



STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage  
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360/902-5335 Fax 360/902-5300

November 10, 2014

Judd H. Lees  
Williams, Kastner & Gibbs PLLC  
Two Union Squart  
601 Union Street, Suite 4100  
Seattle, WA 98101

Dear Judd;

Thank you for your letter dated June 17, 2014 addressing prevailing wage rates that are applicable to work performed by Armorclad on the projects known as Tukwila Pool Ph. 1 for the Department of Enterprise Services, and John's Prairie Operations Center for Mason County Public Utility District No. 3. This determination originates from an investigation and audit performed by Mario Silva, Industrial Relations Agent, pursuant to a worker complaint that was filed with the Department of Labor and Industries (L&I.) Thank you for your patience as this matter has been under review.

In preparing this determination, I reviewed a number of materials including but not limited to your prior correspondence to the program dated June 26, 2013, September 23, 2013 and June 17, 2014, along with correspondence submitted by Rebound dated September 10, 2013. As you know, an Industrial Relations Agent and Industrial Relations Specialist from our program conducted a visit to Armorclad's facility on May 31, 2013 and observed a demonstration of the installation process for the floor product.

This is a determination of the Industrial Statistician regarding coverage of the referenced work under Washington's prevailing wage laws and is made pursuant to RCW 39.12.015. It is based on the facts presented. If the facts change, the answer could be different. See the enclosed document, "Prevailing Wage Determination Request and Review Process."

Process Reviewed

Based on the information that I have been able to review, both projects involve a similar layered, epoxy and sand, built-up flooring product, and its installation in a multi-step process. Associated with this installation process is some preparatory taping and masking, shot blasting, grinding, and patching work, as well as the shaping of some coves. Additionally, the Tukwila Pool project involved the grinding down and resurfacing of tile walls. I will review the work on floors and the work on walls separately.

### *Flooring*

The flooring installation process at issue involves multiple steps and multiple layers following the initial preparation. For the John's Prairie Operations Center I understand that five total layers of epoxy and sand were used, whereas for the Tukwila Pool project there were three layers of epoxy and sand (in each the bottom and top layer are epoxy). First is a preparatory process that involves taping and masking of areas for protection; shot blasting with the use of sandpaper, steel wool, wire brushes or a 4" standard wire wheel grinder; and patching work with an epoxy performed with hand-held trowels and squeegees. On the Tukwila pool project you refer to 4" and 7" inch grinders.

Following this preparatory work, the flooring product is applied in layers. An initial layer of the epoxy is applied using a long-handled squeegee trowel, and then "back-rolled" using traditional paint rollers. Following this, a layer of sand is broadcast evenly across the surface by hand to the point of refusal. The surface is allowed to dry and the remaining loose sand is then vacuumed or swept off of the surface. As described in your June 23, 2013 letter, for the work on the John's Prairie Operations center, second layers of epoxy and sand were then applied in similar manner, followed by sweeping and vacuuming. With or without these second layers of epoxy and sand, a final "top coat" of epoxy is applied with long-handled squeegees and then back-rolled using paint rollers to create the finished surface. The result is a textured, non-skid surface that includes either three layers of epoxy and two layers of sand, or two layers of epoxy and one layer of sand. A sample tile provided by Armoredclad at the May 31 meeting shows a product that is approximately 2 mm thick.

### *Coves*

Around the bottom of the wall, the product is applied by trowels to create a seamless cove. I understand that this process involves a pre-mix of sand and epoxy. In your June 23, 2013 letter you describe a worker using a trowel "to take the liquid material from the floor up to the wall to form a several inch cove."

### *Walls*

For the Tukwila Pool project, Armoredclad performed work to grind and resurface tile walls, in addition to the work on the floors. You describe the grinding work in your June 17, 2014 letter to include the use of paint remover, scrapers, and wire brushes. I understand that small grinders were also used. Following this preparation a layer of epoxy was applied by trowel and, to this, the workers applied a fiberglass mesh cloth using a brush. Finally a roller is used to achieve a finished surface where necessary.

