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January 25, 2010

Mr. Curtis Spalding, Regional Administrator  
U.S. EPA Region 1 - New England  
5 Post Office Square  
Boston, MA 02109-3912

Re: State Enhancement of Remedy Request  
New Bedford Harbor Superfund Site

Dear Mr. Spalding:

The Massachusetts Department of Environmental Protection (MassDEP) understands that the U.S. EPA is preparing an Explanation of Significant Differences (ESD) for the New Bedford Harbor Superfund Site (Site) which would modify the September 29, 1989 Record of Decision (ROD). MassDEP requests the inclusion of an Enhancement of Remedy to the remedy modifications to be proposed in the ESD. As you know, an Enhancement of Remedy is permitted under a provision of the National Contingency Plan (NCP) [40 CFR 300.515(f)] that allows a State to "...ask EPA to make changes in or expansions of a remedial action..."

MassDEP understands that the ESD under consideration would change the Site remedy from off-site disposal of dredged contaminated sediments to on-site disposal into Confined Aquatic Disposal (CAD) facilities. CAD facilities are currently being used for the disposal of contaminated navigational dredging sediments generated under an existing Enhancement of Remedy pursuant to the ROD.

MassDEP is requesting this Enhancement of Remedy to the ESD, as outlined below, for several reasons. First, the proposed enhancements would provide a substantially greater level of environmental cleanup to the harbor, while providing significant cost savings to the overall clean up anticipated from the proposed ESD. Second, the enhancements would provide

environmental benefits to areas outside the harbor and positive economic impacts to the New Bedford area. Third, the enhancements would help efforts to locate an inter-modal transportation facility and a staging area for offshore wind development and possibly cargo ship loading and unloading, combining greater overall environmental benefit and creation of hundreds of jobs in New Bedford. MassDEP would be pleased to discuss these potential benefits with you further, should you require additional information in considering this request.

While MassDEP supports the proposed ESD as presently understood, for the reasons stated above, we hereby request that you the ESD the following Enhancement of Remedy to improve the remedy:

- On-site Confined Disposal Facility (“CDF”) disposal/storage of clean sand generated during CAD construction and navigational dredging; and the use of that clean sand to extend, enlarge and place bulkheads at a parcels of lands known as “the South and North Terminal”
- Where feasible, the on-site capping of contaminated areas, that will not otherwise be remediated, using the clean material generated during the construction of CAD facilities;
- The option of permanently disposing some contaminated sediments in the requested CDFs; and
- Protect and repair any dock that is impeding and may be damaged by the navigational dredging.

This Enhancement of Remedy request falls under the National Contingency Plan (NCP) [40 CFR 300.515(f) (1)(ii)]. The NCP provides that “[i]f EPA finds that the proposed change or expansion is *not necessary* to the selected remedial action, *but would not conflict or be inconsistent* with the EPA-selected remedy, EPA may agree to integrate the proposed change or expansion into the planned CERCLA remedial work...” (Emphasis added.) This is subject to State agreement “to fund the entire additional cost associated with the change or expansion...” and State agreement “to assume the lead for supervising the state-funded component of the remedy...” (The regulation further requires, “if EPA determines that the state-funded component cannot be conducted as a separate phase or activity, [State agreement] for supervising the remedial design and construction of the entire remedy.”) If you determine that this Enhancement of Remedy is not *necessary* to the selected remedy for the Site, as it may be modified by the anticipated ESD, the implementation of these remedy enhancements would depend upon the ability of the Commonwealth and City of New Bedford to obtain sufficient funding. MassDEP believes that there would be significant support for this proposal and we are prepared to work with the various agencies to secure the necessary funding, as this proposal moves forward.

1) **On-site Disposal, Storage and Re-use of the CAD Construction Material.**

MassDEP requests that EPA include as an enhancement of remedy to the ESD, the construction of on-site Confined Disposal Facilities for disposal/storage of the clean sand generated during CAD construction and navigational dredging. The construction of CAD

facilities generates "clean" (non-contaminated) material (mostly sand) that requires appropriate management, either disposal or reuse. To date, two CAD facilities have been constructed for the navigational dredging work. The clean material generated during construction of the first CAD facility was used by EPA to cap part of the site in Buzzards Bay. Clean material generated during the construction of the second CAD facility was not reused but was instead disposed of at the Cape Cod Disposal Site, a deep water disposal area. This off-site disposal requires a permit (issued June 29, 2005 by MassDEP) which prohibits the disposal of the clean sand between January 1<sup>st</sup> and May 15<sup>th</sup> to protect the Right whales. This "time of year" restriction can cause significant delays and increased costs to both the EPA Superfund remedy and the navigational dredging. In addition to increased costs, such restrictions also delay mitigation of the continued human and ecologic risks that the site presents. Including the disposal of clean sand in the CDFs will avoid these delays in the work, avoid the detrimental ecological impacts of deep water disposal, and allow for a beneficial reuse of some of the material.

