

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

One Financial Center
Boston, Massachusetts 02111

61221
5.3.76

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: 202/434-7300
Fax: 202/434-7400

Telephone: 617/542-6000
Fax: 617/542-2241

Craig H. Campbell
Member

Direct Dial Number
(617) 348-1801

December 5, 1996

David Dickerson
Remedial Project Manager
U.S. EPA
Region I, HBO
JFK Federal Building
Boston, MA 02203

Re: Comments of Marine Hydraulics, Inc. on EPA's Proposed
Remedy for the Upper and Lower New Bedford Harbor,
New Bedford, Massachusetts

Dear Mr. Dickerson:

The following comments on EPA's proposed remedy for the Upper and Lower New Bedford Harbor ("Proposed Remedy") are submitted on behalf of Marine Hydraulics Inc. ("Marine Hydraulics" or "the Company").

BACKGROUND

Marine Hydraulics is a Massachusetts corporation which conducts its business at 256 Herman Melville Boulevard located on New Bedford Harbor ("Harbor") in New Bedford. The Company's business includes the fabrication of marine parts and the hauling, storage and servicing of boats.

Marine Hydraulics leases property located at 256 Herman Melville Boulevard pursuant to a 99-year lease ("Lease") with the City of New Bedford. A copy of the Lease is enclosed with this letter. Pursuant to the terms and conditions of the Lease, the Company is entitled to use the property to fabricate marine parts and for other water dependent activities. Marine Hydraulics is permitted to make improvements to the property in connection with conducting its business.

Among the improvements to the property made by Marine Hydraulics are a crane pad and a boat ramp. The construction of

David Dickerson
December 5, 1996
Page 2

the docking facilities and the crane pad were permitted pursuant to the licensing requirements of Mass. Gen. Laws c. 91 ("c. 91"), among other requirements. It took Marine Hydraulics over three years to complete the c. 91 licensing process. The c. 91 license is location specific; it is non-transferrable from one property to another or even within the same property.

The Lease also grants Marine Hydraulics the right of first refusal to develop property created seaward of the current mean high water ("MHW") line. This means that, assuming the acquisition of all necessary permits, licenses and approvals, Marine Hydraulics could create filled land seaward of the existing MHW line and extend its business seaward on the newly created property.

EPA'S PROPOSED REMEDY AS IT RELATES TO MARINE HYDRAULICS

As proposed, the remedy calls for Confined Disposal Facility ("CDF") D to be constructed so as to occupy the entire waterfront of Marine Hydraulics' property. Some portion of an estimated 450,000 cubic yards of PCB-contaminated sediments to be dredged from the Harbor would be placed in CDF D on and adjacent to the Company's property. After approximately three years from the initial placement of the sediments in CDF D, a cap would be constructed over the sediments and a long-term monitoring and maintenance program would commence. In addition, as currently proposed, the remedy also may involve the use of sediments from navigational dredging as a component of the cap to be placed over the PCB sediments. These sediments contain PCBs as well as metals.

POTENTIAL IMPACTS OF PROPOSED REMEDY ON MARINE HYDRAULICS

Since the Company's business is a marine business substantially dependent upon access to the water, the construction of CDF D could be devastating to the Company. Unless the design and construction of CDF D accommodates the Company's current and anticipated future levels of boat launching and hauling, the adverse impact on the Company's business would be very substantial.

Even assuming the design and construction of CDF D could accommodate the continued use by the Company of its crane pad and boat ramp facilities, the mere presence of an enormous mass of contaminated material on or near the Company's property would

David Dickerson
December 5, 1996
Page 3

have the potential for significant adverse impacts on the Company's business. The ability of Marine Hydraulics to further develop the property, and to finance any such future development, likely would be severely restricted if not foreclosed. The newly created property, as to which Marine Hydraulics would possess the right of first refusal to develop, would consist almost entirely of contaminated material. Again, the ability of Marine Hydraulics to develop and finance the development of such property would be limited if not foreclosed by the presence of the contamination. Finally, the ability of the Company to sell the business or to sell or sublease the Company's interests in the property would be severely limited or foreclosed for the same reasons. Such a limitation would effectively deny Marine Hydraulics the substantial rights in the property it bargained for and obtained under the Lease.

CONCLUSION

Any configuration of CDF D on or in the immediate vicinity of Marine Hydraulics' property will likely have a very significant adverse impact on the Company's property interests and its business. Accordingly, Marine Hydraulics is opposed to EPA's proposed remedy to the extent that CDF D is located on or in the vicinity of Marine Hydraulics' property. Should EPA nevertheless decide to locate CDF D as currently proposed, Marine Hydraulics recommends, indeed demands, that the Company be consulted with respect to the means by which the adverse impacts on its property interests and business may be mitigated.

Notwithstanding anything in these comments which might be construed to the contrary, Marine Hydraulics reserves any and all rights it has to assert claims against the United States for compensation for the taking by the United States of property rights held by Marine Hydraulics and for adverse impacts to the Company's business caused by the implementation of the remedy as it is proposed or as it may be revised.

If EPA or the Army Corps of Engineers has any questions about anything contained in these comments, please feel free to

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

David Dickerson
December 5, 1996
Page 4

contact me or Mr. David Chambers at Marine Hydraulics. Mr. Chambers can be reached at:

Marine Hydraulics Inc.
256 Herman Melville Blvd.
New Bedford, MA 02740
(508) 990-2866

Sincerely,



Craig H. Campbell

Enclosure

cc: David Chambers, President
Marine Hydraulics Inc.

L3/637112.1