



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

URGENT LEGAL NOTICE - PROMPT RESPONSE REQUIRED

September 10, 1993

Mayor Rosemary S. Tierney
City of New Bedford
133 William Street
New Bedford, Massachusetts 02740

Superfund Records Center
SITE NEW BEDFORD
REF ID 10.1
OTWID 294560

City Council of New Bedford
c/o Frederick M. Kalisz, Jr.
City Council President
133 William Street
New Bedford, Massachusetts 02740

Dear Sir/Madam:

Enclosed is an administrative order for property access ("Order") issued by the U.S. Environmental Protection Agency (EPA) to the City of New Bedford regarding the New Bedford Harbor Superfund Site. This administrative order is issued pursuant to the authority in Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9604(e).

Please read the enclosed Order carefully. Under the terms of the Order, before the Order becomes effective, the City has the opportunity to confer with EPA in person, and to submit written comments to EPA regarding the Order. The opportunity to confer with EPA is to be held on September 13, 1993 from 10:00 AM to 12:00 noon at EPA's offices at One Congress Street, 10th Floor, in Boston, Massachusetts. In addition to the opportunity to confer, the City also has the opportunity to submit to EPA written comments regarding the Order on or before September 16, 1993. The address for submittal of comments is provided in the Order.

Finally, please be aware that the effective date of the Order is September 16, 1993. If, by that date, EPA has not received an unconditional written agreement by the City to comply with the terms of the Order, EPA will consider the City to be in noncompliance with the Order, and will take appropriate action to enforce the Order.



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294560



Please be advised that the opportunity to confer which is scheduled for September 13, 1993 is open only to the Mayor and/or members of the City Council, as the representatives of the City of New Bedford, and their legal representatives.

If you have any questions regarding this Order, please call either Timothy M. Conway of the Office of Regional Counsel, at 617-565-3454, or Marcia J. Lamel of the Office of Regional Counsel, at 617-565-3435.

Sincerely,

A handwritten signature in cursive script that reads "Paul Keough".

Paul G. Keough
Acting Regional Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

In the Matter of:)	
)	
New Bedford Harbor Superfund Site)	
Hot Spot Remedial Action)	
)	
City of New Bedford, Massachusetts,)	
By and Through the Mayor and)	
the City Council)	
)	
Respondent.)	U.S. EPA Region I
)	CERCLA Docket No.
Proceeding Under Section 104(e) of the)	I-93-1085
Comprehensive Environmental Response,)	
Compensation and Liability Act,)	
42 U.S.C. § 9604(e).)	

ADMINISTRATIVE ORDER FOR PROPERTY ACCESS

Jurisdiction

1. This order is issued pursuant to the authority vested in the President of the United States by Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9604(e), and the National Contingency Plan, 40 C.F.R. § 300.400(d). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 52 Fed. Reg. 2923, and further delegated to the Regional Administrator, Region I, by EPA Delegation No. 14-6.

Respondent

2. The Respondent City of New Bedford, Massachusetts is a municipality organized and incorporated under the laws of the Commonwealth of Massachusetts.

Findings of Fact

3. The New Bedford Harbor Superfund Site (the Site), located in Bristol County, Massachusetts, extends from the northern reaches of the Acushnet River estuary, south through the commercial harbor of New Bedford, and into adjacent areas of Buzzards Bay. The Site is defined by three Fishing Closure Areas which were established by the Massachusetts Department of Public Health in 1978. The Site extends for approximately 6.8 miles north to south and encompasses a total area of approximately 18,000 acres. In order to facilitate the investigation of site contamination and expedite remediation of this unusually large site, EPA divided response activities at the Site into three separate phases of cleanup, known as operable units; (1) the Hot Spot, (2) the Estuary and Lower Harbor, and (3) Upper Buzzards Bay. "The Hot Spot" is comprised of several small areas covering about 5 acres in total located along the western bank of the Acushnet River estuary, directly adjacent to an electrical capacitor manufacturing facility, the Aerovox facility. EPA has defined the Hot Spot as those areas where concentrations of polychlorinated biphenyls (PCBs) in sediment are 4000 parts per million (ppm) or greater. PCB concentrations in the Hot Spot sediments range from 4000 ppm to over 200,000 ppm with an estimated average concentration of 30,000 ppm.

