

Statement of

The Honorable Matt Zone
Councilman, City of Cleveland, Ohio
President of the National League of Cities

On behalf of the National League of Cities

Before the House Transportation and Infrastructure Committee,
Subcommittee on Water Resources and Environment

“Building a 21st Century Infrastructure for America: Revitalizing American Communities through the Brownfields Program”

March 28, 2017

Good morning, Mr. Chairman and Members of the Committee. I am Matt Zone, Councilmember from Cleveland, Ohio and President of the National League of Cities (NLC). I am here today on behalf of the National League of Cities, the oldest and largest organization representing local elected officials in America’s cities and towns. NLC represents 19,000 cities and towns of all sizes across the country. I appreciate the opportunity to share the perspective of local elected officials on the importance of the U.S. Environmental Protection Agency’s (EPA) Brownfields program, how the program contributes to the revitalization of communities, and boosts the local and national economy.

As an older industrial city, Cleveland’s legacy of manufacturing and commerce is now symbolized by numerous abandoned structures, obsolete buildings, leaking underground storage tanks and polluted properties. The impact of our industrial legacy has spread across our neighborhoods, killing once vibrant areas and leaving behind dead zones. The factories that once built America and employed thousands of Clevelanders are no longer an asset—they are a liability. To regain our stature as a great American city once again, we will need help in revitalizing our land and buildings.

Local governments approach brownfields redevelopment as an economic development activity. However, strategically redeveloping these contaminated properties means much more than dollars and taxes. It means correcting the environmental injustices unduly thrown upon those living in our impoverished neighborhoods that are host to a disproportionate share of brownfields. It means protecting our first responders by eliminating contaminated enclaves of criminal activity and structures of high fire risk. For Cleveland, it means protecting Lake Erie and our streams and rivers. It also means creating a more sustainable future by promoting urban infill rather than urban sprawl and incorporating more environmentally-friendly design and building stock into our existing urban fabric.

Brownfields sites threaten the health and well-being of communities and are a missed economic opportunity. Redevelopment of these unproductive properties allows local governments to attract jobs and investment to distressed communities while simultaneously addressing public health and safety concerns. The EPA Brownfields Program is vital for local governments in aiding their redevelopment efforts and supporting the productive reuse of property, which otherwise remains a blight on the community. Since its creation, the program has provided crucial assistance to local governments for reuse of hazardous, polluted and underutilized properties.

The Brownfields program has a proven track record of leveraging additional investments, creating new jobs, and redeveloping properties, while creating additional tax revenues. To date, there have been over 26,000 brownfields assessments and 1,200 brownfields cleanups nationally, which has led to over 123,000 jobs. Each of the \$22 billion federal dollars that has been invested since the program was established in 2002 has leveraged approximately \$16 in other investments—close to \$400 billion in total. It is estimated, however, that there are over 450,000 brownfields remaining in the United States. More must be done to make brownfields redevelopment a viable option for more communities.

The City of Cleveland has had a successful partnership with the State of Ohio and EPA in utilizing the Brownfields program to redevelop our urban landscape. Since 2008, the City of Cleveland has directed \$6.2 million in federal, state and local resources towards brownfields assessments. Through these assessments, the city identified 1,155 acres of land with contamination. To date, the city has redeveloped 13 sites, totaling 137 acres, through our Industrial Commercial Land Bank, creating or retaining over 2,800 jobs.

While we have seen great success in Cleveland, there is still much work to be done. Investment in and cleanup of the brownfields sites that are a blight on urban and rural communities across the country is an investment in our nation's civic infrastructure, and infrastructure investment is essential to moving America forward. President Trump has made reinvesting in America a key priority of his administration, and we believe the brownfields program is one avenue to making good on this promise. In Cleveland, our brownfields redevelopment has brought new life to the city, new opportunities for our residents, and new businesses. To build upon these past successes and assist in the cleanup, reuse and redevelopment of remaining sites, both in Cleveland and in cities and towns across the country, some key improvements to the program are needed, but importantly, we ask Congress to increase or maintain the current authorization level for the EPA brownfields program.

