



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
PO Box 44540 • Olympia, Washington 98504-4540
360/902-5335 Fax 360/902-5300

January 29, 2019

McKanna Bishop Joffe, LLP
1635 North West Johnson Street
Portland, Oregon 97209

RE: Cedar Hills Regional Landfill Determination

Messrs. Barish and Hutzenbiler,

I appreciate your interest in prevailing wage matters and the extensive materials you have provided in support of your January 31, 2018 request for a formal determination under RCW 39.12.015. Your January 31, 2018 letter requests a determination that leachate and gas piping systems under construction at the Cedar Hills Regional Landfill project must be paid at the Pipefitter prevailing wage. You have made this request on behalf of United Association of Plumbers, Pipefitters and Steamfitters (UA) Local 32 and the Washington State Association of the UA, which are both associated with the United Association of Plumbers, Fitters, Welders, & Service Techs to which I will refer collectively as the "Pipefitters." The Laborers International Union of North America, to which I will refer as "Laborers," has also provided feedback during the Department's determination review. I've enclosed the laws and rules discussed in this letter for ease of reference.

The Project at Issue

Cedar Hills Regional Landfill Area 8 Refuse Facility and Area 7 Stg 3&4 Closure is a project that was awarded by the Solid Waste Division of King County and is covered under a labor agreement called the King County Community Workforce Agreement (CWA). The prime contractor for the project is Scarsella Bros., Inc. (Scarsella).

The contract amount is \$32,619,010.45. Work under this contract includes the excavation of approximately 1.75 million cubic feet of dirt, erosion, sediment and stormwater controls, installation of a composite liner system, sludge removal from existing leachate lagoons and leachate and gas collection and transportation piping including pumps, valves and controls. Construction of leachate and gas piping is subcontracted to Agostino Construction.

Labor Disputes

Jurisdictional Disputes – As you know, a jurisdictional dispute is one in which two labor unions claim that certain work on an active construction project falls within their work jurisdiction and that, as such, their workers should be assigned to perform that work rather than workers of another trade. The CWA covering this project stipulates that if a jurisdictional dispute arises on this project which cannot be resolved by the local parties, the dispute must be decided by the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (Plan).¹ Plan arbitrators decide which workers may perform a specific body of work on the project. As I understand it, plan arbitrators decide these disputes using three criteria, in descending order:

1. Whether a previous agreement of record or other agreement between the two unions governs the dispute;
2. Established trade practice in the industry and prevailing practice in the locality; and,
3. If neither of the above criteria is found to exist, the arbitrator considers efficiency, cost, continuity, and good management according to the interests of the consumer or the past practices of the employer

While plan arbitrators decide jurisdiction, they do not decide whether projects require prevailing wages, nor do they decide which prevailing wages are applied to a specific body of work.²

Interaction between Jurisdictional Disputes and Prevailing Wage Determinations – On the other hand, the Industrial Statistician (and the Director of L&I where arbitration is requested) makes prevailing wage determinations. Prevailing wage determinations answer specific questions about whether prevailing wages are required to be paid on a specific project and/or which prevailing wage rate is required for a specific body of work on that project. Prevailing wage determinations do not directly control which workers may perform the work.

¹ The Building Trades Department of the AFL-CIO requires that all affiliated international unions and their locals include, in all collective bargaining agreements, a stipulation that such disputes shall be decided by the Plan.

² In considering recognized labor and management industry practice as mentioned in WAC 296-127-013(2)(e), L&I is informed by these jurisdictional agreements and decisions of record. See *Everett Concrete Products, Inc. v. Department of Labor & Industries*, 109 Wn.2d 819, 748 P.2d 1112 (1988). But the findings of plan arbitrators are just one of several factors L&I considers when making a determination.

But prevailing wage determinations can influence industry practice and might affect who performs certain work. If a labor union were reluctant to pursue a jurisdictional claim before a Plan arbitrator it might instead request a prevailing wage determination from L&I. If L&I determines that a Pipefitter prevailing wage is required for this work (and therefore also for future similar work), general contractors may hire union Pipefitters or subcontract to employers of union Pipefitters, for that work. In this way, a favorable prevailing wage determination can have an effect similar to a favorable Plan jurisdictional decision.

Pre-Job Conference - It is my understanding that during a meeting held to discuss work assignments and jurisdiction on this project, the Pipefitters asserted that the piping work on this project falls within the Pipefitters' jurisdiction and that the work must be assigned to Pipefitters, not Laborers. Despite this assertion during the meeting, the Pipefitters have declined to pursue this jurisdictional claim through the arbitration process set forth in the CWA. Instead, the Pipefitters have requested a prevailing wage determination.

Prevailing Wage Scopes of Work

As we've previously discussed in correspondence, all work performed on a public works contract must be classified into one or more of the many labor classifications for which prevailing wage rates have been established. Chapter 296-127 WAC contains the written scope of work descriptions for prevailing wage purposes. Because of the complexity and changing nature of work, scope of work descriptions rarely provide a complete discussion of the work performed by each trade. For many trades, including the two we consider here, the scope of work descriptions would be too unwieldy if the department attempted to include every system, tool, material, method or purpose involved in that trade. Instead, the scopes commonly begin with a sentence or short paragraph that provides a concise description of the context for the work performed under that trade classification. Following this description, a scope typically provides examples of materials, tools, and methods which are illustrative of the work included within that trade, for prevailing wage purposes.

WAC 296-127-01364 offers information about work which must be paid at the Pipefitter prevailing wage, on public works. This scope of work description mentions a substantial range of piping systems and fixtures, pumps, valves, and joining methods. There is no doubt that plumbers, pipefitters and steamfitters assemble, install and maintain a broad range of residential, commercial, and industrial piping systems. But nothing in WAC 296-127-01364 suggests that Pipefitter prevailing wages are required to be paid to all workers performing pipe work on public works and your clients agree that some pipe-joining falls outside WAC 296-127-01364. Indeed, pipe joining is specifically set forth in both WAC 296-127-01389 and WAC 296-127-01344.

WAC 296-127-01389 – Utilities construction, applies only to the construction, alteration, repair or improvement of water mains, sanitary sewer mains, underground storm sewers and branch lines. Leachate and gas collection piping on landfills such as the current project at Cedar Hills Landfill do not fit this description of sewer and water utility systems. Accordingly, the work you identify falls outside this scope.

WAC 296-127-01344 – Laborers, contains this passage: “Position, join, align, wrap and seal pipe sections.” We know from this passage that some pipe-joining is required to be paid at the Laborer prevailing wage, and that this pipe-joining does not fall within the Utilities scope mentioned above. I am aware of no instance in which an Industrial Statistician has specifically applied the Laborer prevailing wage to pipe-joining of any kind, though I have been told anecdotally that in the industry, laborers perform a range of pipe-joining.

Pipefitters contend that leachate and gas collection piping on landfills is unarguably included only in WAC 296-127-01364. I do not agree. Nothing in the Pipefitter scope of work description exclusively applies a Pipefitter prevailing wage to leachate or gas collection piping on landfill projects. The word “all” does not appear in the beginning sentence of that scope. This Pipefitter rule does however mention, with specificity, the assembling, installing and repairing of valves and pumps. It also specifically includes joining ductile iron pipes when the pipes will be under pressure. I discuss the importance of the appearance of these provisions in greater detail below.

L&I’s Site Visits

I visited this construction project site on October 12, 2018. Representatives of both the Pipefitter and Laborer unions were present, as were representatives of Mechanical Contractors’ Association. The general contractor (Scarsella) and the piping subcontractor (Agostino) were also present, providing access to the work areas and answering questions. During that visit, I saw a leachate settling pond located several hundred feet from the “cell.” I also stood at the edge of the “cell.” The cell is a large excavation with beveled sides, presumably as a safety measure to protect against mud and dirt slides while workers are working inside that cell. The cell was approximately 1000 feet long, 600 feet wide and 250 feet deep. These are very rough approximations based only on my visual observation. Finally, I saw twelve black high-density polyethylene (HDPE) pipes running up the south side of the cell which I believe were about 16” in diameter.

I visited the site again on November 20, 2018 to see the process of fusing the HDPE pipe. I was once again joined by representatives of both unions and the contractor. We went to the bottom of the cell where lengths of 30” HDPE pipe were being joined using a process involving heat and pressure.

The total length of this 30" diameter pipe was to span the length of the bottom of the cell, approximately 700 feet in length. Equipment was used to move the pipe sections into place. The ends of the pipes to be joined were inserted into a machine with curved hydraulic arms to clamp the pipe sections into place and to force and hold them against one another, after trimming and heating the ends of the pipes.

After viewing and learning about the pipe fusing process, I spent some time with the contractor's representative discussing the nature of the work. I was particularly interested in how many hours of labor are involved in the fusing of HDPE pipe on the project. I asked him to help me understand the labor hours for joining the pipe, exclusive of other work also associated with piping such as labor necessary for equipment operators who position the pipe into the fusing machine. In other words, I asked him to provide an estimate of labor hours limited to the worker actually operating the joining machine(s).

According to the representative, the 700 feet of 30" HDPE pipe joining I viewed would take approximately 40 hours of labor. We discussed the smaller HDPE pipes running up the south side of the cell, which according to the contractor, required approximately 200 hours to join. Total length of HDPE piping for this project will be approximately 41,000 lineal feet. According to the contractor, the joining of HDPE pipe on the total project would take approximately 2000 hours. This excludes the joining of other (non-HDPE) types of pipe, the installation of valves and pump and all other work.

L&I's Consideration of the Available Data

As discussed in my November 28, 2018 letter, I queried our Prevailing Wage Intent and Affidavit (PWIA) database to see what labor classifications were reported on projects similar to the current Cedar Hills Landfill project. The PWIA system began capturing data in the year 2000. Rather than restate the contents of the November 28 letter, I am making it a part of this letter by reference, and enclosing it for your convenience.

In summary, my November 28, 2018 letter highlighted my findings from data for several dozen "landfill" projects since 2000. Employers reported that workers performed more than one million labor hours on those projects and 37,587 of those reported hours were paid at Pipefitter wages. Of those 37,587 hours, 33,706 were performed on a single project involving the setting of two gas turbine generators and one steam turbine generator along with the associated systems for purifying the gas and compressing both the air and gas in order to fuel the turbines. The piping systems on this project were quite different from leachate and gas collection piping which are the subject of this determination.

That leaves 3,881 Pipefitter hours worked on several dozen landfill projects, which may have involved leachate and gas collection systems. Some of those remaining hours were worked on projects involving truck wash and administration building piping.

Further sorting of the data to isolate “closure” projects where leachate and gas collection piping are likely to be installed shows that contractors only reported 540 hours paid at Pipefitter wages on the approximately sixteen projects involving landfill closures. As mentioned above, HDPE pipe fusing on the current Cedar Hills Landfill project is estimated to require approximately 2000 labor hours. The project also requires other types of pipe joining, which means the total pipe joining will require more than 2000 hours. If Pipefitter wages had been paid to workers joining pipes on the majority of those sixteen projects and if those projects were similar to the current Cedar Hills project, then roughly 32,000 hours or more would have been reported at Pipefitter wages. This is a very rough estimate which assumes the 16 projects in the data set involve, on average, pipe-joining hours similar to the Cedar Hills Project. That said, the data shows that only 540 hours were actually paid at Pipefitter wages, which is roughly one fourth of the pipe-fitting hours on the single project in question at Cedar Hills Landfill. It seems clear that the majority of workers joining leachate and gas collection piping on landfill projects, in the data available to me, were not paid Pipefitter wages.

In summary, here is the data I found:

	<u>All Hours</u>	<u>Pipefitter Hours</u>	<u>Laborer Hours</u>
Landfill Projects	994,715	37,587	298,864
Landfill “Closure” Projects	192,081	540	74,936

In closing the November letter, I asked you to provide any additional information for my consideration, including any data that might show that pipefitters have performed this type of work more often than is reflected by the PWIA.

The Pipefitters’ December 12, 2018 Letter

I appreciated receiving your December 12, 2018 response to my November 28, 2018 letter. Although you did not provide any additional data to refute my findings from PWIA data, your letter does offer some observations about the data I provided, which I appreciate. You noted that only 14, 943 Pipe Layer hours were found on “landfill” projects and that only 3,468 Pipe Layer hours were found on “closure” projects. You contend that pipe-joining work on those projects would likely require more hours than these, and that therefore the data does not support application of the Pipe Layer prevailing wage for this work.

I agree with your assessment that more than 3,468 hours of pipe-joining were likely worked on those projects. However, I also notice that many other occupations besides Pipe Layer fall within the Laborer trade and also within the list of prevailing wage occupations found under Laborer, and that 74,936 Laborer hours were reported on landfill “closure” projects. Without question, the vast majority of pipe-fitting hours on those projects were not paid Pipefitter wages. It seems equally clear to me those hours were also not paid at carpenter, electrician, truck driver, painter, sheet metal worker, power equipment operator, ironworker, etc. wages. Further, the data does show that more than 30,000 hours on landfill closure projects were paid at Laborers-Underground Sewer & Water wages. These and other observations suggest that Laborer wages were paid for gas and leachate pipe-joining on these projects.

L&I’s Determination

As I noted in my earlier correspondence, the purpose of the Prevailing Wages on Public Works Act, chapter 39.12 RCW, is to preserve local wage standards and to protect workers from substandard wages below local wage standards.³ In order to discern the specific wage standard to be protected, the department looks to a variety of sources. Obviously, the department’s prevailing wage scope of work descriptions are a primary source. The department also relies on other sources of industry practice such as jurisdictional agreements and decisions of record, standards and curriculums of apprenticeship programs and statistical data. This is an important aspect of prevailing wage administration and enforcement because the department’s decisions should reflect and preserve actual wage and worker classification practices and standards in the industry.

As discussed above, the plain language of WAC 296-127-01364 does not require the payment of the Pipefitter prevailing wage for leachate and/or gas piping on landfills. Because of these considerations, the absence of any jurisdictional agreements and decisions of record from arbitrations for L&I to consider, and in light of the compelling statistical data showing that Pipefitter wages are rarely if ever paid for this work, I decline to apply the Pipefitter wages here.

Your request also raises the question of whether chapter 39.12 RCW should be used to restore an eroded wage standard. As previously discussed, this goes beyond the guidance in *Everett Concrete*. Another reason also supports not applying the wage standard as a “restorative measure.” Although I see some evidence from the materials you presented that Pipefitter wages have been paid for this work in the past under some circumstances, the evidence does not show that Pipefitter wages were *predominantly* paid in the past for this work.

³ *Everett Concrete*, 109 Wn.2d at 823.

