

BROWNFIELDS IN ERA OF TRUMP:



What the New Administration Means for the Future of Site Cleanup and Redevelopment

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What this discussion will cover...

- **Current redevelopment climate for brownfields**
- **EPA/brownfield programs**
 - *Administrative actions, prospective FY18 funding*
- **Federal economic development programs**
 - *Prospective FY18 funding*
- **Impact of tax reform**
- **Heard on the Hill – Brownfields legislation**
- **What all this means for brownfields financing**
 - *Trends to watch*
- **Lessons for Pennsylvania communities**



Today's Brownfield Redevelopment Climate:

What federal policies could impact contaminated property/sustainable re-development transactions? What concerns practitioners now?

- *Regulatory uncertainty*
 - *Rule roll-backs, anticipated legal challenges*
- *Availability of federal redevelopment investment funding and incentives*
 - *Trump proposals v. Congressional reality*
 - *What sure things still exist?*
- *Congressional brownfield action*
- *What environmental steps is the private sector taking?*

FY 2018 Trump Policy & Funding Proposals for EPA



Initial EPA proposal to OMB

- 25% cut for FY18, from \$8.2 billion to \$6.1 billion

Pass back from OMB, per Trump FY18 proposal

- 31% cut (\$2.5 billion), from \$8.2 billion to \$5.7 billion
- Staffing reduced by 3,200 FTEs, to approximately 12,000
 - *For Brownfields – 1/3 of HQ, nearly all regional staff*
- Focus on “core legal requirements”
- Reduce/eliminate regulations
- Devolve regional/non-core functions to states
 - *Would de facto shift much brownfield support, oversight to states/localities*

What EPA/Trump Administration CAN Do – Without Congressional Concurrence

- **Leave political positions unfilled**
 - *Reserve decision-making to Administrator's office*
- **Change enforcement priorities**
 - *Enforcement discretion is reserved to the Executive branch*
- **Modify guidance documents, NOFAs**
 - *Shift/eliminate current priorities (i.e., brownfields Area-Wide Planning, sustainable communities, renewable energy)*
- **Internal administrative actions**
 - *Reassign/re-align staff within offices
(brownfields/climate/enforcement/environmental justice)*
 - *Offer early retirements/buyouts*



V.



FY 2018 appropriations –

- **Building blocks for brownfield redevelopment/ financing partnerships?**
- **Or a potential train wreck this year?**



Congressional action imminent

- **2 week extension passed (to 12/22) last night by House and Senate – waiting Trump signature**



EPA Brownfield Appropriations for FY 2018 – Progress so far...



Brownfields program total

- *FY 17 enacted – \$153.3 million*
- *FY 18 House – \$163.2 million*
- *FY 18 Senate – \$153.3 million*
- *Trump request – \$118.5 million*

Project grants

(assessment/cleanup/RLF)

- *FY 17 enacted – \$80 million*
- *FY 18 House – \$90 million*
- *FY 18 Senate – \$80 million*
- *Trump request – \$69 million*

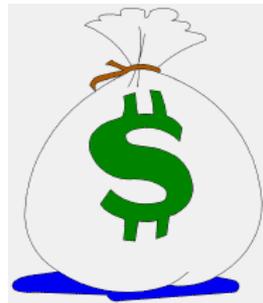
Grants to states (128a funding)

- *FY 17 enacted – \$47.7 million*
- *FY 18 House – \$47.7 million*
- *FY 18 Senate – \$47.7 million*
- *Trump request – \$33.4 million*

Management/t.a./staffing/other

- *FY 17 enacted – \$25.6 million*
- *FY 18 House – \$25.5 million*
- *FY 18 Senate – \$25.6 million*
- *Trump request – \$16.1 million*

FY 2018 Appropriations – Progress so far....about other e.d. programs



CDBG – national total

- FY 17 enacted – \$3.0 billion
- FY 18 House – \$2.9 billion
- FY 18 Senate – \$3.0 billion
- Trump request – \$0

EDA – national total

- FY 17 enacted – \$276 million
- FY 18 House – \$176 million
- FY 18 Senate – \$254 million
- Trump request – \$30 million

DOT – Highways national total

- FY 17 enacted – \$43.1 billion
- FY 18 House – \$45.0 billion
- FY 18 Senate – \$45.0 billion
- Trump request – \$45.0 billion

DOT – Transit national total

- FY 17 enacted – \$12.4 billion
- FY 18 House – \$11.5 billion
- FY 18 Senate – \$12.1 billion
- Trump request – \$11.2 billion

USDA –Community facility loans total

- FY 17 enacted – \$2.6 billion
- FY 18 House – \$2.6 billion
- FY 18 Senate – \$3.0 billion
- Trump request – \$0

USDA – Business & industry program

- FY 17 enacted – \$920 million
- FY 18 House – \$819 million
- FY 18 Senate – \$920 million
- Trump request – \$0



Tax Reform and its Impact on Key Incentives Used to Finance Brownfield Redevelopment



House and Senate versions of H.R. 1 contain some differences to be resolved, but at this point include the following provisions – which will have a significant impact on tools that brownfield practitioners have come to rely on for leveraging

- Tax code revision is poised to make taking risk less attractive, less rewarding – **what does this mean for brownfields financing?**



House Tax Reform Bill as Passed – potentially devastating

- Elimination of key incentives after 2017 –
 - *New Markets Tax Credits*
 - *Historic Rehabilitation Tax Credits (20%)*
 - *Non Historic Rehabilitation Tax Credit (10%)*
 - *Low Income Housing Tax Credits (4% PAB)*
 - *Renewable energy investment tax credit (10%)*
 - *Tax exemption for private activity development bonds*
- Renewable energy production tax credit reduced (from 2.4 cents per kWh to 1.5 cents per kWh)



