

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION

IN THE MATTER OF THE	*	
PETITION OF THE WISCONSIN	*	
STATE AFL-CIO; LABORERS	*	
LOCAL 113 OF MILWAUKEE;	*	SUMMARY
INTERNATIONAL UNION OF	*	OF
OPERATING ENGINEERS LOCAL	*	DECLARATORY
139; CEMENT MASONS LOCAL 558	*	RULING
OF MILWAUKEE AND WISCONSIN	*	
TEAMSTERS JOINT COUNCIL NO.	*	NO. 84-1
39 FOR DECLARATORY RULING	*	
WITH RESPECT TO THE APPLI-	*	SECTION 227.06, STATS.
CABILITY OF SECTION 103.50,	*	
STATS., TO MOVEMENTS OF	*	
SAND, GRAVEL, STONE, SPOIL,	*	
ASPHALT AND READY-MIX	*	

This is a summary of the Opinion and Declaratory Ruling of State of Wisconsin Department of Transportation (WisDOT) No. 84-1 under sec. 227.06, Stats. (1983-84) regarding the applicability of sec. 103.50(1), Stats. (1983-84) (White Sheet Rates):

1. Does sec. 103.50(1), Stats. (1983-84) require the payment of prevailing wage rates and minimum rates for equipment (White Sheet Rates) for the movement of sand, gravel or stone from any kind of pit, including commercial pits, where the product is delivered to the highway project and dumped on the project (not stockpiled)?

YES. Section 103.50(1), Stats. (1983-84) requires that no less than White Sheet Rates be paid to laborers or mechanics who deliver mineral aggregate by or for non-commercial sources regardless of whether the mineral aggregate is dumped, stockpiled, delivered substantially in place or not.

Section 103.50(1), Stats. (1983-84) also requires that no less than White Sheet Rates be paid to laborers or mechanics who deliver mineral aggregate such as sand, gravel or stone by or for commercial sources which is incorporated into the work under the contract by depositing the material substantially in place directly or through spreaders, from the transporting vehicle.

Mineral aggregate such as sand, gravel or stone from commercial sources is deposited substantially in place directly or through spreaders, from the transporting vehicle if it is deposited, dumped, placed, spread or laid on the roadbed within the site of the work where it will be or is being bladed, spread, scraped, pushed, raked, rolled, compacted or similarly worked without further hauling.

A commercial source of mineral aggregate such as sand, gravel or stone is a commercial establishment which has a fixed place of business from which it regularly supplies mineral aggregate such as sand, gravel or stone. The following guidelines apply for WisDOT determinations of whether an establishment is commercial:

1. The operator owns the land or has a long-term lease;
2. The operator's records indicate that a substantial volume of its annual sales from the location are for other than WisDOT highway contracts;
3. The operator is primarily a material supplier rather than a contractor or subcontractor;
4. The operator will not set up at the location primarily to serve WisDOT highway contract work; and
5. The operator advertises the availability of material for sale and has facilities available at all times for effecting sales.

Laborers or mechanics employed by a commercial establishment which, although having a fixed place of business of the kind in some location, operates in a location specifically established in order to supply a particular highway job within the scope of sec. 103.50(1), Stats., or in a location used only sporadically when a project happens to be close at hand, will not be considered as delivering mineral aggregate or manufactured or processed materials or products by or for a commercial source. Incidental or casual sale of the material or product from such locations to others does not classify the same as a fixed commercial establishment.

2. Does sec. 103.50(1), Stats. (1983-84) require the payment of prevailing wage rates and minimum rates for equipment (White Sheet Rates) for the movement of spoil off of the project, whether for recycling or otherwise, including where the material is moved off the site and recycled and returned to the project in whole or in part?

YES. Section 103.50(1), Stats. (1983-84) requires that no less than White Sheet Rates be paid to laborers or mechanics who move spoil off of the project site. Removal of spoil is work under the contract whether the removal movement is for removal, for removal and recycling, or for removal, recycling and return to the project, in whole or in part. Spoil is not a manufactured or processed material or product.

3. Does sec. 103.50(1), Stats. (1983-84) require the payment of prevailing wage rates and minimum rates for equipment (White Sheet Rates) for the movement of asphalt from a plant to the highway strip where the material is put immediately into place, either directly or by hooking the truck to a spreader?

YES, but only if the delivery is not by or for a commercial source. Section 103.50(1), Stats. (1983-84) requires that no less than White Sheet Rates be paid to laborers or mechanics who deliver asphalt or bituminous concrete by or for a non-commercial establishment to a WisDOT highway project.

Asphalt or bituminous concrete is a manufactured or processed material or product. If the delivery thereof is by or for a commercial establishment as defined in this Declaratory Ruling, the laborers or mechanics who are engaged in the delivery of the asphalt or bituminous concrete are not entitled to White Sheet Rate payments under sec. 103.50(1), Stats.

Asphalt or bituminous concrete is not a mineral aggregate such as sand, gravel or stone.

4. Does sec. 103.50(1), Stats. (1983-84) require the payment of prevailing wage rates and minimum rates for equipment (White Sheet Rates) for the movement of ready-mix concrete from a commercial batch plant adjacent to the project for delivery directly to the project?

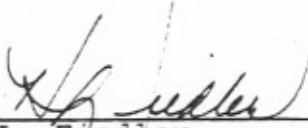
NO. Section 103.50(1), Stats. (1983-84) does not require the payment of no less than the White Sheet Rates to laborers or mechanics who deliver ready-mix concrete by or for a commercial establishment as defined in this Declaratory Ruling.

Ready-mix concrete is a manufactured or processed material or product. If the delivery is for a non-commercial establishment, the laborers or mechanics who are engaged in the delivery thereof are entitled to White Sheet Rate payments under sec. 103.50(1), Stats. (1983-84).

Ready-mix concrete is not a mineral aggregate such as sand, gravel or stone.

Mineral aggregate such as sand, gravel or stone is an inert solid material of mineral composition, such as sand, gravel, crushed stone, crushed rock, screenings, slag and other hard and durable mineral soil or rock fragments or granulated material with similar characteristics, or a combination thereof, specified or selected under the contract with WisDOT, but not concrete, ready-mix concrete, bituminous concrete, asphalt, mastic, mortar, plaster, macadam and other similar processed or manufactured materials and products. Mineral aggregate does not include other material such as clay, topsoil, fill dirt, silt, boulders, riprap, wall stone, loam, gumbo, loess, peat, muck, hardpan or other similar soils or mixed earth which may contain scattered rock, boulders and vegetable material.

This is a summary of the Opinion and Declaratory Ruling of WisDOT, No. 84-1, under sec. 227.06, Stats., adopted this 22nd day of May, 1985, by the State of Wisconsin Department of Transportation.



H. L. Fiedler
Administrator

Dated May 22, 1985.

