibility. Properties that were subject to CERCLA removal actions and where removal actions are complete are eligible for funding. Section 3.4.1 of Appendix 3 states that "a removal action is complete when the actions specified in the action memorandum are met, or when the contractor has demobilized and left the site (as documented in the 'pollution report' or POLREP). Once a removal action is complete, a property is eligible for brownfields funding without having to obtain a property-specific funding determination."

Facilities that are subject to the jurisdiction, custody or control of the United States government
Section 3.4.7 of Appendix 3 of the "Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants," outlines when properties subject to the jurisdiction, custody, or control of the United States government are and are not eligible for brownfields funding. Section 3.4.7 of Appendix 3 states that the exclusion does not "extend to: a. Privately-owned, Formerly Used Defense Sites (FUDS); b. Privately-owned, Formerly Utilized Sites Remedial Action Program (FUSRAP) properties; and c. Other former federal properties that have been disposed of by the U.S. government." Section 3.4.7 also states that "eligibility for brownfields funding does not alter a private owner's ability to cost recover from the federal government in cases where the previous federal government owner remains liable for environmental damages."

RCRA Sites

Section 3.4.5 of Appendix 3 of the "Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants," outlines when properties subject to RCRA permits are and are not eligible for brownfields funding. This section of Appendix 3 states that the types of RCRA facilities that do not fall within the scope of the exclusion and would be eligible for funding (without a property-specific determination) include "c. Parcels of RCRA facilities that are not under the scope of a RCRA permit or administrative or judicial order."

Exclusion of Leaking Underground Storage Tank (LUST) Trust Fund Sites

Section 3.4.9 of Appendix 3 of "Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants," outlines when properties subject to the exclusion for LUST Trust Fund Sites are and are not eligible for brownfields funding. In that section, the guidelines state that properties may receive brownfields funding on a property-specific basis. Section 3.4.9 of Appendix 3 also points out that certain sites that previously received LUST fund monies are considered to "be good candidates to receive brownfields grants or loans." Such properties include "all USTfields pilots," and "sites (or portions of properties) where an assessment was completed using LUST trust fund monies and the state has determined that the site is a low-priority UST site and therefore additional LUST trust fund money cannot be provided for the clean up of petroleum contamination, but the site still needs some clean up and otherwise is a good candidate for economic revitalization."

1. Canton, Illinois / International Harvester: The draft audit report indicates that there are issues relating to ongoing CERCLA removal action on part of the site and a Potentially Responsible Party's involvement with the removal. There have been three removal actions at the site, two fund-lead and one PRP-lead. Region 5 confirmed that the most recent removal action at

this facility is complete and was documented in a Final Pollution Report (POLREP) issued in May 2002. Although International Harvester, a potentially responsible party, was involved in the removal action, the applicant's (the City of Canton) potential responsibility was resolved in a prospective purchaser agreement signed with EPA in 1999. The eligibility determinations are specific to each proposal, applicant and site. In some cases, where the proposal does not unequivocally indicate the eligibility of a particular applicant or site, the various EPA entities involved in determining site and applicant eligibility consulted. Region 5 used its best judgement based on the information contained in paragraph 3 of the prospective purchaser agreement (PPA). They determined that the applicant and site were eligible, that a property-specific determination was not needed, and that the activities proposed in their application were allowable uses of funds because the PPA noted that the settling respondent (Canton) was including federal funding of brownfields activities as their contribution to the agreement. In addition, the PPA noted that the settling respondent in no way caused or contributed to the release or threat of release of contaminants from the site and therefore was not a potentially responsible party. Region 5 had email documentation of the deliberations regarding this issue. Canton was therefore eligible for funding.

2 and 3. Trenton, New Jersey, Magic Marker Site, and; Gloucester, New Jersey, Vanguard Vinyl Site: Regarding site eligibility, CERCLA §101(39)(B) excludes from the definition of a Brownfields site certain facilities, including one that is the subject of a UAO, a court order, an AOC or a CD that has been issued to or entered into by the parties under CERCLA.

