

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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June 26, 2007

Charla Curtis
Labor Compliance Officer
CS & Associates, Inc.
6077 Bristol Parkway, Suite 250
Culver City, CA 90230Re: Public Works Case No. 2006-017
Off-Hauling of Contaminated and Clean Soil
Long Beach Unified School District, Avalon School

Dear Ms. Curtis:

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 California Code of Regulations, title 8, 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 off-hauling of contaminated soil from Avalon School by truck and barge to various disposal locations is a public work subject to prevailing wage requirements. Conversely, the off-hauling of clean, uncontaminated soil is not a public work.

Facts

Apex Environmental Recovery, Inc. ("Contractor") entered into a contract with the Long Beach Unified School District ("District") to excavate, transport and dispose of soil from Avalon School, a grades K through 12 school, in the City of Avalon ("City"), Santa Catalina Island ("Island"). The contract describes the soil as "impacted" with dioxin, lead and arsenic, and its removal is necessary to reduce the potential of toxic exposure to students and faculty at the school. In order to access the contaminated soil, the contract also requires Contractor to temporarily relocate portable classrooms to a specified adjacent site, and to demolish and remove hardscape. The contract further requires the demolished hardscape to be hauled off-site to a specified location on Island where it will be recycled by a third party for re-use. Once the excavation and disposal of the contaminated soil is accomplished, the contract requires Contractor to backfill and compact the excavated areas with clean soil. Finally, new concrete or asphalt pads are to be constructed for the portable classrooms, and the classrooms are to be re-installed with the necessary framing support and connection to utilities.

Of the 5,208 tons of soil hauled from Avalon School, 4,418 tons were contaminated with arsenic and classified as non-hazardous Class III soil under the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) ("RCRA"). Contractor disposed of this soil by engaging the services of subcontract haulers to transport it by truck from the school to City's Seagull Sanitation Landfill, a Class III disposal site located on Island. After disposal by the haulers at the landfill, the soil was de-contaminated by landfill personnel so that it could be used as ground cover. Seagull Sanitation Landfill charged Contractor \$20 per ton to accept this Class III soil.

An additional amount of soil, 590 tons, was classified as RCRA Class I hazardous waste due to the presence of dioxin and lead contamination. Contractor used a licensed hazardous waste transporter to transport this soil off Island to a Class I disposal facility. The soil, loaded into roll-off bins, was hauled by truck from the school to the Catalina Freight Line at the Avalon dock. From there, the bins were transported by barge to Wilmington, California, where they were unloaded and hauled by truck to Clean Harbors in Buttonwillow, California, a privately-owned and permitted landfill and Class I hazardous waste disposal facility with the capacity to treat hazardous material. After disposal by the haulers at Clean Harbors, the soil was converted by landfill personnel to solid form suitable for indefinite storage pursuant to federal regulations. Clean Harbors charged Contractor a Kern County Hazardous Waste Fee of \$91 per ton to accept this Class I soil.

Finally, another 200 tons of clean, uncontaminated soil were hauled by truck and barge from the school to the Puente Hills Landfill in Los Angeles County and disposed of there at no charge to Contractor for re-use by the landfill as ground cover.

Discussion

"Public works" is defined by Labor Code section 1720(a)(1)¹ as "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds" Section 1720.3 states: "For the limited purposes of Article 2 (commencing with section 1770), 'public works' also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including the California State University and University of California, or any political subdivision of the state."

The requesting party² does not dispute that the on-site work involved in the relocation of the portable classrooms, demolition and removal of the hardscape, the excavation, removal and loading of the contaminated and clean soil, the backfilling and compacting of the excavated area with clean soil, the construction of the pads and re-installation of the portable classrooms constitutes a "public works" project subject to prevailing wage requirements. This work entails construction, demolition, installation, alteration and repair done under contract and paid for in whole or in part out of public funds within the meaning of section 1720(a)(1). The only issue presented is whether the off-hauling of the contaminated and clean soil is also subject to prevailing wage requirements.³

The requesting party argues that the off-hauling of the contaminated soil by barge and truck is not a public work under section 1720.3 for two reasons: First, the hazardous Class I soil is not "refuse"

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

²CS & Associates administers District's Labor Compliance Program.

³Requesting party requested a determination only as to the coverage issue raised by the off-hauling of soil. To the extent the relocation of the classrooms or the removal of the demolished hardscape involves any off-site work, such off-site work is not addressed herein. The requesting party represented to Department staff that all of the work involved in relocating the classrooms and removing the demolished hardscape was treated as part of the public works project and, accordingly, prevailing wages were paid for all work performed under the contract except for the off-hauling of soil.

because it was converted into solid form at Clean Harbors in strict conformance with federal regulations, which do not permit the disposal of hazardous waste as ordinary refuse; second, the Class III soil is not "refuse" because it was de-contaminated for beneficial use as ground cover.

