

Practice Update

Major Boost Coming in Federal Brownfield and Superfund Spending and Focus

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Following the enactment of the federal *Infrastructure Investment and Jobs Act* (H.R. 3684) and its signing into law by President Joseph R. Biden this month, significantly expanded federal funding and emphasis is expected in federal Brownfield and Superfund cleanup at sites across the United States. According to some observers, the infrastructure measure provides the largest single expenditure in federal environmental cleanup and remediation spending to date. While largely pumping additional funds into existing, established federal Brownfield programs, the bill also provides opportunities for expanding the role and integration of environmental justice (EJ), clean energy, and electric vehicle (EV) initiatives into Brownfield policy and practice.

The federal infrastructure bill was signed into law on November 15, 2021. The legislation passed the U.S. House of Representatives on November 5, 2021, after earlier passing the U.S. Senate on a largely bipartisan basis in August 2021. The approximately \$1.2 trillion measure includes \$550 billion in new federal spending (increase over current spending levels). The bill is designed to direct infrastructure funds and facilitate projects over a number of years, not in a rapid, stimulus-type manner.^[1]

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According to a White House fact sheet (dated November 6, 2021), the measure invests an overall total of \$21 billion in environmental cleanup and remediation programs, aimed to address legacy pollution and contamination and to seek to mitigate its effect on EJ communities.

Background - Federal Brownfield Program. As background, according to the U.S. Environmental Protection Agency (EPA), the best historical estimate is that there are approximately 450,000 to 1 million Brownfields in the U.S. The main elements of the federal Brownfield program began in earnest with the passage of the federal Small Business Liability Relief and Brownfields Revitalization Act in 2002, which provided funds to assess and clean up Brownfields and clarified Brownfield CERCLA liability protections. The program was continued and expanded by the federal Brownfields Utilization, Investment, and Local Development (BUILD) Act of 2018.

The 2021 infrastructure bill contains substantial Brownfield and environmental provisions, including:

- **Federal Brownfield Program Funding:** The bill provides \$1.5 billion for Brownfield grants and loans within EPA's Brownfields program over the next 5 years. This is a significant increase over the \$200 million in annual federal Brownfield spending levels authorized by the 2018 BUILD Act. EPA administers several major federal Brownfield assessment, site cleanup, revolving loan fund, multi-purpose, job training, and state and tribal response program grants and programs.
- **Federal Superfund Tax & Funding:** The bill reinstates and revises the federal Superfund tax (enacted as part of CERCLA and which expired in 1995) – to provide \$3.5 billion in additional funding over the next 5 years for EPA to conduct response actions and cleanup at federal Superfund sites across the U.S. The Superfund tax reinstatement is projected to generate about \$14.4

billion over the next approximately 10 years. These federal Hazardous Substance Superfund Trust Fund excise taxes, effective July 1, 2022, relate to the manufacture, production, and importation of certain chemicals and substances. The bill also waives state Superfund cost-sharing requirements. Separately, the Build Back Better legislation, if enacted, may also reinstate and impose this Superfund tax on crude oil and imported petroleum.

- **EV Charging Stations:** The bill invests \$7.5 billion to build a network of EV electric charging stations – moving toward the Administration’s stated goal of a nationwide network of 500,000 EV charging stations in the U.S. According to the Biden Administration, this constitutes the largest investment in EV infrastructure and clean energy transmission in history – and includes \$2.5 billion to electrify thousands of school and transit buses across the U.S.
- **Reclaim Abandoned Mine Lands:** The bill authorizes nearly \$11.3 billion to be deposited into the federal Abandoned Mine Reclamation Fund targeting the reclamation of abandoned mines across the U.S. The funds are to be distributed as annual grants to states and Indian tribes for abandoned mine land and water reclamation projects. The money is to be allocated based on the amount of coal production before August 3, 1977 in the applicable area. The bill also authorizes an additional \$3 billion for a program to assess and reclaim abandoned hardrock mine lands.
- **Cap Orphaned Oil & Gas Wells:** The bill provides over \$4.7 billion in funding in connection with the creation of a new federal program to plug, remediate, and reclaim orphaned wells (i.e., wells on federal or tribal land that are not used for an authorized purpose and for which (i) no operator can be located, (ii) the operator is unable to plug the well and remediate and reclaim the well site, or (iii) are within the National Petroleum Reserve-Alaska; or wells on state or private land given the

same or similar meaning under state law). This program includes the creation of a well priority ranking system based on health, safety, and environmental concerns.

- **Waste Management & Recycling:** The bill includes \$350 million for solid waste and recycling grants – \$275 million for grants under the Save Our Seas 2.0 Act directed at improvements to waste management and recycling and \$75 million for grants aimed at improving material recycling and management through education and outreach. The bill also provides \$25 million for the development of best practices for battery recycling and voluntary battery labeling guidelines.
- **Pollution Prevention:** The bill provides \$100 million for EPA’s Pollution Prevention (P2) Program and the launch of a new program targeting EJ.

Overall, the bill’s expanded Brownfield and Superfund funding provides a major opportunity to unlock remaining Brownfields and contaminated sites across the U.S.; to continue to integrate and expand EJ initiatives in this area; and to link Brownfield cleanup to renewable energy and EV site reuse. In addition, enhanced Superfund program funding is expected to move more sites (especially orphan sites) forward through the federal regulatory process, providing a significant chance for more Superfund sites to reach key milestones enabling their reuse and revitalization – and to ready them for redevelopment.

Akerman’s Brownfield and environmental team works across the United States. Akerman attorneys are able to assist clients evaluate the bill and its relevance and application for their projects and initiatives.

[1] Former New Orleans Mayor Mitch Landrieu was named a special White House advisor to coordinate

the federal government's implementation.

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