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION

IN THE MATTER OF THE	*	
PETITION OF THE WISCONSIN	*	
STATE AFL-CIO; LABORERS	*	
LOCAL 113 OF MILWAUKEE;	*	
INTERNATIONAL UNION OF	*	OPINION
OPERATING ENGINEERS LOCAL	*	AND
139; CEMENT MASONS LOCAL 558	*	DECLARATORY
OF MILWAUKEE AND WISCONSIN	*	RULING
TEAMSTERS JOINT COUNCIL NO.	*	
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SAND, GRAVEL, STONE, SPOIL,	*	
ASPHALT AND READY-MIX	*	

This is an opinion and declaratory ruling of the State of Wisconsin Department of Transportation under sec. 227.06, Stats. (1983-84) regarding the applicability of sec. 103.50(1), Stats. (1983-84) (White Sheet Rates) in the following four situations:

1. The movement of sand, gravel or stone from any kind of pit, including commercial pits, where the product is delivered to the highway project and dumped on the project (not stockpiled).
2. The movement of spoil off of the projects, whether for recycling or otherwise, including where the material is moved off the site and recycled and returned to the project in whole or in part.
3. The movement of asphalt from a plant to the highway strip where the material is put immediately into place, either directly or by hooking the truck to a spreader.
4. The movement of ready-mix concrete from a commercial batch plant adjacent to the project for delivery directly to the project.

This declaratory ruling determines whether prevailing wage rates established by the Department of Industry, Labor and Human Relations under sec. 103.50(2) to (4), Stats. (1983-84), must be paid to laborers or mechanics who move or process these materials in the manner stated as part of the work under a contract under sec. 84.06(2), Stats. (1983-84), to which the State of Wisconsin, Department of Transportation (WisDOT) is a party for the construction or improvement of any highway.

The Petitioners in this matter are the Wisconsin State AFL-CIO; Laborers Local 113 of Milwaukee, Wisconsin; International Union of Operating Engineers Local 139; Cement Masons Local 558 of Milwaukee and Wisconsin Teamsters Joint Council No. 39 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter "Petitioners" or "Laborers").

The Petitioners seek to make the declaratory ruling binding on all contractors, subcontractors, suppliers or any other person, firm or corporation that undertakes to perform the work directly under the control of the State or indirectly through any other person, firm or corporation under contract to the State, including the Wisconsin Road Builders Association, its affiliated members, and independent firms specifically identified by the Petitioners in Exhibit #1.

The Petition for Declaratory Ruling dated October 24, 1984 was received October 25, 1984. The Department of Transportation served the Notice of Declaratory Ruling Hearing on all persons named on the attached service list on November 2, 1984 and hearing was held November 16, 1984. Petitioners' Brief and Reply Brief were submitted November 29 and December 21, 1984; Contractors' Brief was submitted December 14, 1984.

David Leo Uelmen, Esq., appeared for the Petitioners.

Joseph A. Melli, Esq., appeared for the Wisconsin Road Builders Association, the Associated Builders and Contractors of Wisconsin, and the Wisconsin Ready-Mix and Concrete Association (hereinafter "Contractors").

THE WISCONSIN STATUTE

The statute involved reads in part as follows:

103.50(1) Highway Contracts. No laborer or mechanic in the employ of the contractor or of any subcontractor, agent or other person doing or contracting to do all or a part of the work under a contract based on bids as provided in s. 84.06(2) to which the state is a party for the construction or improvement of any highway shall be permitted to work a longer number of hours per day or per calendar week than the prevailing hours of labor determined pursuant to this section; nor shall he be paid a lesser rate of wages than the prevailing rate of wages thus determined, for the area in which the work is to be done; except that any such laborer or mechanic may be permitted or required to work more than such prevailing number of hours per day and per calendar week if he is

paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times his hourly basic rate of pay." Section 103.50(1), Stats. (1983-84). (Emphasis added.)

The "contracts based on bids" to which the statute refers are highway contracts administered by WisDOT. The contracts are awarded by WisDOT to the "lowest competent and responsible bidder".¹ Section 84.06(2), Stats. (1983-84). WisDOT awarded \$233,996,000 in contracts by competitive bidding under this statute in calendar year 1984.

The "prevailing wage rate" to which the statute refers is the "hourly basic rate plus the contribution for health and welfare benefits, vacation benefits, pension benefits and any other economic benefit, whether paid directly or indirectly, paid to the largest number of workmen engaged in the same class of labor within such area." "Area" means "the locality from which labor for any project within such area would normally be secured." Section 103.50(2), Stats. (1983-83).

The State of Wisconsin, Department of Industry, Labor and Human Relations (WisDILHR), after hearings and investigation, certifies to WisDOT the prevailing wage

¹WisDOT may award any contract to a minority business that submits a qualified responsible bid that is no more than 5% higher than the low bid. Section 84.075(1), Stats. (1983-84).

rate and the hourly basic rate of pay for all classes of laborers and mechanics. Section 103.50(3) and (4), Stats. (1983-84).

WisDOT is required to set forth these prevailing wage rates in the proposals on which contractors bid and in each highway construction contract WisDOT enters.² Exhibit #9 is an example of these prevailing wage rate or White Sheet Rate provisions. WisDOT is to cause the prevailing wage rates to be kept posted in at least one conspicuous place on the job site as well as the penalties for violating this law. Sections 103.50(6) and (7), Stats. (1983-84).

WisDOT is the sole state agency charged with the duty to require adherence to the prevailing wage rate law [sec. 103.50(1), Stats., including posting requirements, (sec. 103.50(6), Stats.)]. It has the authority to demand and inspect contractor records relating to this law. Section 103.50(8), Stats. (1983-84).

It is not surprising that WisDOT, as the state highway contracting agency, is charged with requiring adherence to this law. WisDOT has numerous administrative means of enforcing compliance. For example, WisDOT may remove a contractor that violates the prevailing wage rate

²The sheets of prevailing wage rates and minimum rates for equipment in the contracts are known as the "White Sheet Rates".

law from the list of WisDOT prequalified, responsible bidders on future highway contracts. WisDOT may advise parties to file a lien with WisDOT against the proceeds of the contract due the prime contractor under sec. 779.15, Stats. (1983-84). WisDOT may declare a contractor in default and require the contractor's surety to make the required payments under the performance and payment bond on the contract. Section 779.14, Stats. (1983-84). Under §109.2 of WisDOT's Standard Specifications for Road and Bridge Construction incorporated in the contracts, WisDOT may also retain money otherwise payable to a contractor until WisDOT is satisfied the contractor has fully paid for labor done in connection with the contract.

WisDOT may also call upon the District Attorney of the county in which the work is located to prosecute violations. Section 103.50(8), Stats. (1983-84).

THE FEDERAL DAVIS-BACON ACT

The provisions of 40 U.S.C. §276a et seq. are commonly referred to as the "Davis-Bacon Act". This federal prevailing wage rate law applies to public works projects to which the United States is a party.

The Davis-Bacon Act does not apply to WisDOT highway contracts unless the United States is a participating party to the contract for purposes of reimbursing WisDOT for portions of the expenditures made by WisDOT with federal highway aid funds. Some WisDOT contracts are

subject to Davis-Bacon Act coverage and some are not. All WisDOT highway contracts are subject to sec. 103.50(1), Stats. For example, sec. 103.50(1), Stats. (1983-84) applied to all \$233,996,000 in contracts awarded by WisDOT in calendar year 1984; the Davis-Bacon Act also applied to \$169,538,000 of the total of \$233,996,000.

Even when it is applicable to a contract, the Davis-Bacon Act requires prevailing wage rates to be paid for different work than sec. 103.50(1), Stats. requires. On its face 40 U.S.C. §276a applies to:

"...all mechanics and laborers employed directly upon the site of the work" (Emphasis added.)

