

Brownfields Legislation Listening Session
State and Local Government and Tribal Stakeholders
April 8, 2002

Participants:

Kris Swanson, Association of State and Territorial Solid Waste Managers
Rick Tomlinson, Environmental Council of the States
Diane Hartson, FMC Corporation/Hartson Consulting
Danielle Miller Wagner, International City/County Management Association
Molly Singer, International City/County Management Association
Louise Anderson, International Economic Development Council
Paul Kalomiris, International Economic Development Council
Chris Costopoulos, New York Department of Environmental Conservation (also representing the Environmental Council of the States)
Paula Cotter, National Association of Attorneys General Association
Kelly Novak, National Association of Development Organizations
Ken Brown, National Association of Local Govt Environmental Professionals
Molly Stauffer, National Conference of State Legislatures
Robert Holden, National Congress of American Indians
Diane Shea, National Governors' Association
Christopher Paisano, Navajo Nation Washington Office
Derrick Coley, U.S. Conference of Mayors
Judy Sheahan, U.S. Conference of Mayors
Danielle Solomon, Washington, D.C., Department of Health
Evans Paul, Baltimore Development Corporation
Pamela Janifer, U.S. EPA OCIR
Paul Connor, U.S. EPA OECA
Greg Madden, U.S. EPA OECA

Jim Drummond, U.S. EPA OGC
Annette Gachette, U.S. EPA ORD
Sara Rasmussen, U.S. EPA OSW
Dave Evans, U.S. EPA OSWER
Brigid Lowery, U.S. EPA OSWER
Christopher Prins, U.S. EPA OSWER
Mike Shapiro, U.S. EPA OSWER
Felicia Wright, U.S. EPA OSWER
Jeff Tomhave, TASWER
Karl Alvarez, U.S. EPA Brownfields
Kathy Atencio, U.S. EPA Brownfields
Myra Blakely, U.S. EPA Brownfields
Jennifer Bohman, U.S. EPA Brownfields
Ann Carroll, U.S. EPA Brownfields
Alison Evans, U.S. EPA Brownfields
Linda Garczynski, U.S. EPA Brownfields
Valerie Green, U.S. EPA Brownfields
Greg Jordan, U.S. EPA Brownfields
Sven-Erik Kaiser, U.S. EPA Brownfields
Jim Maas, U.S. EPA Brownfields
Ann McDonough, U.S. EPA Brownfields
Patricia Overmeyer, U.S. EPA Brownfields
Anthony Raia, U.S. EPA Brownfields
Tom Rinehart, U.S. EPA Brownfields
Rey Rivera, U.S. EPA Brownfields
Beth Zelenski, U.S. EPA Brownfields
Larry D'Andrea, U.S. EPA Region 2
Myron Knudson, U.S. EPA Region 6
Karen Wardzinski, U.S. DOJ ENRD
Allyn Finegold, Marasco Newton Group
Colleen Morgan, Marasco Newton Group

Introduction:

Mike Shapiro, deputy assistant administrator of the Office of Solid Waste and Emergency Response (OSWER), welcomed the participants and emphasized the importance the U.S. Environmental Protection Agency (EPA) attaches to maximizing stakeholder involvement early in the implementation process of the brownfields law. Mr. Shapiro noted that this is the final of four listening sessions and that EPA has recently set up its teams and structure to develop the appropriate policies, guidance, and regulations.

EPA is looking to various stakeholder communities to identify issues impacting their constituents. Mechanisms are in place through the implementation work groups and other means to identify key issues as quickly as possible. EPA's objective is to get input on major themes and issues to consider when developing policy and guidance. By the fall of 2002, EPA expects to have developed new funding application guidelines and various policy documents related to implementation of the law.

Stakeholder Issues:

- C If a site can receive both an assessment and cleanup grant, the same basic threshold of the applicant's need for a grant should be used.
- C There will be no requirement to submit a Phase I or Phase II assessment for cleanup grant applications, but it must be demonstrated that assessment has been conducted and the cleanup action determined.
- C Targeted Brownfields Assessments (TBAs) are addressed in Subtitles A and C of the legislation. Currently, 65 percent of TBAs are done by states and 35 percent are through direct support from EPA.
- C The anticipated budget breakdown is as follows: \$30.3 million for petroleum sites (divided among assessment, RLF, and cleanup grants); \$50 million to be distributed among states and tribes; and remaining funds will go towards the rest of the program
- C There is a transition provision regarding RLFs under the old program. Existing RLFs can make a request to follow new rules, but must adhere to the new prohibition on administrative costs and the 20-percent cost-share requirement.
- C In-kind services can be used towards the match requirement, as well as state funds and Community Development Block Grant funds to local governments.
- C The administrative cost prohibition applies to all Subtitle A grants. Indirect costs are included in administrative costs.
- C Many of the liability provisions are self-implementing.
- C EPA must promulgate regulations related to the due diligence standard.
- C Some parties consider ASTM 2000 standards more flexible and some states do not use ASTM. Banks require the ASTM standard. A limited and quick rulemaking may be needed to put a more accessible standard in place. (The 1997 standard is not available on the ASTM Web site.)
- C The standards issue also applies to how grantees must conduct site assessments.
- C The cleanup funds provided for in the bill will facilitate greenspace preservation, but cannot be used for actual redevelopment.

- C The Economic Development Administration and U.S. Department of Housing and Urban Development have funds and authority for redevelopment activities. EPA works to clear the path so “back end” activities can occur.
- C Because Congress intended that the liability provisions to be self-implementing, there should be no further need for EPA to issue liability protection documentation (e.g., prospective purchaser agreements)
- C The issue of property that is located in the District of Columbia and owned by the federal government should be considered as EPA works with the definitional issues related to the law.
- C Subtitle C provides funding for tribal response programs. Tribal representatives at the meeting urged EPA to ensure that any performance measurement goals for the new program include cultural reuse. Tribes are especially interested in cultural reuses.
- C There is an audit provision in the law that requires the Inspector General to conduct an audit of the program, therefore, good reporting and evaluation will be critical.
- C Participants emphasized the need for flexibility in the grant process. Sites that applicants target early in the process may not be those targeted in the future if conditions change that alter activity at a site.
- C Participants encouraged EPA to help small/rural communities compete for funding. The law requires a balance between urban and non-urban communities. Currently, 48 percent of the recipient communities have populations under 100,000 and 52 percent of the communities are larger areas. There is also a need to look at tribal needs.
- C Developing a site inventory is one element that must be met to receive state funding. New York has been reluctant to create a similar inventory because of the stigma attached to brownfields sites. There is some sense in the financial world that this type of list would encourage realtors and developers to look at brownfields sites. This is not possible if sites are not in the public eye. Cities have developed inventories using different approaches.
- C The public record and site inventory provision of the law have different meanings. The site survey and inventory are goals to strive toward, while the public record is a requirement to trigger funding and the enforcement bar. The public record involves providing the public with information about sites in a state response program, and it must be updated at least annually.
- C Concern that a state might not be aware of sites that will be in the program in the future and that states could be liable if a site is added.
- C Flexibility should be considered in any guidance related to the inventory or public record requirements.