

DEPARTMENT OF INDUSTRIAL RELATIONS  
OFFICE OF THE DIRECTOR  
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August 29, 2005

Janice V. Goss, Director  
County of Orange  
Integrated Waste Management Department  
320 N. Flower Street, Suite 400  
Santa Ana, CA 92703

Re: Public Works Case No. 2005-013  
County of Orange Hazardous Waste Program

Dear Ms. Goss:

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 operation of Hazardous Waste Program is not a public work subject to the payment of prevailing wages.

### Facts

The County of Orange ("County") entered into a service agreement with Clean Harbors Environmental Services ("Contractor") for a Hazardous Waste Program that consists of two parts. As to the first part, County staff working at three landfills remove hazardous waste found in a load being delivered to the landfills and temporarily store it on landfill property. Under the agreement, the Contractor periodically travels to the landfill, packages the stored "load check waste," and loads the waste onto its trucks. The Contractor then off-hauls the hazardous waste to the Contractor's permitted treatment, storage, and disposal facility ("TSDF"). Examples of load check waste handled by the Contractor include latex and oil-based paint, motor oil, antifreeze, asbestos, poisons, aerosol cans, oil filters, and computer monitors.<sup>1</sup>

The second part of the Hazardous Waste Program involves four regional Household Hazardous Waste Collection Centers ("Household

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<sup>1</sup> Although not part of the service agreement, the Contractor later hauls the hazardous waste from its TSDF to other locations where the waste is treated and recycled or incinerated.

Centers") that are located on either private or municipally-owned property. Program components undertaken at the Household Centers consist of common household hazardous waste collection from the general public, latex paint recycling, and household waste materials exchange. Members of the public drop off at the Household Centers various common household hazardous or waste materials. There, the Contractor removes the materials from the vehicles, segregates them according to class of material, and packages them. The Contractor visually inspects and categorizes any unidentified waste materials. Certain household waste materials that are reusable such as latex paint, automotive products, household cleaners, registered pesticides, fertilizers, and hobby supplies are kept at the Household Centers for members of the public to retrieve for private reuse. Household waste that is not for reuse is periodically off-hauled by the Contractor to its TSDF for disposal. Under the agreement, the Contractor also contains, cleans up, and removes any emergency hazardous material spills at the Household Centers, and keeps the Household Centers in a clean and organized condition.

#### Discussion

Under what is now Labor Code section 1720(a)(1)<sup>2</sup> public works is defined as "construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds... including...inspection and land surveying work." Further, under section 1720.3, public works includes "the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving ... any political subdivision of the state."

Under section 1771, contracts let for maintenance are subject to the payment of prevailing wages. "Maintenance" is defined, in relevant part, in title 8, California Code of Regulations, section 16000, to include:

(1) 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.

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<sup>2</sup>All statutory references are to the Labor Code, unless otherwise indicated.

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Finally, under section 1772 workers employed in the execution of any contract for public work are deemed to be employed upon public work.

The work in question is being done under a contract between the County and the Contractor. The County concedes that the work is paid for with public funds from the County. We examine whether the work performed falls within the types of work enumerated in sections 1720(a) (1), 1720.3, 1771, or 1772. The County contends that the operation of Hazardous Waste Program is not a public work as defined in any of those sections.

In PW 2001-002, *Mono County Transfer Station/Construction and Demolition Waste Landfill* (April 18, 2001), this Department found that the operation of a county transfer station was not a public work since it did not involve construction, alteration, demolition, installation or repair work. There, the contractor only directed other contractors or construction workers to locations on a landfill where construction and demolition waste should be deposited, and collected fees for the disposal. Here, in operating the County's Hazardous Waste Program the Contractor does not perform any construction, alteration, demolition, installation, or repair work on a public works site. First, at the County landfill sites, the Contractor does not alter the land when it packages, loads, and hauls the hazardous waste to the TSDFs. Second, at the Household Centers, the Contractor's duties in unloading, segregating, packaging, storing and hauling the hazardous waste from the Household Centers to the TSDFs also do not constitute construction, alteration, demolition, installation or repair work under section 1720(a) (1).

The work of the Contractor with regard to the clean-up and removal of hazardous material spills at the Household Centers also does not constitute "public works" under section 1771. By their nature, spills do not occur in a "routine, recurring and usual" manner. As such, the work to clean-up and remove spilled material is not maintenance work as defined in section 16000. Similarly, the portion of the contract that requires the Contractor to keep the Household Centers neat and organized do not convert the Household Centers to a maintenance site covered under section 1771 because those duties do not relate to the "preservation, protection and keeping" of the facility, as contemplated by the applicable regulation. See, PW 2005-007, *Street Sweeping/City of Santa Clarita* (June 1, 2005).

The Contractor's duties with respect to visually inspecting and categorizing unknown materials brought to the Household Centers is not "inspection" work as defined in section 1720(a)(1) because they do not pertain to a public works or maintenance site. See,

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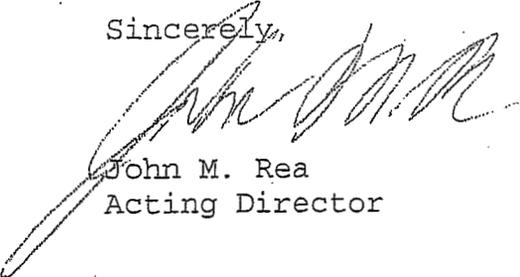
PW 2002-096, Request for Proposals: Planting, Operation, Maintenance and Monitoring of Owens Lake Southern Zones Managed Vegetation Project/Los Angeles Department of Water and Power (June 1, 2005) (monitoring and inspection work of a managed vegetation site).

As for the off-hauling work, under section 1720.3 there may be circumstances under which the transporting of waste from a recycling or transfer center constitutes a public work. But, for that section to apply there must be an underlying public work. Because the operation of Hazardous Waste Program is not a public work, there is no public work site from which the waste is hauled for purposes of section 1720.3. For the same reason, the off-hauling of waste is not done in the execution of a contract for public work under section 1772.

Accordingly, the Contractor's work in the County's Hazardous Waste Program is not a public work for which prevailing wages are required to be paid.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea  
Acting Director