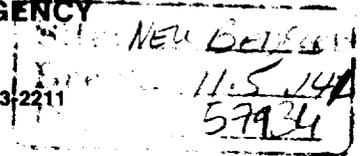




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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211



September 14, 1989

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Re: New Bedford Harbor documents

Dear Counsel:

This is to confirm my conversation of Tuesday morning with Mary Ryan and Richard Hughto of Rizzo Associates. Mr. Hughto should contact Richard Pruell of EPA's Narragansett Laboratory (or Norman Rubinstein if Dr. Pruell is unavailable), and Mark Otis of the Corps of Engineers' New England Division (or Brian Condike of the Corps' Water Quality Lab, at 508 928-4711) in order to obtain access to the laboratory documents which Mr. Hughto wishes to see.

I wish to emphasize that we have always been willing to provide Mr. Hughto with access to these files, but his previous requests have been for us to send him copies of these documents, which, as we have explained repeatedly, could only be done on a very slow schedule if at all, because of the time and expense

required to carry out the copying. Prior to your letter of August 14, EPA had indicated to Mr. Hughto on several occasions that his request, on the terms in which he had presented it, would take many weeks and several thousand dollars to comply with. After receiving your August 14, 1989, letter, EPA advanced the alternative proposal that he examine the documents on-site, and be prepared to provide the personnel to do the copying. I understand that is what you are now planning to do.

In reference to your August 14 letter, EPA does not agree that comment on the Hot Spot Feasibility Study is dependant on documents which have not yet been completed, or have otherwise not been included in EPA's Administrative Record. All of the documents and data available to EPA have made public and included in the Administrative Record as soon as they are finalized. In particular, the material relating to the Pilot Study Hot Spot study which you do not have consists of laboratory documents, rather than data. "Data" can only refer to the results of sampling and analyses, which in the case of the Hot Spot study are all included in the report which has long since been provided to you. (In my letter of July 14, 1989, I pointed out that the Corps' report on the Hot Spot sampling was first provided to you on March 31, 1988. It has been produced on two separate subsequent occasions).

The only data which have not yet been added to the Administrative Record are unvalidated results of air monitoring during the Pilot Study, along with the accompanying meteorological data. EPA is willing to produce a copy of the air results, and you should contact Alan Fowler of Ebasco to arrange for a copy from his office. I wish to emphasize that this data is still being validated, and may be corrected before a final report is issued. EPA has not had this data at any earlier time, and did not rely on it in developing its proposed plan. EPA plans to rely on the data in the design phase for any remedial action chosen for the Hot Spot.

All data on which EPA has relied for the Hot Spot have been presented in the reports included in the Administrative Record. In EPA's view all of the information necessary to comment on the Hot Spot Feasibility Study was available by the beginning of the comment period. Nonetheless, as you know, EPA released its draft Risk Assessment on August 15 and extended the comment period to October 2.

In response to the other comments in your August 14 letter, EPA has the following replies:

1. Availability of the Administrative Record. EPA rejects your unspecified assertion that "(u)ntil quite recently, neither the public nor the defendants have had access to much of the information..." in the Administrative Record. On the contrary, most of the record is composed of documents which have been publicly available for years. The record includes an extensive history of public participation and production of documents to the

defendants. All of the documents in the Record have been made publicly available as soon as they are completed.

2. Pilot Study data. The Interim Report on the Pilot Study included in EPA's Administrative Record includes the data and calculations relied on by EPA in developing its Proposed Remedial Action Plan. Your assertion that "the Report did not include most of the water quality data collected during the course of the program" is a mischaracterization. In some cases, the Corps' report recorded results as averages rather than individual sample results, and some metals data was not complete at the time of the report.

The data which was averaged or omitted was not essential for a review of the results of the study. In any case, all of the additional information has now been produced to you. (See letter to Mr. Hughto dated August 25, 1989). In addition, an update was added to EPA's Administrative Record on August 3rd. This includes the individual results reported as averages in the Interim Report, and the additional metals results.

3. Reports on the Treatability Studies. These reports have been completed and were included in the August 3rd update of the Administrative Record. Copies were provided to Mr. Hughto by letter dated August 23, 1989.

In conclusion, EPA is not persuaded that any information necessary for review and comment on the Hot Spot Feasibility Study and Proposed Plan has been unavailable, or that comment cannot be provided within the comment period, particularly as extended. EPA does not agree with your claim that necessary data has not been made available. Moreover, your correspondence has not identified any basis for your claim that your failure to obtain copies of laboratory documents from one of several studies "severely prejudices [y]our ability to critically analyze the proposed remedial alternatives." At this point, EPA knows of no reason why you should not be able to comment on the choice of a remedy for the Hot Spot, or why such a decision should be delayed any longer.

EPA is, however, open to further discussion of your concerns with regard to obtaining documents or information. If there are materials which you still feel you need, we would appreciate it if you would specify as much as possible what information you are seeking and why you need it to comment on the Hot Spot remedy. Please feel free to contact me if you wish to discuss this issue further.

Yours sincerely,



Charles C. Bering
Assistant Regional Counsel

cc: Nancy Preis