

Tashima, Keith (ENRD)

From: D'Haiti, Valencia (ENRD)
Sent: Wednesday, November 07, 2012 7:07 AM
To: Tashima, Keith (ENRD)
Subject: FW: PCB Clean-up/ AVX in New Bedford, MA

Keith -

Here's another comment which was received in the comment box.

*Val D'Haiti
Systems Support Specialist
U.S. Dept. of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
(202) 514-2436 (telephone)
(202) 514-0097 (fax)
valencia.d'haiti@usdoj.gov*

From: Rahim Aghai [mailto:g_raghai@umassd.edu]
Sent: Tuesday, November 06, 2012 10:33 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: PCB Clean-up/ AVX in New Bedford, MA

Dear Sir or Madam

We would appreciate if EPA initiate an in-depth studies by a group of scientist before initiating this CAD program in AVX site in New Bedford. If in future any mistake or error is found it would more costly to remedy and the life of many of us would in danger.

After all we are the people being affected by this procedure. In addition punitive damage fund against AVX will not be adequate all the affected sites. It's only a partial cleaning.

Rahim Aghai



From: edward.antheswashburn@gmail.com on behalf of [Edward Anthes-Washburn](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2
Date: Monday, December 17, 2012 4:33:46 PM

Dear Ms. Moreno,

As a citizen of New Bedford, I am in support of the the consent decree that will allow the EPA to clean up the extensive PCB contamination in New Bedford Harbor sooner.

Every year that goes by, the contamination from New Bedford Harbor flows into Buzzards Bay. That contamination gets into the food chain where it can cause the most damage to humans. The key is sequestering that pollution as quickly and safely as possible and this settlement will finish the job in years, not decades.

Thank you,

Edward C. Anthes-Washburn



Tashima, Keith (ENRD)

From: Jon [JonB55198@comcast.net]
Sent: Tuesday, November 27, 2012 7:14 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: New Bedford harbor clean up

Include this text in your comments:

I want New Bedford Harbor cleaned to the highest, safest standard. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.

Sincerely,
Jonathan Barboza



From: [Pierre Bernier](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: Public Comments D.J. Ref. No. 90-11-2-32/2
Date: Monday, December 17, 2012 4:43:15 PM
Attachments: [MARITIME-C55006248.pdf](#)

Assistant Attorney General,
Environment and Natural Resources Division

Reference: United States and Massachusetts
v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2

Please find attached our comment.

Sincerely,
Pierre Bernier
Maritime Terminal, Inc.

Consider the environment. Please do not print this e-mail unless you really need to.





MARITIME TERMINAL INC.

WHALERS' WHARF

P.O. BOX #7745

NEW BEDFORD, MASSACHUSETTS 02742 USA

TELEPHONE #508+996-8500

FAX #508+991-3431

December 17, 2012

Ignacia S. Moreno
Assistant Attorney General
Environment and Natural Resources Division
U.S. DOJ-ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

Re: United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2

Dear Ms. Moreno,

I am writing to express my support for the Supplemental Consent Decree under which AVX Corporation will pay \$366.25 million (with interest) as part of the cleanup of PCB contamination at the New Bedford Harbor Superfund Site.

As a business person in the New Bedford/Fairhaven area, I am concerned about the pace at which the cleanup has taken to date, and am very concerned about the impact to the environment that will continue to occur if PCB and metals contaminated sediments are allowed to remain on the Harbor bottom in direct contact with the ecosystem for as long as the up to the four additional decades the EPA currently estimates the remedy could take in the absence of the AVX settlement. I am aware of the danger to the environment and to the food chain that contaminated sediments represent if they are left in place in the Harbor, thus I strongly believe that every effort to speed up the cleanup must be made to lessen the risks to the ecosystem and human health.

I support the Supplemental Consent Decree which establishes the terms of the settlement with AVX Corporation, as it will accelerate the cleanup of the Harbor. I believe that accelerating the clean up of the harbor with the settlement funds is in the interest of the greater New Bedford area, its businesses, and its citizens. I would urge the EPA to be flexible and allow the settlement funds to be used in a manner which best serves the interests of the citizens of New Bedford and Fairhaven, who for decades have suffered serious environmental and economic harm because of the presence of the contamination. Besides being a hazard to the environment and human health, the presence of contamination in our community and in our Harbor has cast a shadow over all activities related to the Harbor, including the business sector I work in, as well as all local businesses with ties of any kind to the Harbor (which represents a large swath of the



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MARITIME TERMINAL INC.

citizenry of the region). Accelerating the pace of the Harbor cleanup using these settlement funds will have a positive benefit on all aspects of life in this region, and therefore I am in favor of this Supplemental Consent Decree.

Sincerely,

Pierre Bernier



Manager, Stevedoring Operations

From: [Bourne, Mark](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Date: Friday, November 30, 2012 1:39:55 PM

Please do what you can to clean up the harbor. I've spent time in Buzzards Bay since childhood and think it's a natural resource worth preserving. Thanks for your time. Oh yes, this too:

I want New Bedford Harbor cleaned to the highest, safest standard. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.



From: [william.calusine](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: United States and Massachusetts v. AVX Corporation, D.J. Ref. No 9-11-2-32/2
Date: Friday, November 30, 2012 7:59:17 PM

Assistant Attorney General
Environment and Natural Resources Division

I want New Bedford harbor cleaned to the highest, safest standard. The settlement between the EPA and the AVX should include a reopener clause to ensure a complete cleanup of the harbor. This is so very important for the future of our harbor and the health of future generations.

Marcia Calusine



From: [Chase, MacKenzie](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Cc: [Cabral, Antonio - Rep. \(HOU\)](#)
Subject: Rep. Cabral Letter Re. United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/
Date: Monday, December 17, 2012 4:54:50 PM
Attachments: [Rep. Cabral Letter Re. AVX Settlement, Ref. No. 90-11-2-32.pdf](#)

Rep. Antonio F.D. Cabral would like to submit the attached letter as a comment regarding United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/.

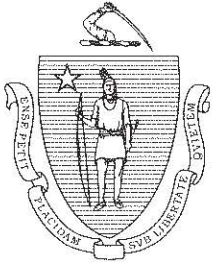
Please don't hesitate to contact me if you have any questions.

Thank you,
Mackenzie Chase

Mackenzie Chase

House Committee on Bonding, Capital Expenditures and State Assets
Office of Representative Antonio F. D. Cabral
State House, Room 466
(617) 722-2017
Mackenzie.Chase@mahouse.gov





COMMONWEALTH OF MASSACHUSETTS
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

ANTONIO CABRAL
STATE REPRESENTATIVE
13TH BRISTOL DISTRICT
STATE HOUSE, ROOM 466
BOSTON, MA 02133
TEL. (617) 722-2017

CHAIRMAN
HOUSE COMMITTEE ON BONDING, CAPITAL EXPENDITURES
AND STATE ASSETS

(508) 997-8113 (DISTRICT)

E-Mail:
Antonio.Cabral@MAhouse.gov

December 17, 2012

Assistant Attorney General
U.S. DOJ - ENRD
P.O. Box 7611
Washington, DC 20044-7611

Re: *United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/*

I am writing to urge you to explore including an appropriate reopener clause in the proposed settlement of the above referenced action.

In a 1992 settlement, AVX agreed to pay \$66 million for the cost of the remediation of the contamination of New Bedford Harbor and the Environmental Protection Agency retained its rights to pursue additional funds through a reopener clause. Without this option, the EPA could not have negotiated this latest agreement with AVX when costs escalated far beyond those foreseen at the time of the 1992 settlement. I support the comments submitted by the Buzzards Bay Coalition encouraging you to include a reopener clause in the settlement. Done correctly, this option can accommodate extraordinary and unexpected cost overruns, providing the residents of New Bedford with greater assurance that the long awaited clean up of their harbor will be completed.

Our City, with its rich maritime history and a future closely linked to its harbor, looks to you to protect the options to complete this clean up.

Sincerely,

A large, stylized handwritten signature in black ink that reads "Tony Cabral".

ANTONIO F.D. CABRAL
State Representative, 13th Bristol District
Chairman, Committee on Bonding, Capital Expenditures and State Assets

From: [Steven Costas](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Date: Friday, November 30, 2012 12:19:05 PM

*Attention: Assistant Attorney General, Environment and Natural Resources Division and refer to **United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2**. I want New Bedford Harbor cleaned to the highest, safest standard. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.*

*Thank you,
concerned citizen*



From: [Chuck Dade](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: Re: CIVIL ACTION NO. 83-3882-Y
Date: Monday, December 17, 2012 11:46:00 PM
Attachments: [AVX-UNITED STATES DISTRICT COURT.pdf](#)
[AVX-UNITED STATES DISTRICT COURT.pdf](#)

Please accept this as my comment letter in the above referenced case:



Chuck Dade



**1) UNITED STATES DISTRICT COURT
2) DISTRICT OF MASSACHUSETTS**

3)	_____			
		a.)	
4)	UNITED STATES OF AMERICA,)	
5)	Plaintiff,)	
		a.)	
	b. v.)	
		a.)	
6)	AVX CORPORATION, et al.,)	CIVIL ACTION NO.
	83-3882-Y)	
7)	Defendants.)	
		a.)	
8)	COMMONWEALTH OF MASSACHUSETTS,)	
9)	Plaintiff,)	
		a.)	
	b. v.)	
		a.)	
10)	AVX CORPORATION, et al.,)	
11)	Defendants.)	
		a.)	
12)	_____)	

13) BRIEF FOR CHUCK DADE a CONCERNED CITIZEN
14) AS AMICUS CURIAE

15) AMICUS BRIEF

16) My name is Chuck Dade and I am writing to this court because of my concern for what is going on with the cleanup efforts of the EPA Superfund site at the Acushnet River/ New Bedford Harbor.

17) I am a native of the area (born in New Bedford), a resident of the South Coast for most of my life, a US armed forces Veteran, and a direct

descendant of the (Eleanor Roosevelt awarded) mother (Maria Teresa Barboza) of 10 children from this same area who served in the US military during WW II. As (a child, a grand child, a person from) a family who lived and/or worked in the area contaminated and as an area educated (BA Psychology) active citizen who has had some experience with hard sciences and engineering (having attended some physics and electronics courses (I am also an Army Engineer> Power Generation).

I mention all of this because I think it lays a foundation to ask (for the many others that are in any way or part connected),

18)“When do we become entitled to equity with regard to government protection (in all of the ways government does such) including environmentally.

19)And I ask (for all)

“When do we become entitled to have a real voice in determining our future”.

20)I believe I can offer some perspective to this case from the position of J.Q. Public..

21) But before I do I would like to say that since the AVX Corporation has entered into this proposed settlement that they have already established that they are ready, willing and able to satisfy the monetary outlay as described in Paragraphs 7, of the Case filing 1:83-cv-03882-WGY Document 2617-1 Filed 10/10/12 (but they are attempting to leverage an escape clause for some of the liability that they deserve).

22) As such, I would ask that the court consider a directed finding/verdict/decreed in the amount stated therein unconditionally and immediately to be accomplished and completed in the time table agreed upon forthwith without any provisions that close any re-opener clauses. Let's get the funding for this in place for the cleanup, and worry about the added costs and best design as needed. And let's do it the right way with no shortcuts that disenfranchises the average citizens of the area, a multitude environmentally deprived for decades (which makes this an Environmental Justice issue and a infringement on civil rights because of the comparative inequity that has occurred for so long).

23) I want New Bedford Harbor cleaned to the highest, safest standard. Time or cost are not the priorities; doing it right is. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.

24) In as much as the slogan for the United States Justice Department website is "The Common Law is the will of mankind issuing from the Life

of the people”, keeping to that theme can only be accomplished when a court finds in such a way that the protection of and the restitution to the people is carried through ensuring that those (particularly those with the wherewithal) that have damaged others (or the public good) be held fully liable for the damages suffered. It should be mandatory that the people are made whole; AVX has the wherewithal. Who speaks better for Lady Justice than the court. Please find/decreed in a way that aids in fulfilling that end completely

25)Of great concern is that, for some time now, it seems that no government entity has really spoken for the people effectively. Certainly NOT the EPA ; at least for a few years. And certainly NOT in this proceeding. The people do not want to let responsible parties off the hook. As a government agency, EPA’s responsibility is to protect the people (a constitutional imperative) by protecting and restoring the environment (an agency responsibility). Recent policies by the EPA with regard to new initiatives have acted in contradiction toward that end and have turned a deaf ear to local government bodies, grassroots community groups,NGO’s and citizen’s that have tried to speak for the people.

26)The EPA’s latest idea is what they call Confined Aquatic Disposal cells (CAD cells). Despite opposition that includes official comments by the City Council of the City of New Bedford, MA who are unanimously against CAD cells and have said so officially at least 3 times, the EPA is on track to bury 300,000 cubic yards (over 8,100,000 cubic feet) of sediment: 15,000

lbs of PCBs in an excavation in the river bed covered with just 3 ft. of sand despite that true popular opinion is against it . When community groups questioned this they were told more than once “If you understood science then you would know that it will work” Well science says : Blood worms live from the Gulf of St Lawrence (Canada) to the Gulf of New Mexico, they are burrowers and a bloodworm's body can grow to be fifteen inches in. I doubt they figured that (just one idea of an unforeseen future occurrence) into the EPA computer modeling.

27) Beyond that we have, recently, learned that some PCBs have already buried some in CAD cells though most people were unaware of until after it was already done. They were kind of snuck in. Because this is an environmental justice area and as such the government needs to go to a higher degree of effort to inform the public than the ‘barely legal’ notices in the legal section of the newspaper since this has federal oversight even the states part should live up to these federal guidelines.

28) Since part of the cleanup is being done by state authorities (under EPA oversight) and some is done by the EPA themselves this division of procedure and public engagement made it possible for it to be slipped in because most of the concerned engaged citizens and NGOs solely attended the federal EPA hosted public meetings expecting, since EPA were the overseers, to be enlightened about all aspects of the PCB cleanup under their purview.

29) This turned out to be an incorrect assumption. Apparently, there were

separate meetings for the MassDEP navigational dredging that were not well attended by the public. MassDEP got their CAD cells approved pretty much with little to no public turnout because the public's continued focus was on the Federal meetings. But this was only touched on with EPA saying that the PCB levels were below the EPA guidelines (which turns out not to be completely true).

30) At the federal meetings, activists from the grassroots community group: Hands Across the River Coalition (HARC) (recognized in citation by the State Senate of Massachusetts as "the Caretakers of the Acushnet River and its Banks") also tried to ask more questions than the EPA would allow time for. EPA would schedule programmed information with just a short amount of time for Q & A.

31) HARC requested that there be more meetings just for the purpose of Q&A. EPA scheduled a meeting (in October or November 2010) for that purported purpose, then cancelled it, then scheduled another in February 24, 2011 which was a presentation of spoon fed info and a short Q & A. Again there were requests for more time (this is well documented on video).

32) From "The Rituals of Public Meetings." (McComas, Katherine, et al. Public administration review 70.1 (2010) it is said," The relationship between public participation and social solidarity lies in the nature of the participation process. In general, the opportunity for group discussion and interaction opens up the possibility for collective understanding of the

issue of concern”

- 33) The EPA process seemed instead to be attempting to ritualize dissemination of their already decided outcome without any real public participation at arriving at the outcome; a minimization of Q&A..
- 34) EPA’s next meeting was held May 26, 2012 and this cited video (http://www.youtube.com/watch?v=8f1Yq_d18W4) shows reaction to them not fulfilling the request for more time. They were asked for more time, beforehand and despite repetitive requests they stalled for months and they steered around providing it.
- 35) In the particular situation in the video the speaker questions who EPA meant when they said that the city wanted some things done with regards to some efforts to stage a few projects. It was suspected that it was the former Mayor Lang whose pet project was a river walk along a new real estate development and a fulfillment of part of another controversial real estate deal (where the mayor overturned a committee designation as to who the developer would be) citing a boathouse adjacent to the EPA where PCBs in the water are likely around 50 ppm. Again the **City Council** was on the record for being **against** CAD cells multiple times; it wasn’t the City council who was making the requests.
- 36) New Bedford is an area of multiple minorities and many with English as a second language or no English at all. At many of the meetings activists pointed this out stating that there were Environmental Justice directives

and (civil rights issues) that say that the government is supposed to be proactive in notification and education of the PCB situation. There are also minority (possibly) subsistence fishers (from Central America) observed; most likely some with children .

37) New Bedford is an area with no clear majority but it has historically been administered by descendants of hierarchical Yankee Whaling and somewhat later by, amongst others) people with strong ties to the Boston Irish political 'machinery'.

38) Since at least the 1950's the "greatest minority" (in that it is the largest single ethnicity) is Portuguese and 'in sum' the city is over 40% Lusitanic when you add other Portuguese speaking ethnicities like Cape Verdean people (2010 Census: Portuguese 33,308; Cape Verdean 7,156; French (except Basque) 5,692; French; Canadian 4,947; English 4,349; Irish 4,267; Polish 1,992; Italian 1,778); we have an unusual situation where we have this greater minority that historically existed under the specter of classic minority disadvantages without out any of the typical legislated minority advantages. Many Portuguese (paradoxically, some through pride and some through embarrassment) do not appreciate being considered a minority. They do not want to be considered "the other".

39) Even at the turn of the 19th to 20th century when the Portuguese population was 16% in New Bedford, they still outnumbered those in government leadership, City Council has had an increasingly better representation by people of Lusitanic derivation in the last couple

decades. Representation is good now (and on the PCB matter they have made formal declarations that they are **against CAD cells 3 times**) but, to date, there has never been a Portuguese surnamed Mayor.

40) The former and current Mayors and the local Economic Council

Development Council (contrarily) wrote letters supporting CAD cells

41) Government attention/action/nonaction by the state and federal

governments may have chronically responded inequitably to the community in this regard and many other ways over the years; in respect to this cleanup, it is less than dubious that this is part of the problem.

42) Another area that overlaps this and is an example of questionable equity

is with respect to train service to Boston that has been held up by EPA.

They are holding up approval for a commuter train through a swamp where a track has existed but not been used for years. But they rushed through an approval for the New Bedford South terminal project which will create yet another CAD cell. (The irony is that when the terminal is done they are going to need the train.)

43) Again this is done for the benefit of business preeminently Cape Wind

(though there are no guarantees that New Bedford will be the port that is used). So again the safety (thus equity) of the community is being compromised by burying more PCBs just for the possibility. Here, on spec, they rushed approval and are going to bury 225,000 yards of PCB contaminated sediment even though there is no contract by any wind developer to any governmental body ensuring that New Bedford will be

the chosen location. Quonsett Pt. and Davisville are other workable locations.

44)The designer of this project is the same as the other CAD Cell project (Apex). The supportrs are leveraging the promise of job,jobs,jobs to bury PCBs for a company with a sole ownership of a single billionaire. Profits for one above safety for all. But it's a falsely mutually exclusive. They can still do the build out but instead of digging a in another CAD cell by hauling the PCBs off (which is what the Community wants). AVX should have to pay for this removal as well. If this non-reopener clause gets approved there would be no way to keep the burden where it belongs: AVX.

45)How is it that with such powerful legislative powerhouses as Ted Kennedy and Barney Frank were reps for the area, yet, for decades New Bedford has remained such a depressed place. I submit there has been some defect in governance, probably in all arenas.

46)In "Community Stress, Psychosocial Hazards, and EPA Decision-Making in Communities Impacted by Chronic Technological Disasters", (*Couch, Stephen R., PhD., and Charlton J. Coles PhD. "Community Stress,."* *American Journal of Public Health 101 (2011)*), investigators consider myriad sociological effects that happen to communities affected by **Chronic Technological Disaster** (CTD).

47)According to Couch & Cole (Ibid,142, **Chronic Technological Disaster** "refers to conditions of perceived or known man-made contamination of an

environment that persists over time. Tornadoes race through a community in a matter of minutes, hurricane impact is measured in hours. A CTD, such as a Superfund site, lasts months, years, even decades---“ “---CTDs characterized CTDs as complex events because such environmental contamination is often cumulative; may be latent and not identified as a problem for several years; has impacts on humans that may be delayed, dynamic, or multiple and certain --“

48)The decades long contamination of the greater New Bedford area by massive amounts of PCBs is probably the definitive CTD. This is an area where self deprecation is a common phenomena.

49)I would suggest that the combination of the unusual sociological/political paradigm mentioned above together with the fact that the area has suffered a (CTD) caused by the PCBs that there has been a sustained depression of self esteem and hence a diminished social capital of the people to be able to wage an adequate fight to be able to counter the efforts of (AVX Corp., the local business interests who support CAD cells and) those that lobby against the grassroots community's wishes for an equitably clean and safe environment.

50)Hands Across the River Coalition President Edwin Rivera Sr. has told me multiple times that when he began fighting for the cleanup he was the youngest member of the then fairly strong group. It was the group that got EPA (through more effective community participation) to reverse the decision to set up an incinerator to burn the PCBs in New Bedford. They

instead got them taken off site to TSCA facility (which is what they are trying to maintain now). After 28 years the group has aged and there are only a few still active. Mustering number lately has been hard. Mr. Rivera says everyone wants to be paid today.

51) Its widely know that PCBs cause cancer in humans. In fact one past study had showed that Winter flounder from New Bedford Harbor had, 26 %, of liver neoplasms (cancer). Fifty-seven percent of all flounder collected from New Bedford Harbor then had some liver disease.

52) Other research shows that PCBs exposure correlate with cognitive impairment throughout life. There have been studies of both developing infants and the elderly that both have shown that those that were PCB contaminated had significantly diminished cognitive capabilities compared to those with normal exposure levels.

53) The New Bedford School system has 2 schools placed on or near the former Parker Street Waste Site a waste dump that had been contaminated with PCBs (some coming from Aerovox as well). The newest Keith Middle School was built since 2004. The area was supposed to be cleaned to 1 part per million (the EPA residential standard, and testing conducted by confirmed in 2006 that the effort had been successful.

54) But more recently in 2008 and 2011 they found PCB levels hundreds of times higher than expected. Some tested areas had PCB levels up to 834 parts per million.

55) At a “City Council Appointments & Briefings meeting on 3/29/11 the New Bedford City Council went on record in opposition to the use of CAD Cells for the purpose of PCB removal in the Harbor; and further that it notify the Administration, the HDC Director, Fairhaven Selectmen, EPA Director and the Massachusetts DEP of its opposition. This motion passed on a roll call vote of Yeas 9, Nays 0, with Councilors Coelho and Saunders not present for vote” (quoted from the official record).

56) On or about the time the EPA made their decision to implement using CAD cells, it was revealed that MassDEP had already buried some PCBs in CAD cells as part of their navigational dredging. This was used as part of an argument for EPA to bury more (it’s been done before). Some local activists (myself included) then began going to the state MassDEP meetings where they learned that, in fact, some of that buried was considerably above the guidelines of 50 parts per million (ppm) which was the cutoff level that determined whether handling was to be performed by the state or the Federal government. More recently Buzzards Bay Coalition has found that on top of that the level of cleanup performed in other areas was to a higher standard (1-2 ppm); New Bedford had been slighted again (50ppm) which certainly questions equity and is indicative of environmental injustice (again).

57) Having the PCBs removed from the area was a hard fought objective

initially; the city's NGO's and community groups had thought that that was finally resolved. Now EPA is reversing its decision. At the time of determination it was also the case that the harmful PCB contaminated sediment was being taken off site. Currently, currently the sediments are still being shipped away to a Toxic Substances Control Act (TSCA) licensed facility in Michigan (Wayne Disposal). This is the method acceptable by the community and the City Council. This method also follows the Federal Guidelines under 40 CFR 761.75 which enables, not only monitoring, but complete leachate collection. Wayne Disposals facility incorporates a cell with in a cell facility for this and it is all above a natural clay bed of a minimum of 11 ft. depth. When things go wrong they can be remediated. How would you remediate an underwater problem?

58)CAD cells are in no way mentioned in the 40.CFR 761 except by extending provisions for administrators to make decisions. 40.CFR 761.61. in special circumstances allows for EPA to do it by decision. This is a long stretch from democracy (and prone to inequity). Their stance is that peer reviewed scientific inquiry makes it alright, but its been noted before that peer reviewed expert knowledge can be wrong. I would like to discuss the limits of expert knowledge.

59)Although AVX in their comment letter (Sept 24, 2010) advocating for CAD cells quotes EPA and says that CAD cells have been proven to be effective, it hasn't.

60) From that letter “

- i. **II. ESD #4 - SETTING THE RECORD STRAIGHT.**
 - a. **CAD Cells Have Been a Proven Technology for Years.**
- ii. **ESD #4 states that CAD cell technology is a "recognized, protective contaminated**
- iii. **sediment disposal approach. ,,**
- iv. **18 While EPA implies, however, that this technology has only**
- v. **recently reached the point where its use could seriously be considered, the potential use of CAD cells for disposal of New Bedford Harbor sediments has a long history dating back to the early 1980s. The record of its previous consideration and evaluation is on the one hand substantial, and on the other hand disappointing, as EPA never provides a clear record explaining why it rejected the use of CAD cells, not once but at least twice. “**

61) Cad Cell techniques have only been utilized for a short period of time; in fact, there has only been one case of any magnitude where they were expressly utilized for the storage of PCB's being contained in the US. That was just in 2000 so there is no long term data available (and they want to bury this stuff forever). It was placed at a Naval facility in Puget sound (Palmerton et, Contained Aquatic Disposal (CAD) - An analysis of Their Advantages, Limitations, and Costs, Palmerton Group, 2000,pg 18); concurrently, PCBs are being attributed to the diminishing whale population there.

