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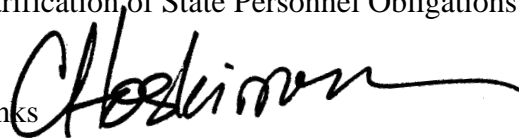
WASHINGTON, D.C. 20460

January 12, 2010

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

MEMORANDUM

**Subject:** LUST ARRA Grant Guidance: Clarification of State Personnel Obligations

**From:** Carolyn Hoskinson, Director  
Office of Underground Storage Tanks 

**To:** Regional UST Division Directors, Regions 1-10  
Regional UST Deputy Division Directors, Regions 1-10  
Regional UST Branch Chiefs, Regions 1-10  
Regional UST Program Managers, Regions 1-10

The June 2009 Guidance to Regions for Implementing the LUST Provisions of the American Recovery and Reinvestment Act of 2009<sup>1</sup> required a term and condition to ensure the expeditious use of ARRA funds, specifying minimum levels of obligation and expenditure within nine months of award. That term and condition was included in all ARRA LUST cooperative agreements. Several states have asked how state personnel costs should be calculated when determining the percent of funds obligated. This memo answers those questions, providing a clarification of the June 2009 guidance.

The term and condition in the June guidance required recipients to obligate at least 35 percent of funds, and expend at least 15 percent of funds within nine months of receiving the award. The guidance further defined the term obligate. However, that definition was silent on how to count state personnel costs when determining the amount obligated. Based on discussions with the ASTSWMO Tanks Subcommittee and EPA's Office of General Counsel and the Office of Grants and Debarment, states should count their personnel costs toward meeting the above requirements in the following way:

For purposes of calculating the obligation percentage to determine compliance with the LUST ARRA term and condition:

- State personnel costs associated with an employee's anticipated labor charges (e.g., salary, benefits, and indirect costs) for work under the LUST ARRA cooperative agreement may be counted as obligated for the complete period of the ARRA grant as long as the employee is on the state's payroll for the purposes of withholding taxes, benefits, and similar indicators of employment.

<sup>1</sup> <http://www.epa.gov/oust/eparecovery/lustproguide.pdf>

- State personnel costs planned for an employee who is not yet employed, or who is no longer employed or charging labor to the LUST ARRA cooperative agreement, may not be counted as obligated.

For example, if the state anticipates that an existing employee will charge 50% of her time to the LUST ARRA cooperative agreement throughout the performance period, the state may report that 50% of her salary, benefits and indirect costs were obligated at the time of award. Should the state also hire an additional employee who will charge 100% of his time to the LUST ARRA cooperative agreement, the state may consider his salary, fringes and indirect costs to be obligated once the employee is added to the state payroll. Obligations may change if the state determines, based on workload or other factors, that the employees will charge more or less of their labor to the LUST ARRA cooperative agreement. States report expenditures based on actual outlays for personnel costs in all cases.

This approach will ensure the accounting associated with the LUST ARRA term and condition meets the spirit of the term and condition, which is to ensure states are on track to fully expend the LUST ARRA funds. To not allow such costs to be considered as obligated would penalize states who chose to use the LUST ARRA agreement to fund state staff, which is a fully valid use of LUST ARRA resources.

If you have any question about this clarification, please contact Adam Klinger at 703/603-7167 or [klinger.adam@epa.gov](mailto:klinger.adam@epa.gov).

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