

# Brownfields and the Inflation Reduction Act

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# Not a PFAS Talk!!!!

## Sustainability 1990s

- Since day one, Brownfields as a concept have been one of the original sustainability vehicles
- Potentially contaminated sites were re-branded as “brownfields” Sustainable land-use goals associated with recycling land, removing blight, restoring employment, revitalizing communities and strengthening the urban real estate market.

## Sustainability 2024

- The costs and risks associated with environmental remediation often make redevelopment projects need public financial and regulatory support.
- Often there is public-private partnerships involving multiple levels of government, nonprofit organizations and private developers have play a role in brownfield redevelopment.

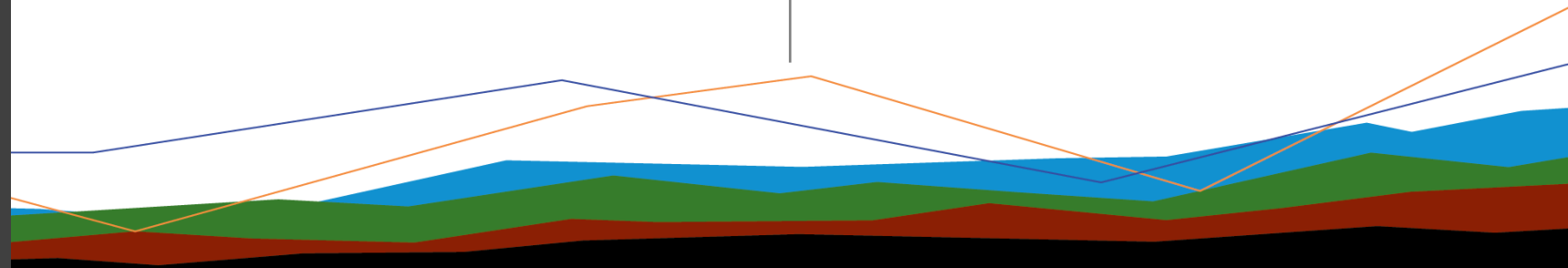
# Inflation Reduction Act By The Numbers

