

MEMORANDUM OF AGREEMENT  
BY AND BETWEEN  
THE MASSACHUETTS DEPARTMENT OF LABOR STANDARDS  
AND  
THE MASSCHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION  
REGARDING  
COORDINATION OF ASBESTOS PROGRAMS

I. PARTIES

The Parties to this Memorandum of Agreement (“Agreement”) are the Commonwealth of Massachusetts, Department of Labor Standards of the Executive Office of Labor and Workforce Development (“DLS”), 19 Staniford Street, 2<sup>nd</sup> Floor, Boston, Massachusetts 02114, acting by and through its Director Heather Rowe, and the Commonwealth of Massachusetts, Department of Environmental Protection (“MassDEP”) of the Executive Office of Energy and Environmental Affairs, One Winter Street, Boston, Massachusetts, 02108, acting by and through its Commissioner David W. Cash.

WHEREAS DLS and MassDEP have operated cooperatively to coordinate their respective programs regulating asbestos, for DLS, under M.G.L. c. 149, §6A *et seq.* and 453 CMR 6.00, and, for MassDEP, under M.G.L. c. 111, §142A, *et seq.* and 310 CMR 7.15, including the establishment and maintenance of an electronic notification system that serves the needs of both agencies;

WHEREAS said coordination has promoted and furthered the achievement of the goals held by each department to protect workers, the general public and the environment;

WHEREAS DLS and MassDEP have identified additional opportunities for coordination that will enhance the protection of worker safety, public health, public safety and the environment;

NOW, THEREFORE, WITNESSETH in consideration of mutual covenants herein contained, the Parties agree as follows:

II. PURPOSE

This Agreement formalizes coordination between DLS and MassDEP to promote compliance with the DLS and MassDEP regulations relative to asbestos, to promote an integrated Commonwealth asbestos management program, and to further the protection of worker safety, public health, public safety and the environment.

### III. AUTHORITY

M.G.L. c. 149, §6A *et seq.* was enacted in 1986. It gives DLS the authority to:

- “monitor, inspect and investigate” asbestos work; (section 6A)
- license persons firms and corporations who engage in “removal, containment or encapsulation of asbestos”; (section 6B)
- “Promulgate rules and regulations relative to the protection of the general public and the occupational health and safety of workers engaged in the use, handling, removal or disposal of asbestos...” (section 6C); and
- Respond to violations through cease and desist orders or penalties (sections 6E and 6F).

DLS’s asbestos regulations can be found at 453 CMR 6.00. The regulations cover:

- Licensure and certification of persons, firms and corporations who engage in removal, containment or encapsulation of asbestos;
- Training requirements for persons, firms and corporations for licensure and certification;
- Recordkeeping;
- Notification to the Commonwealth;
- Work practices;
- Worker protection; and
- Enforcement.

The Massachusetts Clean Air Act, M.G.L. c. 111, §142A, *et seq.*, was first enacted in 1954. Under this statute, MassDEP is granted very broad authority to “adopt regulations” to “prevent pollution or contamination of the atmosphere.” M.G.L. c. 111, §142A.

In 1976, the U.S. Environmental Protection Agency delegated authority to MassDEP to implement the federal Asbestos NESHAP at 40 CFR part 61. This delegation has been updated several times subsequently as federal and state rules have evolved.

MassDEP’s asbestos regulations can be found at 310 CMR 7.15. The regulations include requirements that implement the federal Asbestos NESHAP for building demolition and renovation activities in the Commonwealth, and cover:

- Notification to the Commonwealth of asbestos abatement activities;
- Surveys of facilities for material containing asbestos;
- Required asbestos abatement work practices to prevent the release of asbestos into the environment;

- Establishment of performance standards (“no visible emissions”, prevention of “conditions of air pollution” from asbestos abatements);
- Handling and disposal of Asbestos-Containing Waste Materials (including material containing less than 1% asbestos); and
- Enforcement.

MassDEP also administers the solid waste disposal program in Massachusetts, including management of Asbestos-Containing Waste Material as a “Special Waste”, pursuant to M.G.L. c. 111, § 150A, and 310 CMR 19.000, in particular, 310 CMR 19.061.

#### IV. AGREEMENT

##### A. NOTIFICATION

MassDEP has established an on-line system through which regulated parties can submit Asbestos Notification Forms required under either 453 CMR 6.00 or 310 CMR 7.15. MassDEP uses its information technology resources to maintain this system, which quickly updates the list of summaries of submitted notifications on MassDEP’s website, for use by both agencies.