Letter to Messrs. Barish and Hutzenbiler
January 29, 2019
Page 8 of 8

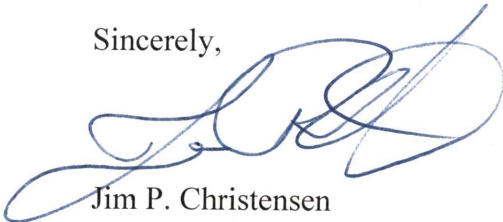
Laborers are currently performing the work at Cedar Hills Landfill at area standard laborer wages. The data discussed above suggests this has been the practice on landfill closure projects for the past eighteen years. Accordingly, I do not consider the payment of Laborer wages for pipe-joining on the Cedar Hills Landfill project to represent a violation of chapter 39.12 RCW.

On the other hand, on landfill closure projects, the Pipefitter wage would apply when workers install valves, pumps and join ductile iron pipe that will be under pressure despite an absence of data showing that has been the industry practice. The reason for this application lies in the specific language of WAC 296-127-01364 because pumps, valves and ductile iron pipe that will be under pressure are specifically called out as work that is performed by pipefitters.

Enclosed is a copy of the Prevailing Wage Determination Request and Review Process policy. According to WAC 296-127-060(3), any party in interest may now request that the Industrial Statistician modify his or her determination. The policy applies a 30-day period during which such a request must be submitted, and advises that any additional relevant information should accompany that request.

Again, thank you for your interest in prevailing wage matters and for this opportunity to inform your clients and others regarding application of prevailing wage law. Please do not hesitate to contact me with any questions you may have.

Sincerely,



Jim P. Christensen
Industrial Statistician/Prevailing Wage Program Manager
jim.christensen@lni.wa.gov

Enclosures

Noah T. Barish*
John S. Bishop, II
Daniel R. Hutzenbiler*
Elizabeth A. Joffe
Noah S. Warman

OF COUNSEL
Elizabeth A. McKanna

*Also admitted in Washington

January 31, 2018

Via Overnight Delivery

Jim Christensen
Industrial Statistician and Prevailing Wage Program Manager
Washington State Department of Labor and Industries
7273 Linderson Way SW
Tumwater, WA 98501

Re: Scope of Work Determination for Cedar Hills Regional Landfill
Leachate and Landfill Gas Piping and Collection Systems
MBJ No. 51.001

Dear Mr. Christensen,

This office represents UA Local 32 and the Washington State Association of the UA in this matter. We write today to request a determination by the Department of Labor and Industries of the correct scope of work for the installation of a pressurized landfill gas and leachate piping and collection systems and controls at the Cedar Hills Regional Landfill, Areas 7 & 8. See RCW 39.12.015 ("All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries."). As we will describe in more detail below, this work falls under the scope of work and related prevailing wage rates established by WAC 296-127-01364 (Plumbers, pipefitters, and steamfitters), not WAC 296-127-01344 (Laborers), WAC 296-127-1389 (Utilities construction (underground sewers and water lines)), or WAC 296-127-01340 (Laborers in utilities construction). We urge the Department to adopt this conclusion as well.

This request for determination seeks only a decision on the appropriate prevailing wage rate for the work performed at this project, not a decision concerning which craft should be assigned to perform that work. As the Department's regulations and rulings have consistently recognized, Washington's prevailing wage law does not dictate actual craft assignments, but only the rate of pay for particular types of work on public projects. See *Lockheed Shipbuilding Company v. Labor and Industries*, 56 Wn. App. 421, 429 (1989) (quoting District Council of Carpenters and Fisherman's Boat Shop, LNI Arbitration Decision 79-17 (March 25, 1980)) ("The prevailing wage law was not intended to require employers to hire any particular category of labor on a public project. It was intended only to require them to pay the category actually hired the prevailing rate of wage for that particular category . . ."); cf. WAC 296-172-013(3) (prevailing wage

rates to be “determined by the scopes of work performed by those workers, and not by their specific job titles”).

1. Procedural History

On June 12, 2017, general contractor Scarsella Bros., Inc. submitted a pre-job conference package under the King County Community Workforce Agreement (CWA) regarding a project involving leachate and landfill gas collection systems at the Cedar Hills Regional Landfill. (Ex. 1). The pre-job conference package described the scope of the project work as follows:

“The Construction project consists of two integrated sites adjacent to one another at the Cedar Hills Regional Landfill. They will be managed under two schedules within the contract. Schedule A- Area 8 Development, which includes the following work items: Erosion and sediment controls, Installation of stormwater controls, Excavation, Haul, and stockpile material, establishment and management of soil stockpiles, Installation of a composite liner system, Installation of leachate collection system sump and conveyance piping, Installation of leachate collection systems pumps and controls, Connection of leachate systems controls and communication, Installation of a landfill gas collectors, laterals, edge collectors and headers, Connections and modifications to existing landfill gas headers, Installation of piping and structures around the existing Leachate Lagoons and Sludge removal from the existing Leachate Lagoons.”

(Ex. 1 at 3). The pre-job conference package indicated that “Leachate & Gas Piping” would be subcontracted to Agostino Construction. (Ex. 1, at 4).

On June 16, 2017, Agostino Construction Inc. filed a Statement of Intent to Pay Prevailing Wage concerning the project at Cedar Hills Regional Landfill, Areas 7 and 8, indicating an intent to pay wages at the Laborers wage rate. (Ex. 3).

On June 19, 2017, then-Rebound Assistant Executive Director David Ciprut spoke with you about the specifics of this work, during which you agreed that, as a pressurized gas system, it would fall under the scope established for Plumbers, Pipefitters and Steamfitters. (Ex. 4, at 2). On June 21, 2017, you confirmed that understanding in writing to David Ciprut, stating that: “As we discussed, piping systems that are not ‘... water mains, sanitary sewer mains, underground storm sewers and branch lines....’ fall outside the Utilities Construction scope definition. The Pipefitter scope specifically calls out piping systems for gas.” (Ex. 4, at 1). Nevertheless, on June 26, 2017, the Agostino Construction Statement of Intent listing Laborer wage rates was approved. (Ex. 3).

On July 24, 2017, UA Local 32 Business Manager Jeff Owen emailed you the project-specific specifications and drawings for the Cedar Hills Regional Landfill project, urging you to

clarify that the job was within the Pipefitter scope because it involved the installation of a pressurized methane gas piping system and leachate collection system. (Ex. 5).

In response, on July 28, 2017, you asked Mr. Owens whether a jurisdictional claim had been filed about assignment of the work. (Ex. 6, at 4). Mr. Owens responded that the UA had not pursued such a claim before the Plan for the Settlement of Jurisdictional Disputes, and that he was only asking you for a determination of the correct prevailing wage rate for the specific project. (Ex. 6, at 3). He reminded you that “[a]gain, we are talking about the installation of a pressurized gas piping system. When this issue was first brought to your attention in June, without having the project-specific information that you now have, you did give a strong general indication that this work did fall under the Plumber/Pipefitter Scope in an email to Rebound.” (Ex. 6, at 3).

On August 28, 2017, you responded in part as follows:

The department has, as you likely know, applied the Pipefitter prevailing wage to the joining of ductile iron pipe that will be under pressure. The scope of work descriptions we use to define trades and occupations for prevailing wage purposes appear clear on the joining of ductile iron pipe. They appear less clear regarding the type and nature of work at Cedar Hills Landfill. For example, the Laborers scope includes the following passage:

- Position, join, align, wrap and seal pipe sections.

I have attached the Pipefitter and Laborer prevailing wage scope of work definitions for your review.

To aid in my understanding and interpretation of phrases like the one above, I hope to learn more about how this work is performed and what workers are commonly used. Laborer representatives report that this work is commonly performed by their members. In fact, they report that their members have done this work on previous closure projects at the same landfill. I expect to receive information from them in the coming weeks that they say will support their assertions. I am unsure what documents they will provide, but I suspect they may include letters of assignment, statements from their signature contractors, perhaps Affidavits of Wages Paid, possibly trust reports, etc.

In order to help me understand current industry practice to give me some context in which to interpret the terms and phrases in the attached Pipefitter and Laborer scope descriptions, I hope you can also provide information to me. I do not know what information or documents you can provide, but anything that shows Pipefitter personnel or wages paid for the work in question would be helpful. Obviously, a jurisdictional claim would be relevant, as would any jurisdictional decisions, agreements of record, letters of assignment, etc.

As I say, while the prevailing wage scope of work descriptions seem clear regarding ductile iron pile that will be under pressure, they are not as clear

regarding heat fusion of HDPE pipe. Please help me understand which contractors, and which classifications of labor, generally perform this work.

(Ex. 6, at 2).

On August 29, 2017, Mr. Owens responded, in part:

Regarding the UA Scope of work however it specifically mentions Piping systems, and any other method of making joints in the pipefitting industry. It is very clear that pipe joining and installing pipe falls under the Plumber and Pipefitter.

Local 32 members work daily in the State of Washington installing and fusing HDPE pipe to include low pressure, medium pressure, and high pressure gas systems.

(Ex. 6, at 1).

David Ciprut continued to communicate with you regarding this issue. After several other informal conversations and emails, on October 10, 2017 you indicated in an email to Mr. Ciprut, in part, the following:

I happen to know that the Laborers' union believes a Laborer wage standard is established for this work. I am told anecdotally that Laborers have done the piping work, at Laborer wages, on previous closures at Cedar Hills Landfill.

The scope of work descriptions are clear, and the department's interpretation and application of those scopes are clear, regarding ductile iron pipe that will be under pressure. The "under pressure" criteria, in the prevailing wage scopes, appears to be specific to ductile iron pipe. Both the Laborer and the Pipefitter scopes discuss the joining of pipes. I am hoping to learn more about what wages have actually been paid for making certain kinds of pipe joints. I believe the pipe at Cedar Hills is HDPE, which is heat-fused.

(Ex. 7, at 3). In response, on October 13, 2017, David Ciprut, who by then had become Director of Prevailing Wage Compliance & Outreach for the Washington State Association of the UA, wrote in part:

We are happy to provide more support for our position that the work falls within the Plumbers / Pipefitter Scope, but we plan on doing that in writing. We are currently in the process of gathering all of the information and will let you know when we are ready to present it. We would like to meet at that point and explain the materials that we've compiled.

I think it's fair to say, with the exception of those first few e-mails that you received from the UA, that you have been given only a very limited picture of this situation from

the Laborer's point of view. One obvious example is that there are several other types of pipe being installed on the Cedar Hills Landfill project under this contract besides HDPE, which you point out below. We very much look forward to having the opportunity to present our case to you in the near future.

(Ex. 7, at 2).

This letter followed, and provides the further detail that we promised supporting our position that the work at issue falls within the Plumbers, Pipefitters, and Steamfitters scope, WAC 296-127-01364.

2. Overview of the Work

The first step in properly determining which scope of work applies is to understand, in detail, the nature of the work itself. This project involves the creation of pressurized leachate and landfill gas (methane) collection systems at Area 8 of the Cedar Hills Regional Landfill in King County, Washington. Cedar Hills Regional Landfill serves the solid waste disposal needs of over 1.25 million people in King County, covering 920 acres. (Ex. 8). As part of its operations, Cedar Hills Regional Landfill collects landfill gas at the rate of about 10,000 standard cubic feet per minute, and transmits that gas to Bio Energy Washington, where it is converted into pipeline-quality biogas and electric power, which ultimately provides natural gas to 19,000 homes in King County. *Id.* Starting in 2015, the landfill began designing a new cell called Area 8, which is projected to be constructed in 2018 and will begin receiving refuse in 2019. *Id.*

The present project mainly involves the construction of two important and interrelated systems in Area 8: leachate and landfill gas collection. Leachate is liquid generated from rainfall and the natural decomposition of waste that is filtered through the landfill. Landfill gas is methane gas emitted from the bacterial activity in decomposing refuse. Leachate and landfill gas are linked; because leachate "collects" and clings to gas, the two systems often work together.

According to Glenn Andrews¹, a general foreman with Zuiderweg Construction who has decades of experience constructing leachate and landfill gas collection systems, these systems are usually very complicated. They combine the creation of extraction wells to collect gas and leachate, pressurized systems with pumps to pull liquid and gas through those wells, flares or atomizers to burn excess leachate and/or gas, and mechanical pads with various equipment and controls for monitoring temperature and pressure. Even more straightforward aspects of piping in these systems require frequent valves and test ports.

As described in the pre-job conference package, the scope of the project is as follows:

¹ Mr. Andrew's complete resume is found at Ex. 26. In short, Mr. Andrew became an apprentice pipefitter in 1981, and has worked for various contractors in the industry since. From 1988 to 2001, he was general foreman with Magnolia Contractors where he supervised numerous jobs installing leachate and landfill gas collection systems, among other projects. Mr. Andrews worked as General Foreman for Primm Mechanical from 2001-2002, for University Mechanical from 2002-2004, and for Zuiderweg Construction from 2004 to the present.

“The Construction project consists of two integrated sites adjacent to one another at the Cedar Hills Regional Landfill. They will be managed under two schedules within the contract. Schedule A- Area 8 Development, which includes the following work items: Erosion and sediment controls, Installation of stormwater controls, Excavation, Haul, and stockpile material, establishment and management of soil stockpiles, Installation of a composite liner system, Installation of leachate collection system sump and conveyance piping, Installation of leachate collection systems pumps and controls, Connection of leachate systems controls and communication, Installation of a landfill gas collectors, laterals, edge collectors and headers, Connections and modifications to existing landfill gas headers, Installation of piping and structures around the existing Leachate Lagoons and Sludge removal from the existing Leachate Lagoons.”

(Ex. 1, at 3).

According to BMWC Constructors, Inc. foreman Jim Hatton, who evaluated the bid specifications for this exact job in preparation for BMWC to bid on the project, the Cedar Hills project involves two complex piping systems. The first is a leachate collection system comprised of a lower HDPE liner and perforated HDPE piping, which collects the leachate. Leachate collected in these pipes runs by gravity to the sump, where it is then mechanically pumped to the surface, through several leachate pump stations, and then is gravity-fed down other leachate lines to a holding pond. (Ex. 9) (excerpts of bid specifications); (Ex. 10, at AC-15) (excerpts of bid mechanical drawings). The leachate pump stations themselves are complex and involve pressure sensors, gauges, flow meters, valves, flanges, and other appurtenances. (Ex. 10, at AC-32, AC-33). The leachate collection system combines both gravity fed and mechanically pumped lines, many of which must be pressure tested to prevent leaks. (Ex. 9) (bid specs). The leachate collection system involves numerous control systems, some automatic and some manual, including various valves, flow meters, and instrumentation. (Ex. 10, at AC-25, AC-29, AC-32, AC-33, AC-35, AP-2).