For the Gloucester site, the AOC was entered into by EPA to have the PRP conduct the removal and all obligations have been met. Attached to the grant application was a letter dated December 30, 1997 to Mr. Fred Bright of GAF Materials Corporation from Richard L. Caspe, Director of Region 2's Emergency and Remedial Response Division documenting that work required pursuant to the administrative order (AOC) was satisfactorily completed and EPA had received GAF's reimbursement of costs. The PRPs have completed their obligations under the AOC and the site was archived from CERCLIS in 2001. Therefore, Region 2 properly determined that the Gloucester site was eligible and the file contained adequate documentation of the Region's determination given the Agency's resource limitations.

For the Trenton site, at the time of the application and award of the grant, no AOC, UAO or CD had ever been issued. An agreement in principle for cost recovery has been reached very recently with respect to the previously completed response action. Attached to the grant application was a Final Pollution Report (POLREP) dated March 3, 1998 documenting that the removal action conducted at the site was completed. Therefore, Region 2 properly determined that the Trenton site was eligible and the file contained adequate documentation of the Region's determination given the Agency's resource limitations.

Under CERCLA §104(k)(B)(i)(IV), no part of a grant can be used as a response cost at a brownfield site for which the recipient may be liable under 107. For both sites, Region 2 determined that the applicants/grantees were not liable parties under 107 and therefore eligible to receive grant funds. Both the Trenton and Gloucester site were acquired by the applicants/grantees through tax foreclosure after the previous owners/operators had contaminated

the properties. Moreover, the Gloucester grant application indicated that the applicant/grantee had taken steps to prevent further releases and minimize exposure to the hazardous substances present on the property. The Trenton applicant/grantee had undertaken activities, such as demolition of the most hazardous buildings on site, undertaking a health initiative to screen children for blood lead levels, and continual coordination with EPA and New Jersey Department of Environmental Protection, to prevent further releases and minimize exposure to the hazardous substances present on the property.

In both the Trenton and Gloucester cases, the grantee was not the liable party. EPA completed removal actions at the sites many years ago and has no plans for further action, however, there are some environmental concerns that remain which the grantees hope to address through the Brownfields grants. Thus, EPA properly awarded cleanup grants to eligible applicants for eligible sites and these awards did not violate any CERCLA requirements and were adequately documented given the resources available.

4. Nome, Alaska, Nome Airport: The draft audit report indicates that there may be a potential Federal facility issue at the property. The subject property is not under the direct jurisdiction of the U.S. government. It is, as indicated in the grant application, a Formerly Used Defense Site. The fact that contamination at the facility may have migrated from an off-site facility that is under the jurisdiction of the U.S. government does not affect the eligibility of the applicant for brownfields funding. The eligibility criteria in the statute only prohibit funding to properties under the jurisdiction, custody, or control of the U.S. government. The grant application provided adequate documentation of eligibility under that criteria. In addition, the fact that a relocation decision on the part of a public utility may have played a role in the applicant's decision to redevelop the subject property and apply for brownfields funding in no way affects the applicant's eligibility or the eligibility of the property for brownfields funding. It's unclear how Region 10 could have documented its disposition of issues that do not appear to be relevant to its eligibility decision. Therefore, Region 10 properly determined that the Nome site was eligible and the Agency's records contained adequate documentation of the Region's determination given the resources available.

5. Oakland Redevelopment Agency, Uptown Site, Oakland, California: The draft audit report states that one facility onsite, Sears and Roebuck, has a RCRA permit. The project area for the revitalization effort includes 56 separate parcels, some, in fact, are ineligible for one reason or another. ORA, the grantee, through communications with EPA Region 9 (including email exchange with the EPA Project Officer), was aware from the beginning, before the award was announced, that it was going to be able to use the grant monies for cleanup of only about 19 or 20 of the parcels. The Sears & Roebuck parcel, which is clearly marked on the site map of the project area accompanying the grant application is not owned by the Oakland Redevelopment Agency, and therefore this parcel is not included in the project area subject to the brownfields grant, in accordance with the ownership requirements of CERCLA 104(k)(3)(A). Thus, despite the existence of a state-issued RCRA permit, EPA never had to make a site-specific determination of the parcel's eligibility because the parcel was never eligible, based on the fact that it was not, and is not, owned by the grantee. Although one parcel in the project area is subject to a RCRA permit, that does not render the other parcels ineligible for cleanup.