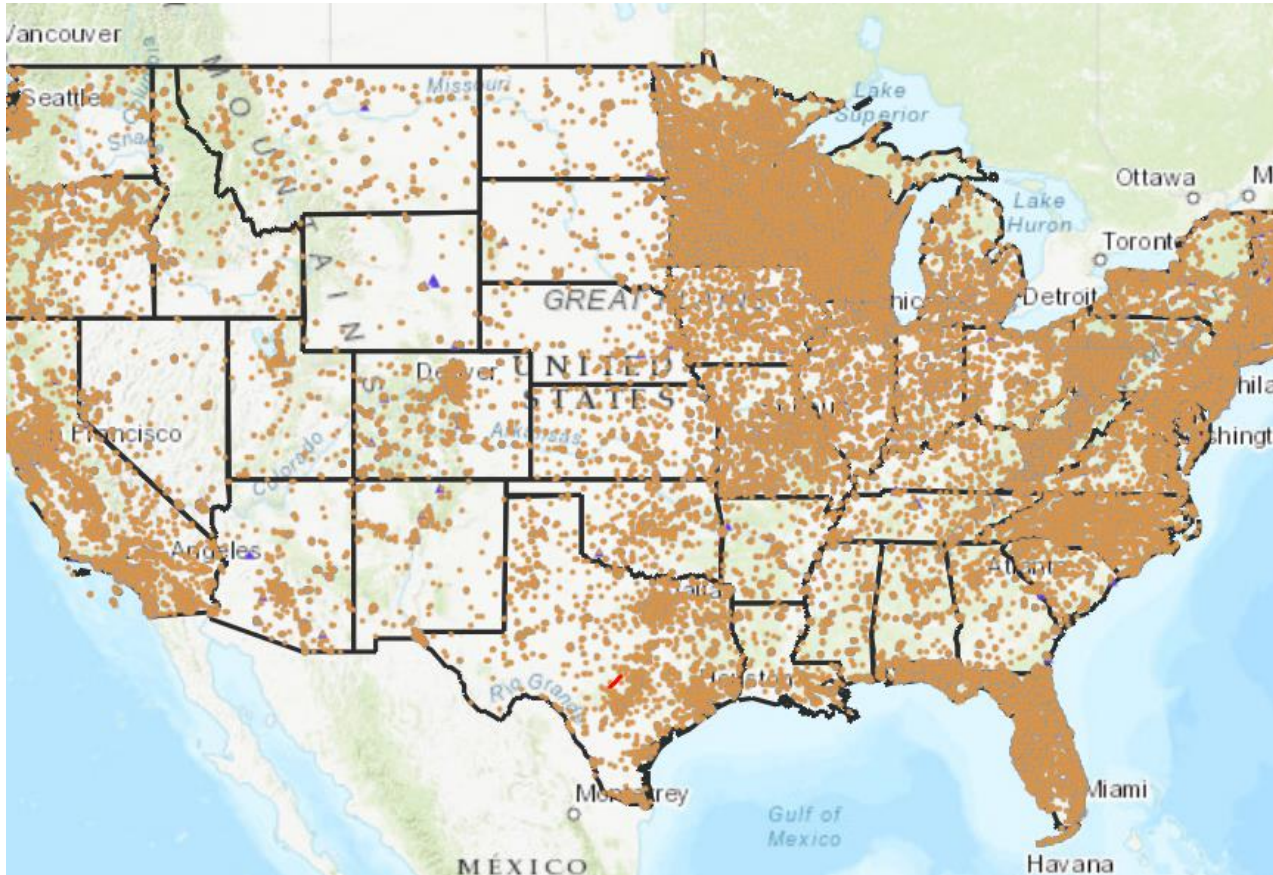
## Investments

- Energy Security and Climate Change (\$369 billion)
- Affordable Care Act Extension (\$64 billion)

## Revenue sources

- 15% Corporate Minimum Tax
- Prescription Drug Pricing Reform
- IRS Enforcement
- Carried Interest Loophole Elimination





Map source : <https://geopub.epa.gov/repoweringApp/>

# Brownfields

- Mentioned only once in 274 pages of text
- A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or **potential** presence of a hazardous substance, pollutant, or contaminant.

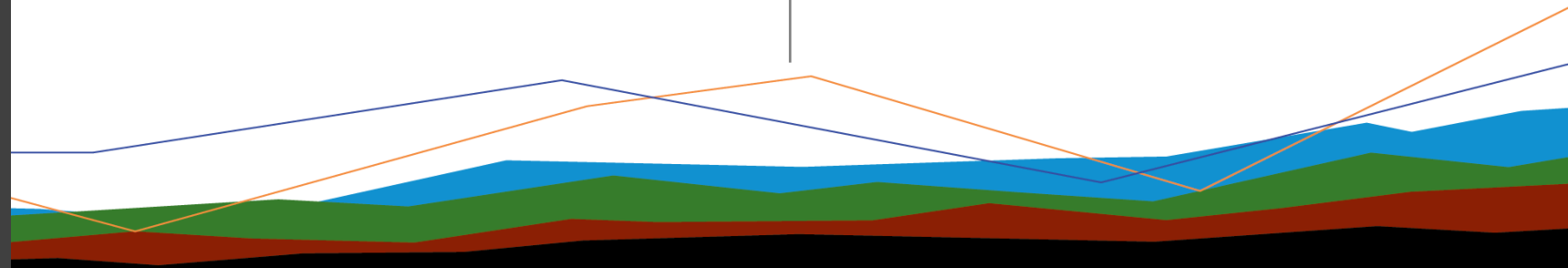
# What does this mean?

## Tax Credits

- The IRA allows taxpayers to deduct a percentage of the cost of eligible renewable energy systems from their federal taxes through an Investment Tax Credit (ITC) and Production Tax Credit (PTC).

## For What

- Qualified projects include: multiple solar and wind technologies, geothermal, tidal, energy storage technologies, microgrid controllers, fuel cells, biomass, landfill gas, hydroelectric, marine and hydrokinetic projects and interconnection costs.



# What are Energy Communities?

## Three Categories

### **Brownfield Category:**

Defined in certain sections of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), namely, real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant, subject to the exclusions outlined in CERCLA.

### **Statistical Area Category:**

An unemployment rate at or above the national average and either has 0.17% or greater direct employment related to "Fossil Fuel Employment" threshold), or 25% or greater local tax revenues related to fossil Fuels.

