

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050



July 19, 2002

Julie Burtech
Burtech Pipeline, Inc.
102 Second Street
Encinitas, CA 92024-3203

Re: Public Works Case No. 2002-020
Hauling Materials to Public Works Sites
San Diego Ball Park and Light Rail Extension to San Diego
State University
Burtech Pipeline, Inc.

Dear Ms. Burtech:

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 documents submitted and an analysis of the relevant facts as presented, I have determined that the employees of Burtech Pipeline, Inc. ("Burtech") hauling materials to the public works construction sites of the San Diego Ball Park and the Light Rail Extension to San Diego State University must be paid prevailing wages.

This determination involves two separate construction projects ("Projects"). In the first Project, the City of San Diego entered into a contract with the San Diego Ball Park Builders ("Builders") for construction of the San Diego Ball Park. Builders subcontracted with Burtech to provide wet underground utilities, including water, storm drainage and sewer utilities for the new Ball Park.

In the second Project, the Metropolitan Transit Development Board entered into a contract with Clark Construction Group, Inc. ("Clark") to build the Mission Valley East LRT Extension San Diego State University Tunnel and Underground Station. Burtech entered into a subcontract agreement with Clark to provide the wet underground utilities for the Extension and Station.

Letter to Julie Burtech
Re: Public Works Case No. 2002-020
July 19, 2002
Page 2

In order to fulfill its obligations under both subcontracts, Burtech had its employees use Burtech trucks to haul sand, rock and other concrete materials from the various suppliers to both Project sites. The materials were stockpiled at the Projects for later use.

What is now Labor Code section 1720(a)(1) (as amended by statutes 2001, Ch. 938, §2) generally defines "public work" to mean "construction, alteration, demolition or repair work done under contract and paid for in whole or in part out of public funds" Labor Code section 1772 provides that "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work."

The building of the Projects, including the installation of the wet underground utilities, is public works under section 1720(a)(1). The work constitutes construction and alteration performed under contract and paid for with public funds. Burtech informs this Department that it is paying prevailing wages to its employees for all aspects of its work on both Projects, except for the materials hauling. It is the hauling work that is the subject of this determination.

The Burtech employees hauling materials to the Projects sites must be paid prevailing wages under section 1772. Burtech is a subcontractor to the Projects. To accomplish the utility work on the Projects, Burtech must obtain the materials described above. Its employees hauling the materials are therefore employed by a subcontractor in the execution of the public works Projects.

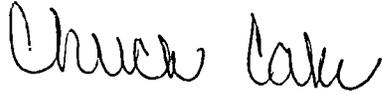
Burtech argues that prevailing wages do not need to be paid to its truck drivers because they are "delivering and dumping materials, albeit important materials, at the Project[s]." It states that the work performed by its truck drivers is no different from the work performed by the truck drivers in Alameda Corridor Project, Precedential Public Works Coverage Determination Case No. 99-037 (April 10, 2000), who were found to be material suppliers and not subcontractors. Burtech's reliance on *Alameda Corridor* is incorrect. In *Alameda Corridor* the truck drivers were employees of the material suppliers, not, as here, employees of a subcontractor on a public works project.

For the above reasons, the Burtech employees hauling the materials to the public works sites must be paid prevailing wages.

Letter to Julie Burtech
Re: Public Works Case No. 2002-020
July 19, 2002
Page 3

I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Chuck Cake".

Chuck Cake
Chief Deputy Director