4. The Site is listed on the CERCLA National Priorities List, 40 C.F.R. Part 300, App. B (1988), pursuant to Section 105 (a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

5. The Hot Spot sediments contain the most concentrated PCBs found at the Site. A Remedial Investigation/Feasibility Study (RI/FS) of the Site was issued in July, 1989. The RI/FS and other studies conducted at the Site substantiate that the Hot Spot sediments are a source of PCB contamination which migrates to other areas of the site with each tide, contaminating increasingly greater volumes of sediment. Sampling conducted by EPA and the U.S. Army Corps of Engineers as part of the RI/FS also indicate that the PCBs in the Hot Spot sediments are a source of PCB contamination to the overlying surface water, to the surrounding air, and to marine biota. EPA has classified PCBs as a probable human carcinogen. In addition, PCBs have been shown to interfere with successful reproduction in primates, including humans, and in lower organisms, including marine fish and shellfish.

6. On April 6, 1990, EPA issued a Record of Decision (ROD) selecting a remedy for the Hot Spot Operable Unit. In April 1992, EPA issued an Explanation of Significant Difference (ESD) which specifies the method for final disposal of incinerator ash. In order to address the release or threatened release of hazardous substances, including PCBs, at the Site, EPA is planning to conduct certain response actions, which are discussed more fully in the ROD and the ESD. The ROD remedy calls for

dredging the Hot Spot sediments to remove the PCBs from the estuary, transport of the dredged sediments through a floating pipeline to property located at 103 Sawyer Street, which is adjacent to and in very close proximity to the Site, collection of the dredged sediments in a Confined Disposal Facility (CDF) previously constructed on the property at 103 Sawyer Street, dewatering of the dredged sediments, treatment of the water from the dredged sediments to remove PCBs and toxic metals prior to discharge of the treated water back to the estuary, treatment of the dewatered sediments by incineration to destroy PCBs, testing of the treated sediments (incinerator ash) for leaching of toxic metals and treatment to immobilize these metals, if indicated as necessary by the testing. The ESD specifies that final disposal of the treated incinerator ash will take place in the CDF and requires closure of the CDF with a multi-layer cap including an impermeable membrane, two feet of clean soil, and vegetation.

7. The Respondent owns or controls property at or near the Site and owns or controls access to property where entry is needed to effectuate a response action under CERCLA. The Respondent owns the property located at 103 Sawyer Street, upon which the incineration of Hot Spot sediments and construction of the CDF will take place. Streets and byways providing access to the property located at 103 Sawyer Street and to the western shoreline of the Acushnet River from the Wood Street Bridge to the Coggeshall Street Bridge are public roads owned or controlled by the Respondent. Further, the Respondent owns or controls at

least portions of New Bedford Harbor and the Acushnet River estuary over which transport of barges and other vessels may be necessary to effectuate the response action.

8. In order to perform the response actions described in the ROD, it will be necessary for employees, agents, contractors, and other representatives of EPA immediately to enter the property owned or controlled by the Respondent referred to above. The activities for which entry is required include: 1) transport of equipment including, but not limited to, wastewater treatment mechanisms, incinerator components, and other construction equipment and materials over the streets and byways of the City of New Bedford from U.S. Interstate Route I95 to the property at 103 Sawyer Street and to the western shoreline of the Acushnet River from the Wood Street Bridge to the Coggeshall Street Bridge; 2) provision of public utilities over and under the streets and byways of the City of New Bedford from Belleville Avenue to 103 Sawyer Street and to the shoreline adjacent to the Hot Spot; and 3) access for boats, barges, dredges, and associated equipment to the waters of New Bedford Harbor and the Acushnet River from the Wood Street Bridge to the U.S. Army Corps of Engineers' seawall and to the shoreline of the Acushnet River from the Wood Street Bridge to the Coggeshall Street Bridge.