**Coal Closure Category:** CA census tract or a directly adjoining census tract where a coal mine closed after 1999 or a coal-fired electric generating unit was retired after 2009.

# Brownfields and the IRA



BROWNFIELDS



COAL COMMUNITIES



JOBS AND TAX REVENUE  
(STATISTICAL AREA)

Not All  
Brownfields  
Are Equal

## Brownfields Site Definition Comparison

IRS Energy Communities Brownfield Category		EPA Brownfield Program Site Eligibility	
Hazardous Substances contamination	✓	Hazardous Substances contamination	✓
Examples: Arsenic, Asbestos, Lead, Polycyclic Aromatic Hydrocarbons, Polychlorinated Biphenyls, Volatile Organic Compounds, Chromium, Dioxin, Mercury		Examples: Arsenic, Asbestos, Lead, Polycyclic Aromatic Hydrocarbons, Polychlorinated Biphenyls, Volatile Organic Compounds, Chromium, Dioxin, Mercury	
National Priorities List (Superfund)	✗	National Priorities List (Superfund)	✗
Removal action or enforcement order	✗	Removal action or enforcement order	✗
Controlled Substance contamination	✗	Controlled Substance contamination	✓
Petroleum contamination	✗	Petroleum contamination	✓
Mine Scarred Lands	✓	Mine Scarred Lands	✓



## Not All Brownfields Are Equal

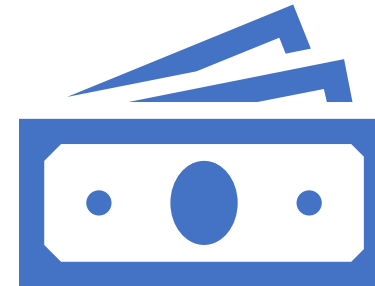
46. Can a landfill with respect to which a closure notification under subtitle C of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), has been submitted and closure requirements have been specified in a closure plan or permit be a Brownfield site for purposes of the Energy Community Bonus Credit?

Generally no; a landfill subject to such closure requirements generally would be considered a "land disposal unit" excluded from the definition of a Brownfield site under 42 U.S.C. § 9601(39)(B)(vi).

# What does this mean for us?



Additional tax credits for projects  
sited within an “energy community”



10% tax credit bonus for eligible  
projects

# What are these Federal Tax Credits?

## Developers are seeking up to 10% bonus

### Developers of wind, solar, RNG and battery sites:

Looking for contaminated sites to get 2-10% bonus in Federal Corporate Tax Credits.

Confusion on definitions caused IRS issue guidance on "Safe Harbor" for automatically qualifying if:

- The site was previously assessed through federal, state, territory, or federally recognized Indian tribal brownfield resources a

- A Phase II Environmental Site Assessment (ESA) has been completed with respect to the site in accordance with the most recent version of the Standard Practice for Phase II ESAs, ASTM E 1903. In addition, the Phase II ESA must confirm the presence on the site of a hazardous substance as defined under CERCLA.
- For small projects with a nameplate capacity of five megawatts or less, a Phase I ESA must have been completed under the most recent version of the Standard Practice for Phase I ESAs, ASTM E1527-21.