### Scopes of Work

After reviewing the correspondence noted above and based on the above descriptions of the relevant processes, I have reviewed our scope of work descriptions found under WAC 296-127-013. I understand that in your view, the work on the floors and walls can mainly be performed under the classification for Painters, [WAC 296-127-01356](#). The scope of work description for Cement Masons is broadly worded using the phrase "...work includes, but is not limited to:...". The scope of work description for Painters however is written with limiting language which

states that the “job description for painters is as follows...” Based on my review, the scopes that are applicable to certain aspects of the described work are those for Cement Masons, [WAC 296-127-01315](#), Laborers, [WAC 296-127-01344](#), and Painters, [WAC 296-127-01356](#). The tasks and their respective classifications are outlined below.

*Cement Masons, WAC 296-127-01315*

The scope of work for Cement Masons describes a variety of tasks including “all work where finishing tools are used.” The scope of work also specifies “[t]he installation of seamless composition floors and the installation and finishing of epoxy based coatings...when...applied by spraying or troweling.” The scope of work does not limit itself to work in which the use of a traditional cement finishing tool is the last step in the process. The flooring product at issue here constitutes a “seamless composition floor.” Here, the use of the term “installation” is important. That term is inclusive of the multiple steps necessary to create such a floor, having a broader meaning than a term like “application” or “coating.” This flooring system, while not made with traditional concrete, incorporates aggregate (sand) which would suggest a Cement Mason material. The Cement Mason prevailing wage is applied to the installation of this seamless composition floor including the distribution of the epoxy using a squeegee trowel, the smoothing of the epoxy coating using a roller and the broadcasting of sand.

The sample tile provided to me shows that it is approximately 2 mm thick and provides independent structure. Therefore the installation of this seamless composition (epoxy) floor, including the distribution of epoxy using a squeegee trowel, the smoothing of the epoxy coating using a roller and the broadcasting of sand is properly categorized under the classification for Cement Masons. The troweling work necessary to form the coves is also included in this classification.

*Laborers, WAC 296-127-01344*

The scope of work for Laborers includes “[t]he 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).” This language is applicable to the preparatory work described above to include taping and masking of areas for protection; shot blasting with the use of sandpaper, steel wool, wire brushes or a 4” standard wire wheel grinder; and patching work with epoxy performed with hand-held trowels and squeegees.

*Painters, WAC 296-127-01356*

The scope of work for Painters is not applicable to the installation of a multi-layer floor product including sand and epoxy. However, the scope includes “[a]pplication of... wallpaper and other materials of whatever kind or quality applied to walls or ceilings with paste or adhesive using brushes, spray gun or paint rollers.” Application of epoxy and fiberglass mesh to walls using epoxy as an adhesive, followed by rolling with paint rollers, falls within this Painters scope of work description.

Additionally, the scope of work for Painters includes preparation of surfaces and specifically “[w]ashing, cleaning and smoothing of surfaces, using sandpaper, brushes or steel wool,” along with “[r]emoval of old paint or other coatings from surfaces, using paint remover, scraper, wire brush or by sandblasting.” This language covers the preparatory work that you described to include the use of paint remover, scrapers, wire brushes, and a small handheld grinder. Accordingly, the work on the walls on the Tukwila Pool project is properly categorized under the Painters classification.

To summarize, the preparatory work involving shot blasting, grinding, etc., is properly paid at no less than the prevailing wage for Laborers (WAC 296-127-01344). The installation of the composition floor system involving epoxy and sand is properly paid at no less than the prevailing wage for Cement Masons (WAC 296-127-01315). The Cement Mason wage also applies to the coves. The wall coating system involving epoxy and fiberglass is properly paid at no less than the prevailing wage for Painters (WAC 296-127-01356).

I appreciate the opportunity to provide this somewhat challenging determination and, as mentioned above, I have appreciated your patience. Please do not hesitate to contact me by phone or email if you have further questions, or for any other reason.

Washington State prevailing wage information, including the WACs, are available on the Department’s web site: <http://www.lni.wa.gov/TradesLicensing/PrevWage/default.asp>

Sincerely,



Jim Christensen  
Program Manger  
Industrial Statistician

cc: Eric Coffelt  
Miriam Moses

Enclosures

# Prevailing Wage Determination Request and Review Process

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RCW 39.12.015 is the basis for requesting a determination, since it provides:

All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries.

