

**STATEMENT OF
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Presented to the

**SUBCOMMITTEE ON WATER RESOURCES & THE ENVIRONMENT
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

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INTRODUCTION

Good afternoon, Madam Chairman, and members of the Subcommittee. My name is Gary Silversmith, President of P&L Investments, LLC, a national brownfield investor and developer, headquartered here in Washington, D.C. I appreciate the opportunity to testify today on the reauthorization of the federal brownfields law, The Small Business Liability Relief and Brownfields Revitalization Act.

My testimony provides some background on my firm and our work redeveloping brownfields across the country. I will provide comments on how the federal brownfields law has provided important tools and resources to stimulate brownfields revitalization. In addition, I will provide some examples which demonstrate the need to improve the law in certain areas.

BACKGROUND ON P&L INVESTMENTS

P&L Investments is involved with the clean-up and redevelopment of dozens of properties across the country ranging from an abandoned gas station in Los Angeles that we are converting to affordable housing to cleaning up an old shopping center in Maine that we are releasing. We not only acquire large brownfields held by major corporations, such as AIG Insurance and General Motors, but we also clean up and redevelop many small properties, including a truck stop in Denton, Texas, near Madam Chairman's district office.

We were told that we were the first company in America to get permission from EPA to convert a Superfund site to residential use. Before cleaning the Superfund site, it was contaminated with PCBs, mercury, and asbestos. The property consisted of dilapidated factory buildings occupied by drug dealers and arsonists. In fact, EPA's on-site trailer was burned down. We demolished these buildings and cleaned up the site. The townhouses built on the land appreciated over 300% in the first four years. So the community not only got rid of a drug-infested blight, but the residents made money. Also, EPA wrote a complimentary article about the project in its Cleanup News publication.

VALUE OF THE FEDERAL BROWNFIELDS LAW

The federal brownfields law signed in early 2002 has been important to the success of the brownfields industry. First, the law provides important liability relief from the federal Superfund statute for innocent land owners and purchasers. Second, the law makes it clear that if we clean up a property under a state voluntary clean-up program and satisfy the requirements of the state program, the federal government is barred from taking any enforcement action against us. For example, in Pennsylvania we took an abandoned 90-acre asbestos brake plant and asbestos landfill and converted the plant to an industrial park with European high tech companies, and we capped the landfill with asphalt and converted it to a commercial parking lot. For this project, we received a liability release from the Commonwealth of Pennsylvania. We would have never undertaken this project without the liability relief for innocent purchasers provided in the brownfields law.

The federal brownfields law also recognizes the critical importance of public-private partnerships in bringing these contaminated properties back to productive use. It is not economical to redevelop many brownfields because the cost of clean-up is often greater than the value of the property. It is only through assistance from local governments receiving federal or state funding for site investigations and clean-up that we are able to provide the private investment needed. For example, through our affiliate, the Value Recovery Group, we are currently involved in an innovative public-private partnership with an Ohio community, where we are converting a landfill to a golf course, with new commercial buildings around the golf course. As part of this partnership, the local government entity will receive 25% of the profits. This project would not be possible without the investment of public remediation dollars from the state and federal government. Moreover, it is unlikely that we would have entered into the partnership without the innocent purchaser liability relief provided by the federal brownfields law.

RECOMMENDATIONS FOR IMPROVEMENTS TO THE FEDERAL BROWNFIELDS LAW

While the federal brownfields law has stimulated the revitalization of thousands of properties around the country, those of us in the brownfields industry have learned a great deal since the law was passed six years ago. As part of my written testimony, I am attaching recommendations developed by the National Brownfields Coalition, which I wholeheartedly support. Based upon my experience in the field, I would like to highlight five of these recommendations:

#1 Congress should increase the ceiling on brownfield clean-up grants. As you know, the maximum amount EPA can provide for a clean-up grant under the current law is \$200,000. There are many sites where the clean-up cost is Millions of Dollars. In these cases, \$200,000 from EPA is usually not enough help, even taking into account funding from other sources. As a result, these sites are usually mothballed.

