

cc: Charlie Bearna
Office of Regional Council
(Please forward)

Working for the Nature of Tomorrow™



NATIONAL WILDLIFE FEDERATION

1412 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

Site:	NEW BEDFORD
ECRA:	10.1
Other:	57506

December 23, 1987

VIA FEDERAL EXPRESS

Freedom of Information Officer
U.S. Environmental Protection Agency
John F. Kennedy Federal Building
Room 2203
Boston, MA 02203

RE: Freedom of Information Act Request:
New Bedford Harbor

Dear Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, et seq., and implementing regulations of the Environmental Protection Agency, 40 C.F.R. Part 2, the National Wildlife Federation (NWF) hereby requests that you provide us the following agency records:

1. One copy of all studies or reports developed for the Remedial Investigation and Feasibility Study for the New Bedford Harbor Superfund site and adjoining areas (e.g. Buzzards Bay), whether completed by EPA, EPA contractors or subcontractors, the Corps of Engineers, Woods Hole Oceanographic Institute, or any other person or entity.
2. Access to all agency records relating to the New Bedford Harbor Superfund site. We do not at this time ask for copies of the documents covered by this request, but we do ask for you to arrange to make these documents available for our review within the 10 day period specified in FOIA.

If you decide that any of the statutory exemptions apply to any record, we request that you nonetheless disclose the record pursuant to your discretionary power to disclose exempted materials. Otherwise, we request that you release all segregable

portions of that record which are not exempt. 5 U.S.C. §552(b). Please provide us with a list of any records that you withhold under claim of privilege or exemption. We request that such an index be of the type required in Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), and Founding Church of Scientology v. Bell, 603 F.2d 945, 949 (D.C. Cir. 1979).

The National Wildlife Federation respectfully requests that you waive all fees in connection with this matter. Disclosure of this information is in the public interest because it will significantly contribute to the public's understanding of the threats posed by the contamination in the New Bedford Harbor, the potential methods to clean up and restore the Harbor and the risks of those methods, and of the operations and activities of the EPA and other government agencies with respect to this problem of significant importance to the public health and the environment. This request is not primarily in the commercial interests of the National Wildlife Federation. See, 5 U.S.C. §552(a)(4)(A)(iii).¹

1. In addition, as the largest, nonprofit conservation education organization in the United States, NWF maintains a number of educational programs, activities and services, which include, but are not limited to:

- publishing "National Wildlife" and "International Wildlife", bimonthly magazines;
- writing and distributing broadly distributed newsletters on current conservation issues and legislation;
- producing educational materials and handbooks for citizen participation in environmental issues--over a half million copies are distributed annually;
- providing support and guidance to our state and territorial affiliates. Through Regional Executives located across the country, NWF assists state conservation organizations by conducting seminars and workshops to help them develop effective support for conservation programs. NWF also publishes "The Leader", a monthly newspaper for our affiliates.

Through the publications and services described above, the information requested will contribute significantly to the understanding the knowledge of the National Wildlife Federation's 4.8 million members' and supporters, and of the general public, regarding the activities and operations of government agencies, such as the Environmental Protection Agency, in dealing with the

Should you decide not to waive fees, we request that you immediately contact us prior to incurring costs in excess of \$50.00. In addition, please request additional information concerning our fee waiver request if you believe it is needed. Nothing in this request, however, shall be construed as a waiver of our statutory right to receipt of the requested records within the time periods established by statute and rule.

Thank you for your prompt consideration of our request. We look forward to your response within 10 working days, as required by FOIA and EPA rules.

Sincerely,



Erik D. Olson
Counsel, Environmental
Quality Division
(202) 637-3739

cc: Charlie Bearing, ORC-Region I

(Footnote Continued)

New Bedford Harbor contamination problem. Therefore, a waiver of fees is in the public interest.

The recent Department of Justice Guidance for FOIA fee waivers ("Memorandum to the Heads of All Federal Agencies" From Stephen J. Markman, Assistant Attorney General, Office of Legal Policy, Re: "New FOIA Fee Policy Guidance," April 2, 1987) are invalid, for they violate the intent of Congress clearly expressed in the legislative history to broaden rather than to restrict the availability of fee waivers under the new statute. In any event, it is clear that this request does meet the criteria established by that "guidance" and the proposed regulations for the reasons described above.