

December 17, 2012

By Electronic Mail

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

Pubcomment-ees.enrd@usdoj.gov

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

On behalf of the Buzzards Bay Coalition ("Coalition") attached please find comments on the above captioned proposed settlement agreement between the U.S. Environmental Protection Agency ("EPA") and AVX Corporation ("AVX") that the United States has lodged with the United States District Court for the District of Massachusetts ("District Court") with respect to the New Bedford Harbor Superfund site ("Site"). EPA has solicited public comments and reserved the right to withdraw its approval of the settlement following its review of these comments.

The Coalition is a membership-supported nonprofit organization dedicated to the restoration, protection and sustainable use and enjoyment of Buzzards Bay and its watershed, including New Bedford Harbor. On behalf of its members and for the reasons set forth in the attached comments, the Coalition opposes the settlement as proposed and respectfully requests that EPA withdraw its proposed settlement agreement and seek modifications allowing EPA to reopen its enforcement action against AVX in the event that the Harbor's remedial costs ultimately exceed EPA's current estimates.

Should EPA withdraw the proposed settlement agreement, as the Coalition suggests, and reenter negotiations with AVX, the Coalition believes that because it represents vital community interests not otherwise represented in these negotiations, as evidenced by the approximately 2,000 signatures enclosed with these comments, that its participation in the negotiations be permitted.

Sincerely.

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

Buzzards Bay Coalition, Inc. Comments on the Proposed Supplemental Consent Decree

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INTRODUCTION AND SUMMARY

The Buzzards Bay Coalition ("Coalition") submits these comments on the proposed settlement agreement between the U.S. Environmental Protection Agency ("EPA") and AVX Corporation ("AVX") that the United States has lodged with the United States District Court for the District of Massachusetts ("District Court") with respect to the New Bedford Harbor Superfund site ("Site"). EPA has solicited public comments and reserved the right to withdraw its approval of the settlement following its review of these comments. For the reasons set forth below, the Coalition opposes the settlement as proposed and respectfully requests that EPA withdraw its proposed settlement agreement and seek modifications allowing EPA to reopen its enforcement action against AVX in the event that the Harbor's remedial costs ultimately exceed EPA's current estimates.

New Bedford Harbor is an invaluable environmental, recreational, and economic resource. More than 30 years ago, toxic concentrations of PCB contamination were discovered in the Harbor sediments and along its shoreline. Soon thereafter, EPA identified an electrical capacitor manufacturing plant owned by AVX as the primary source of this contamination, and EPA's legal action against AVX ensued. EPA and AVX settled that lawsuit in 1992, AVX paid EPA and the Commonwealth \$66.5 million, and the parties agreed that EPA could "reopen" the suit if any of the following occurred in the future: EPA's cleanup costs exceed \$130.5 million; "conditions at the New Bedford Harbor site previously unknown to the United States and the Commonwealth are discovered after issuance of the Record of Decision (ROD)"; or "information is received, in whole or in part, after issuance of the RODs...that the Remedial Action is not protective of human health or the environment."²

Twenty years have elapsed since the 1992 settlement. AVX has abandoned its Aerovox site on the New Bedford Harbor shoreline, EPA's estimated costs to complete the project have increased ten-fold over original estimates, EPA has remediated less than one-third of the Harbor's PCB contamination at a cost of \$456 million³ and government funds to complete the cleanup have become severely limited. A recent EPA assessment revealed that areas of the Harbor still contain

² Consent Decree with Defendant AVX Corporation, Civil Action No. 83-3882-Y, entered February 3, 1992 ("1992 Consent Decree") at 20-21.

¹ For ease of reference only, where these comments make mention of collective actions by both EPA and the Commonwealth of Massachusetts Department of Environmental Quality, we refer to them as "EPA."

³ Unilateral Order for Remedial Design, Remedial Action, and Operation and Maintenance, U.S. EPA Docket No. CERCLA-01-2002-0045, ("UAO"), issued April 21, 2012 at 26 and footnote 15.

PCB concentrations 1,000 times over government criteria, seafood from the Harbor remains so contaminated that its consumption constitutes a serious public health risk, and the expansion of residential and recreational uses of the Harbor and its shoreline has increased and will continue to increase the number of people directly exposed to PCB contamination. Meanwhile, EPA continues to issue significant modifications to its 1998 remedial design plan and now calculates that the project would take another 40 years to complete using government funds.

The Coalition and other members of the community have monitored these developments with increasing concern and dismay. The Coalition is a nonprofit organization whose 8,000-plus members are dedicated to the restoration, protection and sustainable use of Buzzards Bay and its watershed, including the Acushnet River and New Bedford Harbor. About 1,300 of the Coalition's members live in the greater New Bedford area and nearly 250 reside within 1,000 yards of the Harbor's contaminated shoreline. The Coalition's members include commercial lobstermen and fishermen who use the Harbor as their home port, owners of businesses and residences abutting the contaminated Harbor shoreline, people discouraged by PCB contamination from using the Harbor for boating and other recreational enjoyment, and many others throughout the area concerned about the contamination's devastating environmental impacts.

Last April, twenty years after the District Court approved a consent decree requiring AVX to help fund the Harbor cleanup, EPA finally exercised its right to reopen its legal action against AVX and ordered AVX to finance and promptly complete the long-delayed remediation of the Harbor's PCB contamination. In October, EPA proposed to settle its case against AVX and withdraw its order. In place of the order, EPA agreed to "supplement" the consent decree approved by the District Court in 1992. That supplement would require AVX to make additional payments of a fixed amount but would delete all provisions allowing EPA to reopen the case in the future.⁴ In particular and very significantly, the proposed settlement would bar EPA from seeking any additional cleanup funds from AVX should the amount of AVX's payments prove inadequate to complete a timely and effective cleanup; the release would be effective in two years and thus pre-date most remaining remedial work. The proposed settlement also would release AVX from liability for the costs EPA has incurred to date for Site cleanup costs; those costs are at least \$350 million in excess of the amounts paid to EPA under earlier settlements with AVX and others.

⁴ Supplemental Consent Decree with Defendant AVX Corporation, Civil Action NO. 83-3882-Y, lodged October 10, 2012 ("Supplemental Consent Decree" or "proposed Settlement"), at 8, 15-16.

Other than AVX, no responsible company or government agency has sufficient funds to finance the expeditious completion of this project. In fact, EPA has conceded that its funding limitations would delay the project's completion for 40 years. Thus, funding from AVX, a successful enterprise having \$1 billion/year in revenues and now controlled by a much larger Japanese multinational, is the only viable source for the timely completion of the cleanup.

Although AVX's fixed "cash-out" payments under the settlement will be about 90% of EPA's current future cost estimate, the cost of implementing an effective Harbor very likely will ultimately be much higher than EPA's current estimate. For example, the estimate completely ignores future cleanup costs for the 17,000 acres of PCB contamination in Outer New Bedford Harbor where commercial fishing and lobstering have been banned for over 30 years. Also, EPA itself acknowledges that additional volumes of contaminated sediments must be dredged to meet the cleanup standards it established in 1998 because of increasing residential and recreational uses in the area; EPA's current cost estimate does not take account of all of these existing and foreseeable land use changes. EPA's cost estimates are likely understated for other reasons as well. EPA's current "low cost" remedial design using on-Site sediment "containment" in Confined Disposal Facilities ("CDFs") or Confined Aquatic Disposal Cells ("CAD cells") in lieu of off-site disposal could well prove ineffective. Likewise, the now-outdated PCB cleanup levels that EPA selected for the Harbor 14 years ago could well prove inadequate to assure that seafood from the Harbor will be safe for human consumption. Each of these circumstances will require EPA to take additional, costly remedial actions, just as the agency has at other EPA-supervised PCB cleanup sites where on-site containment options and lax cleanup standards were initially used and proved ineffective.

Finally, as EPA acknowledges, because AVX is the only viable source of future funding to complete an effective remedy, the viability of EPA's proposed fixed sum, no-reopener settlement is entirely dependent on the accuracy its current cost estimate of \$393 million. Remarkably, that estimate rejects the prescription of EPA's own guidance document that such estimates "always" should include a 50% up side contingency when made prior to finalization of the remedial design, something EPA is not even close to achieving. Complying with the guidance would have required EPA to acknowledge that the cleanup cost could be as much as \$600 million. Indeed, the report EPA relied on for it \$393 million cost estimate explicitly recognized the applicability of the 50% contingency.

⁵ A Guide to Developing and Documenting Cost Estimates during the Feasibility Study, EPA 540-R-00-002, OSWAR 9 ¶ 355.0-75, July 2000 ("Cost Guidance") at 2-4.

What is more, EPA has consistently and grossly underestimated future remedial costs at the Site. In 1992 court filings supporting its earlier settlements, EPA expressed great confidence in its \$33 million estimate for the OU-1 remedy; in 1998, citing its many years of investigations and studies at the Site, EPA again expressed confidence in its revised \$115 million estimate. Now, with EPA having already spent over \$456 million to remediate a minority of contaminated sediments at the Site and with EPA's future cost estimate now having escalated to nearly \$400 million, EPA again contends that its current estimate is accurate. But the agency's track record at the Site provides absolutely no reason to believe that its most recent estimate is any more reliable than its many, ever-increasing past estimates. Indeed, we can only concur with AVX that there is no evidence "that the estimated cost today is anything near what the ... remedy will ultimately cost." of the strange of the strange

Accordingly, proceeding with a fixed sum, no-reopener settlement with the only entity in a position to finance a timely remedy would create a serious dilemma: EPA will either have to ignore evidence that a fully-protective remedy is much more costly than its current estimate or proceed to implement an adequate remedy without any assurance that funding will be available to complete it expeditiously. No settlement should create such a Hobson's choice when the public health and the environment's restoration are at stake.

EPA concedes that the absence of a reopener creates "risks" and attempts to justify them on ground that a settlement is necessary to avoid complex and protracted litigation with AVX's well-funded attorneys. EPA's concerns in this regard are self-interestedly exaggerated. The governing federal statute imposes "no fault" liability for all cleanup costs on any owner whose facility is the source of environmental contamination, regardless of when the contamination occurred or whether there were other sources of the contamination. Few, if any, relevant facts are in dispute.

Simply stated, AVX's legal defenses to liability have no merit and EPA's decision to settle without a cost-related reopener cannot reasonably rest on the spurious merits of those defenses. Indeed, the governing law confirms that Congress has denied EPA's authority to settle matters such as this without reopeners and other protections that this settlement fails to contain.

The Coalition is gratified that EPA finally resuscitated its legal action against AVX and would support any reasonable settlement of the action. We also understand

⁶ Letter to EPA from Mary K. Ryan and Gary L. Gill-Austern, dated September 24, 2010, at 6.

⁷ Additional Frequently Asked Questions, issued by EPA on October 25, 2012 ("FAQ II") at 4; Frequently Asked Questions, issued by EPA on October 10, 2012 ("FAQ I") p. 2.

why, because it lacks funding to complete the project, EPA decided to give up its past cost claims of over \$325 million against AVX. But the settlement EPA has negotiated will not adequately protect the Harbor or those living near it in the greater New Bedford area because, in the likely event that the future costs of an effective remedy exceed EPA's current and unreliable estimate, there will be no funding source available to complete the project and assure the Harbor's timely restoration.

Accordingly, the Coalition respectfully requests EPA to withdraw the proposed Supplemental Consent Decree and proceed to secure modifications that modify the effective date of the covenant not to sue and allow it to reopen governmental enforcement action against AVX in the event that the Harbor's remedial costs ultimately exceed EPA's current estimate.

Section I below provides, as background, the factual information upon which Coalition's opposition to the proposed Supplemental Consent Decree is grounded, including information about the Site and the history of EPA's remedial activities and legal actions regarding PCB contamination of the Harbor. Section II then sets forth the detailed factual and legal basis for the Coalition's opposition.

I. BACKGROUND INFORMATION

A. The New Bedford Harbor Site and Discovery of PCB Contamination.

New Bedford Harbor is located in southeast Massachusetts where the Acushnet River flows into Buzzards Bay. The western shore of the Harbor is in the City of New Bedford (population c. 100,000); the eastern shore is located in the Towns of Fairhaven (pop. c. 16,000) and Acushnet (pop. c. 10,000), which are primarily residential communities. The City of New Bedford, the largest city on Buzzards Bay, is the home port of the top revenue generating commercial fishing fleet in America⁸ and has the Commonwealth's second largest number of lobstermen. The Harbor is also used for recreational fishing, boating, beach combing and swimming, but the PCB contamination has lowered the value of the Harbor as a recreational resource.

From the 1940s into the 1970s, approximately two million pounds of polychlorinated biphenyl ("PCBs") were dumped or otherwise discharged into the

¹⁰ Id. at 18 and footnote 12.

⁸ http://www.portofnewbedford.org/commercial-fishing/our-commercial-fishing-industry/ Last visited December 16, 2012.

⁹ UAO, supra, at 17-18.

Harbor every year, primarily from a facility on Belleville Avenue near the upper portion of New Bedford Harbor. This facility ("AVX Facility") was an electrical capacitor manufacturing plant owned by AVX and a corporate predecessor. AVX has since abandoned the facility and moved much of its successful business operations to South Carolina. In its most recent filings with the U.S. Securities and Exchange Commission, AVX reported annual revenue over \$1 billion and assets over \$2 billion. Its principal shareholder is a Japanese multinational company with annual net sales of over \$14 billion. With 72% of the outstanding shares, Kyocera is AVX's majority shareholder.

PCB contamination of the Harbor was first discovered in the late 1970s. In 1979, the Commonwealth found that PCBs cause diseases deemed dangerous to the public health, namely PCB intoxication and carcinogenesis, and that consumption of seafood contaminated with PCBs poses an immediate and lasting threat to human health. The Commonwealth accordingly promulgated regulations prohibiting the consumption of any fish/shellfish caught north of the Harbor's hurricane barrier, and of bottom feeding fish or lobster caught from waters south of this barrier. Recently, EPA augmented the Commonwealth's prohibition and issued even more stringent restrictions regarding the consumption of seafood from the Harbor. 16

In 1982, the Commonwealth designated the Harbor as its highest priority site, and the following year EPA added the site to its National Priorities list. For administrative purposes, EPA divided the Site into three geographic areas (which it called "Operational Units" or "OUs"), as follows:

• OU-1, covering both 187 acres in the upper portion of the Harbor above the Coggeshall Bridge ("Upper Harbor") where PCB concentrations reached 100,000 parts per million ("ppm"), and the 750 acres in the lower portion of the Harbor, below the bridge but inside the hurricane barrier, ("Lower Harbor") where PCB levels reached 1000 ppm;

¹² AVX Corporation Fiscal Year 2012 Form 10-K at 38, 39. Excerpts attached hereto as Attachment 1.

¹⁷ UAO, supra, at 7.

¹¹ Id. at 5-6.

¹³ Kyocera Corporation Fiscal Year 2012 Form 20-F at 6. Excerpts attached hereto as Attachment 2.

¹⁴ AVX Corporation Form 10-K *supra* at 26, 32. "In fiscal 2010, 2011 and 2012, dividends of \$27.2 million, \$32.3 million and \$44.2 million, respectively, were paid to stockholders." "Kyocera is the majority stockholder of AVX. As of May 4, 2012, Kyocera owned beneficially and of record 121,800,000 shares of common stock, representing approximately 72% of our outstanding shares."

UAO, supra, at 5.
 www.epa.gov/nbh/seafood.html. Last visited November 15, 2012. See also UAO, supra, at 7.

- OU-2 ,covering a 5-acre "hot spot" adjacent to the AVX Facility in the Upper Harbor where PCB sediment contamination was particularly acute; and
- OU-3, covering 17,000 of sediments in the portion of the Harbor outside the hurricane barrier ("Outer Harbor") through which EPA found that significant amounts of PCBs continued to migrate each year.¹⁸

Starting in 1983, EPA conducted numerous investigations, studies, and a pilot dredging project at the Site. In 1990 EPA selected a remedy for the OU-2 "hot spot" portion of the site. ¹⁹ That plan initially called for dredging "hot spot" sediments and incinerating them nearby; EPA later modified the plan to have the dredged sediments transported off-site for disposal in a licensed landfill. ²⁰ As so modified, this portion of the project was completed in 2000.

Also in 1990, EPA completed a feasibility study of remedial alternatives for OU-1, the remaining portion of the Site inside the Harbor's hurricane barrier. ²¹ In January 1992, based on this study, EPA issued its "preferred" cleanup plan for the OU-1 portion of the Harbor; EPA's future cost estimate for this plan was \$33,274,000, subject to a 50% upside contingency factor to account for uncertainties. ²²

B. EPA's Initial Legal Actions and Settlements.

Meanwhile, in 1984 the United States on behalf of EPA filed an amended complaint in a U.S. District Court seeking recovery of EPA's past and future cleanup costs at the Site pursuant to CERCLA Section 107. ²³ The defendants were AVX and several other owners and former owners of the AVX Facility and of another capacitor manufacturing plant located in the Outer Harbor. Over time, other parties were added to the suit, including the Commonwealth as a plaintiff, the federal government trustee for natural resources, as a plaintiff; the defendants'

²¹ Feasibility Study of Remedial Alternatives for the Estuary and Lower Harbor Bay, issued by EPA in August 1990 ("1990 FS"), at 6-1.

¹⁸ Id. at 6.

¹⁹ Id. at 7-8.

²⁰ Id. at 8.

²² Cleanup Plan to Address Contamination in the Estuary and Lower Harbor/Bay at the New Bedford Harbor Site, issued by EPA, January 1992 ("1992 Plan") at 18.

²³ CERCLA's formal title is the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq.

insurance carriers; and a plaintiff intervenor, the National Wildlife Federation ("NWF").²⁴

In 1987, EPA moved the District Court to approve a settlement of its natural resource damage claims against AVX; the settlement contained a government covenant not to sue AVX for future damages even if then unknown. NWF opposed the motion, contending that CERCLA section 122 required such settlements to contain a "reopener" allowing the EPA to seek additional amounts for then-unknown future damages. After an extensive review of the legislative history of section 122, the court determined that "the thrust of this subsection is to ensure that the federal government, and thus ultimately the taxpayer, does not bear the costs of future unknown damages." The court further found that Section 122's legislative history "leaves no doubt that preventing potentially responsible parties from escaping future liability was a primary concern of Congress." Accordingly, the court agreed with NWF and held that in this instance "the lack of a reopener is a violation of the governing statue as well as against the intent of Congress and not in the public interest."

In November 1991, EPA moved the District Court to approve a settlement of its response cost and natural resource claims against AVX. The settlement provided for AVX's payment of \$66 million (plus accrued interest), a government release of AVX's future liabilities upon completion of the remedy, and EPA's right to reopen the litigation if any of the following were to occur:

- > "conditions at the New Bedford Harbor site, previously unknown the United States and the Commonwealth [,] are discovered after issuance of the RODs"; or
- > "information is received, in whole or in part, after issuance of the RODs...that the Remedial Action is not protective of human health of the environment"; or
- > "the total Remedial Costs exceed \$130.5 million."²⁸

The settlement provided that, of the amount to be paid by AVX, \$50 million would be allocated to the future costs of Site remediation; of that amount, \$15 million was

²⁴ The District Court granted NWF's motion to intervene in 1989. See In Re Acushnet River and New Bedford Harbor, 712 F. Supp. 1019 (D. Mass. 1989) ("1989 Decision").
²⁵ Id. at 1037.

²⁶ Id.

²⁷ Id. at 1038.

²⁸ 1992 Consent Decree, supra, at 20-21.

designated for the OU-2 "hot spot" remediation and \$35 million for future OU-1 studies and remediation.²⁹ NWF opposed the settlement on the grounds that the costs of the remedy and extent of natural resource damages were too uncertain at that time.³⁰ However, EPA assured the court that its cost estimate was reasonable in light of the agency's "comprehensive" studies, "years of information" and "a wealth" of other data then available to it, as follows:

Before entering into this settlement, the governments also evaluated the potential future costs of cleanup and restoration in New Bedford Harbor. In its considerations, the governments had the benefit of the years of information gathered in their investigations and evaluated by their experts on the contamination in the Harbor, the injury to the resources, and options for and costs of remedial and restoration work. The information considered in the governments' evaluation included the plan and underlying data gathered during the investigation and study for the first ROD which addresses the most highly contaminated "Hot Spot" areas of the Upper Estuary. In addition, the governments considered the information gathered and compiled in the multi-volume comprehensive RI/FS [1990] study for OU-1 area] for the second ROD, including estimates of the costs for the various cleanup alternatives under consideration. Included in this information was the wealth of sampling data evaluating the extent of PCB contamination and injury to the resources in the waters, sediments, and biota of New Bedford Harbor...31

AVX agreed with EPA's position and represented that the amount of its settlement payment "compares favorably with expected costs and damages." 32

Furthermore, in urging court approval of the settlement over NWF's objections, EPA acknowledged there was "some exposure if the remedy costs are higher than the government anticipated," but it stressed that this exposure "was mitigated

31 Id. at 10-11(emphasis added).

²⁹ Memorandum in Support of Plaintiff's Motion to Enter Consent Decree with AVX Corporation filed by the U.S. Department of Justice in Civil Action No. 83-3882-Y ("DOJ Memorandum") at 2 and footnote 5. Attached hereto as Attachment 3.

³⁰ Id. at 13.

³² Reply of AVX Corporation to Opposition of Intervenor National Wildlife Federation to Plaintiff's Motion to Enter Consent Decree, filed in Civil Action No 83-3882-Y, January 2, 1992 ("AVX Reply"), at 19. Attached hereto as Attachment 4.

greatly by the reopeners," particularly the cost reopener.³³ Thus, EPA contended, it was unnecessary at that time to know "the full extent of cleanup costs ...given the cost reopener provision of the [proposed] AVX consent decree."³⁴ In February 1992, the District Court overruled NWF's objections, noted that the "bar to settlement" in its 1989 Decision "no longer exists," and entered a consent decree constituting the EPA-AVX settlement ("1992 Consent Decree").³⁵

By the end of 1992, EPA had negotiated and the District Court had approved "cash-out" settlements with the remaining defendants; each of them had limited financial resources and none was the primary source of the Harbor's PCB contamination.³⁶ These settlements provided that the EPA's release of the defendants from future liability would not become operative until the Site remedy had been completed and was certified by EPA to be effective.³⁷

EPA was paid a total of about \$100 million as a result these settlements with AVX and the other defendants.³⁸ Recently, EPA summarized the financial status of the other settling defendants as follows:³⁹

Since these settlements in the early 1990s, the financial strength of these companies is in doubt. Aerovox, Inc. [A different company than AVX] is bankrupt and no longer exists, while Belleville Industries, Inc. was dissolved in 1978. As for CDE [Cornell-Dubilier] and FPE, on August 28, 2012, the United States and the State of New Jersey entered into a settlement for the Cornell-Dubilier Electronics Superfund Site in South Plainfield, New Jersey, with CDE, which provide covenants not to sue to CDE and its former corporate parent FPE, that was based on limited ability to pay considerations.

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³³ Reply Memorandum in Support of Plaintiff's Motion to Enter Consent Decree With AVX Corporation ("DOJ Reply") filed in Civil Action No. 83-3882-Y, January 21, 1992, at 7. Attached hereto as Attachment 5.

³⁵ See docket entry No. 2378 in Civil action no, 83-3882-Y at 65 and preceding unnumbered entry documenting the Court's decision.

³⁶ UAO, supra, at 8-10.

³⁷ See docket entry No. 2362 in Civil action no. 83-3882-Y,at 19 "1991 Consent Decree entered into by the United States, the Commonwealth and Belleville Industries, Inc. and its legal successor, Aerovox Inc."; see docket entry No. 2406 in Civil action no. 83-3882-Y at 20 "1992 Consent Decree entered into by the United States and the Commonwealth with Cornell-Dubilier Electronics, Inc. (CDE) and its parent company, Federal Pacific Electric Company (FPE)." These release provisions are contained in those settlement agreement found in the court records, as attached hereto as Attachment 6.

³⁸ UAO, supra at 8-10 and 1992 Consent Decree supra at 9.

³⁹ FAO II, supra, at 3-4.

C. History of EPA's Design and Cost Estimates for the OU-1 Cleanup.

In September 1998, six years after the District Court approved the 1992 Consent Decree between EPA and AVX, EPA issued a final Record of Decision ("1998 ROD") that constituted its "final" plan for remediation of OU-1. The 1998 ROD prescribed a plan to address sediments there that exceeded specified cleanup performance standards tied to PCB sediment concentrations in the Upper and Lower Harbor. Those standards were, and currently remain, as follows: 50 parts per million ("ppm") for sediments in the Lower Harbor and in salt marshes; 25 ppm for sediments in certain shoreline areas used for beach combing; 10 ppm for the Upper Harbor sediments, and 1 ppm in areas where homes abut the Harbor or otherwise where human contact with sediment is expected. The volumes of sediment that must be dredged under this plan are based on these cleanup standards and thus are dependent upon on the public's current and foreseeable access and exposure at various portions of the Site.

In setting the cleanup standards, EPA rejected AVX's contention that a 50 ppm cleanup standard should be used in all areas, determining that tolerating such a higher level contamination would not provide adequate protection against shoreline dermal contact risks and would be ineffective in protecting against the public's consumption of PCB-contaminated local seafood.⁴² The ROD also stated that, "[f]or seafood to meet both the FDA and site specific levels at the end of 10 years, EPA believes that a TCL [standard] for sediment dredging of 1 ppm would be necessary."⁴³ Nevertheless, EPA ultimately decided to use cleanup standards less stringent than 1 ppm for most of the Harbor and set a 1 ppm standard only for areas where homes directly abutted the Harbor or where EPA expected human contact with contaminated shoreline sediment.⁴⁴

Using these less stringent standards set for most of the Harbor and the status of land use of residential near the Harbor at that time, the 1998 ROD estimated that EPA would need to dredge and dispose of 450,000 cubic yards ("cy") of PCB-contaminated sediment from the Harbor. The 1998 ROD plan called for the

⁴⁰ Record of Decision for the Upper and Lower Harbor Operable Unit New Bedford Harbor Superfund Site New Bedford, Massachusetts, September 1998 ("1998 ROD").

⁴¹ Declaration for the Record of Decision New Bedford Harbor Superfund site Upper and Lower Harbor Operable Unit New Bedford, Massachusetts, ("Declaration for the Record of Decision") Administrative Record No. 38206 at i-ii.

⁴² 1998 ROD at A-32.

⁴³ Id. at 35.

⁴⁴ Declaration for the Record of Decision supra at ii.

⁴⁵ *Id.* at i.

dredged sediments to be transported via a suction pipe to four CDFs to be constructed along the Harbor's contaminated shoreline. The 1998 ROD estimated that the net present-value of the OU-1 remedy's cost would be \$115 million.

In 2002, EPA announced a significant modification to the 1998 ROD. Now estimating that 507,100 cy of sediment would need to be dredged, EPA decided that instead of constructing a CDF on the Harbor's shoreline, it would transport these dredged sediments to a licensed landfill. In the 2002 ESD, EPA estimated that the remedy's fully-funded future costs would be about \$317 million.⁴⁷

In the same decision, EPA acknowledged uncertainties about the adequacy of funding for the project. By this time, EPA had expended all of the monies paid by AVX and others in 1991 and 1992 to settle their liabilities. Because Superfund trust fund monies had been exhausted due to repeal of taxes earmarked for the fund, any funding for CERCLA projects was now dependent on EPA's receipt of annual Congressional appropriations from general revenues. EPA estimated that it could complete the project at this Site by 2011 if it obtained annual funding of \$25 to \$30 million, but it worried that more limited funding would result in "significant project delay and inefficiencies."

Dredging of the OU-1 portion of the Site began in 2004. However, because EPA's annual funding for the project was limited to \$15 million, dredging operations proceeded for only 40 days each year, with only 20-25,000 cy of sediments being removed each year. ⁵² In 2010, EPA conducted an extensive review of progress at the Site. It found that only 200,000 cy of sediments had been dredged to date and that the total estimate of contaminated sediment required to the remediated had increased to 900,000 cy. ⁵³ The 2010 Review also reported that PCB concentrations in fish continued to significantly exceed EPA's site-specific guidelines. ⁵⁴ This prompted EPA to augment the Commonwealth's 1979 regulations closing the

^{46 1998} ROD at 6, 30.

