



October 16, 2019

Elizabeth Callahan
Acting Division Director
Policy and Program Planning Bureau of Waste Site Cleanup
Massachusetts Department of Environmental Protection
One Winter Street
Boston, Massachusetts 02108

Re: Proposed Revisions to 310 CMR 40.0000

Dear Ms. Callahan:

As you are aware, the Massachusetts Department of Environmental Protection (MassDEP) is currently in the process of revising the Waste Site Cleanup Regulations (310 CMR 40.000). The proposed amendments regarding the requirement that a Financial Assurance Mechanism be in place for a site which has implemented an Engineered Barrier as part of site closure under a Permanent Solution Statement include revisions at 310 CMR 40.0996(7)(a)7, and 310 CMR 40.0996(7)(c). The revisions at 310 CMR 40.0996(7)(a)7, and 310 CMR 40.0996(7)(c), would serve to codify the guidelines in the *MassDEP's Draft Guidance on the Use, Design, Construction, and Monitoring of Engineered Barriers*, dated November 2002, that allows for alternative financial mechanisms, other than those included in the Massachusetts Hazardous Waste Regulations (310 CMR 30.000) at 310 CMR 30.906, *Financial Assurance for Post-Closure Care*, to be considered for governmental facilities and/or public or private entities as it is difficult for state agencies and authorities to implement the financial assurance mechanisms allowed under 310 CMR 30.906.

The proposed amendment to 310 CMR 40.0996(7)(a)7, and 310 CMR 40.0996(7)(c) would allow alternative financial assurance mechanisms to be utilized when an Engineered Barrier is implemented, for any state agency or state authority in the form of an executed agreement between the state agency or state authority and the MassDEP that documents their commitment to the maintenance or repair of the Engineered Barrier.

The Worcester Regional Transit Authority (WRTA) is deemed a 'body politic and corporate and a political subdivision of the commonwealth' pursuant to the provisions of G.L. c. 161B, sec. 2 and seeks to safeguard the interests of its member municipalities. The WRTA urges the MassDEP to expand the proposed allowance of alternative financial assurance mechanisms to include regional entities, such as the WRTA, as well as municipalities, and not limit such allowance to "any state agency or state authority" as the exemption as current proposed would not include regional entities and municipalities.

Communities Served:

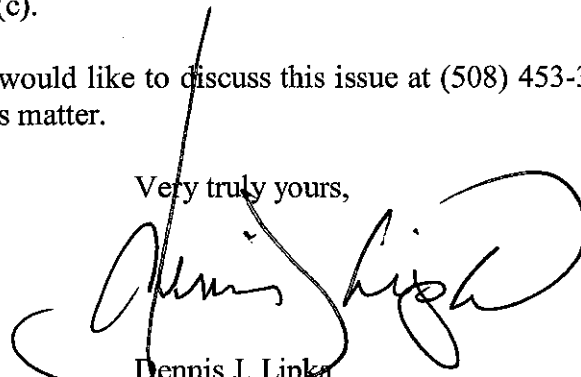
Auburn	Brimfield	Douglas	Grafton	Millbury	North	Paxton	Southbridge	Wales	West Boylston
Barre	Brookfield	Dudley	Holden	New Braintree	Brookfield	Princeton	Spencer	Warren	West
Berlin	Charlton	East	Holland	Northborough	Oakham	Rutland	Sturbridge	Webster	Brookfield
Boylston	Clinton	Brookfield	Leicester	Northbridge	Oxford	Shrewsbury	Sutton	Westborough	Worcester

Regional entities and municipalities are similarly situated as state agencies and authorities, as they are both supported through state and local funding, and both have the same difficulties in the implementation of the types of financial assurance mechanisms available to the private sector. The distinction between state agencies and authorities and regional or municipal entities through the limitation in this allowance creates an unnecessary burden upon regional and municipal entities without any apparent basis.

The WRTA recently remediated a former Manufacture Gas Plant cleanup site and built a new Vehicle Maintenance Facility which utilized an Engineered Barrier as a mechanism for site closure. The new facility will help to ensure a reliable public transportation system for the community, and its construction ensured the remediation of a significant release site and the elimination of an eyesore at the gateway to the City of Worcester. This project was championed at the local, state, and federal levels as a benefit to the City and the Commonwealth. The requirement that the WRTA utilize the financial assurance mechanisms listed in 310 CMR 30.906 (Post-Construction Trust Fund, Surety Bond guaranteeing payment into a Post-Construction Trust Fund, Surety Bond guaranteeing performance of post-construction care, Post-Construction Letter of Credit, and/or Post-Construction Insurance) would be onerous for WRTA to implement. An executed agreement between the WRTA and the MassDEP documenting their commitment to the maintenance or repair of the Engineered Barrier would be much easier, less costly to implement, and serve the same purpose. This project alone points to the need to expand the applicability of the proposed allowance in 310 CMR 40.0996(7)(a)7 and 310 CMR 40.0996(7)(c).

Please feel free to call me if you would like to discuss this issue at (508) 453-3403. Thank you for your time and consideration in this matter.

Very truly yours,



Dennis J. Lipka
Administrator

CC: Mark R. Reich, Esq. – KP Law
Chris McDermott – TRC
Jamie Stapleton – TRC