



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Evaluation Report

Leaking Underground Storage Tank Recovery Act Grants Contained Requirements but Priority Lists Need More Oversight

Report No. 11-R-0018

November 22, 2010



Report Contributors:

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Tim Roach
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Abbreviations

ARRA	American Recovery and Reinvestment Act of 2009
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
GAO	U.S. Government Accountability Office
LUST	Leaking Underground Storage Tank
OIG	Office of Inspector General
OUST	Office of Underground Storage Tanks
SWDA	Solid Waste Disposal Act, as amended
UST	Underground Storage Tank



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We reviewed the U.S. Environmental Protection Agency's (EPA's) management of American Recovery and Reinvestment Act of 2009 (ARRA) funding for the Leaking Underground Storage Tank (LUST) program. We sought to determine whether this oversight ensures that ARRA-funded LUST cooperative agreements comply with applicable laws, regulations, and guidance.

Background

EPA allocated \$190.7 million of ARRA funds to support state and territorial LUST cleanup programs. The overall purposes of LUST Recovery Act money are to clean up contaminated LUST sites effectively while maximizing job creation and retention, and providing economic and environmental benefits to citizens of the United States.

For further information, contact our Office of Congressional, Public Affairs and Management at (202) 566-2391.

To view the full report, click on the following link:
www.epa.gov/oig/reports/2011/20101122-11-R-0018.pdf

Leaking Underground Storage Tank Recovery Act Grants Contained Requirements but Priority Lists Need More Oversight

What We Found

While the Recovery Act grants we reviewed contained most of the requirements specified in Agency regulations and guidance, there were three management control deficiencies with these grants: (1) EPA had not clarified to states whether municipally owned LUST sites would be eligible for ARRA LUST funds, (2) EPA had no plan to deobligate unspent ARRA funds from grant recipients, and (3) EPA in many instances does not use state data to ensure that grants comply with site priority requirements of the Solid Waste Disposal Act, as amended (SWDA). EPA corrected the first two deficiencies by spring 2010 through additional guidance to the regions. However, EPA has not yet corrected the third deficiency.

In accordance with ARRA's economic and environmental purposes, the Office of Underground Storage Tanks' June 2009 Recovery Act guidance instructed states to use ARRA funds at sites that best met program priorities of being both shovel ready and most threatening to human health and the environment. While every ARRA LUST cooperative agreement we reviewed contained language to fund shovel-ready sites, the agreements varied considerably in how they addressed the SWDA site prioritization requirement. This management deficiency means that EPA regions are unable to ensure that states have directed ARRA funds to shovel-ready sites that provide the greatest environmental benefit.

What We Recommend

We recommend that the Assistant Administrator for Solid Waste and Emergency Response ensure that the SWDA site priority requirement is consistently incorporated into the terms and conditions of future LUST Trust Fund grant agreements. The Agency agreed with our recommendation.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

November 22, 2010

MEMORANDUM

SUBJECT: Leaking Underground Storage Tank Recovery Act Grants Contained Requirements but Priority Lists Need More Oversight
Report No. 11-R-0018

FROM: Arthur A. Elkins, Jr.
Inspector General

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is written over the printed name.

TO: Mathy Stanislaus
Assistant Administrator for Solid Waste and Emergency Response

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The estimated cost of this report, calculated by multiplying the project's staff days and expenses by the applicable daily full cost billing rates in effect at the time, is \$766,895.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. You should include a corrective actions plan for agreed-upon actions, including milestone dates. Your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal. We have no objections to the further release of this report to the public. We will post this report to our website at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Wade Najjum at (202) 566-0832 or najjum.wade@epa.gov, or Dan Engelberg at (202) 566-0830 or engelberg.dan@epa.gov.

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Chapter 1

Introduction

Purpose

We reviewed the U.S. Environmental Protection Agency's (EPA's) management of American Recovery and Reinvestment Act of 2009 (ARRA) funding for the Leaking Underground Storage Tank (LUST) program through ARRA LUST Trust Funds. The Office of Underground Storage Tanks (OUST) is responsible for oversight of the ARRA LUST Trust Funds. We sought to determine whether OUST's oversight ensures that ARRA-funded LUST cleanups comply with applicable laws, regulations, and guidance.