⁴⁷ Explanation of Significant Differences for the Upper and Lower Operable Unit New Bedford Superfund Site New Bedford, Massachusetts, August 2002 ("2002 ESD") at 9. The 2002 ESD did not provide a present-value cost estimate.

⁴⁸ Id. at 6.

^{49 11}

⁵⁰ See 2013 Budget, TAX Policy Center, available at http://taxpolicycenter.org/taxtopics/2013.

^{51 2002} ESD at 8, C-14; UAO, supra, at 11-12...

Second Five-Year Review for the New Bedford Harbor Superfund site, issued by EPA, September 10, 2010 ("2010 Review") at 13.
 Id. at 15.

⁵⁴ Id. at 26.

Harbor to fishing and barring the consumption of local seafood.⁵⁵ However, as EPA's report acknowledged, because of "the vast geographic area of the site coupled with the area's cultural diversity and reliance on local fishing, complete control of PCB-contaminated seafood will be problematic until <u>full remediation</u> is complete." ⁵⁶

This 2010 Review also raised concerns about the adequacy of the dredging up to that time: monitoring showed that the EPA model used to determine the depth of remedial dredging was "underestimating the required depth of dredging...at least in the highly contaminated northern reaches of the Upper Harbor." ⁵⁷

In March 2011, EPA promulgated a fourth significant change to its 1998 ROD remedial plan design. ⁵⁸ EPA proposed that, in lieu of disposing of sediment offsite as decided in 2002, it would place 300,000 cy of contaminated sediment in a CAD cell to be dug in the bottom of the Lower Harbor. ⁵⁹ This new plan called for excavating a 47-foot pit deep into the Harbor floor; mechanically dredging contaminated sediment; placing it on a barge; de-watering it in the open air; and then dumping it into the cell. ⁶⁰

Prior to EPA's 2011 decision to use CAD cells in the Lower Harbor, the Coalition submitted comments questioning the efficacy of this approach. EPA responded that it had used CAD cells at other locations, but concededly never to contain materials with PCB concentrations as high as those at the Site. EPA also acknowledged that it had previously tried to use a CAD cell to contain PCB sediments during a pilot project in the Harbor and that the effort was "unsuccessful." Later, the Coalition's own research revealed that, after EPA used CAD cells to bury and cap PCB-contaminated sediments in the Puget Sound Harbor in the State of Washington, PCBs were detected outside the cell as a result of errors made during the sediment disposal process. Additional remedial work and costs were therefore required to complete the remedy.

⁵⁵ www.epa.gov/nbh/seafood.html, last visited November 15, 2012.

⁵⁶ 2010 Review at 5 (emphasis added).

⁵⁷ Id. 31.(emphasis added)

⁵⁸ March 2011 Final - Fourth Explanation of Significant Differences for Use of a Lower Harbor CAD Cell (LHCC), issued by EPA, ("2011 ESD").

⁵⁹ *Id.* at 2.

⁶⁰ Id. at 8-9.

⁶¹ Letter to EPA from Korrin Petersen, Vice President, Advocacy of the Coalition for Buzzard Bay, dated September 10, 2010.

^{62 2011} ESD, supra, Attachment A at 33.

⁶³ Id at 26.

⁶⁴Declaration of Mark P. Rasmussen ("Rasmussen Decl.") at ¶\$51 and 52 and Exhibit N thereto. Rasmussen Decl. attached hereto as Attachment 7.

Although EPA recently re-iterated its plans to use CAD cells in the Lower Harbor, 65 it has not formally decided whether it will use them in the Upper Harbor as well. In 2011, EPA announced that it would undertake a "feasibility study" to re-evaluate its current plan to use on-shore CDFs for the disposition of sediments dredged in the Upper Harbor. 66 More recently, in a public statement about the settlement, EPA stated that this study will begin "within the next six months." 67 EPA documents produced in response to the Coalition's FOIA request reveal that the study will include the option of digging in-situ CAD cells in the Upper Harbor as well. 68 The New Bedford City Council recently expressed its strong opposition to the use of on-site containment of dredged PCB sediments and urged EPA to dispose of all dredged sediments off-site.

In its 2011 ESD, EPA calculated that the time and total future cost to restore the OU-1 portion of the Site with limited government funding would be 40 years and \$1.2 billion. If annual funding were increased to \$80 million/year and the time to complete the OU-I cleanup could be reduced to 6 years, EPA's current estimate is that the future costs would be \$393 million (present value) or \$422 million (fully funded over six years). According to EPA, taking account of inflation and other factors, this estimate is five times higher than its original estimate. EPA has recently stated that this estimate is the "most accurate" because the remedy for the Site is "in place."

EPA guidance regarding remediation at Superfund sites states that cost estimates made prior to the remedy's final design should "always" be qualified as having an uncertainty range of -30% to +50%, meaning that actual costs may be as much as 30% lower or 50% higher than the estimates.⁷⁴ Thus, the EPA report on which EPA grounds its current cleanup cost estimate of \$393 million states in its assumptions an upside uncertainty factor of +50%.⁷⁵ EPA relied on the \$393

65 FAQ II, supra, at 6-7.

⁶⁷ FAQ II, supra, at 7.

71 Id. at 2.

73 FAQ II, supra, at 2.

⁶⁶ 2011 ESD, supra, Attachment A at 6.

⁶⁸ Rasmussen Decl. at ¶47 and Exhibit K thereto.

⁶⁹ Id. at ¶50 and Exhibit M thereto.

⁷⁰ 2011 ESD, *supra*, at 2

⁷² Id. Attachment A at 42. According to AVX, EPA's current estimate is at least 11 times higher than its original estimate. Id.

⁷⁴ Cost Guidance, *supra*, at 3-9 and Exhibit 2-3. The Guidance indicates that a 15% contingency factor may be appropriate once the design of the remedial plan has been finalized.

⁷⁵ June 21, 2010 Cost Estimates for 2010 Confined Aquatic Disposal (CAD) Cell Explanation of Significant Differences (ESD)("June 21, 2010 Cost Estimates") at 1. Administrative Record No. 466839. "The cost estimates supporting the proposed Lower Harbor Confined Aquatic Disposal (CAD) Cell (LHCC) were prepared following EPA's guidance document, A Guide to Developing and Documenting Cost Estimates During the Feasibility Study.

million estimate in its 2011 ESD but ignored the EPA guidance and argued that the cost uncertainty factor should be only 15%, because of EPA's long experience at the Site. ⁷⁶ EPA did not mention that it had not yet established a final design for remediation.

As of the end of 2011, EPA had spent approximately \$456 million for Site study and remediation. Those remediation efforts resulted in the dredging of approximately 265, 000 cy of contaminated sentiments, constituting about 30% of the total volume of 900,000 cy that will require dredging according to EPA's most recent estimates.

D. Public Use Changes in and near the Harbor.

As discussed in subsection C. above, the 1998 ROD adopted cleanup standards for PCB-contaminated sediments in the Harbor that vary in different areas in accordance with human access to and use of each particular portion of the Site. Those standards are the most stringent in areas where the public's use and exposure is the highest.

In 2001, EPA recognized that its earlier estimates of volumes to be dredged had been understated because of increased residential land use near the Harbor. Accordingly, it reduced from 50 ppm to 25 ppm cleanup standards in two additional areas to address the risk of dermal contact. It correspondingly increased the estimated volume of sediment to be dredged. ⁷⁹

In 2010, EPA again acknowledged the increased use of the shoreline in the Upper Harbor for private residences and public recreation. In light of these developments, EPA said it "expected that additional shoreline properties developed before remediation will trigger more stringent cleanup levels." EPA has also acknowledged increased public recreational uses of the Site. However, at least as

EPA 540/R-00/002, July 2000. These cost estimates take advantage of actual costs experienced to date for various elements of the harbor cleanup, and as such represent as accurate an estimate as possible of future costs. Nevertheless, consistent with EPA guidance, and especially since many of the funding/remedial scenarios extend over 20 years or more, these estimates are expected to be accurate within -30 to +50 percent of the actual project cost."

⁷⁶ 2011 ESD, *supra*, at 17.

⁷⁷ UAO, supra, at 26, footnote 15.

⁷⁸ 2011 ESD, supra, at 2.

⁷⁹ Explanation of Significant Differences for the Upper and Lower Harbor Operable Unit New Bedford Harbor Superfund Site New Bedford, MA September 2001 ("2001 ESD") at 5.

^{80 2010} Review, supra, at 37.

⁸¹ Id.

⁸² UAO, supra, at 24-25.

of October, 2012, when EPA announced its proposed settlement with AVX, EPA "ha[d] not yet evaluated" the changes in uses along the shoreline and in the Harbor itself, nor had it revised its cleanup levels or estimated dredged sediment volumes in light of those changes.⁸³

The Harbor has experienced significant land use changes over the last two decades.⁸⁴ When EPA began its studies of the Site in 1985, the predominant land use was industrial. Today the largest single land use is residential, with residential and recreation together making up nearly half of the land use in the Upper Harbor.⁸⁵

Additional land use changes in and around the Harbor can be anticipated, some as result of the Coalition's restoration and conservation-related initiatives. In 2009, the Coalition purchased 7.5 acres of Marsh Island located in the Lower Harbor and has rights to the remainder of Marsh Island under a conservation restriction from the Fairhaven Acushnet Land Preservation Trust. 86 The New Bedford Harbor Trustees Council funded the Coalition's purchase and restoration of this property using proceeds from the 1991 and 1992 settlements discussed above. A primary purpose of the Coalition's investment in Marsh Island is to allow public access. shoreline access and enjoyment of coastal and marine resources, wildlife and open space.⁸⁷ The Coalition's conservation restriction states that permitted acts and uses shall include but not be limited to "hiking, canoeing, fishing, wildlife observation and that the general public shall have the right to enter the Premises ... for passive recreation such as hiking, boating, bird watching, etc."88 The Coalition plans to use this property to promote a heightened community conservation ethic by creating a large publicly-accessible natural riverfront reserve containing walking trails, in an area where access opportunities are now limited or non-existent. Marsh Island is also the largest saltmarsh restoration project in the Harbor and its completion will, following cleanup of the Site, greatly improve the community's access to the Harbor's natural resources.89

There are other land use changes which EPA's current cost estimate does not consider. The City of New Bedford plans to construct a public walking path around the perimeter of the Harbor with funding provided by the New Bedford Harbor Trustee Council and to build a boathouse on the Harbor shore to promote increased

⁸³ FAQ I, supra, at 10.

⁸⁴ Rasmussen Decl., *supra*, at ¶¶25 and 27 and Exhibits E, and F.

⁸⁵ Id

⁸⁶ Id. at ¶¶17 and 18, and Exhibits C and D.

⁸⁷ Id

⁸⁸ Id and Exhibit D.

⁸⁹ Id. at ¶21.

recreational boating. In addition, public use of the Harbor itself has evolved and now supports multiple uses, including the hosting of a fishing fleet of 500 vessels as well as a community rowing program for New Bedford youth. In fact, New Bedford Community Rowing, a city-sponsored program that organizes rowing events, has already held three week-long rowing programs in the Harbor. The *Boston Globe* reported on April 29, 2012 that "... the program seeks to transform the public perception of the harbor, long seen in a gritty, industrial light, to that of a recreational destination." According to the article, "City officials are also hoping the river, which lends itself perfectly to crew races, will become a prime draw for big races and help spur tourism." "91"

Applying the same cleanup standards established in EPA's 1998 ROD, the Coalition has determined that the majority of the Upper Harbor now qualifies for a cleanup to the 1 ppm standard because of existing and reasonably foreseeable residential and recreational uses. ⁹² Furthermore, in order to reflect the future uses of the Marsh Island property discussed above, under EPA's own 1998 standards, this area also now qualifies for the 1 ppm cleanup level. ⁹³

EPA's OU-1 cost estimates do not appear to reflect the increased volume of sediments that must be dredged because of existing and foreseeable land use changes in and near the Harbor, and EPA has provided insufficient information to quantify with precision the additional remedial costs that these changes will require. However, the Coalition's analysis indicates that simply applying the EPA's 1998 cleanup standards to increased residential and recreational use in the Upper Harbor would add about \$89 million to EPA's current cost estimate.⁹⁴

E. EPA's 2012 Administrative Order and Subsequent Proposed Settlement with AVX.

In April 2012, EPA issued a unilateral administrative order ("UAO") reopening its legal action against AVX. That order directed that AVX expeditiously implement an EPA-approved cleanup plan for the Site and bear the entire cost of the cleanup. That order placed no limit on the monetary amount AVX was required to spend to comply with the order and contained no release for future liabilities.⁹⁵

⁹⁰ Id. at ¶ 30, 31 and Exhibit H.

⁹¹ Id.

⁹² Id. at¶ 34.

⁹³ Id. at ¶19.

⁹⁴ Id. at ¶35.

⁹⁵ UAO, supra, at 55.

On October 10, 2012, the United States Department of Justice on behalf of EPA filed with the District Court a proposed "supplemental consent decree" that EPA had negotiated with AVX. That decree would embody a settlement in which AVX would pay a fixed sum of \$366.25 million, plus interest, in exchange for immunity from the United States and the Commonwealth for any past or future Site-related liabilities. The proposed settlement would delete all "reopener" provisions of the 1992 Consent Decree and withdraw the UAO that EPA had issued against AVX six months earlier. The proposed settlement would also release AVX from liability for all costs EPA has incurred at the Site to date; those costs are at least \$350 million in excess of amounts AVX and others paid under the previous settlements. It would further provide a covenant not to sue and release AVX from all liabilities for future Site remediation costs; this release would become effective upon AVX's final settlement payment two years hence.

In its press release announcing the settlement, EPA stated that the AVX payment "will provide the bulk of the funds needed to complete the remedy" and stated that its estimated costs to complete the project were "between \$393 and \$401 million". EPA did not refer in its discussion of its cost estimate or elsewhere to an upside cost contingency, whether of 50% or merely 15%. In subsequent public statements, EPA expressed confidence in the accuracy of its cost estimate to complete the cleanup, citing its lengthy experience at the Site and the status of the remedy selection process. EPA also justified the settlement's complete release of AVX from future liability for cleanup costs and the absence of a cost-related reopener on the grounds that EPA's faced significant "litigation risks" if the case were not settled. 102

F. The Coalition's Interest in the Site and Proposed Settlement.

The Coalition is a nonprofit membership organization dedicated to the restoration, protection, and sustainable use and enjoyment of Buzzards Bay and its watershed, including the Acushnet River and New Bedford Harbor. The Coalition has more than 8,000 members, including approximately 1,300 members in the greater New Bedford area. Nearly 250 of its members live within 1000 yards of the Site.

⁹⁶ Supplemental Consent Decree, supra, at 8 and 15.

⁹⁷ Id. at 15 and 4.

⁹⁸ EPA has incurred costs of \$456 million at the Site and received about \$100 million under the 1991-92 settlements discussed above. UAO, *supra*, fn. 15. See also subsection B above.

⁹⁹ Supplemental Consent Decree, supra, at 15.

¹⁰⁰ FAQ 1, supra, at 3.

¹⁰¹ FAQ II at 2-3.

¹⁰² FAQ I, supra, at 2.

¹⁰³ Rasmussen Decl., supra, at ¶¶ 4 and 5.

¹⁰⁴ Id. at ¶7.

The Coalition's members include commercial fishermen who use the Harbor as their home port, owners of businesses and residences near the contaminated Harbor shoreline, recreational boaters, residents and visitors deprived of the use and of the Harbor because the PCB contamination, and many others throughout the area concerned about the contamination's environmental impacts. Figure 1 on the following page shows the residences and offices of Coalition members located near the Harbor. ¹⁰⁵

¹⁰⁵ Id. at ¶6 and Exhibit A.

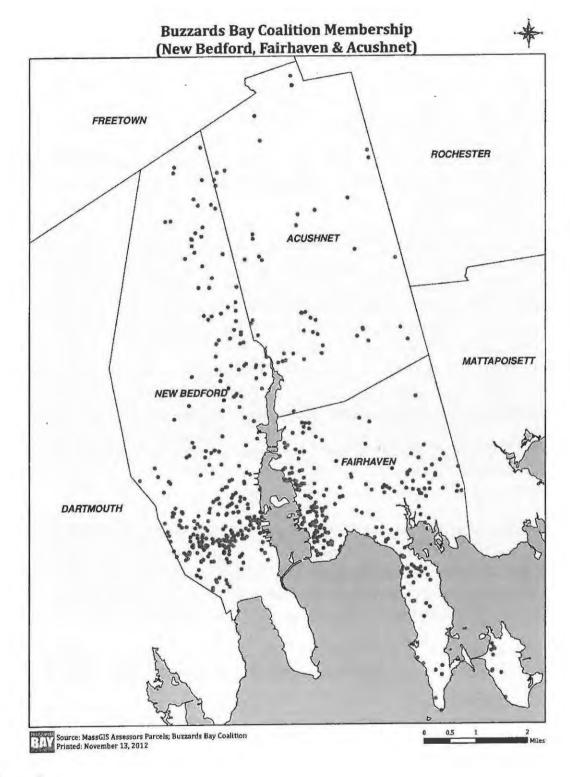


Figure 1.

The Coalition and its members are dismayed about the PCB contamination of the Harbor and its devastating impact on the environment, recreational activities, education opportunities and commercial uses which the Harbor would otherwise provide. ¹⁰⁶ For example, the Coalition and its members are concerned that the clean-up levels established 14 years ago, which are as high as 50 ppm, will prove to be insufficient to reduce PCB concentrations in local fish and lobster to levels which permit safe human consumption. ¹⁰⁷

In light of these concerns, the Coalition analyzed the cleanup criteria EPA is using for the remediation of numerous river and other sediments contaminated with PCBs. The analysis showed that the standard is 1 ppm at most sites, such as a major remediation project in the Fox River in Wisconsin and at six sites supervised by the EPA's Region 1 office in Boston, including the Housatonic River cleanup in Pittsfield.¹⁰⁸

In November of this year, a federal court in Wisconsin rejected legal challenges to EPA's 1 ppm PCB standard for the Fox River cleanup plan, even though EPA's estimated cleanup costs had risen to over \$700 million. That court also endorsed EPA's decision to dredge and dispose of PCB sediments off-site in lieu of capping them in the river, finding that under an on-site containment option, "the more poisonous chemicals [would] be allowed to stay in the River."

EPA's 1998 ROD determined that use of a 1 ppm cleanup standard for all Harbor sediments would cause the volume of dredged sediment to increase to about 2.1 million cy, a volume nearly 2.5 times EPA's current estimate.¹¹¹

The Coalition's own property interests are also affected by the Site's PCB contamination. From 2004 to 2010 the Coalition's headquarters were located at 620 Belleville Avenue, just south of the AVX Facility and directly on the banks of some of the most polluted portions of the Upper Harbor. Its headquarters are now located at 114 Front Street, adjacent to the Lower Harbor. 113

¹⁰⁶ Id. at ¶10.

¹⁰⁷ Id. at ¶8.

 $^{^{108}}$ Id. at ¶38 – 43, and Exhibit J.

¹⁰⁹ United States v. NRC Corp., et. al., 1:10-cv-00910-WCG Filed 11/21/12 and attached hereto as Attachment 8.
110 Id. (emphasis in original). The Fox River Decision also found that dredging and off-site disposal "removes the toxic PCBs from the River for all time and places them in a secure off-site facility. Even if caps provide an adequate solution, they will require maintenance in the long-term, . . . Caps can also affect the navigability of the River in shallow areas or shipping channels, which adds further uncertainty especially if the water levels would decline Finally, as the original ROD noted, capping could be susceptible to catastrophic events like floods." Id. at 17-18.
111 1998 ROD, supra, at 16.

¹¹² Rasmussen Decl., supra, at ¶12.

¹¹³ Id.

As discussed in subsection D. above, for educational and natural resource restoration enhancement, the Coalition owns 7.5 acres of Marsh Island located in the Lower Harbor and holds rights under a conservation restriction on the remainder of the Island. Marsh Island is the largest saltmarsh restoration project in New Bedford Harbor. The Coalition acquired this property with funds from the New Bedford Trustee Council for the specific purpose of restoring them to their natural state and thereafter preserving water quality, wildlife habitat, and public access to the surrounding natural resources. To enhance the Harbor's restoration and public access to it, the Coalition also owns 67 acres at the Acushnet Saw Mill and adjacent LaPalme Riverfront Farm, both located on the Acushnet River north of the AVX Facility.

II. EPA SHOULD WITHDRAW THE PROPOSED "SUPPLEMENTAL"
DECREE AND MODIFY IT TO INCLUDE "REOPENER"
PROVISIONS ALLOWING EPA TO SEEK AVX'S
REIMBURSEMENT OF FUTURE REMEDIAL COSTS EXCEEDING
EPA'S CURRENT ESTIMATE.

The U.S. Department of Justice on behalf of EPA has solicited public comments on EPA's proposed settlement with AVX, which would be embodied in a "supplement" to the 1992 Consent Decree. The Coalition welcomes EPA's recognition—albeit belated—that the pace of the cleanup has been unacceptably slow, that the agency has insufficient resources to implement an effective cleanup, and that AVX is the only entity with the legal responsibility and financial viability to complete such a cleanup. The Coalition would likewise support a settlement of the litigation with AVX that assured that the Harbor will be completely restored, whether or not the cost of restoration exceeds EPA's current estimate.

However, the Coalition must oppose the proposed settlement because it would eviscerate all protections in the 1992 decree allowing EPA to obtain additional funding from AVX if necessary to expeditiously complete an effective remedy. Two of these protections are critical in the particular circumstances of this Site: a) a "reopener" provision, preserving the EPA's right to seek additional funds from AVX if the ultimate costs to complete the remedy exceed EPA's current estimate; and 2) a provision providing that EPA's release of AVX's future liabilities and covenant not to sue does not become effective until EPA certifies the remedy to be complete and effective. A settlement without these provisions is both contrary to

115 Id. at ¶22.

 $^{^{114}}$ Id. at ¶¶17 and 18 and Exhibits C and D.

the public interest and the statutory mandate that governs EPA's authority to settle this type of enforcement action.

As explained in Section I above, AVX is the only viable source of funds to complete the Harbor's restoration if costs to complete the project exceed EPA's current estimate of \$393 million. Notwithstanding EPA's unsubstantiated contentions to the contrary, the costs ultimately required to achieve an effective cleanup remains completely uncertain. Over time, as EPA's remedial plans continue to evolve and unanticipated circumstances arise, costs to complete the project will likely escalate substantially over EPA's current—and very unreliable—estimate. Thus, giving AVX an absolute, no-opener release effective before the project's completion could well deny the government and the community adequate funds for the Harbor's complete restoration. Furthermore, as set forth in Subsections B and C below, a settlement which denies EPA the right to obtain further relief if its current cost estimates prove once again to be understated cannot be justified by exaggerated assertions of litigation risks or by supposed exceptions to the governing statute which denies EPA the authority to enter into such a settlement.

A. The Proposed Settlement With AVX—the Primary Polluter and Only Financially Viable Party—is Not in the Public Interest Unless it is Modified to Include Cost Reopeners.

Decades after the discovery of PCB and other toxic contamination of the Harbor, and notwithstanding EPA's expenditure of substantial sums at the Site, unacceptable threats to human health and the environment are still pervasive. In its April 2012 UAO, EPA documented these threats as follows:

- ➤ Tidal action annually transports PCBs from the Upper to the Lower Harbor and over one-half of these contaminants are carried from the Lower Harbor to the Outer Harbor area of Buzzards Bay. 116
- ➤ Seafood from the Harbor "continues to be contaminated at levels that are orders of magnitude above" public health risk standards, creating cancer risks as high as "1 in 1000." ¹¹⁷
- ➤ Existing PCB levels along the Harbor shoreline remain "significantly higher than those levels deemed protective" by EPA. 118
- ➤ In the Upper Harbor, "the probability of pore water PCBs' being toxic to marine fish...approaches certainty." 119

¹¹⁶ UAO, supra, at 6.

¹¹⁷ Id. at 16.

¹¹⁸ Id.

- > Total catches and earnings of New Bedford's lobster, quahog, and other seafood industries, have significantly decreased since 1979 as a result of closures necessitated by the Harbor's PCB contamination. 120
- > The Harbor's PCB contamination has reduced the use and value of its recreational resources and waterfront property values. 121

In short, although EPA recognized over 30 years ago that the Harbor's PCB contamination posed serious risks and has taken partial steps to address the situation, EPA today acknowledges that the lion's share of the contaminated Harbor sediments are still untouched by the cleanup and the community's health and natural resources continue to be endangered.

Clearly, the need for a prompt and effective cleanup of the Harbor is more urgent than ever and a reasonable settlement with AVX could help accomplish this goal. However, in assessing the reasonableness of a CERLA settlement, reviewing courts assess its "likely efficaciousness as a vehicle of cleansing the environment is of cardinal importance." ¹²² In this case, a proposed cash-out settlement with an absolute release as to future liabilities can accomplish this goal only if there is certainty that either (1) other sources of funding will be immediately available in the event that the settlement amount proves insufficient to complete an environmentally-protective remedy; or (2) the cost of an environmentallyprotective remedy will not exceed the EPA's current cost estimates. Unfortunately, because there is nothing approaching certainty about either requirement, the proposed settlement is not an "efficacious vehicle" for the Harbor's restoration.

> Other than AVX, there is no viable source of funding for a 1. timely cleanup.

In its public comments about this settlement, EPA reviewed the current financial status of other potentially responsible parties and essentially conceded that AVX is the only available source of funding for the cleanup. 123 That is clearly correct.

Indisputably, the AVX Facility was primarily responsible for PCB contamination at the Site 124 and AVX has the financial resources to underwrite the costs for an

¹¹⁹ *Id.* at ¶53. ¹²⁰ *Id.* at ¶¶56-57. ¹²¹ *Id.* at ¶¶58-59.

¹²² Cannons, 889 F2d 79 (1st Cir. 1990).

¹²³ FAO II. supra, at 3-4. See Section I above at subsection C.

effective remedy. In its current filings as a public-traded company, AVX reports annual revenue over \$1 billion and assets over \$2 billion. Its controlling shareholder is a Japanese multinational with annual sales of more than \$14 billion, including substantial dividends that AVX pays to it. As such, AVX's business would not be threatened even if remedial costs proved to be much higher than EPA's current estimate.

As a practical matter, there are no other private parties available to contribute to the cleanup. While one other facility contributed some PCB contamination to the Outer Harbor, its present and former owners are either out of business or have received liability releases from EPA. This is likewise the case as to all of the other potentially responsible parties that EPA named in this litigation. ¹²⁶

Nor is EPA a viable source of funds for the project's expeditious completion. In 1995 Congress repealed the taxes once used to replenish the "Superfund" trust fund to finance EPA's remedial actions, so that today EPA's only source of cleanup funds is annual Congressionally-appropriated general revenues. Significantly, as early as 2002, when EPA had expended all of the monies that the PRPs paid for earlier settlements in this case, EPA determined that it could afford to spend only \$15 million annually for remedial action at the Harbor even though it then estimated the cleanup would cost over \$317 million to complete.

Given the depletion of the Superfund trust fund and the financial straits of the U.S. and Commonwealth governments more generally, there is little likelihood that sufficient government monies will be available in the future to finance the cleanup of the Harbor on any reasonable time scale. EPA itself has acknowledged that, given the "state of the national economy," there is "no guarantee" that additional funding for the project "will materialize year in and year out." The proposed "supplement" to the 1992 consent decree provides no assurance that <u>any</u> funding will be available in the event the AVX settlement payment proves insufficient to complete an environmentally-protective remedy. Tellingly, in its public statements

EPA's early investigations confirmed that the facility was the "primary source of PCBs released" to the Harbor and tests near the facility in 2008 revealed it also to be a source of high levels of contamination by volatile organic compounds. UAO, *supra*, ¶¶4-5.

¹²⁵ See Section I above at subsection A.

¹²⁶ See Section I above at subsection B.

¹²⁷ See Section I above at subsection C.

¹²⁸ Id. In fact, EPA determined that under this "limited funding" scenario it would take at least 40 more years for the remedial action to be finished and lamented that "funding levels are so low as to cause significant project delays and inefficiencies." UAO, supra, at 11-12.

