



New York State Department of Labor
David A. Paterson, *Governor*
Colleen C. Gardner, *Commissioner*

August 3, 2010



Re: Request for Opinion
Wicks Law
Rockland County
Wastewater Treatment Plant
RO-10-0095

Dear [REDACTED]:

I have been asked to respond to your letters of June 18, June 28, and June 30 of this year, regarding this Department's previously issued opinion regarding the applicability of the Wicks law to an equipment replacement project at a Rockland County wastewater treatment plant ("WWTP Project"). The Department's previous opinion letter, dated May 18, 2010, in short, states that no exception or exclusion from the requirement in the Wicks Law that all plumbing work be separately bid existed for "process piping," and that the WWTP Project, since it contained "process piping" believed to be excluded from those requirements, was let in violation of the Wicks Law.

As you are aware, that letter was written in response to a request received from [REDACTED] which requested that we provide an opinion addressing (i) whether the process piping work set forth in the Contract Document is plumbing work, as classified by the Department of Labor on public work projects, and (ii) whether the above-referenced plumbing work and any other relevant work in the Contract Documents should have been bid in accordance with the mandates of the Wicks Law. The letter did not indicate that litigation regarding these issues was underway at the time.

Following receipt of the letter, the Department became aware of the existence of pending litigation with Rockland County involving the letting of the contract for the WWTP. As you are aware, the causes of action in the litigation included the County's failure to bid the project in accordance with the Wicks Law as well as the County's failure to award the contract to a plumbing firm holding a locally-required license. The Department of Labor was not a party to

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this litigation which was ultimately settled upon a Stipulation entered into between the parties, which Stipulation was So Ordered by the Court on June 4, 2010.

Your first letter, dated June 18, 2010, requests that the Department investigate the project further in line with that letter's contention that the WWTP Project does not call for the work of a plumber; rather it is work that is "strictly ancillary to the millwright and laborer activities required to dismantle and replace specified equipment." This letter also contained a request under New York's Freedom of Information Law (Public Officers Law, Article 6) for the documents submitted to the Department by [REDACTED] attorney for [REDACTED], in connection with his request for an opinion. Those documents were released to you on June 25, 2010.

Your second letter, dated June 28, 2010, provides a factual summary upon which to evaluate the assertions in your first letter, which can be summarized as stating that no plumbing work is included in the WWTP Project, which you characterize as being limited to the tasks of removing and replacing mechanical devices. Enclosed with your letter were the contract drawings with your client's areas of work highlighted and specifically designated. It is important to note that these drawings had previously been obtained by the Department prior to the issuance of its May 18, 2010 letter, and served, in part, as a basis for the conclusion that the WWTP Project contained plumbing work.

Your third letter, dated June 30, 2010, points out the fact that the contract materials submitted to the Department by [REDACTED] in connection with his request for the Department's opinion regarding applicability of the Wicks' separate bid requirements to the WWTP did not all relate to the WWTP Project; rather only the information to bidders portion of those materials relate to the WWTP Project, with the other documents relating to an upgrade to the Hackensack River Pumping Station. Based on this fact, your letter requests that this Department withdraw its opinion letter dated May 18, 2010 and recognize the WWTP as being properly bid in accordance with the Wicks Law, and conduct an investigation into the Hackensack River Pumping Station Project, with the aim of issuing a stop-bid order on that project pursuant to Section 224 of the Labor Law for non-compliance with the Wicks Law.

These three letters can be summarized as asserting your disagreement with the Department's opinion of May 18, 2010, which, according to your letter dated June 18, 2010, prompted Rockland County to void the contract on that project with your client. The arguments contained in your letters, which were more fully enunciated above, are that the WWTP Project does not contain any plumbing work and that the Department based its opinion on documents relating to another project.

Initially, please be aware that the Department has no reason to believe that its opinion letter was the sole basis for Rockland County to void the contract for the WWTP with your client. True, the Stipulation and Order does reference the Department's determination that plumbing work on the project is subject to the Wicks Law. It also references Chapter 319 of the Laws of Rockland County requiring plumbing work on the Project to be performed by a licensed plumber. As previously mentioned, the Department was not a party to the litigation involved. We were not privy to the arguments put before the Court, to the discussions between the parties,

nor to the settlement negotiations that ultimately resulted in the issuance of the Stipulation that ended the litigation. Given these facts, the Department cannot, in the first instance, concede that our opinion letter was the precipitating fact for your client's loss of the contract in question.