Background

On February 17, 2009, President Obama signed ARRA into law. One of the primary purposes of ARRA was to preserve and create jobs and promote economic recovery. ARRA awarded \$7.2 billion to six EPA programs. Of that total amount, the LUST program was allotted \$200 million for cleanup activities related to federally regulated underground storage tanks (USTs), as authorized by section 9003(h) of the Solid Waste Disposal Act, as amended (SWDA). These funds are administered by OUST, which is housed in the Office of Solid Waste and Emergency Response.

The Agency allocated the \$200-million ARRA LUST appropriation as follows:

- Grants (an award of financial assistance, including cooperative agreements) with states and territories—\$190.7 million
- Cleanups on tribal lands—\$6.3 million
- Federal management and oversight—\$3 million

EPA was required to obligate all funds to the states and territories by September 30, 2010. Unobligated funds must be returned to the U.S. Treasury.

Each year, states spend roughly \$1 billion of state funds on LUST cleanups. EPA supplements this spending with appropriations from the federal LUST Trust Fund. States can use LUST funds to pay for cleanup activities at sites where the responsible party is unknown, unwilling, or unable to finance cleanup, or the cleanup is an emergency response. Prior to ARRA, annual LUST appropriations of about \$60 million were spent on cleanups, site assessments, and state staff salaries. ARRA funds also may be used to pay for these activities. States normally shoulder most of the costs for LUST cleanups.

Congress estimated that 3,200 jobs would result from the \$200 million in ARRA LUST funds. Although the government does not collect cumulative jobs data, it reports the number of jobs funded in each quarter. From April 1, 2010, through June 30, 2010, the end of the most recent reporting period where jobs data are publicly available, the ARRA LUST Trust Fund appropriation funded 271 jobs.

Activities Covered by ARRA LUST Appropriation

The ARRA LUST appropriation should maximize job retention and creation, assess and clean up high-priority and shovel-ready LUST sites, and provide other environmental benefits (such as protecting ground water and cleaning up and reusing contaminated land). Shovel-ready sites, according to the June 2009 guidance, are sites ready for assessment and cleanup. The Agency intended these grants to fund LUST-related human health and environmental protection activities, such as:

- Site investigations and assessments
- Petroleum contamination release cleanups
- State management and oversight costs
- Soil and ground water pollutant monitoring

OUST estimated that ARRA funds will pay for at least 1,000 site cleanups and 2,000 site assessments. These activities will help to reduce the national cleanup backlog of approximately 100,000 LUST sites that existed at the time Congress passed ARRA. In fiscal year 2009, EPA and its partners completed 12,944 LUST cleanups.

Federal LUST Requirements

To receive a LUST award, recipients had to agree to comply with a number of requirements in the Code of Federal Regulations (CFR). These ARRA grants are administered under 40 CFR Parts 31 and 35. Part 31 contains standard grant conditions regarding period of availability of funds, monitoring and reporting program performance, retention and access requirements for records, and enforcement. Part 35 contains requirements regarding work plans and evaluation of performance. The UST program regulations, 40 CFR 280, provide specific requirements for addressing LUST sites through site assessments and cleanup activities. Finally, section 9003(h) of the SWDA requires that states prioritize site cleanups that pose the greatest threats to human health and the environment.

EPA's ARRA LUST Requirements

To support ARRA's job creation goals, OUST established interim obligation and expenditure requirements for its grant recipients. States had to obligate 35 percent and spend 15 percent of their ARRA grant awards within 9 months of the grant award date. OUST's June 2009 Recovery Act guidance indicated that failure to

meet these obligation and spending goals could result in a number of enforcement actions, potentially leading to reallocation of a state's ARRA award to another state.