If you disagree with a determination the industrial statistician provides, WAC 296-127-060(3) provides for a review process:

(3) Any party in interest who is seeking a modification or other change in a wage determination under RCW 39.12.015, and who has requested the industrial statistician to make such modification or other change and the request has been denied, after appropriate reconsideration by the assistant director shall have a right to petition for arbitration of the determination.

(a) For purpose of this section, the term "party in interest" is considered to include, without limitation:

(i) Any contractor, or an association representing a contractor, who is likely to seek or to work under a contract containing a particular wage determination, or any worker, laborer or mechanic, or any council of unions or any labor organization which represents a laborer or mechanic who is likely to be employed or to seek employment under a contract containing a particular wage determination, and

(ii) Any public agency concerned with the administration of a proposed contract or a contract containing a particular wage determination issued pursuant to chapter 39.12 RCW.

(b) For good cause shown, the director may permit any party in interest to intervene or otherwise participate in any proceeding held by the director. A petition to intervene or otherwise participate shall be in writing, and shall state with precision and particularity:

(i) The petitioner's relationship to the matters involved in the proceedings, and

(ii) The nature of the presentation which he would make. Copies of the petition shall be served on all parties or interested persons known to be participating in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.

If you choose to utilize this review process, you must submit your request within 30 days of the date of the applicable industrial statistician's determination or response to your request for modification or other change. Include with your request any additional information you consider relevant to the review.

Direct requests for determinations, and for modification of determinations via email or letter to the prevailing wage industrial statistician:

Jim P. Christensen  
Industrial Statistician/Program Manger  
Department of Labor & Industries  
Prevailing Wage  
P O Box 44540  
Olympia, WA 98504-4540  
[Jim.Christensen@Lni.wa.gov](mailto:Jim.Christensen@Lni.wa.gov)

## Prevailing Wage Determination Request and Review Process

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Direct requests via email or letter seeking reconsideration (redetermination) by the assistant director to:

Elizabeth Smith, Assistant Director  
Department of Labor & Industries  
Fraud Prevention and Labor Standards  
P O Box 44278  
Olympia, WA 98504-4278  
[Elizabeth.Smith@Lni.wa.gov](mailto:Elizabeth.Smith@Lni.wa.gov)

Direct petitions for arbitration to:  
Joel Sacks, Director  
Department of Labor & Industries  
P O Box 44001  
Olympia, WA 98504-4001

If you choose to utilize this arbitration process, you must submit your request within 30 days of the date of the applicable assistant director's decision on reconsideration (redetermination). Submit an original and two copies of your request for arbitration to the Director personally, or by mail. The physical address for the Director is 7273 Linderson Way, SW, Tumwater, WA 98501.

WAC 296-127-061 also contains the following provisions regarding petitions for arbitration:

In addition, copies of the petition shall be served personally or by mail upon each of the following:

- (a) The public agency or agencies involved,
  - (b) The industrial statistician, and
  - (c) Any other person (or the authorized representatives of such person) known to be interested in the subject matter of the petition.
- (2) The director shall under no circumstances request any administering agency to postpone any contract performance because of the filing of a petition. This is a matter which must be resolved directly with the administering agency by the petitioner or other party in interest.
- (3) A petition for arbitration of a wage determination shall:
- (a) Be in writing and signed by the petitioner or his counsel (or other authorized representative), and
  - (b) Identify clearly the wage determination, location of project or projects in question, and the agency concerned, and
  - (c) State that the petitioner has requested reconsideration of the wage determination in question and describe briefly the action taken in response to the request, and
  - (d) Contain a short and plain statement of the grounds for review, and
  - (e) Be accompanied by supporting data, views, or arguments, and
  - (f) Be accompanied by a filing fee of \$75.00. Fees shall be made payable to the department of labor and industries.

WAC 296-127-01315

Cement masons.

For the purpose of the Washington state public works law, chapter 39.12 RCW, cement masons perform all work where finishing tools are used.

The work includes, but is not limited to:

The setting of screeds, the rodding (buildings), shaping, smoothing and finishing of the surfaces of freshly poured concrete floors, walls, sidewalks, curbs, steps and stairways, the finishing of extruded barrier rails, or any other concrete surface requiring finishing, using hand tools or power tools, including floats, trowels, screeds and straightedge.

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 preparatory to sacking. (The finishing of a large surface of patched holes.)

The moulding of expansion joints and edges, using edging tools, jointers and straightedge.

