

DEPARTMENT OF INDUSTRIAL RELATIONS

**Christine Baker, Director**

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March 24, 2017

H. Bardie Scarborough  
Granite Construction Company  
P.O. Box 50085  
Watsonville, CA 95077

**Re: Public Works Case No. 2016-017  
Highway 99 Realignment Project:  
Off-Hauling of Clean Soil and Asphalt Grindings  
California Department of Transportation**

Dear Mr. Scarborough:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Labor Code section 1773.5<sup>1</sup> and California Code of Regulations, title 8, section 16001, subdivision (a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the off-hauling of asphalt grindings and clean soil from the Highway 99 Realignment Project to outside locations is a public work subject to California prevailing wage requirements.

### **Facts**

On December 4, 2015 and July 25, 2016, the California Department of Transportation (Caltrans) and Granite Construction Company (Granite) entered into two contracts representing two phases of construction: Contract 06-2HT114, the early release construction package, and Contract 06-2HT104, the main construction package (Contracts), respectively. The Contracts call for realignment of Highway 99 through the City of Fresno from 0.2 miles north of Ashlan Avenue to 0.2 miles north of Olive Avenue (Realignment Project). The main construction package is valued at \$127,651,406, and the early release construction package, is valued at \$26,587,424.

### **Discussion**

Section 1720, subdivision (a)(1) defines "public works" as "[c]onstruction, alteration, demolition, installation, or repair work done under contract, and paid for in whole or in part out of public funds." All workers employed on public works projects must be paid at least the prevailing wage rates applicable to their work. (§ 1771.)

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise indicated.

Both Caltrans and Granite agree that the Realignment Project is a public work pursuant to section 1720. The sole question presented is whether the off-hauling of clean soil and asphalt grindings from the Realignment Project is covered public work within the meaning of section 1720.3.

Granite contends that clean soil and asphalt grindings hauled from a public works project to an outside recycling facility or storage location for recycling and reuse, respectively, have value and therefore are not “refuse” as contemplated by section 1720.3. In contrast, Caltrans takes the position that the off-hauling of clean soil and asphalt grindings falls under section 1720.3 and is covered public work.

Caltrans is correct. The plain language of section 1720.3, subdivision (b) reflects that the Legislature intended to include asphalt and soil within the definition of refuse, regardless of whether the materials will later be repurposed. (See *DiCampi-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 992 [construing any statute begins with looking to its language and if it is clear and unambiguous there is no need for construction or examination of legislative intent].)

Immediately prior to the effective date of Assembly Bill No. 514, section 1720.3 defined “public works” to also include “the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state.”

AB 514 amended section 1720.3 effective January 1, 2012, to add subdivision (b), which lists specifically the materials included and excluded from the definition of “refuse”:

For purposes of this section, the “hauling of refuse” includes, but is not limited to, hauling soil, sand, gravel, rocks, concrete, asphalt, excavation materials, and construction debris. The “hauling of refuse” shall not include the hauling of recyclable metals such as copper, steel, and aluminum that have been separated from other materials at the jobsite prior to transportation and that are to be sold at fair market value to a bona fide purchaser.

Asphalt and soil are expressly enumerated as “refuse.” The only exclusion from the definition of “refuse” is for recyclable *metals* followed by illustrative examples of the same. To qualify for the exclusion, the *metal* must be both separated from other materials at the jobsite, i.e., prior to being off-hauled, and sold at market value to a third party, bona fide purchaser. As asphalt and soil are explicitly listed in the definition of refuse, they are necessarily excluded from the subsequent definition of what is not refuse. And, in any instance, asphalt and soil are not metals. Irrespective of the Department’s prior determinations with regard to what constitutes “refuse” under section 1720.3, the Legislature’s amendment of section 1720.3 has now established that asphalt and soil are “refuse” insofar as off-hauling from a public works site is concerned.

It is not necessary to reach the question of whether an outside recycling or storage facility may be considered an “outside disposal location” pursuant to section 1720.3 because the asphalt and soil have already been deemed “refuse” and therefore worthless.

Finally, Granite contends that the asphalt grindings are not refuse because they have worth, based upon the approximately \$1,000,000 credit Caltrans is receiving for the asphalt grindings. Despite this assertion, the Contracts do not specify a credit for the grindings. As explained by Caltrans, the

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proffered "credit" is a commonly used mechanism in the competitive bidding process whereby the contractor recycles the grindings to receive a credit and thereby offset its own costs, allowing it to be the low bid. While these asphalt grindings acquire worth in the present circumstances, the statute nonetheless considers asphalt to be refuse. The same is true for clean soil. The fact that soil is being off-hauled and stockpiled for later reuse may lend it some value for Granite, but it remains refuse by the unambiguous terms of the statute. Finally, for the same reasons, disposal fees are not indicative or determinative as to whether asphalt or soil constitute "refuse" under section 1720.3, as it has been amended by AB 514.

### **Conclusion**

For the foregoing reasons, the off-hauling of clean soil and asphalt grindings from the Highway 99 Realignment Project to an outside location is public work within the meaning of Labor Code section 1720.3 and subject to prevailing wage requirements.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in blue ink that reads "Christine Baker". The signature is written in a cursive, flowing style.

Christine Baker  
Director