The second system is a landfill gas collection system, abbreviated “LFG” in the bid documents). That landfill gas system is also extremely complex, including LFG collection blankets, edge collectors, base collectors, laterals, headers, cleanouts, gate valves, vault valves, condensate traps, condensate isolation valves, and liquid level sight gauges. (Ex. 9, at §33 80 00); (Ex. 10, at AG-1, AG-2, AG-4, AG-8, AG-9, AG-10, AG-11). Ultimately, the system collects landfill gas to be delivered to the on-site Bio Energy Washington plant, where it is converted into pipeline quality biogas and electric power.

Photographs of the work as it is currently being performed give an additional perspective on the nature of the work itself. As of mid-January 2018, the job is approximately 40% complete. Photographs of the work in progress taken on January 15, 2018 (below) reveal the complexity and scale of the landfill gas and leachate collection systems, as discussed in greater detail below. (Ex. 40).



(Ex. 40, at 4)



(Ex. 40, at 3)



(Ex. 40, at 5)



(Ex. 40, at 7)



(Ex. 40, at 12)



(Ex. 40, at 16)

3. General Principles Regarding Interpretation of Scope of Work Descriptions

RCW 39.12.015 requires that the hourly wages for “laborers, workers, or mechanics, upon all public works . . . shall be not less than the prevailing rate of wage for an hour’s work in the same trade or occupation in the locality within the state where such labor is performed.” The Department of Labor and Industries, pursuant to its rulemaking authority, is required to “issue scope of work descriptions for each trade and occupation recognized as being involved in public work.” WAC 296-127-013(1). The scopes are created based on various “authoritative sources” such as apprenticeship standards, collective bargaining agreements, dictionaries of occupational titles, experts in labor and industry, and recognized labor and management industry practice. WAC 296-127-013(2).

The prevailing wage rates are to be “determined by the scopes of work performed by those workers, and not by their specific job titles.” WAC 296-127-013(3). In other words, these scopes of work do not regulate who may perform the work, but rather only what wages must be paid to workers depending on the type, nature, and character of the work performed. See Determination, Pacific Northwest Regional Council of Carpenters, Multi-story Scaffolds (Jim Christensen, October 31, 2016) (Ex. 11, at 2); WAC 296-127-013. RCW 39.12.015 also provides that “All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries.” Accordingly, upon this request for determination under RCW 39.12.015, it is the Industrial Statistician’s duty to determine the prevailing rate of wage for the work in the project at issue, based on the codified scope of work description, and the work performed at the project.

“If an administrative rule or regulation is clear on its face, its meaning is to be derived from the plain language of the provision alone.” *Cannon v. Dep’t of Licensing*, 147 Wn.2d 41, 56, 50 P.3d 627 (2002). Thus, “[s]cope of work descriptions are read and interpreted according to their plain language terms and phrases, and also according to the terms and phrases, and their meanings, which are unique to the construction industry.” *Id.* When the scope of work regulations are clear and unambiguous, words in the scopes are given their plain and ordinary meaning unless a contrary intent appears. See *Silverstreak, Inc. v. Dep’t of Labor & Indus.*, 159 Wash. 2d 868, 881, 154 P.3d 891, 898 (2007).

Moreover, the Department has a duty to give meaning to “every word” in a scope of work regulation. *Id.* at 884. Finally, the Department should adhere to the many prior scope of work determinations cited throughout this letter. See *Vergyle v. Employment Security Department*, 28 Wn. App. 399, 404 (1981) (an administrative agency should act consistent with its prior considered decisions unless it articulates a reasoned basis for departing from that stance).

4. Potential Scopes at Issue

Based on previous communications with the Department and the Intent and Affidavit filed by the contractor, the following scopes are potentially relevant to the present determination:

WAC 296-127-01364– Plumbers, pipefitters, and steamfitters.

For the purpose of the Washington state public works law, chapter 39.12 RCW, plumbers, pipefitters and steamfitters assemble, install, and maintain piping systems, fixtures and equipment for the transportation of water, steam, gas, air, sewage, oil, fuels, liquids, gases, or similar substances.

The work includes, but is not limited to:

- (1) Piping systems installed in structures (e.g., buildings, industrial plants, etc.).
 - (a) The handling and moving of any plumbing, pipefitting and steamfitting materials, supplies, and equipment on the job site.
 - (b) Cutting, threading, and bending pipe.
 - (c) Joining pipes by use of screws, bolts, fittings, solder, welding and caulking, or any other method of making joints in the pipefitting industry.
 - (d) Assembling, installing, and repairing valves, pipe fittings, and pumps.
 - (e) Testing the piping system.
 - (f) Installing and repairing plumbing fixtures, such as sinks, bathtubs, water heaters, and water softeners.
 - (g) Cutting holes in floors and walls for pipes:
 - With point and hammer.
 - Core-drilled.
 - (h) Responsible for all cleanup required in connection with plumbers, pipefitters and steamfitters work.
- (2) Distribution lines (e.g., water mains, sewer mains, oil and gas lines, etc.).
 - (a) The handling and moving of any plumbing, pipefitting and steamfitting materials, supplies, and equipment on the job site.
 - (b) Steel pipe: Welding of pipe joints and joining pipes with screws, bolts, fittings, solder, caulking, or any other method for making joints in the industry.
 - (c) Ductile iron pipe: Joining pipes by using any method for making joints in the industry, when the pipe will be under pressure.
Assembling, installing, and repairing valves and pumps.
 - (d) Testing the piping system.
 - (e) Responsible for all cleanup required in connection with plumbers, pipefitters and steamfitters work.

WAC 296-127-01344 - Laborers.

For the intents and purposes of the Washington state public works law, chapter 39.12 RCW, laborers perform a variety of tasks such as:

- Erect and repair guard rails, median rails, guide and reference posts, sign posts and right of way markers along highways.
- Mix, pour and spread asphalt, gravel and other materials, using hand tools, and mix, pour, spread and rod concrete.
- Lift, carry and hold building materials, tools and supplies.
- Measure distances from grade stakes, drive stakes and stretch tight line.
- Bolt, nail, align and block up under forms.

- Signal operators of construction equipment to facilitate alignment, movement and adjustment of machinery to conform to grade specifications.
- Level earth to fine grade specifications, using pick and shovel.
- Mix concrete, using portable mixer.
- Position, join, align, wrap and seal pipe sections.
- The placement and testing of plastic conduit for electrical cable, when the conduit is buried underground.
- Erect scaffolding, shoring and braces.
- Mop, or spread bituminous compounds over surfaces for protection (outside buildings).
- Spray material such as water, sand, steam, vinyl, or stucco through hoses to clean, coat or seal surfaces.
- Apply caulking compounds by hand or with caulking gun to seal crevices.
- The application of penetrating sealer and primer protective coatings to concrete floors and steps when safe to walk on.
- Installation of plastic panels on the inside of existing window frames for insulation (instead of storm windows). The panels are held in place magnetically (with metal brackets) and with self-taping screws.

The cleaning and grinding of concrete floors and walls by high pressure waterblasting or sandblasting preparatory to the application of waterproofing.

- The removing of rough or defective spots from concrete surfaces, using grinder or chisel and hammer and patching holes with fresh concrete or epoxy compound when not preparatory to sacking (finishing a large surface of patched holes).
- The setting of concrete curb, gutter and sidewalk forms as a composite crew with cement masons.
- The laying of concrete, granite and brick pavers in beds of sand.
- General cleanup required after damage caused by water or fire.

All clean-up work required in connection with the above work. Clean tools, equipment, materials and work areas:

(1) When the cleanup is performed for more than one trade (usually employed by general contractor).

(2) When assisting those trades for which laborers have been specifically designated as tenders, e.g., carpenter tender, cement finisher tender, etc.

WAC 296-127-01340 - Laborers in utilities construction.

For the purpose of the Washington state public works law, chapter 39.12 RCW, the work for laborers includes, but is not limited to:

(1) Pipe layer.

- Shoring, building of manholes and catch basins.
- Sealing, doping and wrapping of the pipe after the joints have been welded and before the pipe is lowered into the trench or ditch.
- Joining ductile iron pipe by using screws, bolts, fittings, caulking or any other method for making joints in the industry, when the pipe will not be under pressure. Lowering the pipe into the trench or ditch.

(2) Topman. Assists the pipe layer from the surface, he does not work in the trench or ditch.

(3) General laborer.

- Performs all other laborers' work which is not done by pipe layers and topmen.
- Responsible for all cleanup required in connection with utilities construction work.

WAC 296-127-01389 - Utilities construction (underground sewers and water lines).

For the purpose of the Washington state public works law, chapter 39.12 RCW, utilities construction is defined as follows:

The construction, alteration, repair or improvement of water mains, sanitary sewer mains, underground storm sewers and branch lines to buildings but not underneath buildings, within cities, towns, suburbs and subdivisions. The work includes, but is not limited to:

- (1) Clearance of right of way preparatory to the excavation of trenches or ditches.
- (2) Excavation and trimming of trenches or ditches (including establishing and maintaining grade).
- (3) Shoring, building of manholes, catch basins, etc.
- (4) Distribution of pipe and skids, placing of skids and pipe over the trench or ditch.
- (5) The cleaning, sealing, doping and wrapping of the pipe after the joints have been welded and before lowering the pipe into the trench and alignment.
- (6) Lowering of the pipe and the removal of the skids.
- (7) Backfilling, compaction and resurfacing of trenches or ditches (e.g., asphalt work necessary to cover the trench or ditch, but all other asphalt work is excluded).
- (8) Cleanup and restoration of right of way (e.g., restore landscaping).

5. Application of Prevailing Wage Scope of Work Descriptions

A. Based Its Plain and Unambiguous Language, the Plumbers, Pipefitters, and Steamfitters Scope's Covers the Work At Issue

For a number of different reasons, the Plumbers, Pipefitters, and Steamfitters scope clearly and unambiguously covers the leachate and landfill gas piping work at issue in this determination request. By contrast, by their own terms, the relevant Laborers scopes of work do not cover the specific work in this project.

1. The Plumbers, Pipefitters, and Steamfitters Scope Broadly Covers "Piping Systems", While the Laborers Scopes Are More Narrowly Limited

It is important to recognize initially that the Plumbers, Pipefitters and Steamfitters scope is clearly a scope of broad application. The introductory paragraph of WAC 296-127-01364 provides: "For the purpose of the Washington state public works law, chapter 39.12 RCW, plumbers, pipefitters and steamfitters assemble, install, and maintain piping systems, fixtures and

equipment for the transportation of water, steam, gas, air, sewage, oil, fuels, liquids, gases, or similar substances.” The key aspect is the introductory broad description of work, relating to assembly, installation and maintenance of “piping systems, fixtures and equipment” for a broad range of substances. Among those substances are “water, steam . . . gas . . . fuel . . . gases or other similar substances.”

As the scope makes clear, all the following specific descriptions of work in the scope in sections (1) and (2) are mere exemplars of the larger class of work on piping systems which fall within the scope. See WAC 296-127-01364 (“The work includes, but is not limited to: [Section 1 regarding piping systems in structures and Section 2 regarding distribution lines].”). In fact, prior determinations have reinforced that very point. It is the scope’s expansive introductory paragraph— in addition to the specific examples listed later – that define the breadth of covered work. See Determination, Geo Loop Tec Company, City of Seattle Fire Station #6, (L. Anne Selover, May 28, 2013) (Ex. 13, at 3) (“The detail that follows in the Plumbers, Pipefitters, and Steamfitters scope is preceded by this phrase: ‘The work includes, but is not limited to ...’ The detailed examples that follow in that scope are there to provide examples of the covered work, and cannot be used to exclude work on piping systems that is consistent with the scope’s introductory paragraph.”) (emphasis added).

By contrast, the several Laborers scopes potentially at issue are more specifically limited in their application. WAC 296-127-01344 (Laborers) outlines “a variety of tasks”, only one of which is to “position, join, align, wrap and seal pipe sections.” The remainder of the 20 tasks delineated in WAC 296-127-01344 identify duties that have nothing to do with piping systems, such as erecting scaffolding, leveling earth, or laying concrete pavers. Likewise, WAC 296-127-01389 (Utilities construction (underground sewers and water lines)), is quite specific and limited. The preface to that scope refers specifically to the “construction, alteration, repair or improvement of water mains, sanitary sewer mains, underground storm sewers and branch lines to buildings but not underneath buildings, within cities, towns, suburbs and subdivisions.” (emphasis added).

In other words, WAC 296-127-01389 pertains only to water mains, sanitary sewer mains, underground storm sewers and branch lines to buildings, but not to other types of utilities, let alone other piping systems. Even more so, the title of WAC 296-127-01340, “Laborers in utilities construction,” indicates that WAC 296-127-01340 delineates a specific subset of job duties already encompassed within WAC 296-127-01389. In other words, the roles of “Pipe layer,” “Topman,” and “General laborer” (WAC 296-127-01340) are all examples of Laborer work in the limited context of “construction, alteration, repair or improvement of water mains, sanitary sewer mains, underground storm sewers and branch lines to buildings” (WAC 296-127-01389).

The Department has previously offered guidance on how to compare scopes of work that differ in their levels of specificity. “[W]hen 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.” Determination on Request for Reconsideration, Cascade Drilling NW, Inc., Valley View Middle School Geothermal System,

Snohomish County, (L. Ann Selover, August 11, 2011) (Ex. 14, at 2). In that case, the Department compared the general Power Equipment Operators scope (WAC 296-127-01354) with the Water Well Drillers scope (WAC 296-127-01391), both of which addressed “drilling.” There, the Department determined that the work at issue, drilling for construction of a closed loop geothermal system, was not specifically addressed by the Water Well Drilling scope, and therefore fit within the broader scope of Power Equipment Operators.

The same logic applies equally here. The Plumbers, Pipefitters, and Steamfitters scope is one of broad application, while the various Laborers scope are more specifically limited. Both refer to pipe or piping, but only the Plumbers, Pipefitters, and Steamfitters scope addresses all manner of piping systems, which would include leachate and pressurized landfill gas (methane). By contrast, the Laborers scopes are specific to positioning, joining, aligning, wrapping, and sealing pipe sections (WAC 296-127-01344) and “water mains, sanitary sewer mains, underground storm sewers and branch lines to buildings” (WAC 296-127-01389). Thus, where the particular work at issue – installation of pressurized leachate and methane gas collection and piping systems– consists of the construction of an entire piping system, rather than just the joining of individual pipe sections, then it must be encompassed in the more broadly defined Plumbers, Pipefitters, and Steamfitters scope (WAC 296-127-01364).

This difference is made clear when examining the actual work itself. For example, the photograph below shows just one portion of the gas and leachate collection system, including piping from the collection fields.