However, in response to your argument that the WWTP Project does not contain any plumbing work, please be advised that after consulting with representatives from Rockland County, as well as a review of the drawings obtained by the Department, the Department concluded that the piping work that is necessary to "dismantle and replace specified equipment" within the WWTP was plumbing and that such plumbing, essential as it was to the WWTP, fell within the purview of the Wicks bidding requirements. In reaching this conclusion, we note, but do not agree with, your characterizations that the plumbing work is limited to disconnection of existing piping and that there are no plumbing specifications in the contract. Where the contract calls for replacement of existing pumps and equipment, the notes to the drawings expressly provide for modification and replacement of piping when they state at note 3 "submit for review all ... piping modifications," at note 4 that "contractor shall supply all bends, adaptors, and fittings required to maintain smooth flow lines" and at note 7 that "contractor shall replace all pipe flange gaskets exposed during removal of existing pumps, equipment, and pipe fittings." See figures 1A, 1B, 2A, 2B, 3, 5, 7, and 9 at notes 3, 4 and 7). Where the contract calls for new equipment, the drawing shows new piping and the notes provide for such new piping when they state at note 3, "contractor to provide and install 1" flexible piping from non-potable water line to wash press manifold" and at note 6, "provide 2" flexible piping from wash press drain connection to floor drain" (figure 4). As for the contract specifications, we read those that are classified under divisions 11 and 15 that involve pumps and inside process piping to be plumbing specifications. The additional information contained in your letters, helpful though it is in furthering the Department's understanding of the nature of the WWTP Project, does not provide a basis upon which to modify this conclusion.

Your view that the plumbing work in question is ancillary to activities performed by other trades assumes, without foundation, that plumbers do not perform such work, and that the Wicks law does not require separate specifications for work that can be characterized as ancillary. However, the issue before us in interpreting the Wicks Law's separate contracting requirement is separate and distinct from the issue of which trades perform the various tasks involved in any one contract. On a more general level, the concept of ancillary work does not appear to be relevant or helpful in interpreting Wicks because each of the three areas to be separately contracted can be characterized as ancillary to the general construction contract required to erect a building. Accordingly, the work at issue in the present project, notwithstanding your characterization of it as being "strictly ancillary to the millwright and laborer activities" is required to be contained in separate specifications for plumbing by the Wicks Law.

In response to the second of the arguments made in your letters, i.e. that the previous opinion should be rescinded as it was based on the incorrect project documents, please be advised that while a significant portion of the contract documents provided to the Department by [REDACTED] in connection with his opinion letter request were for another project, the Department's opinion was not based upon these documents. As indicated in our opinion letter, in reaching its determination the Department reviewed a variety of documents related to the

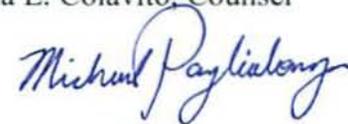
project including bid specifications and project drawings (called "schematics" in that opinion) obtained by an investigator for the Department's Bureau of Public Work on a visit to the work site. As part of the Department's investigation into this matter, we also spoke with representatives of Rockland County, including the engineer who consulted with Rockland County on the project, the Executive Director of the Sewer District, and other individuals familiar with the bids and specifications for the project, and the County's attorney, all of whom provided useful information with regard to the scope of the project. We understand your legitimate concern that the Department's position may have been based upon incorrect documentation and appreciate your providing us with the correct contract documents for the project. We have reviewed these additional materials and can assure you, however, that there is nothing contained therein that would call for a conclusion different from that contained in the Department's previously-issued opinion inasmuch as such previously-issued opinion was based upon the Department's review of the proper bid specs, drawings, discussions with the County, and an on-site visit, not the content of the incorrect contract documents.

In response to your request that the Department investigate the Hackensack River Pumping Station project; please be advised that the matter has been referred, by this office, to the Department's Bureau of Public Work for investigation. Upon the conclusion of this investigation, the Department will take any action determined to be appropriate pursuant to Section 224 of the Labor Law.

If you have any further questions, please do not hesitate to contact me.

Very truly yours,
Maria L. Colavito, Counsel

By:



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