

The BUILD Act & EPA's Brownfields Program

June 6, 2018





Webinar Topics

- I. BUILD Act Overview
- II. Implementation – Immediate (FY18 grant recipients and beyond)
- III. Implementation – Future (FY19 grant recipients and beyond)
- IV. Federal Register Notice – Stakeholder Input
- V. Next Steps
- VI. Q & A

The 2002 Brownfields Amendments to CERCLA



Subtitle A – Brownfields Revitalization Funding

Subtitle B – Brownfields Liability Clarifications

Subtitle C – State Response Programs

✦ Recently Amended by the Brownfields Utilization, Investment, and Local Development Act (**BUILD Act**) - enacted on March 23, 2018

BUILD Act Amendments – Ownership and Liability



- Amended §101(20)(D) by removing “involuntarily” and providing certainty to governmental entities that acquired ownership or control of a site by virtue of its function as sovereign
- Amended §101(20) to provide relief for Alaska Native Villages and Native Corporations
- Added exemption of certain publicly owned sites for grant eligibility
 - Can receive grant funds for sites acquired prior to January 11, 2002, so long as did not contribute/cause contamination
- Revised §101(40) Bona Fide Prospective Purchaser definition to include tenancy or leasehold interests

BUILD Act Amendments – Competitive Grant Programs



- Expanded Eligibility for Nonprofit Organizations and limited liability corporations
 - Adds 501(c)(3) nonprofits as eligible to receive assessment and RLF grants
- Increased Funding for Cleanup Grants
 - Up to \$500k per site; waiver up to \$650k
- Established a Multi-Purpose Grant (§104(k)(4))
 - Up to \$1 M; no more than 15% of 104(k) appropriation
- Added two new Ranking Criteria for grant programs
- Removed Administrative Cost Prohibition
 - Recipients may use up to 5% of award on administrative costs
- Re-authorized level funding at \$200 M each FY 2019 - 2023

BUILD Act Amendments – State & Tribal Response Programs



- Authorized new grant program available to 128(a) recipients to provide training, technical assistance or research for small and disadvantaged communities (15,000 pop or less)
 - Use 104(k) funding, max of \$20k per community, no more than \$1.5 M total
 - Will count towards overall 15% Technical Assistance cap on 104(k) appropriations
- Re-authorized level funding at \$50 M each FY 2019 - 2023

BUILD Act Implementation: immediate provisions



The following provisions will be implemented immediately and are available to FY18 grant recipients and future grant recipients.

- recipients may use up to 5% of award on administrative costs
- petroleum sites no longer will be evaluated as “relatively low risk as compared to other petroleum sites in the State”

BUILD Act Implementation: future provisions



The following will be included in FY19 Brownfields grant guidelines (target release is late fall 2018):

- New eligibility: non-profit 501(c)(3) entities are eligible for assessment and RLF grants in addition to cleanup grants
- Cleanup Grants – up to \$500k for one or more sites that the applicant owns. Max of one grant per entity. Note: Many policy decisions still to be made by EPA regarding waivers for cost share and maximum amounts
- New statutory ranking criteria - the extent to which the grant would:
 - address a site adjacent to body of water or federally-designated flood plain
 - facilitate location of a facility generating renewable electricity from wind/solar/geothermal, or any energy efficiency improvement project at a brownfield site

BUILD Act Implementation: future provisions cont'd



Multi-Purpose Grant – (Guidelines release TBD; Policy decisions under consideration)

- Section 104(k)(4) establishes a multi-purpose grant to carry out inventory, characterization, assessment, planning or remediation activities for 1 or more brownfield sites in an area.
 - Grant max up to \$1,000,000
 - no more than 15% of the total appropriation can be awarded to multi-purpose grants.
 - Up to five year period of performance

- Criteria for multipurpose grants shall also consider how entities are able -
 - To provide an overall plan for revitalization of the 1 or more brownfield sites in the 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 the 1 or more brownfield sites in the proposed area.

- Entity must own the site to expend any grant funds for remediation

BUILD Act Implementation: future provisions cont'd



Small Community Technical Assistance Grants – Available to State and Tribal 128(a) recipients as part of the FY19 allocation process

- 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.

Soliciting Stakeholder Input on EPA's BUILD Act Implementation



- Federal Register Notice with six key questions posed to brownfields stakeholders – published in early June
- Two week response period; stakeholders may submit responses electronically (BUILDAct@epa.gov)
- EPA will review comments
- EPA will not post or respond to comments

Soliciting Stakeholder Input on EPA's BUILD Act Implementation



***Please see the Federal Register Notice or epa.gov/brownfields for full questions, context and reply instructions.**

- **Cleanup Grant Amount Policy**

- How would your community meet the 20% cost share requirement?
- How long does the average brownfield cleanup in your community take? What are the barriers your community experiences to getting the site 'ready for reuse'?

- **Multipurpose Grant**

- Within a target area, which resources does your community need the most – *brownfields inventory, planning, site assessment or site remediation*?
- Please give a brief example of a target area in your community that would benefit from a multipurpose grant.
- What complications and barriers could affect your community's ability to complete these accomplishments within the five-year grant period?

- **128(a) Small Grants**

- EPA anticipates that states and tribes may provide a variety of activities to small and disadvantaged communities under this grant. Besides the ones listed, what other types of activities might be proposed under this grant program?
- EPA proposes to include evaluation criteria for proposals submitted under this grant program to include a community description and demonstration of community support, project purpose, expected outcomes, existing leveraged resources, and timeline. What other types of evaluation criteria are useful for EPA to use to select proposals?

BUILD Act Implementation Timeline



- **Summer 2018:** EPA makes policy decisions on cleanup grant funding amounts, small community technical assistance grants and the multi-purpose grant option
- **Fall 2018:** EPA issues FY19 assessment and cleanup grant guidelines and 128(a) State and Tribal Program allocation guidance
- **Spring 2019:** EPA announces new FY19 grant recipients

BUILD Act Recap & Question/Answer Time



Bigger cleanup grants

Now up to \$500,000.



Non-profits can now apply for assessment and RLF grants, as well as LLCs and community development entities that are non-profit.



Administrative costs can be funded by up to 5% of the grant award.



Multi-purpose grants

(assessment and cleanup combination) up to \$1M can be offered.



Authorized new grant program

available to states to provide training, technical assistance or research for small communities (population $\leq 15,000$). Maximum of \$20,000 per community.



Publicly owned sites acquired prior to Jan 11, 2002 can apply as long as the entity is not responsible for the contamination.



New ranking criteria focusing on renewable energy

or energy efficiency projects and waterfront developments.



More certainty of liability protection

for local or state governments that take control of contaminated sites. No longer has to be "involuntary" acquisition.



For petroleum Brownfield sites

, removed the language and requirement that they be "of relatively low risk" in order to be eligible for funding.