Wisconsin law, sec. 103.50(1), Stats., however, applies to:

"laborer(s) or mechanic(s) in the employ...of any...person doing work under a contract based on bids..." (Emphasis added.)

Davis-Bacon Act provisions do not supersede broader State prevailing wage rate laws under federal or Wisconsin law. As reflected in Exhibits #2, #3, #5, and #9, sec. 103.50(1), Stats., applies in all cases and is different in coverage than the Davis-Bacon Act.³ The Davis-Bacon

³Cases cited by Petitioners show that the Davis-Bacon Act has been interpreted to require payment of prevailing wage rates to drivers of gravel suppliers that are "subcontractors" rather than "materialmen". [In the Matter of D.A. Collins Construction Co., Wage Appeals Board, (Footnote Continued)]

Act covers one set of human activities; the Wisconsin law covers another set of activities. The set of human activities covered by the Davis-Bacon Act does not appear to be fixed. Human activities for highway construction purposes also change over time. The two sets of activities covered by federal and Wisconsin law overlap in part, but are not identical. The Davis-Bacon Act, when applicable, does supersede any lower Wisconsin minimum prevailing wage rates. Exhibit #9. Hence, the minimum level of coverage in Wisconsin on all projects is determined by the Wisconsin law. To the extent the Davis-Bacon Act differs from Wisconsin law, it can only expand upon the minimum Wisconsin rates and the minimum Wisconsin coverage.

(Footnote Continued)

United States Department of Labor (WAB) Case No. 81-4, decided September 20, 1984], and to drivers who deliver subbase materials obtained pursuant to private borrow agreements where the highway contract required the subbase materials to be "furnished", [Sansone Co. v. Dept. of Transportation, California Court of Appeal, 22 WH Cases 1008, particularly pp. 1011 and 1013 (1976)], but not to drivers who are employes of "materialmen", [H.B. Zachry Company, v. United States, 344 F.2d 352, 358-360 and particularly p. 361 (U.S. Ct. Cl. 1965)]. The nomenclature and analytic approach used in Davis-Bacon Act decisions differ from that used in Wisconsin opinions, statutes and decisions. The ebb and flow of Federal decisions sometimes appear to exclude suppliers from coverage who are not "subcontractors", or because the work is not performed "directly upon the site" or because the "function is not a part of the construction contract", or because the drivers are "under contract to the materialmen".

This WisDOT Declaratory Ruling is directed solely to the applicability of sec. 103.50(1), Stats. (1983-84). As stated in Exhibit #5 (1968), ..."truck drivers who are not covered by the Davis-Bacon Act Provisions, but are covered by the State law, are those employed in the delivery of mineral aggregates from commercial sources by depositing the material substantially in place."

THE PURPOSE OF THE WISCONSIN STATUTE

The competitive bidding process on state highway projects is designed to obtain a competent and responsible contractor to do the specified work at the lowest price. All competing contractors obtain the same bid proposal documents and specifications from WisDOT prior to submitting bids to WisDOT. These documents include the prevailing wage rates (White Sheet Rates) applicable to the project.

The Legislature has determined that, as a minimum, laborers and mechanics doing work under a highway contract based on competitive bids to which WisDOT is a party shall be paid no less than the wage rate paid to the largest number of workers engaged in the same class of labor within the locality from which labor for any project in the area would normally be secured.

The Legislature has decided that a determinative factor in the competitive bidding process for state highway work will not be the ability of a contractor to

persuade laborers and mechanics to accept less than the prevailing wage rate.

As in the case of its more recent legislation granting WisDOT the authority to award highway contracts to minority businesses that are not the lowest bidder, the Legislature has established social objectives in sec. 103.50(1), Stats., in the highway contracting process that temper unrestricted competitive bidding that would otherwise yield the lowest possible price for the work to be done.

The Wisconsin Court has stated this statutory purpose as follows:

"[I]t is clear that as an incident of public works highway improvements, the legislature intended to generally stimulate economic activity by increasing and reinforcing the purchasing power of individual workers who performed tasks in execution of the highway improvement." Green v. Jones, 23 Wis.2d 551, 559 (1964).

The Wisconsin Court repeated this statement in 1971:

"(The purpose of sec. 103.50, Stats., is) to stimulate and protect the economic position of individual workers whose jobs are in execution of a highway improvement." Chauffeurs, Teamsters and Helpers v. WERC, 51 Wis.2d 391, 398-399 (1971).

Counsel for the Petitioners, laborers and mechanics, states the statutory purpose as follows:

"The court made it clear Wisconsin law was designed to protect the workers as well as the contractors by giving the workers the minimum wages that were set by (WisDILHR) and the contractors

a fair and equal opportunity to bid without squeezing the blood out of their workers when they're making their bids." Tr. p. 45.

Counsel for the Contractors does not dispute the purpose of the law, but rather expresses concern that the scope of coverage of the prevailing wage rate law not be expanded beyond the statutory language to unnecessarily add to the cost of highway projects to the detriment of all taxpayers and to the total amount of actual highway work available for contractors to perform. Tr. pp. 85-86; Cf. Tr. pp. 88-89.

Section 103.50(1), Stats. was created by Ch. 432, Laws of 1931. The intention of the Legislature was to maintain living wages and prevailing hours in highway employment, relieve unemployment and prevent wage cuts. 20 OAG 496, 497 (1931).

THE CONTRACTORS' MOTION TO DISMISS

Counsel for the Contractors moved to dismiss the Petition for a WisDOT declaratory ruling on the scope of coverage of sec. 103.50(1), Stats. (1983-84) on procedural and jurisdictional grounds.

WisDOT finds that the Petition submitted contains a concise statement of facts describing the situation as to which the declaratory ruling is requested and otherwise conforms with the requirements of sec. 227.06(2), Stats. (1983-84). WisDOT perceives no prejudice or harm to the

Contractors from the content or manner of presentation of the Petition for Declaratory Ruling.

Actions or inactions of WisDOT which relate to the construction or maintenance of highways, and of WisDILHR which ascertain or determine prevailing wage rates under sec. 103.50, Stats., are specifically exempt from the definition of "rule" and the ordinary requirement to adopt statements of policy or interpretations of statutes as a "rule". Section 227.01(11)(e) and (t), Stats. (1983-84). In its many years of existence, WisDOT has adopted no rules governing its interpretation and enforcement of sec. 103.50(1) and (6), Stats.

Over the years, various employees in various positions at various different levels in WisDOT have issued a variety of statements in the form of answers to letters and internal memos regarding the application of sec. 103.50, Stats.

Examples of these statements have been provided by the Contractors and the Laborers as Exhibits #2 through #8 dated from as early as December 17, 1968 (Exhibit #5) and as recently as August 23, 1983 (Exhibit #3). A number of marginal notes and written comments are on the faces of these documents.

Although a careful reading of these documents reveals a surprising degree of administrative consistency in the interpretation of sec. 103.50(1), Stats., the documents submitted are not all that have been prepared by WisDOT

over the years. Other WisDOT letters and memoranda exist on this subject. Moreover, there is little to indicate whether a specific letter is more or less authoritative than a specific memorandum or other letter. The documents are not generally available to the affected public and do not address the situations presented for declaratory ruling with any degree of convenience or certainty to the Petitioners or Contractors.