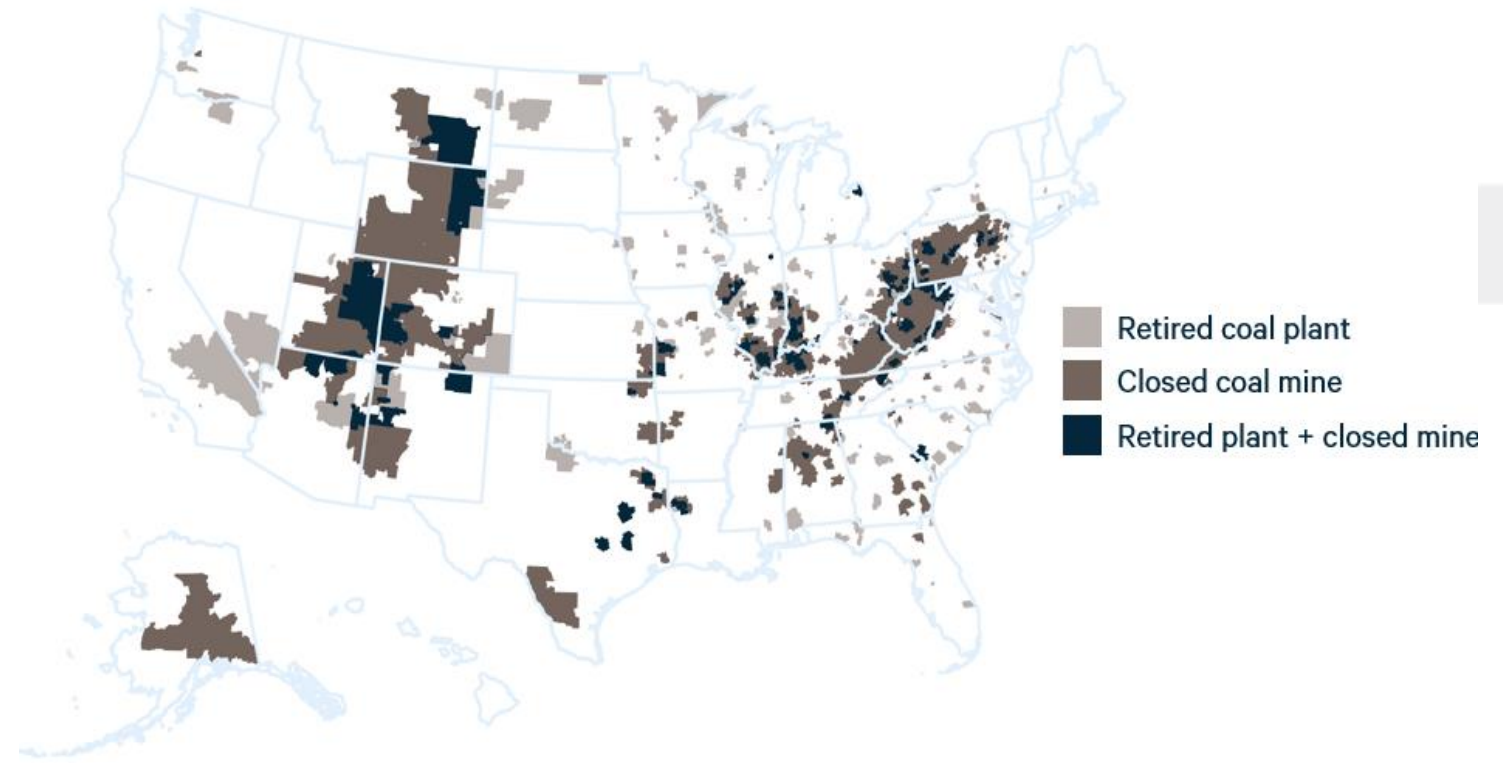
# Coal Communities



After December 31, 1999 a coal mine closed



After December 31, 2009, a coal-fired electrical generating unit has been retired, or which is adjoining to any census tract described in the first subclause



