



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

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August 11, 2011

Robert A. Beattey
Spencer Law Firm, LLC
1326 Tacoma Avenue S, Suite 200
Tacoma, WA 98402

Re: Request for Reconsideration of Determination
Cascade Drilling NW, Inc.
Valley View Middle School Geothermal System, Snohomish County

Dear Mr. Beattey:

Thank you for your June 20, 2011 letter in which you ask for reconsideration of my determination of May 26, 2011 concerning Cascade Drilling NW, Inc. (Cascade) and the work they performed for the Valley View Middle School in Snohomish County with respect to construction of a geothermal system.

I appreciate the effort your discussion entailed and the importance of this decision to your client. In that discussion you implied that the Department of Labor & Industries (L&I) had some duty to oversee the worker classifications your client has been applying to the various projects. Please understand that it is clearly not within the capacity of the department to inquire of each and every contractor and subcontractor on each public work project regarding the accuracy of the worker classifications they apply. For that reason, prevailing wage investigations are generally "complaint driven." However, when an issue of whether a worker is paid consistent with prevailing wage requirements arises, we will inquire further and provide guidance. The issue of whether the proper worker classification was utilized by Cascade for its work on the referenced construction project came to the attention of our program through Heery International, which managed this capital project for Snohomish County.

In reconsidering my prior determination, I reviewed in detail the discussion in your June 20 letter, the information that your client previously provided, and I consulted again with Heery International, who manages capital projects for Snohomish County, and with the project manager for J. R. Hayes & Sons, Inc., the prime contractor for the project. My understanding is that the work Cascade performed on this construction project entailed drilling of approximately 270 bores or shafts into the ground, installing pipe into those bores in a coil like fashion, capping off the pipe, and filling the bores/shafts with concrete slurry.

Robert A. Beattey
August 11, 2011
Page 2 of 3

You are correct in your understanding that for determining the prevailing wage classification (scope of work) the classification is based upon the prevailing wage which is paid to workers "in the same trade or occupation." Washington has established rules within the Washington Administrative Code (WAC) that set forth the descriptions for trades or occupations as adopted by L&I. Having said that, there are instances where scopes of work overlap and sometimes more than one scope of work may cover the same tasks.

However, when comparing two scopes of work, one which is rather specific in its application and another which has broader application, it is appropriate to include within the more specific scope only such tasks as are clearly addressed by that scope's language. Those tasks which fall outside the scope's specific language could be included within another appropriately specific scope of work, or within a broader scope. In comparing the Power Equipment Operators scope of work (WAC 296-127-01354) with the Water Well Drillers scope (WAC 296-127-01391), both address "drilling," and it is the Water Well Drillers scope which is the more specific rule. There is no other scope of work that specifically addresses the type of drilling as occurred here. So, if the work does not come within the more specific scope, and it fits within the broader scope, it is the broader scope which will apply.

The drilling at issue here, drilling for construction of a closed loop geothermal system, is not covered by the Water Well Drilling scope of work or trade. That conclusion is consistent with the Lockheed Shipbuilding case you cited, which looks to the type of work rather than where the work is performed or by whom it was done. In this instance it does not matter that the work was performed by workers who generally drill water wells. Clearly, the nature of the work had nothing to do with water well drilling, exploration drilling, water well pump installation, or equipment oilers, and nothing to do with drilling a well for "water supplies for other purposes" as those efforts are addressed in the Water Well Drilling scope. Rather, the drilling here was performed in order to permit construction of a geothermal system, a type and nature of work included within the provisions of the Power Equipment Operators scope of work, and which is not addressed, generally or specifically, in the Water Well Drillers scope.

One of the points you make in your June 20 letter is that Cascade "was drilling wells for water supplies 'for any other purpose' and for the installation of water well pumps for a purpose other than a commercial water supply." You used this terminology, which is the language of the Water Well Drillers scope, in an attempt to support your conclusion that the Water Well Drillers scope applies here. However, on at least two occasions, I confirmed with Mr. Gosling, and also confirmed with others directly related to the project that the drilling performed for this project was for the purpose of constructing a *closed loop* geothermal system, and not for the purpose of pumping of water into any system. Nor, according to information I received, did Cascade "install water well pumps for a purpose other than a commercial water supply." My understanding is that no water is extracted from the ground and pumped into this system. Work performed by others on this project will include installation of pumps in support of the system, but the purpose of that pumping is to provide for movement of fluid (water with additives) through the closed system. Clearly, the work performed by Cascade Drilling as described in this instance was not for the

Robert A. Beatty
August 11, 2011
Page 3 of 3


drilling of a water well for "water supplies for any other purposes" within the meaning of WAC 296-127-01391, nor was it "for the installation of water wells. . ."

While I appreciate your reference to the Occupational Classification System manual created by the U.S. Bureau of Labor Statistics, the provisions you cite, although interesting, are not dispositive of this issue. All references within the Water Well Drilling scope of work are with respect to water wells, and drilling for geologic or hydrologic "information." The plain meaning of the rule is with respect to those specific types of drilling relating to the use of water and/or obtaining geologic or hydrologic data.

For the reasons identified above, I affirm my prior determination that the drilling that occurred here is outside the scope of WAC 296-127-01391 and in this instance, by its nature, falls within the provisions of WAC 296-127-01354, Power Equipment Operators. Please note also that the work of placing the pipe into the bores/shafts requires payment at the Plumbers, Pipefitters, and Steamfitters (WAC 296-127-01364) rate of wage, and filling the bores/shafts with concrete slurry requires payment at the Laborers (WAC 296-127-01344) rate of wage.

If I can be of further assistance, please contact me at 360 902-5330 or Sela235@Lni.wa.gov.

Sincerely,



L. Ann Selover
Acting Industrial Statistician/Program Manager