

The Davis-Bacon Act and Brownfields

Introduction

By their design, EPA Brownfields grants depend upon the efforts of a wide range of participants, including public- and private-sector entities who finance transformation of brownfields sites, as well as the individual workers and laborers on the front lines of cleanup and redevelopment. The U.S. government has laws in place to ensure that any worker involved in a federally-funded public works project is compensated in a fair and timely manner. This legislation, known as the Davis-Bacon Act, applies to EPA-funded brownfields cleanup activities and projects funded under EPA Brownfields Cleanup and Revolving Loan Fund (RLF) grants.

Background on the Davis-Bacon Act

The Davis-Bacon Act was enacted in 1931 in response to the rampant unemployment of the depression era. At the time, the primary intent of the Act was to promote the hiring of skilled, local workers, by discouraging the import of laborers from other regions who would work for lower wages.

Since its enactment, Davis-Bacon has been amended three times, in 1935, 1964, and 1994. The Act was briefly suspended twice—in 1992 and 2005—to facilitate emergency response activities following Hurricanes Andrew and Katrina. The Act is administered and enforced by the Wage and Hour Division of the Employment Standards Administration, which falls under the U.S. Department of Labor (DOL).

How Davis-Bacon Applies to Brownfields Grants Funded Through the American Recovery and Reinvestment Act

It should be noted that the same Davis-Bacon requirements apply to Brownfields Cleanup and RLF grants funded through the American Recovery and Reinvestment Act. There are no differences as to how Davis-Bacon requirements should be met for such grants.

Overview of the Act

The Davis-Bacon Act applies to EPA Brownfields grants by way of section 104(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), under which:

“...all laborers and mechanics employed by contractors or subcontractors employed in the performance of construction, alteration, or repair work funded in whole or in part [by Brownfields grants] shall be paid locally prevailing wages.”

These locally prevailing wage rates are determined by the U.S. Department of Labor, and can be accessed in a searchable database at the following address: <http://www.access.gpo.gov/davisbacon/>.

The Act covers all contractors and subcontractors performing work on federally-funded or -assisted construction contracts in excess of \$2,000. While apprentices and trainees may be employed at less than predetermined rates, apprentices must be employed pursuant to an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department.

How Does the Act Apply to Brownfields Projects?

The Davis-Bacon Act applies to all construction, alteration, and repair contracts and sub-contracts awarded with EPA grant funds. For cleanup activities funded through EPA Brownfields Cleanup and Revolving Loan Fund grants, recent and applicable wage rates from the U.S. Department of Labor must be incorporated into construction, alteration, and repair contracts.

How Davis-Bacon Applies to Cleanup of Petroleum-Contaminated Brownfields

Some cleanup activities at sites contaminated by petroleum are not subject to Davis-Bacon Act requirements. Such activities include site remediation through drilling temporary recovery wells, drawing out contaminated soil or water, treating the contaminated soil/water on site, removing the treatment technology and closing recovery wells, and restoration of the area surrounding tank removal that involves only filling and compaction of soil. However, the Davis-Bacon Act does apply to the following petroleum-related cleanup activities:

