



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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October 4, 2010

Ian A. Bowles, Secretary  
Executive Office of Energy and Environmental  
Affairs  
Commonwealth of Massachusetts  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Re: New Bedford Harbor Superfund Site, New Bedford, MA  
State Enhanced Remedy

Dear Secretary Bowles:

Regional Administrator Curt Spalding has asked me to respond to your letter of September 27, 2010, in which you request a report from EPA on the status of the Commonwealth's request for EPA to agree on the State's proposal concerning the State Enhanced Remedy at the New Bedford Harbor Superfund Site, under Section 515(f)(1)(ii) of the National Contingency Plan, 40 CFR Part 300 *et. seq.* Specifically, the Commonwealth has requested to include a confined disposal facility (CDF) at the South Terminal location as part of the State Enhanced Remedy contained in the 1998 Record of Decision for the Site. While the Commonwealth did begin very preliminary discussions with the Region in December 2009, the formal request was received by letter dated January 25, 2010 and much of the data and analysis necessary for the Region to respond to this request was submitted in the months following January 2010.

At this time, the Region has reviewed a sufficient portion of the information that has been submitted by the Commonwealth, such that we are able to provide you with the status report you request. However, as you know, the Region has not completed its review, and the Agency's draft decision will be subject to completing our review of the information provided, continued coordination/consultation with other federal agencies, and public comment before the Region makes a final determination. This letter simply informs you of the current status of our review, but does not constitute an EPA draft or final determination.

The following is a summary of the major substantive information submitted by the Commonwealth and currently under review by the Region: (a) an initial submittal package dated May 7, 2010, later supplemented on May 10th; (b) a comprehensive "application" submitted on August 25, 2010; (c) a supplemental report on avian impacts submitted on September 21, 2010; and (d) a response submitted on September 27, 2010 to the Region's September 22, 2010 request for additional information. In addition, there have been specific submittals related to air impacts and historic preservation laws.

With respect to the information submitted on September 27th, the Region has just commenced its review. We also understand that the Commonwealth is planning additional sampling, which will be performed after coordination with the Region on a sampling plan, and suggest that a meeting be arranged within the next few days to discuss this sampling plan. We also await a report on the underwater historic artifact evaluations.

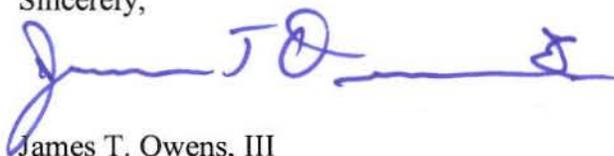
Our review pursuant to 40 CFR §300.515(f)(1)(ii) includes an evaluation of various factors, such as: substantive compliance with over ten federal regulatory programs and executive orders; potential alternatives; overall impacts on the aquatic ecosystem; effects on endangered species and essential fish habitat; and, adequacy of compensatory mitigation. In addition, the Region will need to work with the Commonwealth to ensure complete identification of state performance standards, and confirmation that the standards have been or, as appropriate, will be satisfied.

The information we have reviewed to date has not raised significant legal issues or concerns with regard to ensuring compliance with substantive environmental requirements for the state enhancement; however, as we have indicated, our review is not yet complete. Provided we receive the further information we need or may request from the Commonwealth as our review continues, and depending on our ongoing review and coordination/consultation with other federal agencies, it appears at this time that a draft determination by the Region pursuant to Section 300.515(f)(1)(ii), which would allow for inclusion of the proposed South Terminal CDF as part of the State Enhanced Remedy, will be appropriate. The Region's draft determination and the underlying administrative record will be subject to a 30-day public comment period.

Prior to issuing a final determination, the Region needs to consider and respond in writing to the public comments. To the extent that the comments pertain to state performance standards or state determinations made in accordance with state laws, we will rely on the State's cooperation in responding to those comments. Also there are several ongoing federal consultations that will not be complete at the time we issue our draft determination, but must be complete before a final decision is made. Both the public comments and the federal consultations could result in a final determination that differs from the draft determination. In addition, a complete mitigation plan must be submitted before any final decision.

We expect to continue to devote close attention to this matter in order to complete our review.

Sincerely,



James T. Owens, III  
Director, Office of Site Remediation & Restoration

cc: H. Curtis Spalding, EPA (all by electronic mail)  
Ira Leighton, EPA  
Carl Dierker, EPA  
Michael Amaral, USFWS  
Chris Boelke, NMFS  
Ken Kimmel, EOEAA  
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