



August 2009

## ENVIRONMENTAL UPDATE

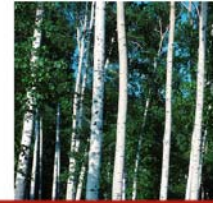
**Stimulus Funds to Become Available for Eligible Underground Storage Tank Cleanup Projects**

The American Reinvestment and Recovery Act of 2009 (the "ARRA") provides a supplemental appropriation of approximately \$200 million from the Leaking Underground Storage Tank ("LUST") Trust Fund to EPA for the cleanup of releases of contamination from federally regulated underground storage tanks ("USTs"), as authorized by section 9003(h) of the Solid Waste Disposal Act. This section of the Solid Waste Disposal Act relates to the cleanup of *petroleum* spills from USTs, and does not address the cleanup of hazardous substances or waste that are otherwise regulated under CERCLA and/or RCRA.

Of this \$200 million, EPA is allocating approximately \$190,700,000, or 95 percent to states and territories through assistance agreements. Specifically, each state or territory that is eligible for ARRA funds is required to formally apply for the funds with its EPA Region via a grant application process, and enter into assistance or cooperative agreements that detail the state's spending plans. If these plans are approved by EPA, the state's funds are then awarded to the state's administrating agency for further distribution pursuant to the state's approved spending plan. As of July 2009, most states have submitted, or are preparing their grant applications, although some states have already entered into cooperative agreements with EPA and can begin awarding the funds to eligible projects. It is expected that many additional states will enter into these agreements and be awarded these funds in late summer 2009, although EPA is not obligated to do so until September 30, 2010.

It is important to note, however, that not all UST cleanup projects will be eligible for the ARRA funds. The money can only be used either to (1) oversee cleaning up underground storage tank leaks or (2) directly pay for cleaning up leaks from federally regulated tanks where the responsible party is unknown, unwilling, or unable to perform the work, or the cleanup is an emergency response. Other criteria that will be considered in site selection include: high contamination and toxicity scores as demonstrated from previous soil boring and water quality tests, and proximity to drinking water/aquifers and public places. In addition to these general requirements, each state will develop its own requirements that will be set forth in its cooperative agreement with EPA. While the majority of these cooperative agreements have not yet been finalized, the preliminary guidance issued by most states limits the award of the funds to sites that have an unidentified owner or unknown party responsible for the release.

Based on this preliminary guidance, it is unlikely that the ARRA funds will be available for many private UST cleanup projects where the owner of the UST or responsible party can be identified. This will most likely be the case with many privately owned USTs where ownership or responsibility can be ascertained from historical or corporate records. However, many



municipalities and developers may be eligible for these funds for the redevelopment of abandoned or vacant properties. Increasingly, cities and developers are seeking to redevelop abandoned properties for commercial use, but often face significant pollution cleanup costs relating to past uses of the property (*i.e.*, industrial use, previous gas station, *etc.*). Thus, these funds could provide a valuable subsidy for these entities in the cleanup of existing contamination on such properties relating to USTs left by unknown owners, or owners who cannot be located or are insolvent.

Municipalities and developers in Ohio may be especially interested in these funds due to the current high level of interest in redeveloping historically abandoned and vacant properties in Ohio cities. EPA has allocated approximately \$8,080,000 to Ohio through the Ohio Department of Commerce. These funds will be administered by the Bureau of Underground Storage Tank Regulations ("BUSTR"). BUSTR has submitted its grant application to EPA Region V and is expected to enter into a cooperative agreement for these funds in August 2009. In the meantime, however, BUSTR, is accepting requests for funds from interested entities in order to begin the process of identifying shovel-ready sites that are eligible for these funds.

We will continue to monitor developments in this area as additional cooperative agreements are entered into between states and the various EPA regions. As these agreements are drafted, additional guidance will be available and should be considered as these funds could provide a valuable resource to the cleanup of existing UST contamination. Please let us know if you have a particular interest in a state program.

#### **FOR MORE INFORMATION**

If you would like more information, please contact Wray Blattner at (937) 443-6539 or [Wray.Blattner@ThompsonHine.com](mailto:Wray.Blattner@ThompsonHine.com), or Devin Barry at (216) 566-5854 or [Devin.Barry@ThompsonHine.com](mailto:Devin.Barry@ThompsonHine.com), or contact any Thompson Hine lawyer. For a list of our lawyers, please go to [www.ThompsonHine.com/practices](http://www.ThompsonHine.com/practices).

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