(Ex. 40, at 3)

The numerous valves, joints, and appurtenances visible in this picture clearly form parts of a complex piping system, as contemplated within the Plumbers, Pipefitters, and Steamfitters scope.

Even this photograph alone demonstrates that the work is not limited to merely positioning, joining, aligning, wrapping, and sealing pipe sections (WAC 296-127-01344) or “water mains, sanitary sewer mains, underground storm sewers and branch lines to buildings” (WAC 296-127-01389).

2. Work on Pressurized Piping Is Covered By Plumbers, Pipefitters, and Steamfitters Scope (WAC 296-127-01364)

The work at issue also is covered under WAC 296-127-01364 for many other reasons. First, it falls under WAC 296-127-01364 because it involves the creation of pressurized piping systems. Prior determinations by the Department have explicitly concluded that pressurized piping systems are within the Plumbers, Pipefitters, and Steamfitters scope. For example, in 1990, then-Industrial Statistician Miriam Moses wrote that “[i]f...the work involved includes joining pipes when the pipes are under pressure, then it is the work of pipe fitters.” Letter Regarding Parameters of Scope, Humphrey Construction, Inc. (Miriam Moses, November 5, 1990) (Ex. 18). Over 20 years ago, the Department likewise determined that piping under pressure in a waste water treatment plant, including sludge piping, and systems for oxygen and methane gas piping, required payment of the Pipefitter rate of prevailing wage, not Laborer rates. Determination, REBOUND, Tacoma Wastewater Treatment (March 4, 1996, Jim Christensen), (Ex. 17, at 1-2). In that determination, the current Industrial Statistician noted that “[v]alve and pump systems are installed using the Pipefitter classification, as are any oxygen and other gas piping and any piping that will be under pressure.” *Id.* at 1 (emphasis added).

The work at issue at the Cedar Hills project clearly involves pressurized piping. According to BMWC Constructors, Inc. foreman Jim Hatton, who evaluated the bid specifications for this job in preparation for a bid, indicates that parts of the leachate collection system and the landfill gas system, are pressurized. This is confirmed by the bid specifications themselves. For example, the Pipe Schedule identifies part of the work to involve a “Leachate Pressurized System”, tested variously at 4 PSI, 25 PSI, 50 PSI, and 100 PSI. (Ex. 9, at §33 41 00, Table 1). Even some aspects of the gravity-fed portions of the leachate system are pressure tested. *Id.* Meanwhile, most aspects of the landfill gas system are pressure tested as well. *Id.* The mechanical drawings also confirm that aspects of these systems are pressurized. For example, drawings for the leachate pump stations include pressure sensors and gauges (Ex. 10, at AC-32) (item #5 on material list). Because significant aspects of the leachate and landfill gas collection systems are pressurized, the work falls under the Plumbers, Pipefitters, and Steamfitters scope.

3. Work on Valves, Pipe Fittings, and Pumps Covered By Plumbers, Pipefitters, and Steamfitters Scope (WAC 296-127-01364)

The work at issue is additionally covered under the Plumbers, Pipefitters, and Steamfitters scope because it involves “[a]ssembling, installing, and repairing valves, pipe fittings, and pumps.” WAC 296-127-01364(1)(d). As former Industrial Statistician L. Ann Selover noted just four years ago:

[s]pecific language in the Plumbers, Pipefitters, and Steamfitters scope includes work on valves, pipes, and fittings. That specific work is not shared with any other

scope, but instead must be performed at the prevailing wage rate for Plumbers, Pipe fitters, and Steamfitters.

Determination- Valve and Valve Actuator Maintenance/Repair/Refurbishment- Energy Northwest-Crane Nuclear, (L. Ann Selover, April 8, 2013) (relating to valve work inside nuclear plant) (Ex. 14, at 5). This has long been the position of the Department, even before WAC 296-127-01364 was codified in 2000. In 1996, the Department explicitly stated that “[v]alve and pump systems are installed using the Pipefitter classification.” See Determination, REBOUND, Tacoma Wastewater Treatment (March 4, 1996, Jim Christensen) (Ex. 17 at 1) (identifying wastewater treatment piping, where “few pipes extended for any substantial length without either a valve or pump in the system” as within the Pipefitter scope, not Laborer’s scope).

The project at issue is replete with work on “valves, pipe fittings, and pumps.” WAC 296-127-01364(1)(d). First, the bid specification includes an entire 20-page section just concerning “Valves and Gates” as part of the work. (Ex. 9, at §22 11 19). This section details the numerous types of valves to be used, including underground valves, valve boxes, ball valves, check valves, plug valves, combination sewage air release valves, gate valves, and knife gate valves. Not only that, but the leachate collection system involves numerous control systems, some automatic and some manual, including various valves, flow meters, instrumentation. (Ex. 10, at AC-25, AC-29, AC-32, AC-33, AC-35, AP-2). Other details of the specifications likewise require work with valves. (Ex. 9) (§33 35 10 3.05, connecting HDPE pipe to auxiliary equipment, including valves and other piping appurtenances); (§33 80 00 1.01– creation of a landfill gas collection system including installing, cleaning and testing “gas system piping, valves and appurtenances”); (§43 25 59 – creation and installation of leachate pump stations, complete with accessories and appurtenances, power monitors, heat sensors and controls); (§33 80 00 2.03– installation of valves suitable for vacuum service and gate valves).

The bid specifications also include an entire subsection regarding “High Density Polyethylene Pipe and Fittings”. (Ex. 9, at §33 35 10 2.04). The same is true for Profile Wall PVC Piping (Ex. 9, at §33 41 15 2.01), Corrugated Polyethylene Pipe (Ex. 9, at §33 41 16, 2.01, and Ductile Iron Piping (Ex. 9, §33 41 20 2.01). The specifications also include specific instructions for “Pipe Joint and Fitting”. (Ex. 9, at §33 41 00 3.02. In addition, various appurtenances and connections are central to the work described. See, e.g., (Ex. 9) (§33 35 10 3.05 connecting HDPE pipe to auxiliary equipment, including valves and other piping appurtenances); (§33 80 00 3.06– installation of landfill gas collection system valves and appurtenances); (§43 25 59 – creation and installation of leachate pump stations, complete with accessories and appurtenances, power monitors, heat sensors and controls).

Finally, the leachate collection system especially features complex pumps that are central to its installation and operation. The pre-job work description clearly identifies these, including “Installation of leachate collection systems pumps and controls . . .” (Ex. 1 at 3). But the bid specifications and drawings are much more explicit. Section 43 25 59 of the bid specification, entitled “Side Slope Pumps,” discusses at length the creation and installation of leachate pump stations, complete with accessories and appurtenances, power monitors, heat sensors and controls. (Ex. 9). The mechanical drawings demonstrate how complex these

pump stations actually are, involving pressure sensors, gauges, flow meters, valves, flanges, and other appurtenances. (Ex. 10, at AC-32, AC-33).

The photographs from the jobsite on January 15, 2018 further confirm that the work at issue involves installation of numerous valves and fittings.² For example, the photographs below from the jobsite feature new installation of several types of valves and fittings, and show how the installation of valves and associated fittings are central to the collection systems being assembled.



(Ex. 40, at 5)

² The various pumps which are specified in the job bid and drawings have apparently not yet been installed.



(Ex. 40, at 3)



(Ex. 40, at 14)



(Ex. 40, at 7)



(Ex. 40, at 15)

In sum, the terms “valve, pipe fittings, and pumps” are plain terms with commonly understood meanings in the industry, and installation of them is included explicitly and exclusively

within the Plumbers, Pipefitters, and Steamfitters scope. See WAC 296-127-01364(1)(d). The Department has a duty not to ignore these terms when it evaluates the correct scope of the work at issue. See *Silverstreak, Inc. v. Dep't of Labor & Indus.*, 159 Wash. 2d at 884. Once the details of the job are examined, there can be no doubt that the work requires the installation of valve, pipe fittings, and pumps, and therefore falls within the Plumbers, Pipefitters, and Steamfitters scope.

Not only does this work clearly fit within the Plumbers, Pipefitters, and Steamfitters scope (WAC 296-127-01364), but nothing in any of the Laborers scope even plausibly covers this work. Even in the single line of the Laborers scope (WAC 296-127-01344) that mentions pipe ("Position, join, align, wrap and seal pipe sections"), there is absolutely no language that refers to valves, pipe fittings, or pumps. In fact, the single reference in the Laborers scope is only to the term "pipe sections," which specifically refers to individual pieces of pipe and excludes other apparatus in piping systems such as valves, fittings, and pumps. In addition, the Laborers scope's reference to the acts of "position[ing], join[in], wrap[ing], and seal[ing]" only make sense when considered in the limited context of connecting individual pipe sections. It is nonsensical, for example, to "join," "wrap" or "align" a pump. Further, neither of the other Laborers scopes contain any language that remotely encompasses the installation of valves, fittings, and pumps. See WAC 296-127-01340 (Laborers in utilities construction); WAC 296-127-01389 (Utilities construction (underground sewers and water lines)).

4. Work Cutting, Threading, and Bending Pipe Covered By Plumbers, Pipefitters, and Steamfitters Scope (WAC 296-127-01364)

The same logic applies for other aspects of the job. WAC 296-127-01364(1)(b) specifically includes "cutting, threading, and bending pipe" in the Plumbers, Pipefitters, and Steamfitters scope. The bid specifications and mechanical drawings make clear that cutting pipe is inherently an element of the work at issue. For example, specifications used in various aspects of the systems state that "HDPE pipe shall be cut[.] fabricated and installed in strict conformance with the pipe manufacturer's recommendations". (Ex. 9, at §33 35 10 3.03) (emphasis added). Even for other types of pipe utilized in the work for which the specifications do not explicitly describe cutting, it is well known in the industry that cutting of pipe is necessary and implied by specifications describing various pipe fittings and joining methods.

In the Cedar Hills project, photographs demonstrate that pipe is delivered to and stored on onsite in standard lengths, and then must be cut to size. For example, photos from the job site on January 15, 2018 show stockpiles of uncut lengths of pipe.



(Ex. 40, at 21)



(Ex. 40, at 22)

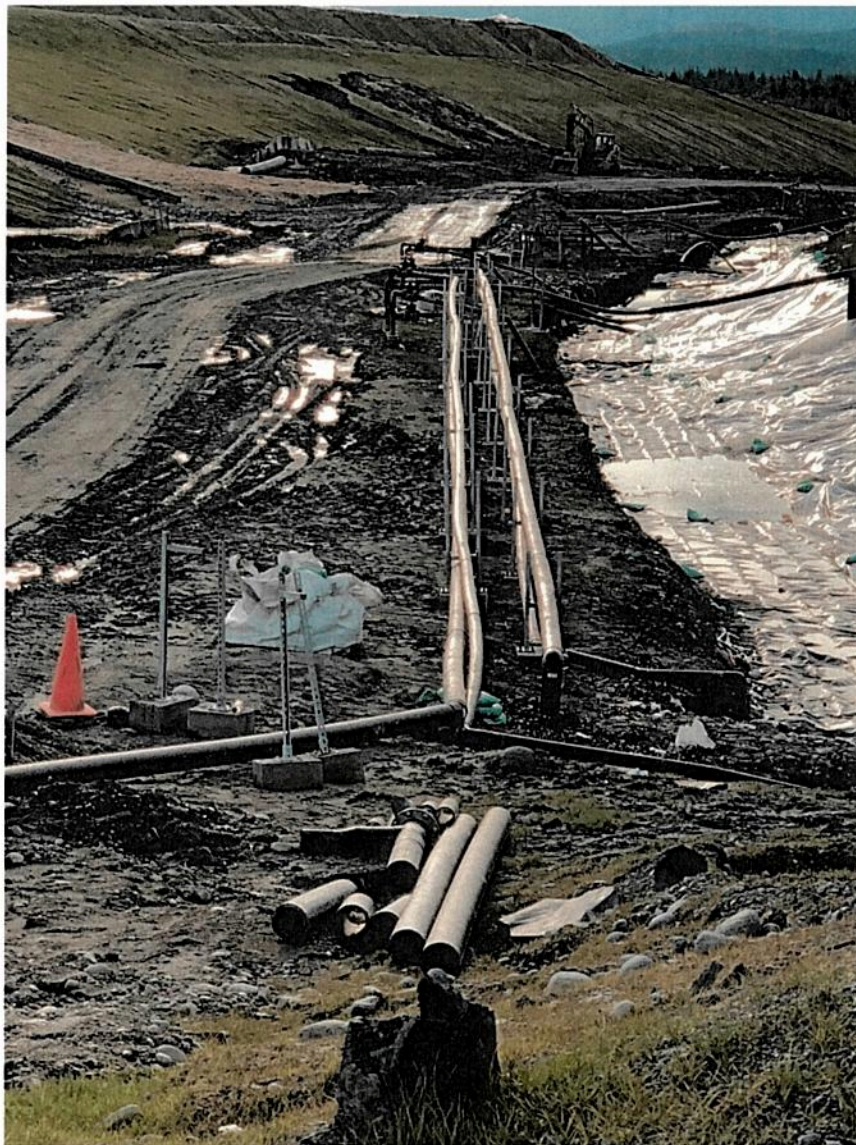


(Ex. 40, at 24)



(Ex. 40, at 25).

Additional photographs show cut pieces of pipe nearby portions of piping system that have recently been assembled, or components of piping systems that could only have been assembled after first cutting pipe.



(Ex. 40, at 18)



(Ex. 40, at 8)



(Ex. 40, at 7)

There can be no dispute that the job at issue involves extensive cutting of pipe, which is explicitly included in the Plumbers, Pipefitters, and Steamfitters scope (WAC 296-127-01364(1)(b)).

By contrast, none of the Laborers scopes of work include “cutting” of pipe as the Plumbers, Pipefitters, and Steamfitters scope does. Again, the Department cannot simply ignore the words of the scopes, and the fact that the Plumbers, Pipefitters, and Steamfitters scope includes “cutting” of pipe, while the Laborers scopes do not. See *Silverstreak, Inc. v. Dep’t of Labor & Indus.*, 159 Wash. 2d at 884. The work at issue requires pipe to be cut, and therefore falls only within the Plumbers, Pipefitters, and Steamfitters scope.