The Contractors rely on Wisconsin Fertilizer Asso. v. Karns, 39 Wis.2d 95, 158 N.W.2d 294 (1968) for the proposition that the declaratory ruling statute does not provide a method for review of a determination already made. The Contractors are correct only as far as they go. The Court's full statement is as follows:

"Sec. 227.06(1), Stats., does not provide a method of review of a determination already made but a method of requesting an agency to make a determination. If the plaintiffs had sought and obtained a declaratory ruling of the commissioner under sec. 227.06(1), then the cases cited would have been authority for the rule that they must seek review under ch. 227. The cases cited are not authority for the proposition that an interested person must seek a declaratory ruling under sec. 227.06(1) on a determination already made. While the plaintiffs in this situation undoubtedly could have sought redress under sec. 227.06(1), we find no authority that requires them to do so." (Emphasis added.) Wisconsin Fertilizer Asso., supra., at p. 107.

In the present case Petitioner Laborers have requested WisDOT to make a determination and the Laborers do seek redress under sec. 227.06, Stats.

WisDOT finds that the declaratory ruling procedure under sec. 227.06, Stats., is available to address the Laborers' Petition for Declaratory Ruling, is an improvement over past WisDOT practice, and will assist WisDOT in fulfilling its duty to require adherence to sec. 103.50(1) and (6), Stats., as required by sec. 103.50(8), Stats. (1983-84).

WisDOT finds that the declaratory ruling will settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations of the parties regarding the scope of coverage of sec. 103.50(1), Stats. (1983-84). Contractors' motion to dismiss is denied.

SCOPE OF COVERAGE OF THE WISCONSIN STATUTE

In 1964, the Wisconsin Court in interpreting that portion of sec. 103.50(1), Stats. (1983-84) quoted above, stated the following:

"The delivery of materials was an integrated aspect of the 'flow' process of construction. The materials were 'distributed over the surface of the roadway' with no 'rehandling' out of the flow of construction. The drivers were 'executing such highway improvement' and hence performing 'work under the contract'." Green v. Jones, 23 Wis.2d 551, 563-4 (1964).

As a result of this decision, which effectively overturned a 1962 Opinion of the Attorney General (51 OAG 20) in favor of a 1949 Opinion (38 OAG 481), the Attorney General in 1964 suggested that the law be clarified by the Legislature (53 OAG 164).

The Legislature responded by adding the last sentence to present sec. 103.50(1), Stats. (1983-84), by Ch. 2, Laws of 1965, published March 23, 1965. This legislative act clarified and narrowed the coverage of sec. 103.50(1), Stats., as interpreted by the Wisconsin Supreme Court in 1964.

It is this last sentence that attempts to clarify the scope of coverage of sec. 103.50(1), Stats., that is the focus of this proceeding. In its entirety the sentence reads:

"This section shall not apply to wage rates and hours of employment of laborers or mechanics engaged in the processing or manufacture of materials or products or to the delivery thereof by or for commercial establishments which have a fixed place of business from which they regularly supply such processed or manufactured materials or products; except that this section shall apply to laborers or mechanics who deliver mineral aggregate such as sand, gravel or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle."

It is this sentence which states the Legislature's determination of what constitutes supply work to which White Sheet Rates do not apply.

APPLICABILITY TO SITUATIONS PRESENTED

1. Does sec. 103.50(1), Stats. (1983-84) apply to the movement of sand, gravel or stone from any kind of pit, including commercial pits, where the product is delivered to the highway project and dumped on the project (not stockpiled)?

YES. Section 103.50(1), Stats. (1983-84) requires that no less than the prevailing wage rates (White Sheet Rates) be paid to laborers or mechanics who deliver mineral aggregate by or for non-commercial sources regardless of whether the material is dumped, stockpiled, delivered substantially in place or not.

Section 103.50(1), Stats. (1983-84) also requires that no less than prevailing wage rates and minimum rates for equipment (White Sheet Rates)⁴ be paid to laborers or mechanics who deliver mineral aggregate such as sand, gravel or stone by or for commercial sources which is incorporated into the work under the contract by depositing the material substantially in place directly or through spreaders, from the transporting vehicle.

⁴Section 103.50(3)(b), Stats. (1983-84) requires the payment of minimum rates for equipment "to prevent a truck driver who owns the equipment he operates from being required to accept less than the actual cost of operating his equipment, thereby reducing the prevailing wage rates established by (WisDILHR)". See also 49 OAG 132 (1960).

Although the "commercial" designation and exemption from White Sheet Rates applies to the delivery of processed or manufactured materials, White Sheet Rates are expressly applicable to the delivery of sand, gravel or stone "which is incorporated into the work under the contract by depositing the material substantially in place directly or through spreaders, from the transporting vehicle".

As stated in Exhibit #4 dated March 14, 1975 regarding commercial sources, quoting an April 30, 1965 memo from the State Highway Engineer contemporaneous with the publication of Ch. 2, Laws of 1965, on March 23, 1965:

"Delivery by or for established commercial sources of the following is covered by Section 103.50:

1. aggregates for gravel or crushed stone base course,
2. granular subbase course, and
3. granular backfill

if material is incorporated into the work by depositing it substantially in place directly or through spreaders from the transporting vehicle."
(Emphasis in original.)

This is a consistent and longstanding interpretation, originating in April 1965, by the State Highway Engineer and reaffirmed by the State Highway Engineer in 1968 (Exhibit #5) and by the Chief Construction Engineer in 1975 (Exhibit #4).

The Legislative Reference Bureau of the Wisconsin Legislature maintains records of contemporaneous evidence of legislative intent. The minutes of the Highway Advisory Committee of the Wisconsin Legislative Council of December 1, 1964 read in part as follows:

"Mr. Burmeister....The amendment specifically limits those workers entitled to so-called "White Sheet Rates" (minimum rates paid on construction projects as determined by the industrial commission), and provides that only those workers whose materials are deposited in the work then under way would qualify for this rate."

....
"Mr. Barrett...noted that about 10 years ago the highway commission requested an attorney general's opinion relative to this section. The interpretation at that time was that under \$103.50 the contract concept of the law extended to people delivering materials to a highway project where it was placed directly on the roadway, and it was immaterial whether the supplies had been delivered by the contractor."

The minutes also reveal that representatives of both the Petitioners and Contractors appeared in favor of the proposed amendment.

As reported by the Legislative Council in its May 1965 General Report to the Governor and the 1965 Legislature, at p. 82:

"...the highway commission consulted with those working in the highway field and with labor and management. Subsequently, a proposed amendment to \$103.50 was drafted which would make it possible to administer the law in a manner similar to that

used before the Supreme Court decision.

The amendment would specifically limit the application of the law to those workers entitled to so-called "White Sheet Rates"...and would provide that only those workers whose materials are deposited in the work then under way would qualify for this rate."

The Committee recommended, and the Legislative Council approved LRB-261 for introduction in the 1965 session as Senate Bill 2, enacted without amendment as Ch. 2, Laws of 1965, adding the last sentence to sec. 103.50(1), Stats.

