

From: [Valiton, Brian E NAE](#)
To: [Sheeringer, Paul J NAE](#)
Subject: FW: New Bedford Federal Navigational Dredging as part of the State Enhanced Remedy (UNCLASSIFIED)
Date: Monday, May 21, 2012 3:16:50 PM
Attachments: [EPA ltr 4-27-04.pdf](#)

Classification: UNCLASSIFIED
Caveats: NONE

-----Original Message-----

From: Valiton, Brian E NAE
Sent: Friday, April 20, 2012 5:37 PM
To: Pendergast, Kathleen M NAE
Cc: Adams, Karen K NAE
Subject: FW: New Bedford Portfields/Dredging Meeting (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Kathleen: this letter specifically relates to the navigational dredging but Joe's message addresses activities that are part of the superfund remedy itself. So I would say it doesn't need Corps approval. I will send you the national guidance letter in a minute if I can come up with it quickly.

-----Original Message-----

From: McInerney, Joseph P NAE
Sent: Tuesday, June 08, 2004 4:35 PM
To: Godfrey, Christine A NAE; Valiton, Brian E NAE; Keegan, Michael F NAE
Cc: Gardner, Crystal I NAE; Astley, John NAE
Subject: RE: New Bedford Portfields/Dredging Meeting

Chris:

EPA said the navigational dredging was an enhancement of the remedy. It was considered and was included as an enhancement in EPA's ROD. As such, EPA's interpretation is that the CERCLA 121(e) permit exemption applies to the enhanced remedy as well as the remedy. I have attached a copy of the correspondence from EPA dated April 27, 2004.

The Corps position has generally been to defer to EPA's interpretation of CERCLA on EPA Superfund lead sites. Counsel concurs with EPA's interpretation of the application of the CERCLA 121(e) permit exemption to the navigational dredging state enhanced remedy.

As indicated in EPA's letter, EPA expects the state enhanced remedy to comply with all substantive standards for applicable environmental laws and regulations. Let me know if you have any other questions.

Joe

Joseph McInerney
Deputy District Counsel

Attorney Client Privileged Communication Attorney Work Product Do Not Release Under FOIA Do Not Forward/Do Not Copy

-----Original Message-----

From: Godfrey, Christine A NAE
Sent: Tuesday, June 08, 2004 3:40 PM
To: Valiton, Brian E NAE; Keegan, Michael F NAE
Cc: Gardner, Crystal I NAE; Mcinerny, Joseph P NAE; Astley, John NAE
Subject: RE: New Bedford Portfields/Dredging Meeting

Joe,

I'm still waiting to hear from you to make a decision on the permit issue. Have you heard back from EPA?

It looks like this issue will be coming up at this meeting on the 16th.

-Chris

-----Original Message-----

From: Valiton, Brian E NAE
Sent: Tuesday, June 08, 2004 3:19 PM
To: Keegan, Michael F NAE
Cc: Gardner, Crystal I NAE; Godfrey, Christine A NAE
Subject: FW: New Bedford Portfields/Dredging Meeting

Mike: Crystal indicated I could attend. Are you going??

-----Original Message-----

From: Robert Neely [<mailto:Robert.Neely@noaa.gov>]
Sent: Tuesday, June 08, 2004 2:07 PM
To: Mike McCormack; Scott Alfonse; John Simpson; Dave Dickerson; Robert Neely; Jack Terrill; David Janik; Matthew Thomas; Kristin Decas; Paul Craffey; Brian Valiton; David Lutes; Mike Keegan; Phil Colarusso; Vincent Milkoski; Christopher Boelke
Subject: New Bedford Portfields/Dredging Meeting

Greetings,

This is a followup message confirming that there will be a Portfields/Dredging meeting in New Bedford next week, 10-12, Wednesday, June 16 in City Hall, Room 314. Though I have touched base with most of you, I realize that I haven't spoken with everyone on this list.

The overarching goal of this meeting is to continue the coordination of the implementation of dredging under the state-enhanced remedy provision of the 1989 New Bedford Harbor Site Record of Decision.

Suggested agenda topics include (but certainly are not limited to):

- update on legal reviews and opinions with respect to application of the state enhanced remedy, permitting, and environmental standards
- defining the "footprint" of the project area and clarification of activities that will NOT require permits versus those that will
- reviewing the status of MOAs between the EPA and DEP, and the DEP and City of New Bedford
- clarifying process for identifying and meeting "substantive environmental standards" and environmental regulations
- status of funding for CAD cell construction funding

- update on potential USACE restoration funding

If you have questions or suggestions for additional topics, please email or call me at the number below. I will circulate a final agenda prior to our meeting next week.

Thanks,

-R

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Robert Neely
Brownfields Coordinator and Portfields Liaison -- New Bedford, MA
NOAA Ocean Service/Office of Response and Restoration
133 William Street, Room 312
New Bedford, MA 02740

(508)979-1707 Office
(508)979-1557 FAX

Robert.Neely@noaa.gov

Visit: www.brownfields.noaa.gov

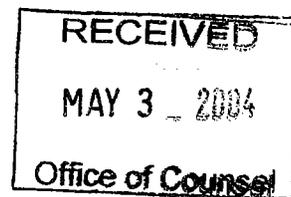
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Caveats: NONE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023



April 27, 2004

Joseph P. McNerny,
Deputy District Counsel
Department of the Army
New England District, Corps of Engineers
696 Virginia Road
Concord, MA 01742

RE: New Bedford Harbor Superfund Site
State Enhanced Remedy

Dear Mr. McNerny:

Your letter to me dated April 8 requests that EPA state in writing its position that the CERCLA §121(e) permit exemption applies to the state enhancement portion of the remedy as presented in the September 1998 Record of Decision for the Upper and Lower Harbor in New Bedford (ROD).

The Commonwealth of Massachusetts petitioned EPA to allow the inclusion of navigational dredging in New Bedford Harbor as an enhancement of the remedy. The enhancement links the dredging and disposal of sediments dredged from the Harbor's navigational channels (located in the lower and outer harbors) with CERCLA dredging of the Harbor as set out in the ROD. EPA agreed and included the enhancement in its ROD. (See pages 33 and 34 of the ROD.) Such enhancements are envisioned in the implementing regulations of CERCLA at 40 C.F.R. §300.515(f) (the NCP).

The NCP functions as an explanation of CERCLA, including §121 and its requirements. Since the NCP provides for enhancements and allows for their incorporation into remedy selection documents, enhancement projects also benefit from the CERCLA provisions that govern remedies, including the permit exemption, as long as the project is something truly characterized as an enhancement under section 300.515(f). In this instance, the enhancement does not conflict with and is not inconsistent with the remedy selected in the ROD. Further, the Commonwealth has agreed to finance the entire enhancement as well as take the lead in supervising the enhancement.

While the permit exemption does apply to enhancement activities carried out onsite, EPA does

not view this benefit as a way of avoiding the normal regulatory review process that applies to such a navigational dredging project. As with the selected remedy, EPA expects all enhancement activities to comply with the substantive standards of the environmental laws and regulations that apply to this work, including the solicitation of any required public comment. To ensure this outcome, EPA is currently negotiating a Memorandum of Agreement with the Commonwealth to document its roles and responsibilities for carrying out the enhancement and to coordinate with other resource agencies, including the Corps of Engineers.

If you have any questions or would like to discuss this further, please call me.

Sincerely,

A handwritten signature in black ink that reads "Cynthia Catri". The signature is written in a cursive, slightly slanted style.

Cynthia Catri
Senior Enforcement Counsel

cc: Richard Lehan, MADEP
Paul Craffey, MADEP
Dave Dickerson, EPA