5. Work Joining Pipes Through Any Method of Making Joints in the Pipefitting Industry Covered By Plumbers, Pipefitters, and Steamfitters Scope (WAC 296-127-01364)

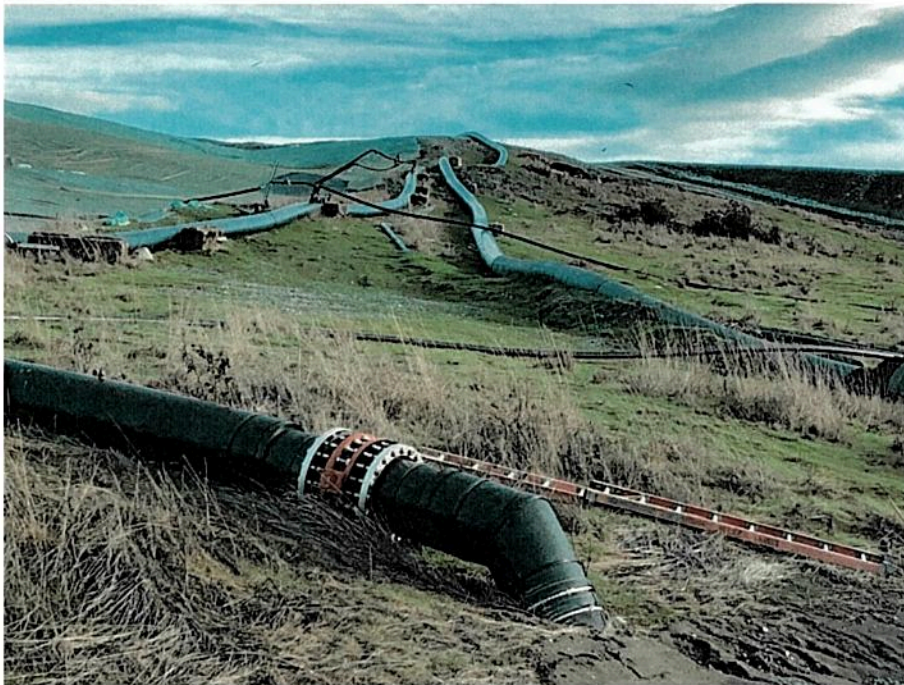
In addition to cutting pipe, WAC 296-127-01364(1)(c) specifically includes “[j]oining pipes by use of screws, bolts, fittings, solder, welding and caulking, or any other method of making joints in the pipefitting industry.” Again, the bid specifications and mechanical drawings make clear joining of pipes is fundamental to the work at issue here. For example, the specifications discuss how HDPE piping is to be fused through thermal butt-fusion or electro fusion. (Ex. 9, at §33 35 10 2.05). Further details on electrofusion coupling are provided. (Ex. 9, at §33 35 10 2.11). Similarly, the specifications go into great detail about thermal butt fusion requirements for this particular work. (Ex. 9, at §33 35 10 3.03). For solid wall PVC piping, the specifications provide requirements on joining per ASTM D3212 using elastomeric gaskets per ASTM F477. (Ex. 9, at §33 41 14 2.02). For profile wall PVC piping and corrugated polyethylene pipe, the specifications provide requirements on joining through bell spigot type joints utilizing elastomeric sealing gaskets. (Ex. 9, at §33 31 15 2.01, §33 41 16 2.01).

Likewise, for this work ductile iron pipe is required to be joined in several different manners, including restrained joints, flanged joints, grooved joints, and non-restrained joints, each with its own specific requirements. (Ex. 9, at §33 41 20 2.01B). Other aspects of the work require stainless steel pipe to be connected either through flange connections, welded connections (using TIG, MIG or Metallic Arc processes), or threaded connections (with NPT pattern threads). (Ex. 9, at § 33 41 25 2.04, 3.01). Overall, there can be no doubt that the job requires the utilization of several different joining processes. Some – fittings and welding – are specifically identified in WAC 296-127-01364(1)(c). Others — thermal butt-fusion or electro fusion— fall within the catch-all in WAC 296-127-01364(1)(c) of “other methods of making joints in the pipefitting industry.”

As expected, the actual photographic evidence at the jobsite confirms the details from the specifications and mechanical drawings that the work involves the joining of pipe.



(Ex. 40, at 4)



(Ex. 40, at 9)



(Ex. 40, at 13)



(Ex. 40, at 14)



(Ex. 40, at 15)

The work, therefore, clearly includes “[j]oining pipes by use of screws, bolts, fittings, solder, welding and caulking, or any other method of making joints in the pipefitting industry” as described in the Plumbers, Pipefitters, and Steamfitters scope.

Conversely, the Laborers in utilities construction scope (WAC 296-127-01340) does not include this type of work. That scope does include the following: “Joining ductile iron pipe by using screws, bolts, fittings, caulking or any other method for making joints in the industry, when the pipe will not be under pressure.” WAC 296-127-01340(1). First, the laborers in utilities construction scope only mentions the joining of ductile iron pipe, and many more types of pipe are utilized in the current job beyond ductile iron pipe. Even more notably, though, the Laborers in utilities construction scope explicitly excludes the joining of ductile iron pipe that will be “under pressure.” WAC 296-127-01340(1). Thus, even if the Laborers contend that joining of HDPE pipe is within WAC 296-127-01340, there can be no doubt that at minimum, WAC 296-127-01340 precludes the joining of pipe for pressurized systems. This is consistent with prior Department determinations holding that pressurized pipe systems are exclusively within the Plumbers, Pipefitters, and Steamfitters scope, not the Laborers scopes. See Section 5.A.2 above. Because the Cedar Hills job requires creation of pressurized leachate and landfill gas collection systems, joining of pipe for those systems falls outside the scope of Laborers in utilities construction (WAC 296-127-01340).

6. Work Testing the Leachate and Landfill Gas Piping Systems Covered By Plumbers, Pipefitters, and Steamfitters Scope (WAC 296-127-01364)

Likewise, WAC 296-127-01364(1)(e) specifically includes “[t]esting the piping system.” As with the other typical elements of pipefitter work, the current Cedar Hills job requires the implementation of various testing protocols. These include solid pipe leak testing (§33 35 10 3.08), conveyance pipe testing (§33 41 00 3.04), solid wall PVC pipe field investigation and testing (§33 41 14 3.02), profile PVC pipe field investigation and testing (§33 41 14 3.02), CPE pipe field inspection and testing (§33 41 16 3.02), ductile iron pipe testing (§33 41 20 3.04), and stainless steel pipe testing (§33 41 25 3.02), each of which is summarized in the Pipe Schedule (§33 41 00 Table 1). (Ex. 9). In contrast, none of the Laborers scopes mention testing of piping systems, or anything even remotely similar. See WAC 296-127-01340; WAC 296-127-01344; WAC 296-127-01389. Thus, there can be no dispute that a component of the work at issue is testing of various aspects of the piping systems to be installed, which is explicitly and exclusively within the Plumbers, Pipefitters, and Steamfitters scope under WAC 296-127-01364(1)(e).

7. Work On Outside Piping Systems Still Covered By Plumbers, Pipefitters, and Steamfitters Scope (WAC 296-127-01364)

The Department may be concerned that the specific language from WAC 296-127-01364(1)(b),(c),(d), and (e) discussed above applies only to piping systems inside structures, and not to outside piping systems like the leachate and landfill gas collection systems at issue here. However, prior Department determinations have already found that the Plumbers, Pipefitters, and Steamfitters scope is not exclusive to indoor work, and that the language in WAC 296-127-01364(1) serve to provide examples of covered work within structures, but does not exclude similar work outside of structures. See Determination, Geo Loop Tec Company, City of Seattle Fire Station #6 (L. Anne Selover, May 28, 2013) (Ex. 13, at 3-4) (noting that the detailed sections of scope, WAC 296-127-01364(1)&(2), are preceded by the phrase “The work includes, but is not limited to:”)

Indeed, in that Geo Loop Tec Company determination, the Department explicitly found that installation of an outdoor closed-loop geothermal heating and cooling system was properly within the Plumbers, Pipefitters, and Steamfitters scope. *Id.* Not only that, but in reaching that determination the Industrial Statistician relied on the fact that the joining of HDPE pipe by heat fusion – a key element of the work – was within the specific language of WAC 296-127-01364(1)(c), “joining pipes by use of . . . any other method of making joints in the pipefitting industry”, despite the fact that the HDPE pipe heat fusion was being performed in an outside piping system. *Id.* at 4. (“Heat fusion is a form of making joints that is common practice within the pipefitting industry, and is included within the Plumbers, Pipefitters, and Steamfitters scope of work and must be compensated at that prevailing wage rate or at the prevailing wage rate for Refrigeration Mechanics”). Thus, while the piping systems at issue here are outdoor systems, the same pipefitting tasks described in WAC 296-127-01364(1) are integral to the work. Thus, as in the Geo Loop Tec Company case, it is appropriate to use the list of tasks in WAC 296-127-

01364(1) as examples of work covered by the Plumbers, Pipefitters, and Steamfitters scope, even when they are performed on an outside system.

8. The Nature of the Work As a Whole Is Best Described By WAC 296-127-01364.

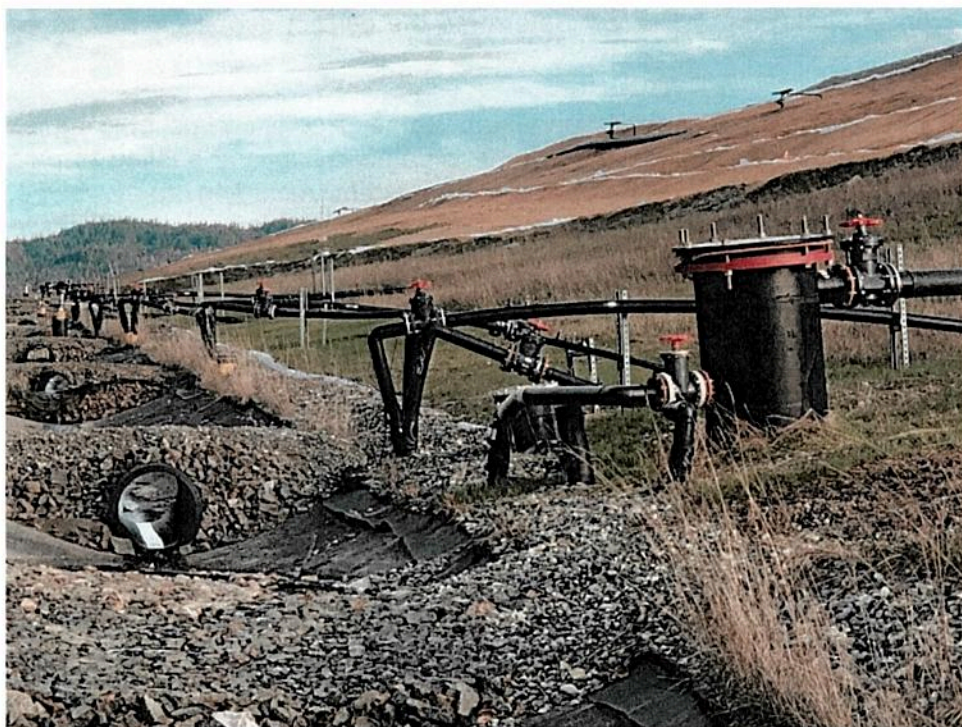
As described above, the isolated aspects of the present job are covered specifically (and, with one exception, exclusively) by the plain language within the Plumbers, Pipefitters, and Steamfitters scope, none of which can be ignored by the Department in making its determination. In addition, however, viewing the work as a unified whole rather than in separate elements leads to the same conclusion. Washington courts have instructed that in determining the appropriate scope of work to apply in the prevailing wage context, a major consideration should be a holistic understanding of the work at issue, as well the individual components of the work.

Thus, in *Lockheed Shipbuilding Company v. Labor and Industries*, 56 Wn. App. 421 (1989), the Court of Appeals ruled that the proper prevailing wage scope relates to the nature of the work or project as a whole, rather than only the particular task performed or the location of the work. There, the Court found the Pipefitter rate was correct because the nature of the work was welding pipe for a wastewater treatment plant project (i.e. constructing a wastewater treatment plan), even though the work of welding pipe sections was performed in a shipyard. The Department has since relied on *Lockheed* for the general rule that identification of the proper scope of work is not "limited to the task performed, but instead is also tied to the nature of the work or project." Determination, Water Garden-Tacoma Children's Nature Exploration Area (David Soma, July 7, 2010) (Ex. 16, at 2) ("case law tells us that the nature of the public works project, as well as the type of work performed, will determine the correct scope of work to be used.")

The work at the Cedar Hills landfill is undeniably that of construction of complex leachate and landfill gas collection systems, not merely the isolated laying and sealing of pipe sections. The work involves complex features of a dynamic system, including many valves, pumps, and other control equipment. The following photographs taken at the jobsite demonstrate the complexity of the collection system.



(Ex. 40, at 5)



(Ex. 40, at 3)



(Ex. 40, at 14)

Thus, the focus should be on the overall nature of the work— creation of a gas and leachate collection and piping system – in addition to the individual tasks performed which collectively comprise that work. Viewed through that lens, the Cedar Hills landfill job as a whole unambiguously requires workers to “assemble [and] install [] piping systems, fixtures and equipment for the transportation of water, . . . gas, . . . liquids . . . or similar substances” as described in the introductory paragraph of WAC 296-127-01364, and is therefore within the Plumbers, Pipefitters, and Steamfitters scope of work, not any of the Laborers scopes of work.

