



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

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

September 27, 2011

Lisa Everson
Everson's Econo-Vac
P. O. Box 428
Sumner, WA 98390

Re: Request for Redetermination – Vactor Truck Operation

Dear Ms. Everson:

Thank you for your patience in awaiting my review of David Soma's determination with respect to the proper prevailing wage classification for the use of vacuum/vactor/eductor trucks (vactor trucks). Thank you also for arranging for me to meet with you and others who share your interest in that redetermination. I very much appreciate that opportunity, the graciousness of the group, and the information provided.

In conducting this review I considered your prior communications with David Soma, Steve McLain, Ramona Christensen-Russell, and other members of our prevailing wage staff, as well as the various documents, slides, and video you provided. In addition to the email and other written communications between you and the Department, additional information that I have considered include the following:

- An undated letter on department letterhead addressed to "Carol, City of Vancouver," from "Rita M. Grimm, Sr. Office Assistant, Prevailing Wage" regarding "Trucks";
- A February 2, 1998 department memo from Jim Christensen, Industrial Statistician addressed to "All Public Agencies and other Interested parties" regarding "Revised Prevailing Wage Rates";
- A May 11, 1998 letter on department letterhead addressed to "R. Scott Robinson, SWM Construction Coordinator, City of Federal Way" from Jim Christensen, Industrial Statistician;
- A July 2000 jurisdictional agreement between the International Brotherhood of Teamsters and the International Union of Operating Engineers which includes a discussion of vacuum trucks;

- Communications with former Industrial Statisticians, David Soma, Jim Christensen, Josh Swanson, and various prevailing wage staff members on the topic; and
- Various pictures, slides, and videos of vacuum truck operation.

In an effort to better understand the development of the position the department has taken regarding vactor trucks, as noted above, I also reviewed a number of messages between department staff and various individuals regarding the operation of such equipment. That review was significant to me because it provided not only the historical perspective that I felt was necessary for me to have regarding the department's approach to the issue, but also because it enabled me to better appreciate the confusion those communications may have brought about.

There were likely earlier communications on the topic that reached the same conclusion, but the earliest communication I found referring to the operation of vactor trucks as Power Equipment Operators (PEO) work was in March of 2004. More recent communications ranging from February 2006 to the current time were consistent on that point. Based on historical policy and interpretations, the Truck Driver classification is properly used for individuals who drive vehicles for the specific purpose of hauling both upon and to, delivering and placing materials, and from a construction project. That activity is in contrast to the primary purpose served by the vactor truck, which, most simply stated, is to perform work on the job site moving or extracting fluid, gas, semi-solids, etc. through the use of a high pressure system, work more appropriately associated with Power Equipment Operators than Truck Drivers.

Having viewed the video you provided, which demonstrated the operation of vactor trucks in various settings, discussed the operation of vactor trucks with your group, and reviewed all the information and documentation available to me on the topic, my conclusion, consistent with department directives since at least early 2004, is that the proper worker classification for this type of work is under the Power Equipment Operators (Operating Engineers) scope of work, WAC 296-127-01354.

However, I did detect an inconsistency in communications which I believe has contributed to the current misperceptions about the classification. As you know, we set wage rates on the basis of surveys. When we publish the rates following a survey, if the rate that "prevails" is a union collectively bargained rate, we publish the various sub-classifications within the scope of work as established by the applicable collective bargaining agreement (CBA). The result of this approach as to setting rates for vactor truck work is that for some counties, where the rate was established by CBA, a sub-classification specifically for vactor trucks (generally listed as "Power Equipment Operator/Vactor Guzzler, Super Sucker) is included, and for other counties, there is no specific vactor truck sub-classification identified.

