

## SCS TECHNICAL BULLETIN

### BUILD ACT SUMMARY AND CERCLA PROVISIONS

August 1, 2018

The **Brownfields Utilization, Investment, and Local Development Act of 2018** (BUILD Act), amends the Brownfields provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Brownfields are sites that have been impaired by historical uses and are or may be contaminated. Concern over environmental liabilities used to mean these sites often sat vacant, resulting in neighborhood blight. The CERCLA Brownfields amendments in 2002 provided a means of overcoming liability concerns, and thousands of Brownfields sites have been safely redeveloped.

The **2018 BUILD Act** provides new opportunities to communities working to redevelop environmentally impaired properties and increases funding—it “authorizes” appropriations for Brownfield projects of \$200 million for each of fiscal years 2019-2023, including projects to protect flood-prone areas and provide clean energy.

Highlights of the **BUILD Act** include:

#### **Local Government/Alaska Native/Non-Profit**

Expands funding eligibility to include non-profit organizations and community development entities.

Extends applicability of brownfields grants for certain government entities that acquired title “by virtue” (e.g., due to abandonment) and/or for properties acquired before January 2002,

even if the entity does not qualify as a Bona Fide Prospective Purchaser (BFPP), so long as the entity did not cause or contribute to release of hazardous substances.

Adds an exclusion from the CERCLA definition of owner and operator under the Alaska Native Claims Settlement Act.

#### **Responsible Party and BFPP**

Allows clean up of petroleum sites “for which there is no viable responsible party.”

Expands BFPP liability protections to lessees who can establish, by a preponderance of the evidence, each of the eight criteria.

#### **Grant Programs**

Establishes a program to provide multipurpose grants to eligible entities. These multipurpose grants would allow spending for inventory, characterization, assessment, planning, and remediation activities at brownfields sites within a designated area.

Adds grant selection criteria to promote waterfront redevelopment (“Waterfront Brownfields Grants”) and clean energy development involving Brownfields sites.

Clean energy is described in the criteria as facilities that generate renewable electricity from wind, solar, or geothermal energy, and any energy efficiency improvement project,

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including combined heat and power systems. Renewable biogas (e.g., landfill gas) projects are not listed explicitly.

Provides for Technical Assistance Grants to “assist small communities, Indian tribes, rural areas, or disadvantaged areas.”

### **Funding/Administrative Costs**

Increases funding to \$500,000 (not to exceed a total of \$650,000) for remediation at each site.

Allows (with restrictions) up to 5% of grant monies to be spent on administrative costs.

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