62) New Bedford will be the test case of putting them near a population; the guinea pigs, another wave of environmental injustice.

63) Because CAD cells as a technology to contain PCB contamination at the high level proposed for at the New Bedford site has no precedent, **research on point is not available.** It's proposed on computer modeling and projective science (**expert knowledge**).

64) This being the case, studies on expert knowledge exist in other technological arenas where grave consequences are possible. In review, much is to be learned about the presumptions of expertise, the typical disposition of players, the typical discourse.

65) The most influential risk analysis document, the Atomic Energy Commission's 1975 Reactor Safety Study (RSS), sometimes known as the **Rasmussen** report (after its director, Norman Rasmussen), on nuclear power plants show that the experts campaigned vehemently to allow a nuclear power plan and they employed subjective manipulated science to arrive at the desired ends of government and business technocrats. Carol R. Miller in "The Presumptions of Expertise: The Role of Ethos in Risk Analysis" writes:

“We can thus understand the RSS, and the use of subjective probabilities, as part of an ongoing negotiation over the burden of proof in public argument about risk. Risk analysis was born in a very tight rhetorical corner, boxed in by four severe constraints:

- (1) political pressure to produce a risk analysis friendly to nuclear power by a congressional deadline;**
- (2) the need to use “expert opinion” in lieu of failure data because there were few data from actual reactor failures;**
- (3) long-standing skepticism of engineers and scientists about the value of opinion; and**

(4) a dramatic reduction in public willingness to defer to technology and its experts.”ⁱ

66) Certain there are parallels in this CAD case to 1 and 2 political ressure and the need for expert opinion because there is nor real longetudal esperatial data with reference to the success of CAD cells.

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logos occurs i.e., when subjective manipulation of what logic is presented by an authority: "**Lies, damned lies, and statistics**".

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(<http://www.epa.gov/region1/superfund/sites/newbedford/472667.pdf>) is by AVX through their law firm. It is a 158 page letter saying how they support CAD cells and how many and the cost analysis, etc. (the cart leading the horse).

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New Bedford was Aerovox Industries “.

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- 80) Though it's not illegal to use form letters to comment, the government (of the people by the people for the people) should consider what the people's concerns are and their safety. They should make decisions that protect people ahead of business and consider their common sense experience (better participatory process), as well as their sociological and physical well being and give their position weight in good measure against fallible (and capable of bias) expert knowledge making determinations for what the good of the true community is, those that have to live at or near a contaminated site, over a small band of contractors,

and business owners, the responsible party –all who have conflicts of interest and most often live far away from the site.

81) In any decision, agency or court we should keep other forms of remediation possible.

- a. Biological remediation in the Keelung River has shown success in the Republic of China (Bea-Ven Chang, Tzu-Chuan Chiu, and Shaw-Ying Yuan. "Dechlorination of Polychlorinated Biphenyl Congeners by Anaerobic Microorganisms from River Sediment." *Water Environment Research* 78.7 (2006): 764-9.)

82) Another test treatment that showed promise is by using phytoremediation i.e., the treatment of environmental problems through the use of plants (bioremediation) that mitigate the environmental problem sometimes without the need to excavate the contaminant material. (K. E. Smith, P. Schwab A, and K. Banks M. "Phytoremediation of Polychlorinated Biphenyl (PCB)-Contaminated Sediment: A Greenhouse Feasibility Study." *Journal of environmental quality* 36.1)

83) When future remediation is considered with respect to the examples just mention, CAD cells negate the capability by 'canning' the PCBs underwater where they are hard to access and they are not exposed to

biota than can degrade and neutralize them. PCBs at an upland facility can be accessed with typical heavy equipment as future tech is improved.

In conclusion, I re-iterate:

“I want New Bedford Harbor cleaned to the highest, safest standard. Time or cost are not the priorities; doing it right is. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.”

Submitted by

Chuck Dade

cdade@umassd.edu

774.849.7802

From: [Chuck Dade](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: Re: CIVIL ACTION NO. 83-3882-Y
Date: Monday, December 17, 2012 11:55:33 PM
Attachments: [letterAVX-UNITED STATES DISTRICT COURT.pdf](#)
[letterAVX-UNITED STATES DISTRICT COURT.pdf](#)

Please accept this as my comment letter in the above referenced case:



Chuck Dade



**CHUCK DADE
398 HAWTHORN ST
NEW BEDFORD, MA 02740**

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO. 83-3882-Y

Defendants.

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff,

v.

AVX CORPORATION, et al.,
Defendants.

Greetings:

Please accept these comments to the above referenced case

- 1) My name is Chuck Dade and I am writing to this court because of my concern for what is going on with the cleanup efforts of the EPA Superfund site at the Acushnet River/ New Bedford Harbor.
- 2) I am a native of the area (born in New Bedford), a resident of the South Coast for most of my life, a US armed forces Veteran, and a direct

descendant of the (Eleanor Roosevelt awarded) mother (Maria Teresa Barboza) of 10 children from this same area who served in the US military during WW II. As (a child, a grand child, a person from) a family who lived and/or worked in the area contaminated and as an area educated (BA Psychology) active citizen who has had some experience with hard sciences and engineering (having attended some physics and electronics courses (I am also an Army Engineer> Power Generation).

I mention all of this because I think it lays a foundation to ask (for the many others that are in any way or part connected),

3) “When do we become entitled to equity with regard to government protection (in all of the ways government does such) including environmentally.

4) And I ask (for all)

“When do we become entitled to have a real voice in determining our future”.

5) I believe I can offer some perspective to this case from the position of J.Q. Public..

- 6) But before I do I would like to say that since the AVX Corporation has entered into this proposed settlement that they have already established that they are ready, willing and able to satisfy the monetary outlay as described in Paragraphs 7, of the Case filing 1:83-cv-03882-WGY Document 2617-1 Filed 10/10/12 (but they are attempting to leverage an escape clause for some of the liability that they deserve).
- 7) As such, I would ask that the court consider a directed finding/verdict/decreed in the amount stated therein unconditionally and immediately to be accomplished and completed in the time table agreed upon forthwith without any provisions that close any re-opener clauses. Let's get the funding for this in place for the cleanup, and worry about the added costs and best design as needed. And let's do it the right way with no shortcuts that disenfranchises the average citizens of the area, a multitude environmentally deprived for decades (which makes this an Environmental Justice issue and a infringement on civil rights because of the comparative inequity that has occurred for so long).
- 8) *I want New Bedford Harbor cleaned to the highest, safest standard. Time or cost are not the priorities; doing it right is. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.*
- 9) In as much as the slogan for the United States Justice Department website is "The Common Law is the will of mankind issuing from the Life

of the people”, keeping to that theme can only be accomplished when a court finds in such a way that the protection of and the restitution to the people is carried through ensuring that those (particularly those with the wherewithal) that have damaged others (or the public good) be held fully liable for the damages suffered. It should be mandatory that the people are made whole; AVX has the wherewithal. Who speaks better for Lady Justice than the court. Please find/decreed in a way that aids in fulfilling that end completely

10)Of great concern is that, for some time now, it seems that no government entity has really spoken for the people effectively. Certainly NOT the EPA ; at least for a few years. And certainly NOT in this proceeding. The people do not want to let responsible parties off the hook. As a government agency, EPA’s responsibility is to protect the people (a constitutional imperative) by protecting and restoring the environment (an agency responsibility). Recent policies by the EPA with regard to new initiatives have acted in contradiction toward that end and have turned a deaf ear to local government bodies, grassroots community groups,NGO’s and citizen’s that have tried to speak for the people.

11)The EPA’s latest idea is what they call Confined Aquatic Disposal cells (CAD cells). Despite opposition that includes official comments by the City Council of the City of New Bedford, MA who are unanimously against CAD cells and have said so officially at least 3 times, the EPA is on track to bury 300,000 cubic yards (over 8,100,000 cubic feet) of sediment: 15,000

lbs of PCBs in an excavation in the river bed covered with just 3 ft. of sand despite that true popular opinion is against it . When community groups questioned this they were told more than once “If you understood science then you would know that it will work” Well science says : Blood worms live from the Gulf of St Lawrence (Canada) to the Gulf of New Mexico, they are burrowers and a bloodworm's body can grow to be fifteen inches in. I doubt they figured that (just one idea of an unforeseen future occurrence) into the EPA computer modeling.

12) Beyond that we have, recently, learned that some PCBs have already buried some in CAD cells though most people were unaware of until after it was already done. They were kind of snuck in. Because this is an environmental justice area and as such the government needs to go to a higher degree of effort to inform the public than the ‘barely legal’ notices in the legal section of the newspaper since this has federal oversight even the states part should live up to these federal guidelines.

13) Since part of the cleanup is being done by state authorities (under EPA oversight) and some is done by the EPA themselves this division of procedure and public engagement made it possible for it to be slipped in because most of the concerned engaged citizens and NGOs solely attended the federal EPA hosted public meetings expecting, since EPA were the overseers, to be enlightened about all aspects of the PCB cleanup under their purview.

14) This turned out to be an incorrect assumption. Apparently, there were

separate meetings for the MassDEP navigational dredging that were not well attended by the public. MassDEP got their CAD cells approved pretty much with little to no public turnout because the public's continued focus was on the Federal meetings. But this was only touched on with EPA saying that the PCB levels were below the EPA guidelines (which turns out not to be completely true).

- 15) At the federal meetings, activists from the grassroots community group: Hands Across the River Coalition (HARC) (recognized in citation by the State Senate of Massachusetts as "the Caretakers of the Acushnet River and its Banks") also tried to ask more questions than the EPA would allow time for. EPA would schedule programmed information with just a short amount of time for Q & A.
- 16) HARC requested that there be more meetings just for the purpose of Q&A. EPA scheduled a meeting (in October or November 2010) for that purported purpose, then cancelled it, then scheduled another in February 24, 2011 which was a presentation of spoon fed info and a short Q & A. Again there were requests for more time (this is well documented on video).
- 17) From "The Rituals of Public Meetings." (McComas, Katherine, et al. Public administration review 70.1 (2010) it is said," The relationship between public participation and social solidarity lies in the nature of the participation process. In general, the opportunity for group discussion and interaction opens up the possibility for collective understanding of the

issue of concern”

- 18) The EPA process seemed instead to be attempting to ritualize dissemination of their already decided outcome without any real public participation at arriving at the outcome; a minimization of Q&A..
- 19) EPA’s next meeting was held May 26, 2012 and this cited video (http://www.youtube.com/watch?v=8f1Yq_d18W4) shows reaction to them not fulfilling the request for more time. They were asked for more time, beforehand and despite repetitive requests they stalled for months and they steered around providing it.
- 20) In the particular situation in the video the speaker questions who EPA meant when they said that the city wanted some things done with regards to some efforts to stage a few projects. It was suspected that it was the former Mayor Lang whose pet project was a river walk along a new real estate development and a fulfillment of part of another controversial real estate deal (where the mayor overturned a committee designation as to who the developer would be) citing a boathouse adjacent to the EPA where PCBs in the water are likely around 50 ppm. Again the **City Council** was on the record for being **against** CAD cells multiple times; it wasn’t the City council who was making the requests.
- 21) New Bedford is an area of multiple minorities and many with English as a second language or no English at all. At many of the meetings activists pointed this out stating that there were Environmental Justice directives

and (civil rights issues) that say that the government is supposed to be proactive in notification and education of the PCB situation. There are also minority (possibly) subsistence fishers (from Central America) observed; most likely some with children .

22) New Bedford is an area with no clear majority but it has historically been administered by descendants of hierarchical Yankee Whaling and somewhat later by, amongst others) people with strong ties to the Boston Irish political 'machinery'.

23) Since at least the 1950's the "greatest minority" (in that it is the largest single ethnicity) is Portuguese and 'in sum' the city is over 40% Lusitanic when you add other Portuguese speaking ethnicities like Cape Verdean people (2010 Census: Portuguese 33,308; Cape Verdean 7,156; French (except Basque) 5,692; French; Canadian 4,947; English 4,349; Irish 4,267; Polish 1,992; Italian 1,778); we have an unusual situation where we have this greater minority that historically existed under the specter of classic minority disadvantages without out any of the typical legislated minority advantages. Many Portuguese (paradoxically, some through pride and some through embarrassment) do not appreciate being considered a minority. They do not want to be considered "the other".

24) Even at the turn of the 19th to 20th century when the Portuguese population was 16% in New Bedford, they still outnumbered those in government leadership, City Council has had an increasingly better representation by people of Lusitanic derivation in the last couple

decades. Representation is good now (and on the PCB matter they have made formal declarations that they are **against CAD cells 3 times**) but, to date, there has never been a Portuguese surnamed Mayor.

25) The former and current Mayors and the local Economic Council

Development Council (contrarily) wrote letters supporting CAD cells

26) Government attention/action/nonaction by the state and federal

governments may have chronically responded inequitably to the community in this regard and many other ways over the years; in respect to this cleanup, it is less than dubious that this is part of the problem.

27) Another area that overlaps this and is an example of questionable equity

is with respect to train service to Boston that has been held up by EPA.

They are holding up approval for a commuter train through a swamp where a track has existed but not been used for years. But they rushed through an approval for the New Bedford South terminal project which will create yet another CAD cell. (The irony is that when the terminal is done they are going to need the train.)

28) Again this is done for the benefit of business preeminently Cape Wind

(though there are no guarantees that New Bedford will be the port that is used). So again the safety (thus equity) of the community is being compromised by burying more PCBs just for the possibility. Here, on spec, they rushed approval and are going to bury 225,000 yards of PCB contaminated sediment even though there is no contract by any wind developer to any governmental body ensuring that New Bedford will be

the chosen location. Quonsett Pt. and Davisville are other workable locations.

29) The designer of this project is the same as the other CAD Cell project (Apex). The supporters are leveraging the promise of job, jobs, jobs to bury PCBs for a company with a sole ownership of a single billionaire. Profits for one above safety for all. But it's a falsely mutually exclusive. They can still do the build out but instead of digging a in another CAD cell by hauling the PCBs off (which is what the Community wants). AVX should have to pay for this removal as well. If this non-reopener clause gets approved there would be no way to keep the burden where it belongs: AVX.

30) How is it that with such powerful legislative powerhouses as Ted Kennedy and Barney Frank were reps for the area, yet, for decades New Bedford has remained such a depressed place. I submit there has been some defect in governance, probably in all arenas.

31) In "Community Stress, Psychosocial Hazards, and EPA Decision-Making in Communities Impacted by Chronic Technological Disasters", (*Couch, Stephen R., PhD., and Charlton J. Coles PhD. "Community Stress,."* *American Journal of Public Health 101 (2011)*), investigators consider myriad sociological effects that happen to communities affected by **Chronic Technological Disaster** (CTD).

32) According to Couch & Cole (Ibid, 142), **Chronic Technological Disaster** "refers to conditions of perceived or known man-made contamination of an

environment that persists over time. Tornadoes race through a community in a matter of minutes, hurricane impact is measured in hours. A CTD, such as a Superfund site, lasts months, years, even decades---“ “---CTDs characterized CTDs as complex events because such environmental contamination is often cumulative; may be latent and not identified as a problem for several years; has impacts on humans that may be delayed, dynamic, or multiple and certain --“

33)The decades long contamination of the greater New Bedford area by massive amounts of PCBs is probably the definitive CTD. This is an area where self deprecation is a common phenomena.

34)I would suggest that the combination of the unusual sociological/political paradigm mentioned above together with the fact that the area has suffered a (CTD) caused by the PCBs that there has been a sustained depression of self esteem and hence a diminished social capital of the people to be able to wage an adequate fight to be able to counter the efforts of (AVX Corp., the local business interests who support CAD cells and) those that lobby against the grassroots community's wishes for an equitably clean and safe environment.

35)Hands Across the River Coalition President Edwin Rivera Sr. has told me multiple times that when he began fighting for the cleanup he was the youngest member of the then fairly strong group. It was the group that got EPA (through more effective community participation) to reverse the decision to set up an incinerator to burn the PCBs in New Bedford. They

- instead got them taken off site to TSCA facility (which is what they are trying to maintain now). After 28 years the group has aged and there are only a few still active. Mustering number lately has been hard. Mr. Rivera says everyone wants to be paid today.
- 36) Its widely know that PCBs cause cancer in humans. In fact one past study had showed that Winter flounder from New Bedford Harbor had, 26 %, of liver neoplasms (cancer). Fifty-seven percent of all flounder collected from New Bedford Harbor then had some liver disease.
- 37) Other research shows that PCBs exposure correlate with cognitive impairment throughout life. There have been studies of both developing infants and the elderly that both have shown that those that were PCB contaminated had significantly diminished cognitive capabilities compared to those with normal exposure levels.
- 38) The New Bedford School system has 2 schools placed on or near the former Parker Street Waste Site a waste dump that had been contaminated with PCBs (some coming from Aerovox as well). The newest Keith Middle School was built since 2004. The area was supposed to be cleaned to 1 part per million (the EPA residential standard, and testing conducted by confirmed in 2006 that the effort had been successful.
- 39) But more recently in 2008 and 2011 they found PCB levels hundreds of times higher than expected. Some tested areas had PCB levels up to 834 parts per million.

40) At a “City Council Appointments & Briefings meeting on 3/29/11 the New Bedford City Council went on record in opposition to the use of CAD Cells for the purpose of PCB removal in the Harbor; and further that it notify the Administration, the HDC Director, Fairhaven Selectmen, EPA Director and the Massachusetts DEP of its opposition. This motion passed on a roll call vote of Yeas 9, Nays 0, with Councilors Coelho and Saunders not present for vote” (quoted from the official record).

41) On or about the time the EPA made their decision to implement using CAD cells, it was revealed that MassDEP had already buried some PCBs in CAD cells as part of their navigational dredging. This was used as part of an argument for EPA to bury more (it’s been done before). Some local activists (myself included) then began going to the state MassDEP meetings where they learned that, in fact, some of that buried was considerably above the guidelines of 50 parts per million (ppm) which was the cutoff level that determined whether handling was to be performed by the state or the Federal government. More recently Buzzards Bay Coalition has found that on top of that the level of cleanup performed in other areas was to a higher standard (1-2 ppm); New Bedford had been slighted again (50ppm) which certainly questions equity and is indicative of environmental injustice (again).

42) Having the PCBs removed from the area was a hard fought objective

initially; the city's NGO's and community groups had thought that that was finally resolved. Now EPA is reversing its decision. At the time of determination it was also the case that the harmful PCB contaminated sediment was being taken off site. Currently, currently the sediments are still being shipped away to a Toxic Substances Control Act (TSCA) licensed facility in Michigan (Wayne Disposal). This is the method acceptable by the community and the City Council. This method also follows the Federal Guidelines under 40 CFR 761.75 which enables, not only monitoring, but complete leachate collection. Wayne Disposals facility incorporates a cell with in a cell facility for this and it is all above a natural clay bed of a minimum of 11 ft. depth. When things go wrong they can be remediated. How would you remediate an underwater problem?

43)CAD cells are in no way mentioned in the 40.CFR 761 except by extending provisions for administrators to make decisions. 40.CFR 761.61. in special circumstances allows for EPA to do it by decision. This is a long stretch from democracy (and prone to inequity). Their stance is that peer reviewed scientific inquiry makes it alright, but its been noted before that peer reviewed expert knowledge can be wrong. I would like to discuss the limits of expert knowledge.

44)Although AVX in their comment letter (Sept 24, 2010) advocating for CAD cells quotes EPA and says that CAD cells have been proven to be effective, it hasn't.

45) From that letter “

- i. **II. ESD #4 - SETTING THE RECORD STRAIGHT.**
 - a. **CAD Cells Have Been a Proven Technology for Years.**
- ii. **ESD #4 states that CAD cell technology is a "recognized, protective contaminated**
- iii. **sediment disposal approach. ,,**
- iv. **18 While EPA implies, however, that this technology has only**
- v. **recently reached the point where its use could seriously be considered, the potential use of CAD cells for disposal of New Bedford Harbor sediments has a long history dating back to the early 1980s. The record of its previous consideration and evaluation is on the one hand substantial, and on the other hand disappointing, as EPA never provides a clear record explaining why it rejected the use of CAD cells, not once but at least twice. “**

46) Cad Cell techniques have only been utilized for a short period of time; in fact, there has only been one case of any magnitude where they were expressly utilized for the storage of PCB's being contained in the US. That was just in 2000 so there is no long term data available (and they want to bury this stuff forever). It was placed at a Naval facility in Puget sound (Palmerton et, Contained Aquatic Disposal (CAD) - An analysis of Their Advantages, Limitations, and Costs, Palmerton Group, 2000,pg 18); concurrently, PCBs are being attributed to the diminishing whale population there.

47) New Bedford will be the test case of putting them near a population; the guinea pigs, another wave of environmental injustice.

48) Because CAD cells as a technology to contain PCB contamination at the high level proposed for at the New Bedford site has no precedent, **research on point is not available.** It's proposed on computer modeling and projective science (**expert knowledge**).

49) This being the case, studies on expert knowledge exist in other technological arenas where grave consequences are possible. In review, much is to be learned about the presumptions of expertise, the typical disposition of players, the typical discourse.

50) The most influential risk analysis document, the Atomic Energy Commission's 1975 Reactor Safety Study (RSS), sometimes known as the **Rasmussen** report (after its director, Norman Rasmussen), on nuclear power plants show that the experts campaigned vehemently to allow a nuclear power plan and they employed subjective manipulated science to arrive at the desired ends of government and business technocrats. Carol R. Miller in "The Presumptions of Expertise: The Role of Ethos in Risk Analysis" writes:

"We can thus understand the RSS, and the use of subjective probabilities, as part of an ongoing negotiation over the burden of proof in public argument about risk. Risk analysis was born in a very tight rhetorical corner, boxed in by four severe constraints:

- (1) political pressure to produce a risk analysis friendly to nuclear power by a congressional deadline;**
- (2) the need to use "expert opinion" in lieu of failure data because there were few data from actual reactor failures;**
- (3) long-standing skepticism of engineers and scientists**

about the value of opinion; and
(4) a dramatic reduction in public willingness to defer to
technology and its experts.”ⁱ

51) Certain there are parallels in this CAD case to 1 and 2 political pressure and the need for expert opinion because there is no real longitudinal experimental data with reference to the success of CAD cells.

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66) In any decision, agency or court we should keep other forms of remediation possible.

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67) Another test treatment that showed promise is by using phytoremediation i.e., the treatment of environmental problems through the use of plants (bioremediation) that mitigate the environmental problem sometimes without the need to excavate the contaminant material. (K. E. Smith, P. Schwab A, and K. Banks M. "Phytoremediation of Polychlorinated Biphenyl (PCB)-Contaminated Sediment: A Greenhouse Feasibility Study." *Journal of environmental quality* 36.1)

68) When future remediation is considered with respect to the examples just mention, CAD cells negate the capability by 'canning' the PCBs underwater where they are hard to access and they are not exposed to

biota than can degrade and neutralize them. PCBs at an upland facility can be accessed with typical heavy equipment as future tech is improved.

In conclusion, I re-iterate:

“I want New Bedford Harbor cleaned to the highest, safest standard. Time or cost are not the priorities; doing it right is. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.”

Submitted by

Chuck Dade

cdade@umassd.edu

774.849.7802

From: [Chuck Dade](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: Re: CIVIL ACTION NO. 83-3882-Y
Date: Monday, December 17, 2012 11:59:30 PM
Attachments: [letter2AVX-UNITED STATES DISTRICT COURT.pdf](#)
[letter2AVX-UNITED STATES DISTRICT COURT.pdf](#)

Please accept this as my comment letter in the above referenced case:



Chuck Dade



**CHUCK DADE
398 HAWTHORN ST
NEW BEDFORD, MA 02740**

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO. 83-3882-Y

AVX CORPORATION, et al.,
Defendants.

Greetings:

Please accept these comments to the above referenced case

- 1) My name is Chuck Dade and I am writing to this court because of my concern for what is going on with the cleanup efforts of the EPA Superfund site at the Acushnet River/ New Bedford Harbor.
- 2) I am a native of the area (born in New Bedford), a resident of the South Coast for most of my life, a US armed forces Veteran, and a direct descendant of the (Eleanor Roosevelt awarded) mother (Maria Teresa Barboza) of 10 children from this same area who served in the US military

during WW II. As (a child, a grand child, a person from) a family who lived and/or worked in the area contaminated and as an area educated (BA Psychology) active citizen who has had some experience with hard sciences and engineering (having attended some physics and electronics courses (I am also an Army Engineer> Power Generation).

I mention all of this because I think it lays a foundation to ask (for the many others that are in any way or part connected),

3) “When do we become entitled to equity with regard to government protection (in all of the ways government does such) including environmentally.

4) And I ask (for all)

“When do we become entitled to have a real voice in determining our future”.

5) I believe I can offer some perspective to this case from the position of J.Q. Public..

6) But before I do I would like to say that since the AVX Corporation has

entered into this proposed settlement that they have already established that they are ready, willing and able to satisfy the monetary outlay as described in Paragraphs 7, of the Case filing 1:83-cv-03882-WGY Document 2617-1 Filed 10/10/12 (but they are attempting to leverage an escape clause for some of the liability that they deserve).