THE CLEVELAND EXPERIENCE: INDUSTRIAL-COMMERCIAL LAND BANK

Since 2004, Cleveland and its coalition partner, Cuyahoga County, has received \$2.3 million in EPA brownfields assessment grant funds that has led to the cleanup of over 100 acres. Assessment dollars are critical to local governments, as they support the first, and most risky, phase of a redevelopment project. Assessment funds granted by the EPA Brownfields program assist local governments in evaluating the extent of contamination and potential costs for remediation. The City of Cleveland has successfully used these grants to leverage over \$100 million in development. Without these funds many projects would not have gone forward.

In addition to assessment dollars, the City of Cleveland also received technical assistance from EPA. This assistance is just as critical to local governments as grant funds. With the technical assistance of an expert brownfields professional from the EPA Region 5 Brownfields Office, the city's development department has increased their capacity to redevelop brownfields in Cleveland.

The City of Cleveland, through its partnership with the EPA, State of Ohio, local businesses and other entities, implemented a land bank program in 2005, targeting former industrial and commercial properties for redevelopment. Known as the Industrial-Commercial Land Bank, the rationale for the program is simple—to strategically invest our limited local resources in properties that would, if not for the investment, sit unused for decades.

The land bank allows the city to take a holistic approach to brownfields redevelopment and to take on multiple projects at a time. Currently, the city is redeveloping nearly 140 acres of brownfields properties through the land bank program and has invested over \$40 million in demolition and cleanup costs. Three projects are of particular interest in terms of their economic impact, degree of contamination, and liability concerns for the city.

Trinity Building

One of the most complex redevelopment projects the city has undertaken is referred to as the "Trinity Building." This six-acre site, while small, posed huge challenges to the city and put the land bank program in jeopardy due to the lack of federal liability protections afforded to local governments that assume the responsibility of cleaning up contaminated properties polluted by previous users. Additionally, the current cap on assessment grants for each community limits the city's ability to invest in multiple properties at one time.

The Trinity Building, once the workplace to over 500 Clevelanders, sits on a main thoroughfare adjacent to a daycare, multi-family housing, a nursing home and several commercial businesses. In the 1980s the company that occupied the Trinity Building relocated out of state. By the mid-90s, after many failed attempts to encourage the property owner to voluntarily bring the building up to code, the abandoned building became a blight on the community that posed a risk to public health and safety. Demolishing and remediating the property was the only solution to these problems, and it wasn't until the city established its Industrial-Commercial Land Bank that a local mechanism was available for implementation.

The city eventually took ownership of the property through a foreclosure action. Using the land bank as a mechanism, the city determined that it was in the best interest of the neighborhood to demolish the building and remediate the land. Within a year, the city allocated \$2.9 million for these costs. In early 2007, the city discovered unforeseen PCB (polychlorinated biphenyl) contamination. Because the cost and extent of the risk to public health and the environment was beyond the capacity of the city, the city requested that EPA investigate the contamination and take immediate response measures to protect adjacent residents and businesses. During the summer of 2007, EPA conducted interim response actions under Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, also known as Superfund) to address the most urgent public health matters.

In December 2007, EPA notified the City of Cleveland that it was a party potentially liable for the cleanup under Superfund. Fortunately, the city was able to work with EPA to reach a determination that the city did not cause or contribute to the site contamination. EPA was able to identify a Responsible Party who oversaw the Emergency Response remediation action and reached a settlement with the city and EPA. However, the Emergency Response action did not fully complete the remediation of the site under the Ohio Voluntary Action Program. The city was required to undertake additional remediation actions to complete the remediation. Although the city and EPA were able to reach an agreement protecting the city, the delays and uncertainty caused by years of litigation caused substantial delays in the remediation project, ultimately increasing costs to the city.

The 2002 amendment to CERCLA that established the brownfields program was a step in the right direction, but as the portfolio of risky, polluted properties in our urban cities is growing larger and larger, the exposure to liability, such as the one Cleveland experienced with the Trinity Building, makes redevelopment of these sites impractical and cost-prohibitive.