When responding to inquires about the proper rate for vactor truck operation, the department has had to provide direction about what to do when there was no specific vacuum/vactor truck prevailing wage rate published under the PEO scope of work. From about February 2006 until

mid-2008 the department seems to have communicated consistently that if there was not a specific vacuum/vactor truck prevailing wage rate published for a specific county under the PEO scope, then the Truck Drivers/Other Trucks rate could be used for work in that county. Sometime between February 2006 and mid- 2008 it was decided that this was not the appropriate direction to provide, but rather, in order to properly keep the rate under the PEO scope, the department began taking a “pay band” approach to giving direction on the rate that would be applicable under the PEO scope.

This “pay band” approach, for identifying the appropriate wage rate, is more complex than using our wage rate table in the normal fashion, and we frequently respond to requests for assistance in locating the rate. It may, for example, require us to indicate a sub-classification that on the face of it does not seem to align with the actual equipment used. For instance, recently in taking this approach we told a contractor to use the rate for “Power Equipment Operator-Motor Patrol Graders, Finishing” for vacuum/vactor truck operation because the county in which the work was performed had no specific published sub-classification for PEO/Vactor Guzzler. Here’s how we explained the classification:

We are in no way saying that vactor/eductor equipment usage is to be paid under the Power Equipment Operator-Motor Patrol Graders, Finishing rate as a blanket statement. However, the rate for that equipment is the appropriate rate to apply where no classification of vacuum truck exists in the county under consideration and the rate cited corresponds to the appropriate band rate for Power Equipment Operator-Vactor Guzzler, Super Sucker in another county. It is within the appropriate wage band for the equipment within the Power Equipment Operator classification. In a county, such as Adams, where there is a specific rate for Power Equipment Operators-Vactor Guzzler, Super Sucker, it is that “band” rate you would apply for a county that has no separate listing for Power Equipment Operators-Vactor Guzzler, Super Sucker.

Practically speaking, in applying the PEO worker classification to the subject work, I feel it is important to clarify at this stage how the specific rate is to be determined when the work is performed in a county that does not have a specific listing for PEO/Vactor Guzzler. In counties where there is no separate rate for Vactor Guzzler under the PEO scope, please contact us at (360) 902-5335 or PW1@Lni.wa.gov for assistance in determining the appropriate rate using the “pay band” approach referenced above. We are in the process of developing a table to assist you in easily checking the appropriate correlation yourself, but in the interim, checking directly with us is the best approach. In any event, it is incorrect to use the Truck Drivers/Other Trucks rate for this work in any county.

In addition, members of the group with whom I met also expressed concern about the proper classification for a worker who accompanies the operator in the performance of the eductor tasks, but who does not directly operate the equipment, i.e., a “helper.” The helper may be paid as a Laborer/Nozzleman rather than at the PEO/Vactor Guzzler rate.

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This determination overrules all prior determinations and/or communications that are inconsistent with this determination.

I am fully cognizant of the opinions expressed by various parties with whom I recently met to discuss this topic and that they regard it as burdensome to them for the department to take what they characterize as a shift in approach which increases their costs without providing any notice of the change. Although I do not necessarily agree that it is appropriate or reasonable to have relied on a departmental statement made in 1998 which is very unclear in its application to the current prevailing wage structure, it is appropriate and reasonable to clear up any confusion that may have been generated by communications that occurred between 2004 and 2006 about which rate to apply when there is none specifically labeled to correspond to the work performed.

I appreciate the opportunity to correct any past confusion about the department's position as to which wage rate applied to this work. We will apply this determination prospectively to contracts that are put out for bid on or after October 10, 2011. However, this determination will not change any prior decisions the department has made regarding this matter which resulted in the application of the Power Equipment Operators rate requiring Intent and/or Affidavit correction and compensation to workers at the appropriate wage rate, nor will it apply to situations where the correct PEO rate is already designated on Intents and/or Affidavits filed with the department.

If you have questions or if I can be of further assistance, please let me know.

Sincerely,



L. Ann Selover
Acting Industrial Statistician
Program Manager
(360) 902-5330
Sela235@Lni.wa.gov