- 7) As such, I would ask that the court consider a directed finding/verdict/decreed in the amount stated therein unconditionally and immediately to be accomplished and completed in the time table agreed upon forthwith without any provisions that close any re-opener clauses. Let's get the funding for this in place for the cleanup, and worry about the added costs and best design as needed. And let's do it the right way with no shortcuts that disenfranchises the average citizens of the area, a multitude environmentally deprived for decades (which makes this an Environmental Justice issue and a infringement on civil rights because of the comparative inequity that has occurred for so long).
- 8) *I want New Bedford Harbor cleaned to the highest, safest standard. Time or cost are not the priorities; doing it right is. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.*
- 9) In as much as the slogan for the United States Justice Department website is "The Common Law is the will of mankind issuing from the Life of the people", keeping to that theme can only be accomplished when a court finds in such a way that the protection of and the restitution to the

people is carried through ensuring that those (particularly those with the wherewithal) that have damaged others (or the public good) be held fully liable for the damages suffered. It should be mandatory that the people are made whole; AVX has the wherewithal. Who speaks better for Lady Justice than the court. Please find/decreed in a way that aids in fulfilling that end completely

10)Of great concern is that, for some time now, it seems that no government entity has really spoken for the people effectively. Certainly NOT the EPA ; at least for a few years. And certainly NOT in this proceeding. The people do not want to let responsible parties off the hook. As a government agency, EPA's responsibility is to protect the people (a constitutional imperative) by protecting and restoring the environment (an agency responsibility). Recent policies by the EPA with regard to new initiatives have acted in contradiction toward that end and have turned a deaf ear to local government bodies, grassroots community groups,NGO's and citizen's that have tried to speak for the people.

11)The EPA's latest idea is what they call Confined Aquatic Disposal cells (CAD cells). Despite opposition that includes official comments by the City Council of the City of New Bedford, MA who are unanimously against CAD cells and have said so officially at least 3 times, the EPA is on track to bury 300,000 cubic yards (over 8,100,000 cubic feet) of sediment: 15,000 lbs of PCBs in an excavation in the river bed covered with just 3 ft. of sand despite that true popular opinion is against it . When community groups

questioned this they were told more than once “If you understood science then you would know that it will work” Well science says : Blood worms live from the Gulf of St Lawrence (Canada) to the Gulf of New Mexico, they are burrowers and a bloodworm's body can grow to be fifteen inches in. I doubt they figured that (just one idea of an unforeseen future occurrence) into the EPA computer modeling.

12) Beyond that we have, recently, learned that some PCBs have already buried some in CAD cells though most people were unaware of until after it was already done. They were kind of snuck in. Because this is an environmental justice area and as such the government needs to go to a higher degree of effort to inform the public than the ‘barely legal’ notices in the legal section of the newspaper since this has federal oversight even the states part should live up to these federal guidelines.

13) Since part of the cleanup is being done by state authorities (under EPA oversight) and some is done by the EPA themselves this division of procedure and public engagement made it possible for it to be slipped in because most of the concerned engaged citizens and NGOs solely attended the federal EPA hosted public meetings expecting, since EPA were the overseers, to be enlightened about all aspects of the PCB cleanup under their purview.

14) This turned out to be an incorrect assumption. Apparently, there were separate meetings for the MassDEP navigational dredging that were not well attended by the public. MassDEP got their CAD cells approved pretty

- much with little to no public turnout because the public's continued focus was on the Federal meetings. But this was only touched on with EPA saying that the PCB levels were below the EPA guidelines (which turns out not to be completely true).
- 15) At the federal meetings, activists from the grassroots community group: Hands Across the River Coalition (HARC) (recognized in citation by the State Senate of Massachusetts as "the Caretakers of the Acushnet River and its Banks") also tried to ask more questions than the EPA would allow time for. EPA would schedule programmed information with just a short amount of time for Q & A.
- 16) HARC requested that there be more meetings just for the purpose of Q&A. EPA scheduled a meeting (in October or November 2010) for that purported purpose, then cancelled it, then scheduled another in February 24, 2011 which was a presentation of spoon fed info and a short Q & A. Again there were requests for more time (this is well documented on video).
- 17) From "The Rituals of Public Meetings." (McComas, Katherine, et al. Public administration review 70.1 (2010) it is said," The relationship between public participation and social solidarity lies in the nature of the participation process. In general, the opportunity for group discussion and interaction opens up the possibility for collective understanding of the issue of concern"
- 18) The EPA process seemed instead to be attempting to ritualize

dissemination of their already decided outcome without any real public participation at arriving at the outcome; a minimization of Q&A..

19) EPA's next meeting was held May 26, 2012 and this cited video (http://www.youtube.com/watch?v=8f1Yq_d18W4) shows reaction to them not fulfilling the request for more time. They were asked for more time, beforehand and despite repetitive requests they stalled for months and they steered around providing it.

20) In the particular situation in the video the speaker questions who EPA meant when they said that the city wanted some things done with regards to some efforts to stage a few projects. It was suspected that it was the former Mayor Lang whose pet project was a river walk along a new real estate development and a fulfillment of part of another controversial real estate deal (where the mayor overturned a committee designation as to who the developer would be) citing a boathouse adjacent to the EPA where PCBs in the water are likely around 50 ppm. Again the **City Council** was on the record for being **against** CAD cells multiple times; it wasn't the City council who was making the requests.

21) New Bedford is an area of multiple minorities and many with English as a second language or no English at all. At many of the meetings activists pointed this out stating that there were Environmental Justice directives and (civil rights issues) that say that the government is supposed to be proactive in notification and education of the PCB situation. There are also

minority (possibly) subsistence fishers (from Central America) observed; most likely some with children .

22) New Bedford is an area with no clear majority but it has historically been administered by descendants of hierarchical Yankee Whaling and somewhat later by, amongst others) people with strong ties to the Boston Irish political 'machinery'.

23) Since at least the 1950's the "greatest minority" (in that it is the largest single ethnicity) is Portuguese and 'in sum' the city is over 40% Lusitanic when you add other Portuguese speaking ethnicities like Cape Verdean people (2010 Census: Portuguese 33,308; Cape Verdean 7,156; French (except Basque) 5,692; French; Canadian 4,947; English 4,349; Irish 4,267; Polish 1,992; Italian 1,778); we have an unusual situation where we have this greater minority that historically existed under the specter of classic minority disadvantages without out any of the typical legislated minority advantages. Many Portuguese (paradoxically, some through pride and some through embarrassment) do not appreciate being considered a minority. They do not want to be considered "the other".

24) Even at the turn of the 19th to 20th century when the Portuguese population was 16% in New Bedford, they still outnumbered those in government leadership, City Council has had an increasingly better representation by people of Lusitanic derivation in the last couple decades. Representation is good now (and on the PCB matter they have made formal declarations that they are **against CAD cells 3 times**) but, to

date, there has never been a Portuguese surnamed Mayor.

- 25) The former and current Mayors and the local Economic Council Development Council (contrarily) wrote letters supporting CAD cells
- 26) Government attention/action/nonaction by the state and federal governments may have chronically responded inequitably to the community in this regard and many other ways over the years; in respect to this cleanup, it is less than dubious that this is part of the problem.
- 27) Another area that overlaps this and is an example of questionable equity is with respect to train service to Boston that has been held up by EPA. They are holding up approval for a commuter train through a swamp where a track has existed but not been used for years. But they rushed through an approval for the New Bedford South terminal project which will create yet another CAD cell. (The irony is that when the terminal is done they are going to need the train.)
- 28) Again this is done for the benefit of business preeminently Cape Wind (though there are no guarantees that New Bedford will be the port that is used). So again the safety (thus equity) of the community is being compromised by burying more PCBs just for the possibility. Here, on spec, they rushed approval and are going to bury 225,000 yards of PCB contaminated sediment even though there is no contract by any wind developer to any governmental body ensuring that New Bedford will be the chosen location. Quonset Pt. and Davisville are other workable locations.

29)The designer of this project is the same as the other CAD Cell project (Apex). The supportrs are leveraging the promise of job,jobs,jobs to bury PCBs for a company with a sole ownership of a single billionaire. Profits for one above safety for all. But it's a falsely mutually exclusive. They can still do the build out but instead of digging a in another CAD cell by hauling the PCBs off (which is what the Community wants). AVX should have to pay for this removal as well. If this non-reopener clause gets approved there would be no way to keep the burden where it belongs: AVX.

30)How is it that with such powerful legislative powerhouses as Ted Kennedy and Barney Frank were reps for the area, yet, for decades New Bedford has remained such a depressed place. I submit there has been some defect in governance, probably in all arenas.

31)In "Community Stress, Psychosocial Hazards, and EPA Decision-Making in Communities Impacted by Chronic Technological Disasters", (*Couch, Stephen R., PhD., and Charlton J. Coles PhD. "Community Stress,." American Journal of Public Health 101 (2011)*), investigators consider myriad sociological effects that happen to communities affected by **Chronic Technological Disaster** (CTD).

32)According to Couch & Cole (Ibid,142, **Chronic Technological Disaster** "refers to conditions of perceived or known man-made contamination of an environment that persists over time. Tornadoes race through a community in a matter of minutes, hurricane impact is measured in hours. A CTD,

such as a Superfund site, lasts months, years, even decades---“ “---CTDs characterized CTDs as complex events because such environmental contamination is often cumulative; may be latent and not identified as a problem for several years; has impacts on humans that may be delayed, dynamic, or multiple and certain --“

33)The decades long contamination of the greater New Bedford area by massive amounts of PCBs is probably the definitive CTD. This is an area where self deprecation is a common phenomena.

34)I would suggest that the combination of the unusual sociological/political paradigm mentioned above together with the fact that the area has suffered a (CTD) caused by the PCBs that there has been a sustained depression of self esteem and hence a diminished social capital of the people to be able to wage an adequate fight to be able to counter the efforts of (AVX Corp., the local business interests who support CAD cells and) those that lobby against the grassroots community's wishes for an equitably clean and safe environment.

35)Hands Across the River Coalition President Edwin Rivera Sr. has told me multiple times that when he began fighting for the cleanup he was the youngest member of the then fairly strong group. It was the group that got EPA (through more effective community participation) to reverse the decision to set up an incinerator to burn the PCBs in New Bedford. They instead got them taken off site to TSCA facility (which is what they are trying to maintain now). After 28 years the group has aged and there are

- only a few still active. Mustering number lately has been hard. Mr. Rivera says everyone wants to be paid today.
- 36) Its widely know that PCBs cause cancer in humans. In fact one past study had showed that Winter flounder from New Bedford Harbor had, 26 %, of liver neoplasms (cancer). Fifty-seven percent of all flounder collected from New Bedford Harbor then had some liver disease.
- 37) Other research shows that PCBs exposure correlate with cognitive impairment throughout life. There have been studies of both developing infants and the elderly that both have shown that those that were PCB contaminated had significantly diminished cognitive capabilities compared to those with normal exposure levels.
- 38) The New Bedford School system has 2 schools placed on or near the former Parker Street Waste Site a waste dump that had been contaminated with PCBs (some coming from Aerovox as well). The newest Keith Middle School was built since 2004. The area was supposed to be cleaned to 1 part per million (the EPA residential standard, and testing conducted by confirmed in 2006 that the effort had been successful.
- 39) But more recently in 2008 and 2011 they found PCB levels hundreds of times higher than expected. Some tested areas had PCB levels up to 834 parts per million.
- 40) At a "City Council Appointments & Briefings meeting on 3/29/11 the New

Bedford City Council went on record in opposition to the use of CAD Cells for the purpose of PCB removal in the Harbor; and further that it notify the Administration, the HDC Director, Fairhaven Selectmen, EPA Director and the Massachusetts DEP of its opposition. This motion passed on a roll call vote of Yeas 9, Nays 0, with Councilors Coelho and Saunders not present for vote” (quoted from the official record).

41) On or about the time the EPA made their decision to implement using CAD cells, it was revealed that MassDEP had already buried some PCBs in CAD cells as part of their navigational dredging. This was used as part of an argument for EPA to bury more (it's been done before). Some local activists (myself included) then began going to the state MassDEP meetings where they learned that, in fact, some of that buried was considerably above the guidelines of 50 parts per million (ppm) which was the cutoff level that determined whether handling was to be performed by the state or the Federal government. More recently Buzzards Bay Coalition has found that on top of that the level of cleanup performed in other areas was to a higher standard (1-2 ppm); New Bedford had been slighted again (50ppm) which certainly questions equity and is indicative of environmental injustice (again).

42) Having the PCBs removed from the area was a hard fought objective initially; the city's NGO's and community groups had thought that that was finally resolved. Now EPA is reversing its decision. At the time of

determination it was also the case that the harmful PCB contaminated sediment was being taken off site. Currently, currently the sediments are still being shipped away to a Toxic Substances Control Act (TSCA) licensed facility in Michigan (Wayne Disposal). This is the method acceptable by the community and the City Council. This method also follows the Federal Guidelines under 40 CFR 761.75 which enables, not only monitoring, but complete leachate collection. Wayne Disposals facility incorporates a cell with in a cell facility for this and it is all above a natural clay bed of a minimum of 11 ft. depth. When things go wrong they can be remediated. How would you remediate an underwater problem?

43)CAD cells are in no way mentioned in the 40.CFR 761 except by extending provisions for administrators to make decisions. 40.CFR 761.61. in special circumstances allows for EPA to do it by decision. This is a long stretch from democracy (and prone to inequity). Their stance is that peer reviewed scientific inquiry makes it alright, but its been noted before that peer reviewed expert knowledge can be wrong. I would like to discuss the limits of expert knowledge.

44)Although AVX in their comment letter (Sept 24, 2010) advocating for CAD cells quotes EPA and says that CAD cells have been proven to be effective, it hasn't.

45) From that letter “

- i. **II. ESD #4 - SETTING THE RECORD STRAIGHT.**
 - a. **CAD Cells Have Been a Proven Technology for Years.**
- ii. **ESD #4 states that CAD cell technology is a "recognized, protective contaminated**
- iii. **sediment disposal approach. ,,**
- iv. **18 While EPA implies, however, that this technology has only**
- v. **recently reached the point where its use could seriously be considered, the potential use of CAD cells for disposal of New Bedford Harbor sediments has a long history dating back to the early 1980s. The record of its previous consideration and evaluation is on the one hand substantial, and on the other hand disappointing, as EPA never provides a clear record explaining why it rejected the use of CAD cells, not once but at least twice. “**

46) Cad Cell techniques have only been utilized for a short period of time; in fact, there has only been one case of any magnitude where they were expressly utilized for the storage of PCB's being contained in the US. That was just in 2000 so there is no long term data available (and they want to bury this stuff forever). It was placed at a Naval facility in Puget sound (Palmerton et, Contained Aquatic Disposal (CAD) - An analysis of Their Advantages, Limitations, and Costs, Palmerton Group, 2000,pg 18); concurrently, PCBs are being attributed to the diminishing whale population there.

47) New Bedford will be the test case of putting them near a population; the guinea pigs, another wave of environmental injustice.

48) Because CAD cells as a technology to contain PCB contamination at the high level proposed for at the New Bedford site has no precedent, **research on point is not available.** It's proposed on computer modeling and projective science (**expert knowledge**).

49) This being the case, studies on expert knowledge exist in other technological arenas where grave consequences are possible. In review, much is to be learned about the presumptions of expertise, the typical disposition of players, the typical discourse.

50) The most influential risk analysis document, the Atomic Energy Commission's 1975 Reactor Safety Study (RSS), sometimes known as the **Rasmussen** report (after its director, Norman Rasmussen), on nuclear power plants show that the experts campaigned vehemently to allow a nuclear power plan and they employed subjective manipulated science to arrive at the desired ends of government and business technocrats. Carol R. Miller in "The Presumptions of Expertise: The Role of Ethos in Risk Analysis" writes:

"We can thus understand the RSS, and the use of subjective probabilities, as part of an ongoing negotiation over the burden of proof in public argument about risk. Risk analysis was born in a very tight rhetorical corner, boxed in by four severe constraints:

- (1) political pressure to produce a risk analysis friendly to nuclear power by a congressional deadline;**
- (2) the need to use "expert opinion" in lieu of failure data because there were few data from actual reactor failures;**
- (3) long-standing skepticism of engineers and scientists**

about the value of opinion; and
(4) a dramatic reduction in public willingness to defer to
technology and its experts.”ⁱ

51) Certain there are parallels in this CAD case to 1 and 2 political pressure and the need for expert opinion because there is no real longitudinal experimental data with reference to the success of CAD cells.

52) More over in Millers essay on Risk Analysis she elaborates in classical Socratic terms “ethos/pathos/ logos/” on how the players (the government, the experts, and contractors) shift techniques to sell their preconceived idea. For reference these are the basic concepts:

Ethos: the source's credibility, the speaker's/author's authority

Logos: the logic used to support a claim (induction and deduction); can also be the facts and statistics used to help support the argument.

Pathos: the emotional or motivational appeals; vivid language, emotional language and numerous sensory details.

53) Pathos is not generally useful in this type of interaction. It's more the stock of a feel good charismatic. In essence what's significant is that the public generally believes “the authority”. People go to Doctors, for instance, because they are experts at medicine. So people are trained to think that way. So when they are presented with information that way it rings true. The exception, though, is the engineer or scientist who wants the presentation to ring true via logos.

54) But beyond that, there are times when a merge or a shift of ethos and

logos occurs i.e., when subjective manipulation of what logic is presented by an authority: "**Lies, damned lies, and statistics**".

55) And NOW There is **Computer modeling**.

56) Also to be considered is how experts can fall in to a type of tunnel vision in their own discipline. This is a differing phenomena it's not so much a conscious sales technique but more of a position as a true believer. Just as religious cults believe their way the "cult of experts" serve the beliefs of the knowledge of their discipline believing that theirs is the superior knowledge .

57) It was shown in another study on river basins in Europe that in analysis of risk assessment to exposure to various toxins that there was a dichotomy between project definition uncertainty and true uncertainty. True uncertainty is uncertainty due to lack of knowledge; **things the scientist can't predict**. It further showed that there was a significant probability of underestimating the true risks. It also considered inter individual variability so as to take specific actions to reduce the risk of subpopulations This study also lauded the benefits of participatory research, in helping to define problem definitions and in finding management solutions acceptable to all stakeholders. (Ad, M. J. Ragas, et al. "Uncertainty in Environmental Risk Assessment: Implications for Risk-Based

Management of River Basins." Integrated Environmental Assessment and Management 5.1 (2009): 27-37.)

58) Although the theater of public comment occurred, the spirit of the law was dubiously carried out. Former EPA director Dave Dickerson said there were more letters for than against and there may have been but in terms of individual letters. But, when reviewing in terms of evaluating 'through representation' I would opine that a letter from the City Council of New Bedford (representing a population of 95,000 people) should be considered to have substantially more weight than many others.

59) Beyond that there is the bias of profiteers whose conflicts of interests should be considered (in some cases they were from out of the area so of lesser standing). Some included were: Pioneer Mooring, Smith Marine (3 letters), AGM Marine Contractors, Seaport Inn, Moby Dick Marina Co. Inc., Lighthouse Marine,

60) In fact one of the comment letters

(<http://www.epa.gov/region1/superfund/sites/newbedford/472667.pdf>) is by AVX through their law firm. It is a 158 page letter saying how they support CAD cells and how many and the cost analysis, etc. (the cart leading the horse).

61) An interesting fact is that according to the 2006 "Analysis of Impediments Report City of New Bedford, Massachusetts", The third largest employer in

New Bedford was Aerovox Industries “.

- 62) Then there was a series of comment letters in support of CAD cells that were very much carbon copy form letters that someone began walking around on Sept. 2, 2010; some were exact copies some were modified slightly.
- 63) One even showed up on the DA's letter head:
(<http://www.epa.gov/region1/superfund/sites/newbedford/472687.pdf>) but with the same exact text. And Town officials (administrators not the population) from Fairhaven used a variation that you can tell was based on the same letter.
- 64) Another (<http://www.epa.gov/region1/superfund/sites/newbedford/472688.pdf>) exact copy was signed by a member of the engineering firm that designed the CAD cell project. A couple of other Civil Engineer's signed it; the waterfront companies or the designing engineering firm may be connected.
- 65) Though it's not illegal to use form letters to comment, the government (of the people by the people for the people) should consider what the people's concerns are and their safety. They should make decisions that protect people ahead of business and consider their common sense experience (better participatory process), as well as their sociological and physical well being and give their position weight in good measure against fallible (and capable of bias) expert knowledge making determinations for what the good of the true community is, those that have to live at or near a contaminated site, over a small band of contractors,

and business owners, the responsible party –all who have conflicts of interest and most often live far away from the site.

66) In any decision, agency or court we should keep other forms of remediation possible.

- a. Biological remediation in the Keelung River has shown success in the Republic of China (Bea-Ven Chang, Tzu-Chuan Chiu, and Shaw-Ying Yuan. "Dechlorination of Polychlorinated Biphenyl Congeners by Anaerobic Microorganisms from River Sediment." *Water Environment Research* 78.7 (2006): 764-9.)

67) Another test treatment that showed promise is by using phytoremediation i.e., the treatment of environmental problems through the use of plants (bioremediation) that mitigate the environmental problem sometimes without the need to excavate the contaminant material. (K. E. Smith, P. Schwab A, and K. Banks M. "Phytoremediation of Polychlorinated Biphenyl (PCB)-Contaminated Sediment: A Greenhouse Feasibility Study." *Journal of environmental quality* 36.1)

68) When future remediation is considered with respect to the examples just mention, CAD cells negate the capability by 'canning' the PCBs underwater where they are hard to access and they are not exposed to

biota than can degrade and neutralize them. PCBs at an upland facility can be accessed with typical heavy equipment as future tech is improved.

In conclusion, I re-iterate:

“I want New Bedford Harbor cleaned to the highest, safest standard. Time or cost are not the priorities; doing it right is. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.”

Submitted by

Chuck Dade

cdade@umassd.edu

774.849.7802

From: [Steve Dempsey](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2.
Date: Friday, November 30, 2012 2:41:28 PM

Dear sir: I am writing with regard to United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2. I want New Bedford Harbor cleaned to the highest, safest standard. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor. Thank you for your attention to this matter. Sincerely, Stephen Dempsey



From: [Mal Durkee](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: New Bedford Harbor
Date: Friday, November 30, 2012 1:58:32 PM

To the Dept of Justice,

I am a homeowner on the south coast of Massachusetts and cherish the environment we were given. It has been polluted at our expense by others without proper oversight and compensation. *I want New Bedford Harbor cleaned to the highest, safest standard. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor. Please give my support to this end.*

Thanks

Mal Durkee

Please see important legal disclaimer at <http://www.pwpartners.com/disclaimers.html> which must be read and considered in connection with the information in and attached to this email.



From: John.Farrell@raildev.com
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: AVX
Date: Monday, December 03, 2012 10:49:55 AM

I want New Bedford Harbor cleaned up to the highest & safest standards possible. Nothing less is acceptable to future generations.

John Farrell

Accounts Manager
Rail Development Group
85 Vantage Point Drive
Rochester, NY 14624
585-330-1418 Cellular
585-352-2020 FAX
<http://www.raildev.com>



From: [Tashima, Keith \(ENRD\)](#)
To: [Moss, Karen \(ENRD\)](#)
Subject: FW: PUBLIC COMMENT FW: Buzzards Bay Clean Up
Date: Friday, December 14, 2012 12:18:09 PM

From: Jessie Finneran [<mailto:soyagradecido@gmail.com>]
Sent: Wednesday, December 12, 2012 9:41 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: Buzzards Bay Clean Up

To: The Assistant Attorney General, Environmental and Natural Resources Division
Re: The United States and Massachusetts v. AVX Corporation, D.J. Ref No. 90-11-2-32/2

Dear Sir or Madam,

As a resident of New Bedford, a citizen, and tax payer, I want New Bedford Harbor to be cleaned to the highest and safest standard. For this reason, the settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor. Who will fight for the rights of citizens to have clean water if not the D.O.J.? Please help us provide a healthy environment for the future. Our children and grandchildren are depending on us now to make the right decisions. Thank you for the work you do and for taking the time to read this.

Sincerely,

Jessamyn Finneran
32 Milton Street
New Bedford, MA



From: [Becky Garfield](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: Buzzards bay
Date: Friday, November 30, 2012 9:05:10 PM

I've grown up on the bay and want it to be clean for my children.

I want New Bedford Harbor cleaned to the highest, safest standard. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.

-Becky

Sent from my iPhone



From: [Susan Hammond](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2.
Date: Friday, November 30, 2012 4:16:24 PM

Polluters should not be allowed to walk away without cleaning up the mess they created.

I want New Bedford Harbor cleaned to the highest, safest standard. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.

Best regards,

Susan C. Hammond, CPA, MST
Advisor to CEOs & Boards
Office: 781.837.1999 | Cell: 617.842.2158
susan@schammond.com | www.schammond.com
<http://www.linkedin.com/in/susanchammond>

"Today I will do what others won't, so tomorrow I can accomplish what others can't."

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Please consider the environment before printing this e-mail.



SDMS Doc ID 529604

Tashima, Keith (ENRD)

Subject: FW: EPA, Region 1, Insufficient Settlement To Remove All PCB Sediments Offsite

----- Forwarded by ManChak Ng/R1/USEPA/US on 10/12/2012 09:07 AM -----

From: David Downton/DC/USEPA/US
To: ManChak Ng/R1/USEPA/US@EPA
Date: 10/11/2012 08:41 AM
Subject: Fw: EPA, Region 1, Insufficient Settlement To Remove All PCB Sediments Offsite

To: Lisa P. Jackson
EPA Chief Administrator

Hands Across the River Coalition has reviewed the EPA Settlement amount of \$366,250,000.00 for the cleanup of New Bedford Harbor's Superfund Site. This figure is grossly inadequate for the complete removal of all PCB sediments offsite to a TSCA approved landfill. By burying 300,000 cy of PCB sediments in our lower harbor and placing more PCB sediments in CDF's along the shoreline keeps this deadly material in our waterway and will contaminate our air while removing the PCB sediments to a CAD cell. This will have a long term health impact on our community now and in the future.

