

The Davis-Bacon Act and Brownfields



Introduction

By their design, EPA Brownfield Grants depend upon the efforts of a wide range of participants, including public- and private-sector entities who finance the transformation of brownfield 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 Brownfield 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 several times. 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 U.S. Department of Labor's Wage and Hour Division (WHD).

Overview of the Act

The Davis-Bacon Act applies to EPA Brownfield 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 Brownfield 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: <https://sam.gov/content/wage-determinations>.

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 (including painting and decorating) contracts and subcontracts for work funded in whole or in part with EPA CERCLA 104(k) grant funds as provided in CERCLA 104(g). For cleanup activities funded through EPA Brownfield Cleanup and RLF Grants, recent and applicable wage rates from the U.S. Department of Labor must be incorporated into construction, alteration, and repair (including painting and decorating) bid solicitation documents and contracts.

Note: If a Brownfield Grant recipient is uncertain about whether a cleanup activity falls under Davis-Bacon Act requirements, the recipient should discuss the situation with EPA before authorizing work on the site.

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 restoring the area surrounding tank removal by filling and compacting the soil. However, the Davis-Bacon Act does apply to the following petroleum-related cleanup activities:

- 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 restoration of the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.



An old underground storage tank being pulled from the ground.

In specific legal terms, "the recipient must ensure that solicitations and 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 Brownfield Grant recipients' compliance with Davis-Bacon Act requirements, and EPA Regional project managers are available to assist grant recipients (and in the case of RLFs, borrowers and subgrantees) in this regard.

RLF grant recipients may require RLF borrowers and/or subgrantees to 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 <https://www.dol.gov/agencies/whd/contact/local-offices>). A Wage and Hour Division helpline is also available at 1-866-4US-WAGE (487-9243).

Related Links

Frequently Asked Questions specific to Brownfields and Davis-Bacon
<https://www.epa.gov/brownfields/davis-bacon-act-and-brownfields>

Davis-Bacon and Related Acts Home Page at the U.S. Department of Labor
<https://www.dol.gov/agencies/whd/government-contracts/construction>

Davis-Bacon Act Compliance Assistance Resource: Employment Law Guide—Federal Contracts-Working Conditions: Prevailing Wages in Construction Contracts
<https://webapps.dol.gov/elaws/elg/dbra.htm>

Additional Davis-Bacon Wage Determination Reference Materials
<https://sam.gov/content/wage-determinations>



Workers prepare for the construction of a biomass power plant.

Contact Information

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