For example, we are now struggling to help a suburb of Detroit, Ypsilanti, Michigan, redevelop a 40-acre, old industrial brownfield site that is a blight in the heart of their downtown. They desperately want some retailers to come to the site. We have some interested retailers, and this would revitalize the entire community. The problem is, the estimated clean-up costs significantly exceed \$50,000 an acre, and the estimated fair market value of the land, if clean, is only \$50,000 an acre. For such a project, additional grant money is needed. EPA already gave the town a \$120,000 grant, but that amount is so insufficient that the town cannot find a developer willing to redevelop the site.

#2 Congress should authorize and appropriate more funding for the federal brownfields program. I understand that EPA was only able to fund 25 percent of the brownfield grant applications received this year. This lack of grant money is exacerbated by the current economic situation. In cities such as the Detroit area, where Ypsilanti is located, the State is in a difficult financial condition, and it simply does not have sufficient State monies to clean up its brownfields. Moreover, in the current credit crisis, banks have tightened their lending criteria, particularly in areas of the country that are economically depressed. Banks that previously were willing to lend money on brownfields are, today, often rejecting the loan requests. It doesn't matter if the interest rate is low, if the bank won't give you the money. So, without additional EPA grant monies, many brownfield projects will be unable to proceed, particularly in the parts of the country that need them the most.

#3 Provide flexible, multi-purpose grants to local governments. The slow timing and the lack of flexibility with federal brownfield grants is a real problem. Under the current grant process, there is a lengthy delay between the time of the grant application and the time that funding is available. In addition, the grants are for only either assessment or clean-up. Moreover, the clean-up grants are typically tied to a specific site. As a brownfield investor, I can tell you that local governments could really use multi-purpose grants that are processed quickly, that can be used for assessment and/or clean-up, and that can be employed at a variety of brownfield properties.

By example, our Ohio landfill project received both a \$3 million state grant and a \$200,000 EPA assessment grant. EPA originally awarded the project a \$200,000 clean-up grant, but when the recipient city requested that the grant instead go to a nonprofit entity that was going to take title, EPA would not allow the title of the grant recipient to change. Consequently, that important grant was never funded. This is an example of where EPA grants are sometimes too rigid. More flexible multi-purpose grants would have enabled this much-needed funding to be used on this project.

#4. Congress should make it clear that federal grants can be used for demolition and site clearance. For many of the larger projects we undertake, demolition and site clearance are major costs. For example, we are now converting an abandoned factory in Baltimore County, Maryland to mostly park land. One reason the cleanup is delayed is because the prospective purchaser, the Maryland State Park System, would like the old abandoned factory to be demolished, as part of the clean-up. But, the State Park System

cannot get an EPA grant for all of this demolition. If EPA could award a more flexible grant, then the demolition could proceed.

#5 Congress should provide liability relief for the clean-up of petroleum sites. Gas stations are treated different than all other brownfields. Since petroleum is regulated under the Resource Conservation and Recovery Act (RCRA), innocent purchasers are not afforded the liability protection that all other properties receive. As a result, we almost did not initiate the clean up at the Denton Texas site. At that site, we were unsure of the total clean up costs, so we were concerned about liability for petroleum contamination. We do not understand the public policy behind not giving the same federal liability relief to an innocent person who cleans up a gas station.

In summary, the 2002 Brownfields law was a milestone for brownfield redevelopment, and it should be expanded to both fund bigger grants and to be more flexible in its application. In addition, its liability relief should be expanded. After all, brown to green is good. Thank you.