Because of the large amount of sand generated by the navigational dredging (up to 1 million cubic yards), the State proposes to use up to three Confined Disposal Facilities (CDFs). Two of these CDFs were proposed in the EPA's 1998 Proposed Plan, CDF D (at the North Terminal) and the modified navigational CDF (at the South Terminal). CDF D was included as part of the ROD but later abandoned by EPA. The navigational CDF was proposed for the disposal of the contaminated navigational sediments, but was not part of the ROD. To limit the impact, this CDF would be significantly smaller than the one in the Proposed Plan. A third CDF may be needed, depending upon the storage capacity available for clean material in the first 2 CDFs. Because of the uncertainty of the amount of clean material storage that will be required, the location of the possible third CDF will be sent to EPA before the ESD goes out for public comment. The CDF location will be one that was evaluated in the site Feasibility Study.

MassDEP is aware of the issues related to construction of CDFs, such as the in-water placing of material and permanent loss of some habitat areas. Because of this, MassDEP proposes limiting the size of the CDFs to as small an area as possible. The original ROD proposed a larger area of filling than what is currently being requested by the State. The original selection of CDF D in the ROD was intended to lessen the amount of remedial dredging required by EPA, since construction of CDF's does not require the removal of the underlying contaminated sediment, and CDF D is located in an area where sediment contamination levels would otherwise have required remediation. MassDEP recommends utilizing this original plan thereby allowing EPA to realize that benefit in reduced cleanup costs.

The CDFs would be used to permanently store a portion of the clean material and provide temporary storage for material to be re-used on-site. For example, the CAD facilities, once constructed, will require final capping with clean material to eliminate the exposure risks from the dredged contaminated sediments. The clean material temporarily stored in the proposed CDFs would be re-used for this purpose. Otherwise the capping of the CADs would require the purchase and transport of clean material from an off-site

source. Thus, the additional cost and the environmental impacts of first disposing of clean material at the Cape Cod Disposal Site, and then generating, purchasing, and transporting from off-site suitable capping material could be eliminated.

2) **On-site Capping Using the Clean CAD Construction and Dredge Material.**

The final capping of the CADs will only require a portion of the stored clean dredge materials. MassDEP requests that EPA include as an enhancement of remedy to the ESD, the use of the surplus clean material for on-site capping, where feasible, of contaminated areas of the Site that would not otherwise be remediated. For example, the current sediment cleanup level in the water north of Coggeshall St. is 10 parts per million (ppm) PCBs, while the cleanup level south of Coggeshall St. is 50 ppm. The additional capping would be used in areas where most appropriate, such as areas where PCB contamination levels are above 10 ppm. A cap would not be placed in areas impacted (or potentially impacted) by sewer or storm drain outfalls, navigational areas, or any other inappropriate locations. In addition to eliminating the need to build large and/or additional CDFs for clean sand disposal, this capping would further reduce exposure to residual PCB-contaminated sediment at the Site and provide a valuable reuse of the clean material. While there are some temporary impacts to habitat from capping, the layer of clean material will result in a permanent reduction in the significant impact presented by the residual contaminated sediments.

3) **Limited Disposal of Contaminated Dredged Sediment into CDFs.**

The construction of CADs will result in some temporary ecologic and navigational impacts. Using a design that limits the number of CAD facilities to be built will minimize these impacts. Constructing the CAD facilities deeper can provide greater storage capacity while reducing the overall number of facilities necessary and thereby minimizing the ecological and navigational impacts. The construction of all CADs in New Bedford requires the proper disposal of the top layer of contaminated sediments. In the case of the existing partially filled CAD, this layer of contaminated sediments was disposed of into the previously constructed CAD. The current unfilled CAD has limited space for the storage of the top contaminated layer of any large CAD. Because of this limitation, the State proposes that the option of permanently disposing some contaminated sediments in the proposed CDFs also be included as an enhancement of remedy to the ESD. This concept is no different than what was in the original Proposed Plan.

4) **Dredging Limitation Caused by Infrastructure Failure.**

Planned navigational dredging has been limited by the age and structural integrity of a number of nearby piers. MassDEP requests that the repair of the any pier impacted by the navigational dredging be included as an enhancement of the remedy to the ESD. Any repair of piers would be done only if impacts to the local habitat (i.e., filling) are minimal or mitigated where feasible (e.g., reducing the size of the dock being repaired). For example, this was done as an exemption to the original Enhancement of Remedy request, for the Steamship Authority facility in Fairhaven. This exemption allowed the dredging to proceed, while reducing the final dock size. A reduction in the amount of filling is not

always possible, especially along the bulk headed shoreline. In such cases, repairs will only be allowed if the filling is minimal.

MassDEP believes these enhancements of the remedy warrant inclusion in the upcoming ESD for the New Bedford Harbor Superfund Site because of the on and off-Site environmental benefits, cost savings and broader economic benefits, described above. However, if necessary we would also be willing to discuss a mechanism other than the ESD to formalize the Enhancement of Remedy that we propose in this letter. Thank you for your consideration of this request in conjunction with the upcoming ESD.

If you have any questions regarding MassDEP's request, please contact our site project manager, Paul Craffey at (617) 292-5591.

Sincerely yours,



Gary Moran  
Deputy Commissioner

cc: Dave Dickerson, EPA Remedial Project Manager