



ASTSWMO, Providing Pathways to Our  
Nation's Environmental Stewardship Since 1974

## **ASTSWMO POSITION PAPER 128(a) Brownfields Funding**

### **Introduction**

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (Pub.L.No. 107-118, 115 stat. 2356, "the Brownfields Law"). The Brownfields Law amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) by providing funds to assess and clean up brownfields; clarified CERCLA liability protections; and provided funds to enhance State and tribal response programs. Other related laws and regulations impact brownfields cleanup and reuse through financial incentives and regulatory requirements.

### **The Importance of Brownfield Redevelopment**

Brownfields, properties that are abandoned or underutilized due to contamination or the perception of contamination, are evidence of our country's proud industrial, commercial and social heritage. These once thriving properties, now abandoned, contribute to the economic, social and environmental decline in our communities. However, their redevelopment has substantial benefits including:

- Creating jobs and sparking private investment;
- Addressing environmental issues that threaten public health;
- Encouraging the reuse of existing infrastructure, therefore eliminating the need to create new roads, electrical and water services;
- Increasing property values and the tax base where redevelopment occurs and;
- Facilitating community revitalization.

### **The State and Territorial Program Role**

Since the Brownfields Law was signed in 2002, funding to States, Territories and Tribes, via the 128(a) Brownfield Grant, has been essential for States and Territories (States) to build and maintain successful State brownfield programs. The funding that States and Territories receive each year provides critical assistance to local units of government, corporations, and other organizations, who oversee the day-to-day cleanup and redevelopment of blighted, underutilized, and contaminated properties. Each State has individualized its program to be responsive to the redevelopment needs present within its borders. Services provided by State and Territorial programs include:

- Providing Phase I environmental site assessments of properties to meet all appropriate inquiry (AAI) standards;
- Conducting Phase II sampling to identify hazardous substance and petroleum contamination, asbestos and lead inspections and in some cases ecological and geotechnical services as needed for project completion;

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- Supporting community officials in the planning and preparation of applications for U.S. EPA Brownfield Assessment, Cleanup or Revolving Loan Fund Grants;
- Conducting outreach and education for organizations, communities and others in order to inform them about the brownfield redevelopment process, incentives for projects and services available through both State and Federal programs;
- Providing risk assessments and communications services in order to protect public health and keep community members informed;
- Meeting with community officials and others to provide assistance and mentoring as they work through assessment and cleanup of brownfield properties;
- Providing technical support and recommendations on projects; and
- Supporting voluntary cleanup programs, which provide the foundation for the safe reuse of properties.

Unlike many other environmental programs which began at the Federal level, with States taking over authority to run various aspects, States and Territories are primarily responsible for the development and maintenance of brownfields cleanup and redevelopment programs. States have developed their own, unique State-specific statutes, rules and regulations to govern voluntary cleanup of contaminated sites and provide liability releases or letters of comfort to fit the needs of each individual State. However, the programs are sufficiently consistent to allow 25 States to execute a voluntary cleanup program (VCP) Memorandum of Agreement (MOA) with their respective EPA Regional authorities. These MOAs promote State-Federal coordination, define general roles regarding the cleanup of sites and provide predictability and consistency for those completing a cleanup under State authority.