9. The property at 103 Sawyer Street is adjacent to, and contiguous with, the contaminated Acushnet River, which is part of the Site. The property is a suitable area in very close proximity to the contamination necessary for implementation of

the response action. EPA has access to the 103 Sawyer Street pursuant to a Memorandum of Understanding between the City of New Bedford and the Commonwealth of Massachusetts Department of Environmental Protection. Nevertheless, public utility services, including but not limited to, electricity, natural gas, water, and sewer service must be added or improved at the 103 Sawyer Street property in order to effectuate the Hot Spot remedial action. In addition, EPA requires access for trucks transporting materials and equipment and for construction equipment, over the City streets and byways, or for water transport in New Bedford Harbor or the Acushnet River, as described in paragraph 8, above.

10. EPA estimates that the duration of the required entry and access will be approximately four years.

11. The Respondent repeatedly has hindered EPA's attempts to effectuate response actions for the Site. a. EPA's efforts to obtain permits for provision of required amounts of water to the 103 Sawyer Street property have been met with continuous delay. The Respondent denied requests for hook-up to the existing water mains located beneath Sawyer Street. The Respondent is requiring that EPA's contractor remove one of two existing water mains and install a larger one, based on a recommendation of the Fire Department. Despite numerous requests made to the Respondent for the technical basis of this determination, the contractor, and the U.S. Army Corps of Engineers which is responsible for remedial activities at the Site under a cooperative agreement with EPA, have not gotten a response. The information sought is

necessary in order for the government to obtain necessary funding to construct the water main. b. On August 19, 1993, the City Council denied an application of Commonwealth Electric Company for a street opening permit which would enable Commonwealth Electric Company to upgrade electrical service to 103 Sawyer Street. Such upgraded electric service is necessary for the implementation of response actions at the property located at 103 Sawyer Street. The City Council has stated that under its procedures Commonwealth Electric may reapply for the permit after 60 days and that it will consider a new application at its meeting on October 28, 1993.

12. The Respondent has taken legislative action which interferes with EPA's response activities for the Site. On July 29, 1993, the New Bedford City Council amended Section 15 of the City Ordinance to add new Section 15-70, entitled, "Transportation of Mechanism for Incineration and Water Treatment," which requires a permit for the transportation of incineration and water treatment equipment through the City of New Bedford. Paragraph 2 of the Ordinance requires notification to the Mayor and City Council of New Bedford of such a transportation no later than eight (8) weeks before the transportation is scheduled and requires a public hearing on the transportation permit application. Paragraph 4 of the Ordinance makes issuance of any permit under this ordinance burdensome, if not impossible. Paragraph 4 reads as follows:

4. ISSUANCE OF PERMIT. The mayor and city council shall not issue a permit for the transportation of the items

enumerated in this section unless it is satisfied that the transportation and use of said items shall not cause air pollution, danger to the health of the residents and shall not be detrimental to the welfare and safety of the neighborhood. In granting any permit provided for in this section the may or and city council may issue said permit subject to such appropriate conditions and safeguards as in its discretion will make an excepted [sic] use harmonious with the general purpose and intent of this section. No special permit shall be granted under this section except by a two-thirds (2/3) vote of the mayor and of all the members of the city council.

The purpose of the Ordinance is clearly to delay and/or prevent access necessary for EPA's use of the 103 Sawyer Street property to effectuate response actions under the Hot Spot Operable Unit ROD.

