



DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254

Site: <i>New Bedford</i>
Break: <i>4.1</i>
Other: <i>47167</i>

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REPLY TO
ATTENTION OF

March 9, 1984

Regulatory Branch
NEDOD-R-04

Mr. Gerard Sotolongo
Project Officer
Waste Response and
Compliance Branch
U.S. Environmental Protection
Agency
Region 1
J.F.K. Federal Building
Boston, Massachusetts 02203

**U.S. v. AVX Original
Litigation Document**

Dear Mr. Sotolongo:

This is in regard to Environmental Protection Agency's expected Superfund activities relating to the PCB problem in New Bedford, Massachusetts. This is in answer to your recent question regarding Corps jurisdiction, and under what circumstances a Department of the Army permit may be required for any work in New Bedford Harbor resulting from this project.

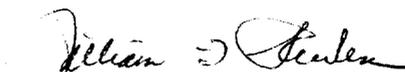
A Department of the Army permit is required for all work beyond mean high water in navigable waters of the United States under Section 10 of the River and Harbor Act of 1899. New Bedford Harbor is considered to be a navigable water of the United States since it is subject to the ebb and flow of the tide. Also, a permit would be required under Section 404 of the Clean Water Act of 1977 for any discharge of dredged or fill material into waters of the United States which includes New Bedford Harbor, the Acushnet River and its associated wetlands. ✓

Since you indicated there should be no disposal beyond the New Bedford hurricane barrier, there should be no portion of the project involving the transportation of dredged material for the purpose of disposing in ocean waters. Therefore, Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, would not apply.

You should be aware that if the selected plan necessitates a Department of the Army permit, we must make a determination of the need for an EIS. Because of the complexity of this project and the potential need for an EIS, we request to be included in your agency's scoping of alternatives and development of the Environmental Assessment as they proceed. We would expect that if either of our agencies determines that an EIS is necessary that the Environmental Protection Agency will be the lead Federal agency in its preparation. ✓

If you have any questions on this matter, please contact Mr. Jim Bajek at (617)647-8213 or FTS 839-7213.

Sincerely,


William F. Lawless, P.E.
Chief, Regulatory Branch
Operations Division