¹²⁹ 2011 ESD, *supra*, Attachment A at 20. *See generally*, Government Accountability Office Report, GAO-10-380, issued May 6, 2010, available at www.gao.gov/products/GAO-10-380.

about the adequacy of funds to pay for the cleanup if the AVX settlement payment proves to be inadequate, EPA has said it only would "seek" monies from the Superfund Trust and the Commonwealth. 130 These are the same sources that have been unable to provide adequate funds for a timely cleanup over the past ten vears. 131

In sum, since the AVX is the only reliable source of funding for all future cleanup costs, a settlement providing AVX with immunity for any future liabilities in exchange for a fixed sum payment is obviously fraught with "risks," as EPA itself concedes. 132 Unfortunately, as shown below, these risks are much higher and have many more serious implications than EPA seems willing to recognize.

> The costs of EPA's remedy are likely to be much higher than 2. the AVX settlement payment.

Since AVX is the only viable source of future funding for this project, a cash-out settlement and an immediate release of all of AVX's future liabilities can be justified only if there is certainty that the future costs of an expeditious, environmentally-protective remedy will not significantly exceed AVX's settlement payment. That payment is about 90% of EPA's current future cost estimate of \$393 to \$401 million. However, as shown below, this estimate is fraught with uncertainly and is likely to prove well understated for at least five reasons:

- EPA already recognizes that its currently-selected remedial plan needs to be expanded because of land use changes;
- Other factors are also likely to escalate the costs of EPA's current remedial plan such as the fact that there is no ROD for OU3, the 17,000 acres of the Outer Harbor;
- A fully-protective remedial plan will cost much more than EPA's current plan;
- EPA has consistently poor track record in estimating the remedial costs at this Site; and

130 FAO I, supra, at 2.

132 FAQ II, supra, at 4.

¹³¹ EPA suggestion that NOAA might fund future cleanup costs (FAQ I, supra, at 3) is not credible. The U.S. National Oceanic and Atmospheric Administration, in its capacity as the Harbor's natural resources trustee, and AVX already entered into a settlement that contains no cost-related reopener. Id. Even if the settlement did not bar future claims, the trustee likely has standing to seek only additional damages to natural resources, not to require reimbursement of EPA's cleanup costs.

- e) Notwithstanding standard industry practice and EPA's own Cost Guidance, EPA's cost estimates contain no contingency or uncertainty factor.
 - a. The Cost of EPA's Currently-Selected Remedy Will Escalate Due to Changes in Land Use and Activities In and Near the Harbor.

As EPA is well aware, its estimates of the cost of cleaning up New Bedford Harbor are keyed directly to its calculations of the amount of contaminated sediment it must dredge and dispose of to comply with the cleanup standards it has established. Likewise, more extensive dredging is obviously required in areas of human exposure where cleanup standards are the most stringent. EPA's most stringent cleanup level for the Site – 1 ppm – is applicable to locations bordering residential and public recreational areas compared to those adjacent to areas of minimal human exposure. ¹³³

EPA has recognized that, because of land use changes, the areas of the Harbor subject to this more stringent standard have increased substantially since 1992 and continue to increase. In a 2010 report, EPA stated that it "expected that additional shoreline properties developed before remediation occurs will trigger more stringent shoreline clean-up standards." Other documents also reflect EPA's awareness that a number of industrial buildings near the Harbor have already converted to residential use and that the City of New Bedford is planning to construct facilities designed to enhance boating and other recreational activities by the public on and near the Harbor. 135

Because EPA itself expects stringency of cleanup standards to be increased in some areas, there will necessarily be a significant escalation of the volume of sediment that must be dredged and necessarily an increase in the costs to complete the cleanup. However, as of October, 2012, EPA had "not yet evaluated" these land use changes in and around the Harbor¹³⁶ and thus obviously has not accounted for these changes in its current cost estimate.

In addition to increased residential use near the Harbor, EPA's cost estimates do not take account of the increasing public access to areas abutting the Harbor for educational restoration, and recreational purposes. One example of particular interest to the Coalition involves enhanced public access to the Marsh Island in the

¹³³ See Section I above at subsection C.

¹³⁴ 2010 Review, supra, at Section 7.2.4.

¹³⁵ UAO, supra, at 24-25.

¹³⁶ FAQ II, supra, at 10.

Lower Harbor. The Coalition plans to create a large publicly-accessible natural riverfront reserve on this property and to develop walking trails in areas where access opportunities are now limited or non-existent. Funding for this project comes from the New Bedford Harbor Trustee Council's Natural Resource Damages funds allocated from the 1991 and 1992 settlements with respect to this Site. Although EPA has apparently assumed the cleanup standards for this area need be only 25 to 50 ppm, the planned use of Marsh Island will trigger a required cleanup to 1 ppm in accordance with EPA's 1998 standards and thus increase the volume of sediments that must be dredged. Likewise, the City's planned River Trail along the Harbor shoreline, and other facilities promoting the Harbor's enhanced recreational use, will also trigger a cleanup level lower than that assumed under EPA's current cost estimates, thus increasing the volume of sediments to be dredged.

Based on the cleanup standards established by EPA in the 1998 ROD, the Coalition has determined that, at a minimum, the entire western intertidal zone of the Upper Harbor and the March Island area in the Lower Harbor now quality for a cleanup to a 1 ppm standard because of existing and anticipated public use and human exposure in these areas. ¹⁴¹ Because EPA has not considered these land use developments in its current cost estimate, it is difficult to quantify with precision the magnitude of additional costs that must be added to its current estimate to account for these changes. However, the Coalition's analysis indicate that simply applying the EPA's 1998 standards to current and planned public uses in and near the Harbor could add at least another \$90 million to EPA's most recent cost estimates. ¹⁴²

b. Other factors are likely to significantly increase the volume of dredged sediments and corresponding costs of the project.

In addition to land use changes, several other factors will likely cause the costs of implementing EPA's remedial plans to increase significantly beyond its current estimate.

First, and foremost, EPA's current cost estimate contains a glaring omission: it entirely ignores the costs required to cleanup OU-3, the 17,000 acres in the Outer

¹³⁷ Rasmussen Decl., supra, at ¶¶20 and 21.

¹³⁸ Id. at ¶24.

¹³⁹ Id. at ¶19.

¹⁴⁰ See Section I at subsection D.

¹⁴¹ Rasmussen Decl., supra, at ¶¶25-27.

¹⁴² Id. at ¶35.

Harbor where commercial fishing is banned. Although significant amounts of PCBs continue to be carried into the Outer Harbor each year, ¹⁴³ EPA has yet to decide how to remedy this contamination, much less estimate the additional costs of doing so. One thing is certain: Those OU-3 costs will increase the total cleanup costs beyond those thus far estimated by EPA.

That is not all. EPA itself has determined that its model is "underestimating the depth to which dredging is required" to remove contaminated sediments in the Upper Harbor. ¹⁴⁴ EPA has further recognized that "at this site, due to poor disposal practices of the past, the more one looks for PCB's in the harbor sediments and the marshes, the more one finds." ¹⁴⁵ Thus, EPA acknowledges specifically and generally that it must dredge more contaminated sediments that it has estimated and its costs will be correspondingly greater.

EPA's current cost estimates are also understated because the EPA contractor that developed the estimate apparently developed it on the assumption that AVX would undertake the remediation. But since EPA has abandoned its April 2012 UAO requiring AVX to complete the project, EPA now plans to undertake the work itself. Experience has shown that, when EPA takes responsibility for implementing a remedial project in lieu of a private party, costs for the same scope of work are at least 20% higher. This consideration alone adds over \$80 million to EPA's current estimate.

In sum, because EPA itself anticipates that the volume of sediments that must be dredged will significantly exceed current expectations and that the ultimate costs of the remedial plan EPA eventually implements are necessarily uncertain at best, the remedial costs incurred to restore the Site could well prove to be much more substantial than EPA's most recent prognosis.

e. EPA's "low cost" remedial design could well prove ineffective once implemented.

Regardless of EPA's necessary modifications to the scope of its currently-selected plan to account for land use changes discussed above, there is considerable uncertainty whether the remedy it implements will prove adequate to protect

145 2011 ESD, supra, Attachment A at 4.

¹⁴³ See Background and Introduction Section above.

^{144 2010} Review, supra, at Section 7.2.4.

¹⁴⁶ EPA's cost estimate is cited in its UAO, *supra*, at 13 n.7; the UAO ordered AVX itself to perform all future remedial work. *Id.* at 30.

¹⁴⁷ Katherine Probst, Testimony Prepared for U.S. Senate Subcommittee on Superfund, Waste Control and Risk Assessment, March 10, 1995 at 4, available at http://www.rff.org/RFF/Documents/RFF-CTst-95-probst.pdf.

human health and the environment because: i) the performance standards EPA adopted in 1998 for the cleanup of most Harbor areas are less stringent than EPA now requires at comparable PCB sites, and ii) EPA's plan for the on-site "containment" of dredged contaminated sediments is an unproven approach that is much less protective than off-site disposal.

(i) Inadequate Cleanup Standards: The standards EPA adopted in the 1998 ROD for dredging most of the Site are much less protective than those used by EPA at other PCB sites. Except in areas of human exposure, those standards range from 10 to 50 ppm. In contrast, EPA has imposed a standard of 1 ppm for all PCB-laden sediments at most similar aquatic sites, including six sites supervised by the EPA's Boston regional office. The Sites where this more stringent standard are being used include comparably-sized projects involving the Housatonic River in Pittsfield, Massachusetts and the Fox River in Green Bay, Wisconsin. A federal court recently rejected challenges to EPA's cleanup standard of 1 ppm for the Fox River site.

Nevertheless, EPA has indicated that it does not plan to change its 1998 cleanup standards for the New Bedford Harbor even though for some areas of the Harbor they are up to 50 times less protective than the criteria in use at similar sites. This does not augur well for the ultimate effectiveness of EPA's remedial plan. The Outboard Marine site in Lake County, Illinois provides a highly relevant example of how initial use of a lax cleanup standard can result in greater future costs. There, EPA implemented a plan to dredge Waukegan River using a PCB cleanup standard of 50 ppm. EPA had to take additional remedial action when post-completion monitoring revealed that PCB levels in fish tissue continued to significantly exceed the applicable human consumption criteria. As a result, EPA issued a ROD Amendment in October 2009, using a revised cleanup standard of 1 ppm and thus requiring substantial additional dredging at substantial cost. ¹⁵¹

This scenario could easily be repeated in the Harbor cleanup. Like the ineffective plan at the Outboard Marine site, EPA is using cleanup standards for the Harbor as high as 50 ppm. The 1998 ROD recognized that, to meet the mandated PCB level of .02 ppm in fish within ten years, the Harbor's cleanup standard must be 1 ppm for all sediments and that even using a Site-wide cleanup standard of 10 ppm would fail to achieve this goal. ¹⁵² If post-remediation monitoring of fish tissue

¹⁴⁸ See Section I above at subsection F.

¹⁴⁹ Id.

¹⁵⁰ FAQ II at 8-10.

¹⁵¹ See Section I above at subsection C.

¹⁵² Id.

demonstrates that human consumption continues to be unsafe and that a 1 ppm cleanup standard must be used throughout the Site, additional remedial work to satisfy this standard more than double the volume of sediment that must be dredged and have a comparable impact on remedial costs. 153

(ii) Unprotective Sediment Disposal Plans: The effectiveness of EPA's planned disposal of sediments from the Lower Harbor also is doubtful. According to EPA's current plan, a CAD cell will be dug in the Lower Harbor floor and sediments dredged from the Lower Harbor will be dumped into those cells. 154 The long-term effectiveness of using CAD cells to contain these contaminated materials permanently on the Harbor's bottom remains unproven at best. This is the same technology EPA unsuccessfully tried in a pilot program at the Harbor and that EPA studied and rejected in 1990 for use in the OU-1 remedy. 155 More recently, after EPA dumped and covered CAD cells in its PCB cleanup of the Puget Sound harbor in Washington, elevated levels of PCB's were detected outside the cells due to inadequate remedial work. 156 As a result. additional remedial actions were required. Furthermore, CAD cells have never been used to contain sediments as contaminated as those at the Site. 157

In sum, EPA's use of unprotective cleanup standards and in-situ containment strategies for this Site may be appear less costly in the short run, but if they prove ineffective, substantial additional work and expense will be required. Because CERCLA section 113(h) prevents anyone from initiating legal action to challenge EPA's remedy selection before the remedial action is completed, EPA is free to ignore concerns about the effectiveness of its remedial plans for the Harbor. Nevertheless, there can be no certainty at this juncture whether the remedy upon which EPA bases its current cost estimate will ultimately prove effective or whether additional actions and attendant expenditures will be required. Unfortunately, under the proposed settlement, AVX will be released from any further liability long before the effectiveness the remedy can be definitively assessed and long before costly additional work is undertaken to address any deficiencies revealed by that assessment.

In its public statements, EPA has contended that the settlement will have "no effect" on the remedy it selects for this Site and "does not limit" future changes to

¹⁵³ See Section I above at subsection E.

¹⁵⁶ Id.

¹⁵⁷ Id.

the remedy. ¹⁵⁸ This is simply not so. By granting a covenant not to sue years before completion of the remedy and omitting any cost-related reopener, EPA would impale itself on the horns of an unacceptable dilemma: EPA must either ignore evidence that the needed remedy will cost much more than AVX's fixed payment or it must confront the likelihood that there will be insufficient funds to promptly implement such a remedy. Plainly, the public interest is disserved by a settlement that would impose such a dilemma.

d. EPA's many cost estimates at the Site over the last 20 years have consistently proven to be significantly understated.

As shown above, the reasonableness of the proposed settlement depends entirely on whether AVX's fixed settlement payment will cover most future remedial costs at the Site. EPA's assurances that this is so are belied by EPA's 20-year history of consistently and significantly underestimating future remedial costs at this Site.

In 1992 after EPA conducted an extensive feasibility study of the OU-1 remedy, it issued a proposed remedial plan. The estimated present-value future cost of that plan was approximately \$33 million, not including a 50% upside contingency factor. In seeking the District Court's approval of its settlement with AVX in 1992, EPA advised the court that \$35 million of the settlement payment would be allocated to future costs of the OU-1 remedy. NWF opposed the settlement, arguing that EPA's cost estimates were unreliable and that the settlement should not be approved until the costs were more certain. However, EPA assured the court that its cost estimates were firmly grounded on a "wealth" of data, "years of information," "expert" evaluations, and "multi-volume comprehensive" studies. Further, while EPA acknowledged that there could be "some exposure if the remedy costs are higher than the government anticipated," it emphasized that this exposure "was mitigated greatly by the reopeners," particularly the \$130 million cost reopener. In the cost of the settlement and the settlement should not be approved until the costs were more certain. However, EPA assured the court that its cost estimates were firmly grounded on a "wealth" of data, "years of information," "expert" evaluations, and "multi-volume comprehensive" studies. In the cost of the cost of

It soon became clear that EPA's cost estimate had been greatly understated. EPA's 1998 ROD somewhat modified the 1990 plan and estimated the present value cost of the ROD plan to be almost four times its earlier estimate, or \$115 million (\$188 million fully-funded over time). The 1998 estimate, too, soon proved illusory.

¹⁵⁸ FAQ I, supra, at 4.

¹⁵⁹ DOJ Memorandum, supra, at 2, 10, footnote 5.

¹⁶⁰ Id. at 10. See also Section I above at subsection B.

¹⁶¹ DOJ Reply Memorandum, supra, at 7.

¹⁶² See Section I above at subsection C.

In 2002, after making two significant modifications to the 1998 ROD, EPA revised its estimate of the fully-funded cleanup costs to be \$317 million and thus nearly twice its 1998 estimate. By 2011, after additional design changes, EPA's most conservative cost estimate had risen another 40% to \$393 million (present value) and \$422 million (fully-funded). 163

Thus, since the 1992 AVX settlement, EPA's cost estimates for remediation of the OU-1 portion of the Site have risen ten-fold, from \$33 million to at least \$393 million. Even taking account of inflation, project duration and other factors, EPA concedes that its current estimate is <u>five times</u> higher than its original estimate. At each instance in which its cost estimates have increased, EPA has expressed confidence in its estimate, citing "comprehensive studies" and a "wealth" of other site-related information. To date, EPA has expended over \$456 million to study and cleanup the Site, and yet a substantial majority of the contaminated sediments have yet to be remediated. Now, again, in support of the proposed settlement, EPA states that it has confidence in its current \$393 million estimate because of even more studies and other information available to it. Given its record at this Site, EPA's assurances about the accuracy of its current estimate ring particularly hollow.

e. Despite standard practice and EPA's own Guidance, EPA's current estimate contains no "contingency" factor

Especially in light of the uncertainties about the scope and effectiveness of EPA's remedial plans, and the historical record of EPA's significantly underestimating future costs at this Site, it is remarkable that EPA's current cleanup cost estimate of \$393 million includes "contingency" factor whatsoever. The absence of such a factor is inconsistent with standard industry practice and with EPA's own guidance for Superfund cleanup projects. Under that guidance, a cleanup cost estimate "always" should include an upside factor of up to 50% for projects where the final remedial design has not yet been completed. 166

In its 2011 ESD, EPA recognized that its cost estimate of \$393 million should include a contingency factor, but it contended that a factor of no more than 15% should be applied. Now, in support of its settlement proposal, EPA merely

¹⁶³ Id

¹⁶⁴ 2011 ESD, Attachment A at 42.

¹⁶⁵ See Section I above at subsection B and C.

¹⁶⁶ See Section I above at subsection C.

¹⁶⁷ Id. at 17.

argues that \$393 million is "most accurate" because it reflects a remedial plan which is already "in place right now." 168

EPA's contentions in this regard have no factual basis. As noted, the EPA report that contains EPA's current estimate expressly stated that it assumed an upside contingency factor of up to 50%. Moreover, the OU-1 remedial plan design has not been finalized. EPA has advised that it will soon begin re-evaluating the entire disposal component of the Upper Harbor remedial plan. EPA's current plan calls for disposal in yet-to-be constructed structures along the shore; EPA once had similar plans for disposal of Lower Harbor sediments but abandoned them in 2002 in favor of off-site disposal. 170

An alternative strategy would be to transport dredged sediments off-site for destruction, as EPA did for sediments from the "hot spot" cleanup in the Upper Harbor and at the Fox River site. As EPA and the federal court recognized in the Fox River cleanup, that more costly approach would be much more protective of human health and the environment than on-site containment. Thus, EPA's current estimate overlooks significant changes to the current remedial plan that may flow from its re-evaluation of the Upper Harbor remedy that EPA shortly plans to undertake. The strategy would be the current remedial plan that may flow from its re-evaluation of the Upper Harbor remedy that EPA shortly plans to undertake.

Further, design of EPA's currently-selected remedy for the Lower Harbor was not begun until after preparation of the current cost estimate and still has not been completed. The history of EPA's remedy selection process for the Lower Harbor also provides no assurance that EPA's current conceptual plan for this area will be its final one. EPA's OU-1 feasibility study issued in 1990 expressly rejected the option of dumping the dredged sediments into on-site CAD cells. Rather, EPA opted for the dredging and disposal of contaminated sediments in CDF structures constructed at the shoreline. In 2002, EPA abandoned this approach in favor of off-site transport and disposal in a licensed landfill, technology used for the disposal of the "hot spot" sediments. In 2011, EPA changed its mind again and opted for disposal in on-site CAD cells—the same remedy EPA studied and rejected 20 years earlier. The content of the same remedy EPA studied and rejected 20 years earlier.

¹⁶⁹ June 21, 2010 Cost Estimates, *supra*, at 1.

¹⁶⁸ FAQ II at 2.

¹⁷⁰ See Section I above at subsection C. In 2011 reversed its decision and opted for on-site containment. Id.

¹⁷¹ See Section I above at subsection F.¹⁷² Rasmussen Decl. at 49 and Exhibit L.

¹⁷³ FAQ II, supra, at 7.

¹⁷⁴ See Section I at subsection C.

Therefore, despite EPA's protestations, the final design of the remedial plans for the Site and <u>not</u> "in place right now" and the estimated costs of the remedy to be ultimately implemented are necessarily subject to substantial uncertainties and unanticipated contingencies. Since EPA's \$393 million estimate reflects no contingency factor, it is obviously significantly understated. A contingency factor as low as 15% is clearly inappropriate given the absence of a final remedial plan; in light of these circumstances and EPA's own guidance, a 50% contingency factor alone is the more appropriate one. In any event, application of a contingency factor increases EPA's current cost estimate by \$60 to \$400 million.

The Coalition and AVX disagree about many aspects of the Harbor cleanup. It is, nonetheless, difficult to quarrel with AVX's critique of EPA's remedy selection and cost-estimation record at this Site over the past 20 years:

EPA's track record of routinely changing its mind and incrementally modifying the remedy provides little comfort that this latest incarnation is the final version or even something likely to be implemented in the form presented. Nor can there be any confidence that the estimated cost today is anything near what the OU1 remedy will ultimately cost. ¹⁷⁵

* * *

In sum, even if EPA had a reliable record in this case regarding cost estimates and at this Site (which it obviously does not), at this juncture there are simply too many uncertainties regarding the ultimate scope and cost of a protective remedy to justify providing a no-reopener cash-out to the only entity able to fund a timely and complete cleanup of the massive damage it caused. The proposed settlement is therefore clearly contrary to the public interest.

B. EPA Exaggerates the Litigation Risks It Confronts in this Case.

One of EPA's principal justifications for its proposed fixed-sum, no-reopening settlement is its boilerplate contention that a fixed sum, no-reopener settlement with AVX is justified because the absence of a settlement "would likely mean years of complex litigation, including litigation over novel legal and significant technical issues, with an uncertain outcome." As a matter of law, this assertion significantly overstates the litigation risks posed in this instance.

176 FAQ I, supra, at 2.

¹⁷⁵ Nutter Letter, supra, at 6.

CERLA, the applicable federal enforcement statue, imposes liability on any past or present owner or operator of a facility from which hazardous substances were at any time released. CERCLA's liability is "sweeping" and "super-strict." That is, the government is not obligated to show that a party was negligent or even aware of the release. The government need prove only that there was a release of hazardous substances from the defendant's property. *Id.* It is also well-settled that a party is "retroactively" liable for its releases whenever they occurred, even if they pre-dated CERCLA's enactment in 1981. 178

In this case, AVX is the current owner of the *only* facility on the Upper Harbor shoreline that manufactured PCB-laden products. Highly toxic concentrations of PCB contamination up to 100,000 parts per million have been found in "hot spots" adjacent to the AVX facility and there is uncontradicted evidence that huge quantities of PCBs were released to the environment from this facility over a 30-year period ending with federal PCB ban in 1979. As such, AVX is clearly a "liable" party under CERCLA section 107(a) and its liability would not be difficult or time-consuming to prove as a matter of law.

AVX's defense that there were also other sources of the Harbor's PCB contamination is irrelevant as a matter of law to its liability for the entire clean-up. CECLA imposes joint and several liability where, as here, the damages are indivisible. ¹⁸⁰ Further, all other potentially responsible parties have resolved their liability with EPA and are essentially judgment-proof. ¹⁸¹ Therefore, this case is no longer burdened by issues about the liabilities of other parties or the division of clean-up costs among various entities. Nor would re-opening the case against AVX involve issues about natural resource damages and insurance coverage that were so time-consuming in the earlier phase of the litigation.

Further, the detection of contaminants other than PCBs in the Harbor does not add to the legal or technical complexity of this case. The cost of the remedy selected by EPA is driven entirely by PCB-related clean-up standards; thus, while other contaminants may be collected during the dredging of PCB-laden sediments, it is the presence of PCBs that is the sole basis for the remedial action at issue. 182

¹⁷⁷ See United States v. Best Foods, 524 U.S. 51, 56 n.1 (1998); and United States v. Burlington Northern Railway Co., 479 F.3d 1113, 1124 (9th Cir. 2007) overruled on other grounds, sub. nom. Burlington Northern & Santa Fe Ry. v. United States, 556 U.S. 599, 617-618 (2009).

¹⁷⁸ See, e.g., United States v. Olin Corp., 107 F.3d 1506, 1513 (11th Cir. 1997).

¹⁷⁹ See 44 Fed. Reg. 31514 (May 31, 1979) (forbidding use of PCBs for most purposes. See also Section I above at subsection A.

¹⁸⁰ See Chem. Nuclear Systems, Inc. v. Bush, 292 F.3d 254, 259 (D.C. Cir. 2002).

¹⁸¹ See Section I above at subsection B.

¹⁸² FAO I, supra, at 1.

Additionally, although AVX may have concerns about the EPA's remedy selection and the costs of those remedies, CERCLA section 113(h) bars judicial review of those issues until remedial work has been completed. Therefore, EPA's enforcement action against AVX would not be prolonged by these issues.

Finally, the 1992 Consent Decree allowed EPA to re-open the case against AVX if any of three circumstances occurred: unknown conditions were discovered, new information came to light, or response costs exceeded a specified amount. Although a reopener could be triggered by any of these circumstances, EPA's UAO in April 2012 presented compelling evidence that each of these circumstances has occurred. Again, it would not take a great deal of EPA's time or effort to prove to the court's satisfaction that the prerequisites for reopening its case against AVX had been satisfied. And if there were any uncertainty about EPA's success in this regard, the government would have the option of moving the District Court to vacate its approval of the 1992 Consent Decree in the interests of justice and changed circumstances.

The likelihood of EPA's success in any "re-opened" litigation against AVX is illustrated by the recent federal court decision regarding the Fox River site. There, parties responsible for PCB contamination of the Fox River in Green Bay, Wisconsin challenged an EPA order requiring them to remediate the site at an estimated cost of over \$700 million. The defendants objected to the order on numerous grounds, several similar to AVX's defenses here, all of which the court rejected on summary judgment. Therefore, the governments' concerns about "litigation risks" in this case appear wholly inconsistent with the facts of this case and governing law.

It is also noteworthy that this is the third settlement AVX has agreed to in this case. This most recent settlement would involve its payment of a substantial sum. Since AVX no longer operates its business in the New Bedford area, this payment clearly is not an effort to foster "good will" in the community. Rather, it obviously reflects the determination of AVX's management and its able attorneys that AVX has no viable defenses to avoid liability for all costs of the PCB clean-up at this Site. Moreover, a settlement that included a cost-related reopener and delayed the effectiveness of the covenant not to sue should still be attractive to AVX since EPA has agreed to forego at least \$325 million in past cost claims not covered by

¹⁸³ UAO, supra, at 21-28.

¹⁸⁴ See Fed. R. Civ. P. 60.

¹⁸⁵ See Section I above at subsection F.

earlier settlements. 186 Furthermore, a cost reopener would still allow AVX to pursue its liability objections if the re-opener were triggered.

Further, EPA and Commonwealth officials knew 10 years ago that clean-up costs had exceeded the reopener cost trigger and that they had insufficient resources to implement an expeditious clean-up of the Harbor. ¹⁸⁷ If the governments were truly worried that reopened litigation against AVX would be prolonged, they could and should have initiated that legal action at that time. It is not in the public interest for governmental inaction to justify an inadequate settlement.

Accordingly, the contention that "litigation risks" provide a credible basis unconditionally to settle AVX's liability without a cost-related reopener in exchange for a fixed sum payment is plainly without merit.

C. The Proposed Settlement is Inconsistent with EPA's Statutory Obligations.

Any settlement proposed by EPA for the District Court's approval must be "faithful to the objectives of the governing statute." Here, the governing statute is CERCLA, and particularly Section 122, as amended in 1986 and 2002. That section seeks to encourage settlements but circumscribes to a great extent EPA's authority to settle cases involving future liabilities. As the District Court held in this case in rejecting an earlier settlement with AVX, "the thrust of this subsection is to ensure that the federal government, and thus ultimately the taxpayer, does not bear the costs of future unknown damages." Indeed, the court in that decision thoroughly documented that Section 122's legislative history reflects "the Congressional concern that potentially responsible parties shall remain liable if an agreed upon settlement proves inadequate to protect the environment and the public health." As explained below, the proposed settlement is not faithful to these Congressional concerns or its mandate and therefore should be modified to delay the effective date of the covenant not to sue and to include a reopener.