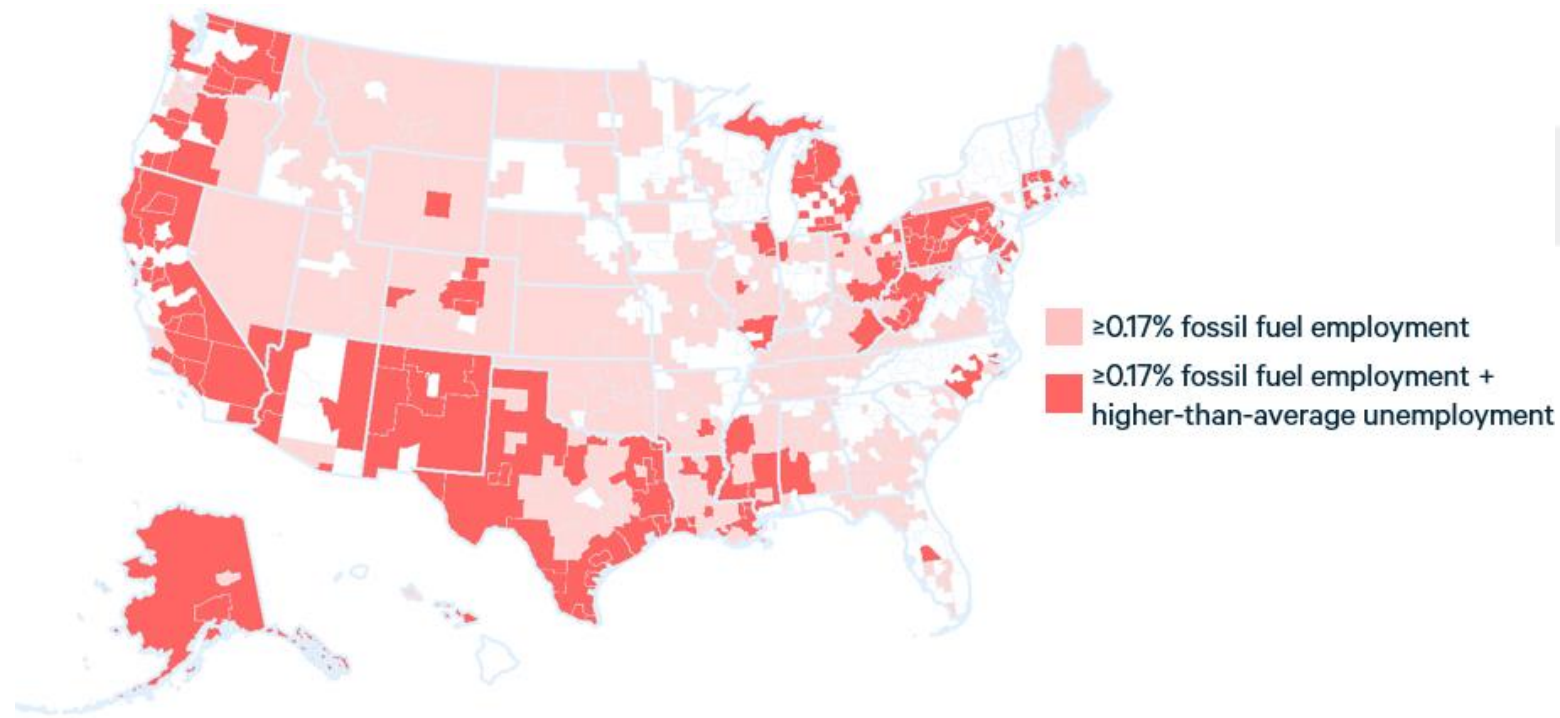
<https://www.resources.org/common-resources/what-is-an-energy-community/>