DLS agrees to notify MassDEP of any amendments to 453 CMR 6.00 that would require revisions of the on-line system for submittals of Asbestos Notification Forms with sufficient advance notice to allow the on-line form and data management system to be updated as necessary.

##### B. NOTICES OF DLS WAIVERS AND MassDEP NON-TRADITIONAL WORK PRACTICES APPROVALS

DLS and MassDEP agree to identify points of contact in their Headquarters and Regional Offices, and to copy the other agency on correspondence issued after the effective date of this Memorandum of Understanding that approves or denies any new applications for waivers issued under 453 CMR 6.01(4) or applications for Non-Traditional Asbestos Abatement Work Practice Approvals issued under 310 CMR 7.15(14).

Attachment A lists the identified points of contact for each agency. Notifications to MassDEP will be sent to the point of contact in the appropriate regional office, with a copy to the point of contact for Headquarters (Boston). Notifications to DLS will be sent to: Brian Wong, Manager of Investigations and Enforcement, 19 Staniford Street, 2<sup>nd</sup> Floor, Boston, MA 02114.

In the event that the responsibilities of a point of contact are re-assigned to a different member of the agency's staff, the re-assigning agency will notify the other agency of this change and update Attachment A.

#### C. TRAINING

DLS and MassDEP agree to coordinate on the preparation of topics to be included in curricula by certified training providers. These curricula should reflect any amendments to 453 CMR 6.00 or 310 CMR 7.15 that have been promulgated, and may also include information about commonly observed violations of either DLS's or MassDEP's regulations. MassDEP agrees to provide outlines of amendments of MassDEP regulations to DLS, and to assist DLS in the preparation of outreach materials for certified training providers.

#### D. OUTREACH

DLS and MassDEP agree to coordinate on preparing outreach materials for owners and operators of buildings in which demolition and renovation activities may need to comply with 453 CMR 6.00 and 310 CMR 7.15, and in conducting meetings with program stakeholders about regulatory compliance, including outreach to homeowners.

#### E. ENFORCEMENT

DLS and MassDEP agree to exchange information through the Agency attorneys about regulated parties who have committed multiple and/or significant violations of their Agency's respective regulations, to explore the possibility of initiating coordinated enforcement actions administratively or by joint referral to the Office of the Attorney General of Massachusetts. DLS and MassDEP also agree to discuss matters of enforcement policy as cases arise where the establishment of coordinated approaches may assist DLS and/or MassDEP in the effective enforcement of their respective regulations.

DLS will provide MassDEP with copies of correspondence informing asbestos contractors of final actions suspending or revoking their license, and with copies of penalty assessments. MassDEP will provide DLS with copies of final enforcement orders and penalty assessments.

#### F. CONFIDENTIALITY OF DOCUMENTS

DLS and MassDEP agree to keep documents exchanged in discussions of enforcement policies and enforcement actions (as referenced in Section IV.E above) confidential, and to refrain from disclosing them to the extent allowed by law. While the general rule is that documents held by public agencies are public records, documents relating to potential or completed enforcement actions may be exempt from the Public Records Law pursuant to M.G.L. c. 4, § 7(26)(d) (“deliberative process materials”), M.G.L. c. 4, § 7(26)(e) (“personal notebook exemption”), M.G.L. c. 4 § 7(26)(f) (“investigatory exemption”), or any other applicable exemption in statutes or case law from disclosure of public records.

In addition, in any discussion of potential referrals of enforcement cases to the Office of the Attorney General of Massachusetts, as referenced in Section IV.E above, DLS and MassDEP agree to keep documents exchanged in such discussion confidential, and from disclosure to the extent allowed by applicable exemptions from the Public Records Law and/or because they fall under the attorney client privilege, applicable work product privileges and/or any other applicable exemption in statute or case law.

DLS and MassDEP agree to take reasonable steps to ensure that the documents are not shared with any other party, other than the Office of Attorney General with respect to referrals to that office, to the extent authorized by law. Such reasonable steps shall include but not be limited to segregating the documents in confidential files separate from public review files, and limiting circulation of such documents within each agency.

## V. IMPLEMENTATION REVIEW

DLS and MassDEP agree to jointly review program operations annually or more frequently as needed, to identify needs for revisions of program requirements, policies, protocols, etc., and to identify reasonable opportunities for improvement.