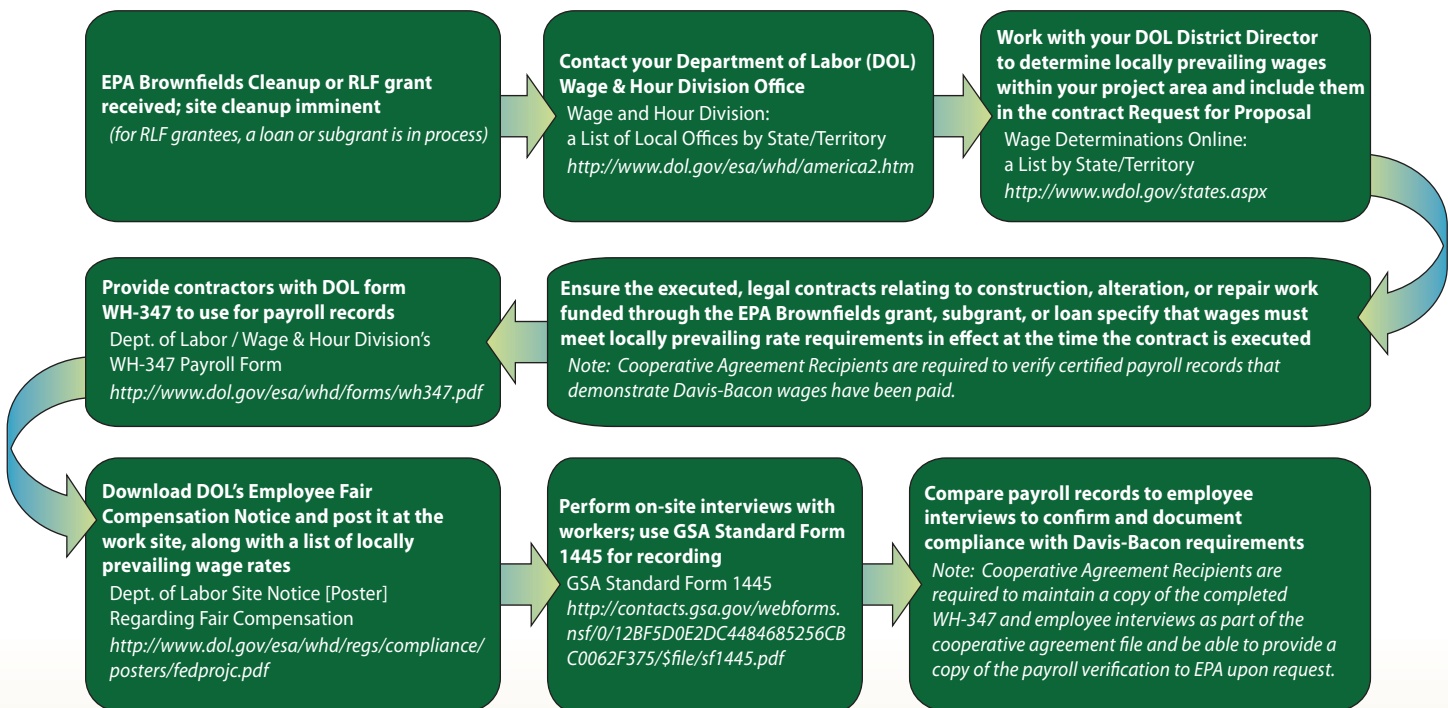


Workers clean up petroleum at a brownfields site in Prineville, Oregon.

- Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination.
- Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above.
- Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

Note: If a Brownfields grant recipient is uncertain about whether a petroleum cleanup activity falls under Davis-Bacon Act requirements, the recipient should discuss the situation with EPA before advising a contractor, borrower, or subgrantee that Davis-Bacon does not apply.

In specific legal terms, "the recipient must ensure that contracts contain the clauses required by 29 CFR 5.5 and any applicable EPA guidance." Please note that EPA and the U.S. Department of Labor are responsible for overseeing Brownfields grantees' compliance with Davis-Bacon Act requirements, and EPA Regional project managers are available to assist grantees (and in the case of RLFs, subgrant recipients) in this regard. RLF grantees may require that RLF borrowers and/or subgrantees perform portions of the Davis-Bacon Act requirements identified in the flow chart below.



For more detailed information, including copies of explanatory brochures and regulatory and interpretative materials, please refer to the links below or contact your local Wage and Hour Division office (a list of local Wage and Hour Division offices is available at <http://www.dol.gov/esa/whd/america2.htm>). A Wage and Hour Division help line is also available at 1-866-4US-WAGE (487-9243).

Related Links

Davis-Bacon and Related Acts Home Page at the U.S. Department of Labor
<http://www.dol.gov/esa/whd/programs/dbra/index.htm>

Davis-Bacon Act Compliance Guide
(U.S. Department of Labor's Office of Compliance Assistance Policy)
<http://www.dol.gov/compliance/guide/dbra.htm>

Additional Davis-Bacon Wage Determination Reference Material
<http://www.access.gpo.gov/davisbacon/referencemat.html>

Contact Information

EPA's Office of Brownfields and Land Revitalization (OBLR)
<http://www.epa.gov/brownfields> • (202) 566-2777



Brownfields cleanup in Boston, Massachusetts.