Link59 Campus

The City of Cleveland first identified the 12-acre former Ohio Knitting Mills site in the heart of Midtown as a candidate for redevelopment in 2002. The city worked with two development groups to investigate and remediate the site before finally undertaking the remediation efforts itself in 2009. The city was able to secure \$3 million in grant funding from the State of Ohio and spent an additional \$5 million in its own funds over the course of 10 years to secure a No Further Action Letter from the Ohio Voluntary Action Program in 2012. However, in addition to the environmental issues, the site had significant geotechnical issues and a site restriction that required further remediation. In order to move the project forward, the city secured a \$10 million HUD 108 Loan and a \$3 million BEDI Grant for the project site. The city ultimately netted almost \$2 million in land sales for the project, a net loss of \$3 million to the city, over and above the \$6 million in grant funding for the project.

The site will be a unique commercial development, featuring health services, retail options, and offices. The western portion of the site will be developed by University Hospitals of Cleveland as an expanded Rainbow Center for Women and Children. The Center will provide a full suite of services for women and children. In addition to routine and specialized medical care, the Center will offer programming in nutrition, mental and behavioral health therapy, and dental care. Additionally, as part of the campus, the development will include healthy food options and programming. The Center's location on a major transit route will increase access for low- and moderate-income residents who often face transportation challenges. The eastern portion of the site will be developed by Hemingway Development with flexible commercial space for health and technology companies. In total, 260 jobs are anticipated to be created at the site.

While this type of development is exactly the type of complimentary, mixed-use development that the market is demanding, this project would not have moved forward without the city expending its own funds and securing substantial grants from our state and the federal government to undertake the remedial activities necessary to make the site developable. The site

serves as an example that EPA's brownfield cleanup grants, generally capped at \$200,000, are far too small to support remediation of contaminated sites at the scale necessary to support high-impact development.

Third District Police Station

The city undertook the remediation and redevelopment of the former Ward Bakery site. The site was originally remediated in the late 1990s and early 2000s, with additional work in 2008. Activities included demolition and removal of asbestos, as well as underground storage tanks. When the site proved unattractive to the market, the city used it for the construction of a new Third District Police Station, relocating from an outdated non-descript building to a centrally located, highly visible site, causing significant increases in perceptions of safety, as well as upgrading and modernizing our police infrastructure.

When the city was constructing the building, unforeseen underground storage tanks were discovered. Fortunately, the city was able to fund the cost overruns. However, the city was handicapped because there is no funding available on a rolling basis to solve underground storage tank contamination. Greater flexibility or access to EPA's funding would have been helpful in keeping this project on track.

BROWNFIELDS REDEVELOPMENT CHALLENGES AND OPPORTUNITIES

Cleveland truly considers the State of Ohio and EPA to be a partner in the area of brownfields redevelopment, but I come to you today with examples of pressing issues that could jeopardize Cleveland's and other cities' strategic redevelopment policies and with recommendations on how to strengthen the program to achieve a greater return on investment for cities and the economy.

The current vacant property portfolio in Cleveland puts my city at risk beyond previous crises. Local governments need the support of Congress and our federal agencies to revitalize the abandoned properties and buildings that are a blight on our communities. These abandoned buildings cost cities millions by shrinking our tax base, undermining property values and increasing service costs. In addition to depressing the economic well-being of cities, a failure to act compromises the well-being of our residents.

Brownfields redevelopment is inherently a risk. Additionally, brownfields sites are at a competitive cost disadvantage compared to greenfields sites. From the development standpoint, uncertainty about long-term funding availability and the desire to see an instant return on investment, coupled with limited time and money to address brownfields issues, pushes many developers to choose to develop greenfield sites rather than brownfields sites. While greenfield development may be cheaper, it comes at a price to the environment and our cities, including increased urban sprawl, traffic congestion, and stormwater runoff.

Therefore, in order to address this market challenge and make the development of brownfields properties a more viable and attractive option for cities and developers, Congress must reauthorize the program and make key improvements. NLC urges Congress to increase or maintain the overall funding authorization level for the EPA Brownfields program, increase the

overall grant funding to allow communities to cleanup more difficult sites, and resolve the disincentives created by potential liability to facilitate reuse of brownfields properties.

