

**Section 128(a) State and Tribal
Response Program
and the
Bipartisan Infrastructure Law (BIL)**

Listening Session

Office of Brownfields and Land Revitalization

December 8, 2021



Agenda

- ❖ **Welcome**
 - **David Lloyd, US EPA Brownfields Program Director**
- ❖ **Overview of Brownfield Sections of Bipartisan Infrastructure Law**
- ❖ **Brief Overview of Section 128(a) State & Tribal funding program**
- ❖ **Discussion**

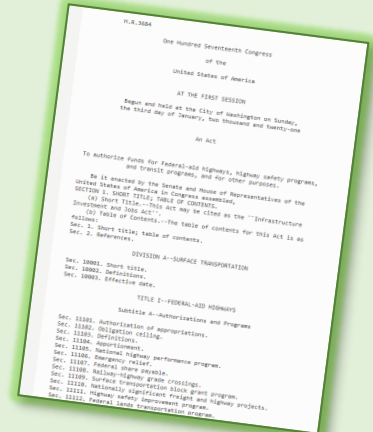
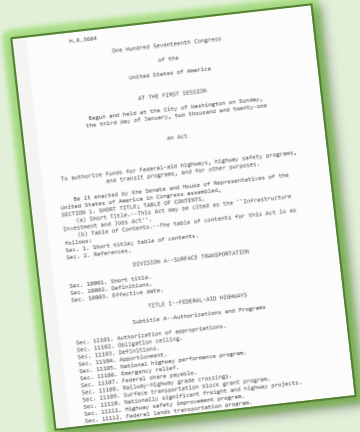
Note: This session is not going to be recorded. We can send out the presentation slides.



Historic \$1.5 B Investment in EPA's Brownfields Program

- President Biden signed "BIL" into law on November 15, 2021
- **\$1.5 Billion over 5 years to EPA's Brownfields Program**
 - \$1.2 B for projects authorized by Section 104(k)
 - \$300 M to carry out Section 128(a)





Brownfields Funding with BIL

- **\$1.5 B over 5 fiscal years (FY22 – FY26)**
 - **\$300 M per year**
 - **\$240 M for projects authorized by Section 104(k)**
 - **\$60 M to carry out Section 128(a)**

- **We will still receive our regular appropriations in FY22 – FY26**
 - **104(k) = ~\$370 M total (approp + BIL)**
 - **128(a) = ~\$107 M total (approp + BIL)**

- Up to 3% set-aside per year for salaries, expenses, and administration
- 0.5% transfer to the Office of the Inspector General for oversight of the funding
- Funds are held in Treasury and apportioned in equal amounts annually to the program through OMB
- Required to track and report to Congress on both Technical Assistance and Cooperative Agreement activities

| \$1.5 BILLION Investment Highlights | 2022 OFFERINGS* |
|--|--|
| \$150 MILLION in <u>Multipurpose Grants</u> | UP TO \$10 MILLION per grant for communities, states, tribes and nonprofits to plan, assess and cleanup sites <i>No cost share requirement</i> Proposals due July 2022 • Projects awarded November 2022 |
| \$600 MILLION in <u>Assessment Grants</u> | UP TO \$10 MILLION per grant for communities, states, tribes and nonprofits to determine extent of contamination and plan revitalization at brownfield sites <i>No cost share requirement</i> Proposals due July 2022 • Projects awarded November 2022 |
| \$160 MILLION in <u>Cleanup Grants</u> | UP TO \$5 MILLION per grant for communities, states, tribes and nonprofits to cleanup contamination on brownfield sites <i>No cost share requirement</i> Proposals due July 2022 • Projects awarded November 2022 |
| \$150 MILLION in <u>Revolving Loan Fund (RLF) Grants</u> | UP TO \$10 MILLION per grant for communities, states, tribes and nonprofits to provide loans and subgrants for the cleanup of contamination and revitalization of brownfield sites <i>No cost share requirement</i> Supplemental requests from existing grantees due April 2022 Funds awarded August 2022 |
| \$30 MILLION in <u>Job Training Grants</u> | UP TO \$1 MILLION per grant for communities, states, tribes and nonprofits to develop a job training program that supports revitalization at brownfield sites Proposals due July 2022 • Projects awarded November 2022 |
| \$300 MILLION in <u>Cooperative Agreements to State and Tribal Response Programs</u> | \$60 MILLION available per year in cooperative agreements for states and tribes to build response program capacity, oversee brownfields cleanups and conduct limited site assessment and cleanup activities FY22 requests due July 2022 • Funds awarded November 2022 |
| \$110 MILLION in <u>Technical Assistance, Including Targeted Brownfields Assessments</u> | The largest investment ever in direct contracts and cooperative agreements to provide communities with technical assistance to adapt to a changing climate and remove barriers to safe and sustainable property reuse Projects awarded on a rolling basis • First round of Targeted Brownfields Assessments awarded April 2022 |

*Funding amounts and deadlines are tentative and subject to change.



Section 128(a) State and Tribal Response Program Funding

BIL says, “\$300,000,000 shall be to carry out Section 128 of [CERCLA]”



CERCLA 128(a) Authority

Who can receive 128(a) money?