Other documents presented as Exhibits do not deal with the delivery of sand, gravel or stone from commercial pits, but rather the production of aggregates, bituminous concrete and other materials by commercial pits. The production of these materials, including mineral aggregates, i.e. their "processing or manufacture" by or for "commercial establishments which have a fixed place of business from which they regularly supply such processed or manufactured materials or products" is exempt from White Sheet Rates. Hence, Exhibit #2, dated July 11, 1973, deals with the criteria for designation of "commercial pits" for this exemption and Exhibit #3, dated August 23, 1983, likewise deals with the designation of pits as commercial for purposes of the "processing or manufacture" exemption.

Exhibit #6, dated November 10, 1980, at p. 3, deals in general terms with the delivery of any materials from commercial sources without discussing mineral aggregates such as sand, gravel or stone delivered substantially in place. Exhibit #7, dated October 18, 1982, at p. 2, does not address the delivery of sand, gravel or stone per se. It is in error to the extent it mentions "crushed aggregate" at the bottom of p. 2. Exhibit #8, dated October 14, 1982, does not distinguish between delivery of bituminous paving materials from commercial sources (exempt) and delivery of mineral aggregates such as sand, gravel or stone deposited substantially in place (covered). This Exhibit, Exhibit #8, is a letter from a district labor compliance coordinator of WisDOT. To the extent it could be interpreted to exempt the delivery of sand, gravel or stone by or for commercial sources which is incorporated into the work under the contract by depositing the material substantially in place from White Sheet Rates, it is erroneous and inconsistent with the law and longstanding administrative interpretation. Even if consistent with the law, it would constitute a revised interpretation that would require formal adoption by WisDOT at the highest level after notice and opportunity to be heard. Cf. Schoolway Transportation Co. v. Division of Motor Vehicles, 72 Wis.2d 223, 237-238, 240 N.W.2d 403 (1976).

The essence of this matter as to commercial sources therefore boils down to the meaning of the phrase "which is incorporated into the work under the contract by depositing the material substantially in place directly or through spreaders, from the transporting vehicle". Tr. pp. 30-31, 41.

The Contractors state that the phrase means that "the material need not be moved, spread or rolled after it is delivered by the truck". Tr. p. 41. The Contractors also state that there is no conceivable circumstance when sand, gravel or stone is deposited substantially in place. Tr. pp. 41, and 43-45, pp. 49-50.⁵

⁵The Contractors subsequently suggested one "possible" example of depositing of material substantially in place as the dumping of pea gravel into an unmanned spreader attached to the delivery truck from which the pea gravel is spread onto asphalt sealer on the road bed, where no additional rolling or raking is needed. The Contractors state that this practice, although in use in 1965, is not used today on state highway work. It appears from Green v. Jones, supra., pp. 563-564, and 566, however, that delivery of sand, gravel or stone which is incorporated into the work under the contract by depositing it "substantially in place" directly or through spreaders, from the transporting vehicle in all likelihood was generally understood to include "crushed base for the first layer of the highway above the ground...dumped or spread by the drivers" and "crushed base and granulated subbase for shoulder material...dumped on the highway." The drivers in all of these circumstances were "performing 'work under the contract'". There is no evidence of legislative intent in 1965 to exclude such activities by amendment from coverage under sec. 103.50(1), Stats.

The Contractors' interpretation would make the last part of the last sentence of sec. 103.50(1), Stats. (1983-84) meaningless surplusage. Statutes are to be interpreted to avoid absurd results [In Matter of Civil Contempt of Kroll, 101 Wis.2d 296, 300 (1981)] and so that no part is rendered surplusage. Acquisition of Certain Lands by Benson, 101 Wis.2d 691, 697 (1981).

The Laborers state that up until the last year or two the delivery of sand, gravel and stone to highway projects which were dumped onto the strip were paid White Sheet Rates. Tr. p. 48. This observation and the ambiguity of Exhibit #8 led to the Petition for Declaratory Ruling. Tr. p. 51.

Exhibits #1, #2, #3, #4, #5, #8, and #9 do not interpret the phrase and offer no guidance.

Exhibit #6, dated November 10, 1980, at p. 1 concludes that "stockpiling" of materials "before the contract execution" is exempt because the contract cannot apply and White Sheet Rates cannot apply. An implication of this reasoning is that a different result would be possible after contract execution depending on the circumstances.

Exhibit #7, dated October 18, 1982, at p. 3 however, does read in part:

"The WisDOT interpretation of the term 'substantially in place' does not recognize a material being dumped by truck on grade as being substantially in place. The interpretation by DILHR

is that, if the material is manipulated by another piece of equipment, then the material is not substantially in place. We agree with DILHR."

This document, Exhibit #7, is a "summary of discussions and conclusions reached" at a conference of WisDOT personnel in September 1982 intended "to establish our future policy".

There is no evidence that WisDILHR has offered an advisory interpretation of the last sentence of sec. 103.50(1), Stats. (1983-84) to WisDOT. WisDILHR is not charged with the interpretation, administration or enforcement of sec. 103.50(1), Stats. (1983-84); WisDOT is. WisDILHR is responsible for the administration of sec. 103.49(1), Stats. (1983-84) and sec. 66.293(3)(c), Stats. (1983-84), which both contain the same language regarding commercial supply and mineral aggregates deposited substantially in place. However, highway work is not within WisDILHR's jurisdiction under either of the statutory provisions administered by WisDILHR.

The language in sec. 103.49(1), Stats., which parallels sec. 103.50(1), Stats., was added by Ch. 4, Laws of 1965. The parallel language in sec. 66.293(3)(c), Stats. was added by Ch. 181, Laws of 1973.

WisDILHR has promulgated rules to administer both sections under its jurisdiction as Ch. Ind 90, Wis. Admin. Code (sec. 66.293, Stats.) and Ch. Ind 92, Wis. Admin. Code (sec. 103.49, Stats.) The text and footnotes for

these rules do not define the phrase in question ("depositing the material substantially in place") or provide examples of its application. Cf. sec. Ind 90.01(12) and footnote 8 and sec. Ind 92.01(11) and footnote 7. Moreover, WisDILHR does not confirm the interpretation attributed to it in Exhibit #7 as its interpretation.

There is no dispute that "stockpiling" of mineral aggregates from commercial sources is not covered by White Sheet Rates. See Exhibit #6, p. 1., Petition, issue #1, Tr. pp. 9, 18-19.

"Substantially" has no meaning unique to this area of law. It means "essentially" or "in the main" or "about" or "materially" or "to a large degree". Black's Law Dictionary, 5th Edition; Webster's Third New International Dictionary.

Hence, the sentence: "this section shall apply to laborers or mechanics who deliver mineral aggregate such as sand, gravel or stone which is incorporated into the work under the contract by depositing the material substantially in place directly or through spreaders, from the transporting vehicle" must mean White Sheet Rates apply to the delivery of mineral aggregate by truck to the highway project by or for commercial sources when the truck dumps or spreads the mineral aggregate on the project roadbed while the highway contract is in effect.

Accordingly, WisDOT hereby declares that for purposes of sec. 103.50(1), Stats., mineral aggregate such as sand, gravel or stone from commercial sources is deposited substantially in place directly or through spreaders, from the transporting vehicle if it is deposited, dumped, placed, spread or laid on the roadbed within the site of the work where it will be or is being bladed, spread, scraped, pushed, raked, rolled, compacted or similarly worked without further hauling.

