

June 21, 2002

Ms. Karla E. Zarbo
Assistant Attorney General
Office of The Attorney General
200 Portland Street
Boston, MA 02114

Re: Determination of Classification: Laborers' Classification or Deleaders' Classification.

Dear Ms. Zarbo:

Your letter dated April 17, 2002 to Robert J. Prezioso of the Division of Occupational Safety ("DOS") has been forwarded to me for a response. This letter responds to your request for a determination of whether the Laborers' occupational classification or Deleaders' occupational classification is the proper occupational classification.

You state in your letter that you seek a determination from DOS as to whether the prevailing wage occupational classifications of "Laborer" or "Deleader" apply to the dismantling of steel ventilation fans and steels doors, which are coated in lead paint, and to the dismantling of steel reinforced concrete walls which do not contain lead paint. The workers are not responsible for the actual removal of the fans, doors, or walls from the structure, but prepare the materials for removal and perform the clean-up after the materials are removed from the structure by others. You also describe in more detail the following tasks:

1. Workers prepare a poly-plastic containment area around the steel walls and the HEPA fans.
2. Workers spray a chemical on the surrounding area to prevent the release of lead into air-this is done before the fans and walls are removed.
3. Steel fans are removed (Coated in lead paint).

4. Workers crawl inside the ventilation shafts and cut out the fans' dampers with a torch (Damper does not contain lead).
5. Workers cut the steel walls and metal columns surrounding the fans' concrete pads (Wall and columns do not contain lead).
6. Workers stack the dismantled steel pieces in piles, and deposit the pieces into a roll off container located on the ground level, using hoist and pull apparatus.
7. Workers cut up the portions of the reinforced concrete using either a torch or bolt cutter.
8. Workers then collect and remove the broken concrete pieces, which are removed to the ground level using a hoist and pull.
9. Workers sweep up the areas.

The work described above is located in East Boston and I obtained this information through a telephone conversation with you on Wednesday, May 8, 2002.

The Division of Occupational Safety ("DOS") issues prevailing wage schedules, which include occupational classifications and rates of wages, for public works construction projects based on "collective bargaining agreements or understandings in the private construction industry between organized labor and employers." See M.G.L. ch. 149, § 26. The question before us is whether the "Laborers" classification (established by the collective bargaining agreement between The Labor Relations Division of Construction Industries of Massachusetts, Inc. and Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL-CIO, effective June 1, 2000 – May 31, 2004) or the "Deleader" classification (established between the Associated Painting, Decorating & Drywall Finishing Contractors of New England, Inc. and the Painters and Allied Trades District Council #35 Asbestos and Lead Abatement which expires on June 30, 2002) applies to the tasks described above.

Based on a review of the aforementioned collective bargaining agreements, DOS has determined that none of the of the tasks described involves actual deleading work. Therefore, the occupational classification of "Deleader" is not required to be used. The "Laborers" occupational classification may be used for the described dismantling work. It should be noted that while laborers must take precautions when handling lead painted components, the presence of lead does not itself require the use of a deleader unless deleading work is being performed. (See the attached relevant portions of the Building and Site Construction Agreement between Massachusetts Laborers' District Council of the Laborers' International Union of North America AFL-CIO and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc. and Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc.; and the Associated Painting, Decorating & Drywall Finishing Contractors of New England, Inc. and the Painters and Allied Trades District Council #35 Asbestos and Lead Abatement)

If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Ronald E. Maranian
Program Manager

cc: Robert J. Prezioso, DOS Deputy Director
Kathryn Palmer, DOS General Counsel
James F. Snow, Painters and Allied Trades, DC No. 35
Paul J. McNally, Mass. Laborers' District Council