



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF TRANSPORTATION

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BERNARD COHEN
SECRETARY

December 1, 2008

Richard F. Taylor, Chair
Boxford Board of Health
7A Spofford Road
Boxford, MA 01921

Dear Mr. Taylor:

Your letter of November 21, 2008 to Commissioner Luisa Paiewonsky concerning MassHighway's Salt Shed Facility on Topsfield Road has been referred to me for response. It is MassHighway's position that the Boxford Board of Health has no authority to regulate or to issue orders concerning this facility. MassHighway takes its public safety responsibilities very seriously and shall, therefore, continue normal facility operations at the Topsfield Road site.


In Massachusetts "[t]he doctrine of essential governmental functions prohibits municipalities from regulating entities or agencies created by the Legislature in a manner that interferes with their legislatively mandated purpose, absent statutory provisions to the contrary." *Greater Lawrence Sanitary District vs. Town of North Andover*, 439 Mass. 16, 21 (2003). "The scope of the immunity is broad and ... also applies to entity actions that are 'reasonably related' to fulfilling the entity's essential governmental function." *Id.* at 21, 22. These principles have been specifically applied to health laws in *Teasdale v. Newell & Snowling Constr. Co.*, 192 Mass. 440 (1906). The present situation is governed by these precedents.

MassHighway's use and operations of the Topsfield Road facility in support of its winter snow and ice control programs is in furtherance of its essential governmental functions to provide for safe travel of the public on state roads and highways. In undertaking these governmental obligations MassHighway is not subject to local regulation. MassHighway can not cease operations at this facility, as it would seriously jeopardize our ability to maintain safe travel conditions on Interstate 95 and its ramp systems.

MassHighway has attempted to work with the Town of Boxford to address its concerns. In 2005, MassHighway installed an addition to the existing salt storage building so as to conduct all salt loading and offloading activities under cover. This modification alone has resulted in a substantial improvement to the operation. We have replaced many wells where salt impacts from road salt applications on Rte I-95 have been identified and we have commenced design work to replace the existing facility with a state-of-the-art "Cathedral" style structure along with new pavement and onsite drainage. We conduct annual training sessions for salt operations, have instituted low salt zones and monitored application rates, and have added an alternative de-icer to further reduce the amount of sodium chloride in the environment. In light of both these operational improvements and the agency's public safety responsibilities, MassHighway will continue its operations at the Boxford facility. Please note, however, that MassHighway will continue to monitor and improve where possible its salt operations at the facility. If the Boxford Board of Health has additional preventative measures (in lieu of cessation of operations) that do not compromise MassHighway's ability to protect the public, please let me know and they will receive our prompt evaluation.

In the event that Boxford takes action in this matter against MassHighway, MassHighway shall immediately refer the matter to the Office of the Massachusetts Attorney General. I trust this answers any questions you may have as to the position taken by MassHighway in this matter. Please feel free to me call at (617) 973-7813 should you have any further concerns.

Very truly yours,


Monica Conyngham
General Counsel

Cc: Bernard Cohen, Secretary
Luisa Paiewonsky, Commissioner
Frank Tramontozzi, P.E., Chief Engineer
Patricia Leavenworth, P.E., District 4 Director
Kevin Walsh, Director of Environmental Services
Thomas Loughlin, P.E., Director of Highway Operations
Boxford Board of Selectmen
Boxford Town Counsel