1. EPA's authority to settle CERCLA cases is statutorily limited.

Subsection 122(f)(1)(A) authorizes EPA to "provide any person with a covenant not to sue concerning any liability to the United States under this chapter,

¹⁸⁶ See Section I above at subsection E.

¹⁸⁷ See Section I above at subsection C.

¹⁸⁸ United States v. Cannons Engineering Corp., supra, at 84.

¹⁸⁹ In Re Acushnet River & New Bedford Harbor: Proceedings Re Alleged PCB Pollution, supra, at 1037.
¹⁹⁰ Id.

including future liability...," but only under circumstances where a covenant not to sue is in the "public interest." With respect to the public interest condition, subsection 122(f)(4) states that a number of factors must be considered, including the following:

- (A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.
- (B) The nature of the risks remaining at the facility....
- (D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.
- (E) The extent to which the technology used in the response action is demonstrated to be effective.
- (F) Whether the [Superfund Trust] Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility....

Moreover, subsection 122(f)(3) provides unequivocally that "[a] covenant not to sue concerning future liability to the United States *shall not take effect* until the President certifies that remedial action has been completed in accordance with the requirements of this Act at the facility that is the subject of such covenant." (emphasis added).

Accordingly, EPA is not authorized to provide a settling party with a covenant not sue as to future liabilities unless, *inter alia*, it has met all of the public interest conditions set forth in subsection 122(f)(1)(A), based on the factors listed in subsection 122(f)(4), as well as the other factors set forth in subsection 122(f)(1)(B)-(D); <u>and</u> unless any such covenant is crafted such that it will not take effect until after EPA's certification of completion of the remedial action.

Further, even where a covenant not to sue is authorized and has been properly crafted with respect to its effective date, subsection 122(f)(6) nonetheless requires EPA to include a reopener provision, which is referred to in the statute as an

¹⁹¹ Section 122(f)(1)(B) to (D) sets forth other conditions that must also be met. See subsection ii below.

"[a]dditional condition for future liability." ¹⁹² Under Section 122, only in "extraordinary circumstances," may EPA determine not to include an "unknown conditions" reopener on the basis that "other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the facility." ¹⁹³ In making such determination, EPA must consider factors such as those listed under subsection 122(f)(4) as well as "volume, toxicity, mobility, strength of evidence, ability to pay, litigative (sic) risks, public interest considerations, precedential value, and inequities and aggravating factors." The House Conference Report regarding this provision reveals that a provision more hospitable to the absence of reopeners was replaced by a tougher measure in the Conference:

The conference substitute deletes the House provision regarding a potentially responsible party's ability to obtain a covenant not to sue without a "reopener" for unknown conditions if that responsible party contributes to a "Groundwater and Surface Water Protection Fund" for any future problems at the facility. Instead, new section 122(f)(6)(B)... now states that settlements shall not be granted without reopeners for unknown conditions, except in extraordinary circumstances where all other terms and conditions of the settlement agreement are sufficient to protect health and the environment from any future releases....

The Congressional mandate that limits of EPA's settlement authority in this case is clear. Although requiring a reopener provision may make CERCLA settlements somewhat more difficult to achieve, such a trade-off must be accepted in return for assurance that those responsible for endangering public health and the environment are not to be allowed escape liability if the settlement proves inadequate to assure protection of public health and the environment.

¹⁹² See also subsection 122(f)(6)(C), authorizing EPA to include additional reopeners conditions where "necessary and appropriate to assure protection of public health, welfare, and the environment."

¹⁹³ CERCLA Section 122(f)(6)(B).

¹⁹⁴ H.R. Conf. Rep. No. 962, 99th Cong., 2d Sess, 255 (1986) (emphasis added).

2. EPA Lacks the Authority to Enter into the Proposed Settlement because its Covenant Not To Sue Would Take Effect Prior to Completion of the Remedial Action and because the Settlement Fails to Include a Reopener.

In this case, EPA lacks the authority to enter into the proposed settlement with AVX because the statutory prerequisites authorizing EPA to grant unconditional covenant not to sue have not been met. First, as explained more fully in Section IIA. above, the public interest factors listed CERCLA Section 122(f)(4) strongly militate against this settlement:

As to factor A, "the effectiveness and reliability of the remedy", there are substantial uncertainties whether EPA's plan to use PCB cleanup standards as lax as 50 ppm and to bury and cap contaminated sediments in on-site cells will prove to be sufficient to restore the Harbor; 195

As to Factor B, "the nature of the risks remaining" at the Site, EPA has documented that contaminated sediments remain untouched and that conditions at the Harbor continue to constitute a serious endangerment to public health and the environment; 196

As to factor D, "the extent to which the response action provides a complete remedy", the proposed remedial plan leaves most contaminated sediments on-site and thus provides no assurance that it will permanently destroy, eliminate, or immobilize the Harbor's contamination; 197

As to factor E, "the extent to which the technology used in the response action is demonstrated to be effective", use of on-site CAD cells is an unproven technology for sediments with PCB concentrations as high as those at this Site and a pilot project at the Site using this technology was unsuccessful: 198

As to Factor F, "whether the [Superfund Trust] Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary", the record is clear that the Trust has insufficient

Id.

¹⁹⁵ Section II.A.2 above at subsection C.

¹⁹⁶ Section II.A.2 above.

¹⁹⁷ Section II.A.2 above at subsection C.

funds to assure timely completion of the project and that AVX is the only viable source of funding required for its completion; 199

Furthermore, wholly apart from subsection 122(F)(1') requirements, subsection 122(f)(3) flatly prohibits EPA from providing a covenant not to sue which becomes effective before the remedy is certified as complete. Nevertheless, the covenant in this proposed settlement would become effective much sooner. Even if the absence of a reopener were appropriate in light of the public factors listed above (which it is not in this case), any covenant not to sue is statutorily required to include language delaying the effectiveness of the covenant until after EPA (under delegated authority from the President) certifies that remedial action has been completed in accordance with the requirements of CERCLA. Notably, the 1992 Consent Decree with AVX contained such a provision, but it has been deleted from the current proposed settlement. Thus, the covenant not to sue, as proposed, is unauthorized as a matter of law and, as such, is *ultra vires*. 202

As discussed above, in 1989 the District Court rejected a natural resources damages settlement with AVX because it contained no reopener. ²⁰³ The principles set forth in that 1989 Decision apply with even more force in the cleanup context because that was the context in which Congress enacted those provisions and the context to which they specifically apply. Like the settlement at issue in the 1989 Decision, here there are no "extraordinary circumstances," as the term is used in subsection 122(f)(6)(B), that place this case in that rare one percent of cases that warrant the absence of a reopener. Much to the contrary, virtually all of public interest factors strongly militate in favor of preventing AVX from escaping future liability so as to ensure that the cleanup is timely completed. Further, the other factors referenced in subsection 122(f)(6)(B), including but limited to the relatively minimal "litigative risk" the governments actually face

199 Section II.A above.

²⁰¹ Id. See also 1992 Consent Decree, supra, at 19.

²⁰⁰ Paragraph 15-e of the Supplemental Consent Decree, *supra*, states that the covenant will become effective when AVX's payments are made. AVX's final payment is due two years after the date of entry of the proposed decree. *Id. at 8*.

²⁰² In addition, the Coalition believes that EPA lacks authority to provide AVX a covenant not to sue because other factors set forth in subsection 122(f)(1) have not been satisfied. For example, subsection(1)(B) requires that the covenant not to sue "expedite" the response action at issue; but here the covenant could result in there being insufficient funding to complete the remedy promptly. *See* Section II.A. above at subsection 2. Likewise, subsection (f)(1)(D) requires that the response action at issue "has been approved" by EPA; but here the EPA plans to re-evaluate the Upper Harbor remedy and has not even issued a final feasibility study as to the Outer Harbor remedy. *Id.* The Coalition reserves all rights regarding these issues.

here and AVX's substantial ability to pay, likewise clearly demonstrate that the extraordinary circumstances exemption does not apply.²⁰⁴

In sum, the 1992 Consent Decree that EPA negotiated with AVX and that the District Court approved contained the very same essential provisions that are missing from this proposed settlement. Most importantly, that decree provided for a reopener if remedial cost exceeded a specified amount. And of equal significance, unlike the release from future liability in the proposed settlement, the covenant not to sue in the 1992 Consent Decree became effective only *after* the remedy was completed and EPA certified it as protective. Similarly, the UAO issued by EPA to AVX in April 2012 expressly reserved all EPA's rights regarding AVX's future liabilities. By contrast, under the settlement now proposed, AVX—the primary polluter at this Site and the only entity with resources available to finance the remedy's completion—would be unconditionally released from all future liability many years before the remedy's completion and perhaps even before EPA finally settles on the design of its remedial plan. In these circumstances, CERLA simply bars EPA from settling this case on the basis it has proposed.

III. CONCLUSION

For the foregoing reasons, EPA should withdraw its proposed settlement agreement and proceed to negotiate a revised agreement with AVX that is consistent with these comments.

Respectfully submitted,

Korrin N. Petersen, Esq.

Senior Attorney

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²⁰⁴ Section II.B. above, and Section I at subsection B.

Attachment 1

10-K 1 avxform10kfy12.htm AVX CORPORATION FORM 10-K FY2012

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549

FORM	10-K
[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 150 For the fiscal year ended March 31, 2012	
[] TRANSITION REPORT PURSUANT TO SECTION 13 OR For the transition period fromto	15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
Commission File Number: 1-7201 (Exact name of registrant as s	PORATION pecified in its charter)
<u>Delaware</u>	33-0379007
(State or other jurisdiction of incorporation or	
organization)	(I.R.S. employer identification number)
1 AVX Boulevard Fountain Inn, South Carolina (Address of principal executive offices) (864) 957-2	29644 (Zip Code)
(Registrant's telephone numbe	
Securities registered Pursuant to	
mul e la	V V V V V V V V V V V V V V V V V V V
Title of each class Common Stock, \$.01 par value per share	Name of each exchange on which registered New York Stock Exchange
Common Stock, \$.01 par value per share	New York Block Exchange
Securities registered pursuant to Securities	ction 12(g) of the Act: None
Indicate by check mark if the registrant is a well-known seasoned issue []	r, as defined in Rule 405 of the Securities Act. Yes [X] No
Indicate by check mark if the registrant is not required to file reports pures [] No [X]	rsuant to Section 13 or Section 15(d) of the Securities Act.
Indicate by check mark whether the registrant (1) has filed all reports Exchange Act of 1934 during the preceding 12 months (or for such reports), and (2) has been subject to such filing requirements for the past	shorter period that the registrant was required to file such
Indicate by check mark whether the registrant has submitted electron Interactive Data File required to be submitted and posted pursuant to R for such shorter period that the registrant was required to submit and posted	ule 405 of Regulation S-T during the preceding 12 months (or
Indicate by check mark if disclosure of delinquent filers pursuant to Ite be contained, to the best of registrant's knowledge, in definitive proxy of this Form 10-K or any amendment to this Form 10-K. [X]	
Indicate by check mark whether the registrant is a large accelerated filer reporting company. See the definitions of "large accelerated filer", "acc of the Exchange Act.	
Large accelerated filer [] Non-accelerated filer [] (Do not check if a smaller reporting condicate by check mark whether the registrant is a shell company (as determined to the company).	
Based on the closing sales price of \$11.87 on September 30, 2011, the second fiscal quarter, the aggregate market value of the common stoc \$570,703,511.	
As of May 4, 2012, there were 169,600,329 shares of the registrant's con-	mmon stock, par value \$.01 per share, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE Portions of the registrant's definitive proxy statement for the 2012 Annual Meeting of Stockholders, which will be filed within 120

days of March 31, 2012, are incorporated by reference into Part III.

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Cautionary Statement Pursuant to Safe Harbor Provisions of the Private Securities Litigation Reform Act of 1995

The following discussion and analysis should be read in conjunction with the consolidated financial statements, including the notes thereto, appearing elsewhere herein. Statements in this Annual Report on Form 10-K that reflect projections or expectations of future financial or economic performance of AVX Corporation, and statements of the Company's plans and objectives for future operations, including those contained in "Business", "Risk Factors", "Management's Discussion and Analysis of Financial Condition and Results of Operations", and "Quantitative and Qualitative Disclosures about Market Risk", or relating to the Company's outlook for overall volume and pricing trends, end market demands, cost reduction strategies and their anticipated results, and expectations for research. development and capital expenditures, are "forward-looking" statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Words such as "expects", "anticipates", "approximates", "believes", "estimates", "intends" and "hopes" and variations of such words and similar expressions are intended to identify such forward-looking statements. No assurance can be given that actual results or events will not differ materially from those projected, estimated, assumed or anticipated in any such forward-looking statements. Important factors that could result in such differences, in addition to the other factors noted with such forward-looking statements and in "Risk Factors" in this Annual Report on Form 10-K, include: general economic conditions in the Company's market, including inflation, recession, interest rates and other economic factors; casualty to or other disruption of the Company's facilities and equipment; potential environmental liabilities; and other factors that generally affect the business of manufacturing and supplying electronic components and related products. Forward looking statements are intended to speak only as of the date they are made and AVX Corporation does not undertake to update or revise any forward-looking statement contained in this Annual Report on Form 10-K to reflect new events or circumstances unless and to the extent required by applicable law.

Passive Component sales were \$1,041.9 million for the fiscal year ended March 31, 2011 compared to \$805.9 million during the fiscal year ended March 31, 2010. The sales increase in Passive Components reflects the overall improvement in global markets in all regions and virtually all markets and sales channels that began during the second half of fiscal 2010 and continued throughout fiscal 2011. The increase in sales of Ceramic Components reflects an increase in the volume of unit sales and favorable pricing environment resulting from increased demand due to the improved global economy and resulting increased demand for electronic components. The increase in sales of Tantalum Components is the result of increased demand and a favorable pricing environment for these components as customers increased purchases in response to the improved economic conditions. Increased revenues from Advanced Components reflect the higher demand resulting from the improved global economy and resulting end user demand for electronic component products and concurrent demand for increased functionality in electronic products such as smart phones, tablets and automobiles.

KDP and KKC Resale sales were \$440.1 million for the fiscal year ended March 31, 2011 compared to \$338.7 million during the fiscal year ended March 31, 2010. When compared to fiscal 2010, the increase during fiscal 2011 is primarily attributable to an increase in KDP unit sales volume due to higher end user demand, particularly in the telecommunications market, resulting from the improvement in global economic conditions.

Total Interconnect product sales, including AVX manufactured and KEC Resale Connectors, were \$171.2 million in the fiscal year ended March 31, 2011 compared to \$160.4 million during the fiscal year ended March 31, 2010. This increase was primarily attributable to increases in the automotive and telecommunications based product sectors as a result of the improved global economy.

Our sales to independent electronic distributors represented 42% of total net sales for the fiscal year ended March 31, 2011, compared to 39% for fiscal year ended March 31, 2010. Our sales to distributor customers involve specific ship and debit and stock rotation programs for which sales allowances are recorded as reductions in sales. Such allowance charges were \$32.8 million, or 4.5% of gross sales to distributor customers, for the fiscal year ended March 31, 2011 and \$29.5 million, or 5.5% of gross sales to distributor customers, for the fiscal year ended March 31, 2010. Applications under such programs for fiscal years ended March 31, 2011 and 2010 were approximately \$32.8 million and \$29.7 million, respectively.

Geographically, compared to the fiscal year ended March 31, 2010, sales for the fiscal year ended March 31, 2011 were 30.9% in Europe, 28.0% in the Americas and 23.6% in Asia. The movement of the U.S. dollar against certain foreign currencies resulted in an unfavorable impact on sales for the year ended March 31, 2011 of approximately \$18.1 million when compared to the prior year.

Gross profit in the fiscal year ended March 31, 2011 increased to 27.7% of sales or \$457.4 million compared to a gross profit margin of 21.3% of sales or \$278.2 million in the fiscal year ended March 31, 2010. This increase is primarily a result of the increased demand for higher margin value added products, particularly for Tantalum Components, due to end user demand for increased functionality and electronic content increases in end user products such as automobiles, smart phones, tablets, hybrid and electric cars and renewable energy products and concerns about component availability. This increased demand for higher margin value added products in conjunction with improved operating efficiencies and disciplined cost management resulted in higher margins throughout fiscal 2011. During the fiscal year ended March 31, 2011, benefits from higher production volumes and lower operating costs were partially offset by higher raw materials and energy cost. During the fiscal year ended March 31, 2010 we incurred restructuring charges of \$4.4 million related to headcount reductions and other charges including those related to facility closures as we realigned production capabilities and reduced operating costs. There were no restructuring charges for the year ended March 31, 2011. During the fiscal year ended March 31, 2010, we also recorded a \$5.0 million reduction in cost of sales related to a vendor settlement. In addition, during fiscal 2011 when compared to the prior year, there was a favorable impact on costs of approximately \$22.3 million due to currency movement of the U.S. dollar against certain foreign currencies.

Selling, general and administrative expenses for the fiscal year ended March 31, 2011 were \$123.9 million, or 7.5% of net sales, compared to \$108.5 million, or 8.3% of net sales, for the fiscal year ended March 31, 2010. The increase in selling, general and administrative expenses was primarily due to higher selling expenses resulting from higher sales. During the fiscal year ended March 31, 2010, we recorded \$2.5 million of restructuring charges primarily related to headcount reductions to reduce ongoing selling, general and administrative expenses.

Research, development and engineering expenditures, which encompass the personnel and related expenses devoted to developing new products and maintaining existing products, processes and technical innovations, were approximately \$23.7 million and \$24.7 million in fiscal 2011 and 2010, respectively. Research and development costs included therein increased in fiscal 2011 to \$7.4 million compared to \$6.8 million in fiscal 2010. Engineering expenses decreased \$1.5 million to \$16.3 million in fiscal 2011 compared to \$17.8 million in fiscal 2010.

Profit from operations for the fiscal year ended March 31, 2011 increased \$154.2 million to \$324.9 million compared to \$170.7 million for the fiscal year ended March 31, 2010. In addition to the factors discussed above, during the fiscal year ended March 31, 2011 we recognized \$8.6 million for environmental and related legal charges related to the implementation of certain environmental remediation actions in the U.S. Gains of \$3.5 million resulting from the sale of excess corporate assets are included in other operating income for the fiscal year ended March 31, 2010.

Other income increased \$3.6 million to \$9.3 million in fiscal 2011 compared to \$5.7 million in fiscal 2010. This increase is attributable to net foreign currency gains of approximately \$1.7 million in fiscal 2011 compared to net foreign currency losses of \$1.6 million in fiscal 2010, partially offset by a decrease in interest income of approximately \$0.6 million resulting from lower return rates on investment balances when compared to the prior fiscal year. Included in other income for the fiscal year ended March 31, 2010 are impairment charges related to the decline in market value of certain available-for-sale securities of \$0.4 million.

The effective tax rate for the fiscal year ended March 31, 2011 was 27.0% compared to an effective tax rate of 19.0% for the fiscal year ended March 31, 2010. This higher effective tax rate is primarily due to the decrease in the amount of deferred tax liabilities associated with certain of our foreign branch losses taken as deductions in prior years' U.S. tax returns no longer subject to U.S. income tax recapture regulations. In March 2007, the Internal Revenue Service enacted a change in tax regulations that reduced the U.S. income tax recapture period for such foreign branch losses from 15 to 5 years. As a result, \$3.6 million of recapture expired in the current fiscal year compared to \$16.6 million during the fiscal year ended March 31, 2010. In addition, the effective tax rate increased due to the increase in pre-tax income in higher tax rate jurisdictions when compared to the same period last year, partially offset by a one-time tax benefit of \$2.2 million attributable to an increase in available U.S. foreign tax credits relating to one of our European operations. We estimate a further reduction in deferred tax liabilities of \$3.2 million during the fiscal year ending March 31, 2012 as the recapture period related to foreign branch losses deducted in certain prior years expire.

As a result of the factors discussed above, net income for the fiscal year ended March 31, 2011 was \$244.0 million compared to \$142.9 million for the fiscal year ended March 31, 2010.

Financial Condition

Liquidity and Capital Resources

Our liquidity needs arise primarily from working capital requirements, dividends, capital expenditures and acquisitions. Historically, the Company has satisfied its liquidity requirements through funds from operations and investment income from cash and investments in securities. As of March 31, 2012, we had a current ratio of 5.8 to 1, \$1,051.5 million of cash, cash equivalents and investments in securities, \$2,120.8 million of stockholders' equity and no debt.

As of March 31, 2012, we had cash, cash equivalents and short-term and long-term investments in securities of \$1,051.5 million, of which \$469.6 million was held outside the U.S. Liquidity is subject to many factors, such as normal business operations as well as general economic, financial, competitive, legislative, and regulatory factors that are beyond our control. Cash balances generated and held in foreign locations are used for on-going working capital, capital expenditure needs and to support acquisitions. These balances are currently expected to be permanently reinvested outside the U.S. If these funds were needed for general corporate purposes in the U.S., we would incur significant income taxes to repatriate to the U.S. cash held in foreign locations. In addition, local government regulations may restrict our ability to move funds among various locations under certain circumstances. Management docs not believe such restrictions would limit our ability to pursue the Company's intended business strategy.

Net cash from operating activities was \$148.4 million for the fiscal year ended March 31, 2012, compared to \$152.1 million for the fiscal year ended March 31, 2011 and \$200.5 million for the fiscal year ended March 31, 2010.

Purchases of property and equipment were \$49.2 million in fiscal 2012, \$27.5 million in fiscal 2011 and \$28.9 million in fiscal 2010. Expenditures primarily related to expanding the production capabilities of the passive component and connector product lines, expanding production capacity in lower cost regions, as well as the implementation of improved manufacturing processes. We continue to make strategic capital investments in our advanced and specialty passive component and interconnect products and expect to incur capital expenditures of approximately \$50 million in fiscal 2013. The actual amount of capital expenditures will depend upon the outlook for end market demand.

Our funding is internally generated through operations and investment income from cash and investments in securities. We have assessed the condition of the current global credit market on our current business and believe that based on the financial condition of the Company as of March 31, 2012, that cash on hand and cash expected to be generated from operating activities and investment income from cash and investments in securities will be sufficient to satisfy our anticipated financing needs for working capital, capital expenditures, environmental clean-up costs, pension plan funding, research, development and engineering expenses and any dividend payments or stock repurchases to be made during the upcoming year. While changes in customer demand have an impact on our future cash requirements, changes in those requirements are mitigated by our ability to adjust manufacturing capabilities to meet increases or decreases in customer demand. Additionally, we do not anticipate any significant changes in our ability to generate or meet our liquidity needs in the long-term.

In fiscal 2010, 2011 and 2012, dividends of \$27.2 million, \$32.3 million and \$44.2 million, respectively, were paid to stockholders.

On October 19, 2005, the Board of Directors of the Company authorized the repurchase of 5,000,000 shares of our common stock. On October 17, 2007, the Board of Directors of the Company authorized the repurchase of an additional 5,000,000 shares of our common stock. As of March 31, 2012, there were 6,492,063 shares that may yet be repurchased under this program.

We purchased 321,969 shares at a cost of \$3.7 million during fiscal 2010, 445,528 shares at a cost of \$6.2 million during fiscal 2011 and 625,068 shares at a cost of \$8.4 million during fiscal 2012. The repurchased shares are held as treasury stock and are available for general corporate purposes.

At March 31, 2012, we had contractual obligations for the acquisition or construction of plant and equipment aggregating approximately \$1.4 million.

We make contributions to our U.S. and international defined benefit plans as required under various pension funding regulations. We made contributions of \$8.2 million to our international defined benefit plans during the year ended March 31, 2012 and estimate that we will make contributions of approximately \$7.7 million during the fiscal year ending March 31, 2013. We have unfunded actuarially computed pension liabilities of approximately \$22.9 million related to these defined benefit pension plans as of March 31, 2012.

We are a lessee under long-term operating leases primarily for office space, plant and equipment. Future minimum lease commitments under non-cancelable operating leases as of March 31, 2012, were approximately \$25.7 million.

From time to time we enter into delivery contracts with selected suppliers for certain metals used in our production processes. The delivery contracts represent routine purchase orders for delivery within three months and payment is due upon receipt.

We are involved in disputes, warranty and legal proceedings arising in the normal course of business. While we cannot predict the outcome of these proceedings, we believe, hased upon our review with legal counsel, that none of these proceedings will have a material impact on our financial position, results of operations, or cash flows. However, we cannot be certain if the eventual outcome and any adverse result in these or other matters that may arise from time to time may harm our financial position, results of operations, or cash flows.

On June 2, 2006, we received a "Confirmation of Potential Liability; Demand and Notice of Decision Not to Use Special Notice Procedures" dated May 31, 2006 from the EPA with regard to \$1.6 million (subsequently reduced to \$0.9 million) of past costs, as well as future costs for environmental remediation, related to the purported release of hazardous substances at an abandoned facility referred to as the "Aerovox Facility" (the "Facility"), located at 740 Belleville Avenue, New Bedford, Massachusetts. Aerovox Corporation, a predecessor of AVX, sold this Facility to an unrelated third party in 1973. A subsequent unrelated owner, Aerovox Inc., the last manufacturer to own and operate in the Facility, filed for bankruptcy in 2001 and abandoned the Facility. AVX has substantially completed its obligations under agreements between the EPA, the City of New Bedford and AVX. Work pursuant to an agreement with the state regulatory authorities is expected to begin shortly, and is likely to include soil and groundwater remediation. Based on our own estimate of remediation costs, we have accrued an estimate of the potential liability related to performance of such environmental remediation actions at the Facility; however, until remediation is complete, we cannot be certain there will be no additional costs.

In 1991, in connection with a consent decree, we paid \$66 million, plus interest, toward the environmental conditions at, and remediation of, New Bedford Harbor in the Commonwealth of Massachusetts ("the harbor") in settlement with the United States and the Commonwealth of Massachusetts, subject to reopener provisions, including a reopener if certain remediation costs for the site exceed \$130.5 million. In 2007, we received notification from the EPA and the Department of Justice indicating that the United States was preparing to exercise the cost reopener. In March 2011, the EPA issued the Fourth Explanation of Significant Differences ("ESD #4") that explains the planned changes to the existing remedial action plan for the harbor to include the use of a confined aquatic disposal ("CAD") cell, along with interim off-site transportation and disposal of certain contaminated dredge spoils, and the continued use of long-term on-site storage for other contaminated dredge spoils. ESD #4 provides future cost estimates under the new remedial action plan (in addition to costs incurred to date) ranging from \$362 million to \$401 million, net present value, based on certain criteria included in the ESD #4. The EPA has indicated that remediation costs through December 31, 2011 were approximately \$456 million, not all of which are subject to the reopener provisions.

On April 18, 2012, the EPA issued to the Company a Unilateral Administrative Order ("UAO") directing the Company to perform the Remedial Design, the Remedial Action and Operation and Maintenance for the harbor cleanup. The effective date set forth in the UAO is June 18, 2012, pursuant to which the Company has until June 25, 2012 to inform the EPA if it intends to comply with the UAO.

We have not received complete documentation of past response costs from the EPA and therefore have not yet completed an investigation of the monies spent or available defenses in light of these notifications and indications. We have also not yet determined whether the Company can avoid responsibility for all, or some portion, of these past or future costs because the remediation method has changed over time and costs can be appropriately apportioned to parties other than the Company. We anticipate further discussions with the U.S. Department of Justice, the EPA, and the Commonwealth of Massachusetts in the first half of our fiscal year

2013.

We are continuing to assess the UAO as well as potential defenses and other actions with respect to the site. However, in light of the foregoing, we consider it to be probable and reasonably estimable that we will incur cost within a range of approximately \$100 million to \$730 million, with no amount within that range representing a more likely outcome until such time as we complete our investigation with regard to monies spent, available defenses and other matters. We recognize liabilities for environmental exposures when analysis indicates that is both probable that a liability has been incurred and the amount of loss can be reasonably estimated. When a range of loss can be estimated, we accrue the most likely amount. In the event that no amount in the range of probable loss is considered most likely, the minimum loss in the range is accrued. Accordingly, we have recorded a charge for the fourth quarter and year ended March 31, 2012 of \$100 million with respect to this matter.