6. Despite Laborers’ Arguments to the Contrary, Installation of HDPE Piping Is Covered by Plumbers, Pipefitters, and Steamfitters Scope (WAC 296-127-01364)

Because the previous sections have shown that the Plumbers, Pipefitters, and Steamfitters scope language is plain on its face and clearly applies to the work at issue, while none of the Laborers scopes cover the work, there is no need for the Department to go any further in its analysis. See Determination, Geo Loop Tec Company, City of Seattle Fire Station #6 (L. Anne Selover, May 28, 2013) (Ex. 13, at 5) (“For our wage determinations, the primary and controlling authority in determining the applicable rate of wage is our scope of work descriptions.”); *Cannon v. Dep’t of Licensing*, 147 Wn.2d 41, 56, 50 P.3d 627 (2002) (“If an administrative rule or regulation is clear on its face, its meaning is to be derived from the plain language of the provision alone.”). Nevertheless, you have indicated previously that the Laborers contend the Cedar Hills Regional Landfill job is properly within Laborer scope because it involves heat fusion of HDPE

pipng. As an initial matter, it should be clear from the discussion above that the project involves far more than just fusion of HDPE piping. See, e.g. (Ex. 9, at §33 41 00 2.01 to 2.06) (discussion of use of multiple kinds of pipe, including HDPE, solid wall PVC pipe, profile wall PVC pipe, corrugated polyethylene pipe, stainless steel pipe, and ductile iron pipe). Nevertheless, the Plumbers, Pipefitters, and Steamfitters scope is the more appropriate one, even if the focus is solely on aspects of the work involving fusion of HDPE pipe.

a. Prior L&I Determinations

First, previous Department determinations have affirmed that projects involving the fusion of HDPE pipe are within the Plumbers, Pipefitters, and Steamfitters scope, in large part due to the overall nature of those jobs as construction of piping systems. In a recent decision by former Industrial Statistician L. Ann Selover, the Department analyzed this issue at length and explicitly determined that heat fusion of HDPE pipe is a process within the Plumbers, Pipefitters, and Steamfitters scope. See Determination, Geo Loop Tec Company, City of Seattle Fire Station #6 (L. Anne Selover, May 28, 2013) (Ex. 13). In that case, the contractor sought a determination of the appropriate scope of work for installation of a geothermal heat pump piping system involving the heat fusion of HDPE pipe sections. The contractor argued that heat fusion of HDPE pipe was not a process within those specifically listed in Section 1(c) of the Plumbers, Pipefitters, and Steamfitters scope (WAC 296-127-01364). Ms. Selover resoundingly rejected that argument, explaining as follows:

You assert that joining pipe by fusing is different from: joining by means of solder, welding, brazing and other specific joining methods. By limiting your reference to the various methods of joining of pipes specifically listed in the scope of work for Plumbers, Pipefitters, and Steamfitters your conclusion seems to be that those work descriptions do not include the process under consideration here, sealing of [HDPE] pipe sections by fusion. That clearly is not the case. A more complete review of that part of the work description you cite includes the following: "Joining pipes by use of screws, bolts, fittings, solder, welding and caulking, *or any other method of making joints in the pipefitting industry.*" Heat fusion is a form of making joints that is common practice within the pipefitting industry, and is included within the Plumbers, Pipefitters, and Steamfitters scope of work and must be compensated at that prevailing wage rate or at the prevailing wage rate for Refrigeration Mechanics (see below).

Determination, Geo Loop Tec Company, City of Seattle Fire Station #6, (L. Anne Selover, May 28, 2013) (Ex. 13, at 4) (*italics emphasis in original, underline emphasis added*). In other words, just four years ago the Department unambiguously affirmed that heat fusion of HDPE piping is properly within the Plumbers, Pipefitters, and Steamfitters scope of work.

Importantly, Ms. Selover further found that the contractor had improperly considered the work to be within the Laborers in Utilities Construction classification (WAC 296-1127-01340) and also confirmed that the Utilities Construction (WAC 296-127-01389) scope did not apply. *Id.* at 4. Ms. Selover made one other crucial point: the material used alone does not dictate the appropriate scope of work. The contractor contended that the Laborers' collective bargaining agreement referenced a Laborer classification called Pipe Layer/Tailor, which worked with materials including HPDE pipe. However, Ms. Selover noted that just because "Laborers may work with HDPE piping as they may work with other materials, this does not establish that the Laborers prevailing wage scope of work includes fusion and installation of a geothermal heating and cooling system." *Id.* at 5. Thus, the prevailing wage scope of work for Plumbers, Pipefitters,

and Steamfitters included fusion of HDPE pipe generally, and especially in the context of construction of a piping system, in that case a geothermal heating and cooling system.

The same logic applies equally here. A major part of the Cedar Hills landfill involves the use of fused HDPE. That technique and material is recognized to be a method of making joints in the pipefitting industry, and therefore within the Plumbers, Pipefitters, and Steamfitters scope. See WAC 296-127-01364(1)(c); see also Section IV.A below (details regarding pipefitter apprenticeship training, pipefitter hours, and other indicia of industry practice). Moreover, even if Laborers at times work with HDPE pipe, the fact remains that this job involves the construction of a system for the collection of leachate and methane landfill gas, the type of "piping system" for the transportation of "liquids" and "gases" that is contemplated in the broad introductory paragraph of WAC 296-127-01364.

Other recent determinations from the Department also illustrate related points. In the matter of Earthheat, Inc., the contractor sought a determination regarding the prevailing wage classification for the laying of geothermal piping, apparently using HDPE pipe. See Determination, Earthheat, Inc., Re Geothermal Piping (J. Christenson, November 17, 2014) (Ex.12, at 1). The Department indicated that the Utilities Construction (Underground Sewers and Water Lines) scope of work (WAC 296-127-01389) did not apply, as HDPE pipe was "rarely, if ever" used in the applications under that scope. *Id.* at 2. The Department also noted that a geothermal piping system does not involve the water mains, sanitary sewer mains, underground storm sewers or branch lines enumerated in WAC 296-127-01389, but rather consisted of a closed loop "process" piping system. *Id.* at 2. The Department then concluded that the May 28, 2013 determination from Ms. Selover controlled, which identified the Plumbers, Pipefitters, and Steamfitters scope as the applicable classification. *Id.*

This is yet another determination finding that work with HDPE pipe is properly within the Plumbers, Pipefitters, and Steamfitters scope, rather than a Laborers scope, Utilities Construction scope, or some other scope. Moreover, this determination reinforces the notion that where HDPE pipe is used as part of a closed loop process piping system, it is properly considered to be within the Plumbers, Pipefitters, and Steamfitters scope, rather than WAC 296-127-01389 which applies to water mains, sewer mains, branch lines, etc. Like the geothermal system in the prior determination, the leachate and landfill gas collection system at issue in the Cedar Hills job is a closed system, and has nothing to do with water mains, sewer mains or the like.

b. Current and Prior Industry Practice

Second, pipefitters have a long and extensive record of installing gas piping systems utilizing HDPE pipe, at the prevailing wage rates associated with the Plumbers, Pipefitters, and Steamfitters scope. For example, pipefitters engage in millions of man-hours yearly in the installation of HDPE piping using heat fusion methods in the Washington gas distribution industry. In 2013 -2017, UA Local 32 pipefitters alone performed over 1.29 million hours of this type of work with HDPE pipe. (Ex. 19) (Gas Distribution Hours Report). According to UA Local 32 representative Ed Holmes, foreman Glen Andrews, and others knowledgeable in the industry, there is no substantive or technical difference between the fused HDPE piping used in the gas distribution industry, and the fused HDPE piping used in leachate and methane gas collection systems in the Cedar Hills landfill job at issue here.

There is also ample evidence that fused HDPE piping work has been, and continues to be, performed at pipefitter rates on prevailing wage jobs throughout Washington, including at

various federal Hanford sites. A number of letters of assignment, emails, and other documents verify that reality. (Exs. 20-23). For example, University Mechanical Contractors confirmed that all HDPE piping for injection and extraction well at the Hanford 200W Pump and Treat facility, approximately 3,000 linear feet, was performed with UA Plumbers and Steamfitters. (Ex. 20) OJEDA, a contractor and signatory of the Hanford Site Stabilization Agreement (HSSA) since 1998, has in its history at Hanford under the HSSA always assigned HDPE piping work to pipefitters through subcontractor Intermech or University Mechanical. (Ex. 21). Numerous Intermech jobs at Hanford involving HDPE piping have been assigned at pipefitter rates, going back at least to 1996, when the Company was formerly known as Thompson Mechanical. (Ex. 22). Fluor Government Group likewise confirmed its consistent assignment of HDPE piping work to pipefitters, rather than laborers, going back “decades” prior to 2003”. (Ex. 23). There can be little doubt that both currently and historically, HDPE piping involving fusion joining methods has been performed extensively by pipefitters on prevailing wage projects, and has been compensated accordingly. Thus, although some HDPE piping work has apparently been performed at Laborers rate, the evidence shows that the pipefitter rate has been applied to millions of man hours yearly on all aspects of HDPE piping systems in Washington.

7. Other Factors Relevant to Interpreting Scope of Work Descriptions

The discussion above should provide ample from which the Department can and should determine that the work at issue is within the Pipefitters, Plumbers, and Steamfitters scope, based on the plain language of the scope, the characteristics of job at issue, and relevant prior determinations. Moreover, even looking solely at the task of installing piping systems with heat-fused HDPE pipe, that work has consistently been performed by pipefitters. However, the Department may seek to evaluate other “authoritative” factors specified in WAC 296-127-013(2) which were used to create the scopes initially, and which have at times been used to assist in a determination of the appropriate scope of work. These factors also favor the UA’s position here.

A. WAC 296-127-013(2)(a)- Apprenticeship and Training Standards

Pipefitters in Washington are extensively trained and experienced in the cutting, fusion bonding and installation of HDPE pipe, along with many other pipefitting techniques. For example, UA Local 598 Plumbers and Steamfitter apprentice training calendars and other documentation going back to 2004 document extensive training on “plastic fusion”, which is heat-fusion bonding of HDPE and other pipe. (Ex. 24). These trainings have typically lasted between 16 and 40 hours. *Id.* Similarly, Zuiderweg Construction General Foreman Glen Andrews has taught HDPE fusion techniques to UA Local 32 apprentices. That training is also extensive, starting with history and general knowledge of the pipe and continuing with calculations relevant to these processes including temperature ranges, ambient temperature issues, rain, wind, and other force considerations. The training includes different cuts, fusion machine set-up, proper welding techniques, then extensive hands-on practice. Based on Andrews’ experience in the industry, UA pipefitters receive much more exhaustive training than any other trade, including the Laborers, regarding the appropriate fusion of HDPE and other “plastic” pipe.

Even more importantly, pipefitters have much more extensive training than any other trade, especially more than Laborers, in the techniques necessary to install, test, and maintain the type of complex leachate and landfill gas collection systems being built at Cedar Hills. For example, the Apprenticeship Program Standards for the Seattle Area Plumbers, Housing Plumbers, Pipefitters, HVAC/Refrigeration Mechanics, and Marine Pipefitters Apprenticeship Committee shows that apprenticeship training devotes hundreds of hours each to high and low pressure piping systems, rainwater drainage piping, pumps, pump motors and controls, valves

and controls, commercial process piping, instrumentation and control piping, and natural gas piping. (Ex. 37 at 20-24). Almost the entirety of the 10,000 hours of training for maintenance plumber/steamfitter and pipefitter deal with the installation, maintenance, and repair of complex piping systems. *Id.* By contrast, the Apprenticeship Program Standards for the Northwest Laborers Apprenticeship Committee include almost no training regarding such piping systems within its 6,000 hours, instead focusing on things such as site preparation and maintenance, tools and materials, safety, and various concentrations like environmental remediation, building construction, highway and utility construction, tunneling, landscaping, and demolition/deconstruction, (Ex. 38). The main mention of pipe in those standards is the Concentration on "Pipeline", which includes within it training only on "hooking and unhooking of pipe" and "pipe preparation, sandblasting, coating, and cleanup". These skills are obviously limited, and do not even begin to approach the training on complex piping systems, including pumps, controls, valves, and instrumentation, at the core of the pipefitter apprenticeship.

B. WAC 296-127-013(2)(b)- Collective Bargaining Agreements

Collective bargaining agreements also reinforce that the Cedar Hills landfill job is within scope of work pipefitters typically perform. For example, a current collective bargaining agreement for UA Local 32 affirms that it shall have jurisdiction over, among others:

All down spouts and drainage areas, soil pipe, catch basins, manholes, drains, gravel basins, storm water sewers, septic tanks, cesspools, water storage tanks, etc. (6)

...

The setting, erecting and piping of instruments, measuring devices, thermostatic controls, gauge boards and other controls used in connection with power, heating, refrigerating, air conditioning, manufacturing, mining and industrial work. (22)

...

All piping for artificial gases, natural gases and holders and equipment for same, chemicals, minerals and by-products and refining of same, for any and all purposes. (24)

...

All piping for power or heating purposes, either by water, air, steam, gas, oil, chemicals, or any other method. (32)

...

All piping of every description in waste water and sewage disposal facilities, through the sewage disposal process, including chlorination and oxygen injection. This process includes the control, collection and treatment of odorous gases generated by the sewage disposal process. (36)

...

All methods of stress relieving of all pipe joints made by every mode or method. (45)

...

All piping for cataracts, cascades, (i.e., artificial waterfalls), make-up water fountains, captured waters, water towers, cooling towers, and spray ponds used for industrial manufacturing, commercial, or for any other purposes. (49)

...

Piping herein specified means pipe made or manufactured from metals, tile, glass, rubber, plastics, wood, or any other materials or product made or manufactured into pipe of any shape or size usable in the pipefitting industry. (50)

(Ex. 25) (Excerpt from CBA) (Art. III, Section 1). These same jurisdictional specifications are also found in older contracts dating to the time period when the Department's scope of work descriptions were codified into regulations in 2000. (Ex. 39, at 22) (UA Local 32 Collective Bargaining Agreement effective 1999 through 2002, Article I – Jurisdiction of the United Association).

These jurisdictional specifications in the current and historical UA Local 32 contracts indicate that leachate and methane gas collection systems of the type at issue here are considered within the scope of pipefitter work currently and at the time the relevant scope of work descriptions were adopted. For example, piping for collection of leachate from a landfill is clearly "captured waters . . . used for industrial manufacturing, commercial, or for any other purposes." (Ex. 25) (Art. III, Section 1(49)). Likewise, piping for collection of landfill gas is clearly "[a]ll piping for artificial gases, natural gases and holders and equipment for same, chemicals, minerals and by-products and refining of same, for any and all purposes." (Ex. 25) (Art. III, Section 1(24)). Though the UA is not asking the Department to pass judgment on any jurisdictional dispute, the collective bargaining agreement language of UA Local 32 demonstrates that the work at issue is within the scope of pipefitter work generally.

C. WAC 296-127-013(2)(c)- Dictionaries of Occupational Titles

Courts have also looked to the Dictionary of Occupational Titles for insight into the appropriate determinations of scopes of work. See *Magula v. Labor & Indus.*, 116 Wash. App. 966, 971, 69 P.3d 354, 356 (2003) (recognizing the Dictionary of Occupational Titles as an authoritative source for scope of work descriptions to determine prevailing wage rates). The Dictionary of Occupational Titles supports the UA's contention that the work at issue at the Cedar Hills landfill falls within the pipefitter occupation.