13. Despite requests from representatives of EPA, the Respondent has refused to provide access for purposes of performing the response activities described above. These requests include letters dated September 1, 1993 and September 3, 1993, from Paul G. Keough, Acting Regional Administrator, EPA Region I, to the Honorable Rosemary S. Tierney and the City Council of New Bedford requesting the following: access to City property to implement response actions; reversal of the City Council's denial of a street opening permit for work which is necessary to carry out the response activities for the Hot Spot Operable Unit; and repeal of Section 15-70 of the New Bedford City ordinance requiring a permit for the transportation of incineration equipment and water treatment equipment through the City of New Bedford.

14. The U.S. Army Corps of Engineers, under a cooperative agreement with EPA, has entered into a fixed-price contractual

agreement with Perland Environmental Technologies, Inc., of Burlington, Massachusetts (Perland), for completion of the remedial action within 570 days. Any delays in the remedial action which are unforeseen and beyond the contractor's control may be cause for additional compensation to the contractor. By letter dated August 23, 1993, Perland notified the U.S. Army Corps of Engineers that the New Bedford City Council's denial of the street opening permit to improve electrical service to the property located at 103 Sawyer Street and the July 29, 1993 amendment to Chapter 15 of the New Bedford City Ordinance referenced in Paragraph 12, above, have a high potential to disrupt the schedule and increase the cost of the Hot Spot response actions. In addition, during any delay in implementation of the remedial action, PCBs will continue to spread to from the Hot Spot into the surrounding air and water. Measured PCB concentrations near the Hot Spot are greater than PCB concentrations in air at other locations near the Site, indicating that the Hot Spot is a source of the PCBs found in air at the Site. PCBs from the Hot Spot also spread with the tides throughout the estuary, into New Bedford Harbor, and ultimately into Buzzards Bay. Each day that the Hot Spot remains unremediated approximately two pounds of PCBs migrates from the estuary, under the Coggeshall Bridge, to the Harbor, and approximately one-quarter pound of PCBs migrates from the Harbor, through the seawall, into Buzzards Bay.

Determinations

15. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. Each Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

17. The chemical listed in paragraph 3 above is a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

18. The past, present, or potential migration of hazardous substances at or from the Site constitutes an actual "release" or a threat of such a release into the "environment" within the meaning of Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) & (22) and thus a reasonable basis to believe that there may be a release or threat of release within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 104(e)(1).

19. The property owned or controlled by the Respondent referred to in paragraphs 7 and 9 above is a facility, place, or property:

(a) where hazardous substances have been stored, treated, or disposed of;

(b) from which hazardous substances have been, are being, and may be released;

(c) where such release is or may be threatened; or

(d) where entry is needed to determine the appropriate response and to effectuate a response action,

within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

20. Entry to property owned or controlled by the Respondent by agents, contractors, or other representatives of the United States is for the purposes of taking a response action, within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

ORDER

21. The Respondent shall provide the United States Environmental Protection Agency and its officers, employees, agents, contractors, and other representatives, immediate, full and unrestricted access at reasonable times to: 1) the Hot Spot Operable Unit of the New Bedford Harbor Superfund Site; 2) the property located at 103 Sawyer Street; 3) the western shoreline of the Acushnet River from the Wood Street Bridge to the Coggeshall Street Bridge; 4) the streets and byways of the City of New Bedford from Belleville Avenue to 103 Sawyer Street and from Belleville Avenue to the shoreline adjacent to the Hot Spot for the provision of public utilities over and under those streets; 5) the streets and byways of the City of New Bedford, including but not limited to, Belleville Avenue, Coggeshall Street, Mitchell Street, Washburn Street, Sawyer Street, Hathaway Street, Coffin Avenue, and Irvington Street for the transport of incineration and water treatment equipment; and 6) the waters of New Bedford Harbor and the Acushnet River from the Wood Street Bridge to the U.S. Army Corps of Engineers' seawall for transportation of boats barges, dredges, and associated equipment

to the Hot Spot and the shoreline of the Acushnet River from the Wood Street Bridge to the Coggeshall Street Bridge.

22. The Respondent shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e)(3) and 40 C.F.R. § 300.400(d), and shall cease, desist and refrain from interfering with the performance of response activities at the Site.

23. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits. This Order applies to and is binding upon Respondent and its agents and assigns. The Respondent and successors in title shall give written notice to EPA at least forty-five (45) days prior to the conveyance of any interest in real property owned or controlled by the Respondent which is described in Paragraph 7, above.

Enforcement

24. Compliance with this order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). Failure to comply may also subject the Respondent to civil penalties of up to \$25,000 for each day of each violation, as provided in Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). Nothing herein shall preclude EPA from taking such other actions as may be necessary to protect the public health or welfare or the environment and recovering the costs thereof.

Opportunity to Confer

25. The Respondent may request a conference with EPA on any matter pertinent to this order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions the Respondent is ordered to take, or any other relevant and material issues or contentions which they may have regarding this order. This conference is not an adversarial proceeding and is not part of any proceeding to enforce or challenge this order. The Respondent may appear in person or be represented by an attorney at the conference. The Respondent may also submit written comments or statements of position on any matter pertinent to this order no later than the effective date of the order. By letter dated September 3, 1993 from Paul G. Keough, Acting Regional Administrator to the Honorable Rosemary S. Tierney and the City Council of New Bedford, the Respondent was advised that the conference, if requested, will take place on Monday, September 13, 1993, from 10:00 a.m. to 12:00, at EPA Region I offices, One Congress Street, 10th floor, Boston, Massachusetts. The Respondent was further advised that the request for a conference must be made by 5:00 p.m. on September 10, 1993. EPA will deem the Respondent to have waived its right to the conference or to submit written comments if it fails to request the conference or submit comments within the specified time periods. Any request for a conference or written comments or statements should be submitted to:

Timothy M. Conway
Office of Regional Counsel
United States Environmental Protection Agency
JFK Federal Building RCT

Boston, Massachusetts 02203-2211
Telephone: (617) 565-3454.

Administrative Record

26. EPA has established an Administrative Record which forms the basis for the issuance of this order. It is available at the EPA offices in Boston, Massachusetts. To review the Administrative Record, please contact Marcia Lamel at (617) 565-3435.

Effective and Termination Dates; Modification

27. Because of the immediate need to conduct the activities described above, this order is effective on September 16, 1993.

28. All times for performance of obligations under this order shall be calculated from the effective date. For purposes of this order, the term "day" shall mean a calendar day unless otherwise specified. When computing any period of time under this order, if the last day would fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next working day.