The EPA was in a prime position to negotiate sufficient monies from AVX, the responsible party, to cover complete removal of all PCB sediments offsite. In addition, this amount of money will not cover ever increasing costs over the proposed next several years to do this work.

H.A.R.C. has not been receiving any communication from Region 1, informing of us of all meetings regarding the harbor including press conferences. We have not received any emails from them at all. We are an environmental justice organization with P.A.C.E. as our fiscal sponsor and have been active with this site for over 25 years. We have not been included in any of the negotiations with AVX for sufficient funding for complete cleanup of our harbor. How does this follow the EJ order given to the EPA when we represent a large EJ community?

We look forward to your immediate assistance with this matter. Thank you.

Cordially,

Karen A. Vilandry
Vice President
Hands Across the River Coalition



To: Rachel Jakuba <jakuba@savebuzzardsbay.org>, "john.anderson@newbedford-ma.gov" <john.anderson@newbedford-ma.gov>, "jarruda@emienergy.com" <jarruda@emienergy.com>, "pierreB@maritimeinternational.org" <pierreB@maritimeinternational.org>, "walter.bohlen@uconn.edu" <walter.bohlen@uconn.edu>, "jborkland@apexcos.com" <jborkland@apexcos.com>, "wbosworth@metrocast.net" <wbosworth@metrocast.net>, "starstripe@comcast.net" <starstripe@comcast.net>, "ellen.cebula@state.ma.us" <ellen.cebula@state.ma.us>, "news@wbsm.com" <news@wbsm.com>, "shellfish@fairhaven-ma.gov" <shellfish@fairhaven-ma.gov>, "cdade@chuckdade.com" <cdade@chuckdade.com>, "dmmd55@comcast.net" <dmmd55@comcast.net>, "neast@northeastmaritime.com" <neast@northeastmaritime.com>, "louis.elisa@state.ma.us" <louis.elisa@state.ma.us>, "ken.finkelstein@noaa.gov" <ken.finkelstein@noaa.gov>, "robert@baylineboatyard.com" <robert@baylineboatyard.com>, "gharper@apexcos.com" <gharper@apexcos.com>, "cheryl.henlin@newbedford-ma.gov" <cheryl.henlin@newbedford-ma.gov>, "david.janik@state.ma.us" <david.janik@state.ma.us>, "bjoe57@hotmail.com" <bjoe57@hotmail.com>, "lacombe56@comcast.net" <lacombe56@comcast.net>, Dave Lederer/R1/USEPA/US@EPA, "paul.g.l'heureux@usace.army.mil" <paul.g.l'heureux@usace.army.mil>, "carolyn@communityrowing.org" <carolyn@communityrowing.org>, "kevin@fairhavenshipyard.com" <kevin@fairhavenshipyard.com>, "dmedeiros@northeastmaritime.com" <dmedeiros@northeastmaritime.com>, "monte727@aol.com" <monte727@aol.com>, "kevin.p.mooney@state.ma.us" <kevin.p.mooney@state.ma.us>, "cmymers@apexcos.com" <cmymers@apexcos.com>, "snilson@cleengineering.com" <snilson@cleengineering.com>, Kelsey ONeil/R1/USEPA/US@EPA, "jpederso@mit.edu" <jpederso@mit.edu>, "tpickering@apexcos.com" <tpickering@apexcos.com>, "bllmeone@aol.com" <bllmeone@aol.com>, "krose02740@yahoo.com" <krose02740@yahoo.com>, "broth@fairhaven-ma.gov" <broth@fairhaven-ma.gov>, "thomas.shields@state.ma.us" <thomas.shields@state.ma.us>, ElaineT Stanley/R1/USEPA/US@EPA, "ewashburn@newbedford-ma.gov" <ewashburn@newbedford-ma.gov>, Kimberly White/R1/USEPA/US@EPA, "cantwellgreg@yahoo.com" <cantwellgreg@yahoo.com>, "Rasmussen@savebuzzardsbay.org" <Rasmussen@savebuzzardsbay.org>, "mclifford@jaycashman.com" <mclifford@jaycashman.com>, Robert Shewack/R1/USEPA/US@EPA, "Mark.gouveia@jacobs.com" <Mark.gouveia@jacobs.com>, "Sal42856@gmail.com" <Sal42856@gmail.com>, "linbergmarine@comcast.net" <linbergmarine@comcast.net>, "anne@newbedfordcommunityrowing.org" <anne@newbedfordcommunityrowing.org>, Jim Murphy/R1/USEPA/US@EPA, David Peterson/R1/USEPA/US@EPA, "rosannem@maritimeinternational.org" <rosannem@maritimeinternational.org>, "joseph.coyne@state.ma.us" <joseph.coyne@state.ma.us>, "harcnb@aol.com" <harcnb@aol.com>, "jonah.mikutowicz@agmmarine.com" <jonah.mikutowicz@agmmarine.com>, "paul.craffey@state.ma.us" <paul.craffey@state.ma.us>, "mpbrown@waterviewsllc.com" <mpbrown@waterviewsllc.com>, "towboatnb@msn.com" <towboatnb@msn.com>, "neil.churchill@state.ma.us" <neil.churchill@state.ma.us>, "awittenberg@s-t.com" <awittenberg@s-t.com>, Margaret McDonough/R1/USEPA/US@EPA, "Ronald.marnicio@tetrattech.com" <Ronald.marnicio@tetrattech.com>, "Judith.leclair@urs.com" <Judith.leclair@urs.com>, "Mikaela.mcdermott@newbedford-ma.gov" <Mikaela.mcdermott@newbedford-ma.gov>, "Bill.white@state.ma.us" <Bill.white@state.ma.us>, "Henry.Bousquet@newbedford-ma.gov" <Henry.Bousquet@newbedford-ma.gov>, Natalie Sherman <nsherman@s-t.com>, Channel 10 <10@wjar.com>, Channel 12/FOX <desk@wpri.com>, Channel 6 <news@abc6.com>, WBSM <wbsm.news@townsquaremedia.com>, Jim Phillips <jim.phillips@townsquaremedia.com>, Phil Paleologos <phil@townsquaremedia.com>, Hands Across the River <HARCNB@aol.com>, Ed Rivera <bllmeone@aol.com>, "Ericson



\(DEP\) " <benjamin.ericson@state.ma.us>, Ken Kimmell <Ken.Kimmell@State.MA.US>, Jack Richard <jack_richard@scottbrown.senate.gov>, "Richard Sullivan Jr." <Rick.Sullivan@massmail.state.ma.us>, Governor Deval Patrick <constituent.services@state.ma.us>, Martha Coakley <ago@state.ma.us>, LisaP Jackson/DC/USEPA/US@EPA, Lisa Garcia/DC/USEPA/US@EPA, NAACP Washington Bureau <washingtonbureau@naacpnet.org>, Washington National <national@washpost.com>, Tom Kerns <tkerns@environmentandhumanrights.org>, Environment Massachusetts Regional Director Johanna Neumann <action@environmentmassachusetts.org>, WORKING GROUP ENVIRONMENTAL <ewg@ewg.org>
From: Karen Vilandry <kav704@yahoo.com>
Date: 10/24/2012 11:44PM
Subject: Re: New Bedford Harbor CAD cell review update

Hello Everyone,

There you have it! Still another expert who has reviewed the air assessments of the EPA as insufficient and even outdated. This is not protective of human health as they are ordered to do under Environmental Justice or any other federally mandated law.

Please be reminded, the EPA has also allowed the MA DEP to bury over 50 PPM and even 100 PPM of PCB contaminated sediments in their DEP CAD cells near Popes Island from mechanically dredging the lower harbor for the navigational dredging project. This information was/is not released to the public and the dredge site uses no air monitors there or along the journey to the CAD cells. Ironically, I have just learned of still another cancer cluster along Fort Street in Fairhaven, MA which parallels the harbor. You can't argue that this is coincidental.

The proposed South Terminal Project will again use a mechanical dredge to remove PCB sediments from that area on the north side of the hurricane barrier. That will be another DEP CAD cell constructed to hold this deadly material making it number 5 CAD cell.

Still remaining is the large acreage of PCB sediments buried in the harbor near Cornell Dubilier lightly covered with sand which sways with the tides. This was the test CAD cell or depression. Directly across the harbor to Fairhaven is the Sconticut Neck Road area extending off which Manhattan Avenue and all streets along and leading to the harbor have yet another cancer cluster. Pay attention to this. The mechanical dredging that took place carrying over the PCB sediments to the Cornell Dubilier area didn't occur without consequences. Was there an air monitor and if so, was it also outdated? The EPA uses no air monitors on the Fairhaven side south of the Route 6 bridge. They don't seem to be concerned about prevailing winds leading to that area or even the high school in Fairhaven, one

block away from the harbor near the Route 6 bridge.

In view of the \$366 million settlement proposed by AVX to forever remove them from further litigation, that figure is grossly inadequate to remove all PCB sediments from the harbor to a TSCA approved offsite landfill. We cannot have this deadly material buried in our river forever nor can we allow the EPA to bury us by knowingly contaminating our air and water with this method of disposal into a CAD cell.

Cordially,

Karen A. Vilandry
Vice President
Hands Across the River Coalition

34 Huttleston Avenue
Fairhaven, MA 02719
USA
Tel. 508-951-1184
Email: kav704@yahoo.com

From: Rachel Jakuba <jakuba@savebuzzardsbay.org>
To: john.anderson@newbedford-ma.gov; jarruda@emienenergy.com; pierreB@maritimeinternational.org; walter.bohlen@uconn.edu; jborkland@apexc.com; wbosworth@metrocast.net; starstripe@comcast.net; ellen.cebula@state.ma.us; news@wbsm.com; shellfish@fairhaven-ma.gov; cdade@chuckdade.com; dmmd55@comcast.net; neast@northeastmaritime.com; louis.elisa@state.ma.us; ken.finkelstein@noaa.gov; robert@baylineboatyard.com; gharper@apexc.com; cheryl.henlin@newbedford-ma.gov; david.janik@state.ma.us; bjoe57@hotmail.com; lacombe56@comcast.net; Lederer.Dave@epamail.epa.gov; paul.g.l'heureux@usace.army.mil; carolyn@communityrowing.org; kevin@fairhavenshipyard.com; dmedeiros@northeastmaritime.com; monte727@aol.com; kevin.p.mooney@state.ma.us; cmyers@apexc.com; snilson@cleengineering.com; oneil.kelsey@epa.gov; jpederso@mit.edu; tpickering@apexc.com; bllmeone@aol.com; kroset2740@yahoo.com; broth@fairhaven-ma.gov; thomas.shields@state.ma.us; stanley.elainet@epa.gov; kav704@yahoo.com; ewashburn@newbedford-ma.gov; white.kimberly@epa.gov; cantwellgreg@yahoo.com; Rasmussen@savebuzzardsbay.org; mclifford@jaycashman.com; Shewack.robert@epa.gov; Mark.gouveia@jacobs.com; Sal42856@gmail.com; linbergmarine@comcast.net; anne@newbedfordcommunityrowing.org; Murphy.jim@epa.gov; Peterson.david@epa.gov; rosannem@maritimeinternational.org; joseph.coyne@state.ma.us; harcnb@aol.com; jonah.mikutowicz@agmmarine.com; paul.craffey@state.ma.us; mpbrown@waterviewsllc.com; towboatnb@msn.com; neil.churchill@state.ma.us; awittenberg@s-t.com; mcdonough.margaret@epa.gov; Ronald.marnicio@tetrattech.com; Judith.leclair@urs.com; Mikaela.mcdermott@newbedford-ma.gov; Bill.white@state.ma.us; Henry.Bousquet@newbedford-ma.gov

Sent: Wednesday, October 24, 2012 4:54 PM
Subject: New Bedford Harbor CAD cell review update

Hello All –

I want to provide you with an update on our technical review of the EPA's lower harbor CAD cell. The EPA has released the design plans for the CAD cell (see below). Dr. Frank Bohlen is currently reviewing the design plans. In addition, we have received Dr. Noelle Selin's review of EPA's air risk analysis. I've attached her review and a summary of her review that we prepared.

In the wake of EPA's announcement of a settlement with AVX, we need to move quickly to complete our review of the CAD. We are working to connect EPA's technical experts with ours in order get responses from the EPA on the issues we are raising. We will make sure to pass on that information as we receive it. At this point we are planning to do that primarily via email rather than meetings.

EPA's CAD Cell design plans are available under the headings Technical Workgroup Documents, EPA CAD cell docs at:

<http://www.epa.gov/nbh/lhcadcell.html#TechnicalWorkgroupDocuments>

The EPA is accepting comments on the CAD cell design plans until November 28, 2012.

Kind regards,
Rachel

Rachel Wisniewski Jakuba, PhD, Vice President, Advocacy

BUZZARDS BAY COALITION

Main - 114 Front Street, New Bedford, MA 02740

Cape - 21 Luscombe Avenue, Woods Hole, MA 02543

Tel - 508-999-6363 x.229

www.savebuzzardsbay.org

From: Karen Vilandry <kav704@yahoo.com>
To: LisaP Jackson/DC/USEPA/US@EPA
Cc: Lisa Garcia/DC/USEPA/US@EPA, Hands Across the River <HARCNB@aol.com>, Ed Rivera <blimeone@aol.com>, Ariel Wittenberg <awittenberg@s-t.com>, "Staci Rubin Esq. MPH MELP" <staci@ace-ej.org>, Michael Lythcott <mlythcott@e2inc.com>, Wilma Subra <SubraCom@aol.com>, Stephen Lester <slester@chej.org>, Lois Gibbs <lgibbs@chej.org>, Peter Montague <peter@rachel.org>, National Resources Defense Council <nrdcaction@nrdc.org>, Kelsey O'Neil/R1/USEPA/US@EPA, Ariel Wittenberg <awittenberg@s-t.com>, George Rogers <George.Rogers@comcast.net>, Governor Deval Patrick <constituent.services@state.ma.us>, Jack Richard <jack_richard@scottbrown.senate.gov>, Luis Rodriguez <luispnkybrn@aol.com>, National Resources Defense Council <nrdcaction@nrdc.org>
Date: 11/01/2012 09:08 PM
Subject: New Bedford Harbor Late Update

To: Lisa P. Jackson, EPA Chief Administrator

This is at least the 5th time, I have requested that the EPA Region 1 places my personal email address on their list for all updates and communication. Somehow, they have eliminated my email address and I haven't received anything from them for months. This has been going on since Kelsey O'Neil became their spokesperson.

Furthermore, as you can see with the below email from the EPA on October 10, 2012 at 3:02 PM, there was a press conference regarding the \$366 million dollar settlement in New Bedford at 1:00 PM that day. Their email was sent at 3:02 PM to HARC. That's unacceptable.

It's obvious that Region 1 does not want to work with our Environmental Justice Group, Hands Across the River Coalition. Yet, we have been involved with the harbor since before the EPA named New Bedford Harbor a Superfund Site.

Instead, they plan on burying PCB sediments in our river, contaminating our air and water while doing so not to mention upsetting our ecosystem with the burial of toxic waste.

Don't you care about this? It seems obvious to me that the executive order for environmental justice does not apply to New Bedford.

Cordially,



Karen A. Vilandry
Vice President
Hands Across the River Coalition

34 Huttleston Avenue
Fairhaven, MA 02719
USA
Tel. 508-951-1184
Email: kav704@yahoo.com

----- Forwarded Message -----

From: Edwin Rvera <harcnb@aol.com>
To: kav704@yahoo.com
Sent: Wednesday, October 31, 2012 11:14 PM
Subject: Fwd: New Bedford Harbor Update

Edwin Rivera harcnb@aol.com

-----Original Message----- From: U.S. EPA <usaepa@govdelivery.com> To: harcnb <harcnb@aol.com>
Sent: Wed, Oct 10, 2012 3:02 pm Subject: New Bedford Harbor Update

test * test * test

Hello,

This is a press release that went out this afternoon regarding the EPA cleanup of New Bedford Harbor. Attached is a Q+A that will help answer any questions you may have regarding the press release. This is very exciting news we are happy to share with you!

News Release

U.S. Environmental Protection Agency

New England Regional Office

October 10, 2012

Contact: EPA Public Affairs, (617)-918-1010

AVX Corp. to Pay \$366 Million in Settlement, Accelerating Cleanup of New Bedford Harbor Contamination in Massachusetts

WASHINGTON – The Department of Justice, on behalf of the U.S. Environmental Protection Agency (EPA), along with the Massachusetts Attorney General's Office, on behalf of the Massachusetts Department of Environmental Protection, have reached a settlement with AVX Corp. for \$366.25 million plus interest regarding the New Bedford Harbor Superfund Site, in New Bedford, Mass.

The settlement paves the way for expedited implementation of the cleanup of the New Bedford Harbor Site at full capacity, providing more rapid protection of public health and the environment in addressing polychlorinated biphenyl (PCB) contaminated sediment in the harbor. PCBs are mixtures of up to 209 individual synthetic chlorinated compounds that are chemically stable, attach onto sediment particles readily and are resistant to biodegradation. PCBs are characterized as a probable carcinogen in humans.

The settlement follows an April 18, 2012, enforcement order issued by EPA to AVX to implement the ongoing cleanup work at the Harbor Site.

The “cash-out” settlement will be paid to the United States and the commonwealth jointly, and retained by EPA for use at the Harbor Site. The settlement provides the United States and the commonwealth with funding from AVX Corp. to continue to take action to remediate contamination. This includes dredging PCB-contaminated sediment and disposing the dredged sediment at an appropriately licensed off-site facility, in a confined aquatic disposal cell in the Lower Harbor, and in confined disposal facilities to be built along the shoreline. AVX's payment resolves its remaining liabilities to pay for the costs of cleanup at the site. If approved by the court, this will be the largest single-site cash settlement in the history of the Superfund program.

“This agreement is the product of our commitment to pursue the government's legal rights to defray costs borne by the Superfund and U.S. taxpayers in the cleanup of the New Bedford Harbor and to hold polluters ultimately accountable,” said Ignacia S. Moreno, Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice. “The recovery of these settlement funds will result in a more rapid reduction of human health and environmental risks and faster restoration of the harbor for the use and benefit of the public.”

“With this settlement, we are making good on our pledge to the citizens of New Bedford to help clean their harbor. Cleanup work will proceed much faster with dedicated funding, and we will more rapidly be able to ensure that both human health and ecological health are being protected from exposure to PCBs in New

Bedford Harbor,” said Curt Spalding, the Regional Administrator of EPA’s New England Office. “Further, the settlement is consistent with EPA’s longstanding ‘polluter pays’ principle.”

“This settlement is a victory for the people of the Commonwealth,” said Governor Deval Patrick. “These funds will allow us to expedite the ongoing cleanup efforts at the Harbor Site in order to protect the environment and the public health of our residents.”

“This settlement brings hundreds of millions of dollars to the City of New Bedford to clean up contamination that subjected people to unacceptable health risks and limited economic development,” said Massachusetts Attorney General Martha Coakley. “The AVX Corporation is responsible for the contamination and will pay for the cleanup, not Massachusetts taxpayers. The settlement also significantly accelerates the schedule so the region can feel the economic benefits sooner rather than later.”

“Thanks to this record settlement, those who live and work along the harbor will see a significant reduction in risk to humans and the environment, and people will not have to wait decades to begin to enjoy the harbor’s natural resources,” said Commissioner Kenneth Kimmell of the Massachusetts Department of Environmental Protection. “As the natural resources return to vitality, so will tourism, recreation and redevelopment for harbor-side communities.”

The settlement with AVX will provide the bulk of the estimated funding needed to allow EPA to complete the cleanup remedy for the New Bedford Harbor Superfund Site in approximately five to seven years, in contrast to the estimated 40 or more years it would take to complete the remedy under current funding of \$15 million per year from the Superfund and payment of \$1.5 million per year by the commonwealth.

From the 1940s to the 1970s, AVX’s corporate predecessor, Aerovox Corp., owned and operated what was known as the Aerovox facility, an electrical capacitor manufacturing facility located on the western shore of New Bedford Harbor. The United States and the commonwealth have determined that Aerovox discharged hazardous substances, including PCBs, into the harbor, and that Aerovox’s facility was the primary source of PCBs released into the harbor.

In 1983, the New Bedford Site was listed on the EPA’s Superfund National Priorities list, and the United States and the commonwealth of Massachusetts filed suit against AVX and other companies for injury to natural resources at the site from releases of PCBs. In 1984, the civil action was amended to include claims on behalf of EPA for recovery of response costs. AVX previously paid \$66 million, plus interest, for past and future response costs and natural resource damages at the Harbor Site as a result of a 1992 settlement with the U.S. and the commonwealth. The governments reserved certain rights in that settlement through reopener provisions, which were exercised to bring about this current settlement. In addition, in 2010 AVX entered into a settlement with the U.S. to demolish the Aerovox facility, which was accomplished in 2011, and AVX entered into a separate settlement with the commonwealth to address the remaining contamination at the Aerovox facility.

Under the supplemental consent decree lodged today in federal district court in Boston supplementing and modifying the 1992 consent decree, AVX agrees to pay \$366.25 million plus interest to settle its remaining liabilities for cleanup at the harbor site.

The supplemental consent decree will be published in the Federal Register and is subject to a 30-day public

comment period and approval by the federal court. A copy of the consent decree will be available on the Justice Department website at www.usdoj.gov/enrd/Consent_Decrees.html.

More information: EPA's New Bedford Harbor website www.epa.gov/nbh

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Learn More about the [Latest EPA News & Events in New England](http://www.epa.gov/region1/newsevents/index.html)
(<http://www.epa.gov/region1/newsevents/index.html>)

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More info on [EPA's Environmental Results in New England](http://www.epa.gov/region1/results/index.html) (<http://www.epa.gov/region1/results/index.html>)
Here it is.

[NBH - Supplemental CD FAQs 10.10.12 \(2\).pdf](#)

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usepag	http://flickr.com/usepag

From: [Karen Vilandry](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: Public Comment on AVX \$366 million dollar Settlement
Date: Monday, December 17, 2012 3:32:40 AM

To: Assistant Attorney General
U.S. DOJ-ENRD

Re: CIVIL ACTION NO. 83-3882-Y

Hands Across the River Coalition has reviewed the EPA Settlement amount of \$366,250,000.00 for the cleanup of New Bedford Harbor's Superfund Site. This figure is grossly inadequate for the complete removal of all PCB sediments in the entire harbor, offsite, to a TSCA approved landfill .

The EPA said in 2010 that \$500 million dollars plus would be needed to clean the river for a seven year period. What made the cost go down with the ever increasing rates for equipment, labor, disposal, etc.?

We don't know what the EPA is doing as they excluded the community from meaningful participation and actively involved harbor groups in any of their plans and negotiations.

The removal of extremely high levels of PCB sediments containing heavy metals and other contaminants has been ongoing in the upper harbor since September of 2004. It has been said that this river, the Acushnet River running through New Bedford Harbor, is the most PCB contaminated river in the world. Currently, this sediment is hydraulically dredged underwater and piped to a desanding and dewatering facility which is a multi-million dollar facility built by the EPA. The processed cakes of PCB sediments are then secured in containers and placed on a train which then is sent by rail to a TOSCA approved landfill in Michigan. This method safely removes the deadly PCB sediment from the river and safely removes the spoils offsite, out of the river and protects the community.

The EPA's current plans to remove 300,000 cy of PCB sediments in the lower harbor by mechanical dredge, ranging from 50 to 200 PPM, and burying them in our lower harbor in a CAD cell which is nothing more than a hole in the bottom of the sea, unlined, will contaminate our air during the process and will retain the PCB sediments in our harbor forever. This will have a long term health impact on our ecosystem and community now and in the future.



Hands Across the River Coalition has consulted a number of experts on this process, namely, an environmental scientist, Wilma Subra, Peter Montague, PhD, of rachel.org., Stephen Lester, Science Director at CHEJ, Wendy Heiger-Bernays, PhD, toxicologist at Boston University, Congressman Barney Frank, Staci Rubin, Staff Attorney at ACE, Francis Veale, Esquire, and Mathew Thomas, Esquire.

It's important to note that the New Bedford City Council has, on file, voted against the CAD cells.

On Huttleston Avenue, in Fairhaven, which is Route 6, is the Fairhaven High School. It resides one block east of the harbor near the New Bedford/Fairhaven Bridge. We have mentioned numerous times to the EPA to place air monitors in this vicinity where rapidly developing students attend school and participate in sports on its football field. The EPA hasn't done so and has no plans to do so either. When young people are actively playing sports, they naturally breathe harder thus ingesting more air. This is unsafe next to an active PCB Superfund Site with unsafe methods of PCB removal with no air monitors. The EPA doesn't seem to be concerned about prevailing winds leading to that area.

Between New Bedford and Fairhaven near the bridge is Popes Island. The EPA has allowed the DEP to place 3 CAD cells along Popes Island which is on the north side of the bridge. The DEP mechanically dredges PCB contaminated sediments in the harbor on the south side of the Route 6 bridge. They then place the spoils on an open top barge bringing it to the CAD cells on the north side of the bridge to drop into their CAD cells. Remember please, again, no air monitors are used for this process. Ironically, there is a cancer cluster along Fort Street, Fairhaven, which is on the south side of the Route 6 bridge along the water where the DEP dredging takes place. They don't use air monitors and are under the authority of the EPA since this is part of their New Bedford Harbor Superfund Site.

The proposed EPA CAD cell which would be CAD cell #4 is proposed to be placed just north of these 3 CAD cells near a heavily populated area of Fairhaven just a quarter mile north of the Fairhaven High School. Again, no air monitors are there.