WisDOT emphasizes that White Sheet Rates apply to the processing, manufacture and the delivery of all materials and products by or for non-commercial sources, regardless of whether the materials are stockpiled or deposited substantially in place.

WisDOT's Declaratory Ruling regarding the first issue presented in the Petition is, for the most part, consistent with longstanding WisDOT administrative practice. Green v. Jones, 23 Wis.2d 551, 563 (1964) and 53 OAG 164, 175 and 177 (1964). Exhibits #4 and #5. White Sheet Rates apply and have applied in the past to delivery of mineral aggregates deposited substantially in place regardless of commercial or non-commercial source. However, WisDOT's interpretation of the phrase "substantially in place" has been administered with some degree of variability.

WisDOT's Declaratory Ruling regarding the precise meaning of "substantially in place" from commercial

sources is binding prospectively on WisDOT and all parties and others on the attached service list.

2. Does sec. 103.50(1), Stats. (1983-84) apply to the movement of spoil off of the projects, whether for recycling or otherwise, including where the material is moved off the site and recycled and returned to the project in whole or in part?

YES. WisDOT declares that the movement of spoil for removal from the project site is work under the contract and White Sheet Rates apply. The same is true whether the movement from the site is for removal, for removal and recycling, or for removal, recycling, and return to the project, in whole or in part. Spoil is not "processed or manufactured material" and its removal is not "delivery" nor "supply" of materials by or for commercial establishments as used in the sec. 103.50(1), Stats. Therefore removal of spoil cannot fall within the exception to sec. 103.50(1), Stats., for laborers engaged in the delivery of processed or manufactured materials by or for commercial establishments which have a fixed place of business from which they regularly supply such processed or manufactured materials.

As an attempted clarification, consider a driver delivering construction materials such as steel to a highway job site from a commercial source. White Sheet Rates are not applicable to this delivery. If work under the contract involves removal of spoil from the job site,

and a person doing work under the contract makes an agreement with this driver to remove the spoil on the otherwise empty back haul then, for the removal, the driver must be paid White Sheet Rates. This is the situation regardless of how or who loads the spoil material on the truck. The "loading" operation is in itself sufficient to be covered work under the contract; but the "loading" operation is not necessary to make the removal activity covered work under the contract.

An agreement between the person doing work under the contract and the driver to remove the spoil on the driver's return trip is likely to affect the initial bid price for the highway work. Whether the effect is to enable a particular bidder, subcontractor, or materialman to quote a higher or lower price, the savings or increase in bid or quoted price does not change the requirement that the driver must be paid White Sheet Rates for the removal.

The statement on page 2 of Exhibit #7, to the extent it requires payment of White Sheet Rates on the full round trip, based solely on who loads the spoil on the truck, is erroneous.

There are only very narrow circumstances under which removal of spoil may not require payment of White Sheet Rates. This would be the extraordinary circumstance such as when a volunteer asks permission to take, for example, scrap timber from the job site that would otherwise be

burned as in Exhibit #6, pp. 2-3, paragraph 3. In these circumstances the volunteer involved is not a laborer in the employ of any person doing, or contracting to do, part of the work under the WisDOT highway contract, and does not fall within the overall coverage of the initial sentence of sec. 103.50(1), Stats. (1983-84).

WisDOT's Declaratory Ruling that White Sheet Rates apply to the movement of spoil off of the projects site, whether for recycling or otherwise, is consistent with longstanding WisDOT interpretation.

The determination that White Sheet Rates are applicable to the removal of spoil on the backhaul by otherwise exempt drivers for commercial materialmen is binding prospectively on WisDOT and all parties and others on the attached service list.

3. Does sec. 103.50(1), Stats. (1983-84) apply to the movement of asphalt from a plant to the highway strip where the material is put immediately into place, either directly or by hooking the truck to a spreader?

YES, but only if the delivery is not by or for a commercial establishment from a fixed place of business from which it regularly supplies asphalt or bituminous concrete. The movement of asphalt⁶ or bituminous concrete.

⁶Asphalt is a composition of ground asphalt rock and bitumen, of bitumen lime and gravel, or even of coal tar, lime and sand. In this context, "asphalt" includes asphaltic concrete or bituminous concrete.

under these circumstances is clearly work under a contract under sec. 103.50(1), Stats. (1983-84) for which White Sheet Rates must be paid, if the delivery is not by or for a commercial establishment from a fixed place of business from which it regularly supplies asphalt or bituminous concrete.

Although the first sentence of sec. 103.50(1), Stats. (1983-84) would require White Sheet Rates to be paid for all movements of asphalt or bituminous concrete under these circumstances, there is an exclusion from White Sheet Rates of deliveries by or for commercial suppliers of processed or manufactured materials contained in the last sentence of sec. 103.50(1), Stats. (1983-84).

WisDOT finds that asphalt or bituminous concrete is a manufactured or processed material or product.

WisDOT further declares that asphalt or bituminous concrete is not a mineral aggregate such as sand, gravel or stone. Accordingly the delivery of asphalt or bituminous concrete by or for a commercial establishment from a fixed place of business from which it regularly supplies asphalt or bituminous concrete does not fall within the mineral aggregate exception to the exclusion from White Sheet Rate coverage.

This is a longstanding and consistent WisDOT interpretation as reflected in Exhibit #4:

"Delivery by or for established commercial sources of the following material is exempt from sec. 103.50:

....
2. Plant Mix Bituminous products."

Exhibit #7, at p. 2, likewise shows that delivery of "bituminous mixture" from a commercial establishment is not covered by White Sheet Rates, Cf. Exhibit #8 "bituminous paving material".

WisDOT considers the movement of asphalt or bituminous concrete from a commercial source to the roadbed where the material is deposited directly into the paver from the truck to be included within the meaning of "delivery" of processed or manufactured materials under sec. 103.50(1), Stats. (1983-84). This is consistent with longstanding WisDOT administration.

4. Does sec. 103.50(1), Stats. (1983-84) apply to the movement of ready-mix concrete from a commercial batch plant adjacent to the project for delivery directly to the project?

NO. The movement of ready-mix concrete under these circumstances is excluded from the applicability of White Sheet Rates if the delivery is by or for a commercial establishment from its fixed place of business from which it regularly supplies ready-mix concrete and not from a location specifically established in order to supply the particular job.

If the delivery is by or for a non-commercial establishment, the laborers or mechanics who are engaged

in the delivery thereof are entitled to White Sheet Rate payments under sec. 103.50(1), Stats. (1983-84).

WisDOT finds that ready-mix concrete is a manufactured or processed material or product.

WisDOT further declares that ready-mix concrete is not a mineral aggregate.

This is a longstanding and consistent WisDOT interpretation as shown in Exhibit #4:

"Delivery by or for established commercial sources of the following material is exempt from sec. 103.50:
1. Readymix concrete"

Exhibit #8, p. 2, likewise considers "concrete" as a manufactured or processed material or product.

This determination that ready-mix concrete is not a mineral aggregate is the same as WisDILHR's interpretation of the same language in sec. 66.293(3)(c) and sec. 103.49(1), Stats. as expressly stated in footnotes 8 and 7 to sections Ind 90.01(12) and Ind 92.01(11), Wis. Admin. Code:

"Ready-mix concrete is not a mineral aggregate under the provisions of section 66.293, Wis. Stats. (or of section 103.49, Wis. Stats.)."