Proposal for the

**REAUTHORIZATION OF THE
FEDERAL BROWNFIELDS LAW**

From the National Brownfields Coalition:

**The U.S. Conference of Mayors
National Association of Counties
Northeast-Midwest Institute
National Association of Local Government
Environmental Professionals
National Conference of Black Mayors
International City/County Management Association
Local Initiatives Support Corporation
National Association of Towns and Townships
National Association of Development Organizations
International Council of Shopping Centers
Community Revitalization Alliance
The Real Estate Roundtable
National Association of Home Builders
National Association of Industrial & Office Properties
Environmental Bankers Association
National Brownfield Association
National Brownfield Nonprofit Network Initiative
Cherokee Investment Partners, LLC
Smart Growth America
Scenic America
Groundwork USA
Trust for Public Land**

KEY PROVISIONS FOR
REAUTHORIZATION OF THE FEDERAL
BROWNFIELDS LAW

FUNDING THAT MEETS AMERICA'S BROWNFIELDS NEEDS

1. **Increase Cleanup Grant Amounts** – Congress should recognize the complexity of the cleanup process at larger or more complicated sites by increasing the funding limit for cleanup of a single site to up to \$1 million. Under special circumstances, EPA could waive the limit and go up to \$2 million per site
2. **Establish Multi-Purpose Brownfield Grants** – Congress should allow eligible entities to have the option to apply for multi-purpose grants that can be used for the full range of brownfield-funded activities (assessment, cleanup, reuse planning, etc.) on an area-wide or community-wide basis. Such multi-purpose grants should be available in grant amounts of up to \$1.5 million. Applicants would 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.
3. **Establish Pilots for Sustainable Reuse and Alternative Energy on Brownfields** – The Act should authorize \$20 million for pilots that demonstrate sustainable reuse, green buildings, and alternative energy. Pilots should allow use of funds for site assessments, cleanup, site planning, feasibility analysis, and engineering studies related to environmentally beneficial site improvements, such as, high performance/green buildings, green infrastructure, ecosystem restoration, and/or renewable energy production.
4. **Establish Pilots for Waterfront Brownfields** – The Act should authorize \$20 million for EPA to fund demonstration pilots and create an interagency taskforce to help communities overcome the unique challenges of waterfront brownfields restoration along rivers, coastal lands, lakes, ports, and other water bodies. Pilots should allow use of funds for site assessments, cleanup, site planning, feasibility analysis, and engineering studies related to environmentally-beneficial site improvements, such as, riparian zones, green infrastructure, low impact development, remediation and management of sediments, and flood damage prevention.
5. **Increase Total Brownfield Grant Program Funding** – Congress should increase overall EPA funding for brownfields grants, beginning with \$350 million in FY07 and increasing by \$50 million annually to a total of \$600 million in FY12 and beyond.

MAKING BROWNFIELDS GRANTS WORK BETTER AT THE LOCAL LEVEL

1. **Facilitate Petroleum/UST Brownfield Cleanups** -- Grantees that seek to use assessment, cleanup or multi-purpose grants on sites with petroleum contamination should not be required to make the difficult demonstrations that the site is “low risk” and that there is “no viable responsible party” connected with the site. Replace the “No Viable Responsible Party” language with a prohibition on using funds to pay for cleanup costs at a brownfield site for which the recipient of the grant is potentially liable under the petroleum statutes (parallels the language for non-petroleum brownfields sites).

Create greater flexibility in use of grant funds by eliminating the currently defined set-aside of total grant funding for petroleum brownfields. Substitute a new “Ranking Criteria” that gives weight to petroleum-contaminated sites.

2. **Clarify Eligibility of Publicly-owned Sites Acquired Before 2002** – Congress should allow local government applicants to obtain funding at sites 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.
3. **Establish that Non-Profits are Eligible for Assessment and RLF Grants** – The law should clarify those non-profits and related community development entities are eligible to receive brownfields assessment, cleanup, revolving loan fund, and job training grants. Currently non-profits are only eligible for cleanup and job training grants.
4. **Streamline Funding Approvals by Reducing Redundant EPA Reviews** – Congress should direct EPA to streamline the RLF and cleanup grant process by eliminating redundant EPA reviews for quality control, cleanup alternatives analysis, cleanup protectiveness analysis, and community involvement plans, when those reviews are already conducted by a State brownfields response program. EPA should be directed to propose an administrative solution to the problem of redundant EPA involvement in sites that are being overseen by state voluntary cleanup programs.
5. **Allow Funding for Reasonable Administrative Costs for Local Brownfields Programs** -- Brownfield grant recipients should be allowed to use a small portion of their grant to cover reasonable administrative costs such as rent, utilities and other costs necessary to carry out a brownfields project.
6. **Clarify Eligible Brownfields Remedial Activities** – The Act should clarify that assessment, cleanup, RLF, and multi-purpose grants can be used for remedial activities connected with demolition, site clearance and site preparation.