For sites not funded under ARRA, states only had to provide performance reporting semiannually to OUST. States were not required to provide OUST with any information on site assessments. As a condition of the ARRA LUST grants, recipients were required to report quarterly on the number of site assessments and cleanups that they were funding through ARRA. OUST's national summary of quarterly ARRA performance reports include:

- Site assessments initiated
- Site assessments completed
- Cleanups initiated
- Cleanups completed

EPA is also conducting enhanced baseline monitoring on all ARRA grants. EPA Order 5700.6A2 CHG2 defines baseline monitoring as the periodic review of a recipient's progress in, and compliance with, a specific award's scope of work; terms and conditions; and regulatory requirements. While all regular LUST Trust Fund grants are subject, as all other grants are, to annual baseline monitoring, ARRA LUST grants are subject to more frequent monitoring. EPA headquarters is requiring that the regions conduct quarterly baseline monitoring on all ARRA grants.

EPA developed a specific Recovery Act Program Plan and guidance for its ARRA LUST funds. EPA developed the program plan in May 2009. In this plan, OUST detailed the formula that it would use to distribute ARRA funds to states and territories. The plan also described the allowable uses for these funds. In June 2009, OUST also provided the regions with guidance to assist in the negotiation and approval of the grants. The guidance provided details about eligible and ineligible costs, and ARRA-specific requirements including Davis-Bacon wage rates, the Buy American provision, and unique reporting requirements. The Agency's ARRA LUST guidance provides examples of construction activities to which the Buy American provision applies (e.g., piping to public water systems and paving) and to which the Davis-Bacon prevailing wage rate requirements apply (e.g., piping to public water systems, excavation, tank removal, and paving).

Scope and Methodology

We conducted a review of OUST and regional oversight of state ARRA LUST grants from November 2009 through September 2010. We conducted this review in accordance with generally accepted government audit standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a

reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We reviewed reports, guidance documents, and correspondence to determine whether OUST developed and implemented adequate management controls to ensure that ARRA-funded LUST cleanups complied with applicable laws, regulations, and guidance. We list the significant prior OIG and U.S. Government Accountability Office (GAO) reports that we reviewed in Appendix A. We also interviewed OUST managers, and staff and managers in Regions 4, 5, 7, and 9. We chose these regions because their states and territories accounted for a large share of the ARRA LUST funds that had been awarded (\$131.8 million, or 66 percent of the ARRA allocation for grants with states and territories).

We selected states based on each state's knowledge of its underground tanks universe, the size of its annual LUST Trust Fund allocation, and program approval status. We selected two states within each of the four regions for intensive review—California, Florida, Georgia, Indiana, Iowa, Nebraska, Nevada, and Wisconsin. We obtained additional information from Illinois after we learned that it had some difficulty making site eligibility determinations. For each state, we reviewed its work plan, cooperative agreement, and other documentation, and interviewed state staff and managers. As part of our review, we developed a checklist to document the extent to which state grant applications were in compliance with applicable federal laws, regulations, and guidance. The checklists contain the applicable requirements from SWDA, the National Energy Policy Act of 2005, ARRA, EPA's Recovery Act Program Plan (dated May 15, 2009), EPA's UST Program regulations, EPA Grants Management regulations, OUST's June 2009 Recovery Act guidance, and Office of Management and Budget guidance (see appendix B).

Noteworthy Achievements

OUST reported that it was one of the few EPA offices to have 100 percent of its grant recipients submit all of their required performance reports for both the first and second quarter ARRA performance reporting periods. OUST has also taken steps to further improve the quality of reported data. In December 2009, March 2010, and June 2010, OUST published "lessons learned" from the first three quarters of ARRA performance reporting. In addition to informing states of common errors, the March publication indicated that OUST had added reporting subsystems to the LUST 4 database that allow states and regions to review their submitted data.

Chapter 2

Leaking Underground Storage Tank Recovery Act Grants Contained Requirements but LUST Priority Lists Need More Oversight

While the Recovery Act grants we reviewed contained most of the requirements specified in Agency regulations and guidance, there were three management control deficiencies with these grants:

- (1) EPA had not clarified to states whether municipally owned LUST sites would be eligible for ARRA LUST funds.
- (2) EPA had no plan to deobligate unspent ARRA funds from grant recipients.
- (3) EPA in many instances does not use state data to ensure that grants comply with site priority requirements of SWDA.

