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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

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

November 9, 1984

Paul B. Galvani
Ropes and Gray
225 Franklin Street
Boston, MA 02110

Dear Mr. Galvani:

This is in response to your letter of October 29 regarding access to EPA documents.

First, on Friday morning, October 26, I supplied Mr. DaSilva of your office copies of 150 documents from Metcalf and Eddy ("M&E")'s reference list and a copy of M&E's computer tape. I also met with Mr. DaSilva on Tuesday, November 6. We went over the documents which we have so far located and made available, including copies of the 150 documents already obtained, 17 other documents listed in your letters of October 10 and 11, and 22 additional documents listed as references in NUS's draft RI/FS. The EPA Regional Library has prepared an index of these documents which is enclosed with this letter.

Of the documents which you requested which were not in the library when I met with Mr. DaSilva, the following have been accounted for:

1. Herlich and Shashikant, January, 1983. Literature Review and Technical Evaluation of Sediment Resuspension During Dredging; Report No. COE-266. This was part of the Library's existing collection and had been taken out by an EPA staff person. It is being retrieved and we will let Mr. DaSilva know when it is available. (Note that half of the title appears on page two of your October 10 letter; this half was mistaken by Mr. DaSilva for a separate document.)
2. Unpublished data from J.W. Farrington dated September 1982. The copy of this data, which was in the Library, was inadvertently included with the copy of the 1961 Corps of Engineers Report which Mr. DaSilva copied. It is now in a separate folder. The material is also reference number 94 of the Appendix A documents, which Mr. DaSilva has also obtained.

3. "Air Monitoring data for 1978." These are references number 56, 57 and 71-73 of the Appendix A documents.
4. Boring logs referred to in NUS's draft RI/FS. These are still being assembled and copied by NUS. We will let Mr. DaSilva know when these are available.
5. Volume I of the 1977 "Route 6 Bridge Corridor Planning Study Report." This is still being copied and sent on by NUS, after some delay in locating it.
6. Reports and data from the September 1982 U.S. Coast Guard/EPA study. Aside from the Interim and Final Reports, the only relevant documents which Region I has currently located are references 125 and 126 of the Appendix A documents.

The following documents have not yet been located:

Geotechnical Engineers, Inc., September, 1977: Biological Reconnaissance of New Bedford Harbor, etc.. Apparently this was an erroneous citation by NUS. Geotechnical Engineers informs us that they did not author such a document, and we have not located any document by this title.

References number 51, 55, 78 and 84 from Metcalf and Eddy's Appendix A were missing from M&E's files. M&E and Region I are now trying to locate these documents. We will let Mr. DaSilva know as soon as they are available. (References 79, 90 and 95 have been located and copies are enclosed).

One document which we are not releasing is M&E's reference number 70. This is a memorandum dated August 28, 1981, from me and James Okun, to Lawrence Goldman, then Director of Region I's Enforcement Division. It discusses the data from Versar, Inc.'s inspections at Aerovox, Cornell-Dubilier and the New Bedford Sewage Treatment Plant, in June, 1981, and sets forth options for EPA to respond to this data. The data themselves are contained in several other documents, including M&E's data base, but the discussion is subject to the attorney-client privilege.

Finally, Region I's Permits Library has reviewed the list of companies in your October 10 letter and assembled all existing files on those companies (including those records retrieved from the Federal Records Center in Waltham). The following list indicates the current status of these files. "None" indicates that we have no record of a permit number ever being assigned, or of any file being created:

<u>Facility</u>	<u>NPDES Permit Number</u>	<u>RCRA Permit Number</u>
1. Integrated Technologies, Inc.	none	none
2. Acushnet Saw Mills	MA0024121	MAD001025154*
3. Reliable Trust Co., Inc.	none	none
4. Independent Fasteners	none	none
5. Plastics International, Inc.	none	none
6. Unital Inc.	none	none
7. C&P Machine & Welding Co., Inc.	none	none
8. Coyne Industrial Laundry Inc.	none	MAD095871638
9. Acushnet Golf	MA0005428*	MAD001025170
10. Acushnet Rubber	MA0003913**	MAD000650226
11. City of New Bedford	MA0100781*	none
12. Acushnet Capacitor Co. Inc.	MA0023884*	MAD05806237
13. Fibre Leather Mfg. Co.	MA0021903***	MAD001023449
14. Cliftex Corp	MA0021377	none
15. Cameo Curtains of New Bedford	MA0022128***	none
16. Mass Bargain-land	none	none
17. Whitman Mills Outlet Center	none	none
18. Star Plating Co. Inc.	MA0023205***	MAD001021245
19. American Press Inc.	MA0021253	none