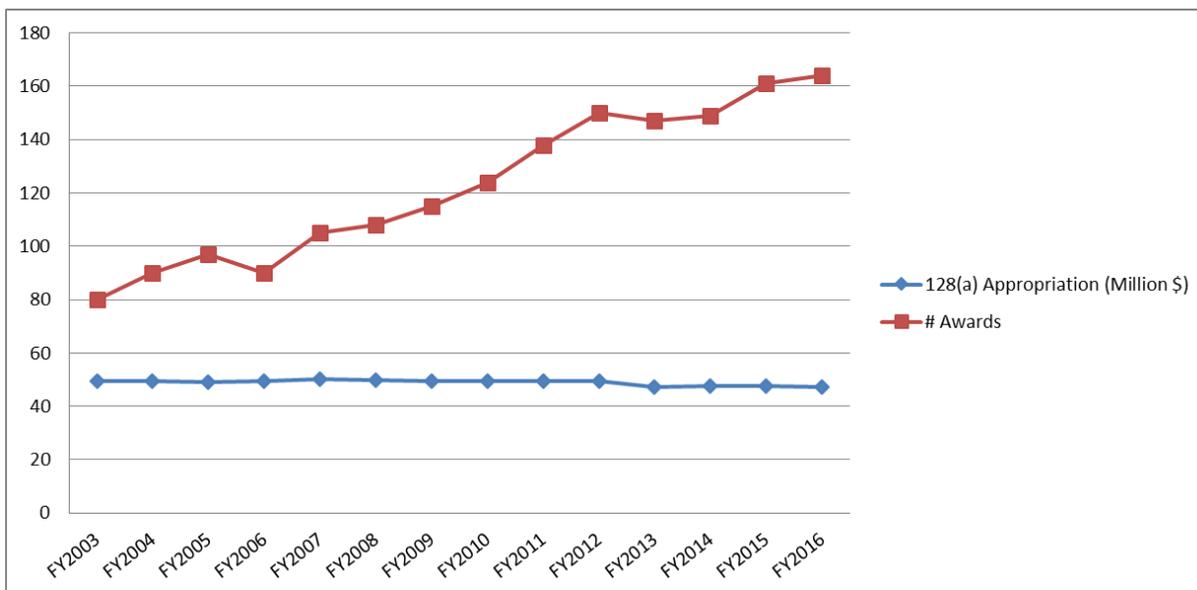
The States have also developed a variety of incentives to encourage cleanup and redevelopment of contaminated/potentially contaminated properties depending on the economic and social needs of their States. Such tools include, but are not limited to, tax incentives, low-interest loans, grants and liability protections. For example, Virginia provides a tax exemption for increases in property taxes which can cap taxes for up to 5 years. Wisconsin offers low-interest loans and grants to local units of government so they may conduct assessments of their brownfield properties. Idaho has a Community Reinvestment Pilot Initiative, which for 10 sites, rebates up to 70% of approved remediation costs up to a maximum rebate of \$150,000. Massachusetts' Mass Development Brownfields Redevelopment Fund was capitalized by the legislature in 1999 with \$30 million to support brownfield cleanup and redevelopment and recapitalized the program in 2006 with an additional \$30 million.

Because States have primary responsibility for operating brownfield/VCP programs, the key to continued success of brownfields cleanup and redevelopment in the nation is the economic health and viability of State programs. The brownfields program at all levels is one of the few programs which has successfully bridged the gap between environmental cleanup and economic development by often integrating cleanup with redevelopment.

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### 128(a) Funding Background

Since the Brownfields Law's beginnings in FY2003, 128(a) funding has been provided to States, Territories and Tribes with the national funding level remaining at just under \$50 million, whereas the number of applicants has continued to rise to nearly double. The graph below illustrates the changes in funding awards, from a static pot of funding over the years. In FY2003, 80 States, Territories and Tribes received funding from a total appropriation of \$49.4 million. By FY2016, 164 entities requested funding including 50 States, 4 Territories, the District of Columbia and 109 Tribes, 8 of which were new applicants. The total funding requested in F20Y13 was \$54.2 million and the total budget allocated in FY2016 was \$47.3 million. The awards in FY2003 averaged \$618,000, however, by FY2016 the average award had dropped to \$293,000 nearly half of what had been awarded in FY 2003. This dramatic decrease in award amounts is directly attributable to the steadily increasing demand and competition for these essential funds. It is noted that the FY2017 anticipated budget is \$47.7 million (this is pre-rescission), and 170 entities requested funding.



As a result of this increasing demand on 128(a) funds, the vast majority of States are receiving less funding each Federal fiscal year. This, coupled with inflation, greatly hampers States' abilities to address brownfield redevelopment through a full complement of services. Adjusted for inflation based on the Bureau of Labor Statistics Consumer Price Index, 128(a) brownfield funding would have had to have been granted at over \$66 million in 2015 to be current with inflationary rates.

### Impacts on State Programs

Although most States do not rely solely on 128(a) funding alone to support their brownfields and State response programs, 128(a) funds are an essential component of each State's program. The additional funding many States utilize includes program fees, special cleanup funds and, in some cases, general revenue funds; however, most of these sources have either decreased or remained flat given the slow economic recovery since 2008. Few of the States receive sufficient State

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funding to cover all program costs. As a result, States have had to resort to cost saving measures, such as reducing staff dedicated to brownfield functions, cutting or eliminating the amount of assistance provided to local communities and reducing the number of 128(a) funded assessments.

Many States use their 128(a) funding to conduct site-specific activities such as Phase I and Phase II Environment Site Assessments or cleanup planning to assist rural and economically disadvantaged communities. Services through the State and Federal brownfield programs are often the only resources available to these areas. Rural and high poverty areas are often disproportionately impacted by brownfields. However, redevelopment in those same areas often yield relatively high economic, social and environmental impacts. The 128(a) funding also allows the States to provide technical, administrative and public outreach to these communities in support of these site-specific activities. Considering the current economic situation, some States have eliminated all direct funding assistance to their local communities or have been unable to recapitalize State-administered brownfield funds and have redirected that funding into staff salaries.

