

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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DEPUTY DIRECTOR

June 4, 2002

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

Re: Applicability Determination for Concrete and Soil Density Testing

Dear Ms. Zarbo:

Your letter dated April 19, 2002 to Robert J. Prezioso of the Division of Occupational Safety ("DOS") has been forwarded to me for a response. In your letter you ask DOS to determine whether M.G.L. ch. 149, sections 26-27H apply to workers performing soil and concrete testing at the work site, while construction of a structure is underway. You also seek clarification as to whether the workers should be classified as "field engineers," or some other occupational classification, if the prevailing wage law applies. The projects are located in Arlington, Danvers, and Lexington and I obtained the location information through a telephone conversation with you on Wednesday, May 8, 2002.

I will first address the applicability of the prevailing wage law regarding workers performing soil density testing. You state in your letter that before performing the actual soil density testing, the worker takes a soil sample to a laboratory for determination of the nature of the soil grade (i.e. the "Proctor Number"), in order to ensure that the density testing is performed at the appropriate level. The language in M.G.L. ch. 149, sections 26-27H makes repeated reference to the work site itself by repeatedly using the terms "on" or "upon." Clearly, the expressed purpose of the statute is to cover workers at the work site and, in this case, the work performed at the laboratory is off-site. Prevailing wages do not apply to soil testing performed at an off-site laboratory.

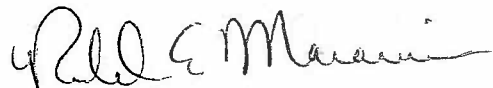
Next, you state that once the Proctor Number is determined by the laboratory, the worker performs two types of soil density testing at the work-site to ensure the suitability of the soil for the excavation. In determining whether prevailing wages apply to on-site soil density testing, we look to M.G.L. ch. 149, section 27D, which states: "...certain work done preliminary to the construction of public works, namely, *soil explorations*, test borings,..." When defining the word explorations as described in M.G.L. ch.149, section 27D, we look to Webster's Unabridged Dictionary (see attached) which describes the word explore as: "...make a first or preliminary study of..." Furthermore, the Black's Law Dictionary (see attached) describes exploration as: "The examination and investigation of land supposed to contain valuable minerals, by drilling, boring, sinking shafts, driving tunnels, and other means, for the purpose of discovering the presence of ore and its extent." Thus, DOS has determined that the prevailing wage law applies to on-site soil density testing since all on-site activities associated with soil exploration are covered.

For the workers who perform concrete testing, you state that there are two types of methods: Concrete Slump Cone Test and Concrete Air Test. By their very nature, the concrete testing work is done on-site while the construction of a structure is underway. Again, DOS has determined that the prevailing wage law applies to concrete testing because it is an essential part of the pouring or installation of concrete.

As for the proper occupational classifications for the on-site work described above, the "Field Engineer" occupational classifications may be used for soil density testing work. (See the relevant portions of the collective bargaining agreement between the Associations-Independent Employers and International Union of Operating Engineers, Local 4E, attached). On-site concrete testing, which is part of concrete installation, is an activity covered by two collective bargaining agreements. (See the relevant portions of the collective bargaining agreement between the Laborers Building and Site Construction Agreement, 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 the Cement Masons agreement, Boston Plasterers and Cement Masons and Asphalt Layers Union Local 534 of the Operative Plasterers and Cement Masons International Association, attached). This overlap between the craft jurisdictions of the Laborers' and the Plasterers and Cement Mason's unions is addressed in the attached letter to your office dated February 21, 2001.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Ronald E. Maranian", written in a cursive style.

Ronald E. Maranian
Program Manager

cc: Robert J. Prezioso, DOS Deputy Director
Kathryn Palmer, DOS General Counsel
William Ryan, International Union of Operating Engineers Local 4E
Paul J. McNally, Mass. Laborers' District Council
Stephen M. Uva, Boston Plasterers' & Cement Masons Local 534