The application of penetrating sealer and primer protective coatings to concrete floors and steps for the first twenty-four hours after pouring, when part of the finishing process.

The installation of seamless composition floors and the installation and finishing of epoxy based coatings or polyester based linings to all surfaces, when the coatings or linings are applied by spraying or troweling.

Sandblasting or waterblasting for architectural finish or preparatory to patching.

The setting of all forms one board high.

The cutting of joints with concrete saw for the control of cracks in buildings and contiguous to buildings.

The setting of concrete curb, gutter and sidewalk forms as a composite crew with laborers.

All cleanup work required in connection with the above work.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051, 00-15-077, § 296-127-01315, filed 7/19/00, effective 7/19/00.]

## 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.
- X • 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.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051. 00-15-077, § 296-127-01344, filed 7/19/00, effective 7/19/00.]

WAC 296-127-01356

Painters.

For the intents and purposes of the Washington state public works law, chapter 39.12 RCW, the job description for painters is as follows:

(1) Preparation of surfaces.

(a) Washing, cleaning and smoothing of surfaces, using sandpaper, brushes or steel wool.

(b) Removal of old paint or other coatings from surfaces, using paint remover, scraper, wire brush or by sandblasting.

(c) Filling of nail holes, cracks and joints with putty, plaster or other fillers.

(2) Color matching and mixing.

(3) Application of paint, varnish, stain, enamel, lacquer, vinyl, wallpaper and other materials of whatever kind or quality applied to walls or ceilings with paste or adhesive using brushes, spray gun or paint rollers.

(4) Application of polyurethane elastomers, vinyl plastics, neoprene, resin, polyester and epoxy as waterproofing or protective coatings to any kind of surfaces (except roofs) when applied with brushes, spray guns or rollers.

(5) Application of sprayed on fire retardant foam.

(6) Texturing and decorating.

(7) Erecting of scaffolding or setting up of ladders to perform the work above ground level.

(8) Responsible for all the cleanup required in connection with painters work.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051, 00-15-077, § 296-127-01356, filed 7/19/00, effective 7/19/00.]

June 26, 2013

27777.0101

Marcus Ehrlander  
 Industrial Relations Specialist-Prevailing Wage  
 WA Department of Labor & Industries  
 7273 Linderson Way SW  
 Tumwater, Wash. 98501-5414

Re: Work Classifications Applicable to Armorclad Floor Applications

Dear Marcus:

Thanks for your willingness to accompany Mario Silva to Armorclad's headquarters and warehouse to view the broadcast application process involved in painting floors. Based on your email of April 30, 2013, the Department is currently of the opinion that the prep work belongs to the Laborers classification and that all other work except for the final coating belongs to the Terrazzo workers and/or the Cement Masons. The final coating (and I assume other coating work involving a paint roller) belongs to the Painters. It is Armorclad's position that its past and current practice of treating the entire broadcast application process as Painters' work is correct. Based on the demonstration you witnessed, here is the basis for that claim.

**Step 1: Prep**

In this step, the worker uses a diamond grinder on the floor surface to clean up small debris but primarily to ensure a good bond for the paint by removing any finishes to the floor surface. This is similar to the sanding process when painting wood which has been previously painted. On larger projects, Armorclad employees use shotblasters.

*Applicable Classification:*

The Painters' scope of work, WAC 296-127-01356, includes the "preparation of surfaces" and, in particular, the "removal of old paint or *other coatings* from surfaces using paint remover, scraper, wire brush or by sandblasting." Employees involved in marine painting use all sorts of heavy equipment to remove rust or finishes from ships in preparation for painting. A grinder is one of those devices, although not listed in this WAC.

While the Laborers scope of work, WAC 296-127-01344, does list the "cleaning and grinding of concrete floors" this is limited to "high pressure waterblasting or sandblasting preparatory to the *application of waterproofing*" which is not the case here. The use of a "grinder" is mentioned elsewhere but only for "removing of rough or defective spots from concrete surfaces."<sup>1</sup> As you saw in the pictures you viewed on Mark Hoefer's computer, a grinder was used on a beautifully finished concrete floor in order to create a bondable surface for the paint. While it can smooth

<sup>1</sup> Similarly, the mention of "grinders" in the Cement Masons scope of work, WAC 296-127-01315, Williams, Kastner & Gibbs PLLC limits its use to "removing of rough or defective spots from concrete surfaces."  
 Two Union Square

rough spots, the grinder is primarily used by Armorclad employees to prepare the surface to receive paint.