Therefore, Region 9 properly determined that the ORA uptown site was eligible, and the file contained adequate documentation of the Region's determination given the resources available.

6. Multnomah County, Oregon, Grocery/Market Site: The draft audit report indicates that there are questions concerning the use of LUST funds. LUST money was previously used at the site and the applicant requested a property-specific determination to use brownfields funding for additional petroleum contamination at site. The applicant also submitted all required information to apply for a property-specific determination.

Region 10 evaluated information contained in the attachment to the grant and made a property-specific determination. Region 10 determined that Grant funds were needed and would be used to a) protect public health and the environment by cleaning up the site before more contaminant exposure or migration occurs and b) would enable creation/addition to non-profit property, specifically much-needed special needs housing for the physically handicapped that will be built by the non-profit developer. Although the Multnomah County, Grocery/Market site was properly eligible for a property specific determination, and the grant application provided adequate information for the Region to reach its determination, we agree with OIG that the Region's grant file should have contained more explicit documentation to support the property specific determination.

Response to Chapter 2 Recommendations

2-1. Require Regions to clearly document the site and applicant eligibility determination process and require that the documentation be part of the official application file.

Documentation should include, at a minimum, the source used (EPA database, Regional or State information, etc.), the results of the search (even negative search results), and the date the eligibility determination was made.

Comment: As noted above, while we agree with OIG that documentation of eligibility is important, there are practical limits on the resources and time available to the Regions to extensively document such determinations. Choices had to be made. In FY 03, EPA determined that, because this was the first year the Agency would operate under the complex eligibility criteria contained in the new Brownfields law, it was particularly important to document determinations of ineligibility. This approach was intended to ensure that EPA would have information that shows the basis for an ineligibility decision readily available in the event that the applicant challenges the determination.

In grant programs throughout the Agency, where EPA determines that an application is eligible for funding, the Agency generally relies on the representations made by the applicant to document EPA's eligibility determination. In the absence of contradictory information in the EPA's possession, this approach meets the minimum legal standard. The Agency maintains the ability to recover inappropriately awarded funds under principles of grant law if the applicants representations prove to be inaccurate. Nonetheless, we agree with OIG that the particular eligibility criteria in the Brownfields law make it especially important to document site and applicant eligibility determinations. For example, the December 4, 2003, process memorandum for the FY 04 competition, emphasizes that it is the responsibility of each Region to maintain

good, substantive documentation of the results of its regional evaluation panel, including site and applicant eligibility determinations.

The experience the Agency gained with the FY 03 application process will gain in the FY 04 process, and the constructive observations in this audit report, will help the Headquarters offices (OBCR, OUST, OSRE and OGC) develop additional clarification of the standards and process for documenting eligibility determinations. As we develop the guidance to the regions for the FY 2005 grant competition, we make a reference that the regions clearly document the site and applicant eligibility determination process, which, at a minimum, must include the source used, the results of the search, and the date the determination was made. We trust, however, that OIG will accept the need for Agency management to make trade-offs between the resources and time available to develop documentation and the administrative costs of more detailed processes and procedures.

2-2. Do not extend ownership deadlines for cleanup grants in FY 2004 beyond the specified date of September 30, 2004.

Comment: The FY 2004 *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants* inform applicants of cleanup grants that they "must own the property for which they are applying by the time the grant is awarded and no later than September 30, 2004." EPA has no intentions of extending this deadline for the FY 2004 brownfields grant competition. We believe however, that the few applications for which we extended the 2003 deadline had extenuating circumstances that we thoroughly documented (e.g., a fire on the Nome, Alaska property).