We have been named as a potentially responsible party in state and federal administrative proceedings seeking contribution for costs associated with the correction and remediation of environmental conditions at various waste disposal and operating sites. In addition, we operate on sites that may have potential future environmental issues as a result of activities at sites during AVX's long history of manufacturing operations or prior to the start of operations by AVX. Even though we may have rights of indemnity for such environmental matters at certain sites, regulatory agencies in those jurisdictions may require us to address such issues. Once it becomes probable that we will incur costs in connection with remediation of a site and such costs can be reasonably estimated, we establish reserves or adjust our reserves for our projected share of these costs. A separate account receivable is recorded for any indemnified costs. Our environmental reserves are not discounted and do reflect any possible future insurance recoveries, which are not expected to be significant, but do reflect a reasonable estimate of cost sharing at multiple party sites or indemnification of our liability by a third party.

We currently have environmental reserves for current and estimated future remediation and compliance costs of approximately \$115.9 million at March 31, 2012. The amount recorded for identified contingent liabilities is based on estimates. Amounts recorded are reviewed periodically and adjusted to reflect additional legal and technical information that becomes available. The uncertainties about the status of laws, regulations, regulatory actions, technology and information related to individual sites make it difficult to develop an estimate of the reasonably possible aggregate environmental remediation exposure; therefore these costs could differ from our current estimates.

Disclosures about Contractual Obligations and Commitments

The Company has the following contractual obligations and commitments as of March 31, 2012 as noted below.

					FY	2014 -	FY	2016 -		
Contractual Obligations (in thousands)	7	Fotal	FY	2013	FY	2015	FY	2017	The	reafter
Operating Leases	\$	25,728	\$	6,041	\$	9,236	\$	7,969	\$	2,482
Plant and Equipment	\$	1,384	\$	1,384	\$		\$	-	\$	-

As discussed in Note 8 to our consolidated financial statements elsewhere herein, the amount of unrecognized tax benefits recorded in the Company's balance sheet at March 31, 2012 was \$12.0 million. The Company is unable to reasonably estimate in which future periods these amounts will be ultimately settled.

During the fiscal year ended March 31, 2012, we made contributions of \$4.5 million to Company sponsored retirement savings plans. Our contributions are partially based on employee contributions as a percentage of their salaries. Certain contributions by the Company are discretionary and are determined by the Board of Directors each year. We expect that our contributions for the year ending March 31, 2013 will be approximately the same as in fiscal 2012.

During the fiscal year ended March 31, 2012, we made no contributions to our U.S. defined benefit plans, due to their fully funded status at the end of the prior year and \$8.2 million to our international defined benefit plans. These contributions are based on a percentage of pensionable wages or to satisfy funding requirements. We expect that our contributions for the fiscal year ending March 31, 2013 will be none for our U.S. defined benefit plans and approximately \$7.7 million for our international defined benefit plans.

We have an employment agreement with our Chief Executive Officer which provides for salary continuance equivalent to his most recent base salary as a full-time employee during a two-year advisory period upon retirement from the Company.

From time to time we enter into delivery contracts with selected suppliers for certain metals used in our production processes. The delivery contracts represent routine purchase orders for delivery within three months and payment is due upon receipt. As of March 31, 2012, we had no material outstanding purchase commitments.

Critical Accounting Policies and Estimates

"Management's Discussion and Analysis of Financial Condition and Results of Operations" is based upon our consolidated financial statements and the notes thereto, which have been prepared in accordance with generally accepted accounting principles in the United States. The preparation of these financial statements requires management to make estimates, judgments and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reported periods. On an ongoing basis, management evaluates its estimates and judgments, including those related to revenue recognition, warranties, inventories, pensions, income taxes and contingencies. Management bases its estimates, judgments and assumptions on historical experience and on various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. While our estimates and assumptions are based on our knowledge of current events and actions we may undertake in the future, there can be no assurance that actual results will not differ from these estimates and assumptions. On an ongoing basis, we evaluate our accounting policies and disclosure practices. In management's opinion, the critical accounting policies and estimates, as defined below, are more complex in nature and require a higher degree of judgment than the remainder of our accounting policies described in Note 1 to our consolidated financial statements elsewhere herein.

Revenue Recognition

All of our products are built to specification and tested by us for adherence to such specification before shipment to customers. We ship products to customers based upon firm orders. Shipping and handling costs are included in cost of sales. We recognize revenue when the sales process is complete. This occurs when products are shipped to the customer in accordance with the terms of an agreement of sale, there is a fixed or determinable selling price, title and risk of loss have been transferred and collectability is reasonably assured. Estimates used in determining sales allowance programs described below are subject to the volatilities of the market place. This includes, but is not limited to, changes in economic conditions, pricing changes, product demand, inventory levels in the supply chain, the effects of technological change, and other variables that might result in changes to our estimates. Accordingly, there can be no assurance that actual results will not differ from those estimates.

Returns

Sales revenue and cost of sales reported in the income statement are reduced to reflect estimated returns. We record an estimated sales allowance for returns at the time of sale based on using historical trends, current pricing and volume information, other market specific information and input from sales, marketing and other key management. The amount accrued reflects the return of value of the customer's inventory. These procedures require the exercise of significant judgments. We believe that these procedures enable us to make reliable estimates of future returns. Our actual results approximate our estimates. When the product is returned and verified, the customer is given credit against their accounts receivable.

Distribution Programs

A portion of our sales are to independent electronic component distributors which are subject to various distributor sales programs. We report provisions for distributor allowances in connection with such sales programs as a reduction in revenue and report distributor allowances in the balance sheet as a reduction in accounts receivable. For the distribution programs described below, we do not track the individual units that we record against specific products sold from distributor inventories, which would allow us to directly compare revenue reduction for credits recorded during any period with credits ultimately awarded in respect of products sold during that period. Nevertheless, we believe that we have an adequate basis to assess the reasonableness and reliability of our estimates for each program.

Distributor Stock Rotation Program

Stock rotation is a program whereby distributors are allowed to return for credit qualified inventory, semi-annually, equal to a certain percentage, primarily limited to 5% of the previous six months net sales. We record an estimated sales allowance for stock rotation at the time of sale based on a percentage of distributor sales using historical trends, current pricing and volume information, other market specific information and input from sales, marketing and other key management. These procedures require the exercise of significant judgment. We believe that these procedures enable us to make reliable estimates of future returns under the stock rotation program. Our actual results approximate our estimates. When the product is returned and verified, the distributor is given credit against their accounts receivable.

- *10.2 Amended Non-Employee Directors' Stock Option Plan as amended through February 4, 2003 (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of the Company for the guarter ended December 31, 2002).
- 10.3 Products Supply and Distribution Agreement by and between Kyocera Corporation and AVX Corporation (incorporated by reference to Exhibit 10.4 to the Annual Report on Form 10-K of the Company for the year ended March 31, 2000).
- *10.4 AVX Nonqualified Supplemental Retirement Plan Amended and Restated effective January 1, 2008 (the AVX Corporation SERP was merged into this plan effective January 1, 2005) (incorporated by reference to Exhibit 10.4 to the Annual Report on Form10-K of the Company for the year ended March 31, 2009).
- *10.5 Employment Agreement between AVX Corporation and John S. Gilhertson dated December 19, 2008 (incorporated by reference to Exhibit 10.10 to the Quarterly Report on Form 10-Q of the Company for the quarter ended December 31, 2008).
- *10.6 AVX Corporation 2004 Stock Option Plan as amended through July 23, 2008 (incorporated by reference to Exhibit 10.11 to the Annual Report on Form 10-K of the Company for the year ended March 31, 2004).
- *10.7 AVX Corporation 2004 Non-Employee Directors' Stock Option Plan as amended through July 28, 2008 (incorporated by reference to Exhibit 10.12 to the Annual Report on Form 10-K of the Company for the year ended March 31, 2004).
- *10.8 Form of Notice of Grant of Stock Options and Option Agreement for awards pursuant to AVX Corporation 2004 Stock Option Plan and AVX Corporation 2004 Non-Employee Directors' Stock Option Plan (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of the Company for the quarterly period ended June 30, 2005).
- *10.9 AVX Corporation Management Incentive Plan (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of the Company for the quarter ended June 30, 2009).
- 10.10 Machinery and Equipment Purchase Agreement by and between Kyocera Corporation and AVX Corporation (incorporated by reference to Exhibit 10.14 to the Annual Report on Form 10-K of the Company for the year ended March 31, 2005).
- 10.11 Materials Supply Agreement by and between Kyocera Corporation and AVX Corporation (incorporated by reference to Exhibit 10.15 to the Annual Report on Form 10-K of the Company for the year ended March 31, 2005).
- 10.12 Agreement and Plan of Merger, dated as of June 15, 2007, by and among AVX Corporation, Admiral Byrd Acquisition Sub, Inc. and American Technical Ceramics Corp. (incorporated by reference to Exhibit 2 to the Schedule 13D filed by the Company with the Securities and Exchange Commission on June 25, 2007).
- 10.13 Disclosure and Option to License Agreement effective as of April 1, 2008 by and between Kyocera Corporation and AVX Corporation. (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K of the Company filed with the Securities and Exchange Commission on March 25, 2008).
- 10.14 Form of Relocation Agreement (incorporated by reference to Exhibit 10.15 to the Annual Report on Form 10-K of the Company for the year ended March 31, 2010).
- 10.15 Form of Director and Officer Indemnification (incorporated by reference to Exhibit 10.16 to the Annual Report on Form 10-K of the Company for year ended March 31, 2010).
- 21.1 Subsidiaries of the Registrant.
- 23.1 Consent of PricewaterhouseCoopers LLP.
- 24.1 Power of Attorney.
- 31.1 Rule 13a-14(a)/15d-14(a) Certification of Chief Executive Officer John S. Gilbertson
- 31.2 Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer Kurt P. Cummings
- 32.1 <u>Certification Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 John S. Gilbertson and Kurt P. Cummings</u>
- * Agreement relates to executive compensation.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AVX Corporation

by: /s/ Kurt P. Cummings

KURT P. CUMMINGS

Vice President, Chief Financial Officer, Treasurer and Secretary

Dated: May 25, 2012

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
*		
Kazuo Inamori	Chairman Emeritus of the Board	May 25, 2012
*		
John S. Gilbertson	Chairman of the Board, Chief Executive Officer and President	May 25, 2012
Donald B. Christiansen	Director	May 25, 2012
*		
Kensuke Itoh	Director	May 25, 2012
*		
Makoto Kawamura	Director	May 25, 2012
*		
Rodney N. Lanthorne	Director	May 25, 2012
*		
Joseph Stach	Director	May 25, 2012
*		
David DeCenzo	Director	May 25, 2012
*		
Tetsuo Kuba	Director	May 25, 2012
*		
Tatsumi Maeda	Director	May 25, 2012
by: /s/ Kurt P. Cummings	torney-in-Fact for each of the persons indicated	

AVX Corporation and Subsidiaries Consolidated Balance Sheets

(in thousands, except per share data)

(at abusans, shop	Marc	
Assets	2011	2012
Current assets:	\$ 379.350	¢ 205.20
Cash and cash equivalents Short-term investments in securities	398.914	\$ 395,28- 418,13
Available-for-sale securities	2,747	410,13.
Accounts receivable - trade, net	227,642	206,170
Accounts receivable - affiliates	6,141	1,883
Inventories	496,495	566,11
Income taxes receivable	470,493	14,988
Deferred income taxes	39.355	85,787
Prepaid and other	51,471	38,783
Total current assets	1,602,115	1,727,145
Long-term investments in securities	220,835	238,112
Long-term investments in securities Long-term available-for-sale securities	4,490	230,112
	4,490	
Property and equipment:	29,241	24 200
		34,290
Buildings and improvements	313,581	311,038
Machinery and equipment	1,105,983	1,081,098
Construction in progress	13,897	23,555
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	1,462,702	1,449,981
Accumulated depreciation	(1,227,043)	(1,213,493
A 1 W	235,659	236,488
Goodwill	162,532	162,707
Intangible assets, net	82,612	78,221
Deferred income taxes - non-current	1,651	14,493
Other assets	9,588	10,846
Total Assets	\$ 2,319,482	\$ 2,468,012
Tiskilities and Staalshalderal Faulty		
Liabilities and Stockholders' Equity		
Current liabilities:	S 46.055	£ 42.710
Accounts payable - trade	\$ 46,255	\$ 43,719
Accounts payable - affiliates	86,378	60,078
Income taxes payable	10,452	13,815
Deferred income taxes	42.001	547
Accrued payroll and benefits	43,221	38,333
Accrued expenses	49,359	140,581
Total current liabilities	235,665	297,073
Pensions	18,028	22,337
Deferred income taxes - non-current		2,270
Other liabilities	26,372	25,579
Total non-current liabilities	44,400	50,186
Total Liabilities	280,065	347,259
Commitments and contingencies (Note 11)		
Stockholders' Equity:		
Preferred stock, par value \$.01 per share:	•	-
Authorized, 20,000 shares; None issued and outstanding		
Common stock, par value \$.01 per share:	124	1.764
Authorized, 300,000 shares, issued, 176,368 shares; outstanding, 170,142	1,764	1,764
and 169,601 shares for 2011 and 2012, respectively	345 224	240 454
Additional paid-in capital	347,664	349,474
Retained earnings	1,729,507	1,838,140
Accumulated other comprehensive income	41,174	19,363
Treasury stock, at cost,	(80,692)	(87,988)
6,227 and 6,768 shares for 2011 and 2012, respectively		
Total Stockholders' Equity	2,039,417	2,120,753
Total Liabilities and Stockholders' Equity	\$ 2,319,482	\$ 2,468,012

AVX Corporation and Subsidiaries Consolidated Statements of Operations (in thousands, except per share data)

Years Ended March 31,		2010	2011	2012
Net sales	\$:	1,304,966	\$ 1,653,176	\$ 1,545,254
Cost of sales		1,027,368	1,195,790	1,153,295
Vendor settlement		(5,000)	-	-
Restructuring charges		4,397		
Gross profit	• -	278,201	 457,386	391,959
Selling, general and administrative expenses		108,527	123,887	116,408
Environmental charges		-	8,575	100,000
Restructuring charges		2,509	-	-
Other operating income		(3,519)		-
Profit from operations	•	170,684	324,924	175,551
Other income (expense):				
Interest income		7,120	6,569	6,798
Interest expense		(111)	-	(707)
Other, net		(1,336)	2,766	(1,737)
Income before income taxes		176,357	334,259	179,905
Provision for income taxes		33,499	90,256	27,100
Net income	\$	142,858	\$ 244,003	\$ 152,805
Income per share:		100-11 · · · · · · · · · · · · · · · · · ·	 	
Basic	\$	0.84	\$ 1.44	\$ 0.90
Diluted	\$	0.84	\$ 1.43	\$ 0.90
Dividends declared	\$	0.165	\$ 0.190	\$ 0.280
Weighted average common shares outstanding:				
Basic		170,247	170,025	169,886
Diluted		170,274	170,390	170,134

AVX Corporation and Subsidiaries Consolidated Statements of Stockholders' Equity (in thousands, except per share data)

	Commo			Additional	,	nulated ther			
	Number Of Shares		Treasury Stock	Paid-In Capital	Retained Earnings	rehensive come	Total		rehensive icome
Balance, March 31, 2009	170,384	\$1,764	\$(77,552)	\$343,275	\$1,402,202	\$ 64	\$1,669,753	\$	(126,440
Net income	-	-	12		142,858	-	142,858		142,858
Other comprehensive									
income, net of income taxes	-	-	-	-	-	17,193	17,193		17,193
Dividends of \$0.16									
per share	-	-	-	-	(27,242)		(27,242))	
Stock-based				4 - 1					
compensation expense		-	5	2,040	-	•	2,040		
Stock option activity	12	-	151	(18)	-	*	133		
Tax benefit of stock									
option exercises	(222)	-	/2 72 ()	8	-	-	8		
Treasury stock purchased	(322)		(3,736)	-		-	(3,736)		
Balance, March 31, 2010	170,074	\$1,764	\$(81,137)	\$345,305	\$1,517,818	\$ 17,257	\$1,801,007	\$	
Net income	-	-	÷	-	244,003	-	244,003		244,003
Other comprehensive									
loss, net of income taxes	-	-	-	-	-	23,917	23,917		23,917
Dividends of \$0.19									
per share	-	-	-	*	(32,314)	-	(32,314)	1	
Stock-based							272-2		
compensation expense	445	-	-	2,475	-	-	2,475		
Stock option activity .	513	-	6,638	(632)			6,006		
Tax benefit of stock							***		
option exercises	(445)	-	((100)	516	-	-	516		
Treasury stock purchased	(445)		(6,193)	-	-	 -	(6,193)		
Balance, March 31, 2011	170,142	\$1,764	\$(80,692)	\$347,664	\$1,729,507	\$ 41,174	\$2,039,417	\$	267,920
Net income	-	-	-	-	152,805	-	152,805		152,805
Other comprehensive									
income, net of income taxes	-	-	_	-	-	(21,811)	(21,811)		(21,811)
Dividends of \$0.28									
per share	-	-	-	-	(44,172)		(44,172)		
Stock-based									
compensation expense	-		-	1,816			1,816		
Stock option activity	84	-	1,098	(101)	•		997		
Tax benefit of stock				12.2					
option exercises	* * * * * * * * * * * * * * * * * * *		-	95	-	-	95		
Treasury stock purchased	(625)		(8,394)	*	· ·	-	(8,394)		
Balance, March 31, 2012	169,601	\$1,764	\$(87,988)	\$349,474 \$	1.838.140	\$ 19,363	\$2,120,753	\$	130,994

AVX Corporation and Subsidiaries Consolidated Statements of Cash Flows

(in thousands)

Years Ended March 31,	2010	2011	2012
Operating Activities:			
Net income	\$ 142,858	\$ 244,003	\$ 152,805
Adjustment to reconcile net income to net cash from operating activities:			
Depreciation and amortization	58,173	47,619	46,890
Stock-based compensation expense	2,040	2,475	1,816
Deferred income taxes	(8,419)	8,492	(56,456)
(Gain) Loss on available-for-sale securities	362	55	572
(Gain) Loss on sale of property, plant & equipment, net of retirements	(2,546)	594	648
Changes in operating assets and liabilities:			
Accounts receivable	(47,462)	(37,792)	25,730
Inventories	14,788	(135,223)	(74,007)
Accounts payable and accrued expenses	25,868	41,640	55,232
Income taxes	16,390	3,220	2,759
Other assets	(10, 156)	(10,108)	(7,757)
Other liabilities	8,558	(12,880)	190
Net cash provided by operating activities	200,454	152,095	148,422
Investing Activities:		-	
Purchases of property and equipment	(28,888)	(27,470)	(49,201)
Sales of available-for-sale securities	29,006	8,374	5,686
Purchases of investment securities	(943,231)	(923,482)	(1,162,317)
Redemptions of investment securities	659,523	785,337	1,125,616
Proceeds from property, plant & equipment dispositions	6,050	7	-
Contingent consideration for a prior acquisition	(63)	-	-
Other investing activities	(870)	(120)	(127)
Net cash (used in) investing activities	(278,473)	(157,354)	(80,343)
Financing Activities:			
Dividends paid	(27,242)	(32,314)	(44,172)
Purchase of treasury stock	(3,736)	(6,193)	(8,394)
Proceeds from exercise of stock options	133	6,006	997
Excess tax benefit from stock-based payment arrangements	8	516	95
Other financing activities	1,732		-
Net cash (used in) financing activities	(29,105)	(31,985)	(51,474)
Effect of exchange rate on cash	389	620	(671)
ncrease (Decrease) in cash and cash equivalents	(106,735)	(36,624)	15,934
Cash and cash equivalents at beginning of period	522,709	415,974	379,350
Cash and cash equivalents at end of period	\$ 415,974	\$ 379,350	\$ 395,284

Attachment 2

20-F 1 d231151d20f.htm ANNUAL REPORT

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 20-F

	REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934
	OR
X	ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 For the fiscal year ended March 31, 2012
	OR
	TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
	For the transition period from to

OR

☐ SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of event requiring this shell company report

Commission file number: 1-7952

Kyocera Kabushiki Kaisha

(Exact name of Registrant as specified in its charter)

Kyocera Corporation

(Translation of Registrant's name into English)

Japan
(Jurisdiction of incorporation or organization)

6, Takeda Tobadono-cho, Fushimi-ku, Kyoto 612-8501, Japan (Address of principal executive offices)

Shoichi Aoki, +81-75-604-3556, kyocera-ir@kyocera.jp, +81-75-604-3557, 6, Takeda Tobadono-cho, Fushimi-ku, Kyoto 612-8501, Japan (Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)

Securities registered or to be registered pursuant to Section 12(b) of the Act.

<u>Title of Each Class</u> Common Stock (Shares)* Name of Each Exchange On Which Registered
New York Stock Exchange

Securities registered or to be registered pursuant to Section 12(g) of the Act.

None (Title of Class)

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act.

None (Title of Class)

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report.

As of March 31, 2012, 183,443,920 shares of common stock were outstanding, comprised of 180,561,415 Shares and 2,882,505 American Depositary Shares (equivalent to 2,882,505 Shares).

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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes 🗵 No 🗅
If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. Yes D No 🗵
Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes \boxtimes No \square
Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes \boxtimes No \square
Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check One):
Large accelerated filer Accelerated filer Non-accelerated filer Non-accelerated filer
Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing: U.S. GAAP 🗵 International Financial Reporting Standards as issued by the International Accounting Standards Board 🗆 Other 🗆
If "Other" has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow. Item 17 🗋 Item 18 🗖
If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes 🗆 No 🗵
* Not for trading, but only in connection with the registration of the American Depositary Shares, each representing one share of Common Stock.

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Cautionary Statement Regarding Forward-Looking Statements

This annual report on Form 20-F contains "forward-looking statements" within the meaning of Section 21E of the U.S. Securities and Exchange Act of 1934. To the extent that statements in this annual report on Form 20-F do not relate strictly to historical or current facts, they may constitute forward-looking statements. These forward-looking statements are based upon our current assumptions and beliefs in the light of the information currently available to us, but involve known and unknown risks, uncertainties and other factors. Such risks, uncertainties and other factors may cause our actual actions or results to differ materially from those discussed in or implied by the forward-looking statements. We undertake no obligation to publicly update any forward-looking statements after the date of this annual report on Form 20-F, but investors are advised to consult any further disclosures by us in our subsequent filings pursuant to the U.S. Securities Exchange Act of 1934.

Important risks, uncertainties and other factors that may cause our actual results to differ materially from our expectations are generally set forth in Item 3.D. "Risk Factors" of this annual report on Form 20-F and include, without limitation:

- (1) general conditions in the Japanese or global economy;
- (2) unexpected changes in economic, political and legal conditions in countries where we operate;
- (3) various export risks which may affect the significant percentage of our revenues derived from overseas sales;
- (4) the effect of foreign exchange fluctuations on our results of operations;
- (5) intense competitive pressures to which our products are subject;
- (6) manufacturing delays or defects resulting from outsourcing or internal manufacturing processes;
- (7) shortages and rising costs of electricity affecting our production and sales activities;
- (8) the possibility that future initiatives and in-process research and development may not produce the desired results;
- (9) companies or assets acquired by us not produce the returns or benefits, or bring in business opportunities;
- (10) inability to secure skilled employees, particularly engineering and technical personnel;
- (11) insufficient protection of our trade secrets and intellectual property rights including patents;
- (12) expenses associated with licenses we require to continue to manufacture and sell products;
- (13) environmental liability and compliance obligations by tightening of environmental laws and regulations;
- (14) unintentional conflict with laws and regulations or newly enacted laws and regulations;
- (15) our market or supply chains being affected by terrorism, plague, wars or similar events;
- (16) earthquakes and other natural disasters affecting our headquarters and major facilities as well as our suppliers and customers;
- (17) credit risk on trade receivables;
- (18) fluctuations in the value of, and impairment losses on, securities and other assets held by us;
- (19) impairment losses on long-lived assets, goodwill and intangible assets;
- (20) unrealized deferred tax assets and additional liabilities for unrecognized tax benefits;
- (21) changes in accounting principles;

and other risks discussed under Item 3.D. "Risk Factors" and elsewhere in this annual report on Form 20-F.

Presentation of Certain Information

As used in this annual report on Form 20-F, references to "Kyocera," "we," "our" and "us" are to Kyocera Corporation and, except as the context otherwise requires, its consolidated subsidiaries.

Also, as used in this annual report on Form 20-F:

- "U.S. dollar" or "\$" means the lawful currency of the United States of America, "yen" or "\subsection" means the lawful currency of the European Union.
- "U.S. GAAP" means accounting principles generally accepted in the United States of America, and "Japanese GAAP" means accounting principles generally accepted in Japan.
- "ADS" means an America Depositary Share, each representing one share of Kyocera's common stock, and "ADR" means an American Depositary Receipt evidencing ADSs.
- "fiscal 2012" refers to Kyocera's fiscal year ended March 31, 2012, and other fiscal years are referred to in a corresponding manner.

PART I

Item 1. Identity of Directors, Senior Management and Advisers Not applicable.

Item 2. Offer Statistics and Expected Timetable

Not applicable.

Item 3. Key Information

A. Selected Financial Data

The selected consolidated financial data set forth below for each of the five fiscal years ended March 31 have been derived from Kyocera's consolidated financial statements that are prepared in accordance with accounting principles generally accepted in the United States of America.

You should read the U.S. GAAP selected consolidated financial data set forth below together with Item 5. "Operating and Financial Review and Prospects" and Kyocera's consolidated financial statements included in this annual report on Form 20-F.

		2008		2009		2010		2011		2012
	(Yen in millions and shares in thousands, except per share amounts)									
For the years ended March 31:										
Net sales	¥1,290,436		¥1,128,586		¥1,073,805		¥1,266,924		¥1,190,870	
Profit from operations		152,420		43,419		63,860		155,924		97,675
Net income attributable to shareholders										
of Kyocera Corporation		107,244		29,506		40,095		122,448		79,357
Earnings per share:										
Net income attributable to shareholders										
of Kyocera Corporation:										
Basic	¥	566.58	¥	157.27	¥	218.47	¥	667.23	¥	432.58
Diluted		565.80		157.23		218.47		667.23		432.58
Weighted average number of shares outstanding:										
Basic		189,283		187,618		183,525		183,517		183,451
Diluted	189,544		187,661		183,525		183,517		183,451	
Cash dividends declared per share:										
Per share of common stock	¥	120	¥	120	¥	120	¥	130	¥	120
Per share of common stock*	\$	1.10	\$	1.26	\$	1.32	\$	1.58	\$	1.51
At March 31:				-						
Total assets	¥1,976,746		¥1,773,802		¥1,848,717		¥1,946,566		¥1,994,103	
Long-term debt	8,298		28,538		29,067		24,538		21,197	
Common stock	115,703		115,703		115,703		115,703		115,703	
Kyocera Corporation shareholders'										
equity	1,451,165		1,323,663		1,345,235		1,420,263		1,469,505	
Total equity	1.	,516,167	1,	383,088	1	,407,262	1	,483,359	1.	,534,241
Depreciation	¥	75,630	¥	83,753	¥	60,602	¥	59,794	¥	62,374
Capital expenditures	¥	85,101	¥	63,055	¥	37,869	¥	70,680	¥	66,408

^{*} Translated into the U.S. dollars based on the exchange rates at each payment date in Japan.

The following table shows the exchange rates for Japanese yen per \$1.00 based upon the noon buying rate in New York City for cash transfers in foreign currencies as certified for customs purposes by the Federal Reserve Bank of New York:

For the years ended March 31,	High	Low	Average	Period-end
2008	124.09	96.88	114.31	99.85
2009	110.48	87.80	100.62	99.15
2010	100.71	86.12	92.93	93.40
2011	94.68	78.74	85.71	82.76
2012	85.26	75.72	79.00	82.41
For most recent six months				
December 2011	78.13	76.98	77.80	76.98
January 2012	78.13	76.28	76.96	76.34
February 2012	81.10	76.11	78.47	81.10
March 2012	83.78	80.86	82.47	82.41
April 2012	82.62	79.81	81.25	79.81
May 2012	80.36	78.29	79.67	78.29

The noon buying rate for Japanese yen on June 22, 2012 was \$1.00 = 80.52

B. Capitalization and Indebtedness

Not applicable.