The proposed South Terminal Project recently approved by the EPA, will again use a mechanical dredge to remove PCB sediments from that area on the north side of the hurricane barrier. That will be another DEP CAD cell constructed to hold this deadly material making it number 5 CAD cell. The PCB sediments in that southern area of the harbor was removed to alongside the shoreline to accommodate the building of the hurricane barrier back in the 1960's. That upland soil has had 114 samples, 77 of which has PCBs ranging from 0.0059 to 989 ppm. There are more PCBs in the river there. The South Terminal Project will create CAD cell number 5 further north of the barrier near Popes Island which will be used for mechanically dredged PCB sediments.

On the south side of the hurricane barrier, is the large acreage of PCB sediments buried in the harbor near Cornell Dubilier Corp. lightly covered with sand which sways with the tides. This was the test CAD cell or depression which the EPA must monitor regularly and has no current plans to remove this PCB sediment.

Directly across the harbor to Fairhaven is the Scotcut Neck Road area, further southeast from the Fort Street area extending off which Manhattan Avenue and all streets along and leading to the harbor have yet another cancer cluster. The mechanical dredging that took place carrying over the PCB sediments to the Cornell Dubilier area didn't occur without consequences. There was no air monitoring for this operation. The EPA uses no air monitors on the Fairhaven side south of the Route 6 bridge.

The EPA has outdated data risk assessments for the effects of PCBs in the air on the community. They have excluded the most sensitive populations namely children and pregnant women. Also, when we asked, the EPA told us that they have not studied the cumulative effects of all these CAD cells on the ecosystem and human health.

We have heard this year that a study was conducted by Jon Levy, ScD, at Harvard School of Public Health, who concluded after testing the umbilical chords from pregnant New Bedford women and following the children to school age that there is a link between PCBs and ADHD.

Another study done by Harvard scientists, one of which is Donna

Vorhees, ScD., who specializes in multi-pathway exposure assessments, showed that there is a significant increase of PCBs found in tomatoes grown in gardens around New Bedford Harbor during the time of dredging. Now if PCBs are getting into tomatoes, logically, they're getting into humans here as well.

In view of the \$366 million settlement proposed by AVX to forever remove them from further litigation, that figure is grossly inadequate to remove all PCB sediments from the harbor to an offsite TSCA approved landfill. We cannot have this deadly material buried in our river forever nor can we allow the EPA to bury us by knowingly contaminating our air and water with this method of disposal into a CAD cell and yet without sufficient air monitoring with immediate readings other than those that take months to return results like the ones they currently use in the upper harbor.

Cleanup costs must be sufficient to cover all cleanup costs throughout the harbor, including sufficient air monitoring to protect the community, all the way up from north to south where dredging takes place, and removal of all PCB sediments offsite to a TSCA approved landfill.

It is crucial to retain the re-opener clause in this decree due to the very unexpected cleanup costs and increased costs over the next several years. Just a year ago, the EPA dug up archaeological finds in the upper harbor that they weren't aware of was there. As Elaine Stanley, EPA Remedial Project Manager for the Superfund Site said, that set them back about \$50,000.00 as when they find something of that nature, they have to stop operations, call the appropriate agencies and have archaeologists come over to examine the material. That was unplanned costs that by law they had to pay for.

In addition, the City of New Bedford has spoils from AVX around the area. The Parker Street Waste Site, a former toxic waste burn dump has some of the highest levels of dioxin, PCBs, heavy metals, PAH's and VOCs in the area. On this 122 acre site, far bigger than Love Canal's 70 acres, currently lies New Bedford High School, the Keith Middle School, the Andrea McCoy Sports Field, the Paul Walsh Field, a church, private and public housing.

New Bedford High School has classrooms closed due to high levels of PCBs found, a constantly monitored mechanical room with contaminants leaching in through ground water, levels of DIOXIN found in 9 out of 18 samples taken

around the school and a high amount of staff who have cancer or who have died of cancer. Students who have left the school, many have gone on to bare children with some type of neurological disorder if they could have children at all. Please remember the study on New Bedford children having ADHD from PCBs. Even neighborhood pets, both cats and dogs have died of cancer here.

The City of New Bedford had to buy out 5 private homes on this site due to high levels of contamination. The houses were demolished and the land, capped. One area of this site has electrical capacitors that were dumped there by AVX with high levels of PCBs.

The Keith Middle School which sits across the street from New Bedford High School has wetlands right behind it with one level of over 700 ppm of PCBs. This senseless, newly built school has air monitoring to keep an eye on the levels of PCBs in the building.

Why is the important? This is one more area in the city that has been affected by the PCBs from AVX, You have to maintain in the decree, the right to sue for cleanup and related costs or to take administrative action against AVX. There are more PCBs at another Superfund Site in New Bedford, Sullivan's Ledge. There are also plenty of PCBs at the Shawmut Avenue Landfill in New Bedford, both north of the Parker Street Waste Site.

We must maintain the right to go after the responsible party for all unexpected costs and for you to order the responsible parties to assume all costs now and in the future. Should the responsible party re-organize and try to get out of it, then you as the court need to insure that the future party be held responsible.

The EPA also has plans written for a CAD cell in the upper harbor where thousands of ppm of PCBs lay as we just learned. The local newspaper, the Standard Times has an in depth article on this.

When asked about the documents obtained by the Buzzards Bay Coalition through the Freedom of Information Act, EPA Region 1 Administrator Curt Spalding had said that there is no planning under way now for an Upper Harbor CAD cell at all. But he said the EPA will officially consider the idea in July when it plans to reopen the Record of Decision regarding harbor cleanup.

"At that time, we would talk about different ways to remedy the harbor," he said. "There has been no decision made whether an Upper Harbor CAD cell would be part of that discussion."

<http://www.southcoasttoday.com/apps/pbcs.dll/article?>

It is clear that the EPA plans are inconclusive and cannot predict actual costs for cleanup. Therefore, again, the \$366 million dollar settlement is insufficient. It may be a down payment but is hardly enough to cover the entire harbor cleanup to the world level of 1 PPM of PCBs.

We have a very large Environmental Justice community that you need to protect under the Civil Rights Laws and any other laws that protect the rights for people to live in a healthy environment free from the ravages of deadly contaminants. Whatever a person ingests into their body, passes over into the womb to the child. So contamination affects humans and animals genetically for generations to come. Not only does PCBs cause cancer and ADHD, it causes neurological disorders, altered brain development, hearing loss, vision loss, is an endocrine disruptor affecting the thyroid, sperm count, and altered sperm affecting any future pregnancies. There is a 53% dropout rate at New Bedford High School. Don't you think that maybe, children going to school on top of a toxic waste burn dump with PCBs in and around the school can affect their ability to learn and think rationally in all ways?

That's why you need to retain the re-opener clause and remove the covenant not to sue in the decree or take any other civil, judicial or administrative action against AVX.

Cordially,

Karen A. Vilandry
Vice President

34 Huttleston Avenue
Fairhaven, MA 02719
kav704@yahoo.com

Edwin J. Rivera, Sr.
President

Hands Across the River Coalition
181 Hillman Street, Building 9, Room 109
New Bedford, MA 02740

harcnb@aol.com



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 - NEW ENGLAND
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912**

October 25, 2012

Karen A. Vilandry
Vice President
Hands Across the River Coalition
34 Huttleston Ave.
Fairhaven, MA 02719

Re: New Bedford Harbor Superfund Site—October 10, 2012 Letter to EPA
Administrator Lisa P. Jackson

Dear Ms. Vilandry:

EPA Region 1 is writing in response to your letter to EPA Administrator Lisa P. Jackson, dated October 10, 2012, regarding the governments' settlement with AVX Corp. that was lodged with the U.S. District Court for the District of Massachusetts on that same day. This settlement is subject to a 30-day public comment period, which began on October 17, 2012. EPA appreciates your comment. While your letter was submitted before the public comment period, we have forwarded a copy to the U.S. Department of Justice, and it will be considered along with other comments submitted during the 30-day public comment period.

EPA has posted on the New Bedford Harbor Site's webpage (<http://www.epa.gov/nbh/>) two sets of frequently asked questions (FAQs) and answers about the settlement and the cleanup, which I am enclosing with this letter. I hope that these FAQs provide useful information.

Finally, you mentioned a few other issues in your October 10, 2012 letter that I would like to address. I want to clarify that neither EPA nor the U.S. Department of Justice held or participated in any press conference regarding this settlement. Regarding settlement discussions with AVX, the fact that settlement discussions have taken place is not confidential, but the contents of these discussions are confidential and subject to a mediation agreement.

Please contact Kelsey O'Neil, Community Involvement Coordinator, at 617-918-1003 if you have questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Man Chak Ng".

Man Chak Ng
Senior Enforcement Counsel

Enclosures

cc (via email): Curt Spalding, Regional Administrator



SDMS Doc ID 529609



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 - NEW ENGLAND
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912**

November 9, 2012

Karen A. Vilandry
Vice President
Hands Across the River Coalition
34 Huttleston Ave.
Fairhaven, MA 02719

Re: New Bedford Harbor Superfund Site—October 24, 2012 and November 1, 2012
Emails to EPA and Others

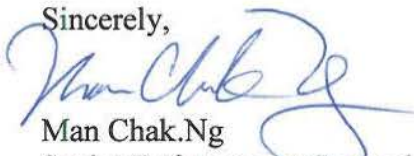
Dear Ms. Vilandry:

EPA Region 1 is writing in response to your emails to EPA and others, dated October 24, 2012, and November 1, 2012, regarding the governments' settlement with AVX Corp. that was lodged with the U.S. District Court for the District of Massachusetts on October 10, 2012. On October 25, 2012, EPA Region 1 sent you a letter in response to your October 10, 2012 letter to EPA Administrator Lisa P. Jackson, indicating that while your letter was submitted before the public comment period, we have forwarded a copy to the U.S. Department of Justice (DOJ), and that it will be considered along with other comments submitted during the public comment period. With respect to your October 24th and November 1st emails, they were not submitted to the official DOJ email address for public comments on the settlement with AVX. However, we have also forwarded copies of these emails to DOJ, and they will be considered along with other comments submitted during the public comment period.

As EPA Region 1's October 25th letter was sent out the day after your October 24th email, I am enclosing a copy of the October 25th letter, along with the two enclosed sets of frequently asked questions (FAQs), for your reference.

Please contact Kelsey O'Neil, Community Involvement Coordinator, at 617-918-1003 or 857-998-0226 if you have questions.

Sincerely,



Man Chak Ng
Senior Enforcement Counsel

Enclosures

cc (via email): Curt Spalding, Regional Administrator



SDMS Doc ID 529610

From: [Bob Kelley](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: New Bedford Harbor Cleanup
Date: Saturday, December 01, 2012 10:55:14 AM

Assistant Attorney General
Environment and Natural Resources Division
Re: *United States and Massachusetts v. AVX Corporation, D.J.*
Ref. No. 90-11-2-32/2.

Please don't let polluters walk away without fully cleaning up the mess they made.

I want to have New Bedford Harbor cleaned-up to the highest, safest standard. The settlement between the EPA and AVX should include a *re-opener* clause to ensure a *full cleanup* of the harbor.

It's really important to me and the environment.

-- Sincerely,
~**Robert B. Kelley**
51 Angelica Avenue
Mattapoisett, MA 02719-2287
508-758-6311



DEAR THE DEPARTMENT OF JUSTICE,

THIRTY YEARS IS A LONG TIME TO WAIT FOR THE HAND OF JUSTICE. MY NAME IS THOMAS A. KENNEDY, (NO RELATION TO THE HYANNIS KENNEDY'S), AND FOR THAT LENGTH OF TIME HAVE BEEN BATTLING TO RECTIFY AN INJUSTICE CAUSED BY THE PCB CONTAMINATION INTO THE ACUSHNET RIVER. MY BACKGROUND INCLUDES SERVING ON THE NEW BEDFORD CITY COUNCIL 1979-1983. I AM GRATEFUL TO BE ABLE TO COMMENT ON THE NEW SETTLEMENT AGREEMENT BETWEEN THE U.S. AND A.V.X. (366 MILLION DOLLARS).

MY REMARKS TODAY ARE SPECIFICALLY CONCERNING THE 110 MILLION QUOHOGS (SHELLFISH) NONHARVESTABLE OR DESTROYED IN THE DREDGING PROCESS TO DATE. WHEN I SERVED ON THE CITY COUNCIL I WAS CHAIRMAN OF THE SHELLFISH COMMITTEE AND WAS HEARTENED BY THE ORIGINAL CONSENT DECREE BY JUDGE YOUNG. JUDGE YOUNG STATED THAT THE SET ASIDE FUNDS COULD ONLY BE USED TO RESTORE, REPLACE, OR ACQUIRE THE EQUIVALENT OF THAT WHICH WAS DAMAGED BY THE PCB CONTAMINATION. AVX AGREED TO 66 MILLION DOLLARS AND THE JUDGE SET ASIDE AND ADDITIONAL 6.7 MILLION FOR DAMAGE TO NATURAL RESOURCES OR 10% APPROXIMATELY. THESE SET ASIDE FUNDS WERE COMBINED WITH OTHERS AND FOR THE LAST TWENTY YEARS WERE DISPERSED FOR VARIOUS ENVIRONMENTAL PROJECTS IN THE ACUSHNET RIVER WATERSHED BY THE HARBOR TRUSTEE COUNCIL. AS THE HTC DIMINISHED THE RELEVANCE OF SHELLFISH CONTAMINATION BY NOT RECOGNIZING THE POINT OF INJURY ASPECT WHATSOEVER IN THE ORIGINAL, THEY JUST CONTINUED TO IGNORE IT THROUGHOUT THE GRANTMAKING PROCESS. WE UNDERSTOOD AT THE TIME THAT TO RESTORE AND REPLACE OR EVEN ACQUIRE THE EQUIVALENT OF 110 MILLION QUOHOGS WOULD LEAVE NO FUNDS FOR ANYTHING ELSE. WE WERE PATIENT AS THEY STATED, WELL THE DAMAGE ASSESSMENT OF THE AREA HADN'T BEEN COMPLETED YET. INITIALLY THIS WAS THE RESPONSIBILITY OF THE DEPARTMENT OF INTERIOR WHO THEN PASSED IT OFF TO THE HTC. BY THE TIME THE SECOND ROUND OF FUNDING CAME AND WENT IN JANUARY 2001 (EXHIBIT A) THEIR OWN DOCUMENT STATED THAT THE ASSESSMENT HADN'T BEEN COMPLETED. WE KNEW BETTER. A DOCUMENT ON SHELLFISH STOCK ASSESSMENT WAS COMPLETED WITH THEIR FUNDING IN 1999. IT IS TITLED "CROP SURVEY" BY DAVE WHITTAKER JUNE 6, 1999. IF YOU'RE INTERESTED ITS ON PAGE 8. THE BREAKDOWN IS AS FOLLOWS;

SEED	16 million 680 thousand
LITTLE NECKS	21 MILLION 346 thousand
CHERRY STONES	28 MILLION 330 thousand
CHOWDERS	44 MILLION

#25-30 million
VALUE

1999
DATE
Completed



THE FUNDING THAT WAS RECEIVED WAS FOR PROJECTS OUTSIDE THE INNER HARBOR AS THE ENTIRE STOCK JUST MENTIONED CAN NEVER BE HARVESTED AND MOST OF IT ALREADY DESTROYED BY EPA DREDGING. THIS POINT OF INJURY ASPECT MUST BE CONSIDERED BY THE JUDGE AS HIS WISDOM IN THIS SETTLEMENT OF 366 MILLION GETS HIS OR HER REVIEW. BELIEVE ME WE UNDERSTAND THE EVOLUTION OF THE CERCLA REGULATIONS AND HOW THEY MAY AFFECT THE CURRENT SETTLEMENT PARTICULARLY IF NO SET ASIDE SPECIFICALLY FOR SHELLFISH IS GRANTED. JUST IMAGINE IF NONE IS GRANTED. THE EPA CAN THEN STATE THAT THERE WERE NO INJURIES TO THE SHELLFISH IN THE INNER HARBOR DUE TO CONTAMINATION OF PCBs. YOU KNOW THEY WOULD BE RIGHT BECAUSE DAMAGES UNDER CERCLA ARE ONLY COUNTED WHEN THERE IS COMPENSATION. NO COMPENSATION NO DAMAGES. NO DAMAGES NO INJURY. THIS IS WHY THAT WHOMEVER IS READING THIS COMMENT THAT SOMEHOW THE JUDGE REVIEWING THIS SETTLEMENT CAN RECTIFY THE SHELLFISH DILEMMA.

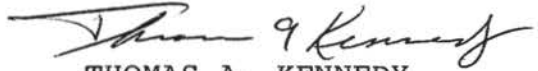
CERCLA ALSO HAS WITHIN ITS EVOLVING REGULATIONS A NOTION OF "DISCOVERY" WHICH CAN BE HELPFUL CONCERNING OUR PLEA. COMMONLY REFERRED TO AS THE SOUTH TERMINAL PROJECT, A CONSULTING FIRM HAD TO PERFORM A SHELLFISH SURVEY TO DETERMINE HOW MUCH STOCK IN THE SOUTHERNMOST AREA OF THE INNER HARBOR WOULD BE AFFECTED BY THE SUBSEQUENT DREDGING OF THIS MOST IMPORTANT PROJECT THAT WE ARE ALL IN FAVOR OF. MITIGATION TOOK PLACE AND FOR 5 MILLION SHELLFISH THAT WOULD BE DISPLACED 25 MILLION SEED WOULD BE USED TO REPLACE THE FIVE MILLION STOCK. A DERIVATIVE PROCESS WAS USED AND LIKE MOST DERIVATIVES VALUATIONS BECAME PERVERTED AND WHEN IT COMES TO LIVE ORGANISMS THAT PERVERSION BECOMES FURTHER PERVERTED BECAUSE OF MORTALITY RATES IN RESEEDING. CERCLA ALLOWS FOR THE DERIVATIVE PROCESS. WE DIDN'T LIKE IT BUT BECAUSE OF THE IMPORTANCE OF THE OVERALL PROJECT WE WERE GLAD TO SUPPORT IT. WE ALSO HAVEN'T BEEN INFORMED OF WHERE THE FUNDING FROM THE DERIVATIVE RESEEDING WILL COME FROM SINCE IT IS SEPARATE AND DISTINCT FROM THE CURRENT SETTLEMENT BEFORE YOU. I MENTION IT BECAUSE IT IS THE FIRST TIME ANY COMPENSATION HAS BEEN GRANTED FOR SHELLFISH STOCK IN THE INNER HARBOR AND HOPEFULLY CAN BE USED FOR DISCOVERY PURPOSE. (THE CONSULTING COMPANY THAT PERFORMED THAT SURVEY IS CALLED APEX) EXHIBIT B EPA DRAFT DETERMINATION P. 29.

IN CLOSING WE BELIEVE THE JUDGE CAN SET ASIDE AS PER THE ORIGINAL CONSENT DECREE, A CERTAIN AMOUNT OF FUNDS TO BE PLACED IN AN ESCROW ACCOUNT SPECIFICALLY FOR SHELLFISH RESTORATION IN CLEAN WATERS IN THE CITY OF NEW BEDFORD IN AN ATTEMPT TO MAKE WHOLE THAT WHICH WAS DESTROYED BY THE PCB CONTAMINATION. UNDERSTANDING THAT THE FIGURE WOULD BE IN THE TENS OF MILLIONS OF DOLLARS WE ARE NOT ASKING FOR THAT. WE ARE ASKING THAT YOU WHO ARE READING THIS MAKE A DETERMINED EFFORT TO GET THIS INFORMATION BEFORE THE JUDGE SO THAT JUSTICE CAN FINALLY BE SERVED. OUR RECOMMENDATION IS THAT AN ESCROW ACCOUNT BE ESTABLISHED RESTRICTED FOR SHELLFISH IN NEW BEDFORD WATERS IN THE AMOUNT OF 15 MILLION DOLLARS WITH ONLY THE MAYOR OF THE CITY AND THE REGIONAL DIRECTOR OF THE DEPARTMENT OF MARINE SERVICES BEING ABLE TO ACCESS THIS ACCOUNT. FURTHER THAT ALL FUNDS BE USED FOR

SHELLFISG PROPAGATION INCLUDING SEEDING AND TRANSPLANTING.

THANK YOU FOR YOUR TIME.

RESPECTFULLY,



THOMAS A. KENNEDY
78 ELLEN ST 2ND FLOOR EAST
NEW BEDFORD, MASS.
02744

TEL508-9927948

ps WE SUPPORT THE SETTLEMENT AND HOPE THEIR IS A SET ASIDE!

*INITIAL SETTLEMENT WOEFULLY INADEQUATE
AND SO WAS ORIGINAL SET ASIDE
TK*

THIS IS FROM NBHTC, JAN. 2001 Re LACK of FULL DAMAGE Assessment
IT WAS THE FIRST DISCLOSURE AND AFTER HTC SETUP!

(A)

RP/EIS Section 3.5.1.2, EPA has informally estimated that once the cleanup is completed, water quality target levels for PCBs may take another ten years to achieve (Dickerson, PC, 1996). The Harbor cleanup will reduce the concentration and volume of PCBs, but residual PCBs will continue to remain and affect natural resources for an additional 16-100 years.

2.2 The Preferred Alternative: Natural Resource Restoration

Funds to restore injured natural resources are available from settlements with the parties responsible for releasing contaminants into the New Bedford Harbor Environment. The Trustee Council has the legal responsibility to use this money to restore, replace or acquire the equivalent of the natural resources that were injured.

Natural resource restoration will accelerate the natural recovery process and, in turn, should lead to additional economic benefits through increased use and greater confidence in the health of the Harbor. The sooner injuries can be corrected through cleanup efforts and natural resource restoration, the sooner natural resources can thrive in a healthy environment. Such an environment will support larger populations of marine organisms, healthier individuals and a greater diversity of species. This will also lead to increasing the services provided by the natural resources such as, *inter alia*, fishing, shoreline use and boating.

(2001)

* Due to time constraints and settlement of the litigation, the damage assessment performed was incomplete and was a generalized approach for determining the impacts of the contamination on natural resources. It remains for the Trustee Council to determine the best approach for restoration. Other environmental impacts are present in the area which may mask or increase the impacts of PCB contamination. Historical information does not describe the quality to which resources should be restored. Accordingly, the preferred approach is to take a holistic view and address natural resource restoration opportunities throughout the affected environment. This will provide ecological benefits throughout the watershed while having additional positive effects on the human environment.

Projects will be selected to address the restoration priorities (RP/EIS Section 2.2.6) and by applying the selection criteria (RP/EIS Section 2.2.5). The restoration priorities have equal weight under this approach, which promotes a broad perspective for the restoration actions. Projects may be distributed throughout the affected environment or the supporting environment if that environment contains affected natural resources.

2.3 Specific proposals/alternatives

Please Consider THIS } Discovery Issue

(B)

In general, stormwater will be rerouted around the construction area using swales, diversions, checkdams and temporary sediment basins. Sediment and erosion controls will prevent sediment runoff into the Harbor waters without prior treatment for suspended solids and other TMDL limits. Outfalls in the northern portion of the proposed CDF will be extended through the new sheet pile wall to ensure stormwater does not discharge into the bulkhead area. Existing pipelines will be modified and strengthened or replaced as necessary to accommodate loads from filling, storage, truck traffic and heavy equipment, including the 600 ton cranes needed to transfer wind turbine equipment on and off the proposed CDF from and back onto vessels waiting along the bulkhead.

An Activity and Use Limitation pursuant to M.G.L. c. 21E will be recorded for the entire filled and upland area of the terminal. Any development or activity on the proposed CDF shall be designed, implemented and maintained in a manner to prevent any release or exposure to any material contaminated with PCBs at greater than 1 ppm concentration. Institutional controls will be implemented that prohibit use or contact with groundwater, that prohibit activities that would adversely affect the cap, and that prohibit any land use activities that were not considered as part of the TSCA determination. Once completed, the Commonwealth will secure a M.G.L. c.91 license as well as other regulatory permits for use of the CDF.

Mitigation Measures

Item 4 was determined by what they found in the shellfish survey. The only survey known to the public as of this date, 10/20/12

To compensation for impacts caused to resource areas, the Commonwealth is required to implement the following mitigation measures:

1. Creation/enhancement of 4.47 acres of intertidal habitat and 14.91 acres of subtidal habitat south of the hurricane barrier in the area of the Superfund pilot cap;
2. Creation/enhancement of 1.9 acres of a combination of successional marsh in a tidal tributary along the western end of the hurricane barrier;
3. Creation of 22.73 acres of winter flounder habitat in the Outer Harbor
4. EPA recommends reseeding of 24,542,803 shellfish over 10 years given the expected 40% survival rate; and
5. Completion of Tern Monitoring Program

10% survives

Addition of clean sand to existing Superfund pilot cap located south of hurricane barrier to create or enhance 19.38 acres of aquatic habitat: This mitigation will consist of creation/enhancement of 4.47 acres of intertidal habitat and 14.91 acres of subtidal habitat through the placement of suitable dredged material outside the Harbor, adjacent to the hurricane barrier between the barrier and the existing Superfund pilot cap³⁰. This mitigation creates intertidal and subtidal areas with clean sand generated from dredging activities while simultaneously capping and isolating sediments with less than 10 ppm

³⁰ Page 6 of the 1998 ROD identified two areas located just south of the hurricane barrier in the outer harbor as containing sediment with PCB concentrations greater than the lower harbor cleanup level of 50 ppm and determined that these areas would be addressed on an interim basis as part of the remedy. A pilot underwater cap was placed in 2005 over one of the areas of contaminated sediment to evaluate the performance of an underwater cap in the outer harbor. See Figure 7 for location of the cap. Additional information about the pilot underwater cap may be found at www.epa.gov/nbh.