WisDOT further declares that labor employed by a commercial ready-mix establishment which, although having a fixed place of business of the kind in some location, operates in a location specifically established in order to supply a particular highway job within the scope of

sec. 103.50(1), Stats., or in a location used only sporadically when a project happens to be close at hand, comes under the White Sheet Rate coverage of sec. 103.50(1), Stats. Incidental or casual sale of ready-mix from such plants to others does not classify the same as a fixed commercial establishment.

This declaration is consistent with longstanding WisDOT interpretation and that of WisDILHR as expressly stated in footnotes 8 and 7 to Section Ind 90.01(12) and Ind 92.01(11), Wis. Admin. Code.

COMMERCIAL DESIGNATION BY WISDOT

As a matter of formal declaration and clarification WisDOT further declares that the following guidelines have been and will continue to be used in determining whether a source qualifies as a "commercial establishment which has a fixed place of business from which it regularly supplies processed or manufactured materials or products" under sec. 103.50(1), Stats.:

1. The operator owns the land or has a long-term lease;
2. The operator's records indicate that a substantial volume of its annual sales from that location are for other than WisDOT highway contracts;
3. The operator is primarily a material supplier rather than a contractor or subcontractor;
4. The operator will not set up at the location primarily to serve WisDOT highway contract work; and

5. The operator advertises the availability of material for sale and has facilities available at all times for effecting sales.

This is a longstanding and consistent WisDOT interpretation as shown in Exhibits #2 (1973) and #3 (1983).

WISDOT DEFINITION OF "MINERAL AGGREGATE"

As a matter of formal declaration and clarification WisDOT further declares that it has used and will continue to use the following definition of "mineral aggregate such as sand, gravel or stone":

"Mineral aggregate is an inert solid material of mineral composition, such as sand, gravel, crushed stone, crushed rock, screenings, slag and other hard and durable mineral soil or rock fragments or granulated material with similar characteristics, or a combination thereof, specified or selected under the contract with WisDOT, but not concrete, ready-mix concrete, bituminous concrete, asphalt, mastic, mortar, plaster, macadam and other similar processed or manufactured products. Mineral aggregate does not include other material such as clay, topsoil, fill dirt, silt, boulders, riprap, wall stone, loam, gumbo, loess, peat, muck, hardpan or other similar soils or mixed earth which may contain scattered rocks, boulders and vegetable material."

This is a longstanding and consistent WisDOT interpretation as shown on page 1 of Exhibit #4 ("aggregates for gravel or crushed stone base course, granular subbase course, and granular backfill."). It is

binding prospectively on the parties and others shown on the attached service list.

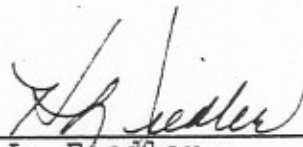
DECLARATORY RULING

As announced at the hearing on November 16, 1984, this final Declaratory Ruling of WisDOT in this matter is made by Harold L. Fiedler, Administrator of the Division of Highways and Transportation Facilities of the State of Wisconsin Department of Transportation, to whom this final authority has been delegated by the Secretary of Transportation, Lowell B. Jackson, Tr. p. 4. Administrator Fiedler was present throughout the hearing and has considered all of the documents and arguments presented, including the exhibits, transcript, position statements and briefs of the parties, as has the Hearing Examiner, WisDOT General Counsel James S. Thiel.

This Declaratory Ruling under sec. 227.06, Stats. (1983-84) binds this agency and all parties to the proceedings and all the persons on the attached service list, on the general statement of facts alleged in the Petition, unless it is altered or set aside by a Court. This Declaratory Ruling is subject to review by the Circuit Court in the manner provided for review of administrative decisions under Ch. 227, Stats. Unless a rehearing is requested, a petition for judicial review must be served and filed within 30 days after service of this Declaratory Ruling on all parties. The institution

of a proceeding for judicial review does not stay the enforcement of this Declaratory Ruling by the Department of Transportation.

This Opinion and Declaratory Ruling and the Summary of Declaratory Ruling are hereby adopted this 22nd day of May, 1985 by the State of Wisconsin Department of Transportation.



