

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

ANGELO BUONOPANE
Director

ROBERT J. PREZIOSO
Deputy Director

October 17, 1997

Thomas Joyce, Esq.
Joyce & Joyce, Counsellors at Law
22 Beacon Street
Boston, MA 02108

Re: Topsfield Sanitary Landfill; Prevailing Wage Applicability

Dear Mr. Joyce:

Your letter to Deputy Director Robert Prezioso dated September 29, 1997 has been forwarded to me for a response. At issue is whether the Massachusetts prevailing wage law, as prescribed by M.G.L. c. 149, section 27F, is applicable to the operation of the Topsfield Sanitary Landfill located in the Town of Topsfield. According to your letter and other documents supplied by your office, my understanding of the facts are as follows:

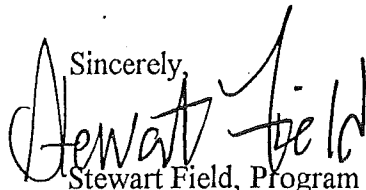
1. On November 4, 1994, the Department of Environmental Protection (DEP) and the Town of Topsfield entered into an administrative consent order for the accelerated closure of the Topsfield Sanitary Landfill. The order, among other items, called for the town to cease accepting municipal solid waste at the landfill by July 1, 1998.
2. An action plan completed for the landfill indicated a need to accept commercial construction and demolition related debris to accelerate the landfill closure and comply with the July 1, 1998 deadline. Fees generated by accepting non-municipal solid waste at the landfill will be used to fund final closure and other reclamation activities.
3. As memorialized in an Environmental Notification Form dated April 28, 1997, DEP allowed the Town of Topsfield to increase the tonnage of commercial construction and demolition debris accepted at the landfill to 295 tons per day. Currently, the landfill accepts only 65 tons per week of municipal trash.

M.G.L. c. 149, s. 27F requires the Director of the Department of Labor and Workforce Development to set hourly wage rates which must be paid to operators of "trucks, vehicles or other equipment." It is undisputable that any contractor - in this case Eirco Environmental, LLC - will employ operators of "trucks, vehicles or other equipment" while operating the landfill. Thus, the only issue is whether such individuals are engaging in "public works."

Given that the landfill will primarily accept commercial construction and demolition related debris and not municipal solid waste generated by curbside collection of rubbish, the operation of the landfill cannot be construed as "public work" for the purpose of the prevailing wage law.

This determination is based on the facts contained in your September 29th letter, our subsequent conversation and is confined to this particular situation. If additional facts concerning the work in question come to your attention, please notify me immediately so that I may consider such information in a reassessment of this decision.

If you have any questions concerning this matter, do not hesitate to call me.

Sincerely,

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

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

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

Barbara Piselli, Acting Division Chief
Attorney General's Office of Fair Labor