At a time when most States are struggling to meet basic revitalization needs because of decreased funding and inflation, there is an increasing workload placed on the States as developers and bankers turn to State brownfield and voluntary cleanup programs as a cost-effective means to promote property revitalization projects. In addition, State programs are increasingly dealing with more complex sites with multiple exposure pathways and ever expanding contaminant concerns, such as vapor intrusion, which add to an already overburdened State program.

The 128(a) funding forms the foundation on which many State programs are developed, and, without sufficient funding, a gap remains that is difficult to bridge regardless of other funding sources. States have traditionally served as a source of continuity for communities navigating redevelopment and have been relatively nimble in responding to needs of communities. If these programs become ineffective due to lack of funding, confidence in the program will erode and resurrecting these programs will be difficult if additional funding ever does become available.

### **Brownfield Return on Investment**

Conducting studies to effectively and accurately document and quantify the full impact of brownfields funding has been a challenge due to the numerous factors affecting outcomes, the widely varying conditions and demographics across the county, the extended time frames often needed for redevelopment and the specific objectives of individual States. However, the studies completed have shown brownfields funding, and particularly 128(a) monies, play a vital role in successful redevelopment. It has been demonstrated repeatedly the tremendous value Federal brownfields money has on the State programs, local communities, the leveraging of State-local community funding, economic development and the increase in tax base.

- The University of Delaware has published two well respected studies: *Economic Impact of Delaware's Economy: The Brownfields Program* dated January 5, 2010; and *Beyond*

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*Natural and Economic Impact: A Model for Social Impact Assessment of Brownfields Development Programs and a Case Study of Northeast Wilmington, Delaware* dated February 2013. The economic study found that every nominal dollar spent through the brownfield program generates a \$17.50 return on the State's initial investment.

- A November 2015 study by the Fiscal and Economic Research Council at the University of Wisconsin found that every \$1 spent for assistance in the State of Wisconsin leveraged \$27.25 in total funds and that \$3,000 in brownfield funding leverages one job.
- Since 2015, Oklahoma has garnered over \$10 million in new State and income taxes annually on remediated sites. There has also been a 147% increase in job growth on redeveloped brownfields and surrounding sites.
- A 2014 study by ECONorthwest found that every \$1 invested in brownfield redevelopment in Oregon resulted in \$15 of leveraged funding. The 51 completed sites in the survey generated 4,300 permanent jobs, of which 60% are in the industrial sector. In total, 8,900 indirect and direct jobs were created.
- The Michigan Department of Environmental Quality (MDEQ) reports that in 2016 the return on investment on brownfield funding is \$34 for every dollar of MDEQ funding.

Even more challenging to demonstrate are the socio-economic values of brownfields revitalization which include the decrease in crime as redevelopment occurs, the creation of more livable communities, increase in wages with revitalization, and overall community health and welfare as environmental conditions improve.

### **ASTSWMO Position**

States have faced significant funding issues due to ongoing challenging economic conditions. Their brownfields programs are no exception. Without these programs, or if the programs are insufficiently staffed, there are fewer resources to ensure that 1) cleanups meet State risk standards and, 2) when non-permanent remedies are employed, that institutional controls critical to protecting future users of the property are in place and monitored regularly to ensure compliance.

Sufficient funding for State brownfield/voluntary cleanup programs via the 128(a) Brownfields Grant process is essential for developing and maintaining a successful brownfield cleanup and redevelopment process throughout the nation. As brownfield redevelopment becomes increasingly important to the nation's economic growth, the need for this funding grows critical. Without increased funding, many States may be forced to cut back their already underfunded brownfields and voluntary cleanup activities as well as assistance to municipalities. This will impact all communities, but particularly the small and rural communities that need brownfields redevelopment assistance so desperately.

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Insufficient funding will impact our ability to respond to the national crisis involving the country's failing infrastructure. Growth around urban boundaries, while attractive short-term, creates more infrastructure, which the country can ill afford. Brownfield reuse not only creates economic and social improvement opportunities, it also allows communities to use infrastructure that is already in place, reducing initial investment costs and long-term maintenance expenses.

ASTSWMO believes a robust brownfields program, at all levels of government and working in concert with the private sector, is essential to the nation's environmental, economic and social health, and without adequate funding for State, Territorial and Tribal brownfield and voluntary cleanup programs, brownfield program goals cannot be achieved. The current funding level is inadequate and should be increased to reflect and accommodate the steady increase in applications for 128(a) grant funding that has occurred over the last 14 years.

Approved by the ASTSWMO Board of Directors on April 27, 2017, in Cleveland, OH.