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Duluth, MN 55810

Ebner Construction, Inc.
110 Causeway Boulevard
La Crosse, WI 54601

Edgerton Contractors, Inc.
6466 South 13
Oak Creek, WI 53154

Endres Inc.
216 6th Street
Waunakee, WI 53597

Ewers Excavating & Contracting
Box 398
Lone Rock, WI 53556

P.V. Farms Inc.
6395 U.S. Highway 53
Eau Claire, WI 54701

Fox Construction Inc.
3760 Marsh Road
Madison, WI 53704

Allan Gerke & Sons Inc.
Route 4
Tomah, WI 54660

Hanz Contractors
1801 Burek Avenue
Wausau, WI 54401

Hi Boom Erecting Inc.
Box 153
Black River Falls, WI 54615

Highway Fence Corp.
P.O. Box 11
Waunakee, WI 53597

Highway Sves. Inc.
6315 Cambridge St.
Minneapolis, MN 55416

Hoepfner Bldg. Corp.
P.O. Box 905
Eau Claire, WI 54702

Hoffman Construction Co.
Route 4
Black River Falls, WI 54615

International Erectors, Inc.
P.O. Box 2130
Green Bay, WI 54306

Iowa Dredging Inc.
Box 202
Decorah, IA 52101

Iverson Construction Inc.
P.O. Box 142
Platteville, WI 53818

H. James & Sons Inc.
925 Washington Street
Fennimore, WI 53809

James Drilling Co., Inc.
925 Washington St.
Fennimore, WI 53809

Janesville Construction, Inc.
P.O. Box 112
Janesville, WI 53547

H.B. Janke & Sons Inc.
P.O. Box 211
Fredonia, WI 53021

J.R. Jensen & Sons, Inc.
Box 187
Superior, WI 54880

Rueben Johnson & Son Inc.
5300 Stinson Avenue
Superior, WI 54880

Johnson Bros. Corp.
P.O. Box 1002
Litchfield, MN 55355

D.L. Johnson & Sons Inc.
Lake Nebagamon, WI 54849

P.C. Kaiser Construction Inc.
P.O. Box 29
Portage, WI 53901

Kenosha Paving & Construction Inc.
5817 46th Street
Kenosha, WI 53140

Kloke Construction
Route 3
Dodgeville, WI 53533

Korpela Inc.
Route 1, Box 142
Ashland, WI 54806

Koshak Construction Co., Inc.
P.O. Box 491
Park Falls, WI 54552

Edward Kraemer & Sons Inc.
Plain, WI 53577

Daniel Kramer Construction Inc.
9850 Grandview Road
Duluth, MN 55810

Krause Excavating, Inc.
Route 3
Markesan, WI 53946

Lakehead Constructors, Inc.
P.O. Box 698
Superior, WI 54880

Land Development Sve., Inc.
1200 Cleveland Avenue
Kaukauna, WI 54130

Larson Construction Co.
Route 6
Box 234
Chippewa Falls, WI 54729

Leahy Construction Co.
Route 2
Box 258
Cumberland, WI 54829

Leon Joyce Construction Co.
P.O. Box 6656
Rochester, MN 55901

Linck Inc.
1226 N. Center
Beaver Dam, WI 53916

Little Mondeaux Land & Cattle
940 S. Whelen St.
Medford, WI 54451

Mann Bros S & G Inc.
P.O. Box 48
Elkhorn, WI 53121

Marco-Dustrol Co.
820 W. Nebraska Ave.
St. Paul, MN 55117

Maschuda Contractors, Inc.
Box 16
Princeton, WI 54968

Mathy Construction Co.
P.O. Box 189
Onalaska, WI 54650

McGuire Engineering & Construction
Route 3
Box 252
Monroe, WI 53566

McMahon Bros. Inc.
Box 530
Iron River, MI 49935

Mercury Construction
Route 2
Box 27
Whitewater, WI 53190

Merrill Gravel & Construction Co.
Route 6
Merrill, WI 54452

Meyer Margis Inc.
2944 Graybill Drive
Beloit, WI 53511

Midstate Construction Co.
524 E. Ogden
Medford, WI 54451

Minority Enterprises
P.O. Box 110
Mikana, WI 54857

Mirrs Tree Service
Box 1025
Green Lake, WI 54941

Modern Constructors Inc.
325 Lake Avenue South
Duluth, MN 55801

R & J Morello Inc.
11965 West Ohio
Milwaukee, WI 53227

New Berlin Grading, Inc.
W220 N1600 Jericho Court
Waukesha, WI 53186

Northwest Asphalt Products Inc.
11710 West Hampton
Milwaukee, WI 53225

Jack L. Olsen Inc.
500 South 59th Avenue West
Duluth, MN 55807

Overlien Construction Co.
Route 1, Box 229
Black River Falls, WI 54615

Pagel Construction Co., Inc.
Almond, WI 54909

Sam Parisi Co.
2401 Park Street
Middleton, WI 53562

Park Construction Co.
7900 Beech Street, N.E.
Minneapolis, MN 55432

Paschke Construction Co.
Box 61A
Fish Creek, WI 54212

G.J. Payne
P.O. Box 4906
Carson, CA 90745

Payne & Dolan Inc.
P.O. Box 781
Waukesha, WI 53186

J. Peterson Sons, Inc.
P.O. Box 120
Medford, WI 54451

Portland Construction Inc.
N59 W14179 Bobolink Avenue
Menomonee Falls, WI 53051

Progressive Contractors, Inc.
8736 Zachary Lane
Osseo, MN 55369

R S & D of ILL, Inc.
5960 Falcon Road
Rockford, IL 61109

Rademann Landscaping
Route 2
Fond du Lac, WI 54935

F.H. Raemisch & Sons Inc.
300 4th Street
Waunakee, WI 53597

F.C. Raemisch & Son
109 N. Madison
Waunakee, WI 53597

Reliance Construction Co.
P.O. Box W220
DePere, WI 54115

Reyes Landscaping, Inc.
P.O. Box 712
Green Lake, WI 54941

Geo. O. Reynolds Excavating
Route 3
Boscobel, WI 53805

Rio Management & Construction Inc.
P.O. Box 27341
Milwaukee, WI 53227

Rock Rd. of WI, Inc.
P.O. Box 1779
Janesville, WI 53545

Rodriguez Construction Corp.
615 Peters Drive
Waukesha, WI 53186

Roffers Construction Co.
404 12th Avenue West
Ashland, WI 54806

Rouse Construction Co., Inc.
Route 3
Shawano, WI 54166

Ed Ryan, Inc.
3463 Breen's Road
Oconomowoc, WI 53066

D.S. Samuels Inc.
515 West 4th Street
Duluth, MN 55802

Sanchez Enterprises, Inc.
420 East Main Street
Anoka, MN 55303

Saxa, Inc.
P.O. Box 261
Hurley, WI 54534

Schindler Construction Co.
P.O. Box 565
Menasha, WI 54952

Schuster Construction Co.
300 Elizabeth Street
Green Bay, WI 54302

Shafer Contracting Co.
Shafer, MN 55074

Shipler Construction Co., Inc.
P.O. Box 26
Beloit, WI 53511

Sjostrom & Son Inc.
1129 Harrison Avenue
Rockford, IL 56112

St. Joseph Contracting Co.
Route 1
La Crosse, WI 54601

Standard Asphalt Products
17080 Pheasant Drive
Brookfield, WI 53005

Stark Asphalt Sve., Inc.
11710 West Hampton Avenue
Milwaukee, WI 53225

Stoehr Grading Co., Inc.
2855 South 166
New Berlin, WI 53151

Stoppleworth Construction Co.
P.O. Box 397
Oakfield, WI 53065

Straight Arrow Construction
3951 Highway N
Cottage Grove, WI 53527

Streu Construction Co.
2004 14th Street
Two Rivers, WI 54241

Svendsen Bros. Inc.
1030 Washington Avenue
Kacine, WI 53406

Swanson's Heavy Moving Co.
2850 Hemstock St.
La Crosse, WI 54601

H. Thieding Construction Inc.
Route 1
Box 60
Loganville, WI 53943

J. Thieding Construction Inc.
Route 1
Box 17
Loganville, WI 53943

Timme, Inc.
Endeavor, WI 53930

Town Board of Tomah
Tomah, WI 54660

Tomasini Contractors Inc.
909 Blackstone Avenue
Waukesha, WI 53186

Twin Ports Concrete, Inc.
1131 Central Ent.
Duluth, MN 55811

W.K. Construction Co., Inc.
6367 Nesbitt Road
Madison, WI 53719

George Wendtlandt Inc.
Highway 151 South
Mineral Point, WI 53565

Western Bituminous Co.
4435 North 127
Brookfield, WI 53005

Wilson & Shipler, Inc.
2300 Shirland Avenue
Beloit, WI 53511

Wolf Construction Co., Inc.
612 North Sawyer Road
Oconomowoc, WI 53066

Yahara Materials Inc.
Route 1
Waunakee, WI 53597

Zenith Tech, Inc.
12125 West Silver Spring Road
Milwaukee, WI 53225

Hammersley Stone Co., Inc.
6311 Lacy Road
Madison, WI 53711

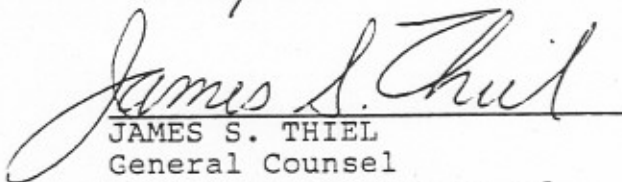
Zignego Construction
W226 N2940 Duplainville Road
Waukesha, WI 53186

Wayne's Grading Inc.
Box 118A, Highway 60
Rubicon, WI 53078

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Opinion and Declaratory Ruling No. 84-1 under sec. 227.06, Stats., and the Summary of Declaratory Ruling No. 84-1 upon all known parties of interest in this proceeding and the persons named on the foregoing Service List by mailing a copy thereof in the United States mail, properly addressed with first-class postage fully pre-paid.

Dated this 23rd day of May, 1985.



JAMES S. THIEL
General Counsel
Wisconsin Department of
Transportation