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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Office of the Director
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Arnold Schwarzenegger, *Governor*

October 31, 2005

Robert Pieplow
California Department of Transportation
Division of Construction
1120 N Street
Sacramento, CA 94274

Re: Public Works Case No. 2005-014
Sediment Removal from Storm Drains
California Department of Transportation

Dear Mr. Pieplow:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the removal of sediment from storm drains is not public work subject to the payment of prevailing wages.

In Southern California, moving vehicles discharge waste products onto freeways, and rain washes these waste products into storm drains. The sediment of these waste products builds up in the storm drains and eventually is flushed out into the ocean. A federal lawsuit by an environmental group alleged that sediment from storm drains was hazardous to wildlife in Santa Monica Bay. Sediment removal is therefore necessary to prevent contaminating the Bay and endangering wildlife. In 1994, a federal court issued an injunction ordering the California Department of Transportation ("CalTrans") to reduce or eliminate the discharge of hydrocarbon and lead-contaminated sediments from storm drains into Santa Monica Bay.

The storm drains at issue in this determination are designed to be "self-flushing" in that they automatically flush sediments out into waterways as part of their normal functioning. According to CalTrans, these self-flushing drains normally require little or no maintenance. If large debris accumulates, thereby clogging a drain, the Division of Maintenance of CalTrans performs the maintenance necessary to remove the debris and restore the drain to its normal operable condition.

To comply with the injunction, CalTrans intends to contract with a private company to remove the sediment from the drains once per year. The contractor will use a vactor truck equipped with a dry vacuum to remove the sediment from the storm drains and filter it. Sediment will be tested for hazardous components. Non-hazardous sediment will be used as landfill, and hazardous sediment will be disposed of at a waste site. The contractor also will be required to visually inspect the drains for damage and cleanliness. CalTrans represents that the sediment removal work will not affect the function or preservation of the drains because the contractor will be removing sediment that would otherwise be washed into waterways by the normal operation of the self-flushing drains.

Under Labor Code section 1771,[1] public work includes work performed under "contracts let for maintenance work." Title 8, California Code of Regulations, section 16000, defines maintenance in pertinent part as "routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system, or any real property), for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired."

The storm drains are publicly owned and operated facilities under the above definition. The issue presented here is whether under the facts of this case the contracted for sediment removal work performed on the storm drains pursuant to the federal injunction is "maintenance within the meaning of section 1771 and Title 8, California Code of Regulations, section 16000.

In PW 2005-007, *Street Sweeping/City of Santa Clarita* (June 1, 2005), the Director determined that street sweeping was not maintenance because street sweeping was intended merely to improve the appearance of city streets, not to "preserve, protect and keep" the streets in working order. *Street Sweeping* set forth the following definitions: "Preserve" means "to protect, keep up, maintain." "Protect" means "to shield from injury, danger or loss, guard, defend." To "keep" means to "maintain in good order or condition."

By their design, the drains are self-cleaning and, according to CalTrans, require little to no maintenance. The drains will continue to work properly and discharge into the waterways, whether or not the sediment is removed. The purpose of removing the sediment is only to satisfy environmental concerns about what is being discharged into the waterways, not to keep up the drains or maintain them in good order or condition.

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[1] All statutory references herein are to the Labor Code, unless otherwise indicated.

Sediment removal is also not necessary to shield from injury, danger or loss. The Director has previously determined that the removal of garbage from rail tracks is maintenance because the purpose of such work is to ensure safety and to keep the rail system in working condition. PW 2001-005, *Trash/Debris Removal; Los Angeles County Metropolitan Transportation Authority* (August 8, 2001). Here, again, the purpose of the work is to preserve the environment, not to ensure safety. The sediment is being removed because it might cause harm to wildlife, not because it poses any harm to the public or to the storm drainage system.

Therefore, the sediment removal work is not for the "preservation" or "keeping" or "protection" of the storm drains; it is being performed for a purely environmental purpose. Accordingly, this work does not constitute "maintenance" under the authority cited above. Because the sediment removal work does not constitute maintenance, it is not public work for which prevailing wages are required to be paid.

Because the sediment removal work is not public work, the other aspects of the scope of work, including visual inspection of the storm drains, testing of the sediments for hazardous materials and hauling and disposal of the treated waste, are likewise not public work under any statutory provision.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

John M. Rea
Acting Director