

LANNY



COASTAL ZONE  
MANAGEMENT

*The Commonwealth of Massachusetts*  
*Executive Office of Environmental Affairs*  
*100 Cambridge Street*  
*Boston, Massachusetts 02202*

M E M O R A N D U M

Superfund Records Center  
SITE: New Bedford  
BREAK: 4.1  
OTHER: 47096

TO: LANNY JOHNSON

FROM: RICHARD F. DELANEY *RD*

DATE: APRIL 18, 1984

SUBJECT: EPA REGION I QUERY REGARDING STATE LAWS GOVERNING NEW BEDFORD CLEAN UP

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In a letter dated April 3 Michael Deland asked Secretary Hoyte to apprise EPA of the state laws which could delay the implementation of federal actions to clean up New Bedford Harbor pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This memorandum examines the applicability of the CZM consistency review and provides a list of other state laws which may affect Superfund activities.

CZM CONSISTENCY REVIEW

Remedial actions, such as dredging, conducted or supported by the EPA are subject to consistency review by CZM unless EPA can make a showing that compliance is prohibited.

The Federal Coastal Zone Management Act of 1972 requires all federal agencies which are "conducting or supporting" activities affecting the coast to do so in a manner consistent with state coastal management plans. (CZMA Section 307(c)(1)). Federal regulations enacted pursuant to the CZMA require the federal agency which is conducting or supporting the coastal activity to submit a consistency determination to the state prior to proceeding with the action. (15 CFR 930.34). State regulations govern CZM's review of federal agency consistency determinations. A mandatory component of the review is a 21 day public notice and comment period. (301 CMR 21.04).

Some of the New Bedford clean up activities may, however, be exempt from CZM consistency review. First, only activities conducted or supported by a federal agency are subject to CZM review. Consequently, if the state conducts the activity CZM need not review it (unless a federal permit is required). For instance, CZM may not need to review the siting and designation of the disposal site since this will be done by the state as required in CERCLA. (Section 104(c)(3)).

Second, the Superfund activities in New Bedford will be exempt from CZM review if EPA can demonstrate that compliance with the state plan is prohibited by federal law. EPA has the burden of making this showing to the state. (15 CFR 930.32(a)).

CZM review need not be a lengthy process. While the federal regulations require the federal agency to submit the determination 90 days prior to acting (15 CFR 930.34), this period can be shortened by agreement between the State and the agency. Once CZM received EPA consistency determination, we could likely complete our review in four (4) weeks.

#### OTHER APPLICABLE STATE LAWS

There are a variety of other state laws which could delay Superfund activities such as dredging and dredge spoil disposal:

*Wetlands Protection Act	MGL c. 131 s 40
*Clean Waters Act	MGL c. 21 s 26-53
*MEPA	MGL c. 30 s 62-62H
*Disposal of Dredge Material	MGL c. 21A s 14
*Waterways	MGL c. 91