



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

**ANGELO BUONOPANE**  
Director

**ROBERT J. PREZIOSO**  
Deputy Director

December 19, 1997

Claude Lancome  
ICF Kaiser Engineers of Massachusetts  
190 Tafts Avenue  
Winthrop, MA 02152

**SUBJECT:** Massachusetts Water Resources Authority Contract #6159

Dear Mr. Lancome:

I have reviewed your letters dated November 24<sup>th</sup> and December 4<sup>th</sup> concerning whether the Massachusetts prevailing wage law, as prescribed by M.G.L. c. 149, ss. 26 through 27D, is applicable to certain field engineering work performed during construction of the Secondary Treatment Facility - Battery C. According to your letters and our subsequent telephone conversations, my understanding of the facts are as follows:

1. The Massachusetts Water Resources Authority (MWRA) solicited sealed bids for the construction of a secondary reactor and clarifier beginning September 21, 1996. The project was bid in accordance with the provisions of M.G.L. c. 149, ss. 44A-44J, the Commonwealth's public building construction bidding statute. The MWRA called for general contractors to be certified by the Division of Capital Planning and Operations (DCPO) in "Sewerage and Wastewater Treatment Plant" construction. Filed sub-bids were solicited for numerous categories, including: masonry, roofing, plumbing and HVAC sub-trades.
2. During construction, field engineers and surveyors will: establish grid lines which guide the placement of the wastewater tanks; check and measure concrete forms to ensure they are plumb; determine the proper elevation of roofing-type structures for concrete slabs; establish and measure as-built locations for all necessary utilities; and provide reference points for other trades.

M.G.L. c. 149, s. 26 requires the Director of the Department of Labor and Workforce Development to set hourly wage rates which must be paid to tradespeople who are employed "in the construction of public works." Section 27D of chapter 149 defines "construction" as "additions to and alterations of public works." In this case, the field engineers and surveyors will be performing construction layout activities, which include inserting demarcation points for

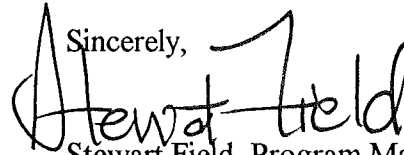
construction and ensuring proper fabrication of concrete slabs and foundations. These activities directly and substantially aid the construction process itself and qualify as engaging in the work of construction.

Given the facts surrounding your inquiry, the field engineers and surveyors engaged in construction layout activities are engaged in "public works construction" for the purpose of the prevailing wage law and, therefore, must be paid in accordance with the wage schedule issued for the project.

This determination is based on the facts contained in your November 24<sup>th</sup> and December 4<sup>th</sup> letters and our subsequent conversations, 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 reassess this decision.

If you have any questions concerning this matter, do not hesitate to call me at (617) 727-3492.

Sincerely,

A handwritten signature in black ink, appearing to read "Stewart Field". The signature is stylized with a large, sweeping "S" and a long horizontal stroke.

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