**Step 2: Vacuum**

Since this involves cleanup of the surface residue (similar to wiping a sanded surface prior to painting), this step is part and parcel of the “surface preparation” expressly covered by the Painters’ scope of work.

**Step 3: Mixing of Paint**

This clearly is Painters’ work.

**Step 4: Spread of Epoxy Paint with Squeegee**

Since the epoxy mix cures quickly, it is imperative on a large surface for the employee to get a layer of epoxy spread on the floor as quickly as possible. While application largely involves a paint roller (see below), the favored method to get the paint in place for the roller is to spread it out using a squeegee.

*Applicable Classification*

While the Painters’ classification expressly covers application of paints utilizing “brushes, spray guns or rollers,” it does not rule out the use of squeegees to get the paint in place for rolling. Indeed “squeegees” are not mentioned in any other classification. For instance the Terrazzo Worker classification, WAC 296-127-01379 is limited to the spreading of “sand, cement and water with trowel” to form a base for Terrazzo. Similarly, the Cement Mason scope of work is limited to the “installation of seamless composition floors and the installation and finishing of epoxy based coatings or polyester based linings to all surfaces, when the coatings or linings are applied by spraying or troweling.” A trowel is not used by the Armorclad employee in this phase.<sup>2</sup> Indeed, a trowel is an unusable tool to apply to quickly thickening paint.

**Step 5: Spread of Epoxy Paint with Paint Roller**

The Department has conceded that this work falls within the Painters’ scope of work.

**Step 6: Broadcast of Sand to “Refusal”**

In this step the Armorclad employee throws sand-like material on the wet surface of the paint for thickening, texturing and decorative purposes. The sand is thrown by hand until it is all absorbed by the liquid. It is then “cured” for 24 hours.

*Applicable Classification*

The Painters’ classification references “texturing and decorating.” The variety and color of quartz, paint chips or other granules is chosen by the owner depending on whether they are

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<sup>2</sup> As discussed at the 5/31/13 meeting, Armorclad employees do occasionally use a trowel to patch walls or floors but this work is limited and the trowel is used like a putty knife to place the filler where it is required to go. Similarly, the use of grinders on walls does not convert this work to Laborers or Cement Masons work since the application under both is expressly tied to concrete surfaces.

seeking only texture or also decoration. While, as you've pointed out, the sand becomes part of the floor covering, the epoxy which is painted on, is the primary floor covering.

Moreover, no other classifications expressly describe the throwing of sand onto a wet paint surface. While the scope for Terrazzo workers does include the "spreading of any other kind of mixture of ...quartz,...and all other kinds of chips or granules," this is expressly limited to premixed materials—not the coating of a wet application with sand.

#### **Step 7: Sweeping and Vacuuming of Unabsorbed Sand**

After the coating has cured for 24 hours, the employee returns to remove the unabsorbed granular material. This involves first sweeping, then vacuuming the surface.

#### *Applicable Classification*

Under the Painters' scope of work, the employee is "responsible for all the cleanup required in connection with painters' work." This step falls within that scope of work.

#### **Step 8: Repeat Same Steps for Second Coat**

The same processes of mixing the paint, squeegee then rolling the liquid material on the surface, then the broadcast of sand, 24-hour cure, then removal of excess sand is repeated. As discussed above, the Painters' classification applies to all of these steps.

#### **Step 9: Finish with Top Coat**

Once the second layer has dried, the final steps are to sweep and vacuum the excess sand and apply a final coat via the mixing, squeegee and rolling process engaged in previously. Again, for the reasons set forth previously, this is Painters' work.

#### **Step 10: Cove at Base of Wall**

One of the processes you asked about involved the application of the paint material to the bottom of the wall to create a cove. Typically, the painter uses a trowel to take the liquid material from the floor up the wall to form a several inch cove. Again, the Painter's use of a trowel does not convert creation of this cove to another classification's work. The Painter could, just as easily, use a paint brush or other device to move the paint to its location for finishing. As a result, it remains Painters' work.

