

Prevailing Wage Opinion Letters 05-12-04 –v2

May 12, 2004

Re: Municipal Landfill and Residential Drop-Off Recycling Center; Applicability of the Prevailing Wage Law

This letter responds to your request for a determination on the applicability of the Massachusetts Prevailing Wage Law, G. L. c. 149 §§ 26 - 27F, to the employees of a contractor hired to operate a municipal landfill and residential drop-off recycling center. You have posed this question in a theoretical fashion, without reference to any particular town or bid. Thus this response provides an answer that has no particular applicability to ongoing or future contracts and should be used for guidance purposes only. Accordingly, questions about specific projects should be directed to this office.

In the operation of a municipal landfill and residential drop-off recycling center, contractors would be required to employ workers that perform several different tasks, according to your letter. Those tasks include "gate attendant" (whose responsibilities include directing traffic, checking permits, directing customers to the appropriate containers for waste disposal and recycling, and collecting fees), "equipment operators" (including bulldozer drivers and other heavy equipment operators who move, compact, load, and cover refuse), and "truck drivers" (who transport recyclable materials from the landfill and recycling center to market sites for disposal).

Sections 26 - 27D of the prevailing wage law cover public works construction, with the term construction defined in Section 27D. Given the parameters of that definition, the operation of a municipal landfill and recycling center would not generally fall under the construction sections of the prevailing wage law. Rather, this operation would be contemplated under Section 27F which requires prevailing wage rates to be paid when "a truck or any automotive or other vehicle or equipment is to be engaged in *public works* ..." (emphasis added). The Massachusetts courts, "in construing 'public work' in section 27F, [have given] weight to the role of boards of public works with respect to the activities in question." Perlera v. Vining Disposal Service, Inc., 47 Mass. App. Ct. 491, 495 (1999). See also, Commonwealth v. W. Barrington Company, Inc., 5 Mass. App Ct. 416 (1977). These works "can be, and often are, performed by private contractors using their own employees and equipment rather than by the public labor force using publicly owned equipment." W. Barrington, 5 Mass. App. Ct. at 419. ¹

In theory, contracting for the operation of a municipal landfill and residential recycling drop-off center - functions commonly performed by city or town employees - would fall under the ambit of Section 27F based on the reasoning offered in the Perlera and W. Barrington decisions.

As such, the payment of prevailing wage rates would be required for workers on municipal landfill contracts, provided those workers operate "a truck or any automotive or other vehicle or equipment" as instructed by Section 27F. This would include the "equipment operators" and "truck drivers," but not the "gate attendant" described in your inquiry. ²

If you have any further questions concerning this matter, please do not hesitate to contact Lisa Price, Legal Counsel, or me.

Sincerely
Robert J. Prezioso
Commissioner

¹ We also note that the Massachusetts Appeals Court, in a Rule 1:28 opinion, held that municipal landfill operation is a public work within the meaning of G. L. c. 30, § 39M, the applicable public bidding statute, for

the purposes of that case. Commonwealth v. Town of Pepperell, Memorandum and Order Under Rule 1:28, May 23, 1988.

² We acknowledge that this determination regarding "truck drivers" is contrary to the position taken in the Letter to Oakes, Needham, dated November 1, 1999.