Increase overall grant funding to allow communities to cleanup more difficult sites.

Although many brownfields sites have been redeveloped, what remains are brownfields sites that are more difficult to redevelop due to their level of contamination or marketplace conditions. Expanding the EPA brownfields program would allow communities to address the cleanup challenges at these more complex sites.

We suggest the following:

- **Increase Cleanup Grant Amounts** – Congress should recognize the complexity of the cleanup process for larger or more complicated sites by increasing the funding limit for cleanup of a single site to \$1 million. Under special circumstances, EPA could waive the limit, up to \$2 million per site.
- **Establish Multi-Purpose Brownfields Grants** – Congress should allow local governments to have the option to apply for multi-purpose grants that can be used for the full range of brownfields-funded activities (assessment, cleanup, reuse planning, etc.) on a community-wide basis. Applicants should be required to demonstrate a plan and the capacity for using this multi-purpose funding within a set timeline in order to qualify for such funding.
- **Allow Funding for Reasonable Administrative Costs for Local Brownfields Programs** – Congress should allow brownfields grant recipients to use a small portion (10 percent) of their grant to cover reasonable administrative costs such as rent, utilities and other costs necessary to carry out a brownfields project.

Resolve the disincentives created by potential liability to facilitate the reuse of brownfields properties.

The issue of municipal liability for cleanup costs is a concern for local governments, particularly if they were not involved in the contamination of the site. As a general rule, under current law, local governments have a disincentive to cleanup and develop brownfield properties because of the liability that they could face. Often, as involuntary owners of brownfields property, many local governments are wrongly designated potentially responsible parties and held liable for cleanup. The fear of such designation has led to municipalities choosing not to invest in the cleanup or development of land, not because they do not want to, but because they cannot afford the liability costs. Addressing the local liability issue does not constitute a rollback of environmental protections, but rather corrects a market challenge and further incentivizes the redevelopment of brownfields properties.

We encourage Congress to revise CERCLA to encourage and protect local communities who choose to take ownership of blighted properties for the purpose of brownfields redevelopment where the local government had no role in creating the contamination by providing a waiver, a

definitive limitation, or elimination of liability for non-contributing local governments coming into title of previously contaminated properties involuntarily. These changes should include:

- **Clarify Eligibility of Publicly-Owned Sites Acquired Before 2002** – Congress should allow local governments to be eligible for grant funding for properties that were acquired prior to the January 11, 2002 enactment of the Brownfields Revitalization Act—when there was no required standard for “all appropriate inquiries”—provided that the applicant did not cause or contribute to the contamination and performed “appropriate care.” For these sites, applicants would not have to demonstrate that they performed all appropriate inquiry.
- **Remove Barriers to Local and State Governments in Addressing Mothballed Sites** – Congress should exempt local and state governments from CERCLA liability if the government unit (a) owns a brownfields property as defined by section 101(39); (b) did not cause or contribute to contamination on the property; and (c) exercises due care with regard to any known contamination at the site. We suggest language to amend section 101(20) (D) that clarifies that properties acquired through eminent domain qualify for the CERCLA exemption for local governments involved in “Involuntary Acquisitions.” Alternatively, we would suggest language that establishes a simplified and clear exemption from CERCLA liability for local governments that acquire brownfields sites.

In closing, the City of Cleveland has the experience and expertise to address the brownfields in its neighborhoods. The city established a land bank program to prepare brownfields sites for economic growth. Cleveland’s story and experiences are no different than any other American city with an industrial legacy. Congress showed great leadership amending CERCLA in 2002. While progress has been made and beneficial relationships formed among local, state and federal entities, the federal brownfields program has not achieved its full potential. The Federal government must continue its commitment to the brownfields program and to the cities protecting its citizens and the environment from the dangers these sites pose to reuse the properties for new economic opportunities.

On behalf of the National League of Cities and the City of Cleveland, I thank you for the opportunity to submit this testimony on a most timely issue. I look forward to your questions.