



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY


WASHINGTON, D.C. 20460

December 17, 2009

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

Subject: Supplemental Guidance To Regions For Implementing The LUST Provision Of The American Recovery And Reinvestment Act Of 2009

From: Carolyn Hoskinson, Director
Office of Underground Storage Tanks 

To: Regional UST Branch Chiefs, Regions 1-10
Regional UST Program Managers, Regions 1-10

States recently posed a question about the applicability of Davis Bacon Act (DB) requirements relative to the installation of private wells. EPA's June 2009 *Guidance To Regions For Implementing The LUST Provision Of The American Recovery And Reinvestment Act Of 2009* (<http://www.epa.gov/oust/eparecovery/lustproguide.htm>) and the national DB terms and conditions for ARRA LUST cooperative agreements indicate that DB applies to installation of wells connected to public water systems, but are silent with respect to private well installation. After further discussions with the U.S. Department of Labor, a determination was made that installation of private, agricultural, and rural water supply wells all trigger Davis Bacon Act requirements. Activities associated with installation of these well types represent a “unique situation”, which is one of the DB triggers described in EPA’s guidance.

Please note that the supplemental guidance in this memo will require action on the part of states based on the scenarios listed below. In either case, there is no requirement for a state to retroactively meet DB administrative procedures and reporting, except for the documentation as required below.

- If activities associated with installation of these well types have been completed and contracts or task orders closed out, a state must make a wage determination and document that its prevailing wage rate equals or exceeds the federal DB wage rate for the state to be in compliance.
- If a state determines that prevailing wage rates have not been met, workers must be reimbursed at the appropriate wage rate even if contracts or task orders have been closed out and records must be kept to document compliance with the wage rate.

You should also note that this supplemental guidance does not require regions and states amend the LUST DB terms and conditions in their assistance agreements. However, future LUST site activities associated with installation of these well types must follow the standard DB procedures relative to wage determination and administrative procedures.

Please provide states in your region with this supplemental guidance. If you have further questions concerning this memo, please contact Queenie M. Mungin-Davis of my staff at mungin-davis.queenie@epa.gov or 703-603-7176.

cc: OUST Managers
OUST Regional Liaisons
James Drummond, EPA Office of General Counsel
Samuel Peterson, EPA Office of Grants and Debarment