PCB contamination. This will enhance spawning and foraging areas for winter flounder, scup, black sea bass and windowpane flounder, shellfish habitat, and horseshoe crab habitat. See Attachment A of the Commonwealth's June 29, 2012 submittal for engineering plans for this area.

Hurricane barrier vegetated swale rehabilitation and restoration: Conditional upon the U.S. Army Corps of Engineers' concurrence, in accordance with 33 U.S.C. § 408 that the channel design will have no adverse effect on the operation of the Hurricane Barrier, this mitigation will consist of creation/enhancement of 1.9 acres of a combination of successional marsh area (mudflat, low marsh, high marsh, and transitional area) within the tidal tributary area behind the hurricane barrier between Cove and Gifford Streets. This involves removal of some of the PCB contaminated sediment that has filled the tributary, disposal of that material in CAD cell 3 and capping the area with clean material and grading to prevent direct contact with the remaining residual impacted sediment. Replanting with native wetland plants and installation of a public access walkway/bike path adjacent to the newly created marsh area will also be part of this mitigation measure. A monitoring program will be implemented to protect against invasive species. This mitigation measure will enhance the hydraulic capacity of the tidal tributary to transport stormwater from behind the Barrier and will enhance spawning and foraging areas for winter flounder, scup, black sea bass and windowpane flounder, and enhance foraging area for avian wildlife identified within the resource delineation. See Attachment A of the Commonwealth's June 18, 2012 submittal for plans and cross-sections for these mitigation activities.

Creation of 22.73 acres of winter flounder habitat in Outer Harbor:³¹ This measure consists of filling a relative depression west of the Federal Channel, immediately north of the Butler Flats lighthouse. The eastern edge of the area to be filled (the edge closest to the channel) is 90 feet from the western boundary of the Federal Channel. Clean navigational dredged fill will be placed in this area to raise the elevation from -20 MLLW to a depth of approximately -16.4 MLLW.

Shellfish seeding: To compensate for the approximately 9,817,121 shellfish lost during filling and/or dredging operations, the seeding proposed is designed to provide between 1,000,000 and 2,000,000 seed per year for the next five to ten years in order to provide approximately 9,817,121 seed for this project. See Attachment E of the Commonwealth's June 18, 2012 submittal and Attachment A of the June 29, 2012 submittal for engineering plans for this area. Given the expected 40% survival rate, EPA recommends reseeding of 24,542,803 shellfish over 10 years to replace 9,817,121 impacted shellfish.

Completion of the Tern Monitoring Program: The Commonwealth is proposing a survey to confirm the presence of foraging habitat as well as tern use of the area. As terns are migratory birds, the best time to conduct the survey would be from May to mid June timeframe with boat transects completed once every 2 weeks to count the type and number of terns flying over the transect. If this proposed Project is approved, the Commonwealth anticipates conducting the survey during the Spring/Summer of 2013.

³¹ Acreage proposed for Winter Flounder habitat was increased from the original 17.73 acres presented by the Commonwealth in its January 18, 2012 submittal to the present 22.73 acres in its June 18, 2012 submittal. The additional mitigation was added to compensate for the potential federal channel dredging and potential widening and deepening of the deep draft channel; however, because this additional work is uncertain at this time, there is no commitment from the Commonwealth to perform this increased mitigation work.

T. Kenney
78 ELLEN ST, 2ND FL EAST
New Bedford, MASS 02764
Re: AIX Comment Period



1023

20044

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DEPARTMENT OF JUSTICE

ASSISTANT ATTY GENERAL ENRD

P.O. Box 7611

WASHINGTON, DC

20044-7611


BubbleWrap
BRAND
INSIDE!

Rec'd in LPS
10/31/12

DEAR THE DEPARTMENT OF JUSTICE,

THIRTY YEARS IS A LONG TIME TO WAIT FOR THE HAND OF JUSTICE. MY NAME IS THOMAS A. KENNEDY, (NO RELATION TO THE HYANNIS KENNEDY'S), AND FOR THAT LENGTH OF TIME HAVE BEEN BATTLING TO RECTIFY AN INJUSTICE CAUSED BY THE PCB CONTAMINATION INTO THE ACUSHNET RIVER. MY BACKGROUND INCLUDES SERVING ON THE NEW BEDFORD CITY COUNCIL 1979-1983. I AM GRATEFUL TO BE ABLE TO COMMENT ON THE NEW SETTLEMENT AGREEMENT BETWEEN THE U.S. AND A.V.X. (366 MILLION DOLLARS).

MY REMARKS TODAY ARE SPECIFICALLY CONCERNING THE 110 MILLION QUOHOGS (SHELLFISH) NONHARVESTABLE OR DESTROYED IN THE DREDGING PROCESS TO DATE. WHEN I SERVED ON THE CITY COUNCIL I WAS CHAIRMAN OF THE SHELLFISH COMMITTEE AND WAS HEARTENED BY THE ORIGINAL CONSENT DECREE BY JUDGE YOUNG. JUDGE YOUNG STATED THAT THE SET ASIDE FUNDS COULD ONLY BE USED TO RESTORE, REPLACE, OR ACQUIRE THE EQUIVALENT OF THAT WHICH WAS DAMAGED BY THE PCB CONTAMINATION. AVX AGREED TO 66 MILLION DOLLARS AND THE JUDGE SET ASIDE AND ADDITIONAL 6.7 MILLION FOR DAMAGE TO NATURAL RESOURCES OR 10% APPROXIMATELY. THESE SET ASIDE FUNDS WERE COMBINED WITH OTHERS AND FOR THE LAST TWENTY YEARS WERE DISPERSED FOR VARIOUS ENVIRONMENTAL PROJECTS IN THE ACUSHNET RIVER WATERSHED BY THE HARBOR TRUSTEE COUNCIL. AS THE HTC DIMINISHED



THE RELAVANCE OF SHELLFISH CONTAMINATION BY NOT RECOGNIZING THE POINT OF INJURY ASPECT WHATSOEVER IN THE ORIGINAL, THEY JUST CONTINUED TO IGNORE IT THROUGHOUT THE GRANTMAKING PROCESS. WE UNDERSTOOD AT THE TIME THAT TO RESTORE AND REPLACE OR EVEN ACQUIRE THE EQUIVALENT OF 110 MILLION QUOHOGS WOULD LEAVE NO FUNDS FOR ANYTHING ELSE. WE WERE PATIENT AS THEY STATED, "WELL THE DAMAGE ASSESSMENT OF THE AREA HADNT BEEN COMPLETED YET. INITIALLY THIS WAS THE RESPONSIBILITY OF THE DEPARTMENT OF INTERIOR WHO THEN PASSED IT OFF TO THE HTC. BY THE TIME THE SECOND ROUND OF FUNDING CAME AND WENT IN JANUARY 2001 (EXHIBIT A), THEIR OWN DOCUMENT STATED THAT THE ASSESSMENT HADNT BEEN COMPLETED. WE KNEW BETTER. A DOCUMENT ON SHELLFISH STOCK ASSESSMENT WAS COMPLETED WITH THEIR FUNDING IN 1999. IT IS TITLED "CROP SURVEY" BY DAVE WHITTAKER JUNE 6, 1999. IF YOUR INTERESTED ITS ON PAGE 8. THE BREAKDOWN IS AS FOLLOWS;

SEED	16million680thousand
LITTLE NECKS	21MILLION346 thousand
CHERRY STONES	28MILLION330 thousand
CHOWDERS	44 MILLION

Commercial Consumer
market
VALUE
\$51,766,763
Page 14
same document

THE FUNDING THAT WAS RECEIVED WAS FOR PROJECTS OUTSIDE THE INNER HARBOR AS THE ENTIRE STOCK JUST MENTIONED CAN NEVER BE HARVESTED AND MOST OF IT ALREADY DESTROYED BY EPA DREDGING. THIS POINT OF INJURY ASPECT MUST BE CONSIDERED BY THE JUDGE AS HIS WISDOM IN THIS SETTLEMENT OF 366 MILLION GETS HIS OR HER REVIEW. BELIEVE ME WE UNDERSTAND THE EVOLUTION OF THE CERCLA REGULATIONS AND HOW THEY MAY AFFECT THE CURRENT SETTLEMENT PARTICULARLY IF NO SET ASIDE SPECIFICALLY FOR SHELLFISH IS GRANTED. JUST IMAGINE IF NONE IS GRANTED. THE EPA CAN THEN STATE THAT THERE WERE NO INJURIES TO THE SHELLFISH IN THE INNER HARBOR DUE TO CONTAMINATION OF PCBs. YOU KNOW THEY WOULD BE RIGHT BECAUSE DAMAGES UNDER CERCLA ARE ONLY COUNTED WHEN THERE IS COMPENSATION. NO COMPENSATION NO DAMAGES. NO DAMAGES NO INJURY. THIS IS WHY THAT WHOEVER IS READING THIS COMMENT THAT SOMEHOW THE JUDGE REVIEWING THIS SETTLEMENT CAN RECTIFY THE SHELLFISH DILEMMA.

CERCLA ALSO HAS WITHIN ITS EVOLVING REGULATIONS A NOTION OF "DISCOVERY" WHICH CAN BE HELPFUL CONCERNING OUR PLEA. COMMONLY REFERRED TO AS THE SOUTH TERMINAL PROJECT, A CONSULTING FIRM HAD TO PERFORM A SHELLFISH SURVEY TO DETERMINE HOW MUCH STOCK IN THE SOUTHERNMOST AREA OF THE INNER HARBOR WOULD BE AFFECTED BY THE SUBSEQUENT DREDGING OF THIS MOST IMPORTANT PROJECT THAT WE ARE ALL IN FAVOR OF. MITIGATION TOOK PLACE AND FOR 5 MILLION SHELLFISH THAT WOULD BE DISPLACED 25 MILLION SEED WOULD BE USED TO REPLACE THE FIVE MILLION STOCK. A DERIVATIVE PROCESS WAS USED AND LIKE MOST DERIVATIVES VALUATIONS BECOME PERVERTED AND WHEN

your dealing with live organisms it BECOMES FURTHER
PERVERTED BECAUSE OF MORTALITY RATES IN RESEEDING. CERCLA ALLOWS
FOR THE DERIVATIVE PROCESS. WE DIDN'T LIKE IT BUT BECAUSE OF THE
IMPORTANCE OF THE OVERALL PROJECT WE WERE GLAD TO SUPPORT IT.
WE ALSO HAVEN'T BEEN INFORMED OF WHERE THE FUNDING FROM THE
DERIVATIVE RESEEDING WILL COME FROM SINCE IT IS SEPERATE AND
DISTINCT FROM THE CURRENT SETTLEMENT BEFORE YOU. I MENTION IT
BECAUSE IT IS THE FIRST TIME ANY COMPENSATION HAS BEEN GRANTED
FOR SHELLFISH STOCK IN THE INNER HARBOR AND HOPEFULLY CAN BE
USED FOR DISCOVERY PURPOSE. (THE CONSULTING COMPANY THAT PERFORMED
THAT SURVEY IS CALLED APEX) EXHIBIT B EPA DRAFT DETERMINATION
P. 29.

IN CLOSING WE BELIEVE THE JUDGE CAN SET ASIDE AS PER THE ORIGINAL
CONSENT DECREE, A CERTAIN AMOUNT OF FUNDS TO BE PLACED IN AN
ESCROW ACCOUNT SPECIFICALLY FOR SHELLFISH RESTORATION IN CLEAN
WATERS IN THE CITY OF NEW BEDFORD IN AN ATTEMPT TO MAKE WHOLE
THAT WHICH WAS DESTROYED BY THE PCB CONTAMINATION. UNDERSTANDING
THAT THE FIGURE WOULD BE IN THE TENS OF MILLIONS OF DOLLARS
WE ARE NOT ASKING FOR THAT. WE ARE ASKING THAT YOU WHO ARE
READING THIS MAKE AN DETERMINED EFFORT TO GET THIS INFORMATION
BEFORE THE JUDGE SO THAT JUSTICE CAN FINALLY BE SERVED. OUR
RECOMMENDATION IS THAT AN ESCROW ACCOUNT BE ESTABLISHED
RESTRICTED FOR SHELLFISH IN NEW BEDFORD WATERS IN THE AMOUNT
OF 15 MILLION DOLLARS WITH ONLY THE MAYOR OF THE CITY AND THE
REGIONAL DIRECTOR OF THE DEPARTMENT OF MARINE SERVICES BEING
ABLE TO ACCESS THIS ACCOUNT. FURTHER THAT ALL FUNDS BE USED FOR

SHELLFISH PROPAGATION INCLUDING SEEDING AND TRANSPLANTING.

THANK YOU FOR YOUR TIME.

RESPECTFULLY,



TK

THOMAS A. KENNEDY

78 ELLEN ST 2ND FLOOR EAST

NEW BEDFORD, MASS.

02744

TEL 508-9927948

ps WE SUPPORT THE SETTLEMENT AND HOPE THEIR IS A SET ASIDE!

Copy
Mayor
Mitchell

New Bedford Harbor Trustee Council



Environmental Assessment

New Bedford Harbor Restoration

Round II

Final

Commonwealth of Massachusetts

U.S. Department of Commerce

U.S. Department of the Interior

EXHIBIT
A

Final January 2001



Paul J. Diodati
Director

Commonwealth of Massachusetts

Division of Marine Fisheries

1213 Purchase St. 3rd Floor

New Bedford, MA 02740

(508)990-2860

fax (508)990-0449



Deval Patrick
Governor

Timothy P. Murray
Lt. Governor

Richard K. Sullivan, Jr.
Secretary

Mary B. Griffin
Commissioner

Re
Comment
Period
AVX

October 25, 2012

Mr. Thomas Kennedy
78 Ellen Street
New Bedford, MA 02744

Dear Mr. Kennedy,

Enclosed, please find a copy of the report that you requested, entitled "Quahog Standing Crop Survey, New Bedford/Fairhaven, Inner and Outer Harbors". This report was written by David K. Whittaker in 1999.

The results of the shellfish survey of the South Terminal site in New Bedford Harbor, conducted by Apex Companies LLC, are not a matter of public record. As a result, I am unable to provide you a copy.

Sincerely,

Thomas Shields
South Coast Shellfish Project Leader

QUAHOG STANDING CROP SURVEY

New Bedford/Fairhaven
Inner and Outer Harbors



David K. Whittaker
Marine Fisheries Biologist
June 6, 1999

Funds for this study were provided by the New Bedford Harbor Trustee Council.

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APPENDIX F.

Assessment of Quahog Stocks in Contaminated Waters of Southeastern Massachusetts

Therefore, using the above figures, the value of the quahog fishery in the inner and outer harbors are noted below. The "Value to Fishermen" column denotes the dollars paid to fishermen by the dealers. To realize the gross value to the general community, however, these figures must be factored by the economic multiplier of 4.50 (Wong, 1968). The "Consumer Market Value" column reflects the total dollars after using the multiplier.

Table 7
Current Value of Quahogs for New Bedford Inner and Outer Harbors

Harbor	Littlenecks	Cherrystones	Chowders	Total Value to Fishermen	Consumer Market Value
Outer	\$683,229	\$625,494	\$4,191,780	\$5,500,503	\$24,752,264
<u>Inner</u>	\$3,811,950	\$2,124,990	\$5,566,785	\$11,503,725	\$51,766,763
Total	\$4,495,179	\$2,750,484	\$9,758,565	\$17,004,228	\$76,519,027

OBSERVATIONS AND CONCLUSIONS

Sampling Observations

As noted above, densities of quahogs varied throughout both the inner and outer harbors and significantly from the inner harbor to the outer harbor. These variances are due to several factors, e.g., fishing pressures, predation, bottom types etc. and have been demonstrated in other standing crop surveys and treatises (Saila et al. 1965;66). However, as much as these factors contribute to contagious distribution of the animal, sampling biases may result in skewed representations of that distribution. Previous studies on quahogs populations sampled by use of dry dredges (Russell, 1972) were constructed around the stratified random sampling methodology where preliminary reconnaissance of an area served to identify areas of abundance resulting in density contours. Purely statistical manipulation of the data was then used to determine the efficiency of the sampling technique. Hickey, (1983) during his investigation of the standing crop of the inner and outer harbor modified this stratified random sampling method. His sampling protocol was enhanced with two significant features; by increasing the number of sampling sites and utilizing a dredge efficiency coefficient.

total standing crop. The cherrystone size category followed closely with 25.98%. These two size categories constitute approximately 67% of the standing crop. Littleneck comprise 17.9% and seed 15.31% of the standing crop.

Observations indicate that the greatest percentages of "chowders" were found in sampling unit areas I-2 (Fig. 2) just south of Marsh Island and sampling unit area I-8A (Fig. 3) just northwest of the hurricane barrier opening. Significant percentages of greater than thirty for "cherrystones" were found in sampling unit areas I-3, along the Fairhaven shoreline just north of the Fairhaven Bridge, I-5 on the New Bedford shoreline fronting the fishing fleet piers, I-6 on the Fairhaven shoreline

FIGURE 2

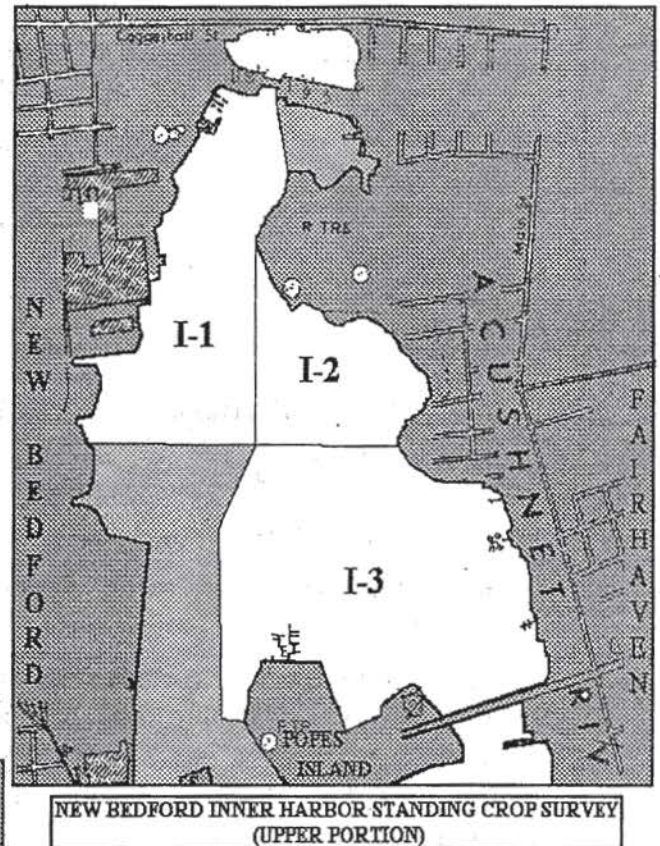
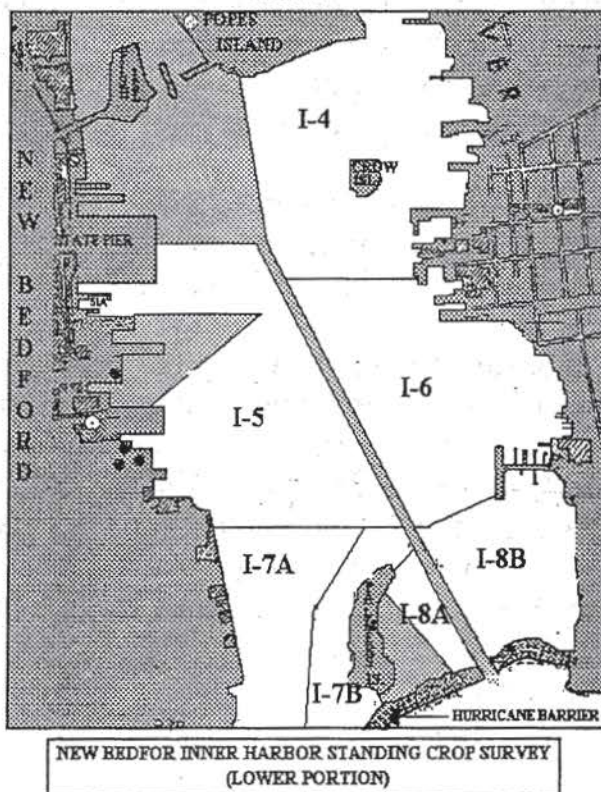


FIGURE 3



fronting their fishing piers, and I-7A and I-7B in Palmer's Cove. Littlenecks in percentages greater than twenty were found in sampling unit areas I-3, I-5, I-7A and I-7B. Seed in abundances greater than ten percent were found in six of the ten sampling unit areas with sampling unit area I-4, on the Fairhaven shoreline just south of the Fairhaven Bridge, exhibiting the greatest at 18.93%.

The range of average adjusted quahog densities by size class for the inner harbor are: seed, 0.08/ft² to 2.28/ft²; littlenecks, 0.16/ft² to

4.19/ft²; cherrystones, 0.27/ft² to 6.07/ft²; and, chowders, 0.10/ft² to 6.60/ft². Table 1 presents the totals and percentages of the inner harbor standing crop.

Table 2
Quahog Standing Crop Assessment
New Bedford Inner Harbor

Area	Area				
Square Feet	Acres	Seed	Littleneck	Cherrystone	Chowder
17,495,874	401.65				
Total Quahogs		16,680,452	21,346,744	28,333,211	44,534,264
Total Bushels			50,826	118,055	371,119
Total Bushels/Acre:			126.54	293.93	923.99

Several other species were noted in varying abundances throughout the area. However, the distribution of soft shelled clams (*Mya arenaria*) in sampling unit areas, I-3, I-4, I-7A and I-7B and oysters (*Crassostrea virginica*) in sampling unit areas I-1, I-4, I-6, I-7A and I-7B is significant. In at least two tows in sampling unit area I-2, almost a bushel of soft shelled clams was landed in the dredge. The area just south of Palmer's Island contained approximately 15 clams per ft².

Large quantities of oysters and clams were also observed around Crow Island and Palmer's Island. Other specie noted during sampling along with substrate compositions and quahog length frequency information are found in Appendix I.

Substrate types in the inner harbor varied from a relatively large mud area in sampling unit area I-3 to firm sand and gravel with interstitial mud around Palmer's Island. Pockets of very soft, black mud are found scattered over the area. Quahog densities were found to be comparatively low at these locations with no seed observed and an average of 0.30 quahogs per ft² of the other three class sizes. Large quantities of debris ranging from soda cans to unknown "hangs" that literally stopped the forward progress of the dredge are found predominantly in the area between the hurricane barrier and the Fairhaven Bridge concentrated near the fishing fleet piers on either side of the harbor.

THOMAS Kennedy
78 ELLEN ST
New Bedford, MASS
02746



DEPARTMENT of JUSTICE
ASST ATTORNEY GENERAL
ENRD - Comment Period A.V.X vs. USA
P.O. Box 76111
WASHINGTON, D.C.

20044-7611

X-RAYED
NOV 05 2012
DOJ MAILROOM

20044761111



From: [Rich Legault](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: Clean Up New Bedford Harbor - Buzzards Bay Coalition
Date: Friday, November 30, 2012 11:48:51 PM

Assistant Attorney General
U.S. DOJ—ENRD
P.O. Box 7611
Washington, DC 20044–7611

Dear sir,

I am writing in regard to United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90–11–2–32/2.

I have lived in Southeastern Massachusetts my whole life. I spent almost 3 of my 43 years living in New Bedford. It is a city that has a great deal of potential, and it has really improved in the past 20 years. It has a beautiful harbor, but unfortunately that was polluted with PCBs years ago.

I want New Bedford Harbor cleaned to the highest, safest standard. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.

Richard Legault
2620 Williams Street
Dighton, MA 02715

"Be the change you wish to see in the world." - Gandhi



From: [Donald Marcus](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Cc: [Donald Marcus](#)
Subject: New Bedford Harbor Clean-Up
Date: Friday, November 30, 2012 1:40:26 PM

Dear Asst. Attorney General,

I want New Bedford Harbor cleaned to the highest, safest standard. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.

*Sincerely,
Donald Marcus
454 Scraggy Neck Road
Box 111
Cataumet, MA 02534*





Mattapoissett Land Trust, Inc.

14 December, 2012

Assistant Attorney General
U.S. DOJ – ENRD
PO Box 7611
Washington, DC 20044-7611

RE: *United States and Massachusetts v. AVX Corporation*, D.J. Ref. No. 90-11-2-32/

On December 6, 2012, the board of directors for the Mattapoissett Land Trust voted unanimously to support the Buzzard Bay Coalition's position that the settlement between EPA and AVX must include a re-opener allowing EPA to reopen litigation with AVX in the event that a complete cleanup of New Bedford Harbor exceeds current estimates.

It is clear that \$366million falls short of a harbor cleanup for several reasons.


First, in 1998 EPA chose a cleanup level of 1ppm for those areas abutting and adjacent to residences and where contact with sediment is likely. The industrial harbor found in the early 1990's has been replaced by land uses dominated by residential, recreational, and permanently conserved. This community movement towards open space, recreation, and residential use requires EPA to remove larger amounts of sediments than initially estimated in 1998, thereby driving the cost beyond current estimates.

Second, EPA's past performance leaves us with serious doubts about future remedial action and leaves us with no confidence that the negotiated deal will adequately protect the interests of this community. \$366 million is nowhere near adequate to complete this cleanup. To date, EPA has spent approximately \$425 million to remove about 225,000 cubic yards (cy) of the total 900,000cy of sediment. The fact that EPA now states that it can remove the remaining 675,000cy for less than what they spent to remove 225,000cy does not appear reasonable.