2-3. Use environmental data from Property Profile Form to establish performance goals for the expanded brownfields program that will allow EPA to report, at a minimum, the impact of the program on protecting human health and the environment.

Comment: The Brownfields Program is currently using the Property Profile Form to collect performance information on the grants awarded under the Brownfields Law. The property profile form allows the program to collect data on environmental indicators such as contaminants found and addressed, media affected and addressed, acreage, and on the use of institutional controls. Previously, the Program did not have comprehensive, uniform data in these areas. The Brownfields Program will use the data collected from the Property Profile Form within this first year to evaluate which elements should be used as environmental indicators for the program and to determine appropriate targets.

In addition, the Brownfields Program is developing an efficiency measure for the Cleanup Grants. The Brownfields Program is looking to measure program efficiency by examining the period between the time of grant award and the completion of a property cleanup. We anticipate this temporal measure will serve as an indicator of how efficiently the grant recipient achieves a cleanup outcome. Since Cleanup Grants were first awarded in FY 2003, the Program is currently collecting baseline performance information on these grants.

2-4. Report performance goals and measures for the grants awarded under the expanded program that are separate from the results of the pilot program.

Comment: The Brownfields Program is committed to maintaining performance data for the expanded Brownfields Program created by the Brownfields Law separate from the Pilot Program performance data. The Brownfields Management System (BMS) database has been redesigned to achieve this distinction. The Program agrees that distinct program performance data for the expanded program is essential to measure program progress.

In addition, the Program feels that the ability to combine the achievements of the Pilot Program with the achievements of the Expanded Program provides a seamless measure of the progress EPA has made in promoting the assessment, cleanup, and reuse of brownfields properties.

2-5. Identify the source authority for OBCR's memo stating travel funds must be used only for administering brownfields. Based upon that source authority, determine whether the Region 5 use of travel dollars was appropriate. If use is not appropriate, address the extent of the problem within the Agency and take corrective action as needed.

Comment: We understand that Counsel to the OIG questioned the source authority for the following statement in OBCR's FY 2003 Budget Guidance, contained in a Memorandum Dated March 19, 2003, from Linda Garczynski, OBCR's Director and David Bloom, Director of OCFO's Budget Division to Superfund National Program Managers and Brownfields Coordinators (quoted below):

... are available only for administering the Brownfields program. . . The travel resources allocated for Brownfields are considered part of the \$27 million set aside for the Brownfields program in the appropriations bill and should therefore not be moved out of the Brownfields account or used for any other program's travel"

The Environmental Programs and Management (EPM) account for EPA's fiscal year 2003 Appropriation Act, Public Law 108-7, states that the approximately \$2.1 billion lump sum appropriation for that account "include[es] administrative costs for the Brownfields program under the Small Business Liability Relief and Brownfields Revitalization Act of 2002 (SBLRBRA)." The Conference Committee report for the 2003 Appropriation Act states that the conferees agreed to certain "program levels" for the Agency including "\$27,200,000 for the EPM account's portion of the Brownfields program, an increase of \$24,381,000 above the level provided in fiscal year 2002."

The March 19 memorandum reflects EPA funds control policy, which states that EPA "will generally act in accordance with the views expressed in Conference Reports, Appropriation Committee Reports, and other documents that reflect legislative history." Office of Comptroller Resource Management Directive, Administrative Control of Appropriated Funds, p. 1-5 (July 1, 1997). As the Comptroller General observed, while failure to honor a Congressional committee earmark may not rise to the level of a statutory violation, "this does not mean that agencies are

free to ignore clearly expressed legislative history applicable to the use of appropriated funds." 55 Comp. Gen. 307, 325 (1975).