According to the Dictionary of Occupational Titles, the occupation of "Pipe fitter (construction) (862.281-022)" consists of the following:

Lays out, assembles, installs, and maintains pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating, sprinkling, and industrial production and processing systems, applying knowledge of system operation, and following blueprints: Selects type and size of pipe, and related materials and equipment, such as supports, hangers, and hydraulic cylinders, according to specifications. Inspects work site to determine presence of obstructions and to ascertain that holes cut for pipe will not cause structural weakness. Plans installation or repair to avoid obstructions and to avoid interfering with activities of other workers. Cuts pipe, using saws, pipe cutter, hammer and chisel, cutting torch, and pipe cutting machine. Threads pipe, using pipe threading machine. Bends pipe, using pipe bending tools and pipe bending machine. Assembles and installs variety of metal and nonmetal pipes, tubes, and fittings, including iron, steel, copper, and plastic. Connects pipes, using threaded, caulked, soldered, brazed, fused, or cemented joints, and handtools. Secures pipes to structure with brackets, clamps, and hangers, using handtools and power tools. Installs and maintains hydraulic and pneumatic components of machines and equipment, such as pumps and cylinders, using handtools. Installs and maintains refrigeration and air-conditioning systems, including compressors, pumps, meters, pneumatic and hydraulic controls, and piping, using handtools and power tools, and following specifications and blueprints. Increases pressure in pipe system and observes connected pressure gauge to test system for leaks. May weld pipe supports to structural steel members. May observe production machines in assigned area of manufacturing facility to detect machinery malfunctions. May operate machinery to verify repair. May modify programs of automated machinery, such as robots and conveyors, to change motion and speed of machine, using teach pendant, control panel, or keyboard and display screen of robot controller and programmable controller.

National Academy of Sciences, Committee on Occupational Classification and Analysis. DICTIONARY OF OCCUPATIONAL TITLES (DOT), (*available at* <http://www.govtusa.com/dot/dot08c.html>). The work at issue in installation of the leachate and methane collection systems clearly fits within this title, especially the broad language of “assembles, installs, and maintains pipe systems . . . for . . . industrial production and processing systems, applying knowledge of systems operation” and various specific tasks: “cuts pipe” , “connects pipes,” “secures pipes to structure”, “installs and maintains hydraulic and pneumatic components of machines and equipment, such as pumps and cylinders,” and “increases pressure in pipe systems.”

D. WAC 296-127-013(2)(d),(e)- Expert Knowledge and Industry Practice

Expert knowledge and construction industry practice can also be relevant to scope determinations. See WAC 296-127-013(2)(d),(e). Nevertheless, in considering such information, the Department has stressed that scope of work regulations are to be interpreted primarily based on the construction industry conventions at the time the scopes were written, rather than on how industry practice has evolved since their drafting. See Determination, Pacific Northwest Regional Council of Carpenters, Multi-story Scaffolds (Jim Christensen, October 31, 2016) (Ex. 11, at 1). For example, in 2016 the current Industrial Statistician noted the importance of “reading scope of work descriptions in the context of the contemporary trade and occupation conventions in the construction industry when the regulation was written” (emphasis added). That sensibly ensures fidelity to the intent of the scope of work descriptions as they were originally drafted. Moreover, it discourages employers from eroding the prevailing wage by attempting to create new industry practices that conflict with those scopes and in order to justify further

continued deviations from the scopes in the future. In other words, just because employers have in the past ignored a Department scope of work— and thus applied an incorrect prevailing wage rate — without being noticed or challenged, does not mean that the scope ceases to have full force of law.

Pipefitters have historically performed installation of leachate and landfill gas collection systems for well over 30 years. We acknowledge that, in recent years, some employers have performed this work at Laborer rates as well. However, there has never been a determination from this Department regarding the appropriate scope of work covering leachate collection and landfill gas collection piping systems. Thus, it is imperative that the Department approach this issue from first principles — the text of the relevant scopes, and their meanings at the time they were drafted — rather than merely relying on what trade or job classification currently performs the majority of the work at issue.

The scope of work descriptions were originally drafted in 1989 by George May, but did not become codified in regulation until 2000. See *D.W. Close Co. v. Dep't of Labor & Indus.*, 143 Wash. App. 118, 131, 177 P.3d 143, 150 (2008). Thus, if the plain language of the scopes themselves is not completely dispositive, to determine the intent of the scopes it is relevant to consider expert knowledge and industry practice at the time the scopes were drafted and codified— in 1989 and 2000— rather than focusing exclusively on current industry practice. This historical approach is in line with the Department's prior determinations, some of which review industry practice going back almost a century. See, e.g. Determination, Pacific Northwest Regional Council of Carpenters, Multi-story Scaffolds (Jim Christensen, October 31, 2016), (Ex. 11, at 5) (considering jurisdictional evidence dating back to 1920 to determine historical practice to interpret scope).

Contractors have utilized pipefitters to install leachate and landfill gas piping systems for decades. Glenn Andrews, currently general foreman with Zuiderweg Construction, served as general foreman for Magnolia Contractors from 1988 to 2001. (Ex. 26). In that time period, he supervised a number of the installations of leachate collection and gas collection systems at landfills across the state of Washington, exclusively utilizing pipefitters and paying applicable pipefitter rate for that work. (Ex. 27) (June 2017 Letter describing jobs). These jobs included the “install[ation] and modification of the gas collection piping,” “flare pad mechanical equipment complete with all equipment for processing gas and leachate treatment equipment, pumping stations, process/holding tanks and Zink Flares,” “all the site leachate piping installed or modifications from the site with installation of pneumatic driven extraction pumps or condensation leachate traps in the gas collection system” *Id.*

In fact, the first such job at a landfill that Andrews completed was at the Cedar Hills Regional Landfill, the same site at issue currently. (Ex. 26). Andrews worked with pipefitters to install the initial collection system for methane using PVC pipe at Area #2 of the landfill, even before HDPE pipe was standard for this application. Andrews also used pipefitters to install the leachate collection system, which at the time was collected in lined ditches. Andrews performed other leachate and methane collection jobs at Cedar Hills subsequently, the last of which was in 1994, and this work is documented by photographs on the site showing pipefitters actually performing that work. (Ex. 28) (Cedar Hills).

Andrews did many other similar landfill piping jobs with pipefitter labor. The next was installing new HDPE gas collection and leachate collection systems, as well as a mechanical pad, at the Midway Landfill in Kent Washington, which is also documented by photographs on the site. (Ex. 29) (Midway). Andrews performed similar work with pipefitters at Hobart Landfill in Issaquah (1994), Highline Landfill, Port Townsend Landfill, Centralia Landfill (1995), Vashon Island Landfill

(1996), several of which are documented by photographs as well. (Exs. 30-32) (photographs of Hobart, Vashon, and Centralia jobs).

Not only do the photographs confirm that the work at issue falls within the Plumbers, Pipefitters, and Steamfitters scope, but the individuals in the photographs are UA pipefitters. For example, photographs of the Hobart Landfill job feature Glen Andrews and UA foreman Don Phillips. (Ex. 30, at 4-5). Andrews confirms that these jobs involved extensive creation of HDPE piping systems for the collection of leachate and landfill gas. Like the current Cedar Hills landfill job, these previous projects involved high degrees of skill in HDPE fusion joining processes, installation of numerous valves and test ports, leachate condensation traps, creation of complex pumping and control systems, and leak detection and testing.

Similarly, BMWC Constructors foreman Jim Hatton performed and supervised the work of pipefitters on numerous large jobs involving creation and expansion of the leachate collection system at the Hanford Environmental Restoration Disposal Facility (ERDF), a large landfill for the Hanford facility, starting in approximately 1999. Hatton supervised creation of the leachate collection systems at ERDF cells 3, 4, 5, 6, 7, 8, 9, and 10. Generally, each cell's leachate collection system involved installing HDPE line, with a full HDPE drain system, two large sumps with three pumps at different levels, pressurized HDPE pipe outlets from the pumps, and double contained HDPE pipe for the gravity-fed portion of the leachate containment system. Hatton estimated that either he or another BMWC foreman led a crew of five pipefitters on those jobs, each of which took up to a year to complete.

Documentation from the installation of leachate collection systems at Hanford ERD "super cells" 9 and 10 shows how extensively pipefitters were used to accomplish this work. That project involved installing piping systems including the batch plant waterline, leachate transmission line, sump rises, raw waterline, EPG pumps and leachate collection piping, comprising around 6,000 man hours and involving the installation of 10,000 linear feet of piping, much of it HDPE piping. (Ex. 33) (Steven Klein email); (Ex. 34, at 5, 8, 50) (Washington Closure Hanford- Final Report, Section 1). Extensive weekly construction reports demonstrate that BMWC's pipefitters performed the same types of functions in creating the leachate collection system at ERDF supercells 9 and 10 as are involved in the Cedar Hills leachate collection system at issue in this determination. (Ex. 35, at 13, 15, 17, 19, 21, 23, 26, 28, 30, 34, 37, 44, 59, 65, 74, 77, 78, 82, 87, 88, 97) (Washington Closure Hanford- Final Report, Section 20). There, BMWC's pipefitters installed and tested HDPE drain lines, discharge lines, double contained leachate transmission lines, leachate collection lines, leachate risers, leachate collection pumps, and flow meters. *Id.* The leachate collection system portion of the project finished in late 2010. *Id.* The extensive history of BMWC Constructors using pipefitters, at pipefitter rate, for these massive leachate collection system projects indicates that this work continues to be performed by the pipefitter trade.

Even more recently, pipefitters continue to do work on leachate and landfill gas collection systems in Washington. For example, a recent search of the Department of Labor & Industries Intent and Affidavits database revealed nine projects referring to "leachate" and also using the Plumber/Pipefitter trade classification. (Ex. 36, at 1). Due to idiosyncrasies in how these jobs are reported and stored in the database, many more projects – 48 in total– revealed use of Plumber/Pipefitter trade classifications on prevailing wage jobs involving "landfill". (Ex. 36, at 2-5). Most of these jobs related to work on landfill gas and leachate systems. *Id.* These results confirm that contractors continue to pay pipefitter rate for work on leachate and landfill gas systems in Washington, even up to the present.

8. Even Assuming Multiple Scopes of Work Could Theoretically Apply, the Department Should Apply the Higher Wage Rate to Avoid Erosion of Wage Standards

We have provided ample law and evidence indicating that only the Pipefitters, Plumbers, and Steamfitters scope – and no other scope – applies to the Cedar Hills landfill leachate and landfill gas collection system work. Nevertheless, should the Department be tempted to conclude that multiple scopes could theoretically apply to the work at issue, it should nevertheless apply the single scope associated with the higher wage rate. This is consistent both with longstanding practice of the Department and Washington courts' interpretation of the purposes of prevailing wage laws. In fact, the current Industrial Statistician recently wrote:

Where more than one wage rate could be construed (according to the scope of work descriptions) to apply to a work activity, the local wage standard to be preserved may not be clearly obvious. In these instances, and to avoid the inadvertent erosion of a wage standard, we hesitate in applying the analysis favoring the lower paid classification.

Determination, Pacific Northwest Regional Council of Carpenters, Multi-story Scaffolds (Jim Christensen, October 31, 2016) (Ex. 11, at 6). Indeed, this hesitance to assign the lower of two potential wage rates is consistent with the overarching concern animating the prevailing wage system in Washington, which is to protect workers and their wages. As the Washington Supreme Court explained:

When we apply basic statutory construction principles, our primary task is to determine which interpretation best reflects the intent of the legislature in enacting the prevailing wage act and to give effect to that interpretation. . . . [T]he prevailing wage act is remedial legislation designed to protect the employees of government contractors in this state from substandard earnings and to preserve local wage standards. As such, the act and regulations promulgated thereunder are to be liberally construed in favor of the beneficiary of the act, the worker.

Silverstreak, Inc. v. Dep't of Labor & Indus., 159 Wash. 2d 868, 882, 154 P.3d 891, 899 (2007)(internal citations omitted).

Simply put, the workers, not the contractors, are the beneficiaries of the prevailing wage law. *Everett Concrete Prods. Inc., v. Dept. of Labor and Indus.*, 109 Wn.2d 819, 823-824, 748 P.2d 1112 (1988). The Pipefitters, Plumbers, and Steamfitters scope is compensated at a higher wage rate than any of the other scopes potentially at issue (Laborers, Laborers in Utilities Construction, Utilities Construction). In the unlikely event that the Department were to determine that Cedar Hills landfill job did not fall solely within the Pipefitters, Plumbers, and Steamfitters scope, but another scope as well, then the Department must apply the higher paid scope in order to effectuate the remedial purposes of the prevailing wage law and to avoid erosion of area wage standards.

9. Conclusion

The statutes and regulations vest the Industrial Statistician with the authority and responsibility to determine the prevailing wage rate for particular work, based on the codified scope of work determinations. We respectfully request that you do so here, considering the plain language of the relevant scopes. We look forward to having an opportunity to discuss this statement and the attached documentation with you. If you need any additional information to

Jim Christensen
Washington State Department of Labor and Industries
January 31, 2018
Page 43

assist you in making this determination, please do not hesitate to contact us. After reviewing the extensive documentation and relevant authority, we respectfully request that the Department confirm that the Cedar Hills Regional Landfill work at issue falls within the Plumbers, Pipefitters, and Steamfitters scope (WAC 296-127-01364) and not within WAC 296-127-01344 (Laborers), WAC 296-127-1389 (Utilities construction (underground sewers and water lines)), or WAC 296-127-01340(Laborers in utilities construction).

Sincerely,

MCKANNA BISHOP JOFFE, LLP



Noah Barish



Daniel Hutzenbiler

Encl. (Exhibits 1 - 40)

cc: David Ciprut (WA State Association of the UA)
Tim Herbert (WA State Association of the UA)
Jason Hewitt (UA Local 32)
Ed Holmes (UA Local 32)
Jeffrey Owens (UA Local 32)



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
PO Box 44540 • Olympia, Washington 98504-4540
360/902-5335 Fax 360/902-5300

November 28, 2018

McKanna Bishop Joffe, LLP
1635 North West Johnson Street
Portland, Oregon 97209

Re: Cedar Hills Regional Landfill Determination Request

Messrs. Barish and Hutzenbiler,

The purpose of this letter is to inform you about industry practice data we found in the Prevailing Wage Intent and Affidavit System (PWIA) and to ask for your further comments and suggestions before we move forward with the determination you requested. But before I turn to our findings, I wanted to thank you again for the opportunity to visit the project site on October 12th and November 20th, and for the opportunity to discuss the work with the Pipefitter and Laborer representatives and the Mechanical Contractors' Association. I especially thank Nick Scarsella, Mike Agostino, and Ryan McBride for hosting our group, organizing the site visit, and answering our questions.

Relevant Scope of Work Descriptions

As I previously discussed in the September 26, 2018 letter, the issue at hand is whether the Plumbers and Pipefitters prevailing wage applies for leachate and gas collection piping installed as part of a landfill 'closure' project rather than Laborer rates based on the nature of the work and the language of prevailing wage scope of work descriptions found in chapter 296-127 WAC. Both the Laborer scope (WAC 296-127-01344) and the Plumbers, Pipefitters and Steamfitters scopes (WAC 296-127-01364) mention the joining of pipes. There is no question that plumbers, pipefitters and steamfitters join many kinds of pipes.