Senate Tax Reform Bill as Passed – bad, but not catastrophic

- New Markets Tax Credits – *2018, 2019 rounds retained*
- Historic Rehabilitation Tax Credits (20%) – *retained, but now claimed over 5 years*
- Non Historic Rehabilitation Tax Credit (10%) – *repealed*
- Low Income Housing Tax Credits (4% PAB) – *retained*
- Renewable energy investment tax credit (10%) – *retained*
- Renewable energy production tax credit reduced – *retained*
- Tax exemption for private activity development bonds – *retained*

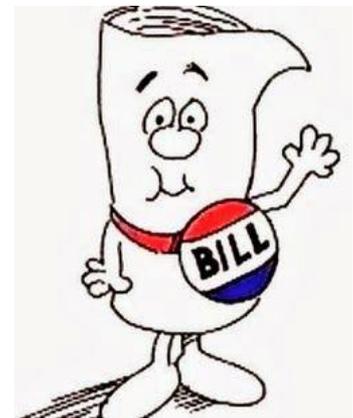
Congressional interest/action in brownfields: 2017 so far

House passed HR 3017 on November 30th:

- Maintains authorization at \$200 million for project grants and program administration, \$50 million for states/VCPs
- Makes orphan petroleum brownfield sites eligible for grants
- Expands non-profit eligibility
- Increases assessment/cleanup grants to \$500,000
- Allows multi-purpose grants up to \$1 million (up to 15% of program funding)
- Clarifies liability for governmental entities – excludes them from the definition of “owner or operator”
- Small communities t.a -- \$20,000 grants, \$1.5 million total
- Requires EPA to consider potential for renewable energy when ranking grant applications
- Allows 5% administrative costs

Senate bipartisan BUILD Act introduced on April 4

- **S 822** – marked up, reported out of committee on July 12
- Includes most provisions of House-passed bill, similar funding levels



Brownfield Bill Provisions – A Conceptual Look at Possible Impacts and Viability

Expanding eligibility

- Reflects current public-private partnership real estate development trends and opportunities

Codifying Area-wide Planning, other initiatives

- Brings certainty, eliminates “whim” changes

Targeting – for renewable energy, waterfront, green infrastructure, others

- Hamstrings EPA’s flexibility, could skew community priorities/grants competition, reduce ability to address emerging situations

Establishing small community t.a. grants

- Grants so small would be an administrative challenge and tax the capacity of both communities (to apply) and EPA (to administer)

Provide EPA loaned staff to small/disadvantaged communities

- Impractical, given staffing reductions underway

Increase funding for cleanup grants, other grants

- Without increased appropriations, could reduce number of annual grants by 30% to 50%

Authorization levels

- Focus needs to be on what’s appropriated; EPA has never gotten more than ½ of current authorized level

Bundling and Leveraging BF Financing Resources: Key Trends to Watch

- New types of leveraging that emerge from current federal financing/incentive uncertainty
 - *What types of tools will evolve to replace the potential loss of federal tax incentives?*
- States' response to shifting federal tax code –
 - *Will they offer more of their own tax abatements, credit enhancements, expand eligible business/economic development programs to compensate?*
- Locals' response to shifting federal tax code –
 - *Will they offer more local abatements, TIF, etc. to compensate? What can be given a brownfields “spin”?*

Options that cities are exploring now...

- Earmarking water, sewer, wastewater charges for brownfield cleanup
- Using monies raised from fees/fines for a brownfield financing pool or RLF
- Using tax liens, nuisance ordinances to “encourage” private site cleanup and reuse
- Brownfield zoning or marketing strategies
- Expedited permitting, property transfers
- More sophisticated approaches to dealing with risk – insurance pools, forming intermediaries
- Promoting multiple site/combined site process approaches – area-wide planning

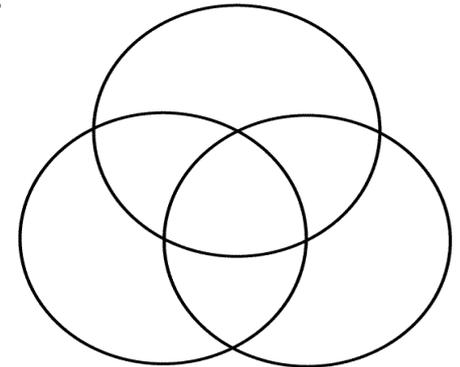


So – What’s next in this volatile climate for brownfields?

*“Fasten your seatbelts...
it’s going to be a bumpy ride”*

Key take-aways TODAY:

- Public-private partnerships will be key, and this is the time to develop new ones that fit with current trends*
- Think creatively about ways to integrate “brownfields” into new areas – make it the center of your new “Venn diagram” of redevelopment*



What All This Means for Pennsylvania Communities...



- Less reliance on federal assistance
- Need to recalibrate project financing strategies
- Need creative use of resources
- Thinking unconventionally – using a blend of guarantees and tax incentives in addition to grants
- Need to develop new resources – revamped TIF? Brownfield guarantees? State-local guarantees in tandem with federal grants? Contingency/shortfall pots of \$\$?

What All This Means for Pennsylvania Communities...



- Advocacy on all levels to support tool/incentive continuation/creation
- Education/outreach/events to take advantage and channel Congressional/state legislative/local council interests
- Document results and make the case! Brownfields offer an excellent ROI on public investment, in communities of all size, for projects of all type
- This is still news to many public officials



For additional examples and information....

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