



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

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March 26, 2013

Kenneth Kimmell, Commissioner
Elizabeth Callahan, Acting Division Director of Policy and Program Planning
Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street, 6th Floor
Boston, MA 02108

Dear Commissioner Kimmell and Acting Director Callahan:

The City of New Bedford commends MassDEP on the breadth and comprehensiveness of the review of and proposed revisions to 310 CMR 40.0000 – the Massachusetts Contingency Plan (MCP). MassDEP's acknowledgement that storied industrial cities like New Bedford face different challenges than our younger, more rural neighbors is crucially important as we continue to set priorities that promote the health and safety of our citizens, visitors, and business partners. We believe that the planned reforms will enhance the efficiency and streamline the process of Brownfield redevelopment. At the same time, we appreciate that MassDEP will continue to hold responsible parties' feet to the fire to require real demonstration that sites truly represent *No Significant Risk* before they can claim a permanent solution; and that conditions required to maintain a Permanent Solution are upheld. Several areas of focus in the proposed regulatory changes are of particular import to New Bedford.

The inclusion of historic fill as anthropogenic background is essential to the evolution of the MCP in our Commonwealth, home to many of the nation's oldest industrial centers, including New Bedford. Relief from the requirement to conduct response actions in legitimate areas of historic fill provides greater flexibility in planning and better allows limited financial resources to be prioritized based on need.

Secondly, requiring the utilization of actual analytical data collected at exposure points to evaluate vapor intrusion will undoubtedly result in greater confidence that remedial goals have been achieved. Although modeling can be a valuable tool to assist with predicting fate and transport potential, it should not be used to replace actual data where practicable. The City is committed to working with MassDEP to encourage private property owners to participate in these investigations where warranted to identify and mitigate potential vapor intrusion issues.

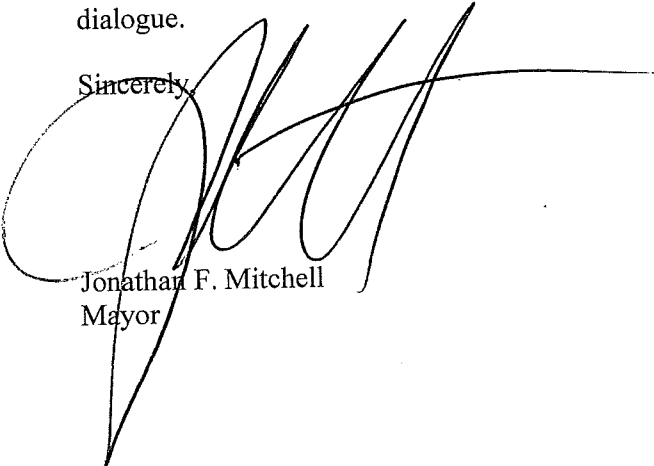
Thirdly, the modifications to Risk Assessment and MCP Standards are essential to maintain consistency with other agencies and again, to ensure that the cost and efforts put into response actions appropriately focus on true health and safety factors. The scope of these changes demonstrates careful and thorough review, as well as MassDEP's openness to adjust each risk endpoint in the most appropriate direction.

Lastly, the City greatly appreciates efforts to streamline and clarify the Activity and Use Limitation and regulatory closure processes. The straightforward descriptions will increase the level of understanding by current and future property owners and underscore the ongoing requirement for use limitations or other conditions necessary to maintain a level of No Significant Risk.

In anticipation of upcoming proposed changes to 310 CMR 4.00 which sets MCP fee requirements, I urge MassDEP to examine municipalities' growing role in performing response actions on properties where contamination is the result of historic uses under prior ownership. The City of New Bedford continues to expend considerable financial resources to secure and perform response actions on properties acquired through various mechanisms (such as tax title). Proposed MCP reforms will likely result in a greater number of initial Tier 1 site classifications due to the default inclusion of sites with conditions that require Immediate Response Actions, as well as Critical Exposure Pathway and Imminent Hazard conditions. Potential fee increases for Tier I or Tier II sites would substantially impact the City's ability to maintain compliance. In these cases where the City has not caused or contributed to contamination, we urge the consideration of waiving compliance fees as part of future 310 CMR 4.00 reform.

The reform of 310 CMR 40.0000 will enhance the Commonwealth's voluntary cleanup program through increased efficiency and clarity of process. On that basis, I support the intent of these changes and MassDEP's pending promulgation. Thank you for the opportunity to contribute to this most important dialogue.

Sincerely,



Jonathan F. Mitchell
Mayor