EPA corrected the first two deficiencies by spring 2010 through additional guidance to the regions. However, EPA has not yet corrected the third deficiency. In accordance with ARRA's economic and environmental purposes, OUST's June 2009 Recovery Act guidance instructed states to use ARRA funds at sites that best met program priorities of being both shovel-ready and most threatening to human health and the environment. While every ARRA LUST cooperative agreement we reviewed contained language to fund shovel-ready sites, the agreements varied considerably in how they addressed SWDA's site prioritization requirement. This management deficiency means that EPA regions are unable to ensure that states have directed ARRA funds to shovel-ready sites that provide the greatest environmental benefit.

Grants Contained Most Agency Regulations and Guidance Requirements

The eight ARRA LUST Trust Fund grants that we reviewed largely contained requirements specified in Agency regulations and guidance. Prior to awarding the ARRA LUST grants, OUST issued its *Guidance to Regions for Implementing the LUST Provision of the American Recovery and Reinvestment Act of 2009*. While nearly all of these requirements were also reflected in the state work plans and grants that we reviewed, we found two instances in which the Buy American provision was omitted.

None of the work plans or grants that we reviewed in EPA Region 4 contained an explicit reference to ARRA's Buy American requirement. Even though Florida staff told us they informed their contractors to implement Buy American where

practical, and Georgia officials stated that this requirement was unlikely to affect their ARRA LUST work, the requirement should still have been an explicit part of the terms and conditions of their cooperative agreements as it was in other regions.

In addition to referencing EPA’s standard grant requirements, the grants usually included all of the requirements that were unique to ARRA LUST Trust Fund awards. In all eight of the cooperative agreements we reviewed, for example, the states committed to complying with Davis-Bacon requirements in their expenditures. The EPA regions also ensured that both OUST’s 35/15 obligation and expenditure requirement¹ and its quarterly ARRA performance reporting requirements were part of all of state cooperative agreements that we reviewed.

EPA Unable to Ensure That Cleanups Meet Prioritization Requirements

OUST maintains that ARRA funds were intended to achieve multiple goals and, while environmental benefit was paramount in its considerations, so was the need to invest ARRA funds quickly at shovel-ready sites. From April 1, 2010, through June 30, 2010, ARRA funded 271 jobs, funded site assessments, and led to improved environmental conditions through site cleanups (table 1).

Table 1: Cumulative site assessments/cleanups funded with ARRA funds as of June 30, 2010

ARRA performance measure	Quarter 3 FY 2010 results	Cumulative long-term target	Percent complete
Site assessments initiated	649	2,000	32
Site assessments completed	340	2,000	17
Cleanups initiated	402	1,000	40
Cleanups completed	326	1,000	33

Source: EPA, *American Recovery and Reinvestment Act - Quarterly Performance Report (Quarter 3 - Cumulative Results as of June 30, 2010)*.

Note: Recovery Act funds have contributed to other assessments and cleanups at a total of 1,424 sites that did not begin as Recovery Act projects.

We found that all eight state ARRA LUST cooperative agreements contained language to fund shovel-ready sites and, therefore, are supportive of Congress’s job creation goals. However, they varied considerably in the extent to which they also included the SWDA site prioritization requirement. As a result, EPA is unable to ensure that all ARRA-funded LUST cooperative agreements for site cleanup activities authorized by 9003(h) of SWDA are consistent with the SWDA site prioritization requirement.

OUST’s June 2009 guidance instructed states to use ARRA funds at sites that best met the program priorities of being shovel ready and most threatening to human

¹ OUST’s interim obligation and expenditure requirements for its grant recipients stipulated that states had to obligate 35 percent and spend 15 percent of the ARRA award within 9 months of the award date.

health and the environment. These funding priorities supported the job creation/retention and economic goals of ARRA as well as the environmental goals of SWDA, but created competing goals for states, which, prior to ARRA, only had to direct funds toward sites that posed the greatest threats to human health and the environment.