<u>Facility</u>	<u>NPDES Permit Number</u>	<u>RCRA Permit Number</u>
20. Revere Sink Corp.	none	none
21. Cape Cod Women's Apparel	none	none
22. Fairhaven Corp.	MA0021261	none
23. Cape Cod Window Inc.	none	none
24. New Bedford Textile Co.	MA0021539	none
25. Patriot Footwear Corp.	none	none
26. Eastern Sports-wear Corp.	MA0023566***	none
27. Superior Sportswear, Inc.	MA0021482***	none
28. E&M Clothing Company, Inc.	MA0023825	none
29. Sonny & Leo's Furniture Co.	none	none
30. Medeiros Bus Co., Inc.	none	none
31. New Bedford Thread Co., Inc.	MA0021598	none
32. Revere Copper & Brass; and	MA0020419 MA0005100	MAD000844274*** MAD001064963
33. Commonwealth Electric	MA0004910	MAD000220954

* In use

** Not located

*** Listed as no permit required; no file located

In response to your comments on the Metcalf and Eddy computer tape, let me say that we seem to have had a misunderstanding. When I first discussed the matter with Mr. DaSilva on the telephone, I stated to him that it was my recollection that when Ropes and Gray had first requested the tape, following your letter to me of November 23, 1982, an individual at M&E had expressed concern for M&E's proprietary interest in the computer program which M&E had used to organize EPA's data. Because of my imperfect recollection, I told Mr. DaSilva that before releasing the tape I had to talk to M&E to determine whether or not M&E has proprietary rights that would present a legal barrier to a public release of the tape by EPA. I added that if such were the case, Aerovox could probably nevertheless obtain the tape through discovery, under a protective order.

Subsequently, I found that there is no longer a proprietary obstacle to copying the tape. In fact, in reviewing my file, I found that in response to your 1982 request, M&E offered to make the tape available, in a letter from Richard L. Ball of M&E to Eric Anderson of Applied Science Associates, dated January 6, 1983. At the time of Mr. Ball's letter, I had not determined whether M&E's computer program or the tape, as distinguished from the data, was actually subject to disclosure by the government. Rather than press the issue, you subsequently chose to obtain a 263 page print-out of the data, which I made available to you in a letter dated February 15, 1983, and which you subsequently obtained in March, 1983. In the interest of facilitating your review of the draft RI/FS, we have this time waived prepayment of any copying expenses and you have obtained the tape.

You should recall that in response to your letter of November 22, 1982, I acted in accordance with 40 C.F.R. §2.109(b), discussing the matter with you by telephone and arranging for Mr. Allensworth of your office to visit our office, where we gave him access to all files which we considered nonexempt from FOIA disclosure, and allowed him to copy whatever he chose. At the same time, you obtained the 263 page printout, which was designed to include all of the valid environmental sampling data in EPA's possession at the time. At no time, then or since, has EPA attempted to withhold "clearly germane data", as you claim in your October 29 letter.

I understand "germane data" to mean environmental sampling results or other factual information relevant to EPA's activities in New Bedford. I do not regard internal draft documents and deliberative memoranda as "data", nor am I aware of any relevant data contained in any withheld document which has not otherwise been released in publicly available documents. In response to your letter of October 29, EPA is reviewing your request in order to determine whether such drafts, memoranda and other internal documents as exist should be released.

If you have any further questions, or if I can be of further assistance, please feel free to get in touch with me.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Charles Bering".

Charles Bering

Enclosures

cc without enclosures: William Cheeseman
Jeffrey Bates
Daniel Gleason
David McLaughlin
John Quarles