

CITY OF



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MASSACHUSETTS

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Department of Environmental Protection
Bureau of Waste Site Cleanup
1 Winter Street, 6th Floor
Boston, MA 02108

Attention: Elizabeth Callahan

***Re: Comments on Public Hearing - Draft - Proposed Amendments to
the Massachusetts Contingency Plan, 310 CMR 40.0000***

Dear Ms. Callahan:

On behalf of the Mayor's Brownfields Task Force, we are pleased to have this opportunity to comment on the Department's proposed changes to the Massachusetts Contingency Plan, 310 CMR 40.0000, *et seq.* ("MCP"). The Mayor's Brownfields Task Force applauds the Department for its initiative to make many changes that, from our perspective, will facilitate and streamline site cleanup activities and thereby redevelopment of Brownfields sites located in the City of Worcester.

The Mayor's Brownfields Task Force was initially formed in 2002 under the direction of then Mayor, now Lt. Governor, Timothy P. Murray. It consists of professionals with strong interest in promoting and developing Brownfields sites in the City of Worcester. The Task Force comprises City administration, LSPs, developers, attorneys, lenders, non-profit organizations, colleges and universities, along with representatives from the Department's Bureau of Waste Site Cleanup, Central Regional Office and MassDevelopment. We routinely meet to discuss and address Brownfields opportunities and impediments. Our goals are to promote the reproductive use of abandoned and underutilized Brownfields sites; provide additional job opportunities, increase the tax base; improve the quality of life for residents in surrounding neighborhoods; maximize leveraging opportunities from both private and public funding; and educate private developers, lending institutions, the real estate community, and the non-profit sector on Brownfields site development opportunities, financing mechanisms, and liability relief tools. Our accomplishments include the establishment of the Brownfields "Coordinator" position within the City Manager's office; encouragement and support for legislative and regulatory

changes, including asbestos and lead abatement funding through MassDevelopment pilot projects, BRAC funding, and prior MCP amendments (including recognition of naturally occurring arsenic in Worcester area soils); and support for amendments to the Brownfields Covenant Not to Sue Program. Over the past 10 years, the Mayor's Brownfields Task Force has also provided several educational programs and sponsored meetings with State Legislators on Brownfields issues impacting the City.

We commend the Department for its initiative in making these changes. First, we support the use of new terms to designate the type of site closure required for MCP sites by replacing "response action outcome" ("RAO") with "permanent solution," "permanent solution with conditions" and "temporary solution". The use of plain, simple and descriptive wording will allow the public, financing institutions, future property owners, and developers unfamiliar with "MCP jargon" to readily understand the outcome of cleanup activities. It also dovetails with the statutory language of Chapter 21E, where the term RAO is nowhere to be found, and will allow parties to recognize when the liability protections afforded to eligible persons for "permanent solution" sites will occur. We do, however, question how the new terms "permanent solution" and "permanent solution with conditions" will be treated by the Department of Revenue ("DOR") for the purpose of Brownfields Tax Credits, an important component of Brownfields development. We urge the Department to work with the DOR to assure, consistent with DOR's Brownfields Tax Credit program, that the 50% tax credit on eligible costs for response actions will be applicable to "permanent solutions with conditions" where there is a no activity and use limitation ("AUL").

Second, we support the Department's changes to define and include historic fill within the definition of anthropogenic background so as to allow sites with historic fill to reach closure with conditions, with or without an AUL. One impediment to facilitating such closure we see is in the definition of historic fill; it includes the words "not a result of illegal disposal of waste material." We think the Department needs to provide clarity as to what is meant by "illegal" disposal. Alternatively, we believe that it may be better to drop this sub-clause from the definition of historic fill. Similarly, we support the Department's regulatory changes that will allow for site closure at non-aqueous phase liquid ("NAPL") sites, where separate phase petroleum is found in soil and ground water. These sites, many of which are in urban areas including Worcester, have not been able to achieve a permanent solution. We hope that the proposed changes will now allow those sites with "stable" (non-recoverable) NAPL to finally reach closure. We also believe that the Department should reconsider the one-eighth ($\frac{1}{8}$) inch NAPL criteria as a 72-hour notification condition. In addition, we suggest that the Department reevaluate the draft source control provisions. Finally, we believe that the upper concentration limits are protective and therefore recommend deleting the 1% solubility rule.

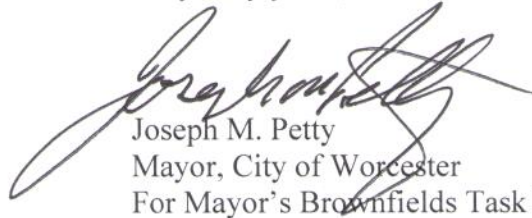
Third, we commend the Department for seeking mechanisms to close sites where vapor intrusion is or may be present from soil or groundwater migrating to indoor air in overlying buildings. We know this is a very complicated area and appreciate that the Department recognizes a need to for vapor intrusion sites to reach closure, which is problematic in the current regulatory framework.

Finally, we support the Departments streamlining effort to eliminate permitting requirements for Tier 1 sites, eliminate the numerical ranking system and replacing it with simple "Tier 1 Criteria," and simplifying the AUL submittals and documentation necessary to record an AUL. In response to the Department's request for comments on the metes and bounds description in the AUL, we see no need for a "certification," which could only be provided by a registered surveyor, and recommend no change to this component of the AUL regulations.

The Mayor's Brownfields Task Force recognizes that others, especially LSPs and developers with expertise in the application of MCP requirements to sites, will be providing detailed comments. We urge the Department to consider those comments toward assuring that the final regulatory package carries out the Department's goal to facilitate the prompt cleanup of sites, but at the same time maintaining a high standard of environmental protection. We believe that by doing so the Department will be able to issue final regulations consistent with the goals of the Department's regulatory reform and the Mayor's Brownfields Task Force: streamlining the redevelopment of Brownfields sites.

Thank you for your consideration of these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph M. Petty", is written over the typed name and title.

Joseph M. Petty
Mayor, City of Worcester
For Mayor's Brownfields Task Force