## VI. MODIFICATIONS

The terms of this Agreement may only be modified by written agreement or amendment signed by both Parties.

## VII. TERMINATION

This Agreement may be terminated by either Party, with or without cause, upon written notice to the other Party provided at least thirty (30) calendar days in advance of the date of termination.

## VIII. ENTIRE AGREEMENT

This Agreement represents the entire understanding of the Parties. The Parties acknowledge that they are not and will not rely upon any representation not contained herein that affects the terms, conditions or scope of services of this Agreement.

## IX. SEVERABILITY

If any part of this Agreement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

## X. NOTICE

Any notice given pertaining to this Agreement other than the notices required by Section IV.B and by Section IV.E above shall be sent in writing, by hand delivery or first class mail, to the following representatives of the Parties:

If to DLS:

Heather Rowe, Director  
Department of Labor Standards  
19 Staniford Street, 2<sup>nd</sup> Floor  
Boston, MA 02114

And to:

Brian Wong, Manager of Investigations and Enforcement  
Department of Labor Standards  
19 Staniford Street, 2<sup>nd</sup> Floor

Boston, MA 02114

And to:

Jean Zeiler, General Counsel, DLS  
Department of Labor Standards  
19 Staniford Street, 2<sup>nd</sup> Floor  
Boston, MA 02114

If to MassDEP:

David W. Cash, Commissioner  
Department of Environmental Protection  
One Winter Street  
Boston, Massachusetts 02108

And to:

Greg Cooper, Director, Business Compliance Division  
Department of Environmental Protection, Bureau of Waste Prevention  
One Winter Street  
Boston, Massachusetts 02108

And to:

Laurel Mackay, Chief Bureau Counsel, BWP  
Office of the General Counsel  
Department of Environmental Protection  
One Winter Street  
Boston, Massachusetts 02108

Either party may change a notice recipient by providing prior written notice of such change to the other party.

XI. GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

The parties herein have read the above terms and conditions and hereby agree and approve same to be effective on the last date of signature below.

<p>MASSACHUSETTS DEPARTMENT OF LABOR STANDARDS</p> <p>This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.</p>	<p>MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION</p> <p>This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.</p>
<p>Heather Rowe Director Department of Labor Standards 19 Staniford Street, 2<sup>nd</sup> Floor Boston, Massachusetts 02114</p> <p>Date: _____</p>	<p>David W. Cash Commissioner Department of Environmental Protection One Winter Street Boston, Massachusetts 02108</p> <p>Date: _____</p>

ATTACHMENT A

AGENCY POINTS OF CONTACT FOR NOTICES OF APPROVED AND DENIED  
 WAIVERS AND NON-TRADITIONAL ASBESTOS ABATEMENT WORK  
 PRACTICES (PARAGRAPH IV.B) AND FOR ENFORCEMENT ACTIONS  
 (PARAGRAPH IV.E)

<b>DLS</b>		<b>MassDEP</b>	
Headquarters	Brian Wong, Manager of Investigations and Enforcement 19 Staniford Street, 2 <sup>nd</sup> Floor Boston, MA 02114 617-626-6961	Headquarters	Greg Cooper Director, Business Compliance Division, Bureau of Waste Prevention, 1 Winter St. Boston, MA 02108 617-292-5988
Haverhill Office	Garry Pharris, Inspector 4 Summer Street Room 212 Haverhill, MA 01830 978-372-9797	Region 1 (Northeast)	John MacAuley, Environmental Analyst 205B Lowell St., Wilmington, MA 01887 978-694-3262
New Bedford Office	Avelina Correia, Inspector 1213 Purchase Street, 2nd Floor New Bedford, MA 02740 Phone: 508-984-7718	Region 2 (Southeast)	Cynthia Barans, Environmental Analyst 20 Riverside Drive Lakeville, MA 02347 508-946-2887
Westborough Office	Michelle O’Leary, Inspector Hadley Building 167 Lyman Street Westborough, MA 01581 Phone: 508-616-0461	Region 3 (Central)	Gregg Levins, Environmental Analyst/Strike Force Supervisor 627 Main Street Worcester, Massachusetts 01608 978-767-2768
Springfield Office	Jared Saunders, Inspector 165 Liberty Street Springfield, MA 01103 Phone: 413-781-2676	Region 4 (Western)	Marc Simpson, BWP Permit Section Chief 436 Dwight Street Springfield, MA 01103 413-755-2115