



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION I  
 JOHN F. KENNEDY FEDERAL BUILDING  
 BOSTON, MASSACHUSETTS 02203-0001

*HQ LAN response  
 attached.*

*DVD  
 9/17/96  
 9.1.5*

July 25, 1996

George Wyeth  
 USEPA Waterside Mall, 2366  
 401 M Street, S.W.  
 Washington DC 20460

Superfund Records Center  
 SITE: NEW BEDFORD  
 BREAK: 9.1  
 OTHER: 47215

RE: New Bedford Harbor Superfund Site  
 New Bedford, Massachusetts

Dear George:

Thanks for your telephone message on July 17 regarding Headquarters' position relative to a proposed enhancement of the remedy at New Bedford Harbor. The enhancement consists of dredging the federal navigational channel as we dredge portions of the Harbor during remediation and disposing of the dredged material in confined disposal facilities. (See my memo to Sheila Igoe dated May 2, 1996 for additional information.)

It wasn't clear to me whether you would be issuing anything in writing to the Region; therefore, I am writing to confirm my understanding of Headquarters' position.

Basically, there is a good faith argument to be made that the permit waiver provisions of § 121(e)(1) of CERCLA could extend to this enhancement. There is a concern that § 121(e)(1) speaks to remedy selection carried out in compliance with § 121. This language could be interpreted as requiring the use of the criteria set out in § 121 during remedy selection and this navigational dredging project was not selected using that criteria.

The counterargument is that the NCP is an explanation of § 121 and its requirements and the NCP anticipates enhancements as long as it is something truly characterized as an enhancement. This navigational dredging can be characterized as an enhancement because it furthers the protectiveness of the remedy and provides material to implement the remedy. (Again see my memo dated May 2, 1996 for further information.)

Based on the above, Headquarters agrees that the Region can move forward with the enhanced remedy under § 121(e)(1) and the NCP.

George Wyeth  
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If any of the above is incorrect, please call me. Again, I appreciate your time and assistance on this and all the other issues that continue to surface as we try to remediate this unique Site.

Sincerely,

*Cindy Catri*

Cynthia Catri  
Senior Enforcement Attorney

cc: Dave Dickerson, RPM, EPA-NE ✓  
Frank Ciavattieri, Dep. Dir., OSRR, EPA-NE  
Harley Laing, Dir., Office of Env. Stewardship, EPA-NE  
Larry Brill, Chief, OSSR1, EPA-NE

**From:** GEORGE WYETH  
**To:** R1CANAL.R1ORC1.CATRI-CYNTHIA  
**Date:** 7/28/96 11:22am  
**Subject:** New Bedford

Thanks for your note on New Bedford. I believe your analysis is generally an accurate reflection of our thinking on the issue, and I can confirm that on this basis we would not object to invoking the s. 121(e)(1) permit waiver in connection with the state's enhancement of the remedy. We would still like, as we originally intended, to lay out our entire analysis in writing and hope to provide it soon. However, you need not wait until you have that to proceed.