Third, EPA has failed to select a cleanup plan or funding strategy to implement that cleanup plan for Outer New Bedford Harbor. Some of the most pristine waters for fishing and lobstering exist in the Outer harbor which has been closed to fishing since 1979. Unless and until there is a cleanup plan and funding to implement that plan on an expedited schedule a re-opener must be included.

Finally, according to research released by the Buzzards Bay Coalition, it appears that EPA failed to select the most protective remedy in 1998 which ultimately does not provide the community with a full cleanup. It is likely that after EPA completes the cleanup under the current remedy and exhausts the money from the settlement, the Harbor will remain closed to fishing and EPA will be required to take further action, action for which they will not be able to seek any funds from responsible parties due to the fact that there are no re-openers in this settlement.

Sincerely,


Gary P. Johnson
President

cc. The Buzzards Bay Coalition



SDMS Doc ID 529615

From: [Neil Mello](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2
Date: Monday, December 17, 2012 9:04:39 PM
Attachments: [Mayor Mitchell Letter to Asst. AG Moreno re AVX settlement.pdf](#)

Please find attached a letter from John Mitchell, Mayor of New Bedford, MA, to Assistant Attorney General Ignacia Moreno in the above referenced case.

Thank you.

*Neil Mello
Chief of Staff
Office of the Mayor
City of New Bedford
133 William Street, Room 311
New Bedford, MA 02740
(508) 979-1410 Office
(508) 472-1641 Cell
(508) 991-6189 Fax*





CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

December 17, 2012

Ignacia S. Moreno
Assistant Attorney General
U.S. DOJ-ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

sent via email: pubcomment-ees.enrd@usdoj.gov

Re: United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2

Dear Ms. Moreno:

I am writing to express the support of the City of New Bedford for the supplemental Consent Decree under which the AVX Corporation will pay \$366 million with interest for PCB contamination at the New Bedford Harbor Superfund Site. The accelerated cleanup made possible by the Consent Decree is clearly in the interest of a City whose citizens have suffered severe economic harm, damage to a unique natural resource, and loss of other opportunities due to contamination of the harbor by the AVX Corporation.

At this historic juncture it is important to recognize that the citizens of New Bedford have endured a protracted legal process stretching decades. Lengthy, complex litigation and negotiation has itself contributed to the environmental and economic threat posed by the contamination as the annual downstream migration of PCBs into the outer harbor and Buzzards Bay has continued all the while.

New Bedford's potential as a City and as a place to live and work has been hampered for far too long by the uncertainties surrounding the funding and pace of a cleanup of the harbor. For the first time, the primary source of funds for a comprehensive harbor cleanup can be secured. For the first time, we are poised to engage in a serious program of cleanup action. And, for the first time, the cleanup can be pursued on a timetable in which residents living today—not decades from now—will witness measurable progress and enjoy conspicuous results.

In short, my assessment is that it is time to get to work cleaning up our harbor. This judgment is also informed by personal experience as an Assistant United States Attorney. Having served as lead prosecutor on some of the nation's major environmental contamination cases in recent years, I well appreciate the risks of protracted litigation in cases like the AVX case and its implications for resources expended and a diminished likelihood of future recovery. The possibility that a settlement of this size and scope might not present itself again argues strongly for its adoption.

The proposed \$366 million settlement makes possible not merely a new chapter in the story of our harbor, but a new chapter in the life of the City of New Bedford. At the same time, I respectfully request consideration be given to two issues in the context of the settlement. First, the settlement should contain no elements that might constrain the ability of the Environmental Protection Agency in developing a creative, thoughtful cleanup and restoration plan. Flexibility in the use of settlement funds is important so that innovative approaches to the cleanup, including public access solutions, can be developed and pursued.

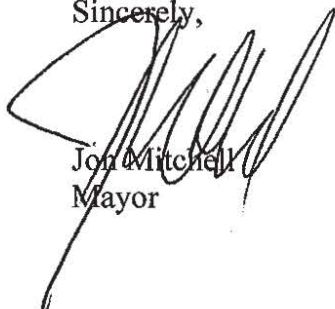
The goal of the cleanup ought to be nothing less than the transformation of a long-standing environmental challenge into a unique natural asset that benefits generations of residents to come. Toward that end, the City encourages the Department of Justice to ensure that agreement language submitted to the Court includes definitions of remedy, response, and method sufficiently broad that a range of approaches can be considered without limitation by the Court Order. Alternatively, language could be added to the current draft agreement that makes clear that neither the Court, nor the parties, object to such approaches.

Second, it is important to recognize that—by its nature—a cleanup of this magnitude and complexity will confound to a certain degree the ability of today's project managers to predict precisely how much and when funding is needed to keep the effort on track. By any measure, the \$366 million being contemplated represents a monumental leap forward from the modest \$15 million cleanup now implemented annually with federal funds.

That said, we should adopt a financing path that insulates the cleanup effort from vagaries in the availability of future federal funding, if such federal funds ever become required. The best way to do so is to maintain annual federal appropriations and spending at the current level (or greater as necessary) simultaneous with the spending of settlement monies. Doing so will go a long way toward instilling public confidence in the federal government's commitment to a final, complete cleanup whatever the future may hold.

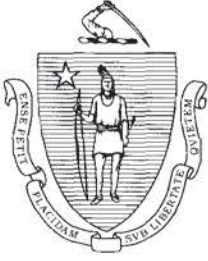
Thank you for your consideration in these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Mitchell", written over a printed name and title.

Jon Mitchell
Mayor

Fiske, Catherine



The Commonwealth of Massachusetts
MASSACHUSETTS SENATE

SENATOR MARK MONTIGNY
Second Bristol and Plymouth District

STATE HOUSE, ROOM 312A
BOSTON, MA 02133-1053
TEL. (617) 722-1440
FAX. (617) 722-1068

Chairman
COMMITTEE ON POST AUDIT
AND OVERSIGHT

DISTRICT OFFICE
888 PURCHASE STREET, ROOM 305
NEW BEDFORD, MA 02740
TEL: (508) 984-1474

MARK.MONTIGNY@MASENATE.GOV
WWW.MASENATE.GOV

12
DEC 18 AIO:28
DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION

December 13, 2012

Assistant Attorney General
U.S. DOJ - ENRD
PO Box 7611
Washington, DC 20044-7611

RE: *United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/*

I am writing you regarding the proposed settlement between the Environmental Protection Agency ("EPA") and the AVX Corporation relating to contamination and cleanup of New Bedford Harbor. I have serious concerns regarding this settlement, which I will set forth and explain below.

One essential addition is required before approval of the proposed settlement between EPA and AVX for \$366.5M; the settlement must include a "reopener" clause allowing EPA to resume litigation with AVX in the event that a complete cleanup of New Bedford Harbor exceeds current estimates.

Long has this community waited for a safe, clean, and usable harbor and while \$366.5M may take a significant step forward in achieving that goal, the harbor remains a long way off from the finish line. Approving a cash-out settlement without a "reopener" clause handicaps this cleanup for an undefined amount of time in the future. That result is unacceptable. I support the comments submitted by the Buzzards Bay Coalition and encourage the Department of Justice to carefully consider their points and adopt their, and my, request for a reopener.

I have had the honor of representing the interests of the Greater New Bedford area since 1993, and EPA's failure to return this harbor to the community in any kind of usable form is outrageous. I represent a community rich with history tied directly to the sea and the prohibitions on the use of the harbor due to persistent PCB contamination is an insult to that heritage. Justice dictates that the polluters return to the children of this community a clean harbor where they can safely pursue a wide range of activities they are entitled to, including recreational fishing, swimming, boating and future careers as commercial fishermen.



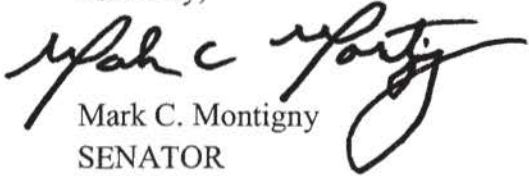
SDMS Doc ID 529617

corr. 90-11-2-32

While I appreciate EPA's actions in taking the initiative to exercise its right to seek additional cleanup funds from AVX, I strongly caution that EPA not treat this settlement as a windfall for this community but rather concentrate on securing its own rights as it did once before to reopen this matter in the event costs for a complete cleanup of the Harbor exceed current estimates.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark C. Montigny".

Mark C. Montigny
SENATOR

SENATOR MARK MONTIGNY
MASSACHUSETTS SENATE
STATE HOUSE, ROOM 312A
BOSTON, MA 02133-1053



Hasler

010126623128
\$00.450
12/14/2012
Mailed From 02108
US POSTAGE

Assistant Attorney General
U.S. DOJ - ENRD
PO Box 7611
Washington, DC 20044-7611
RE: Unites States and Massachusetts v. AVX Corporation,
D.J. Ref. No. 90-11-2-32

X-RAYED
DEC 18 2012
DOJ MAILROOM



2004437611 8039 1477

MacLaughlin, Jerome

P.O. Box 146
Cataumet, MA 02534

Assistant Attorney General
U.S. DOJ—ENRD
P.O. Box 7611
Washington, DC 20044-7611

November 30, 2012

RE: *United States and Massachusetts v. AVX Corporation*, D.J. Ref. No. 90-11-2-32/2

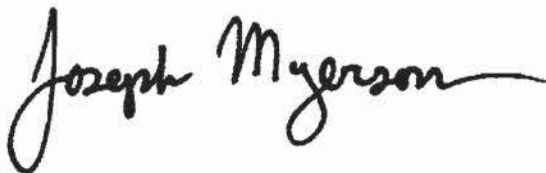
Dear Asst. Attorney General,

As one who has enjoyed living near the beautiful, shallow waters of Buzzards Bay, Massachusetts, for more than 60 years, I have watched fish and shellfish stocks decline, algae blooms and chemical pollutants discolor the water and periodic oil spills despoil the shoreline—all of this in spite of the bay's status as a federally protected estuary.

One of the worst cases of chemical pollution in the bay has been the toxic residue of PCBs left in New Bedford Harbor through the activities of AVX Corporation. The EPA has recently announced a \$366 million settlement with the polluter, which is supposed to cover the cost of cleaning up the harbor. However, terms of the settlement as now written make it impossible for concerned communities to determine if this amount of money is sufficient to undo years of pollution by AVX.

As the owner of property near the shoreline of Buzzards Bay, I want New Bedford Harbor cleaned to the highest, safest standard. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.

Sincerely,



Joseph Myerson



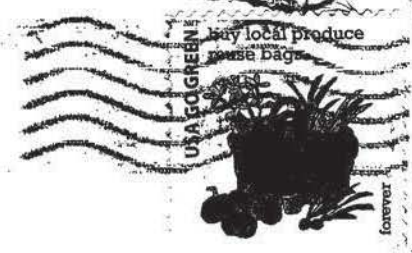
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Cataumet, MA 02534

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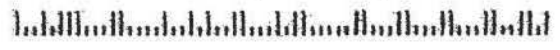
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X-RAYED

EES

~~Assistant Attorney General
U.S. DOJ ENRD
P.O. Box 7611
Washington, DC 20044 7611~~

20044761111



From: [Edward Nardi](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: cleanup
Date: Monday, December 03, 2012 10:04:33 AM

Asst. Attorney General,

Please ensure that whatever steps have to be taken in the settlement between the EPA and AVX to clean New Bedford Harbor completely of their contaminants --- including a "reopener" clause in the settlement

Thank you

Edward Nardi



From: [Nersesian, Jennifer](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Cc: [mhc@sec.state.ma.us](#); [jon.mitchell@newbedford-ma.gov](#); [victor.mastone@state.ma.us](#); [anne.louro@newbedford-ma.gov](#); [bettina@wampanoagtribe.net](#); [cgreen@mwtribe.com](#); [jonathan.patton@sec.state.ma.us](#); [jrussell@whalingmuseum.org](#); [wnicholas@waterfrontleague.org](#); [Marcos.A.Paiva@usace.army.mil](#); [Janine da Silva](#); [dianahenry1943@gmail.com](#); [michelle.paul@newbedford-ma.gov](#); [Mark Rasmussen](#); [White.Kimberly@epamail.epa.gov](#); [Stanley.Elaine@epamail.epa.gov](#); [Jennifer Nersesian](#)
Subject: NPS comments on United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2
Date: Monday, December 17, 2012 4:58:15 PM
Attachments: [NPS comments on proposed AVX settlement.pdf](#)

Please see attached comments.

Jennifer T. Nersesian, Superintendent
New Bedford Whaling National Historical Park
33 William Street
New Bedford, MA 02740

508-996-4095 x6100

Like us on Facebook: <http://www.facebook.com/NBWNHP>





United States Department of the Interior

NATIONAL PARK SERVICE
New Bedford Whaling National Historical Park
33 William Street
New Bedford, Massachusetts 02740

IN REPLY REFER TO :

A00(NER/NEBE)

December 14, 2012

Assistant Attorney General
U.S. DOJ- Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611

Sent via email: pubcomment-ees.enrd@usdoj.gov

Re: NPS comments on United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2

To whom it may concern:

Thank you for the opportunity to comment on the proposed settlement with AVX Corporation regarding the cleanup of New Bedford Harbor. Over the past two years our agency has been working with EPA as a consulting party in regards to archeological impacts from the project. We are writing now to underscore the need to factor archeological surveys into both the proposed settlement amount as well as into the new project schedule that will be developed as a result of the settlement.

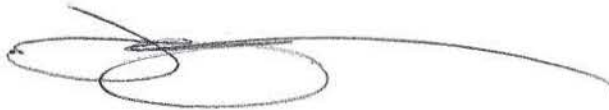
Some extremely rare archeological finds were discovered through the dredging process in 2010 that had not been anticipated by the archeological surveys done in the early 2000's (including a shipwreck and unrelated anchor, both from the 1700's). Understanding that survey technology has greatly improved over the past decade, and that the discovery of these artifacts indicated the insufficiency of the original survey data, the EPA agreed as a part of each year's work to re-survey whatever portion of the harbor would be included in the dredging for that year before beginning operations. This is the procedure that has been followed over the past two years. Naturally, there is significant expense associated with underwater archeological surveys, both in the technology employed in the physical survey as well as in the professional analysis of the data. However, it is a necessary step to meet the EPA's compliance responsibilities under Section 106 of the National Historic Preservation Act, and to ensure the appropriate preservation and/or documentation of artifacts that are in some cases the last tangible connections to significant episodes of our national history.

Again, we would like to ensure that these expenses have been considered in arriving at the final settlement amount of \$366 million. With the announcement of the settlement it has also been publicized that this would compress the project timeline from 40 years to 5-7 years. This would imply that much larger geographical areas will be remediated each year. As more territory is covered, broader and more intensive pre-dredge surveys will need to be planned in advance of that work, a point we hope will remain a part of the discussion as conversations regarding the settlement come to their conclusion.

The harbor cleanup is a project of immense importance and benefit, and we urge your office, the Commonwealth of Massachusetts, and the EPA to effect a settlement that serves the best interests of our local residents as well as the taxpayers of our country. We look forward to continuing to work with these partners to ensure the project proceeds in a way that restores a fishable and swimmable harbor for us all while preserving our national heritage and history.

If you have any questions, you can contact me at (508) 996-4095 x6100 or jen_nersesian@nps.gov. Thank you for your consideration.

Sincerely,



Jennifer T. Nersesian
Superintendent

cc (via email):

Mayor Jon Mitchell, City of New Bedford
Kimberly White, EPA
Elaine Stanley, EPA
Marc Paiva, U.S Army Corps of Engineers
Victor T. Mastone, Massachusetts Board of Underwater Archaeological Resources
Brona Simon, Massachusetts Historical Commission
James Russell, New Bedford Whaling Museum
Bettina Washington, Aquinnah Wampanoag Tribe
George Green Jr., Mashpee Wampanoag Tribe
Wendy Nicholas, WHALE
Anne Louro, City of New Bedford
Michelle Paul, City of New Bedford
Diana Henry, New Bedford Historical Commission
Mark Rasmussen, Buzzards Bay Coalition

From: [Dick Payne](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2.
Date: Saturday, December 01, 2012 6:01:21 PM

I would like to see New Bedford Harbor cleaned to the highest, safest standard. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.



Tashima, Keith (ENRD)

Subject: FW: New Bedford Harbor cleanup

-----Original Message-----

From: Malcolm Phinney [<mailto:mbp43mack@gmail.com>]

Sent: Friday, November 02, 2012 9:32 AM

To: ENRD, PUBCOMMENT-EES (ENRD)

Subject: New Bedford Harbor cleanup

I have lived in the Buzzards Bay Watershed all my 68 years and have watched the continued degradation of the bay ecosystem. I work with a number of organizations who work tirelessly to address this issue. The cleanup of New Bedford harbor's PCB contamination is very important in this effort. I encourage the EPA to deal with AVX in such a way that they are required to provide enough money for a complete clean up. This should not be a burden on the tax payers. The details of the cleanup plan should be available to everyone since the results of the PCB pollution affects everyone. A strong message must be sent out to all polluters and would be polluters that the can no longer do business as usual. Malcom Phinney, 10 Gault Rd., West Wareham MA 02576 508-295-4225



From: [Brenda Ross](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2.
Date: Saturday, December 01, 2012 5:17:48 PM

TO: The Assistant Attorney General, Environment and Natural Resources Division

I have lived in the New Bedford area my entire life. My mother worked at Aerovox (the primary polluter) before and while she was pregnant with me. She and most of the other workers in her department died of rare forms of cancer. I believe that this is no coincidence. Aerovox's negligence has adversely affected the lives of many families.

Please ensure that New Bedford Harbor is cleaned to the highest, safest standard. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.

It is time to end Aerovox's deadly legacy.

Respectfully,

*Brenda R. Ross
54 Lyng Street
Dartmouth, MA 02747*



From: [Aneshia](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: Clean New Bedford Harbor
Date: Monday, December 10, 2012 9:50:55 PM

I want New Bedford Harbor cleaned to the highest, safest standard. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.

Aneshia Savino

Sent from my iPad



From: [Lauren Costello](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: Re: United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90- 11- 2- 32/2
Date: Friday, December 14, 2012 3:48:02 PM
Attachments: [Re United States and Massachusetts v AVX Corporation DJ Ref No 90- 11- 2- 322.pdf](#)

Good Afternoon,

Please find the document for public comment regarding AVX corporation settlement attached as a .pdf.

Should you have any questions, please contact:

Matthew A. Morrissey
Executive Director
New Bedford Economic Development Council
mmorrissey@nbedc.org
508-991-3122

Thank you,

Lauren Costello

--

Lauren Costello
Economic Development Specialist
New Bedford Economic Development Council
1213 Purchase Street
New Bedford, MA 02740
w. 508.991.3122 x 121
c. 508.525.0408
www.nbedc.org



December 13, 2012

Ignacia S. Moreno
Assistant Attorney General
U.S. DOJ – ENRD
P.O. Box 7611
Washington, DC 20044 – 7611

Re: United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90- 11- 2- 32/2

Dear Ms. Moreno,

New Bedford has always been defined by its water. Our entire history has developed, matured, and succeeded around our harbor and shoreline. Our recent past has been defined by the pressing need to make our waters safer and again more accessible for our citizens.

As employers that represent more than 3,000 workers in the area of the greatest environmental impact we know firsthand that it is critical for New Bedford to create a safe, diverse and productive waterfront, and as such we support and fully endorse the AVX settlement. It is crucial that we now move forward and define an integrated remedy to the PCB problem, and compress the time frame for reaching the chosen result.

Certainly, one key component to the clean-up of our harbor is the continued and responsible use of Confined Aquatic Disposal (CAD) Cells as is suggested by the EPA. For the 10th year in a row New Bedford was the top-grossing fishing port in the country with 60,000,000 tons offloaded annually. This represents \$281.5M in product and a \$1 billion economic impact. The 500 fishing vessels, cruise ships, recreational vessels, and cargo transports that call New Bedford their home-port, benefit daily from the navigational dredging made possible by the use of CAD Cells. The New Bedford Marine Commerce Terminal is the first facility in the nation designed to be dedicated to the support of the offshore wind industry. It represents a \$70 Million investment that could not be constructed without the use of a CAD Cell. The construction of the terminal will result in hundreds of new jobs and nearly 1,000 long term jobs will be created in the development and operations of offshore wind farms. Further, it opens a new chapter in our City's history by placing our City at the forefront of our nation's clean energy future.

Maritime activity in New Bedford Harbor; exemplified by the industrious efforts of the 4,000 people working on the waterfront; keep New Bedford on the map as a leader in the maritime world. This highly competitive industry demands immediate cohesive solutions that keep our City at the forefront.

The impact of an efficient, environmentally sound clean-up in our harbor cannot be overemphasized. It significantly impacts, by further example, the Upper Harbor mill redevelopment, with more than \$78 Million in private investment. This emerging area has resulted in over 400 construction jobs in the New Bedford, and over 760,000 square feet of real estate in our most historic structures. The clean-up can help expand the ongoing efforts to make the waterfront part of the daily lives of people in these neighborhoods.

The AVX settlement gives the EPA and the City an opportunity to fashion a detailed integrated response

to our harbor clean-up that can serve the safety, economic concerns, and quality of life issues of our entire community.

It is an opportunity that cannot be passed by.

Sincerely,

David Slutz

CEO, Precix: 400 employees

Anthony R. Sapienza

CEO, Joseph Abboud: 500 employees

Jeff Glassman

CEO, Darn It: 100 employees

John Lees

President, MarLees Seafood: 300 employees

Joseph Nauman

Executive Vice President, Acushnet Company: 1,750 employees

Tashima, Keith (ENRD)

From: McMullen, Rebecca (ENRD)
Sent: Tuesday, November 06, 2012 9:00 AM
To: Tashima, Keith (ENRD); MacLaughlin, Jerry (ENRD); Levine, Bradley (ENRD)
Subject: PUBLIC COMMENT (FW: Letter for Public Comment on New Bedford Harbor Cleanup)
Attachments: Scott Smith Letter to Attorney General - New Bedford 11-5-12.pdf; Cape scientist Faux eelgrass will lower boom on oil spills CapeCodOnline.com.pdf; Synopsis of WHOI OPFLEX Synthetic Eelgrass Research .pdf

Another comment for AVX.

-Becky

Rebecca McMullen
Systems Support Specialist
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
Office: 202-514-2416
Fax: 202-514-0097

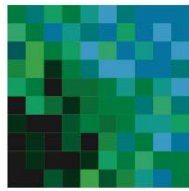
From: Scott Smith [<mailto:ssmith@opfex.com>]
Sent: Monday, November 05, 2012 6:45 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Cc: jamie roberts; Karyn Eldredge
Subject: Letter for Public Comment on New Bedford Harbor Cleanup

Please see attached letter and exhibits as to New Bedford public comment.

Best Regards,

Scott C. Smith
ssmith@opfex.com
Cell (508) 776-2995





Opflex Solutions



<http://www.opflex.com>
ph- 646-580-2613 / fx- 508-425-2990

Assistant Attorney General
U.S. DOJ - ENRD
P.O. Box 7611
Washington, D.C. 20044-7611
Via email - pubcomment-ees.enrd@usdoj.gov

Dear Attorney General,

My name is Scott C. Smith and I am the Founder and CEO of OPFLEX Solutions. From the polluted water of Upstate NY's 2006 flood disaster, OPFLEX technology was created. It worked then and it works even better now, after millions were put into research and development of the product. In 2007, Senator Schumer led a press conference with me about the contaminated flood water recovery efforts.

In 2010, I worked side by side with fishermen, coast guard personnel, and oil spill workers in the BP Deepwater Horizon oil disaster and improved the first approved and used Open-Cell foam that can remove from water PCB's, oil, oil sheens, and other related carbon contaminants.

In 2011, I donated product to New Bedford Harbor and prove the OPFLEX Environmental Indicators and related OPFLEX Technology's efficacy in fingerprinting, detecting, and removing oil and PCB's in the water.

The situation is complicated with the CAD cells in New Bedford and the community deserves a transparent way to know what is in their water and alternative ways to remove the contaminated sediment. If you are truly considering the use of CAD Cells that will take at least 6 years and \$80 million, why is it that you have not considered the use of a safe, environmentally friendly, locally-created option that would cost UNDER \$1 MILLION and, depending on manpower and deployment tactics, would take 3- 6 months?

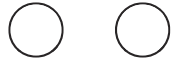
OPFLEX Technology can clear the water of all the contaminants currently listed in New Bedford Harbor and OPFLEX Environmental Indicators can be used to detect what is in the water and fingerprint any pollutants. In order to remove pollutants, wouldn't it be helpful to know what they are and in what concentration they exist?

There needs to be careful consideration of all available technologies to remove the contaminants from the water in the Port of New Bedford, not just simply burying the contaminants and deferring the problem for the future generation.

I am working with scientists at the Woods Hole Oceanographic Institute in developing synthetic eelgrass, which is a viable and proven option for New Bedford to protect the harbor even if the CAD cells move forward. I have enclosed a White Paper from the scientists detailing its development and use.

I look forward to hearing from you.

Scott C. Smith
Founder and CEO
OPFLEX Solutions
ssmith@opflex.com



[Prev](#)

[Next](#)

See full article text

Curtis is a guest investigator at WHOI, studying ways to better protect the environment from oil spills, such as the one that devastated the Gulf of Mexico two years ago.

A retired engineer and former salvage diver with the Navy, he said he worked on the concept of a high-speed oil skimmer in the late 1960s and early 1970s. When he saw the lack of progress by the time of the Deepwater Horizon spill in 2010, he decided to jump back into researching the subject.

