

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

ANGELO BUONOPANE  
Director

ROBERT J. PREZIOSO  
Deputy Director

January 10, 1997

Sharon M. Pelosi, Esq.  
Deputy General Counsel  
Commonwealth of Massachusetts  
Executive Office of Environmental Affairs  
100 Cambridge Street  
Boston, MA 02202

Re: Allens Pond Wildlife Sanctuary Septic System; Prevailing Wage

Dear Attorney Pelosi:

Your letter to Spencer Demetros dated January 7, 1997 (copy attached) concerning the Request For Responses for Construction of an Innovative On-Site Wastewater Disposal System ("RFR") was forwarded to me for a response. In your letter, you request that the Department of Labor and Workforce Development issue a determination on whether the construction of the septic system on property owned by the Massachusetts Audubon Society in South Dartmouth (the "Project") is a "public works construction project" subject to the requirements of the Massachusetts prevailing wage law, Mass. Gen. L. ch. 149, sections 26 through 27H.

The Project clearly falls within the definition of "construction" contained in section 27D. Thus, the issue at hand is whether the construction of the septic system constitutes "public works" for purposes of the statute. Upon review of your letter and the attached RFR, for the reasons set forth below, it is the determination of the Department that the project is not "public works" construction for purposes of the statute and therefore is not subject to the Commonwealth's prevailing wage requirements.

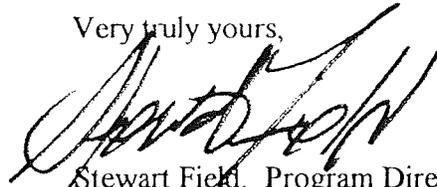
First, the Project will be funded primarily with money provided by the US Environmental Protection Agency. Although the Massachusetts Department of Environmental Protection ("DEP") has some discretion in how to use the money, the fact remains that, as you state in your letter, the funding is federal "pass-through" money which must be used by DEP for purposes specified in the federal grant.

Second, the property on which the Project will be undertaken is owned by the Massachusetts Audubon Society, a private non-profit corporation. Since the septic system at issue will be constructed primarily with federal money for the benefit of a private property owner on privately owned land, it does not appear that the Project falls within the scope of the term "public works" construction for purposes of the Massachusetts prevailing wage law. The fact that the Massachusetts Office of Coastal Zone Management ("CZM") will be the party hiring the contractor to perform the work or that CZM will retain certain rights to the documents generated in conjunction with the Project do not outweigh the aforementioned factors which form the basis of the Department's determination.

This determination is based on the information contained in your January 7 letter and the RFR. If additional facts concerning the Project come to your attention, please notify us immediately so that we may consider such facts in reassessing the determination contained herein.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Stewart Field", written over the typed name.

Stewart Field, Program Director  
MA Div. Of Occupational Safety

cc. Helen Moreschi, Director  
Attorney General's Office of Fair Labor

Spencer Demetros, General Counsel  
MA Dept. Of Labor and Workforce Development