C. Reasons for the Offer and Use of Proceeds

Not applicable.

D. Risk Factors

You should carefully read the risks described below before making an investment decision.

Risk Related to Kyocera's Business

(1) The continuing economic slowdown in the Japanese and global economy may significantly reduce demand for Kyocera's products

The outlook for the global economy remains uncertain, and there is concern that the financial problems facing European nations will continue to cause such uncertainty or trigger another downturn in the global economy. With respect to the Asian economy, although a fundamental trend toward Chimese-led expansion is expected, there are signs that growth rates may be slowing. In addition, the growth of the Japanese economy may be affected by an economic slowdown in Europe, the United States or Asia. In the event that stagnation in the Japanese and global economies has an adverse effect on capital investment in and consumption of digital consumer equipment and industrial machinery, which are the principal markets for Kyocera, demand for Kyocera products may fall significantly, the business environment facing Kyocera may worsen, and the performance and financial condition of Kyocera may be adversely affected.

(2) A substantial portion of Kyocera's business activity is conducted outside Japan, exposing Kyocera to the risks of international operations

A substantial amount of Kyocera's investment has been targeted towards expanding manufacturing and sales channels located outside Japan, such as in the United States, Europe and Asia, which includes the developing and

MOTION NUMBER US-58

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

LUNITED STATES OF AMERICA.

45

AVX COMPORATION, et al.,

COMMONWEALTH OF MASSACHUSETTS, Plaintiff,

16

AVX CORPORATION, et al.,

CIVIL ACTION NO.

HEHORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO ENTER CONSENT DECREE WITH AVX CORPORATION

INTRODUCTION

On September 25, 1991, the United States and the Commonwealth of Massachusetts (collectively "Plaintiffs") lodged with this Court a Consent Decree with the third of the five defendants in this case, AVX Corporation ("AVX"), pending solicitation and consideration of public comments consistent with 28 C.F.R. § 50.7 and 42 U.S.C. § 9622(d)(2). The Department of Justice then published in the Federal Register a notice of the lodging of the AVX Consent Decree, soliciting public comments on

On July 17, 1991, this Court approved and entered a Consent Decree with two of the five defendants in this action, Aerovox Incorporated ("Aerovox") and Belleville Industries, Inc. ("Belleville"). That judgment has been appealed by Intervenor, National Wildlife Federation. United States v. AVX Corporation, appeal docketed No. 91-1895 (1st Cir. Sept. 9, 1991).

the Decree for a period of thirty (30) days from the date of publication. See 36 Fed. Reg. 51238 (Oct. 10, 1991).

Only one set of comments was received by the Department on the AVX Consent Decree, submitted on behalf of Intervenor Mational Wildlife Federation ("NWF"). (Exhibit A). The United Status, in consultation with the Commonwealth, has reviewed and considered the comments submitted by NWF, and requests that this Court enter the proposed Consent Decree as fair, reasonable, and consistent with the objectives of CERCLA.

A. AVX Consent Decree Terms

The proposed Consent Decree requires AVX to pay a total of \$66 million, plus accrued interest from August 1990, 2 toward the costs incurred by the Plaintiffs for investigation and cleanup of PCB contamination in New Bedford Harbor and for natural resource damages. That payment will be allocated for past and future study, investigation, and cleanup costs ("response costs") in the amount of \$59 million and for natural resource damages in the amount of \$7 million. See Consent Decree, Paragraph 7.3

From the response costs portion of the settlement,

\$9 million will be used to reimburse EPA and the Commonwealth for
the governments' past study and investigation costs, and

\$50 million will be used toward future response costs for New
Bedford Harbor. Id., Paragraphs 8-10.

² With accrued interest, that amount is approximately \$72 million at present.

² Each payment will also include the interest accrued on that amount.

From the natural resource damages portion of the settlement, \$105.946.47 and \$125.268.86 will be paid directly to NOAA and the Commonwealth, respectively, in reimburgement of costs incurred for assessment of the natural resource damages at the site. Id., Paragraphs 12-13. The remainder of the damages payment:

(\$6.068.812.67) will be placed in an interest-bearing account in the Registry of the Court. Monies may be disbursed from that account only by order of the Court, upon joint application of the trustees, for use by them to plan, implement, and oversee actions to restore, replace, or acquire the equivalent of the injured natural resources in accordance with Section 107(f)(1) of CERCLA.

Id., Paragraph 11.

The Consent Decree provides AVX with a covenant not to sue for response costs, injunctive relief, and natural resource camages from releases of hazardous substances at the New Bedford Harbor site. The covenant not to sue for future liability does not take effect until certification of completion of the EPA remedial action at the site. Id., Paragraph 14-15.

The Consent Decree also includes reopeners, or reservations of rights, which permit the governments to institute a new action against AVX under certain circumstances. First, the AVX Decree includes a reopener which overrides the covenant not to sue and protects the governments and the public in the event that the costs of the first and anticipated second Records of Decision (*RODE*) exceed \$130.5 million. Id., Paragraph 18. It is not necessary that new information or unknown conditions arise to

trigger this reopener -- it is simply triggered by cleanup costs in excess of \$130.5 million. Second, the Decree includes the "standard" reopeners which permit the governments to institute a new action if new information or previously unknown conditions at the site are discovered after the issuance of the RODs and indicate that the cleanup action is not protective of human health or the environment. Id., Paragraphs 16-17. For this reopener, there is no cost threshold; the reopener can be triggered at any time after issuance of the RODs regardless of the amount of costs incurred in cleanup. Third, the Decree includes a reopener which allows the United States and the Commonwealth to seek further natural resource damages if there are unknown conditions that result ingreleases that contribute to natural resource injury, or if new information indicates that there is injury of a different type or of a greater magnitude, than is currently known. Id., Paragraph 19.

B. Summary of Comments Received

The comments submitted on behalf of NWF do not challenge the fairness or reasonableness of the AVX Decree nor do they object to the settlement amount to be recovered under the AVX Decree.

NWF instead raises the same two legal arguments on which it based its unsuccessful opposition to this Court's approval of the Aerovox/Belleville settlement and on which it bases its First Circuit appeal. NWF's comments simply incorporate those two arguments by reference to its appeal, and do not repeat or reargue those points in the submitted comments. See Exhibit A.

In its brief in No. 91-1895, MMF first argues that Section 181(f)(i) of CERCIA prohibits the United States from providing a covenant not to sue in cash settlements — essentially prohibiting any such settlement — until EPA has completed the process of selecting all remedial actions to be implemented at the New Fedford Harbor sits. Second, NWF argues that the federal natural resource trustees cannot sattle their claims against AVX for less than the full amount required to restore the damaged natural resources, based on Section 122(j)(2)'s requirement that the defendant agree "to undertake appropriate actions nacessary to protect and restore the natural resources damaged."

As discussed below, NWF's position in the Aerovox/Belleville appeal, incorporated as its comments on the AVX Decree, raises no supportable challenge to the AVX Decree as fair, reasonable, and consistent with the objectives of CERCLA.

ARGUMENT

 Judicial Review of the Proposed Consent Decree Should Be Deferential to the Government's Judgment, Examining Only Whether the Decree is Fair, Reasonable, and Faithful to the Objectives of CFRCIA.

In reviewing this settlement, the law in this Circuit is clear that this Court "is only to 'satisfy itself that the settlement is reasonable, fair, and consistent with the purposes that CERCIA is intended to serve.' "United States v. Cannons Engineering Corp., 899 F.2d 79, 85 (1st Cir. 1990); see also In re Acushnet River & New Sedford Harbor, 712 F. Supp. 1019, 1027 (D. Mass. 1989) ("Acushnet IV"). ("Before approving such a settlement, this Court must ascertain 'that it is fair, adequate, and

reasonable, and consistent with the constitution and the mandate of Congress.'*). The Cannons court cautioned district courts to refrain from "second-quessing the Executive Branch," stating:

The relevant standard, after all, is not whether the settlement is one which the court itself might have fashioned, or considers as ideal, but whether the proposed decree is fair, reasonable, and faithful to the objectives of the governing statute.

SPS F.3d at 64. See generally Ser Fox Publishing Co. v. United States, 366 U.S. 683, 689 (1961) (absent malfessance or bad faith, courts are not to "assess the wisdom of the Government's judgment in negotiating and accepting [a] consent decree*).

In contrast to NWF's position, which would sharply narrow the governments' discretion to compromise claims under CERCLA, the Court's elements in Cannons strongly favor settlements:

(I)t is the policy of the law to encourage settlements.

That policy has particular force where, as here, a government actor committed to the protection of the public interest has pulled the laboring oar in constructing the proposed settlement.

ass F.2d at 84 (citations omitted). NWF's restrictive interpretation of Section 122 is also contrary to this Court's statements on the importance of encouraging settlements in CERCLA cases:

That Congressional purpose [protecting public health and the environment] is better served through settlements which provide funds to enhance environmental protection, rather

Numerous other courts have adopted similarly deferential standards of review of CERCLA consent decrees. E.g., United States v. Town of Moreau, 751 F. Supp. 1044 (N.D.N.Y. 1990); United States v. Rohm & Haas Co., 721 F. Supp. 666, 680 (D.N.J. 1929); Kelley v. Thomas Solvent Co., 717 F. Supp. 507, 516 (W.D. Mich. 1929); City of New York v. Exxon Corp., 697 F. Supp. 677, 692 (S.D.N.Y. 1988); State of New York v. Town of Oyster Bay, 696 W. Supp. 841, 843 (E.D.N.Y. 1988); United States v. Hooker Chems. & Plastics Corp., 540 F. Supp. 1067, 1072 (W.D.N.Y. 1982).

than the expenditure of limited resources on protracted litigation. Without question Congress passed the SARA litigation. Without question congress passed the SARA amendments to encourage settlements for this very reason.

Acushnet IV. 712 F. Supp. at 1028-29. NWF's argument contrasts sharply with the emphasis Congress placed on encouraging settlements. Id. at 1029 ("Indeed, subsection 113(f), as well as section 122, . . . are devoted to facilitating (settlements)").

The United States has determined that the settlement with AVX fully satisfies the relevant criteria of fairness, reasonableness, and consistency with statutory objectives. As discussed below, an evaluation of the NWF comments on the AVX becree provides no basis to alter that judgment.

II. The Proposed Consent Decree With AVX Is Fair. Reasonable, and Consistent with CERCIA's Objectives.

A. Principal Terms of Settlement

As noted above, NWF does not oppose the proposed AVX Decree on the grounds that it is unfair or unreasonable in the amounts recovered or on any other terms. In addition to recovering \$66 million, plus nearly \$6 million in interest to date, the Decree limits the covenant not to sue for remedial work to be implemented in New Bedford Harbor under the RODs. The covenant not to sue extends only up to a cost ceiling of \$130.5 million. If the work under the first two RODs costs more than \$130.5 million, the governments can seek to recover those additional amounts from AVX or have AVX perform the additional work.

Moreover, regardless of whether the cost of the cleanup under the RoDs exceeds \$130.5 million, the AVX Decree reserves the governments' rights to reopen the action against AVX for policy of CTRCIA Section 122(f)(6)(A). Those reopeners are triggered if: (1) the governments discover new information or previously unknown conditions indicating that the cleanup is not protective of human health or the environment; or (2) unknown conditions result in releases that contribute to natural resource injury, or new information indicates that there is injury of a different type or of a greater magnitude than is presently known. Finally, the covenant does not take effect for future liability until certification of completion of the remedial action.

s. Factors Considered in Evaluation of Settlement

In arriving at a settlement with AVX on the settlement amount and on the covenant and reopener terms of the Decree, the governments had to consider and evaluate the potential litigation risks, expense, uncertainty and other limitations in recovering for past and future response costs and damages to natural resources. Indeed, this Court had made it clear that it considers there to be risks, expense, and uncertainty of recovery in a case of this complexity. Acushnet IV, 712 F. Supp. at 1029-10, and has noted that the inherent uncertainty *makes settlement desirable for the parties and satisfies the public interest by securing a substantial recovery in the face of unknown and perhaps unknowable odds.* Id. at 1030. See also Cannons, 899 F.2d at 90 (amount recovered must take into account foreseeable risks of loss and the time and money necessary to collect the damages); Rohm & Heas, 721 F. Supp. at 686 (*Compromise of

litigation occurs precisely because there is uncertainty about the underlying factual circumstances and the range of possible recoveries. If a settlement is reasonable in light of those circumstances, it ought to be approved.").

In addition to the general litigation risks and uncertainties facing the governments in any CERCLA action, the governments face particular risks egainst AVX. Throughout the seven years of very contentious litigation, AVX has marshalled arguments and expert testimony in an effort to avoid or limit its liability. For example, AVX has attempted to demonstrate that the harm to the Harbor, and therefore the response costs incurred, are divisible, thereby avoiding the imposition of joint and several liability for the cleanup costs. AVX intended to offer evidence that its PCB releases could not be linked to any injured natural resources for which the governments could recover, and to challenge whether the injuries could be linked to the PCBs in the Marbor. AVX also contended that certain of AVX's PCB releases were federally permitted and exempt from CERCIA liability. Finally, AVX was sounting a detailed and well-funded challenge to EPA's selection of cleanup alternatives, potentially slowing down the actual implementation of the remedy and restoration work. The governments do not concede that any of these or other efforts of AVX would have been successful; however, AVX's legal defenses and challenges were factors which the governments legitimately took into account in evaluating the AVX settlement terms -- an

evaluation which government counsel were uniquely qualified to undertake after zeven years of litigation.

sefore entering into this settlement, the governments also evaluated the potential future costs of cleanup and restoration in New Bedford Harbor. 5 In its considerations, the governments had the benefit of the years of information gathered in their investigations and evaluated by their experts on the contamination in the Harbor, the injury to the resources, and options for and costs of remedial and restoration work. The information considered in the governments' evaluation included the plan and underlying data gathered during the investigation and study for the first ROD, which addresses the most highly contaminated "Not spot" areas of the Upper Estuary. In addition, the government considered the information gathered and compiled in the multi-volume comprehensive RI/FS for the second ROD, including

The governments' claim for past response costs is approximately \$25-30 million (including prejudgment interest, and enforcement costs). The estimate for future cleanup costs includes approximately \$15 million under the first operable unit mon for the highly contaminated hot spots of the Estuary, issued to the public in April 1990. The total future cleanup costs are dependent upon which cleanup alternative EPA selects in the second ROD for the remainder of the Estuary, lower Harbor and Bay. Costs of the alternatives under consideration were estimated in a comprehensive remedial investigation and feasibility study ("RI/FS") for this second ROD, released to the public in the summer of 1990. The governments' claim for natural resource damages includes an assessment of the lost use value for the injured natural resources assuming no EPA cleanup, and totals approximately \$39-47 million. If further restoration activities are needed after EPA selects and implements a comprehensive remedy, the cost for any further restoration of the resources will be dependent upon the extent to which the EPA cleanup addresses or mitigates the damages and the restoration work that remains to be done.

estimates of the costs for the various cleanup alternatives under consideration. Included in this information was the wealth of sampling data evaluating the extent of PCB contamination and injury to the resources in the waters, and biota of New Sedford Rather submitted in the governments' Requests for Admission and which, in part, was the subject of the hearings in January and February of 1990.

of the uncertainties of recovery against AVX, provided the basis for the governments' informed and reasoned determination that the AVX mettlement terms of \$66 million, plus interest amounting to almost \$6 million to date, for costs and damages in New Bedford Harbor, the \$130.5 million cost reopener, the standard CERCLA reopeners, and the natural resource damage reopener, are fair, reasonable, and wholly consistent with the objectives of CERCLA.

C. Response to NWF Comments

The NWF comments raise the same two statutory arguments -challenging the consistency of the proposed AVX Decree with
Bection 122 of CERCIA -- as NWF raised unsuccessfully in
objecting to the Aerovox/Belleville settlement. For even more
compelling reasons now that the AVX settlement terms have been
finalized, the NWF position is wholly unpersuasive.

1. Provisions of Section 122(f)(1)

NWF's argument under Section 122(f)(1) of CERCLA, that the United States cannot give a covenant not to sue when the remedial action has not been selected, is inapposite in reviewing the AVX

Decree. As a threshold matter, NNF did not even bother to teshion its comments on the AVX Decree to acknowledge distinctions between the AVX Decree and the Aerovox/Selleville Decree. Epscifically, in the AVX Decree, the governments do not provide a covenant not to sue for AVX's full cleanup liability under the first two RODS, but only for those costs of cleanup under \$110.5 million. For any cleanup costs incurred for the RODS above \$130.5 million, the governments can seek further costs and injunctive relief against AVX.6

Thus, NWF's position that the public must know the full extent of the cleanup costs in order to evaluate a settlement carries no weight given the cost reopener provision of the AVX Decree. Indeed, NWF's position in the district court on the Aerovox/Belleville settlement was supportive of such a reopener. In that brief, NWF expressly conceded that a broader reopener provision to address substantial unexpected cleanup costs would have aliayed much of NWF's concern about the settlement. See NWF's Response to Plaintiffa Motion to Enter Consent Decree,

The fact that the governments were able to negotiate a cost ceiling on the response costs covenant with AVX provides a classic example of the real world practicalities of litigation. In both the Aerovox/Belleville and AVX negotiations, the governments were driving the hardest bargain possible after assessing the strengths and weaknesses of the case and any limitations on the defendants' ability to pay. The governments' litigation risks and uncertainty of recovery are obviously not as significant with AVX as with Aerovox and Belleville; Aerovox and Belleville also had a much more limited ability to pay than AVX. Consequently, the amounts of money recovered and certain reopener terms vary significantly.

dated June 17, 1991, at 11. The AVX cost ceiling of \$130.5 willion on the covenant is precisely such a provision.

Yet in its comments on the AVX Decree, NWF still maintains that Section 122(6)(1) prohibits the settlement by the United States until the second Record of Decision ("ROD") for the Ectuary, Harbor and Bay has been issued. Even if the AVX cost reopener did not eradicate NWP's argument, the language NWF points to in support of its position is directed to settlements for the performance of the cleanup by defendants, as discussed and argued fully in connection with the United States' Motion to Enter the Aerovox/Belleville Decree. Section 122(f)(1)'s terms are inapplicable to the AVX settlement under the same analysis adopted by this Court with regard to the Aerovox/Belleville settlement. Particularly the inclusion of subsection 122(f)(1)(C), which requires that the defendant be in full compliance with a consent decree under Section 106, can only be read to refer to a consent decree to perform the response actions. Since settlement of a Section 107 cost recovery claim does not entail the performance of response actions by the settling parties, such a settlement could never meet that condition. 7

NWF argues that Section 122(f)(1)(C) can be reconciled with its position by adding certain words to it so that the subsection

Notably, however, before any cleanup action is performed by the <u>covernments</u> in New Bedford Marbor, the response action will be approved by the top level SPA decisionmakers to whom have been delegated the President's approval authority under the statute. That decision cannot be made until the public has been given the opportunity to participate through public hearings and written comment.

requires adherence to this condition only "where a 'consent decree under Section sece" does exist". NWF argues that subsection (f)(f)(c) is therefore a part of the statute that may simply be ignored in analyzing the applicability of the Section (f)(1) and in considering a cash out settlement. The underlined words, of course, are NWF's and do not appear in the statute; the language Congress chose does not provide the option to ignore this provision. Consequently, this attempt to explain away subsection (f)(1)(C) has no legitimate foundation. It is in fact ironic for NWF to claim that the governments! interpretation isolates one subsection without regard to its context. In actuality, it is NWF's interpretation, by relying exclusively on subsection (f)(1)(0) and ignoring the significance of subsection (f)(1)(C), that does not pay proper head to the overall context.

As a fundamental matter, the government's authority to enter into the AVX Decree is not derived from Section 122 of CERCLA, but rather from the long-established inherent authority of the Attorney General to conduct and resolve litigation involving the United States. The government's preexisting authority to grant

Even if it were appropriate to read subsection (f)(1)(C) as only optional, depending on whether it fits the situation under review, NWF's theory does not explain why it would not be equally appropriate to read subsection (f)(1)(D), regarding EFA approval of the remedy, as also optional depending on the particular facts.

⁹ See. e.g., Swift & Co. v. United States, 276 U.S. 311, 331 (1927); United States v. Seymour Recycling Corp., 554 F. Supp. 1314, 1318 (s.D. Ind. 1982); Halbach v. Markham, 106 F. Supp. 475, 479-80 (D.N.J. 1952), aff'd, 207 F.2d 503 (3rd Cir. 1953), cert. denied, 347 U.S. 933 (1954); accord United States v. (continued...)

expressly acknowledged during Congressional floor discussions of the proposal that became Section 122. See 132 Cong. Rec. S14904 (October 3, 1986) (remarks of Sen. Stafford) ("The bill also explicitly authorizes the Government to enter into covenants not to sue. This authority exists under current law, but the Government has been reluctant to exercise it . . . because of the widespread adverse publicity surrounding several early mettlements.") (emphasis added). While Congress may restrict the Attorney General's authority over litigation to some degree, the courts have insisted that any such restriction be explicit and may not be implied. 10

NWF has failed to point to anything in the language of Section 121(f)(1) or in its legislative history that amounts to an explicit statement of intent to deny the government its traditional discretion to enter into a cash-out settlement with a covenant not to sue. Indeed, contrary to NWF's unsupported assertion that Congress meant to make covenants not to sue disfavored, the remarks of Senator Stafford, quoted above, suggest that the government had, in his view, actually become

^{\$\}text{\$\partial}\$ (...continued) Conservation Chemical Co., 628 F. Supp. 391, 400 (W.D. Mo. 1985) ("[T]he authority of the United States and the Attorney General to settle litigation is well established."). The Attorney General's settlement authority is further evident from Section 122(a), which gives broad discretion to the President not to use the procedures in Section 122.

^{10 &}lt;u>See United States v. California</u>, 332 U.S. 19, 27-28 (1947); <u>United States v. Tonry</u>, 433 F. Supp. 620, 622 (E.D. La. 1977).

everly reluctant to provide covenants not to sue, because of the strong public reaction to earlier agreements that were viewed as "sweetheart deals." Thus, one purpose of Section 122(f)(1) was to establish beyond question that it is appropriate to grant a covenant not to sue when the conditions described there are met. That objective is entirely consistent with continued authority of the government to grant covenants not to sue in other appropriate circumstances based on existing inherent authority. 11

The consequence of NNF's argument that Section 122(f)(1) strips the United States of authority to compromise and settle claims if the remedy has not been selected would be that the United States may be compelled to take the case to trial even when there is a significant risk of losing on key issues and, in the Attorney General's judgment, the defendants are offering to settle on terms advantageous to the government. There is absolutely no reason to believe that Congress intended to so circumscribe the government's settlement options in drafting Section 122(f)(1).

This Court has acknowledged that the language and the legislative history of Section 122 lend significant support to

As discussed in the motion to enter the Aerovox/
Belleville Decree, two recent decisions under CERCLA have
rejected challenges to cash-out settlements based on Section 122,
upholding the government's inherent authority to compromise
claims. See United States v. Bell Petroleum Services, Inc., No.
MO-88-CA-05, slip op. at 6 (M.D. Tex. July 24, 1990) (attached as
Exhibit B): United States v. Vertac Chemical Corp, et al., No.
18-C-80-109, slip op. at 7 (E.D. Ark. February 4, 1991) (attached
as Exhibit C), appeal docketed, No. 91-1887 (8th Cir. Apr. 5,
1991).

the view that it was designed for cleanup settlements. Id., at 1033. Indeed, this Court quoted much of the key legislative history statements that support that view in Acushnet IV:

"This new section [122] sets forth a series of provisions designed to encourage and facilitate negotiated private party gleanups of hazardous substances in those situations where negotiations have a realistic chance of success."

H.R.Rep. No. 253, 59th Cong., 1st Sess. pt. 3, at 29 (1985) (emphasis added). Accord H.R.Rep. No. 253, 99th Cong. 1st Sess., pt 5, at 58 (1985) ("This new section 122 is intended to encourage and establish procedures and protections pertaining to pegotiated private party cleanup of hazardous substances where such cleanup is in the public interest").

712 F. Supp. at 1034 (D. Mass. 1989) (emphasis in original); ges also id. at 1034, hotes 25 & 26.

Contrary to NWF's argument, it is not anomalous to require that the remedy be selected before agreeing to a covenant not to sue in a clean-up agreement, while allowing a cost recovery claim to mettle prior to selection of the remedy. The apparent purpose of subsection (f)(1)(D) is to prevent the parties to litigation from dictating the cleanup plan through settlement negotiations -- that is, to ensure that the decision on the appropriate extent of cleanup at the site is approved by EPA through the public administrative decisionmaking process prescribed in CERCLA, in which the public has a right to participate, and not through some negotiated closed-door sattlement. Because the AVX Decree does not purport to determine what response action should be taken at New Bedford Harbor, and instead simply recovers a substantial sum to be applied toward whatever cleanup EPA ultimately decides to undertake, the settlement is entirely consistent with this reading of Section 122(f)(1).

As NWF well knows, the government's reading of Section

122(f)(1) as inapplicable to the AVX decree hardly lifts all

restraints on the terms of cash-out settlements. To the

contrary, the district court's duty to review such decrees for

fairness, reasonableness, and consistency with CERCLA's purposes

provides more than adequate assurances that a cash out settlement
must be in the public interest in order to be approved.

2. Provisions of Section 122(j)(2)

effectively prohibits a natural resource settlement by a federal trustee unless the settling defendant agrees to provide full restoration of the injured natural resources. Section 122(j)(2) provides that the federal natural resource trustee may agree to a covenant not to sue in any agreement under Section 122 if the defendant "agrees to undertake appropriate actions necessary to protect and restore the natural resources damaged. . . ". NWF is either ignoring the phrase "to undertake appropriate actions" or is reading it as meaning only one thing -- full restoration of the resources by a settling defendant.

In Acushnet IV, this Court characterized NWF's position as "neither requisite nor wise." 712 F. Supp. at 1036. It is not requisite because the statutory language plainly calls for "appropriate actions" -- not full recovery. Congress certainly would have drafted such an unusual mandate -- to recover "all of the funds" necessary for full restoration -- in a patently clear manner. The term "appropriate actions" on the other hand sets a

broad and more flexible standard. NWF's argument is equally not wise because it precludes any real compromise on the government's part in a natural resource settlement since the bottom-line demand of the trustees, no natter what the litigation risks or ability to pay of the defendant, must be a requirement of full restoration of the injured resources. This Court has instead interpreted Section 122(1)(2), in a menner more in keeping with the language and intent of Congress, as requiring the United States "to assess the strengths and weaknesses of its case and drive the hardest bargain it can." Id.

Department of the Interior, 880 F.2d 432 (D.C. Cir. 1989)

provides no authority for their position. The Obio court was not addressing issues of liability or the standards for natural resource settlements, but was reviewing regulations on the proper measure of damages. Plainly, determining the legally proper measure of damages — assuming liability is not an issue — is a far different matter from determining whether a particular payment from a defendant — for whom liability is unresolved — constitutes an appropriate compromise of the government's claim. The Ohio court explicitly acknowledged that, in settlement negotiations, the issue of liability can bring the amount of recovery well below the amount for full restoration:

In bargaining between rational actors, any settlement reached before trial will normally lie between the lower limit of liability (\$0, which represents a finding of no liability) and the upper limit of potential liability . .

set F.2d at 549 & n.20. Thus, the remarks of the Ohlo court do not purport to provide guidance in the review of an actual settlement, and in any event would support the governments' position.

CONCLUSION

NWF's argument under Section 12%(f)(1) is irrelevant to the AVX Decree given the \$130.5 million cost ceiling on the covenant not to sue. NWF's statutory analyses of Sections 122(f)(1) and 12%(j)(2) are also wholly unpersuasive. The governments' efforts to evaluate the litigation risks and uncertainties, as well as the potential costs of the remedy and restoration, coupled with the proposed Decree's provisions for reopening and for deferral of the covenant not to sue for future liability, fully satisfy the intent and objectives of CERCIA.

For all the foregoing reasons, this Court should approve and enter the proposed Consent Decree with AVX as fair, reasonable, and consistent with the objectives of CERCIA.

