

# THE BUILD ACT AND EPA'S BROWNFIELDS PROGRAM

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# BROWNFIELDS UTILIZATION, INVESTMENT, AND LOCAL DEVELOPMENT ACT (BUILD ACT)

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- **Division N** of the Omnibus Spending Bill passed in March 2018
  - Page 1768
- Amends CERCLA, as amended by the Small Business Liability and Brownfields Revitalization Act of 2002
  - Liability and grant eligibility -- certainty for state, tribal and local governments
  - Tenants and Leasehold Interests including in the BFPP liability defense
  - New Brownfields Grant provisions

# SECTION 2: REDEVELOPMENT CERTAINTY FOR GOVERNMENT ENTITIES

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## GRANT ELIGIBILITY

- Section 101(20)(D) of CERCLA is amended to state:
- owner or operator does not include a unit of state or local government which acquired *“ownership or control through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its power as sovereign.”*
- **Exemption** from definition of “owner/operator” -- exemption from CERCLA liability – eligible for grant funding without having to make affirmative defense



# SECTION 3: ALASKA NATIVE VILLAGE AND NATIVE CORPORATION RELIEF

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## GRANT ELIGIBILITY

- Section 101(20) is amended to provide relief for Alaska Native Villages and Native Corporations.
- Section 101(20)(E) **excludes Alaska Native Villages and Native Corporations from the definition of “owner / operator”** with respect to a facility conveyed to them under the Alaska Native Claims Settlement Act (either they received it directly, or they are a successor to the interest in the facility).
- The exclusion does not apply to any entity that causes or contributes to the release or threatened release of a hazardous substance from the facility.



# SECTION 4: PETROLEUM BROWNFIELD ENHANCEMENT

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- Section 101(39)(D)(ii)(II)(bb) (brownfield petroleum definition) is amended to state *“is a site for which there is no viable responsible party and that is determined by the Administrator or the State, as appropriate, to be a site that will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site under this Act or any other law pertaining to the cleanup of petroleum products; and ...”*
- Note: amended language **deletes 101(39)(D)(ii)(II)(bb)(AA) of the current language**
- Applicants no longer have to demonstrate site is “of relatively low risk, as compared with other petroleum-only sites in the State”

# SECTION 6: EXPANDED GRANT ELIGIBILITY FOR NONPROFIT ORGANIZATIONS

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- Section 104(k)(1) is amended to add **nonprofits with an IRS 501(c)(3) designation to the list of eligible entities for all CERCLA 104(k) grants.**
- The list of eligible entities also is expanded to include limited liability corporations where all managing partners are 501(c)(3) nonprofits, limited partnerships where all general partners are 501(c)(3) nonprofits, and qualified community development entities.

# SECTION 7: TREATMENT OF CERTAIN PUBLICLY OWNED BROWNFIELD SITES

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- Sections 104(k)(2) and 104(k)(3) are amended to add **an exemption for certain publicly owned brownfield sites for grant eligibility**
- Eligible state and local government entities may receive grant funds for properties acquired **prior to** January 11, 2002, even if such eligible entity does not qualify as a bona fide prospective purchaser, so long as the eligible entity did not cause or contribute to the contamination.
- Brownfields acquired by eligible entities prior to January 11, 2002 are eligible for brownfields grant funding without a demonstration of a defense from CERCLA liability.



## SECTION 8: INCREASED FUNDING FOR REMEDIATION GRANTS

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- Section 104(k)(3)(A)(ii) is amended to **increase the cleanup grant funding amount to \$500,000 per site**;
- EPA may allow eligible entities an opportunity to request a waiver of up to \$650,000 per site, based on the anticipated level on contamination, size, or ownership status of the site.
- In FY19, eligible entities may apply for one cleanup grant of up to \$500,000 to address contamination at one or more brownfields.





# SECTION 9: MULTIPURPOSE BROWNFIELDS GRANTS

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- Section 104(k)(4) is amended to provide EPA with the authority to award **multi-purpose grants** of up to \$1,000,000.
- Criteria for multipurpose grants shall also consider how entities are able -
  - To provide **an overall plan for revitalization** of one or more brownfields in a proposed area in which the multipurpose grant will be used;
  - Demonstrate **capacity to conduct the range of eligible activities** funded by the multipurpose grant; and
  - Demonstrate that a multipurpose grant will meet the needs of one or more brownfields in the proposed area.
  - Entity **must own the site to expend any grant funds for remediation.**
- No more than 15% of EPA's total appropriation can be awarded in multi-purpose grants (e.g., \$12M if funding is \$80M).



# SECTION 10: ALLOWING ADMINISTRATIVE COSTS FOR GRANT RECIPIENTS

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- Section 104(k)(5) is amended to:
  - Remove the administrative cost prohibition on 104(k) grant funds.
  - Entities will now be able to use **up to 5% of grant awards on administrative costs.**

# SECTION II: NEW RANKING CRITERIA

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- Section 104(k)(6)(C) is amended to add **new statutory grant ranking criteria** for the competitive grants to:
  - Prioritize grant funding to **sites adjacent to a body of water or a federally designated flood plain.**
  - Prioritize grant funding for sites that would **facilitate renewable electricity from wind, solar, or geothermal energy; or any energy efficiency improvement** project at a brownfield site.



# SECTION 14: SMALL COMMUNITY TECHNICAL ASSISTANCE GRANTS

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- Section 128(a)(1)(B) is amended to authorize a new grant program using CERCLA 104(k) funding for states and tribes to provide training, technical assistance, or research for small communities (15,000 or less), Indian tribes, rural areas, and disadvantaged areas.
  - A maximum of \$20,000 per community and no more than \$1,500,000 total of technical assistance funding can be used for these grants.
  - Disadvantaged Area definition – a community with an annual median household income that is less than 80% of the statewide annual median household income, as determined by the most recent census
  - Small Community definition – a community with a population of not more than 15,000 individuals, as determined by the most recent census.
- This will be funded with 104(k) funding and be included / rolled into state and tribal 128(a) cooperative agreements.



# NEED ADDITIONAL INFORMATION ?

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- **U.S. EPA Brownfields Website:**
  - **[www.epa.gov/brownfields](http://www.epa.gov/brownfields)**
- **Patricia Overmeyer**
  - **[Overmeyer.patricia@epa.gov](mailto:Overmeyer.patricia@epa.gov)**