Seven of the eight regional LUST program managers we interviewed did not report using state priority site information. This information could have been used by regional staff to verify that ARRA funds would be directed to high-priority sites that states also identified as shovel ready. Of the eight program managers we interviewed, only the regional program manager for the State of Nebraska reported using site priority information during the grant application review process. In many cases, regional staff lacked the necessary information to discuss how states planned to conduct their ARRA LUST work in accordance with the SWDA site prioritization requirement. No regional staff reported supplementing the state's initial submission with their own review of the state's LUST database. For example, while Florida's cleanup backlog contains sites with priority scores as high as 111, none of the Florida LUST sites that received ARRA LUST funds had state priority scores over 56. The state has over 300 sites with priority scores above 56, some of which may have been shovel-ready sites eligible for ARRA LUST funds. Even though the states determined sites for cleanups, we found that regional staff knowledge of state priority lists was incomplete.

Furthermore, regional program managers were unaware that sites lacked risk information. Even though at least 11 of Wisconsin's ARRA LUST sites lacked petroleum risk information, the Region 5 state program manager stated that he was unaware of the large number of Wisconsin LUST sites lacking petroleum risk rankings. We analyzed Wisconsin's LUST backlog and identified a total of 573 Wisconsin LUST sites that did not have petroleum risk information. Likewise, the Region 5 Indiana program manager was unaware of any additional, eligible sites in that state that might have been candidates for ARRA-funded assessments because their site risk was listed as "unknown." As of November 2009, Indiana had 31 active LUST sites lacking priority rankings. One of these was located at an elementary school (Porter Lakes Elementary) that relies on its own ground water sources to meet the building's drinking water needs.

Eligibility Not Clarified Prior to ARRA Awards

OUST and the regions dealt with many state-specific eligibility issues before the regions approved states' grants. ARRA did not change the eligible uses for LUST Trust Fund monies and OUST expected states to be familiar with eligibility requirements. OUST reported that discussions with states revealed that some were shifting their historic uses of LUST Trust Funds from personnel costs to direct site work and had questions about eligibility. OUST and regions responded to such requests for clarification. However, OUST did not provide states with guidance on how to determine site eligibility in situations in which local

governments obtained title to sites until March 2010—almost 6 months after the regions approved the last ARRA LUST grant. Since OUST had not provided states with complete site eligibility determination guidance in its original directives, the March 2010 supplemental guidance allows work to proceed on municipally owned sites where a financial commitment had already been made. The OIG Office of Counsel analyzed this supplemental guidance document and concluded that OUST did not exceed its discretion when it issued this guidance.

OUST Initially Lacked a Plan to Redistribute Unspent ARRA Funds

OUST established interim obligation and expenditure requirements for its grant recipients to support ARRA’s economic and job creation goals. States had to obligate 35 percent and spend 15 percent of the ARRA award within 9 months of the award date. This timeframe was established to provide OUST adequate time to redistribute any unused ARRA funds prior to the September 30, 2010, statutory deadline. The June 2009 guidance states that failure to reach obligation and expenditure requirements could be considered a “material failure,” potentially resulting in states losing a portion of ARRA awards. Although OUST and the regions monitored expenditures of funds, OUST did not complete its development of a plan to redistribute funds until June 2010. On June 23, EPA’s Office of Grants and Debarment issued an expedited grant termination process in the Federal Register because OUST reported that if it had decided to take funds away from nonperforming states, the potentially lengthy appeals process would have extended beyond the September 30 deadline.

Conclusions

EPA was largely successful in ensuring that ARRA grants contained applicable laws, regulations, and guidance. Moreover, in the first year of implementation, OUST corrected two of three cases in which there were management control deficiencies. The remaining challenge for EPA is consistent implementation of the SWDA site prioritization requirement.

Recommendation

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

- 2-1 Ensure that the SWDA site priority requirement is consistently incorporated into the terms and conditions of future LUST Trust Fund grant agreements.