# Jobs and Tax Revenue

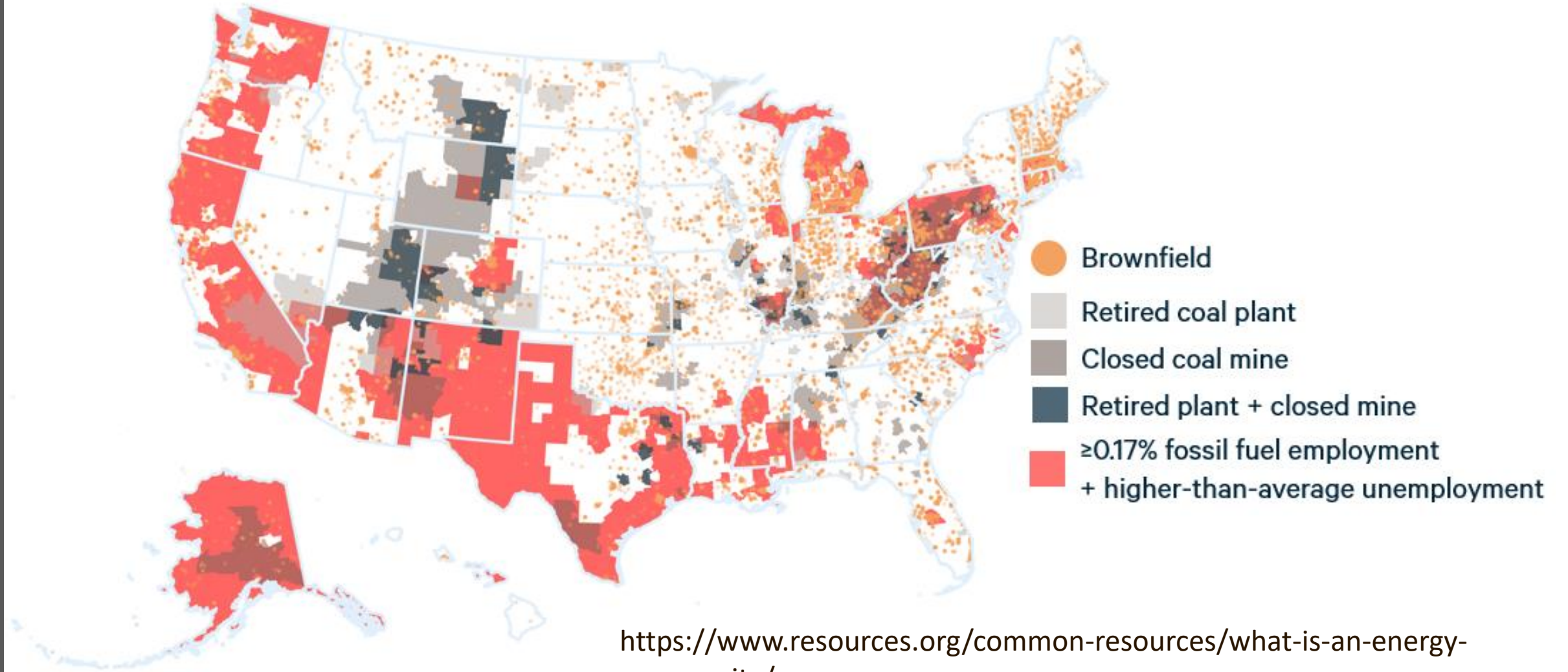
- MSA or non-metro SA where 0.17% or greater direct employment or at least 25% of local tax revenues are related to extraction, processing, transport, or storage of coal, oil or natural gas.

AND

- Unemployment is at or above the national average in the previous year.



<https://www.resources.org/common-resources/what-is-an-energy-community/>



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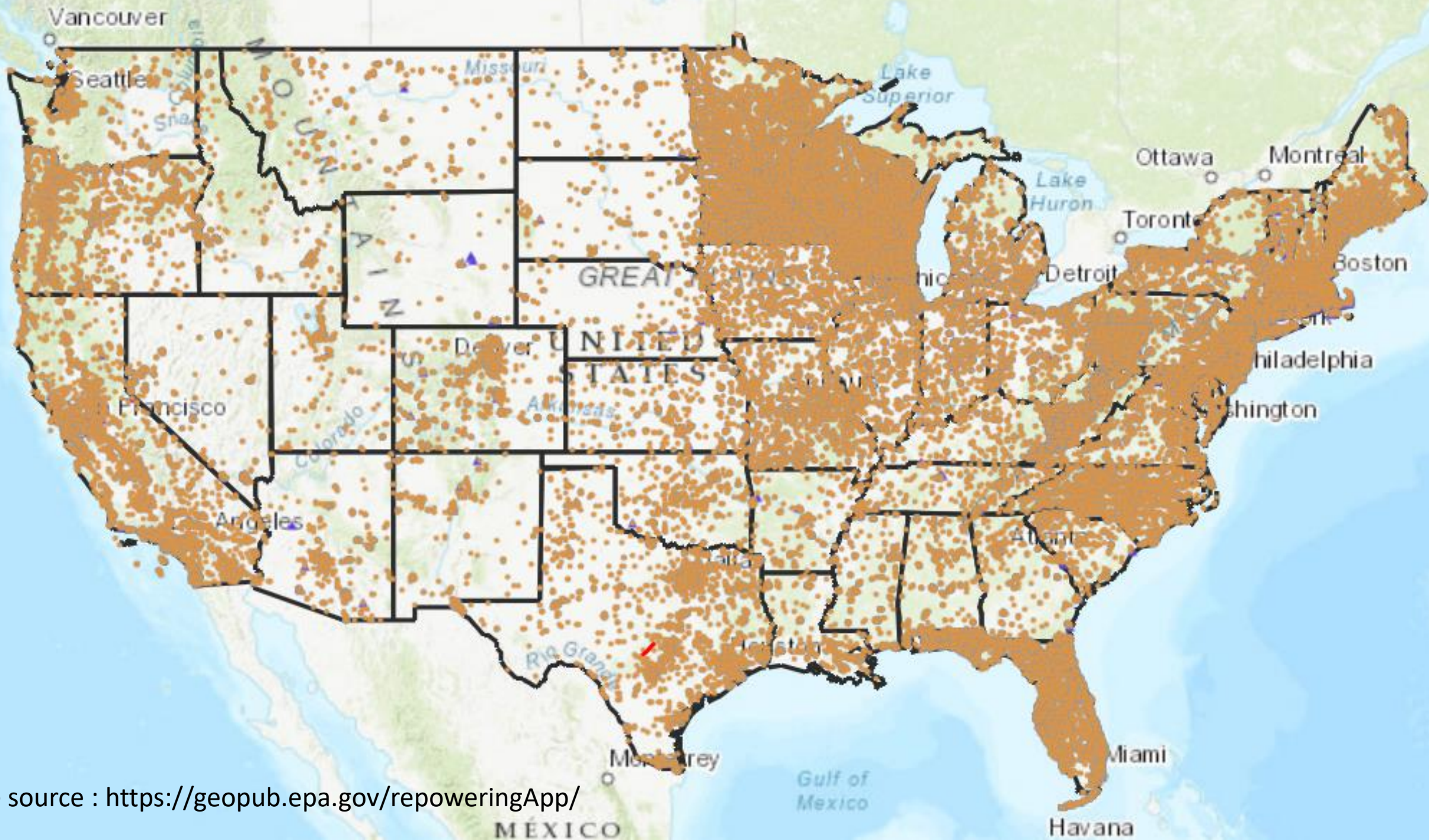