For example, under state law, piping systems in buildings must be installed by licensed plumbers. We also know from the plain language of WAC 296-127-01389 (Utilities Construction) and WAC 296-127-01340 (Laborers in Utilities Construction) that certain laborers also join pipes (other than ductile iron pipes that will be under pressure) for water mains, sanitary sewer mains, underground storm sewers and branch lines. Utilities construction work falls into those two scopes and does not fall within the Laborers scope (WAC 296-127-01344). The Laborers scope of work (WAC 296-127-01344) itself also mentions the joining of pipes.¹ We know those piping structures are not water mains, sanitary sewer mains, underground storm sewers or branch lines (as these piping structures are specifically called out in the utilities scopes) since these are tasks covered in WAC 296-127-01340. WAC 296-127-01344 does not provide further guidance about what kinds of piping systems are covered by that scope and I am not aware of any particular pipe joining for which the department has applied the Laborer prevailing wage in a previous determination. Your question gives us an opportunity to determine whether the wage standard for landfill closure (gas and leachate collection) piping is that of pipefitters or laborers based on the nature of the work and industry practice. *See Lockheed Shipbuilding v. Dep't of Labor & Indus.*, 56 Wn. App. 421, 783 P.2d 1119 (1989).

Established Wage Standards

As we previously discussed, Washington prevailing wage laws were enacted to preserve local wage standards. Local wage standards evolve in the construction industry, or any free market industry, but may be diminished if public entities allow contractors to bid projects with lower rates. It is these industry-set wage standards that the Legislature seeks to protect through prevailing wage laws. The prevailing wage program at L&I does not dictate or create new wage standards. Instead, it protects existing ones. Understanding the history and especially the current state of construction industry wage standards is vital to the mission and mandate of the prevailing wage program. Where a discernable, established wage standard exists, this would be the wage standard that chapter 39.12 RCW was designed to protect, according to *Everett Concrete Products, Inc. v. Dep't of Labor & Indus.*, 109 Wn.2d 819, 748 P.2d 112 (1988). The discussion below discusses the evidence, or lack thereof, that the established wage standard for Leachate and gas collection systems constructed during a landfill closure project is that of pipefitter.

¹ This scope states, in part, "...Position, join, align, wrap and seal pipe sections...."

Pipefitter Hours

On November 20th, I visited the construction site again to see the fusing of a 30" HDPE pipe that was to be 700 feet long when completed. Afterwards, I asked Ryan McBride how many hours altogether it would take the pipe fuser to complete that 700' pipe. I specifically asked him to limit the hours to the worker operating the fusing machine, and to exclude the equipment operators and other helpers. He estimated that time at approximately 40 hours.

The project will require twelve 300 foot-long lateral pipes running up the hill from that 700' pipe. Other fused HDPE pipe will also be installed on this project. I asked Mr. McBride to estimate how many hours, just operating the fusing machine, will be required to fuse the HDPE pipe sections on the project. He used a spreadsheet to tally the lineal feet of fused pipe and estimated that approximately 2000 hours of HDPE fusing machine operation will be needed for the project. This information helps me understand the number of work hours I should expect on these types of projects. Based on information from Mr. McBride's assumptions, and assuming the established wage standard for this work is that of pipefitter, I would expect to find that contractors have reported paying thousands of hours of pipefitter wages for the HDPE fusing, other pipe joining, and for the installation of valves and pumps for each landfill closure project. The available data does not match this assumption.

Data Available to the Department

The Prevailing Wage Intent and Affidavit (PWIA) system was created in the year 2000. Since that time, this system has been capturing data from contractors' Intent and Affidavit form submitted. The data discussed below was taken from contractors' Affidavit forms on completed public projects.

As you probably know, landfills are not public agencies in Washington State. Instead, they are divisions within other larger public agencies. Counties, cities, PUDs, and other local agencies typically own and operate landfills.² Because landfills are not operated as independent public agencies, we could not identify landfill-related data using the names of public agencies.

² Some landfills are privately operated. Those projects are not public works and therefore are not included in PWIA data.

Instead, we found the data by searching for certain words within the Project Name. The data you see represents data captured into PWIA from Affidavits filed on completed projects where the project name includes the term “landfill.” The relevant period of time (since the inception of the PWIA system) is eighteen years. In other words, this spreadsheet represents all the data we could locate regarding wages paid on landfill projects. Several dozen projects are represented in this data set. The total number of hours reported on these projects is just under one million hours. Of those, the number of hours paid at pipefitter wages on all “landfill” projects in this system is 37,587.

Further analysis shows that the vast majority of pipefitter hours (33,706.5 hours) reported on landfill projects were reported from a single project in Klickitat County entitled “HW Hill Landfill Gas Generation Exp. Project.” In speaking with the general contractor on that project and also with the Klickitat County manager for that facility, I learned that this project did not include any landfill “closure” piping. The landfill itself is privately operated. This project, and these 33,706.5 hours, involved the setting of two gas turbines and one steam turbine to make electricity from gas generated at the landfill. It makes sense to me that pipefitter wages would be paid for this work. However, if we subtract these hours from the total of all landfill pipefitter hours, we are left with 3,880.5 pipefitter hours reported as hours worked on landfill projects.

“Landfill” Hours:	37,587
Kittitas Project	<u>-33,706.5</u>
Total	3,880.5

Searching for the word “closure” within the Project Name, we found approximately 16 projects. The total of all hours paid at pipefitter wages on those 16 projects is limited to 540 hours.

We found 74,936 hours paid at laborer wages on the 16 landfill “closure” projects. On the several dozen “landfill” projects we found 298,864.1 hours paid at laborer wages.

Request for Any Additional Information Before Completing the Determination

If the established wage standard for this work is that of pipefitters, then I would expect to see a substantial numbers of hours reported as such. Instead, for all landfill project data I can find no more than 3,880 hours reported for work I could reasonably attribute to leachate or gas collection piping.

Letter to Messrs. Barish and Hutzenbiler
November 28, 2018

Looking at the roughly sixteen “closure” projects in this data set (which would all presumably include leachate and gas collection piping), I see only 540 hours paid at a pipefitter rate.

I am looking for any further evidence that the wage standard for leachate and gas collection piping on these closure projects is that of pipefitter. I am providing you with a copy of the current data available to the Department. Let me know if you have other sources I should look to find evidence that pipefitter wages are sometimes paid for leachate and gas collection piping on landfills. Once you provide any additional data for my consideration I will complete the requested determination. Of course, let me know if for some reason that you no longer believe a specific determination would be helpful given what we have learned during this process.

Sincerely,



Jim P. Christensen

Industrial Statistician and Prevailing Wage Program Manager
360.902.5330

jim.christensen@lni.wa.gov



Noah T. Barish*
John S. Bishop, II
Daniel R. Hutzenbiler*
Elizabeth A. Joffe
Noah S. Warman*

Elizabeth A. McKanna, *Inactive*

*Also admitted in Washington

February 21, 2019

Jim Christensen
Industrial Statistician and Prevailing Wage Program Manager
Washington State Department of Labor and Industries
7273 Linderson Way SW
Tumwater, WA 98501

Re: Scope of Work Determination for Cedar Hills Regional Landfill
Leachate and Landfill Gas Piping and Collection Systems
MBJ No. 51.001

Dear Jim,

I am in receipt of your determination dated January 29, 2019 (hereafter "Determination"). Please consider this the UA's request, in part, for reconsideration/modification of that Determination. We have no objection to your holding that the installation of valves, pumps, and work on ductile iron pipe must be paid at Plumber/Pipefitter rate.

A. The Determination failed to address our request in its entirety.

As a preliminary matter, the Determination does not address cutting, threading, or bending of pipe, work on pipe fittings, or testing of the piping system, all of which were part of the determination request filed in January 2018. These are all significant components of any piping system like the Cedar Hills project, which we confirmed in the documentation provided to you with the initial request. In your Determination, you held that the installation of valves, pumps, and ductile iron pipe were properly classified under the Plumber/Pipefitter scope because they are explicitly listed in the relevant WAC. The same reasoning applies to cutting, threading, and bending of pipe (WAC 296-127-01364(1)(b)), work on pipe fittings (WAC 296-127-01364(1)(d)), and testing of a piping system (WAC 296-127-01364(1)(e)), yet you failed to address each. Based on the reasoning listed in the Determination, please confirm that cutting, threading, bending of pipe, work on pipe fittings, and the testing of pipes must be paid at Plumber/Pipefitter rate.

RECEIVED
FEB 28 2019
Prevailing Wage Section

B. The Determination is more fundamentally flawed and must be reversed in significant part.

Contrary to the holding in the remainder of the Determination, the construction of gas of the Cedar Hills piping system is exclusively within the Plumber/Pipefitter scope of work, and the decision to the contrary must be reversed. For the same reason that the Determination holds that work on valves and pumps must be paid at Plumber/Pipefitter rate, the remainder of the Determination should be reversed. The entire construction of the piping system must be paid at Plumber/Pipefitter rate.

WAC 296-127-01364 clearly and exclusively provides that Plumber/Pipefitter rate applies to the construction of piping systems carrying gas, which is precisely what the Cedar Hills project involves. When comparing actual scopes of work to the regulations' descriptions, the most important aspect to examine is whether the tasks in question are plainly described by a regulation. "If an administrative rule or regulation is clear on its face, its meaning is to be derived from the plain language of the provision alone." Cannon v. Dep't of Licensing, 147 Wn.2d 41, 56, 50 P.3d 627 (2002). The task here – constructing a piping system that transports gas – is plainly covered by WAC 296-127-01364, and no other analysis is necessary. The courts have made clear that the starting point is the plain language of the WAC; if, as here, the plain language covers the work at issue, one need not go any further.¹

Moreover, where scope of work regulations are clear and unambiguous, the words in the scopes are given their plain and ordinary meaning absent contrary intent. See Silverstreak, Inc. v. Dep't of Labor & Indus., 159 Wn.2d 868, 881, 154 P.3d 891, 898 (2007) (citing In re Estate of Little, 106 Wn.2d 269, 283, 721 P.2d 950 (1986); Hewson Constr., Inc. v. Reintree Corp., 101 Wn.2d 819, 826, 685 P.2d 1062 (1984)). This process includes giving meaning to "every word" in a scope of work regulation. Silverstreak, Inc., 159 Wn.2d at 884. The Determination fails to do this by essentially reading the phrase "piping systems" out of the Plumber/Pipefitter scope of work. If the phrase "piping system" does not cover the Cedar Hills project – a large, complex, pressurized piping system – then the phrase is essentially eliminated from the scopes. Essentially, the Determination holds that an alleged current industry practice supersedes the written scope of work. The Industrial Statistician has no authority to read the scopes in such a manner to eliminate portions with which he or she disagrees.

Further, the Determination fails to respect (or even mention) previous agency decisions. Administrative agencies should act consistently with their prior considered decisions, absent an articulated reason for deviating from that stance. See Vergyle v. Employment Security Department, 28 Wn. App. 399, 404 (1981). L&I has previously and consistently held that pressurized pipe work must be paid at the Plumber/Pipefitter rate. In 1996, the current Industrial

¹ This is why the notion that our determination request seeks to restore an eroded wage standard is irrelevant. However, to the extent that the Determination acknowledges that the Plumber/Pipefitter wage standard has been eroded, that is an acknowledgment that the Plumber/Pipefitter rate did apply to such work at one point, only to have been eroded by the law-breaking of contractors over time. Needless to say, it is rather surprising that the Department would take the position that such lawbreakers should be rewarded by imposing a lower wage rate due to their illegal cheating of workers on prevailing wage projects.

Statistician explicitly ruled that “[v]alve and pump systems are installed using the Pipefitter classification, as are any oxygen and other gas piping and any piping that will be installed under pressure.” Determination, REBOUND, Tacoma Wastewater Treatment (March 4, 1996, Jim Christensen) (Ex. 13 at 1). The Cedar Hills piping system is a pressurized gas piping system, and the 1996 determination makes clear that such a system must be constructed at the Plumber/Pipefitter rate.

An earlier Industrial Statistician similarly held that “[i]f . . . the work involved includes joining pipes when the pipes are under pressure, then it is the work of pipe fitters.” Letter re Humphrey Construction, Inc. (Miriam Moses, November 5, 1990) (Ex. 6). Both holdings apply the pipefitter rate to all pressurized piping, not merely ductile iron pipe. The current Determination simply reverses decades-old L&I precedent without providing any reasoning or basis to do so.

The Determination ignores this by attempting to discern and apply what the current industry practice is in relation to methane gas piping systems on landfill enclosures. The current industry practice is irrelevant for two reasons: 1) as previously noted in both our determination request and subsequent communications, if any industry practice is relevant, it is that which was in place at the time the scopes were adopted; and 2) the Determination’s definition of the relevant industry is too narrowly defined.

There is no scope of work related to “landfill enclosures” because the scopes are meant to apply to the work performed, not the location of the work. See Lockheed Shipbuilding Co. v. Labor and Industries, 56 Wn. App. 421 (1989) (Court of Appeals held that proper prevailing wage scopes relate to the nature of the work or project as a whole, rather than just the location of the work). Accordingly, the court ruled that the Plumber/Pipefitter rate was correct for welding pipe in a wastewater treatment plant project (i.e. constructing a wastewater treatment plant), despite the fact the work was performed in a shipyard. *Id.* Thus, what is relevant here is the fact that the work involves construction of a complex, pressurized piping system, not that such work happens to occur at a landfill enclosure.

Finally, the data used in the Determination is flawed because it is based on supposition and guesswork. The Laborers presented nothing relevant to confirm a current industry practice, and the research performed by the Department after they failed to present anything relevant does not provide any direct evidence of what type of specific work was done on the projects identified in the Determination. The Determination speculates that some of the projects found involved piping systems similar to the Cedar Hills project, but there is no evidence beyond mere speculation. As previously explained, the data shows that, over an 18-year period, there is an average of 192 hours paid at the Laborers pipe layer rate on projects related to landfill closures throughout the entire state – the equivalent of one employee working slightly over a month of standard workweeks on such a project. That is not an industry practice.

RECEIVED
FEB 28 2019
Prevailing Wage Section

Jim Christensen
February 21, 2019
Page 4

For the above-noted reasons, your Determination was flawed, and should be reversed in part. The proper scope of work for the construction of the Cedar Hills piping system is that of Plumber/Pipefitter.

Very truly yours,

MCKANNA BISHOP JOFFE, LLP



Daniel R. Hutzenbiler

DRH:sp

cc: David Ciprut (WA State Association of the UA)
Tim Herbert (WA State Association of the UA)
Ed Holmes (UA Local 32)
Jeffrey Owen (UA Local 32)

RECEIVED
FEB 28 2019
Prevailing Wage Section