

Restoration Projects by Non-Profits: Prevailing Wages Issues

- Should new project proposals assume prevailing wages?
- What about funded projects that did not assume prevailing wages?
- What about retroactive assessment of prevailing wages for completed projects?

How have PW Rules been Applied to Restoration Projects by Non-profits?

- Federal Programs: Davis-Bacon Act
 - EPA 319 Program: Davis-Bacon not applicable to watershed restoration projects
 - OSM Appalachian Clean Streams Program: Davis-Bacon not applicable to watershed restoration projects
- Commonwealth: Prevailing Wage Act
 - DLI has strove to make projects subject to PW

PA Prevailing Wage Act of 1961

§ 9.101. Purpose and scope.

(a) Every contract to which the Commonwealth, its political subdivisions, an authority created by the General Assembly of the Commonwealth including authorities created under the Municipality Authorities Act of 1945 (53 P. S. §§ 301 - 401) and instrumentalities or agencies of the Commonwealth is a party, for construction, reconstruction, demolition, alteration or repair work other than maintenance work where the estimated cost of the total project is in excess of \$25,000, which requires or involves the employment by a contractor or subcontractor of laborers, mechanics, skilled and semi-skilled laborers and apprentices in the performance of services directly upon the public work project shall include in its specifications a provision stating the general prevailing minimum wage rates as determined by the Secretary which shall be paid for each craft or classification of workmen needed to perform the contract during the anticipated term thereof in the locality in which the public work is performed.

Deciphering the PWA

Who is Applicable?

- the Commonwealth,
- Political subdivisions,
- Public Authorities
- Instrumentalities
- Agencies

What is Applicable?

- Construction,
- Reconstruction,
- Demolition,
- Alteration or repair work

What is explicitly NOT Applicable

- Maintenance Projects
 - “The repair of existing facilities when the size, type or extent of the facilities is not thereby changed or increased.”
- Projects less than \$25,000

How can non-profit watershed association projects be considered eligible?

- When GGI was enacted in 1999, they were **not** considered eligible
- The Prevailing Wage Act has not been changed to make non-profits eligible
- DLI has pieced together a series of court rulings to make the case that non-profits using GG funds are, in fact, “public bodies” doing “public work”
 - the first pertinent court case is in 2002
 - None of the cases deal with grants to non-profits

Growing Greener PWA Guidance

Year	Prevailing Wage Guidance
1999	None
2000	None
2001	None
2002	None
2003	None
2004	Grantees must comply with PA and Federal requirements...
2005	Grants over \$25K may be subject to PWA...check with DLI
2006	Grants over \$25K may be subject to PWA...check with DLI

\$25,000 PW Trigger

- 1961 value
- 2007 value, ~\$200,000

Prevailing Wage Project Classifications

- Building
- Residential
- Heavy Construction
- Highway



Prevailing Wage Rates, 2007

Job	Hourly rate	Fringe benefits	Total
Laborers	\$18 - \$24	\$11	\$29-35
Operators	\$20 - \$25	\$13	\$33 -\$38

Some comparative costs

Project	Non PW	PW	PW increase
Passive System	\$720,840	73,000	+10%
Sludge removal	\$204,246	\$222,340	+11%
Access road			

Case Study: Marchand Passive Treatment System

- Design, permit and construction of passive mine water treatment system for large deep mine discharge
- \$1.22 million Growing Greener I grant to Sewickley Creek Watershed Association

Marchand Project Progression

Feb 2002	Proposal submitted
Sep 2002	Grant awarded
Sep 2004	Project bid and awarded
Oct 2005	Construction starts
Oct 2006	DLI makes informs SCWA of PWA
Oct 2006	Construction completed
Nov 2006	SCWA appeals decision
Dec 2006	DLI rejects appeal
May 2007	DLI makes \$63,000 assessment
July 2007	DLI increases assessment to \$66,000

Other DLI Prevailing Wage Decisions

Wilson Settling Pond Cleanout

- Project cleans out pond and updated aerator
- PDLI: the sludge disposal basin is new construction, so all project is PW

Farmington Well capping

- Cap two abandoned gas wells that through neglect have become AMD conduits
- PDLI: capping the wells changes their function, so project is PW

Restoration Projects by Non-Profits: Prevailing Wages Issues

- Should new project proposals assume prevailing wages?
 - yes
- What about funded projects that did not assume prevailing wages?
 - recalculate budgets and inform Grants Center more money is needed
 - If there are federal components – switch all construction to federal side
- What about retroactive assessment of prevailing wages for completed projects?
 - DLI is doing this and holding non-profits liable
 - talk to an attorney?
 - talk to your legislators?