29. This order shall terminate when EPA so orders.

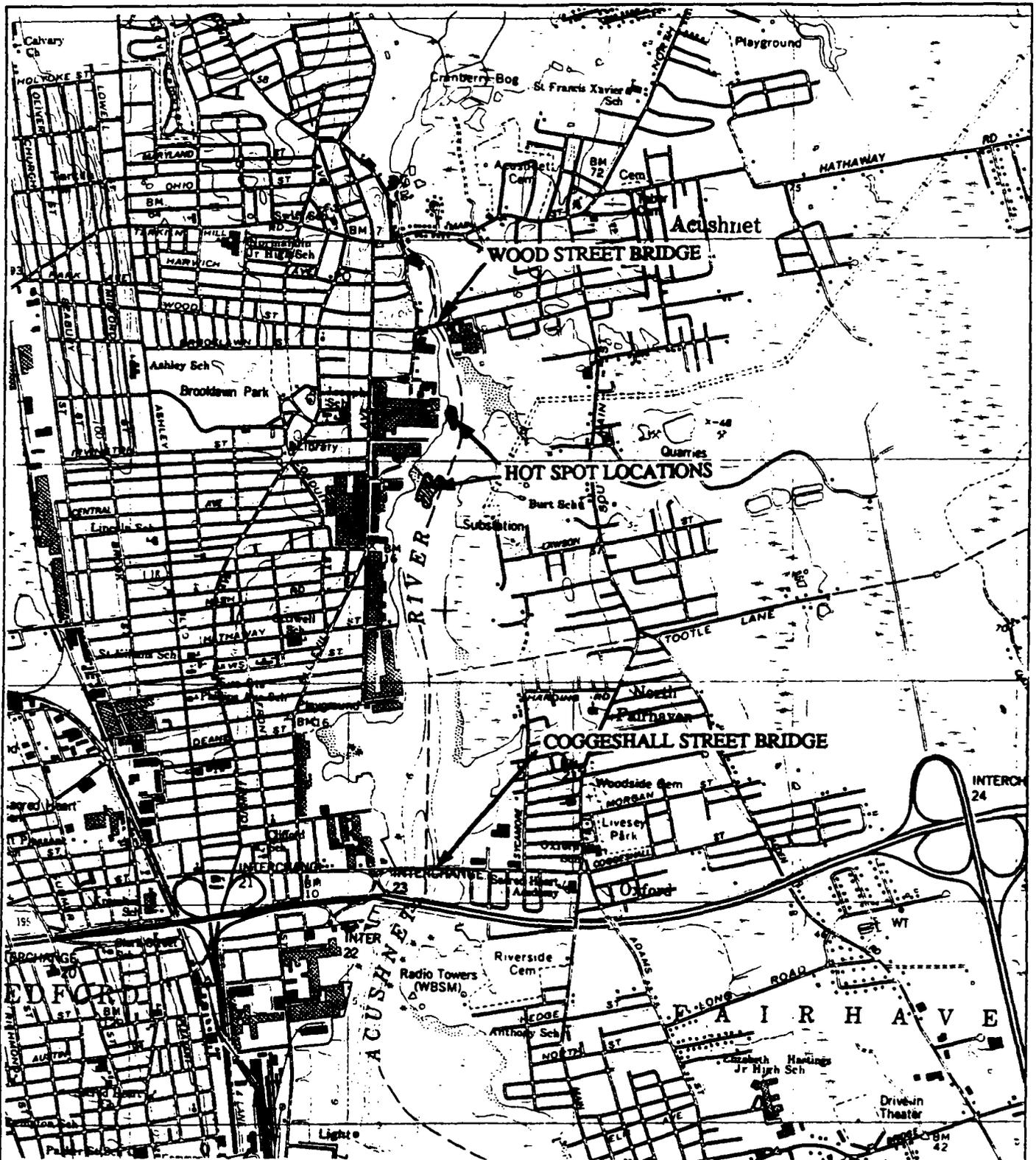
30. This order may be amended or modified only by EPA in writing. Any such amendments or modifications shall be effective when signed by the Regional Administrator or his or her delegate.

SO ORDERED.