The Agency's operating plan for Brownfields funding in FY 2003 also followed the Conference Committee direction. OBCR agrees with the OIG that Region 5's use of Brownfields travel funds OBCR sent to it for other purposes was inconsistent with Agency funds control policies and the views of the Comptroller General. OBCR will examine the extent to which this practice occurred in other regions. Moreover, EPA's FY 2004 Appropriation Act, Public Law 108-199, contains language in the EPM account for Brownfields administrative costs identical to that in the FY 2003 statute. The Conference Committee report specifies an EPM program level of \$27,500,000 for "Brownfields administration." OCFO has advised OBCR that standard and appropriate EPA funds control practice is to honor program levels in conference committee reports. OBCR will reinforce the importance of respecting Congressional intent as the Regions carry out the FY 2004 operating plan for the Brownfields program.

Chapter 3 Recommendations

p.23, EPA Workload Analysis Not Comprehensive or Complete

Comment: The parenthetical in the last sentence of the first paragraph of this section should read as follows: "These FTEs represent 29 percent (*approximately 45 of 154*) of the total FY 2003 request"

3-1. Evaluate the current workload model to determine whether the new demands and responsibilities of the expanded program require an updated workload model. Implement the updated workload model as needed.

Comment: The Brownfields Regional FTE workload model was based upon data through the end of FY 2001. Updating the Regions' workload model with grant selections through the end of FY 2003 and grant applications received in FY 2004 does not significantly alter the allocation of the Regional FTE. The variance between the updated and current workload model allocation changes no Region's resources more than 3% for FY 2004. Therefore, OSWER is of the opinion that the increase in grant applications does not demand a revision to the current workload model at this time. Further, the program did not receive its requested FTE increase for FY 2004. Should more FTE resources become available in FY 2005, OBCR agrees to revisit the issue of adjusting the Regional workload model and including the number of grant applications received by each Region.

3-2. Include estimates of staffing needs for all brownfields headquarters activities in the current workload model.

Comment: The FTE levels for the Agency, and the Brownfields program, are determined during the Agency's budget formulation process. All the Agency's programs, as well as new proposals, are examined during this process. FTE levels are adopted after considering the purpose of the programs, new program requirements, and budget constraints. OSWER believes the FTE

distributed to OSWER are thoroughly supported by an analysis of the range of functions necessary to implement and manage the program. They are detailed below:

1. Policy development, legislative implementation, interagency coordination for the Brownfields Federal partnership, regulatory development, outreach to stakeholder groups, oversight of research cooperative agreements and other outside technical assistance, and preparation of materials for Congressional hearings and inquiries.
2. National brownfields budget formulation, OBCR budget execution, distribution of Regional funds, information management system execution and oversight, contract and website management, and strategic planning including the Government Performance Results Act (GPRA) and Program Assessment Rating Tool (PART).
3. Management of the national brownfields grant programs including application guidelines development, application reviews, responses to policy issues raised in applications, coordination of grants and related issues with the OGC, OECA, OUST, Office of Grants and Debarment (OGD) and the EPA Regions.
4. Coordination with State/Tribal response programs and consequent associations, development of national funding guidances for State/Tribal response programs, development of memoranda of agreement between EPA and the States, and environmental-justice related activities.

We believe this broad range of activities exceeds current staffing levels and is fully supported by the President's request for an increase in FTE level both in Headquarters and the Regions. An increase is necessary to respond to all program-specific activities as well as the usual managerial and administrative workload. However, as discussed during previous interviews, the development of a workload model, when Congress has not given OSWER additional resources, seems unnecessary. Use of a Regional workload model would be inappropriate as a basis for comparison to Headquarters operations, due to the differing nature of the functions performed by OSWER Headquarters.

Other EPA Legal, Administrative and Resource Management offices provide legal and administrative support, as well as, rent, utilities, and security costs related to the brownfields program. These resources are not distributed by OSWER. Coordination with the Office of the Chief Financial Officer (OCFO) is necessary to determine how these levels were determined. According to OCFO, no FTE workload models exist for Headquarters operations.

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