



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J. F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203

Site: <u>New Bedford</u>
Break: <u>4.1</u>
Other: _____

1-7-87



SDMS DocID 000200829

Thomas F. McLoughlin, Deputy Commissioner
Executive Office of Environmental Affairs
Department of Environmental Quality Engineering
Division of Solid and Hazardous Waste
One Winter Street
Boston, Massachusetts 02108

Dear Commissioner McLoughlin:

Thank you for your letter of November 13, 1986 setting out your comments on the preliminary proposal for the pilot program to demonstrate the feasibility of dredging and disposal of contaminated sediments in New Bedford Harbor. Your support of this project is both welcome and essential. As you are undoubtedly aware, our staffs have continued to work closely to further develop and refine the pilot proposal.

In this regard, your staff has asked us to set forth the requirements of the Superfund program, as amended by the 1986 Superfund Amendments and Reauthorization Act (SARA), concerning compliance of response actions undertaken by the Superfund Program with state permitting requirements, particularly as they may affect the pilot program and subsequent cleanup actions being considered for the New Bedford Harbor site. The provisions of the new statute can be simply summarized as requiring that remedies comply with applicable or relevant and appropriate state standards which are substantive in nature, but, with respect to on-site disposal remedies, not with state procedural requirements. Off-site transport of hazardous substances is the least preferred alternative, and it is required to utilize permitted facilities. In certain circumstances, the substantive requirements for on-site remedies may be waived.

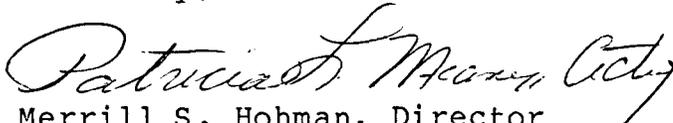
Section 121 of SARA contains the provisions relevant to the application of state requirements. Relevant excerpts from section 121 are enclosed with this letter.

In respect to the New Bedford site, we are already working together with state personnel to determine the applicable and relevant and appropriate state standards. We will need to work closely with your staff to evaluate the various alternatives under consideration in light of the various state substantive standards, and assure the ultimate selection of a remedy or remedies which will either comply with the state's standards, or satisfy the requirements of

SARA set forth above for a remedy which does not comply. However, we will not need to file permit applications and follow the permitting procedures if an on-site remedy is chosen. Instead, we will follow the existing process for a Remedial Investigation/Feasibility Study and a Record of Decision under the National Contingency Plan.

If you have any further questions concerning the application of SARA to the New Bedford site, please feel free to contact Charles Bering, in our Office of Regional Counsel, at 565-3445.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia S. Merrin".

Merrill S. Hohman, Director
Waste Management Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: January 6, 1987

SUBJECT: Provisions in SARA Relating to Compliance with State Standards

FROM: ^{CCB} Charles Bering, Office of Regional Counsel
THRU: Pam Hill, Office of Regional Counsel

TO: Frank Ciavattieri, Superfund

The relevant provisions of SARA § 121 are as follows:

(d) Degree of Cleanup....

"(2)(A) With respect to any hazardous substance, pollutant or contaminant that will remain onsite, if ---

"(i) any standard, requirement, criteria, or limitation under any Federal Environmental Law, including, but not limited to, the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, the Marine Protection, Research and Sancturaries Act, or the Solid Waste Disposal Act; or

"(ii) any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation, including each such State standard, requirement, criteria, or limitation contained in a program approved, authorized or delegated by the Administrator under a statute cited in subparagraph (A), and that has been identified to the President by the State in a timely manner,

is legally applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 104 or secured under section 106 shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable or relevant and appropriate standard, requirement, criteria, or limitation

"(2)(C)(i) Clause (ii) of this subparagraph shall be applicable only in cases where, due to the President's selection, in compliance with subsection (b)(1), of a proposed remedial action which does not permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances, pollutants, or contaminants, the proposed disposition of waste generated by or associated with the remedial action selected by the President is land disposal in a State referred to in clause (ii).

"(ii) Except as provided in clauses (iii) and (iv), a State standard, requirement, criteria, or limitation (including any State siting standard or requirement) which could effectively result in the statewide prohibition of land disposal of hazardous substances, pollutants, or contaminants shall not apply.

"(iii) Any State standard, requirement, criteria, or limitation referred to in clause (ii) shall apply where each of the following conditions is met:

"(I) The State standard, requirement, criteria, or limitation is of general applicability and was adopted by formal means.

"(II) The State standard, requirement, criteria, or limitation was adopted on the basis of hydrologic, geologic, or other relevant considerations and was not adopted for the purpose precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment.

"(III) The State arranges for, and assures payment of the incremental costs of utilizing, of a facility for disposition of the hazardous substances, pollutants, or contaminants concerned. . . .

"4. The President may select a remedial action meeting the requirements or paragraph (1) that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation as required by paragraph (2) (including subparagraph (B) thereof), if the President finds that ---

"(A) the remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed;

"(B) compliance with such requirement at the facility will result in greater risk to human health and the environment than alternative options;

"(C) compliance with such requirements is technically impracticable from an engineering perspective;

"(D) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach;

"(E) with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State; or

"(F) in the case of a remedial action to be undertaken solely under section 104 using the Fund, selection of a remedial action that attains such level or standard of control will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.

The President shall publish such findings, together with an explanation and appropriate documentation.

"(e) PERMITS AND ENFORCEMENT.-- (1) No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section