Respectfully submitted,

Assistant Attorney General Environment and Natural Resources Division

ELLEN M. MAHAN BRUCE C. BUCKHEIT Senior Counsel

Environmental Enforcement Section Environment and Natural Resources Division

U.S. Department of Justice Washington, D.C. 20530 (202) 514-3581 MOTION NUMBERS US-58; HA-2

SERVICE DATE: December 20, 1991 OPPOSITION DATE: January 6, 1992 REPLY DATE: January 21, 1992 DELIVERED TO COURT:

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

plaintiff.

-12 .

AVE CORPORATION, et al.,

Defendants.

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

40

AVX CORPORATION, et al.,

Defendants.

Civil Action Nos. 83-3882-Y 83-3899-Y

REPLY OF AVE CORPORATION TO OPPOSITION OF INTERVENCE MATIONAL WILDLIPE PEDERATION TO PIAINTIPES' MOTIONS TO MATER CONSENT DECREE

INTRODUCTION

After some seven years of intensive and often contentious litigation, the United States and the Commonwealth of Massachusetts have requested that this Court enter their proposed Consent Decree with defendant AVX Corporation ("AVX") as fair, reasonable and consistent with the objectives of CERCLA. See United States v. Cannons Engineering Corp., 899

F. 26 79, 65 (let Cir. 1990). Although none of the original parties has interposed any objection to the AVX decree, 1/ intervenor Mational Wildlife Federation ("MWF") opposes entry -- not based on the Cannons test, 1.6., a challenge to the fairness and reasonableness of the agreement, or to the general faithfulness of its terms to the objectives of CERCIA -- but rather on the same two statutory grounds it raised unsurcessfully in opposing an earlier sattlement between the government plaintiffs and defendants Aerovox and Belleville Industries, Inc. (the "Aerovox/Belleville decree"). In addition, NWF urges the Court to refrain from reviewing the AVX decree at all entil (1) the Court of Appeals decides NWF's appeal from the entry of the Aerovox/Belleville decree, and (2) the government reaches a final decision selecting a comprehensive plan for the cleanup of the New Bedford Harbor Superfund Site.

AVX submits this memorandum to join the plaintiffs in seaking prompt entry of the AVX decree and to respond to NWF's misquided effort to delay this settlement indefinitely. Specifically, AVX demonstrates below that postponement of the court's consideration of the AVX decree will disserve the public interest and the interests of the parties and will

^{1/} Aerovox Incorporated ("Aerovox") has filed a statement regarding the motion for entry specifically stating that it has no objection to the AVX decree.

preclude unnecessarily the possibility of the Court of Appeals consideration of the Aerovox/Belleville and AVX decrees together -- an option that would remain open to the appellate court in the event of an NWF appeal from prompt entry of the AVX decree. AVX also takes this opportunity to expand upon the United States' discussion of the uncertainties and risks which yielded the compromise embodied in the AVX decree. Finally, AVX endorses this Court's previous interpretation and application of Section 122 of CERCIA to the unique facts of this case, an approach which will permit the governments and private parties to avoid squandering valuable public and private resources on "complex, lengthy and uncertain" trials of Section 107 cost recovery and natural resource damages claims, In re Acushnet River & New Bedford Harbor, 712 F. Supp. 1019, 1030 (D. Mass. 1989) ("Acushnet IV"); in favor of prudent, well-informed settlement agreements.

I. REVIEW OF THE AVX DECREE SHOULD NOT BE DELAYED TO AMAIT THE OUTCOME OF BEF'S APPEAL FROM THE ENTRY OF THE APPROVOX/BELLEVILLE DECREE

NWF asserts that the Court should put off the execution of its review function pending the appeal on the Aerovox/Belleville decree "[i]n the interests of economy and efficiency." (NWF Opposition at 2.) NWF fails, however, to spell out precisely how these interests purportedly are better served by such a postponement than by prompt consideration of the decree. Nor does NWF make any effort to address the interests of the parties and the public which it would have the Court sacrifice in service

of the claimed benefit to "economy and afficiency." Upon analysis, may's proffered justification for delay is revealed to be speculative at best, and greatly cutvelghed by the public interest in having the proceeds of the settlement immediately available for the cleanup of the Harbor, by AVX's interest in finally gaining a measure of financial certainty with respect to its potential liability on the governments' claims, and by the jurisprudential benefits that may be realized from having any NWF appeals before the entry of the AVX decree before the Court of Appeals before the appeal on the Aerovox/Belleville decree is decided.

In the first instance, NWF's argument tacitly assumes that a decision of the Court of Appeals upholding the Aerovox/Sallaville decree would obviate any NWF appeal from a judgment of this Court entering the AVX decree. Yet NWF offers no assurance that it would in fact refrain from taking such an appeal. To the contrary, NWF's request that the Court hold the AVX decree in abeyance pending a final remedial decision suggests that NWF believes it would still be entitled at that time to challenge the reasonableness of the AVX decree in light

of the expected cost of the selected remedy -- in spite of the fact that it has thus far exchemed any such challenge.2/

Nor would any substantial gain in economy or efficiency be realized in the unlikely event the Court of Appeals were to agree with NWF's view that CERCIA categorically prohibits pre-ROD cash out settlements. Although such a ruling might mitisately require that the final remedial decision be taken into account in evaluating the reasonableness of the AVX decree, the need for consideration of the existing record of this litigation will remain. The issue of the reasonableness of the AVX decree on this record has been fully briefed, and AVX respectfully suggests that the Court is fully prepared, in light of its extensive knowledge of the record, to make the necessary determination. Sen Tr. July 16, 1991 at 26-27.

Against this possibility for minimal gains in "economy and efficiency," the Court must weigh the interests of the parties and the public in prompt approval of the AVX decree. The

Even if NWF were to concede that it is now precluded from challenging the reasonableness of the AVX decree, and represent to the Court that it will withdraw its opposition to the motion for entry if its appeal is unsuccessful, "the interests of economy and efficiency" still would not militate against prompt review by this Court. In the event the AVX decree is entered and NWF appeals, it will remain open to NWF — after incurring minimal expense — to ask the First Circuit to hold its appeal in abeyance pending resolution of the earlier appeal. As more fully discussed below, such a procedure would afford the Court of Appeals the option of considering the two appeals together — an option NWF now seeks to foreclose.

decision of the federal and state governments to move for entry at this time itself indicates their determination that the public interest will be beat served by prospt entry of the decree. New can offer this Court no assurance that a delay in approval of the AVX decree will not yield a delay in implementation of a remedy or, alternatively, a need to deplete scarce public resources to fund remedial action pending approval of the AVX decree.

AVX, for its part, is of course acutely interested in securing final approval of its settlement as soon as possible. AVX has faced substantial financial uncertainty since the governments first asserted these claims in 1983. The company has already placed in excess of \$66 million in an interest-bearing escrow account pending final judgment in this litigation. Thus, while these substantial funds cannot be put to use for AVX's business purposes, its financial affairs remain incapacitated by uncertainty pending approval.

Moreover, as the consent decree makes clear, both parties intend that the decree fully preserves all of AVX's contribution rights. Upon final entry of the consent decree, AVX's inchoate rights to seek contribution from other companies it believes contributed to the contamination which has been the subject of years of EPA studies -- g.g., metals dischargers --

will ripen into an independent cause of action. 2/ Back in 1988, AVX sought to make at least 15 additional third parties, but this Court denied defendants' motion to include third party claims in what was already a complex case. With each passing day, witnesses move, disappear or die, companies dissolve, and the facts relevant to those claims became harder and harder to prove, all to AVX's prejudice. No good reason exists why AVX's contribution rights should be further derogated by unnecessary delay in bringing nine years of court proceedings to closure as quickly as possible.

Finally, were this Court to stay its hand, the Court of Appeals would be denied an opportunity to judge for itself whether the appeal on the Aerovox/Belleville decree and any NWF appeal from entry of the AVX decree ought to be decided together. The potential salutary effect of having both appeals before the First Circuit as it seeks to resolve the issues NWF has raised should not be ignored. For example, NWF supports its interpretation of Section 122 in part by arguing that the reasonableness of a proposed settlement cannot be determined until the full extent of cleanup costs is known. The "reopener" contained in the AVX decree for response costs under

If The prejudicial postponement of the day AVX can enforce its statutory contribution rights is cited as an example of the injury AVX may suffer if entry of the decree is unnecessarily delayed. Whether AVX in fact will bring contribution actions is an issue for another day.

the first two RODs which exceed \$110.5 million, however,
illustrates that the government and private parties can fashion
agressents addressing such uncertainties.

Indeed, when it moved the Court of Appeals to hold the appeal of the Aerovox/Belleville decree in abeyance, NWF itself acknowledged that a more complete view of the agreements by which the governments propose to resolve their claims will enable a more informed evaluation of any individual decree.

NWF then argued that it would "plainly facilitate" the First circuit's consideration of issues pressed by NWF

if the entire case -- rather than simply one segment of it -- is considered by the Court at one time. Thus, just as NWF would be in a far batter posture to assess the appropriateness and legality of the settlements in the context of the entire case -- including the total amount of funds recovered -- so too would the Court itself.

Appellant's Motion to Hold Appeal in Abeyance or, in the Alternative, for Extension of Time at 7 (attached hereto as Exhibit A). 1/ Although the circumstances likely foreclose

NWF's motion was opposed in the Court of Appeals by the government plaintiffs and by Aerovox, principally due to uncertainties regarding when decrees with other defendants would be ripe for review. The motion was denied, perhaps for this reason. Prompt action by this Court on the motion for entry of the AVX decree obviously will remove such uncertainty as to that decree. Should the Pirst Circuit be presented with an appeal on the AVX decree before it has decided the pending appeal, that court can then consider whether the interests of justice would be better served by deciding the two appeals together. Any possible delay attendant to such an approach can be weighed as part of the Pirst Circuit's analysis.

concurrent appellate consideration of all anticipated decrees, the same rationals clearly counsels that an opportunity to enable the First Circuit to review at least two of the decrees together should not be squandered.

In the final analysis, any modest gains in "economy and efficiency" that may be realized by avaiting a decision from the First Circuit are grossly outweighed by the potential detrimental effects of such a delay. There simply is no sustainable reason to postpone action on the present motion or to effectively remove the question of the appropriate handling of NWF's appeals from the discretion of the appellate court.

II. REVIEW OF THE AVX DECREE SHOULD NOT AWAIT FINAL REMEDY

As noted, MWF has asked the Court to delay decision not only until the Court of Appeals speaks, but also until the government completes the process of selecting a final remedy for the New Bradford Harbor site. This Court should reject NWF's further invitation for delay in light of the total absence of factual support for NWF's assertion that the final remedy will be selected — and necessary restoration costs determined — within some unspecified "short period of time," and in light of the circumstances under which the settlement embodied in the AVX decree was reached.

selected within a "abort period of time" exclusively by reference to the government's statement, in a brief filed in the Court of Appeals, that the remedy selection process is in an "advanced stage," (MMY Opposition at 2.) But the mere fact that a process which began nearly ten years ago now can be said to be in an "advanced stage" tells one nothing about when the process will completed. MMF's conclusion is a non magnitur.

The government has not made, and cannot make, any representation to this Court or the Court of Appeals as to when a final remedy will be selected. While EPA has issued a "first operable unit" ROD addressing so-called "Hot Spot" areas of the Upper Estuary, and articipates issuing a second ROD for the remainder of the Estuary, lower Harbor and Bay, the process leading to issuence of the second ROD is far from complete. At present, EPA has issued only a proposed plan, addressing portions of the areas to be addressed in the second ROD. See 42 U.S.C. \$5 9613(k)(2)(B)(i), 9617(a)(l). 5/ Pursuant to Sections 113(k)(2)(B)(ii) and 117(a)(2) of CERCLA, 42 U.S.C. \$5 9613(k)(2)(B)(iii), 9617(a)(2), EPA will start a 120 day comment period on that plan on January 30.

^{5/} A copy of EPA's January 17, 1992 press release announcing its proposed plan for a "second portion" of the New Bedford Warbor Superfund Site is attached hereto as Exhibit B.

addressing additional areas of Bussards Bay, until this spring, when an opportunity for additional public comments will be offered. EPA will then be required to consider carefully all submissions received and respond to all significant comments, criticises and new data presented. See 42 U.S.C.

\$ 1613(k)(2)(8)(iv). CERCLA expressly contemplates that the final recedial action plan may incorporate "significant changes" from the proposed plan. See 42 U.S.C. \$ 9617(b). NWF obviously is in no position to assure the Court that these important additional steps leading to the second ROD will consume only a "short period of time."

There likewise is no basis in fact for NWF's assumption that a reliable estimate of natural resource restoration costs will be available as of the time the second ROD is issued. EPA repeatedly has stated an intention to implement a "comprehensive" remedy at this site. The question whether any restoration activities will be needed after implementation of the remedy necessarily will depend upon the degree to which EPA's remedy succeeds. The precise extent of post-remedy residual harm to

natural resources, if any, and the likely cost of any restoration seasures, will not be known for years to come. 6/

Even if one could reliably predict when the second ROD will be issued, or when a reasonably accurate estimate of restoration costs, if any, will be possible, such information would not aid the Court in the determination it is charged with: whether the estilement decision was reasonable in the context in which it was made. If pre-ROD cash out settlement decisions can be made at all — and this Court has ruled that they can — then they must perforce be based upon an informed assessment of probabilities and risks in light of all information then available. It follows that the function of the Court in reviewing such a settlement is to evaluate its reasonableness by reference to the contents of the record as of the time the settlement decision was made — not to play "Monday morning quarterback" by considering information that was unknown and unknowable when the parties reached their agreement. See Cannons, 899 F.2d at 90.

The fact that natural resource restoration costs are not presently susceptible of quantification does not suggest, however, that the parties lacked sufficient information concerning the likely magnitude of the governments' combined cleanup cost recovery and natural resource damages claims when the settlement decision was made. As the United States points out, it did possess at that time a wealth of technical information concerning the claimed injury to natural resources as well as an assessment of the lost use value of the resources, assuming no EPA cleanup. Memorandum in Support of Plaintiff's Motion to Enter Consent Decree with AVX Corporation ("Plaintiff's Newgrandum") at 10 5 n.5. As discussed below, AVX was prepared to introduce substantial evidence at its scheduled 1990 trial that any alleged loss of use or injury to natural resources would likely be substantially remediated.

now made the exact wase argument to the Court months ago when it challenged the Aerovox/Belleville decree. While EPA's edministrative process inexorably moves on, the argument has no greater merit now than it did when it was first raised and rejected by the Court in July 1991.

THE AVE DECREE IS PAIR, REASONABLE AND CONSISTENT WITH THE OBJECTIVES OF CERCIA

United States ably demonstrates that the terms of the settlement pass muster under the review standard articulated by this Court is Acushnet IV and by the First Circuit in Cannons, namely, "that the settlement is reasonable, fair, and consistent with the purposes that CERCLA is intended to serve." Cannons, 899 F.2d at 85, Gusting H.R.Rep.No. 253, Pt. 3, 99th Cong., 1st Sess. 19 (1985), reprinted in 1986 U.S.Code Cong. & Admin.News 3038, 1042; see also Acushnet IV, 712 F. Supp. at 1027. 2/ AVX will not restate each point covered by the government, but rather add its perspective regarding the "risks of loss" the government faced as it approached a trial of its claims against AVX. See Cannons, 899 F.2d at 90; see also Acushnet IV, 712 F. Supp. at 1030.

In providing a summary of the terms of the decree, the government necessarily departs from its exact language. While AVX believes that the decree ultimately must speak for itself, and might have described certain of its terms somewhat differently, the government's summarization is generally fair and accurate.

For example, one of the points mentioned by the United States and the Componwealth as part of their evaluation of risks posed by engoing litigation with AVX was AVX's "detailed and well-funded challenge to EPA's selection of clean up alternatives.* In fact, AVX was the only defendant in the case to submit its own alternative remedial action proposal to EPA as part of its comments on the Not Spot Operable Unit Remedial Investigation/Feasibility Study and Proposed Plan. AVX's team of 15 experts had been retained not only for litigation consultation, but to engage in substantial original field work. On the basis, then, not only of the governments' extensive data base, which AVX had carefully and exhaustively critiqued, but also its own original work, AVX had developed an environmentally sound, nonintrusive, cost-effective reasedy which principally rulled on natural engoing processes of sedimentation to encapsulate sediment polychlorinated biphenyls ("PCBs") and blodegradation to detoxify PCBs in the sediment.

Based on this work, AVX, through its RFAs (see Volume IX, Mitigation of Future Injury), sought to introduce evidence not only of its proposed remedial action but also of EPA's Hot Spot Record of Decision (as avidence of future remedial action EPA had already decided to take) as proof that there would be remedial action which would mitigate future injury, such that the governments' claimed natural resource injury in the harbor would be of short duration, and their damages, if any, significantly less than those claimed. AVX's administrative record submittal

ascunted to 16 volumes of scientific reports and sampling data presented with the same specificity this Court required for the court record is NVAs. Thus, AVX was well equipped to challenge not only the governments' remedial selection, but also its natural resource damage claims.

Purther contesting the governments' natural resource damages claims, AVX was prepared to attack both theories of causation of injury to natural resources and measures of the dollar value of the injury ellegedly caused by AVX's releases of PCBs. AVX would nave proved, for example, that its addition of PCBs to the Harbor did not cause any cognizable hars over and above the pre-existing "baseline" conditions caused by nearly a century of sewage, oil and metals discharges and would have established that this historic contamination in and of itself was sufficient to cause the claimed excess expense associated with dredging activities, the asserted hars to commercial lobstering activities, and the alleged impairment of beach use and recreational fishing.

AVX's trial proof would have included extensive expert testimony challenging the validity of "contingent valuation" studies relied upon by the government to value Harbor amenities. Through expert evidence, it would have demonstrated, by way of example, both (1) that the only significant factors limiting beach attendance on primary beach use days was overcrowding and unavailability of adequate parking facilities and (2) that a

survey, undertaken to test bias of the governments' study, established that the governments' approach to surveying beach use was not statistically valid or reliable.

In addition, AVX was ready to attack the governments' effort to attribute declining local real estate values to AVX's release of PCBS. The decline is attributable to economic factors (a recession) which affected other Massachusetts cities (E.G., Fall River, Lowell and Lawrence) similarly to New Bedford. Citimately, the results of the survey of property values conducted by the plaintiffs did nothing to show changed property values attributable to PCBS, but merely confirmed normal variations in property values based on type, size, age and the amount of land for homes, school system differences, property tax-rate differences, and the substantial differences in the services provided by towns surrounding New Bedford.

This is but a snapshot of the dynamics facing the parties in August 1990, when they were in the midst of yet another round of depositions (over 25 expert depositions were proceeding by agreement of the parties), struggling with newly-filed boxes of summary judgment motions, with a three-month trial on the horizon. NWF would have the Court delay entry of the consent decree because of speculative concerns about what the remedial ection at this Site will be and whether there will be residual natural resource injuries or damages. NWF remained silent, however, when the Court entered its case management order in

Bovember, 1988, establishing the trial schedule which led the parties to their eleventh hour settlement. Second guessing from the sidelines for from the hurly burly of a hard fought litigation is easy, but not productive. Everything in the record of this case desonstrates that the governments negotiated the best deal they could, and that the parties senorialized it in a carefully crafted consent decree. NWP's academic, ivory tower approach to this case must be rejected in the face of the litigation realities the Court and the parties confronted.

IV. THE AVX DECREE, WHICH RESOLVES A SECTION 107 ACTION FOR RECOVERY OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES, DOES NOT VIOLATE PROVISIONS OF CERCLA ADDRESSING PRIVATE FARTY CLEANUP AGREFICIATS

This court already has determined that pre-ToD cash out settlements of Section 107 cleanup cost recovery and natural resource damages claims are permissible under CERCLA, notwithstanding the statutory arguments advanced by NNF. Tr. July 16, 1991 at 26-28. See Acushnet TV, 712 F.Supp. at 1034-1035. Specifically, the Court has concluded that Section 122(f)(1) of CERCLA, 42 U.S.C. \$9622(f)(1), "does not apply strictly to cash out settlements," Tr. July 16, 1991 at 27-28, and that at least in the paculiar circumstances of this case, it is not necessary under Section 122(j)(2), 42 U.S.C. \$9622(j)(2), for restoration costs to be "determined prior to entry of the decree." Tr. July 16, 1991 at 27.

Implicit in the Court's carefully chosen phrasing of these rulings is a recognition both that the principles embodied in Sections 122(f)(1) and 122(j)(2) may properly inform judicial review of a camh out agreement and that the circumstances presented by litigated Section 107 claims may nevertheless justify a departure from the process ordinarily pursued in the contact of private party cleanup settlements. The Court found that such circumstances were presented in the case of the Asrovox/Belleville decree, and that, notwithstanding the absence of a second ROD, the Court could conclude from the record that "the restoration and cleanup costs are reflected reasonably in the [Asrovox/Belleville] decree." Tr. July 16, 1991 at 27. AVX submits that the same conclusions can be drawn with respect to its decree.

AVX has, of course, travelled essentially the same procedural path in this case as was followed by Aerovox and Belleville. The AVX trial date loosed in the absence of a second ROD or a restoration plan and the context in which the case could be settled — if at all — was thus defined. A lengthy, expensive and uncertain trial was avoided, and the congressional goal of settlement was served. See Cannons, 899 F.2d at 90.

The costs of cleanup and restoration likewise are reasonably reflected in the AVX decree. The total sum made available to the governments (now in excess of \$72 million)

compares favorably with expected costs and damages. See

Plaintiff's Memorandum at 10 n. 5. Furthermore, the parties

made use of the flexible provisions of Section 122 to fashion

the so-called "cost reopener" to deal with uncertainty

regarding the ultimate magnitude of expenditures under the two

RODS. See 42 U.S.C. \$9622(f)(6)(C) (authorizing exceptions to

covenants not to sue other than "standard" reopener found in

Section 122(f)(6)(A), 42 U.S.C. \$9622(f)(6)(A)).

The provisions of Section 122 of CERCIA upon which NWF relies do not apply to the AVX decree. To the extent that Sections 122(f)(1) and 122(j)(2) offer guidance to a reviewing court in its consideration of a pre-ROD cash out settlement, the Court has ample reason to conclude that the objectives underlying these provisions have been served. Since the AVX decree otherwise is fair, reasonable and consistent with the purposes of the statute, see Cannons, 899 F.2d at 85, the decree should be approved and entered.

CONCLUSION

For the foregoing reasons, the Court should allow the motions of the United States and the Commonwealth of Massachusetts for entry of their Consent Decree with AVX Corporation.

AVX CORPORATION

By its attorneys,

mary K Ryan

Daniel J. Gleason (BBO# 194900) Mary K. Ryan (BBO# 435860) Martin C. Pentz (BBO# 394050) Mutter, McClennen & Fish One International Place Boston, MA 02110-2699 (617) 439-2000

Dated: January 21, 1992

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served by Federal Express mail on Elien Mahan, Eric R. Glitzenstein, Matthew T. Brock and Mark Lowe, and by first class mail, postage prepaid, on all other counsel record this 21st day of January, 1992.

Mary K. Ryan

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MOTION HUMBER US-58

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA.

AVX CORPORATION, et al., Defendants.

COMMONWEALTH OF MASSACHUSETTS, Plaintiff,

AVX CORPORATION, et al., Defendants. CIVIL ACTION NO.

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTES. TO EMTER CONSENT DECREE WITH AVX CORPORATION

In its Opposition to the Motions of the United States and of the Commonwealth to Enter the Consent Decree with AVX Corporation, Intervenor National Wildlife Federation ("NWF") relies upon the same statutory arguments on which it based its unsuccessful opposition to this Court's approval of the Aerovox/Belleville settlement and on which it bases its First Circuit appeal. NWF's brief simply incorporates those two arguments by reference, and adds no further grounds for its position. Instead, NWF's Opposition suggests that this Court stay its hand and hold in abeyance any action on the Plaintiffs' Motions to Enter the AVX Decree. For the reasons set forth below, Plaintiffs urgs the Court to reject NWF's suggestion, and

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to proceed as promptly as possible to consider Plaintiffs'

ARGUMENT

I. Meither Judicial Economy Nor the Public Interest Would Be served By Deferring Consideration of the AVX Decree Until the First Gircuit Issues a Decision.

AVX Decree should await the First Circuit's ruling on the AVX Decree should await the First Circuit's ruling on the Aerovox/Belleville settlement, would unduly prejudice the governments and the public in obtaining the funds to undertake remediation and restoration in a timely fashion, and may not resolve the issues pertaining to the validity of the AVX Decree.

has no obligation to turn over any monies to the governments until the Decree has been entered by the Court and any period for appeals has run and/or the approval has been upheld on appeal. This court must take action on the Decree in order for that period to begin. Molding any decision in abeyance, and then taking up consideration of the AVX Decree after a ruling by the Pirst Circuit, could result in a delay of many months before the governments could begin drawing on the settlement recoveries to undertake the cleanup work, rather than depleting the Superfund as the government is now doing.

Moreover, the First Circuit's ruling may not resolve the issues surrounding approval of the AVX Decree for two reasons. First, the governments have challenged NWF's standing to bring the appeal in the First Circuit by a motion to dismiss. The

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challengs to these sattlements under Section 122, but may rule in favor of the governments on the motion to dismiss the appeal.

Second, the reopener provisions of the AVX Decree differ from the Aerovom/Belleville settlement by including a cost reopener in the event the remedy costs exceed \$150.5 million. Thus, the reach of the covenant not to sue which NWF challenges in the First Circuit is not the same as in the AVX Decree.

Therefore, NWF's suggestion to await a ruling by the First Circuit will result in a delay that could potentially harm the public interest in securing settlement funds promptly for cleanup and may prove to be wholly unnecessary if the First Circuit's ruling is inapposite to the AVX Decree.

II. Postponing Consideration of the AVX Decree To Await a Cleanup Decision by EPA Would Not Serve the Public Interest.

NWF's second argument is based on the unsupported premise that there is only a "brief period of time that it would take for the final remedy selection process to move from its currently 'advanced stage' to completion." NWF Opposition at 4. From this unsupported assertion, NWF then asks the Court to hold any consideration of the AVX Decree until the remedy selection process is complete. In order to make this argument, NWF has plucked two words -- "advanced stage" -- from the governments' brief on appeal to suggest that EPA's decision on the comprehensive cleanup of the Harbor is imminent. In fact, the full quote and context of the words selected by NWF stated that, at the time of the settlement negotiations with Aerovox and Belleville in 1990,

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"the United States and the Commonwealth had the benefit of information developed in the remady selection process, which was in an advanced stage with one ROD already done and the RI/FS for the remainder completed." That NWF would select those two words — "advanced stage" — from that quote to argue that final remady selection will occur in a brief period of time is remarkable.

In fact, the tiretable for EPA's final remedy selection, while progressing, could probably not be characterized as "brief". This month EPA issued a Proposed Plan to the public which identifies a further piece of the cleanup work EPA proposes to undertake in the Harbor. 1 EPA's Proposed Plan does not constitute a final decision. The Proposed Plan solicits public review and comment, through written submissions and public hearings. EFA will consider that public input in selecting the appropriate cleanup alternative for the Harbor. The period for submission of public comment on that work alone is 120 days.

Moreover, the January 1992 Proposed Plan identifies a supplemental study that is being prepared to evaluate alternetives before EPA determines whether further cleanup, in addition to that identified in the January Proposed Plan, should be undertaken as part of the final remedy in the area south of the Rurricane Barrier. EPA plans to issue an Addendum Proposed Plan and projects the date for its issuance as April 30, 1992,

¹ EPA has elready begun undertaking the first phase of the cleanup, remediation of the highly contaminated Hot Spot areas in the Upper Estuary, which it determined to perform under its April 1990 Record of Decision ("Hot Spot ROD").

with a 30 day public comment period to overlap with the end of the comment period on the January 1992 proposal.

Under the current schedule, therefore, all public comments on the January 1982 Proposed Plan and on the Addendum Proposed Plan will not even be received by EPA until after June 1. The final remedy selection, including consideration of and response to public comments, and the preparation of the Record of Decision for the final remedy, must take place thereafter. A period of seven to eight months from issuance of the Proposed Plan to issuance of the ROD would therefore not be unlikely.

