



The Commonwealth of Massachusetts
Office of the Inspector General

GREGORY W. SULLIVAN
INSPECTOR GENERAL

JOHN W. MCCORMACK
STATE OFFICE BUILDING
ONE ASHBURTON PLACE
ROOM 1311
BOSTON, MA 02108
TEL: (617) 727-9140
FAX: (617) 723-2334

April 3, 2007

John Cogliano
Chairman
Massachusetts Turnpike Authority
Ten Park Plaza, 4th Floor
Boston, MA 02116

Dear Chairman Cogliano:

Last year's roadway fatality resulting from the ceiling collapse on the relatively new approach to the Ted Williams Tunnel has raised questions about who is responsible for inspection and maintenance of the covered portions of the Metropolitan Highway System (MHS). For the newer Central Artery/Tunnel Project portions of the MHS, this responsibility rests with either the Turnpike Authority or the Highway Department. However, there are various older sections of covered roadway that are not part of the Central Artery/Tunnel Project. These sections are the responsibility of the Turnpike Authority.

The engineering reviews and inspections that took place after last year's ceiling collapse (the so-called "Stem-to-Stern" review) did not address these older roadway sections that are the sole responsibility of the Turnpike Authority. As a result, my office has looked into the various maintenance and inspection agreements that the Turnpike Authority has had in place (some for decades) for these covered roadway sections.

These roadway sections are covered by air-rights agreements. In other words, these roadway sections have a roof and/or a ceiling (also known as deck) because private parties have purchased or leased the rights above the roadway for development purposes (except for the roadway under the Prudential Building which is an easement from Prudential to the Authority for the construction of the roadway). These private parties design and build the decks after Turnpike Authority approval. In most cases, these decked roadways involve maintenance and inspection by private parties and not the Turnpike Authority. These maintenance and inspection responsibilities may include roof, ceiling, lighting, ventilation, building supports, utilities and other below-ground components.

My office wants to ensure that the Turnpike Authority has iron-clad assurances from these private parties that on-going inspections and maintenance will prevent a calamity similar to last year's fatal accident.

The Turnpike Authority has agreements in place for the following covered or soon to be covered roadways:

- Shaw Supermarket (formerly Star Market) Overpass - Newton
- Sheraton Hotel Overpass – Newton
- Central Artery North Area (CANA) Tunnel Parcel 2– Charlestown
- CANA Parcel 4 – Charlestown
- Urban Investment and Development (a.k.a Copley Square) - Boston
- Prudential Center – Boston
- Copley Marriot Hotel – Boston
- Copley Westin Hotel - Boston
- John Hancock Insurance - Boston
- Columbus Center (5 agreements) - Boston (for future deck)

In most cases, the air-rights lessee or tenants of the lessee are responsible for the maintenance and inspection of the decks and other components. The only exception is the Prudential lease which, according to the Turnpike Authority, is ambiguous concerning this responsibility. Although, by agreement, the Turnpike Authority has a right to inspect (with the exception of the Prudential lease that does not grant this right), the responsibility rests with the lessees. Turnpike staff informed this office that the Authority has no legal obligation to inspect or to identify problems with these decks when an air-rights party is involved. However, the Turnpike Authority has “enforceable rights” regarding inspection, maintenance, and repair.

My office wished to know whether, regardless of any legal obligation, the Turnpike Authority knew if the lessees inspected and maintained the roadway decks. Apparently, the Turnpike Authority has recently begun working on inspection protocols with the lessees. Currently, the Turnpike Authority does not know when or by whom the decks are inspected and has no say in who makes any needed repairs unless the Turnpike Authority mandates inspection or repairs in the face of a clear safety issue.

Another legal issue that needs to be addressed by the Authority is whether this current lessee inspection system satisfies the Authority's bond covenants. These covenants require that the Turnpike Authority hire independent consultants to inspect the “Accepted Metropolitan Highway System and any Extension . . . at least every three Fiscal Years.” If these air-rights roadway sections are covered by these covenants then not knowing when or by whom the decks are inspected could be a significant issue for the Authority.

My office is requesting that the Turnpike Authority do the following:

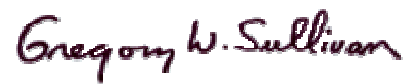
- 1) Complete the above mentioned inspection protocols – including inspection schedules, uniform reporting, and minimum professional requirements for the inspection firms. Please provide this office with a copy as soon as practicable but no later than July 15, 2007.
- 2) Complete a legal review of the bond covenants and/or bond trust agreements regarding the implications of the current inspection system.
- 3) If warranted and required by bond covenants and/or bond trust agreements, arrange for the inspection of these sections as soon as possible by Turnpike Authority staff or by consultants in the Authority's employ.
- 4) Identify all insurance coverage maintained by the lessees for roadway protection and evaluate the adequacy of this coverage.
- 5) Negotiate with lessees for additional insurance coverage if deemed necessary.
- 6) Investigate the need for creating maintenance reserve accounts under current lease agreements. At present, only the pending Columbus Center lease agreement mandates a lessee maintenance reserve fund.
- 7) Ensure that added costs are not borne solely by the tollpayers and that the developer shares in these costs. The Columbus Center lease agreement will create the need for an estimated \$10 million in system upgrades between the Hancock and Copley parcels. These upgrades are necessary because, in effect, a lengthy tunnel will be created where it was not previously envisioned. Integrated tunnel systems will be needed to replace the current multiple mismatched systems that are in place.
- 8) Ensure that maintenance costs never exceed the reserve payments to be made by Columbus Center lessees. In particular, the payments made by the residential condominium owners need to be monitored. In the event of non-payment or default, the Authority may need to take possession of these condominium units. The Authority should have adequate oversight to ensure that this does not become necessary.

Even if not legally or financially responsible for the inspection and maintenance of these covered roadways, this office believes that the Turnpike Authority still has a responsibility to actively ensure that the motorists are protected. Public safety should remain an Authority priority regardless of where the legal liability rests.

John Cogliano
April 3, 2007
Page 4 of 4

Thank you for addressing these matters. We look forward to your response. If we may be of further assistance, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Gregory W. Sullivan". The signature is written in a cursive, slightly slanted style.

Gregory W. Sullivan
Inspector General

cc: Attorney General Martha Coakley
Treasurer Timothy Cahill