#### **Terrazzo Work**

As explained at the 5/31 meeting, Armorclad employees also apply terrazzo and are paid the prevailing wage rate as Terrazzo workers when this work is performed. As a result, the Company is familiar with this work and how it differs from Painters' work. The primary difference is the premixing of resinous material with granite aggregate to provide a single thick layer which, after it dries, is then polished to a fine sheen.

#### **Industry Practice**

It is Armorclad's position that other companies—both union and non-union—utilize Painters for the entire process described above. Indeed the IUPAT web page (attached) lists "floor covering"

as one of the Painters' principal activities, and has "floor covering" local unions who specialize in this activity. Cement Masons, on the other hand, are limited to placement of *concrete* floors utilizing cement.<sup>3</sup>

With regard to the applicable scopes of work, it is important to note that, under WAC 296-127-013, these scopes of work are authored "using authoritative sources available to the department." These include collective bargaining agreements, dictionaries of occupational titles, and "recognized labor and management industry practice." This guidance should also be used in construing the resulting scopes of work.

A review of the relevant classifications reveals the presence of overlapping tools, work processes and materials. It is the overall process which should guide the Department's interpretation of the scopes. A review of all the scopes reveals that they typically cover everything involved in a given process, from preparing surfaces, to application, to clean-up. The scopes do not appear to contemplate a hop-scotching of classifications by the same employee based on the use of certain tools (i.e. only Cement Masons use grinders or trowels) since this is not reflected in the governing industry practice.

Again, I appreciate your careful consideration of this information since it affects a large number of employers and, typically, involves smaller businesses. If you have any questions or require any additional information, please contact me.

Very truly yours,



Judd H. Lees  
(206) 233-2893  
jlees@williamskastner.com

JHL:jh  
cc: Bryan Oakes

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<sup>3</sup> The web site describing Cement Masons' work (attached) states that "[c]ement masons, concrete finishers, and terrazzo workers all work with concrete, one of the most common and durable materials used in construction. Once set, concrete—a mixture of Portland cement, sand, gravel, and water—becomes the foundation for everything from decorative patios and floors to huge dams or miles of roadways."

September 23, 2013

27777.0101

L. Ann Selover  
Industrial Statistician  
State of Washington  
Department of Labor & Industries  
Prevailing Wage  
P.O. Box 44540  
Olympia, WA 98504-4540

Re: Work Classifications Applicable to Armorclad Floor Painting

Dear Ann:

I appreciate the opportunity to review Rebound's view on the work classifications applicable to the Tukwila Pool and John's Prairie work performed by Armorclad employees. It may come as a surprise to the Department but we agree with Miriam Moses' position that the broadcast step of the work at issue does not constitute Terrazzo work since Terrazzo work, by definition, involves application of pre-mixed aggregate compound rather than the broadcast application at issue. As you may be aware, Armorclad employees perform Terrazzo work and when they do so, they are paid the Terrazzo wages and fringe benefits, so Armorclad is familiar with this work.

However, we strongly disagree with Rebound's ultimate position that the correct wage rate for the grinding, broadcast, and spreading portion of the Tukwila Pool and John's Prairie Operations Center constitutes Cement Masons work. It is first important to note that the photos of the Tukwila Pool project are limited to the pool deck work. This work differed from the Armorclad work performed in the locker room since the existing surfaces were quite different. The pool deck involved an existing exposed aggregate of concrete with pea gravel with existing control joints and drains; the locker room involved an existing ceramic tile floor. As a result, much of the thickness and the texture seen in the photos were already in place before Armorclad employees applied a protective coating to seal the existing concrete. The preparation work involved the use of a common painting tool – a shotblast machine – coupled with wire brushes for the exposed edges. The application of the epoxy with various aggregates by the Armorclad employees did involve a broadcast, but the large bumpy texture and tooled joints you see in the pictures were already in the pool deck.

By contrast, the work in the locker room involved a protective coating/decorative coating over ceramic tile. As a result, there was no grinding of concrete, but merely the grinding of the surface to break the glaze on the ceramic tile similar to sanding a wood surface in order to ensure paint adherence. This preparation, far from smoothing the surface like the fine grinding and polishing involved in Cement

Mason work, uses a lower grit to remove contamination and roughen the surface of a floor to ensure that the protective coating adheres to the floor. The floor painting application for the locker room involved the decorative quartz broadcast as described in Mr. Ehrlander's letter. Similarly, the John's Prairie prep work was limited to shotblasting a polished concrete floor to remove the chemical hardener and roughen the surface to ensure proper adhesion of the decorative epoxy system.