TOOLS TO HELP FREE THE MOTHBALLED BROWNFIELD SITES

1. **Promote State Institutional Control Programs** – The Act should encourage the effective use of institutional controls at brownfield sites by requiring states to develop a plan for establishing, monitoring, and enforcing appropriate institutional control mechanisms designed to assure that all future uses of brownfields sites are consistent with any restrictions placed on such sites.
2. **Promote State and Local Environmental Insurance Programs** – The Act should foster the use of environmental insurance at brownfield sites by supporting State, Local or Tribe-sponsored environmental insurance programs like the successful program in the Commonwealth of Massachusetts, which assist purchasers of environmental insurance who are remediating a brownfield through the state response program. The Act should authorize EPA to provide grants to States, localities or Tribes to support the establishment of environmental insurance programs for brownfields, with a 50% match from the applicant.
3. **Remove Barriers to Local and State Governments Addressing Mothballed Sites** – The Act should exempt local and state government from CERCLA liability if the government unit (a) owns a brownfield 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. Alternative language would amend section 101(20) (D) to clarify that properties acquired through eminent domain qualify for the CERCLA exemption for local governments involved in “Involuntary Acquisitions.”
4. **Extend Protections to Innocent Lease Holders** – The Act currently gives protections to tenants of an entity that qualifies as a Bonafide Prospective Purchaser (BFPP), but does not protect an entity that directly leases land from the seller/RP. The Act should also provide protections to an entity that leases a brownfields site and meets all the other requirements for BFPP protection.
5. **Encourage Voluntary Cleanups of Underground Storage Tank (UST)** – For petroleum-contaminated sites the Act should provide liability protections for Bona Fide Prospective Purchasers and innocent land owners at brownfield sites, parallel to CERCLA/brownfields liability protections. Petroleum-contaminated sites should be afforded the same bar on federal enforcement as that provided under CERCLA if the site is being cleaned up under a qualified state program.
6. **Encourage Voluntary Cleanups of PCBs**– To facilitate PCB cleanups, the Act should :
 - a. Establish that the remediation of PCB sites under qualified State cleanup programs satisfies the federal requirements established under TSCA for cleaning up releases of PCBs;

- b. Provide protections for Bona Fide Prospective Purchasers and innocent land owners at brownfield sites, parallel to the protections afforded CERCLA/ brownfields sites.
- c. Establish eligibility for brownfields revitalization funding for PCB-contaminated sites (by eliminating the current exclusion of PCB-contaminated sites from the definition of a brownfields site).

ASSISTANCE FOR HIGH PRIORITY COMMUNITIES AND SITES

1. **Offer EPA Staff for Disadvantaged Communities, Small Communities, and Rural Communities** – The Act should authorize EPA to provide EPA brownfield staff to small, disadvantaged, and rural communities that need support to build local capacity to cleanup and revitalize brownfields. These staff would be provided via Intergovernmental Personnel Act (“IPA”) assignments of up to three (3) years to localities, States, Tribes, and eligible non-profit organizations that competitively apply for an IPA assignment.
2. **Encourage Brownfield Cleanups by Good Samaritans** – The Act should provide an owner-operator exemption from CERCLA liability for non-labile parties that take cleanup action or contribute funding or other substantial support to the cleanup of a brownfield, in conformance with a federal or state cleanup program, but do not take ownership of that site.