Date: Sept 16, 1993



Paul G. Keough
Acting Regional Administrator

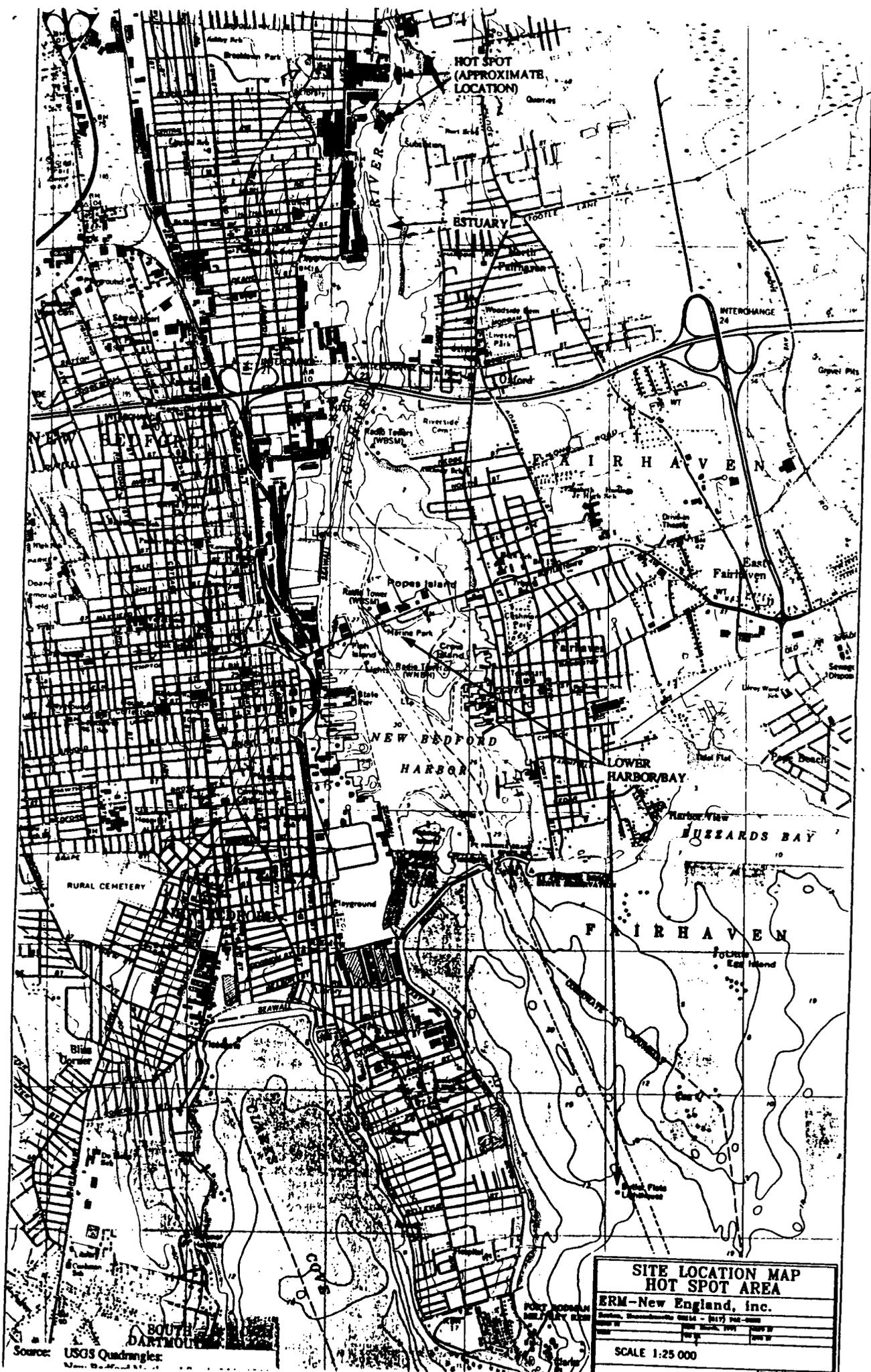


Source: USGS Quadrangles:
New Bedford North and South, MA, 1979

SCALE 1:25 000

0 1000 2000 FEET

UPPER ACUSHNET RIVER ESTUARY AND HOT SPOT AREA		
ERM-New England, inc.		
<small>Dorham, Massachusetts 02114 - (617) 748-0220</small>		
<small>Scale 1:25,000</small>	<small>Map March, 1991</small>	<small>Drawn by</small>
<small>1:25,000</small>	<small>1:25,000</small>	<small>1:25,000</small>
		<small>FIGURE 2-2</small>



HOT SPOT
(APPROXIMATE
LOCATION)

ESTUARY

NEW BEDFORD
HARBOR

FAIRHAVEN

LOWER
HARBOR BAY

MUZZARDS BAY

FAIRHAVEN

RURAL CEMETERY

BOTH
DARTMOUTH

INTERCHANGE
24

SITE LOCATION MAP
HOT SPOT AREA
ERM-New England, Inc.
Boston, Massachusetts 02114 - (617) 262-0000
Map No. _____ Date _____
SCALE 1:25 000

Source: USGS Quadrangle