Agency Response and OIG Comment

The Agency agreed with our recommendation.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
2-1	8	Ensure that the SWDA site priority requirement is consistently incorporated into the terms and conditions of future LUST Trust Fund grant agreements.	O	Assistant Administrator for Solid Waste and Emergency Response			

¹ O = recommendation is open with agreed-to corrective actions pending
 C = recommendation is closed with all agreed-to actions completed
 U = recommendation is undecided with resolution efforts in progress

ARRA-Related Reports from EPA OIG and GAO

While the EPA OIG has not conducted prior reviews of ARRA LUST Trust Fund assessments and cleanups, there have been reviews of other ARRA-funded programs:

- *EPA Recovery Act Recipient Reporting and Data Review Process*, Report No. 10-R-0020, October 29, 2009
- *EPA Action Needed to Ensure Drinking Water State Revolving Fund Projects Meet the American Recovery and Reinvestment Act Deadline of February 17, 2010*, Report No. 10-R-0049, December 17, 2009
- *EPA Needs Definitive Guidance for Recovery Act and Future Green Reserve Projects*, Report No. 10-R-0057, February 1, 2010

GAO has issued several reports on ARRA job creation and reporting issues:

- *RECOVERY ACT: Recipient Reported Jobs Data Provide Some Insight into Use of Recovery Act Funding, but Data Quality and Reporting Issues Need Attention*, GAO 10-223, November 19, 2009
- *RECOVERY ACT: Project Selection and Starts Are Influenced by Certain Federal Requirements and Other Factors*, GAO-10-383, February 2010
- *RECOVERY ACT: One Year Later, States' and Localities' Uses of Funds and Opportunities to Strengthen Accountability*, GAO-10-437, March 2010
- *RECOVERY ACT: States' and Localities' Uses of Funds and Actions Needed to Address Implementation Challenges and Bolster Accountability*, GAO-10-604, May 2010

We also reviewed two GAO reports on EPA's LUST program:

- *ENVIRONMENTAL PROTECTION: More Complete Data and Continued Emphasis on Leak Prevention Could Improve EPA's Underground Storage Tank Program*, GAO-06-45, November 2005
- *LEAKING UNDERGROUND STORAGE TANKS: EPA Should Take Steps to Better Ensure the Effective Use of Public Funding for Cleanups*, GAO-7-152, February 2007

State Checklist Requirements

We reviewed the grants between EPA and the states to determine whether they contained requirements of Agency regulations and guidance. The checklists compiled for reviewing the state agreements contained the following requirements.

1. Applicable Laws
 - a. Solid Waste Disposal Act, as amended
 - b. Energy Policy Act of 2005, provisions regarding Underground Storage Tank Compliance
 - c. American Recovery and Reinvestment Act of 2009

2. Applicable Regulations
 - a. 40 CFR 280.60-280.67, Subpart F—Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances
 - b. 40 CFR 31, Subpart C—Post-Award Requirements
 - c. 40 CFR 31.23—Period of availability of funds
 - d. 40 CFR 31.40—Monitoring and reporting program performance
 - e. 40 CFR 31.42—Retention and access requirements for records
 - f. 40 CFR 31.43—Enforcement
 - g. 40 CFR 31.45—Quality Assurance
 - h. 40 CFR 35.107—Workplans
 - i. 40 CFR 35.115—Evaluation of Performance

3. Applicable Guidance
 - a. Guidance To Regions For Implementing The LUST Provision Of The American Recovery And Reinvestment Act Of 2009, Office of Underground Storage Tanks, EPA-510-R-09-003, June 2009
 - b. LUST Trust Fund Cooperative Agreement Guidelines OSWER Directive 9650.10A, May 24, 1994
 - c. OSWER Directive 9610.17—Use of Risk-based Decision-Making in UST Corrective Action Programs, March 1, 1995
 - d. Supplemental Guidance on Recovery Act Recipient Reporting (section 1512) of the American Recovery and Reinvestment Act of 2009, Office of Underground Storage Tanks, October 2, 2009
 - e. Clarification of LUST Eligibility and Grant Implications, Office of Underground Storage Tanks, March 17, 2010

Agency Comments

October 20, 2010

MEMORANDUM

SUBJECT: Response to Draft Audit Report: Leaking Underground Storage Tank Recovery Act Grants Contained Requirements but EPA Needs to Improve State Oversight, Project No. 2010-1068

FROM: Mathy Stanislaus/s/
Assistant Administrator

TO: Dan Engelberg
Director, Water and Enforcement Issues
Office of Inspector General

Thank you for the opportunity to comment on the draft report entitled, "Leaking Underground Storage Tank Recovery Act Grants Contained Requirements but EPA Needs to Improve State Oversight," dated September 22, 2010. We are in general agreement with the findings and recommendation, and will ensure all corrective actions are completed as required.