CERCLA Section 128(a)* authorizes EPA to award a grant to a State (includes Island Territories and DC) or Indian Tribe that-

- Has a response program that includes each of the elements below, or is taking reasonable steps to include each of the elements, OR is a party to a MOA with EPA for their voluntary response programs
- Establishes a public record and updates at least once annually**

Elements in Section 128(a)(2)

1. Timely survey and inventory of brownfield sites;
2. Oversight and enforcement authorities or other resources that ensure response actions protect human health and the environment, are conducted in accordance with applicable laws, and are completed;
3. Mechanisms and resources to provide meaningful public participation; and
4. Mechanisms for approval of a cleanup plan and verification and certification that response is complete

*Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 USC 9628(a). Section 128(a) was added to CERCLA in 2002 by the Small Business Liability Relief and Brownfields Revitalization Act (Brownfield Amendments).

** CERCLA Section 128(b)(1)(C)



CERCLA 128(a) Authority

What can States and Tribes use this money for?

- May use these funds to “establish or enhance the response program of the State or Indian Tribe”*
 - Establish includes activities necessary to build the foundation for the four elements. For example, a state or tribal response program may use section 128(a) funds to develop regulations, ordinances, procedures, guidance, and a public record.
 - Enhancing includes activities that add to or improve a state or tribal response program or increase the number of sites at which response actions are conducted under such programs. Also includes developing and maintaining Institutional Controls/Engineering Controls tracking.
- Capitalize revolving loan funds for cleanup
- Purchase environmental insurance or develop other insurance mechanisms for brownfields cleanup activities
- As a matter of EPA policy, funds can be used for some limited site-specific work at Brownfield sites

*CERCLA 128(a)(1)(B)(i)



Sample ideas for BIL funds to carry out Section 128(a) and strengthen Environmental Self Governance


- ✓ Build up Brownfields inventory and prioritize sites
 - ✓ Contact KSU Tribal TAB for information on [BiT](#)
 - ✓ May be helpful to coordinate with [HUD ONAP](#) for TA regarding tribal housing
- ✓ Paid internships or term positions (BIL funds are for 5 years)
- ✓ Develop or improve document management system
- ✓ Develop environmental codes, regulations, procedures, SOPs, etc. to assist in capacity-building and succession-planning
- ✓ Continue great tribal mentoring and training
- ✓ Build up community outreach and participation
- ✓ Build the capacity and process to verify that an assessment or cleanup was done properly and include documentation in the public record
- ✓ Work with your EPA POs to discuss your ideas

Site-Specific Work

- Primarily, Section 128(a) funds are meant to establish or enhance response programs
- Site-specific activities are allowed on a limited basis
 - Must be a "Brownfield," as defined in CERCLA Section 101(39)
 - Must be related to establishing or enhancing the response program
- In current FY22 Guidance, funding is subject to 50% cap for site-specific work
 - Waiver requests to exceed 50% of allocation may be granted by headquarters with appropriate documentation from CAR and regional recommendation
 - Waiver process is outlined in funding guidance and Section IV.E. of the Terms and Conditions

Tentative Schedule moving forward (subject to change)





We want to hear from you!

- How can EPA help maximize benefits from the BIL funds to Section 128(a) recipients?
- What are your thoughts on having two funding requests each year, to help with tracking and reporting?
- What are your thoughts on having two awards each year?
- What opportunities and challenges do you foresee with these additional funds?
- Ideas for utilizing BIL funds for the next five years?



Technical Assistance to Brownfields Communities

- [Technical Assistance to Brownfields Communities](#) (TAB Program)
- TA and training to communities and other stakeholders on brownfield issues
- TAB offers assistance with:
 - ✓ preparing grant applications;
 - ✓ performing site inventories;
 - ✓ reviewing historical information;
 - ✓ design of investigation/sampling/field analysis; and
 - ✓ cleanup and redevelopment planning.



Technical Assistance

| Subject Area | TA Provider (EPA Region) |
|--|--|
| Regional, National and Tribal TAB Providers | University of Connecticut (Region 1) |
| | New Jersey Institute of Technology (NJIT) (Region 2) |
| | West Virginia University Research Corporation (Region 3) |
| | International City/County Management Association (Region 4) |
| | Kansas State University (KSU) (Regions 5, 6, 7, 8, nationwide, and tribal) |
| | Center for Creative Land Recycling (CCLR) (Regions 9 & 10) |
| | Groundwork USA (nationwide) |
| Equitable Development in Brownfields Planning | Groundwork USA (nationwide) |
| Brownfields Redevelopment Training & Education | Hazardous Materials Training and Research Institute (HMTRI) (nationwide for Brownfields Job Training grant recipients) |



Thank you! We appreciate your feedback!

For more information on Section 128(a) funding, see the [Section 128\(a\) Fact Sheet](#)

For more information about the Bipartisan Infrastructure Law, see [EPA's BIL Fact Sheet](#)

Office of Brownfields and Land Revitalization
<https://www.epa.gov/brownfields>
<https://www.epa.gov/land-revitalization>

US EPA
Office of Brownfields and Land Revitalization
Mail Code 5105 T
1200 Pennsylvania Ave, NW
Washington, DC 20460

