



Commonwealth of Massachusetts
Executive Office of Environmental Affairs

Department of Environmental Protection

William F. Weld
Governor

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Commissioner

Superior
SITE: NEW BEDFORD
BREATHER: 5.2
OTHER: 220877

MEMORANDUM

DATE: July 15, 1992
TO: Paul Craffey DEP/BWSC - BOSTON
COPY: Jeff Chormann DEP/BWP/HW - BOSTON
FROM: John Carrigan DEP/BWP/HW - BOSTON
PHONE: (617) 292 - 5584
SUBJECT: NEW BEDFORD HARBOR REMEDIATION

Paul:

I have reviewed the documents you supplied concerning EPA's proposal for cleanup of the "second" portion of the New Bedford Harbors Site. Their interpretation of the applicability of the Landban Regulations appears to be consistent with current EPA RCRA policy. As long as the CDF(s) is located within the Area of Contamination then movement and consolidation of materials within the AOC is not subject to the Landban Restrictions. Please note that the Commonwealth is not authorized for Landban under RCRA and that EPA CERCLA should consult with EPA's RCRA program for a final decision. EPA contends that since the requirements of TSCA under 40 CFR 761.60(a)(5)(iii) will be met at the site the requirements of 310 CMR 30.501(3)(a) are satisfied. The intent of 310 CMR 30.501(3)(a) is to defer regulation of PCB contaminated waste to TSCA. However, the management of such waste is still subject to the requirements of 310 CMR 30.370 Special Requirements for Waste Containing PCBs:

"(1) Generators of wastes with which contain polychlorinated biphenyls (PCBs) in concentration equal to or greater than 50 parts per million shall comply with the U.S. Toxic Substance Control Act, all applicable requirements of 40 CFR Part 761, and the following:

(a) 310 CMR 30.001 through 30.009



- (b) 310 CMR 30.060 through 30.064 - notification requirements
- (c) 310 CMR 30.303 - EPA identification number
- (d) 310 CMR 30.304 - offering hazardous waste for transportation
- (e) 310 CMR 30.310 through 30.114 - manifest requirements
- (f) 310 CMR 30.320 through 30.324 - pre-transport requirements
- (g) 310 CMR 30.330 through 30.334 - record keeping and reporting
- (h) 310 CMR 30.361 - international shipments
- (i) 310 CMR 30.750 - land disposal restriction

(2) Notwithstanding any other provision of 310 CMR 30.00, generators of hazardous wastes which contain PCBs in concentration equal to or greater than 50 parts per million shall send such wastes only to facilities which meet all the requirements in 310 CMR 30.501(3)(a)(b) and (c) or shall, with the approval of the Department, otherwise cause such hazardous wastes to be managed in compliance with the provisions of 40 CFR Part 761 and 310 CMR 30.750."

In addition, 310 CMR 30.501(3)(b) requires that "in the case of PCB incinerators or PCB waste landfills, they have been **formally approved** pursuant to 40 CFR Part 761, and such approval is in effect at the time". It is not clear that the management of the PCB contaminated dredge materials in the CDFs under 40 CFR 761.60(a)(5)(iii) complies with this requirement. The intent of 310 CMR 30.501(a) is to defer the regulation of the storage, treatment, and disposal of PCB contained waste that are properly managed under TSCA. CERCLA should demonstrate that this is the case otherwise the requirements of 310 CMR 30.00 would be directly applicable.

In addition, it has been indicated that the CDFs will likely receive some quantities of EP-Toxic characteristic waste. The hazardous waste requirements would be applicable to the CDFs for such wastes. The extent to which the minimum technical design requirements apply depends on whether movement of the waste into the CDFs constitutes placement or consolidation. The Division of Hazardous Waste has applied the same criteria in determining the applicability of 310 CMR 30.629 Landfills as ARRARS to CERCLA actions as the EPA RCRA program. This is based on the April 6, 1990 Memorandum from Sylvia K. Lowrance, Director of the Office of Solid Waste to Stephen D. Luftig, Director of the Emergency and Remedial Response Division, Region II. Ms. Lowrance states "EPA believes that it is appropriate generally to consider CERCLA areas of contamination as a single RCRA land-based unit or 'landfill'." Furthermore, in most cases units located within these areas of contamination (AOCs) are not subject to the design and operating

requirements for subtitle C landfills (40 CFR 264.301) because they are existing portions of the landfill [AOC]. Any lateral expansion of the existing unit [construction or expansion of a CDF outside of the AOC], however, would trigger the minimum technology requirements of 40 CFR 264.301(c)." The basic question becomes whether the CDFs are located within the AOC.

If the CDFs lie within the AOC consolidation is occurring and the remedy EPA proposes for the "second portion" of the New Bedford Harbor Cleanup would be consistent with the requirements of 310 CMR 30.000 and RCRA. However, it is not clear whether the CDFs are within a single AOC or whether consolidation of waste between AOCs will occur. Therefore, the Division of Hazardous Waste believes that the requirements of 310 CMR 30.620 Landfills may be directly applicable. In addition, the Division believes that based on the materials that will be disposed of in the CDFs (>50 ppm PCBs and EP-Toxic) and on concerns regarding the need for lining the proposed CDF that the requirements of 310 CMR 30.620 are at a minimum relevant and appropriate in this case. The Division believes that CERCLA should demonstrate through the waiver process why the CDFs will not be lined.

If you have any questions or need additional comments please contact me at extension 5584.