Curtis saw a centrifugal device championed by actor Kevin Costner as a potential way to separate oil and water gathered by his skimmer.

He was still in search of a material for the bottom of the skimmer that oil would adhere to readily when he came across a green foam called Opflex, manufactured by a company owned by Osterville resident and entrepreneur Scott Smith.

"I think he has a good product in the foam he is working with and I'm trying to help him use it better," Curtis said, adding that his research into its properties is not an endorsement.

Unlike a regular containment boom that floats only on the water's surface and allows oil to pass above and below it, the synthetic eelgrass is anchored to the bottom and extends throughout the water column and across the surface, creating not only a potentially effective barrier but also more surface area to adsorb oil and other pollutants, Curtis said. Adsorption is when a thin layer of molecules sticks to the surface of a solid or liquid substance.

The key to Opflex is a combination of several concepts: The foam is buoyant enough to float even when saturated with oil, Curtis said.

The saturation ratio of the foam, which dictates how much oil can be captured, is based on the amount of open versus closed cells in the material, Curtis said.

The more closed cells the greater the buoyancy. The more open cells the better the ability to adsorb the oil, much like a living sponge filters water for food.

Opflex's optimal saturation ratio is a work in progress but is already equal to 32 times the weight of the foam in oil, Smith said. "And we retain our buoyancy," Smith said. "We don't sink like the white booms."

Smith already has deployed versions of his foam in Bermuda, the Gulf of Mexico, Florida, Alabama, Louisiana and for a 2011 oil spill in the Yellowstone River, he said.

Testing on the foam already has revealed some unexpected results that could have local implications beyond the errant oil tanker or oily harbor, Smith said.

Independent testing by a Pennsylvania laboratory, for example, has shown the foam can reduce the amount of biological oxygen demanders, or BODs, in water by almost half, he said.

BODs can be a sign of excessive nutrients flowing from septic systems and other sources into local bays and ponds and may lead to fish kills. "There's something in there that consumes oxygen that is getting stuck on it and taken out," said Albert J. "Sandy" Williams III, a scientist emeritus at WHOI who works with Curtis and Smith.

Determining other potential uses for his synthetic eelgrass, including helping with the cleanup of local bays and ponds, is one of the reasons it's important to work with researchers such as Williams and Curtis, Smith said.

"We're simple, not magic," he said.



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1. Synopsis of Proposed Research

The proposed research will assess the properties of various formulations of the copolymer ethylene methyl acrylate (EMA) and determine if, and how, these properties can be varied in formation. Variations of EMA will be field tested at sea in oil spill interdiction and containment applications sensitive to these properties to determine how these properties impact the functioning of the applications.

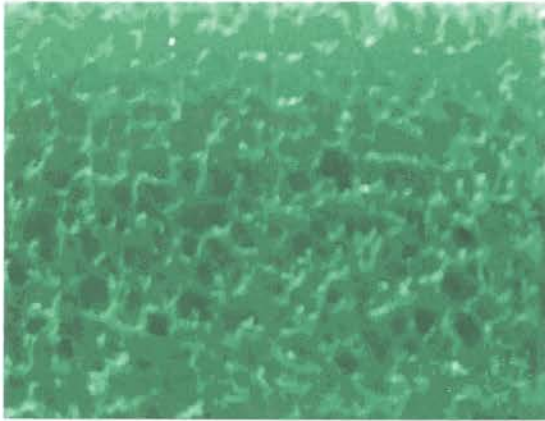
2. Background

Oil spills are not rare events. Natural seeps of oil have existed over recorded history, but catastrophic oil spills are much less common and have had devastating impacts on the ecosystems subjected to them. Repeatedly, oil spills have concerned the public, resulting in flurries of effort to contain the spills, and plan to avoid such catastrophic events in the future. As Wess Tunnell, Associate Director of the Harte Research Institute for Gulf of Mexico Studies, said, after the VLCC, the Aegean Captain and the Atlantic Empress, collided off the coast of Tobago on 19 July 1979, spilled more than 276,000 tonnes of crude oil into the sea: "If it's not in a popular place and there's not a huge outcry of the people that live in the area, probably not much is going to happen." [1] Unfortunately, in short order, the public's attention is distracted by another concern. Progress in solving the problems associated with oil spills is episodic.

The Exxon Valdez oil spill in Prince William Sound in 1989 illustrates this point. After she grounded on Bligh Reef, on 29 March, more than 11 million gallons of crude oil from the tanker inundated the ecosystems of the sound. The largest oil spill in United States history, to that time, captured the public's attention, and the Government acted. However, environmental conditions made spill cleanup less effective; some efforts were counterproductive. Congress passed the Oil Pollution Act of 1990, which mandated the US Coast Guard and oil companies maintain vessels for oil spill cleanup. As this added task was not funded, the Coast Guard has come to depend upon vessels of opportunity, to which they would supply some oil skimming equipment, to augment their "Black Hull" fleet, charged with maintaining aids to navigation. Some Coast Guard buoy tenders were equipped with Spilled Oil Recovery System gear to meet their expanded responsibilities.

However, as other issues captured the public's attention, the demand on resources for other ends increased, concern over the environmental impacts of oil spills waned. Research since the 1990s has improved understanding of the natural processes involved in oil spill behavior [2], and ecosystem recovery [3], but slowed considerably, until the Deepwater Horizon drilling rig explosion in the Macondo Prospect on April 20, 2010 rekindled the public's interest. Unprepared for the Deepwater Horizon oil gusher, technically, operationally, and emotionally, "experts", entrepreneurs, and the general public responded to the news of the catastrophic event with a plethora of suggestions, offers, and equipment to staunch the spill and clean it up, which were so numerous that assessment of them was difficult. Schemes proliferated. "Oil men" promoted the use of oil tankers for skimming oil. A variety of natural organic sorbents, such as hay and hair, were promoted to adsorb spilled oil, despite their limitations. Amidst the well-intended suggestions and ideas that were little more than flights of imagination, were some contributions with merit. Unfortunately, episodic development makes it difficult to integrate improvements into a highly effective emergency response system.

Anecdotal evidence would indicate that ethylene methyl acrylate could be used to improve the interdiction and containment of spilled oil. As EMA is oleophilic and hydrophobic, oil floating on water tends to adhere to a surface of EMA after coming in contact with it. EMA formed as an open cell foam has a large surface area to volume ratio, enabling it retain significant amounts of oil per unit volume. Figure 1 shows a close-up view of such foam and small sample of it saturated with oil from which water is not retained.



(a)
open cell structure



(b)
water dripping from EMA sample
while retaining oil.

These properties and its low density are observed from demonstrations made by Scott Smith, the CEO of Opflex Solutions, the manufacturer of this open cell foam, in his efforts to interest those cleaning up the oil spill in the Gulf of Mexico in using his product. To take full advantage of the open cell foam structure, Smith fabricated EMA foam strips into foam “mops”. Two lengths of “mop” are shown in Figure 2, secured at the seas edge. Initially green, the “mops” darken as oil is adsorbed onto their surface. The green “mop” had not been in position long enough to adsorb a significant amount of oil. Oil can be recovered from “mops” saturated with oil by squeezing it out of them.



Figure 2
Scavenging oil from the sea.

In the Gulf, the most prevalent barrier to oil inundation seems to have been cylindrical booms made of synthetic sorbents such as polyurethane, polyethylene, and polypropylene, although they seem to be only marginally effective. Pads of EMA open cell foam, seen in Figure 3 floating on the surface within, not outside, a containment boom, are discoloured by the oil they have adsorbed. EMA has advantages over natural sorbents, which are harder to collect, once applied, have a tendency to sink once oil is absorbed or adsorbed. In addition, the open cell foam structure of EMA can sequester many more times its weight of oil than natural sorbents.



Figure 3: Floating EMA sorbent.

The copolymer has normally consisted of 20 percent methyl acrylate. However there may be a copolymer formulation for which oil has a greater affinity. Although not tested rigorously, a sample of EMA fabricated with 24 percent methyl acrylate suggests this variability.

EMA is light of weight. The specific gravity of EMA is approximately 0.94, which makes EMA intrinsically buoyant. This will vary some, depending upon the amount of cross-linking. The buoyancy of the foamed formation of EMA could be varied considerably, depending upon the ratio of open to closed cell volume. This capability of adjusting the buoyancy of EMA makes it versatile and useful in a variety of applications for oil interdiction and containment.

3. Proposed Research

The objectives of this proposal are to:

- 1) assess the properties of various formulations of the copolymer ethylene methyl acrylate,
- 2) utilize this material in various configurations to improve the interdiction and containment of oil spilled in the sea,
- 3) test these configurations to establish their behaviour in the marine environment, and

- 4) alter the properties as found necessary to reach a more optimal material.
- 5) publish the results of this materials investigation, including presentation at the OES 2012 Conference

Toward these ends, The Woods Hole Oceanographic Institution (WHOI) will collaborate with the Opflex Solutions LLC. Opflex Solutions LLC, as the principal developer of foamed ethylene methyl acrylate (EMA), for various markets. Mr. Smith, holder of the patents for foamed EMA, and Opflex Solutions are particularly interested in the use of EMA for oil cleanup, and has a vested interest in finding the optimal composition of this copolymer, for use in oil spill impact mitigation.

WHOI will integrate this EMA material in the design of oil spill interdiction and containment equipment to take optimal advantage of the material properties. Testing of these designs will be done at Woods Hole and at Barataria Bay, in Louisiana. The testing of the designs in Louisiana will be done by Opflex Solutions LLC and reported to Woods Hole.

Based on the field test performance of the designs, attempts will be made to adjust material composition, as necessary or desired to optimize performance, or to introduce design changes to take full advantage of the material and thus improve performance. This research and development will be iterated as necessitated, up to twice.

- a. Woods Hole Oceanographic Institution will design at sea tests of the EMA materials provided by Opflex Solutions. The designs will be based on properties measured after formation, which include: density, surface tension with crude oil, amount of cross-linking, copolymer proportions, cell size, percentage of open cells. The results of these tests, sensitive to the synergy among material properties, will be used to suggest variations in EMA formulation, to be made by Opflex Solutions, to optimize the use of the material in scavenging, interdiction and containment of spilled oil.

The at sea tests will be made of a synthetic kelp and a containment boom, fabricated from EMA. These configurations of EMA were conceptually, identified in the white paper: "Oil Scavenging with Ethylene Methyl Acrylate", which is attached. It is expected that the behavior of the synthetic kelp will be particularly sensitive to surface tension, and density. The containment boom performance will probably depend more on cross-linking and cell size. Their performance may enable improved design of the test equipment, and, in either case, provide serendipitous insights.

In consultation with Opflex Solutions, based on the results of tests at sea, different formulations will be made to produce EMA with more desirable properties, which will subsequently be formed into synthetic kelp and containment booms for testing at sea. This recursive process be repeated twice.

Task Structure

Opflex Solutions LLC will supply WHOI with EMA of varying properties, creating formation parameters, x_i . $x_i \in [\lambda, \pi, \varepsilon, \omega, \delta, \mu]$, the independent variables: λ , percent of alkyl acrylate (usually methyl acrylate); ε , foam cell size; ω , foam thickness; and μ , melt index. The set of EMA properties, P_i , of partic

changing the cross-linking; of open cells; t are $P_i \in [\rho, \alpha, K, \tau]$,

where: ρ is the density,
 α is the adhesion of oil,
 K is the bulk modulus
 τ is the durability.

$$dP_i = \frac{\partial P_i}{\partial x_j} dx_j, \quad j = 1 \dots 6$$

Opflex Solutions LLC will supply WHOI with EMA of varying composition. The composition will depend upon the percentage of methyl acrylate, π , in the copolymer, the percentage of open cells in the foam, ξ , the cell size, χ , and the thickness of the foam, δ . It is to be determined how the buoyancy, ρ , surface tension, σ , durability, \mathcal{A} , and longevity, τ , of EMA are influenced by changes in composition. Durability will be a measure of how well EMA stands up to dynamic forces. Longevity relates to the time before properties degrade.

$$dp_i = \frac{\partial p_i}{\partial x_j} dx_j$$

Initially, Opflex Solutions will provide three samples each of EMA based on alterations the formation parameters. Generically, if a parameter as currently fabricated are denoted by P_o , then, in addition to a sample as currently fabricated, samples will be provided which have values greater than and less than this prevalent value. Rather than provide all permutations of possible formation parameters, all parameter values, except that parameter being changed will be provided as currently manufactured.

Synthetic kelp and a containment boom will be assembled at the Woods Hole Oceanographic Institution from the samples of EMA initially provided by Opflex Solutions, and deployed at Woods Hole before being shipped to Bay Jimmy, a set-aside marsh in Barataria Bay, Louisiana for testing in an oil contaminated ecosystem.

Based on the field test results from deployment in Barataria Bay, the Oceanographic Institution will assess, in collaboration with Opflex Solutions, what changes might be feasibly made to improve the efficacy of EMA to interdict, contain, and sequester spilled oil.

Task Execution

- a. Any additional data that will allow us to get more insight into your understanding of the issue, and how you will accomplish the individual tasks(s) listed in your White Paper. If your White Paper did not break the work into specific tasks, please do so in your proposal.

\

- b. A brief discussion to support appropriateness of all research methods to be utilized under these efforts;

There are many factors which determine the efficacy of equipment design, some of which are not obvious. The deploying and recovery of equipment at sea subjects it to loads and handling problems inadvertently overlooked in design.

Although research has been conducted to determine the relative oleophilic and hydrophobic characteristics of an ensemble of materials [4], EMA was not included among those tested. The anecdotal evidence would indicate that this promising material should be evaluated.

The iterative approach that will be taken will enable the designers to make modifications, to take advantage of the results of field tests, and any synergies, to maximize the benefits of EMA properties.

Sorbent material, deployed in the Gulf of Mexico to protect Louisiana coastal wetlands seemed to be only marginally effective. Figure 1 shows a floating sorbent barrier made of a closed cell foam, encased within a skin. This embodiment of the foam, does not have the desirable high exposure to the oil in the environment that an open cell foam of EMA has.

Toward these ends, The Woods Hole Oceanographic Institution (WHOI) will collaborate with the Opflex Solutions LLC. Opflex Solutions LLC, as the principal developer of foamed ethylene methyl acrylate (EMA), for various markets. They are particularly interested in the use of EMA for oil cleanup, and has a vested interest in finding the optimal composition of this copolymer, for use in oil spill impact mitigation.

Opflex Solutions LLC will supply WHOI with EMA of varying composition, i.e. physical properties such as density, foamed EMA with different proportions of open cell structure and cross-linking. This material will be accompanied by testing reports documenting the properties of interest.

WHOI will integrate this EMA material in the design of oil spill interdiction and containment equipment to take optimal advantage of the material properties. Testing of these designs will be done at Woods Hole and at Barataria Bay, in Louisiana. The testing of the designs in Louisiana will be done by Opflex Solutions LLC and reported to Woods Hole.

Based on the field test performance of the designs, attempts will be made to adjust material composition, as necessary or desired to optimize performance, or to introduce design changes to take full advantage of the material and thus improve performance. This research and development will be iterative. It is planned to have three iterations.

[1] Carly Gillis, "Atlantic Empress and Aegean Captain Oil Spill: A Brief History", Huffington Post, <http://www.counterspill.com/article/atlantic-empress-and-aegean-captain-oil-spill-brief-history>, September 17, 2011

[2] Merv F. Fingas, The Evaporation of Oil Spills: Development and Implementation of New Prediction Methodology, International Oil Spill Conference, 1999, Paper #131

[3] David Sell, "Scientific Criteria to Optimize Oil Spill Cleanup", Aberdeen University Research and Industrial Services, Ltd., www.iosc.org/paper_poster/01965.pdf, 1995

From: [Jeffrey D. Stieb](mailto:Jeffrey.D.Stieb)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Cc: ["oneil.kelsey@epa.gov"](mailto:oneil.kelsey@epa.gov); ["stanley.elaine@epa.gov"](mailto:stanley.elaine@epa.gov); ["Lederer.Dave@epamail.epa.gov"](mailto:Lederer.Dave@epamail.epa.gov);
["peterson.david@epa.gov"](mailto:peterson.david@epa.gov); ["catri.cynthia@epa.gov"](mailto:catri.cynthia@epa.gov); ["White.Kimberly@epamail.epa.gov"](mailto:White.Kimberly@epamail.epa.gov)
Subject: United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2
Date: Friday, December 14, 2012 6:11:11 PM

Ignacia S. Moreno
Assistant Attorney General
Environment and Natural Resources Division
U.S. DOJ-ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

Re: United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2

Dear Ms. Moreno,

I am writing to express the support of the New Bedford Harbor Development Commission for the Supplemental Consent Decree under which AVX Corporation will pay \$366.25 million with interest for pcb contamination at the New Bedford Harbor Superfund Site.

The Harbor Development Commission (HDC) is tasked under the laws of the Commonwealth of Massachusetts with administering and developing the waters, lands, and piers of the city of New Bedford and for promoting the economic development of the port. The HDC is the governing body for New Bedford's harbor and city-owned waterfront properties. It is chaired by the Mayor of New Bedford with six other members with diverse professions and interests related to maritime and economic development. The role of the HDC is to upgrade port resources, preserve New Bedford's status as the #1 U.S. fishing port in the nation and expand the New Bedford economy. The HDC oversees commercial and recreational vessel activity within New Bedford city limits, and manages all municipal property on the waterfront, including multiple wharves and a 198-slip marina at Pope's Island.

The Harbor Development Commission fully supports the Supplemental Consent Decree. The accelerated clean up is clearly in the interest of the port – particularly removing potential exposures to humans and halting the migration of pcbs downstream into the outer harbor and Buzzards Bay. Additionally, the Commission requests that the Department of Justice and the Environmental Protection agency retain flexibility so that settlement funds can be used to best serve the citizens of New Bedford and Fairhaven who have suffered severe economic harm and lost opportunities due to their proximity to the contaminated areas.

Sincerely,

Jeffrey Stieb
Executive Director, Harbor Development Commission
(508) 961-3000



SDMS Doc ID 529626



Email: jeffrey.stieb@newbedford-ma.gov
www.portofnewbedford.org

From: [Straus, William - Rep. \(HOU\)](#)
To: [ENRD_PUBCOMMENT-EES \(ENRD\)](#)
Subject: Comment Letter on AVX Settlement
Date: Monday, December 17, 2012 2:53:53 PM
Attachments: [image001.png](#)
[image002.png](#)
[20121217141024777.pdf](#)

Assistant Attorney General
U.S. DOJ---ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

Re: United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2

Dear Sir or Madam:

Attached to this email is my written comment regarding the pending settlement agreement before the Court seeking approval of a resolution of financial responsibility for AVX as a responsible party for the improper discharge of toxic materials into the Acushnet River/New Bedford Harbor. I have also pasted the full text of my comment letter below.

Thank you for your attention.

William M. Straus
Massachusetts State Representative





The Commonwealth of Massachusetts
House of Representatives
State House, Boston 02133-1054

WILLIAM M. STRAUS
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COMMITTEE
Chairman
Transportation

December 17, 2012

Assistant Attorney General
U.S. DOJ—ENRD
P.O. Box 7611
Washington, DC 20044-7611

Re: *United States and Massachusetts v. AVX Corporation*
D.J. Ref. No. 90-11-2-32/2

Dear Sir or Madam:

I am writing in regard to the pending \$366 million settlement of the parties in the above-entitled litigation. This has been described as a "cash out" settlement by the EPA in its recent press statements. My comment is provided as a part of the public comments now being accepted following the October 2012 Consent Decree filed with the U.S. District Court in Boston.

I represent communities on both sides of the New Bedford Harbor with a district that includes a portion of the New Bedford harbor front, and the Town of Fairhaven on the eastern side of the harbor.

I have reviewed the original 1991 Consent Decree approved by Judge Young arising from the 1984 action brought by the United States and the Commonwealth of Massachusetts against certain responsible parties including AVX Corporation. I am aware of the prior responsible party payments which were intended to fund the cleanup of the harbor along with Federal Superfund monies following the 1991 Consent Decree. Unfortunately, those financial sources have proved insufficient to complete the cleanup on a realistic schedule in order to properly deal with the public health threat and natural resource damages posed by the polluted harbor sediments. Pursuant to the 're-opener' contained in the 1991 Decree additional (but final) monies are now being sought from AVX by the Plaintiffs. **For reasons stated below, I do not believe that it is appropriate to eliminate a 're-opener' clause from the pending Decree before the Court.**

I have been active for twenty years in the issues surrounding the appropriate cleanup remedy for the New Bedford Harbor Superfund Site. Although the original Record of Decision (ROD) by the Environmental Protection Agency had called for on-site incineration of the PCB and heavy metal laden waste sitting on the harbor floor, community objections resulted in a reopened ROD during the 1990's; a revised cleanup decision process of the EPA resulted in enhanced community participation through a publicly mediated panel, in which I was proud to participate. That decision making process resulted in the permanent removal from the harbor of the most highly contaminated and toxic materials (some areas in excess of 200,000 ppm of PCB deposits) for off-site disposal.

The already completed dredging, dewatering and off-site removal of polluted sediment which constitutes the core concept of the earlier ROD proved to be more costly and time consuming than originally contemplated. Coupled with the declining availability of Superfund monies to sustain the removal of the remaining sediments, the government Plaintiffs have exercised their 're-opener' rights to seek more monies from this responsible party. I applaud that effort. The difficulty is that the full details of the EPA cleanup remedy for the remaining polluted sediments in the harbor have not been completed; as a result, no one can say with certainty what that total project cost will be. Published newspaper accounts suggest that additional remedy decisions relating to the design and placement of on-site disposal options are yet to be concluded within the EPA, much less made available to the public for comment.

I do believe, however, that a range of cleanup options under consideration by the EPA and the Commonwealth of Massachusetts can result in an informed assessment of the range of cleanup costs (depending on remedies chosen) which remain. Therefore, I recommend that the Court consider approval of the settlement monies now before it, **but** with a further set contingency amount to be considered for payment by AVX; disbursement of which would depend upon further petition to the Court by the Plaintiffs. In this way, the unknowns of an open-ended 're-opener' clause are avoided, but the public is protected by allowing a quicker paced cleanup to begin promptly for the remaining polluted sediments. This would also provide the public with some assurance that a calculated amount of monies will still be available should the final remedy costs escalate.

The EPA and the Commonwealth of Massachusetts are in a very different position in calculating cleanup costs than existed in 1991 when the original Decree was concluded with the inclusion of a re-opener clause. Since that time, over a quarter of the most polluted harbor sediments have been removed, and there is a much greater amount of understanding of the technology and facets of working to remove underwater harbor sediments as found in the New Bedford Harbor. Under this approach, the Court should request a further cleanup cost assessment from the parties on a prompt submission schedule which would still allow for initiation of on-site cleanup as soon as practicable.

Thank you for consideration of this comment.

Sincerely,



William M. Straus
State Representative

Tashima, Keith (ENRD)

From: McMullen, Rebecca (ENRD)
Sent: Monday, November 05, 2012 9:06 AM
To: Tashima, Keith (ENRD); MacLaughlin, Jerry (ENRD); Levine, Bradley (ENRD)
Subject: Public Comment - AVX (FW: Cleaning New Bedford Harbor)

Another comment for AVX.

Thanks.

-Becky

Rebecca McMullen
Systems Support Specialist
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
Office: 202-514-2416
Fax: 202-514-0097

-----Original Message-----

From: Lori Sweeney [<mailto:keltill@gmail.com>]
Sent: Saturday, November 03, 2012 8:05 AM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: Cleaning New Bedford Harbor

To whom it may concern:

I am writing to argue for a settlement between AVX and EPA that includes a reopen clause to guarantee that New Bedford Harbor is cleaned completely of contaminants caused by that company.

Lorene Sweeney
New Bedford, MA



Tashima, Keith (ENRD)

From: McMullen, Rebecca (ENRD)
Sent: Monday, November 05, 2012 9:01 AM
To: Tashima, Keith (ENRD); MacLaughlin, Jerry (ENRD); Levine, Bradley (ENRD)
Subject: Public Comment Received - AVX (FW: (no subject))

I'm guessing the comment below is for AVX.

(Please let me know if is not – she did not include a DJ # or case name, but this looks similar to other comments received for this case.)

Thanks.

-Becky

Rebecca McMullen
Systems Support Specialist
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
Office: 202-514-2416
Fax: 202-514-0097

From: Peacock3333@aol.com [<mailto:Peacock3333@aol.com>]
Sent: Friday, November 02, 2012 6:45 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: (no subject)

please do as the bb coalition suggests and put the reopener clause in the settlement..

thank you sincerely
jennifer j sylvia
33 morses lane
acushnet ma
02743



Tashima, Keith (ENRD)

From: McMullen, Rebecca (ENRD)
Sent: Tuesday, November 06, 2012 8:58 AM
To: Tashima, Keith (ENRD); MacLaughlin, Jerry (ENRD); Levine, Bradley (ENRD)
Subject: PUBLIC COMMENT (FW: too limited)

FYI – Another comment for AVX.

-Becky

Rebecca McMullen
Systems Support Specialist
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
Office: 202-514-2416
Fax: 202-514-0097

From: David Tatelbaum [<mailto:david.bigvalue@comcast.net>]
Sent: Monday, November 05, 2012 11:47 AM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: too limited

The settlement is very large, but the massive nature of this cleanup cannot be limited to a finite number. The company can be given a timetable for notification of the success or failure of this phase of cleanup, but the Buzzards Bay area deserves the right to further evaluation and protection down the road.

DT

David Tatelbaum
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