Image source : <https://geopub.epa.gov/repoweringApp/>





# Potential Issues

Overly inclusive language

Lack of Treasury guidance

Pushback from activist and industry groups

Challenges  
are coming  
from both  
sides.

## Both sides not happy-not typical in Brownfields

### New Administration?

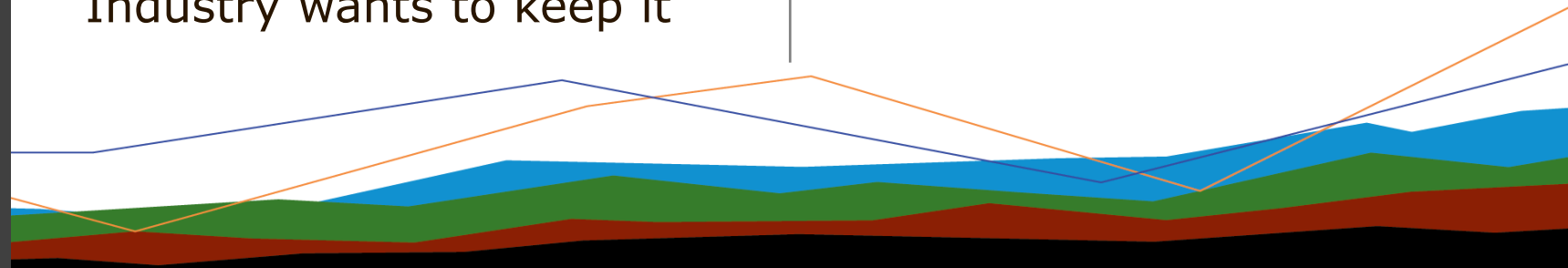
The IRA is authorized for 10 years but there is buzz that it may be repealed or altered under a new administration

According to a July 2, 2024 Greenbiz article "391 billion in government spending tax write offs have been funded so far in less than 2 years

Industry wants to keep it

### Not Good Enough?

On the other side, local communities and environmental groups are starting to sour on the lack of cleanup



# Questions?

For more information please contact:

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## Additional Resources

Data used by [www.resource.org](http://www.resource.org) for determination of energy community extents is available for download as a .zip file at :  
<https://www.resources.org/common-resources/what-is-an-energy-community/>

Inflation Reduction Act comment portal:

<https://www.regulations.gov/document/IRS-2022-0025-0001>

Comment period is technically closed. Comments can still be posted but may not be reviewed.

Additional Bipartisan Infrastructure Law funding resources :

<https://energycommunities.gov/funding-opportunities/>