The following is a more specific rebuttal to some of the points raised by Rebound. First, preparatory work aimed at preparing paint surfaces is covered by the Painters scope of work, whether a wall or a floor. WAC 296-127-01356. The written scope expressly includes the use of sand paper, brushes, steel wool, scrapers, wire brushes and sand blasting. Although grinders are not expressly mentioned, they are clearly subsumed under the "sanding" umbrella. Moreover, in the case at issue, the prep on the Tukwila pool deck and John's Prairie involved a shotblaster – a device common to surface preparation by painters in the industrial and marine setting. By contrast, the Cement Masons classification does mention "grinders" but this is limited to the removal of "rough or defective spots from concrete surfaces." WAC 296-127-01315. In the case of the work at issue, the preparatory work was aimed at breaking the glaze or seal and creating roughness to the entire surface, rather than removing any rough or defective spots and later polishing the floor. Moreover, the locker room of the Tukwila Pool did not involve a concrete surface – it was all ceramic tile. As I indicated in an earlier letter to Mr. Ehrlander, grinders are used by Armorclad employees on perfectly smooth and finished surfaces with no "rough or defective spots" in order to prepare for painting. Again, the easiest illustration is the sanding of wood before painting. There are typically no defective spots but, if the wood has a finish or any other contamination on it, the paint will not stick.

With regard to the Armorclad employees' use of a squeegee to quickly spread the liquid compound out prior to the rolling of the paint on the floor, the Painters scope of work description clearly covers the application of this protective coating "when applied with brushes, spray guns or rollers". Squeegees are the same as rollers. The Department has voiced a concern that a "squeegee" is not expressly mentioned as a tool for the Painters classification. However, nowhere does the Cement Mason scope of work mention "squeegees." The Cement Masons' scope of work is limited to "spraying or troweling".

The Department has indicated that it may consider a squeegee a "trowel." However, the dictionary definition of a "squeegee" is "an implement edged with rubber or the like, for removing water from windows after washing or sweeping water from wet decks." Indeed, Armorclad purchases its squeegees from a window washing company. By contrast the dictionary definition of "trowel" is a "small hand tool with a short handle and a flat, usually pointed blade used for spreading, shaping, and smoothing plaster, cement, or mortar." These are clearly two different tools. I'm obviously aware of the determination in your June 19, 2013 letter regarding Beynon Sports' use of a squeegee, but note in that case that "[t]he use of the squeegee involves the use of a finishing tool to produce a smooth,

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finished surface." In this case the squeegee is used as a quick spreading tool to distribute the paint before it hardens so that it can be applied evenly and finished using a paint roller. It is not being used as a "long handled trowel." In addition, many classifications such as carpet layers, brick layers, Terrazzo workers and tile setters use trowels without being considered "Cement Masons." Finally, the work at issue is limited to fluid-applied protective coating—an application for which a trowel is totally unusable. As a result, this step constitutes Painters work.

Rebound also mentions in several locations in their e-mail that Armorclad employees were not applying a "protective coating". However, it is clear that the paint application provides a cover for the surface and is designed to mitigate wear and tear on structural substrate.

Finally, with regard to the broadcast step, the Rebound letter is largely silent since neither the Painters' scope of work nor the Cement Masons scope of work expressly discusses "broadcast". However, the Painters scope, unlike the Cement Masons, does expressly include "texturing and decorating." WAC 296-127-01356(6). Moreover, the use of broadcasting is common in painting work, for example on deck coatings, to provide texture and, as a result, it has always been a part of the painting process. Potential Departmental concern regarding the resulting thickness of the paint due to the addition of sand is misplaced. There is nothing in any of the scope of work descriptions regarding thickness of protective coatings which would remove the work from one scope and place it in another. The application process, the skill level required, and the equipment are all the same. In addition to texture, the broadcast quartz materials may be selected by an owner based on its decorative qualities.

For these reasons and for the common sense reason that the entire process is performed by one employee from prep to finish, we would ask that the Department determine that the Painters' scope of work applies. Thank you again for the opportunity to provide data to you regarding this issue.

Very truly yours,



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