The Department's longstanding construction of the term "refuse" encompasses "anything discarded or rejected as useless or worthless; trash." See PW 99-059, *Route 30 Asbestos Pipe Removal Project, California Department of Transportation* (March 20, 2000), quoting *The American Heritage Dictionary of the English Language* (New College Ed. 1979 at p. 1095). The Class I and Class III contaminated soil clearly falls within the definition of refuse as a thing that is discarded as worthless. The fact that Contractor was charged a fee for disposal of this soil is direct evidence of its worthlessness. The soil is being hauled from a public works site at the Avalon School to outside disposal locations. Therefore, under the specific facts of this case, the off-hauling by truck and barge of the Class I and Class III contaminated soil from Avalon School falls within section 1720.3's definition of "public works."

Contrary to requesting party's argument, the fact that the Class I soil was later converted is irrelevant because at the time the soil was off-hauled, it retained its character as hazardous waste. There is no factual or legal basis to consider hazardous waste to be anything other than "refuse." It should be noted that the 590 tons of Class I soil was consistently handled as hazardous waste from the time it was excavated through its disposal at Clean Harbors, where Contractor was assessed a \$91 per ton hazardous waste fee due to lead and dioxin contamination. The soil was ultimately converted into a more benign form *after* it was disposed of at Clean Harbors. As stated above, the fact that Clean Harbors collected a fee for disposal of the Class I soil strongly supports the conclusion that the soil was worthless under the definition set forth above. This conclusion is consistent with *Route 30 Asbestos Pipe Removal Project, supra*, wherein the off-hauling of hazardous waste in the form of asbestos pipe was found to be the hauling of refuse under section 1720.3. The fact that the removal and handling of the asbestos pipe was performed in compliance with state and federal regulations was irrelevant to the determination whether the hauling satisfied the elements of section 1720.3. See also PW 200-036, *Carlson Property Site Lead Affected Soil Removal and Disposal Project* (May 31, 2000) wherein lead-contaminated soil was deemed to fall within the definition of "refuse" and its off-hauling determined to be covered work under section 1720.3.

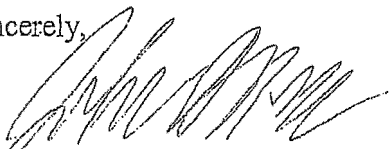
Regarding the 4,418 tons of contaminated but non-hazardous Class III soil, the requesting party contends that it is not "refuse" because it was treated at the landfills and applied as ground cover. The Class III soil, though not considered hazardous by the standards of RCRA, was contaminated with sufficient levels of arsenic to justify its removal as a way to limit exposure to the faculty and students at the school. The Class III soil was off-hauled to a landfill that charged Contractor a fee to accept it. As with the Class I soil, the fact that the landfill collected a fee before it would accept the Class III soil is evidence that this soil was worthless. Consequently, the off-hauling of the Class III soil also satisfies the criteria set forth in section 1720.3: It is "refuse" as that term has been defined in precedential public works coverage determinations to mean worthless; and it was hauled from a public works site to an outside disposal location.

In contrast, the Puente Hills Landfill did not charge Contractor a fee to deposit 200 tons of clean, uncontaminated soil. This soil was re-used by the landfill as ground cover. The fact that no fee was collected by the landfill is evidence that this clean soil, unlike the contaminated soil, was regarded as having sufficient value or worth. In that sense, it cannot be regarded as "refuse" within the meaning of section 1720.3. This analysis is consistent with PW 200-078, *Rosewood Avenue/Willoughby Avenue Sewer Interceptor, City of Los Angeles* (August 6, 2001) wherein the off-hauling of clean soil, which was deposited at several landfills without charge to the contractor and re-used as ground cover, was deemed to not be the hauling of "refuse" under section 1720.3. As stated in *Rosewood Avenue*, "Because the dirt excavated ... is being put to a useful purpose, i.e., the covering of garbage at the landfill sites, it would not be considered refuse under these circumstances. A fact that clearly supports this conclusion is that [contractor] was not charged for dumping the dirt at the landfills." The same rationale applies here.

In summary, the off-hauling of Class I hazardous and Class III non-hazardous contaminated soil from Avalon School by truck and barge, over land and sea, to the Seagull Sanitation Landfill and Clean Harbors constitutes the hauling of refuse from a public works site to outside disposal locations and, therefore, is a public work subject to prevailing wage requirements under section 1720.3. The off-hauling of the clean, uncontaminated soil to the Puente Hills Landfill is not a public work.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea
Acting Director