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January 6, 1988

Ellen M. Mahan
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P.O. Box 7415
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OFFICE OF LEGAL COUNSEL

Re: New Bedford Harbor Remedial Investigation
and Feasibility Study

Dear Ms. Mahan:

This letter is in response to your letter of December 4, 1987, in which you addressed comments made in a letter we wrote to William Brighton, Charles Bering and Lee Breckenridge on August 6, 1987. In our letter, we requested a meeting as soon as possible in which EPA's and our technical consultants could discuss the remedial alternatives being considered by EPA regarding remediation of New Bedford Harbor. We were disappointed not to receive any response for four months.

You indicate that the federal government and the Commonwealth of Massachusetts would be willing to meet with us concerning two reports, the Army Corps of Engineers' report on the pilot dredging study, and EBASCO's draft report on remedial technologies. ^{1/} Although we welcome meeting with you to discuss these reports, our objective in writing Messrs. Brighton and Bering and Ms. Breckenridge last August is really much broader. What we seek is a meaningful role in the on-going administrative proceeding.

Although EPA does not have an established policy regarding the role PRPs should play in EPA's selection of a remedy, EPA officials have acknowledged that this question warrants careful consideration. It is not sufficient to say, particularly in a case as technically complex as New Bedford

^{1/} As Mary Ryan and Verne Vance have discussed with you, we had not received a copy of EBASCO's draft report on remedial technologies as of the date of your letter. Indeed, many of the reports already issued in draft or final form under the RI/FS for New Bedford Harbor have never been provided to us.

Ellen M. Mahan
January 6, 1988

Page 2

Harbor, that the Superfund Act does not specify the role PRPs should play in the administrative process. The technical questions here are too difficult, and the environmental and public health "stakes" too high, for EPA to turn its back on genuine offers such as the ones we have made to bring considerable resources and expertise to bear on the remedial issues under consideration.

The question of what role we should play should not be resolved by litigation counsel. Accordingly, in addition to meeting to discuss the two reports referred to in your letter, we would like to meet with you and EPA officials within Region I to explore alternatives open to us. In particular, we would like to discuss with EPA a mechanism for receiving draft reports and their underlying data in a timely manner, so that we can meaningfully comment upon them.

One recent example of the frustration we have encountered with respect to defining a meaningful role to play in EPA's selection of a remedy is the pilot dredging project. We did not receive the draft report until October, and have never received most of the underlying data. Our request in August for a meeting with EPA, in part to discuss EPA's continued emphasis on dredging as a remedial option, went unanswered for four months. Although you now indicate that EPA is willing to meet with us concerning "the planned pilot study," we wonder whether any comments we have about the study will receive meaningful consideration by EPA at this late date. Nevertheless, we would like to meet with EPA, and have submitted written comments on the proposed study.

We would like to propose a meeting with EPA officials on January 26, 1988 to discuss our participation in

MORGAN, LEWIS & BOCKIUS

Ellen M. Mahan
January 6, 1988

Page 3

the administrative process and the pilot dredging study, at a minimum. Please let us know as soon as possible whether that date is convenient.

Sincerely yours,

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