Comments on Recommendation:

We recommend that the Assistant Administrator for Solid Waste and Emergency Response ensure that the SWDA site priority requirement is consistently incorporated into the terms and conditions of future LUST Trust Fund grant agreements.

Response: We concur with this recommendation. Ensuring LUST funds are spent on high priority sites is one of many responsibilities states must accept when receiving LUST Trust Fund corrective action grants. OSWER's LUST Trust Fund Guidance (Directive 9650.10A) requires states to develop a site priority system for addressing LUST sites. OUST's June 2009 Recovery Act LUST guidance also reiterated the requirement to give priority to sites posing the greatest risks, while balancing the need to create/retain jobs. Despite such guidance, OIG identified inconsistent application of the site priority requirement in the ARRA LUST grant agreements. We will work to ensure this important priority is more consistently addressed in future LUST cleanup grants.

Timing: OSWER will incorporate this requirement into the next iteration of the National Program Manager (NPM) guidance (Spring 2011). In addition, OSWER will work to ensure Regional programs incorporate such a term and condition into all LUST cleanup grants awarded after June 30, 2010.

Additional Comments:

Job Creation - At two places (page 2 and page 6) the draft report characterizes jobs created in a manner that suggests cumulative figures. In both cases the numbers provided represent jobs created during the quarter ending June 30, 2010, rather than cumulatively through that time. We recommend you characterize the jobs created numbers as quarterly data.

Redistribution - The first paragraph of this section indicates the process to deobligate and redistribute would extend beyond the September 30, 2010 deadline. We believe we would have completed the process before that deadline, had it been necessary. In fact, on June 23, 2010, we issued an expedited grant termination process in the Federal Register to help ensure we would meet the deadline [75 FR 35799]. Also, the second paragraph indicates that OUST should be able to redistribute the funds returned from Florida before the September 30, 2010 deadline. While OUST was fully prepared to redistribute the funds, the Education and Medicaid Assistance Act rescinded \$9.2 million, eliminating our ability to redistribute the funds.

Should you have any questions regarding this response, please contact Mark Barolo in the Office of Underground Storage Tanks at (703) 603-7141.

CC: Tim Roach, OIG
Renee Wynn, OSWER
Johnsie Webster, OSWER
Carolyn Hoskinson, OUST
Mark Barolo, OUST
Adam Klinger, OUST

OIG Evaluation of Agency Comments

The Office of Solid Waste and Emergency Response agreed with our recommendation.

The Office of Solid Waste and Emergency Response had a concern on pages 2 and 6 of our report regarding job creation. We revised the report to reflect the job creation figures were for one quarter only.

The Office of Solid Waste and Emergency Response had a concern on page 8 of our report regarding the redistribution of ARRA funds. We revised this section to include actions taken by the Agency to ensure that it would be able to redistribute funds by the September 30, 2010, deadline. We also removed text regarding Florida's decision to return ARRA funds to EPA, because, according to EPA, the passage of the Education and Medicaid Assistance Act of 2010 eliminated EPA's ability to redistribute these funds.

Distribution

Office of the Administrator

Assistant Administrator for Solid Waste and Emergency Response

Director, Office of Underground Storage Tanks, Office of Solid Waste and Emergency Response

Agency Followup Official (the CFO)

Agency Followup Coordinator

General Counsel

Associate Administrator for Congressional and Intergovernmental Affairs

Associate Administrator for External Affairs and Environmental Education

Audit Followup Coordinator, Office of Solid Waste and Emergency Response