

The Commonwealth of Massachusetts
Department of Labor and Workforce Development
Division of Occupational Safety

ANGELO BUONOPANE
Director

ROBERT J. PREZIOSO
Deputy Director

May 20, 1997

Helen Moreschi, Chief
Office of the Attorney General
Fair Labor and Business Practices Division
200 Portland St.
Boston, MA 02114

Re: Prevailing Wage Applicability/DEP Site Support Contracts

Dear Ms. Moreschi:

Your letter to Robert J. Prezioso, Deputy Director of the Division of Occupational Safety (DOS), dated April 10, 1997 concerning the Department of Environmental Protection's *Emergency Response Services and Site Support Services* Request for Proposals (the "DEP Proposal"), dated December, 1995, has been forwarded to me for a response. Please note that an additional letter from your office dated April 25, 1997 was forwarded to Mr. Prezioso which clarified several questions raised by your April 10 letter.

In your letters, you request that DOS determine the applicability of the prevailing wage law (M.G.L. ch. 149, sections 26 - 27H) to the several categories of work listed in the DEP Proposal. These categories of work are divided into two broad areas, Emergency Response Services and Site Support Services, which are analyzed separately below.

The Emergency Response Services section of the DEP Proposal contains the following categories of work: emergency oil spill cleanup and containment; hazardous materials emergency response; and asbestos containment and removal. Each of these categories of work involves the "construction of public works" (M.G.L. c. 149, sec. 26) as defined by M.G.L. c. 149, sec. 27D which reads, in relevant part, "construction ... shall include additions to and alterations of public works." Therefore, all persons employed on a project which falls within the Emergency Response Services section of the DEP Proposal must be paid prevailing wage rates.

The Site Support Services section of the DEP Proposal contains several categories of work that clearly involve "construction of public works" and would thus require payment of prevailing wage rates to all persons employed thereon. Those categories include: soil removal;

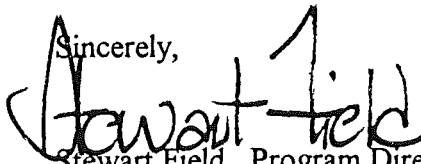
tank removal; fence installation and repairs; and the installation and repair of groundwater recovery and treatment systems, soil vapor recovery systems, air sparge systems, and landfill cap systems. Furthermore, any work performed incidental to the installation of a treatment system, such as test borings or demolition of structures, would require payment of prevailing wage rates.

Several other categories of work contained in the Site Support Services section of the DEP Proposal do not involve the "construction of public works" and therefore do not require payment of prevailing wage rates to persons employed thereon. Those categories include: drum pick-up and disposal; sample collection; sample analysis; site security; and the operation and maintenance of groundwater recovery and treatment systems, soil vapor recovery systems, air sparge systems, and landfill cap systems.

This determination is based on the above-mentioned facts and would require further review if the information provided is found to be in error or if the underlying facts are amended.

If you have any further questions concerning this matter, please do not hesitate to contact me at (617) 727-8519.

Sincerely,

A handwritten signature in black ink, appearing to read "Stewart Field". The signature is written in a cursive, somewhat stylized font. The first name "Stewart" is written in a larger, more prominent script, and "Field" is written in a slightly smaller, more compact script to its right.

Stewart Field, Program Director
Mass. Div. of Occupational Safety

cc: Robert Prezioso, Deputy Director
Mass. Div. of Occupational Safety

Linda Hamel, General Counsel
Mass. Div. of Occupational Safety

Carolyn Levinson, Assist. Director of Contracting
Mass. Dept. of Environmental Management.