Such a delay in consideration of the AVX Decree would clearly not be in the public interest, because it would delay receipt of the settlement monies for that period as well as for the additional period for approval and appeal thereafter.

Moreover, NWF's position that the Court could then compare the amount of money recovered in settlement with the cost of the remedy to determine whether the public is adequately protected takes an entirely different, and legally unsupported, tack from its strictly statutory objections to the settlements. On appeal, NWF has argued that the United States cannot grant a covenant not to sue, under Section 122(f)(1), until a final response action for New Bedford Harbor has been approved. Unsupported by its own premise, NWF now argues that, in order to be approved, the Decree must in addition provide the public with essentially full protection from the potential for higher costs than those recovered in settlement. What NWF's argument ignores is the standard for

judicial review of consent decrees and the practicalities of

The law in this Circuit is clear that this Court "is only to 'satisfy itself that the settlement is reasonable, fair, and consistent with the purposes that CERCIA is intended to serve.'" United States v. Cannons Engineering Corp., 899 F.2d 79, 85 (1st Cir. 1990). The Cannons court expressly cautioned district courts to refrain from "second-guessing the Executive Branch," stating:

The relevant standard, after all, is not whether the settlement is one which the court itself might have fashioned, or considers as ideal, but whether the proposed decree is fair, reasonable, and faithful to the objectives of the governing statute.

899 F.2d at 84. See generally Sam Fox Publishing Co. v. United States, 366 U.S. 683, 689 (1961) (absent malfeasance or bad faith, courts are not to "assess the wisdom of the Government's judgment in negotiating and accepting [a] consent decree*).

Contrary to these principles, NWF is encouraging the Court to wait to see what the ultimate cleanup costs turn out to be, and then to independently determine itself whether the amount of money recovered from each defendant is the amount that should have been accepted by the governments. Such an inquiry would be precisely the type of "second-guessing" the First Circuit eschewed in Cannons.

Instead, the reasonableness of the settlement terms and the extent to which those terms serve the public interest and the objectives of the statute must be viewed from the position of the

powernments at the time the settlement was struck. The inquiry

Is Whether It was fair, reasonable and consistent with CERCIA to

reach a settlement for see million (which has accrued over \$6

aillion in interest to date) based on extensive information

evaluable at that time on the potential extent and future costs

of cleanup and restoration, and on an assessment of the litiga
tion risks and uncertainties of recovery against AVX in the jury

trial which was to begin some six weeks later. Under NWF's argu
ments, the only option for the governments would have been to

take the case to trial -- no matter what amount was offered in

settlement.

Essentially, NWF is now arguing that there can be no exposure for unrecovered costs if the decree is to be approved. But a settlement cannot provide for a 100% reopener for the unrecovered costs or damages and still be considered a settlement. There is always some exposure if the remedy costs are higher than the government anticipated; however, that exposure is mitigated greatly by the reopeners in the AVX Decree. If the costs or damages are higher because of new information or unknown conditions, the governments can seek more money from AVX. Moreover, if the costs of the remedy exceed \$130.5 million, no matter what the reason for that excess, the governments can seek those costs against AVX. It is difficult to imagine how much more protection in the event of unanticipated occurrences NWP can reasonably demand in a settlement.

CONCLUSION

For all the foregoing reasons and those set forth in the Memorandum in Support of Motion to Enter the AVX Decree, this court should approve and enter the proposed Consent Decree with AVX as fair, reasonable, and consistent with the objectives of CERCLA.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

EDLEN M. MAHAN BRUCE C. BUCKHEIT

Senior Counsel

Environmental Enforcement Section Environment and Natural Resources

Division U.S. Department of Justice Washington, D.C. 20530 (202) 514-3581

FOR THE COMMONWEALTH OF MASSACHUSETTS

Matthew T. BROCK

Assistant Attorney General Department of Attorney General Environmental Protection Division

One Ashburton Place Boston, MA 02108 (617) 727-2200

CERTIFICATE OF SERVICE

I hereby certify that the Reply Memorandum in Support of Plaintiffs' Notions to Enter Consent Decree with AVX Corporation was served by first class mail, postage prepaid, on all counsel of record this 21st day of January 1992

ELLEN M. MAHAN

14 12

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff.

AVX CORPORATION, et al., Defendants.

COMMONWEALTH OF MASSACHUSETTS, Plaintiff,

AVX CORPORATION, et al., Defendants.

v .

CIVIL ACTION NO. 83-3882-Y

CONSENT DECREE WITH DEFENDANTS AEROVOX INCORPORATED AND BELLEVILLE INDUSTRIES, INC.

This Consent Decree ("Decree") is made and entered into by the United States of America ("United States") and the Commonwealth of Massachusetts ("Commonwealth") (collectively referred to as "Plaintiffs"), Aerovox Incorporated ("Aerovox"), and Belleville Industries, Inc. ("Belleville"). Aerovox and Belleville are referred to collectively herein as the "Settling Defendants".

Introduction

The United States, on behalf of the National Oceanic and Atmospheric Administration ("NOAA"), and the Commonwealth as state trustee ("Commonwealth" or "state trustee"), filed complaints in these consolidated actions on December 9 and 10, 1983, respectively, seeking damages for injury to, destruction of, and loss of natural resources resulting from releases of

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ENFORCEMENT RECORDS

polychlorimated biphenyls ("PCBs") in New Bedford Harbor,

Massachusetts, and adjacent waters under Section 107 of the

Comprehensive Environmental Response, Compensation and Liability

Act, 42 U.S.C. § 9607 ("CERCLA").

Plaintiffs filed amended complaints (hereinafter "Complaints") in these actions on February 27 and 28, 1984. The United States' Complaint set forth, in addition to the claim for natural resource damages described above, claims on behalf of the United States Environmental Protection Agency ("EPA") for recovery of response costs under Section 107 of CERCLA, and for injunctive relief under Section 106 of CERCLA, 42 U.S.C. § 9606, Section 7003 of the Resource Conservation and Recovery Act, +2 U.S.C. § 6973 ("RCRA"), Section 504 of the Clean Water Act, 33 U.S.C. § 1364 ("CWA"), and Section 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 407 ("1899 Act"). The Commonwealth's Complaint set forth, in addition to its claims for natural resource damages described above, claims for recovery of response costs incurred by the Commonwealth under Section 107 of CERCLA, 42 U.S.C. § 9607, Sections 5(a) and 13 of Chapter 21E, Massachusetts General Laws, and Section 27 of Chapter 21, Massachusetts General Laws, and claims for abatement of a public nuisance and abatement of an abnormally dangerous condition under state common law.

The Complaints assert claims against five current defendants, AVX Corporation, Aerovox, Belleville, Cornell-Dubilier Electronics, Inc., and Federal Pacific Electric Company.

This Decree relates solely to the claims against Aerovox and Belleville and any counterclaims by those defendants against Plaintiffs.

The parties to this Decree agree that settlement of the claims in this case by and against Defendants Aerovox and Belleville is in the public interest and is made in good faith, and that entry of this Decree is the most appropriate means to resolve the matters covered herein.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED:

Jurisdiction

1. The Court has jurisdiction over the subject matter of this action and the parties to this Decree pursuant to 28 U.S.C. §§ 1331 and 1345, Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), Section 7003 of RCRA, 42 U.S.C. § 6973, Section 504 of the CWA, 33 U.S.C. § 1564, and Section 13 of the 1899 Act, 33 U.S.C. § 407, and has pendent jurisdiction over the claims arising under state law. This Court also has personal jurisdiction over the Settling Defendants, which, solely for the purposes of this Consent Decree, waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District.

Settling Defendants

2. Defendant Aerovox is a Delaware corporation with its principal place of business in New Bedford, Massachusetts.

Aerovox has owned and operated the Aerovox Facility (as hereinafter defined) since October 27, 1978. For purposes of

this Cacree, "Aerovox" includes Aerovox Canada, Ltd., a Canadian corporation which is a wholly-owned subsidiary of Aerovox Incorporated.

3. Defendant Belleville was formed as a Massachusetts corporation on December 8, 1972. Belleville dissolved on December 21, 1978, and was revived for purposes of responding to lawsuits on December 18, 1981. Belleville owned and operated the Aerovox Facility (as hereinafter defined) from January 2, 1973 to October 27, 1978.

Applicability of Decree

4. The provisions of this Decree shall apply to and be binding on the United States and the Commonwealth and their agencies and departments and on Settling Defendants and their successors and assigns. Changes in the ownership or corporate form or status of a Settling Defendant shall have no effect on the Settling Defendant's obligations under this Decree.

Effect of Settlement/Entry of Judgment

5. This Decree was negotiated and executed by the parties hereto in good faith to avoid the continuation of expensive and protracted litigation and is a fair and equitable settlement. The execution of this Decree is not an admission of liability, nor is it an admission or denial of any of the factual allegations set out in the Complaints or an admission of violation of any law, rule, regulation, or policy by any Settling Defendant or its officers, directors, employees, or agents.

5. Upon approval and entry of this Decree by the Court, the Decree shall constitute a final judgment between and among Plaintiffs and defendants Aerovox and Belleville.

Definitions

- 7. This Decree incorporates the definitions set forth in Section 131 of CERCLA, 42 U.S.C. § 9601. In addition, whenever the following terms are used in this Consent Decree, they shall have the following meanings:
- A. "Aerovox Facility" means the manufacturing plant and associated structures and land currently owned and operated by Aerovox at 740 and 742 Belleville Avenue, New Bedford, Massachusetts.
- B. "Covered Matters" has the meaning set forth in Paragraph 19 below.
- C. "DEP" means the Massachusetts Department of Environmental Protection.
- D. "Federal Trustees" means the Secretary of Commerce, acting through NOAA, and the Secretary of the Interior.
- earliest date on which all of the following have occurred:

 (1) the Decree has been lodged with the Court and noticed in the Federal Register, and the period for submission of public comments has expired; (2) the Court has approved and entered the Decree as a judgment; and (3) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the time for

further appeal has expired without the filing of a further appeal or no further appeal is allowed.

- F. "Natural Resources" shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).
- G. "Natural Resource Damages" means damages,
 excluding costs of damages assessment, recoverable under Section
 107 of CERCLA for injury to, destruction of, or loss of any and
 all Natural Resources of the New Bedford Harbor Site.
- H. "New Bedford Harbor Site" or "Site" means the New Bedford Harbor Superfund Site, located in New Bedford,
 Massachusetts, including New Bedford Harbor, the Acushnet River Estuary, and any adjacent marine waters and sediments and shoreline areas which are the subject of EPA's current Remedial Investigation and Feasibility Study, including at least Areas 1,
 2, and 3 as defined in 105 C.M.R. part 260.005 and as depicted on Exhibit A to the United States' Complaint. The Site does not include any portion of the Aerovox Facility westward (away from the Acushnet River Estuary) of the steel sheet pile wall which Aerovox has installed along the length of the tidal mudflat.
- I. "Remedial Action" means those actions that EPA determines should be implemented pursuant to CERCLA to address hazardous substance contamination at the New Bedford Harbor Site, as set forth in the RODs.
 - J. "Response costs" means costs of response or

remedial action, including costs of operation and maintenance of remedial action components.

- R. "RODS" means the first and second operable unit records of decision for the New Bedford Harbor Site issued or to be issued by EPA following the completion of the ongoing Remedial Investigation and Feasibility Study and, in the event the first two records of decision do not address all areas of the Site, any additional operable unit record(s) of decision that EPA considers necessary to provide a comprehensive initial remedial decision (including a no action decision) with respect to PCBs for all areas of the Site. "RODS" does not include any record of decision with respect to later-discovered conditions or information as described in Paragraphs 20 or 21.
- L. "State Trustee" means the Secretary of the Executive Office of Environmental Affairs, Commonwealth of Massachusetts.

Payment Terms

Summary of Payment Obligations. In accordance with the requirements of Paragraphs 9-17, Settling Defendants shall pay to Plaintiffs the principal amount of \$12,600,000 (of which \$9.45 million is for response costs and \$3.15 million is for natural resource damages) together with interest. As specified in Paragraphs 9 and 10, \$6.1 million of this principal amount shall be placed in escrow for Plaintiffs' benefit within fifteen days after all parties have signed the Decree and shall be disbursed to Plaintiffs within five days after final approval of the

Decree: as specified in Paragraph 11. Aerovox shall pay an additional \$3.5 million to Plaintiffs within five days after final approval of the Decree: and, as specified in Paragraphs 12 and 13. Aerovox shall pay another \$3 million to Plaintiffs in three annual installments. Plaintiffs, including the Federal Trustees and the State Trustee, have determined the manner in which the payments to be made by Settling Defendants under this Decree shall be allocated between the Plaintiffs and among past and future response costs and natural resource damages, and Settling Defendants have agreed to this allocation as presented to them by Plaintiffs. Plaintiffs represent that the allocation of the recovery set forth in the Decree is appropriate, proper, and adequate.

9. Escrowed Funds

Decree with the Court, Settling Defendants shall establish an escrow account (the "Escrow") bearing interest on commercially reasonable terms, in a federally-chartered bank with an office in the Commonwealth of Massachusetts, and each Settling Defendant shall pay into the Escrow the sum specified for it below for the benefit of Plaintiffs.

Settling Defendant

Amount

Aerovox Incorporated

\$2,100,000

Belleville Industries, Inc.

\$4,000,000

Settling Defendants shall notify Plaintiffs in writing of the creation and funding of the Escrow immediately after both of the

above payments have been made. This notice shall be sent by hand or by evernight mail to: William D. Brighton, Environmental Enforcement Section, U.S. Department of Justice, Room 1541 (EES Dockets), 10th & Pennsylvania Avenue, N.W., Washington, D.C. 20530; and Matthew T. Brock, Assistant Attorney General, One Ashburton Place, 19th Floor, Boston, MA 02108.

- B. Subject only to the provisions of subparagraph C of this Paragraph, Settling Defendants' obligations to establish the Escrow and to pay the amounts specified above into the Escrow within the specified time are contractual obligations to Plaintiffs and to each other, effective as of the date that both Settling Defendants, the United States Assistant Attorney General, and the Massachusetts Assistant Attorney General have signed the Decree, and those obligations shall be enforceable as a matter of contract law regardless of when or whether the Decree is entered by the Court. The consideration for these contractual undertakings by Settling Defendants includes the immediate cessation of litigation activities until a determination is made whether this Decree will be entered and the resolution of Plaintiffs' claims against Settling Defendants as set forth in the Decree, if the Decree is approved and entered by the Court.
- C. All funds paid into the Escrow by Settling
 Defendants shall remain in the Escrow and may not be withdrawn by
 any person, except to make the payments required by Paragraph 10
 or unless one of the following events occurs: (1) the United
 States withdraws its consent to entry of the Decree after the

Decree has been lodged, pursuant to Paragraph 33; or (2) a final judicial determination is made that entry of the Decree is not in the public interest and that the Decree will not be approved and entered. If one of these events occurs, all sums in the Escrew may be returned to Settling Defendants.

- 10. <u>Disbursements From The Escrow.</u> Within five (5) days after final approval of the Decree, Settling Defendants shall cause the full \$6,100,000 paid into the Escrow under Paragraph 9 and all accrued interest thereon to be disbursed from the Escrow to Plaintiffs as follows:
 - A. The sum of \$1,505,000, plus the interest accrued on that amount, shall be paid to the EPA Hazardous Substances Superfund in the manner provided in Paragraph 1; in reimbursement of past response costs incurred by the United States with respect to the New Bedford Harbor Site.
 - B. The sum of \$85,000, plus the interest accrued on that amount, shall be paid to the Commonwealth in the manner provided in Paragraph 15 in reimbursement of past response costs incurred by the Commonwealth with respect to the New Bedford Harbor Site.
 - C. The sum of \$2,985,000, plus the interest accrued on that amount, shall be paid to the EPA Hazardous Substances Superfund, Attn: New Bedford Harbor Special Account, on account of future response costs to be incurred by the United States and the Commonwealth with respect to the New Bedford Harbor Site, in the manner provided in

Paragraph 15. All amounts paid on account of future response costs under this subparagraph and Subparagraphs 11.C and 12.A shall be used to fund response actions by EPA at the New Bedford Harbor Site after final approval of the Decree: provided that ten percent (10%) of those amounts shall satisfy the Commonwealth's obligation under Section 104(c)(3)(C) of CERCLA to pay ten percent (10%) of the cost of those response actions that are funded by the recovery under this subparagraph and Subparagraphs 11.C and 12.A.

- D. The sum of \$1,250,000, plus the interest accrued on that amount, shall be deposited into the Registry of the Court, United States District Court for the District of Massachusetts, to be administered by the Registry of the Court for the Federal and State Trustees, in payment for Natural Resource Damages. This payment shall be made in the manner specified in Subparagraph 17.A below, and the amount so paid and any interest accrued thereon shall be administered and disbursed as provided in Subparagraphs 17.B and 17.C below.
- E. The sum of \$275,000, plus the interest accrued on that amount, shall be disbursed to NOAA in reimbursement of its costs of assessing Natural Resource Damages. This payment shall be made by certified or bank check payable to "U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Marine Assessment," and shall be sent to:

General Counsel
National Oceanic and Atmospheric
Administration
Room 5814 Herbert Hoover Building
14th & Constitution Avenue, N.W.
Washington, D.C. 20230

Settling Defendants shall cause copies of this check and of any transmittal letter accompanying the check to be sent to: Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place.

Boston, MA 02108.

- 11. Additional Up-Front Payment By Aerovox. Within five

 (5) days after final approval of the Decree, Aerovox shall pay to

 Plaintiffs an additional \$3,500,000 principal amount, plus

 interest on that amount at the same rate(s) and from the same

 date applicable to the funds in the Escrow established pursuant

 to Paragraph 9 above. This payment shall be made as follows:
 - A. The sum of \$865,000, plus the interest accrued on that amount, shall be paid to the EPA Hazardous Substances Superfund in the manner provided in Paragraph 14 in reimbursement of past response costs incurred by the United States with respect to the New Bedford Harbor Site.
 - B. The sum of \$45,000, plus the interest accrued on that amount, shall be paid to the Commonwealth in the manner provided in Paragraph 15 in reimbursement of past response costs incurred by the Commonwealth with respect to the New Bedford Harbor Site.

- C. The sum of \$1,715,000, plus the interest accrued on that amount, shall be paid to the EPA Hazardous Substances Superfund, Attn: New Bedford Harbor Special Account, on account of future response costs to be incurred by the United States and the Commonwealth with respect to the New Bedford Harbor Site. This payment shall be made in accordance with Paragraph 16 below.
- D. The sum of \$584,000, plus the interest accrued on that amount, shall be deposited into the Registry of the Court, United States District Court for the District of Massachusetts, to be administered by the Registry of the Court for the Federal and State Trustees, in payment for Natural Resource Damages. This payment shall be made in the manner specified in Subparagraph 17.A below, and the amount so paid and any interest accrued thereon shall be administered and disbursed as provided in Subparagraphs 17.8 and 17.C below.
- E. The sum of \$275,000, plus the interest accrued on that amount, shall be disbursed to NOAA in reimbursement of its costs of assessing Natural Resource Damages. This payment shall be made in the manner specified in Paragraph 10.E above.
- F. The sum of \$16,000, plus the interest accrued on that amount, shall be paid to the Commonwealth in reimbursement of its costs of assessing Natural Resource Damages. This payment shall be made by certified or bank

theck payable to "Commonwealth of Massachusetts", and small be sent to:

Chief, Environmental Protection Division Department of the Attorney General One Ashburton Place, 19th Floor Boston, MA 02108

- addition to the payments required by Paragraphs 9-11, Aerovox shall pay \$3,000,000 to Plaintiffs in three installments of \$1,000,000 each. These three installments shall be due by the first, second, and third anniversaries, respectively, of the date of lodging of this Decree, and they shall be paid by those dates except as set forth in Paragraph 13. Each such installment shall be disbursed as follows:
 - A. The sum of \$750,000 shall be paid to the the EPA Hazardous Substances Superfund, Attn: New Bedford Harbor Special Account, on account of future response costs to be incurred by the United States and the Commonwealth with respect to the New Bedford Harbor Site. Each such payment shall be made in the manner specified in Paragraph 16 below.
 - B. The sum of \$250,000 shall be deposited into the Registry of the Court, United States District Court for the District of Massachusetts, to be administered by the Registry of the Court for the Federal and State Trustees, in payment for Natural Resource Damages. This payment shall be made in the manner specified in Subparagraph 17.A below, and the amount so paid and any interest accrued thereon shall be

administered and disbursed as provided in Subparagraphs 17.8 and 17.0 below.

- that final approval of this Decree has not occurred by the date any installment required by Paragraph 12 above is due, Aerovox shall pay the installment, plus interest thereon at the same rate(s) applicable to the funds in the Escrow established under Paragraph 9 above from the date the installment was due to the date of payment, to Plaintiffs within five (5) days after final approval of the Decree. Any such installment shall be disbursed as specified in Paragraph 12.
- 14. Procedures for Payment of Past EPA Response Costs.

 Each payment for past United States response costs, or for stipulated penalties due to EPA, shall be made by certified or bank check payable to "EPA Hazardous Substances Superfund." Each such check shall reference on its face the New Bedford Harbor Site and CERCLIS No. MAD980731335 and shall be sent to:

EPA Region I Attn: Superfund Accounting P.O. Box 360197M Pittsburgh, PA 15251

Settling Defendants shall cause copies of each such check and of any transmittal letter accompanying the check to be sent to:

Chief, Superfund Office, Office of Regional Counsel, EPA Region

I, 2203 JFK Federal Building, Boston, MA 02203; Chief,

Environmental Enforcement Section, Department of Justice, P.O.

Box 7611, Ben Franklin Station, Washington, D.C. 20044; and

Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.

Each payment for past Commonwealth response costs, or for stipulated penalties due to the Commonwealth, shall be made by certified or bank check payable to "Commonwealth of Massachusetts", and shall be sent to:

Chief Environmental Protection Division Department of the Attorney General One Ashburton Place, 19th Floor Boston, MA 02108

Settling Defendants shall cause copies of each such check and of any transmittal letter accompanying the check to be sent to:

Chief, Cost Recovery Section, Bureau of Waste Site Cleanup,

Department of Environmental Protection, One Winter Street,

Boston, MA 02108.

16. Procedures for Payments for Future Response Costs.

Each payment for future response costs shall be made by certified or bank check payable to "EPA Hazardous Substances Superfund, Attn: New Bedford Harbor Special Account", and shall be sent to:

EPA Region I Attn: Superfund Accounting P.O. Box 360197M Pittsburgh, PA 15251

Settling Defendants shall cause copies of each such check and of any transmittal letter accompanying the check to be sent to:

Chief, Superfund Office, Office of Regional Counsel, EPA Region

I, 2203 JFK Federal Building, Boston, MA 02203; Chief,

Environmental Enforcement Section, Separtment of Justice, 2.0.

Box 7511, Ben Franklin Station, Washington, D.C. 10044; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 32108.

17. Matural Resource Damages Payments and Use of Funds

A. Each payment for Natural Resource Damages shall be made by certified or bank check payable to the "Clerk, United States District Court." Each such check shall include on its face a statement that it is a payment for natural resource damages in Civil Action, No. 83-3882-Y (D. Mass.), and shall be sent to:

Office of the Clerk
United States District Court for the
District of Massachusetts
Room 707
J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

Resource Damages and of any transmittal letter accompanying the check to be sent to: Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station.

Washington, D.C. 20044; Regional Attorney, NOAA Office of General Counsel, One Blackburn Drive - Suite 205, Gloucester, MA 01930; Regional Solicitor, U.S. Department of the Interior, Northeast Region, One Gateway Center - Suite 612, Newton Corner, MA 02158; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.

B. The Registry of Court shall administer all amounts paid for Natural Resource Damages under this Decree in an

interest-bearing account ("Registry Account") as provided in the Order Directing the Deposit of Natural Resource Damages Into the Registry of the Court ("Deposit Order") issued by this Court pursuant to Rule 67 of the Federal Rules of Civil Procedure, IS U.S.C. § 2041, and Local Rule 67.2(c) of the Local Rules for the U.S. District Court for the District of Massachusetts. The Deposit Order shall be attached to this Decree.

- C. All funds and all interest accrued thereon in the Registry Account shall be held in the name of the "Clerk, United States District Court," for the benefit of the Federal and State Trustees. Upon joint application(s) by the United States and the Commonwealth, monies in the Registry Account shall be disbursed to the Federal and State Trustees by further order of this Court for use by the Trustees to plan, implement, and oversee actions to restore, replace, or acquire the equivalent of natural resources that have been injured, destroyed, or lost as a result of the release of hazardous substances at the New Bedford Harbor Site, in accordance with Section 107(f)(1) of CERCLA. All disbursements from the Registry Account shall be made by order of the Court in accordance with the provisions of 28 U.S.C. § 2042 and Local Rule 67.3 of the Local Rules for the U.S. District Court for the District of Massachusetts.
- D. In the event that it is later determined that the provisions of subparagraphs A-C of this Paragraph 17 are unlawful, the amounts in the Registry Account or payable under this Decree for Natural Resource Damages shall be distributed to

the Federal and State Trustees as determined by further agreement of the United States and the Commonwealth or, if no such agreement is reached within a reasonable time, by an allocation of those amounts by this Court. In making any such allocation, the Court shall consider any Memorandum of Agreement or Memorandum of Understanding between the United States and the Commonwealth concerning the use of amounts recovered for natural resource damages at the New Bedford Harbor Site. All amounts recovered for Natural Resource Damages at the Site and all interest accrued thereon shall be used in accordance with Section 107(f)(1) of CERCLA.

Covenants Not To Sue By Plaintiffs

- the United States and the Commonwealth covenant not to sue or to take any other civil or administrative action against Settling Defendants for Covered Matters, as defined in Paragraph 19. With respect to liability for Covered Matters other than future liability, these covenants not to sue shall take effect upon entry of the Decree by the Court, subject to the parties' rights to void the Decree pursuant to Paragraph 33 if the Court declines to approve the Decree as presented. With respect to any future liability of Settling Defendants, these covenants not to sue shall take effect upon certification of completion of the Remedial Action.
- 19. Except as specifically provided in Paragraph 23,
 Covered Matters means any civil or administrative liability to

the United States and/or the Commonwealth for (1) damages for injury to, destruction of, or loss of Natural Resources of the New Bedford Harbor Site, including costs of damages assessment, under Section 107 of CERCLA, M.G.L. c. 21E, M.G.L. c. 21, § 27, and state common law; (2) reimbursement of response costs incurred or to be incurred by the United States or the Commonwealth with respect to the New Bedford Harbor Site under Section 107 of CERCLA, M.G.L. c. 21E, M.G.L. c. 21, §§ 27, 40, and state common law; and (3) injunctive relief with respect to the New Bedford Harbor Site under Section 106 of CERCLA, Section 7003 of RCRA, Section 504 of CWA, the 1899 Act, and state common law.

- other provision of this Decree, the United States, and the Commonwealth if acting jointly with the United States, reserve the right to institute proceedings in this action or in a new action seeking to compel Settling Defendants (1) to perform response actions at the New Bedford Harbor Site, or (2) to reimburse the United States (and the Commonwealth if acting jointly with the United States) for response costs, prior to certification of completion of the Remedial Action, if:
 - A. conditions at the New Bedford Harbor Site,
 previously unknown to the United States and the
 Commonwealth, are discovered after the issuance of the
 RODs, or

3. Information is received, in whole or in part, after the issuance of the RODs,

and these previously unknown conditions or this information, together with any other relevant information, indicate that the Remedial Action is not protective of human health and the environment.

- 21. <u>Post-certification reservations</u>. Notwithstanding any other provision of this Decree, the United States, and the Commonwealth if acting jointly with the United States, reserve the right to institute proceedings in this action or in a new action seeking to compel Settling Defendants (1) to perform response actions at the New Bedford Harbor Site, or (2) to reimburse the United States (and the Commonwealth if acting jointly with the United States) for response costs, after certification of completion of the Remedial Action, if:
 - A. conditions at the New Bedford Harbor Site,
 previously unknown to the United States and the
 Commonwealth, are discovered after the certification of
 completion, or
 - B. information is received, in whole or in part, after the certification of completion,

and these previously unknown conditions or this information, together with any other relevant information, indicate that the Remedial Action is not protective of human health and the environment.

- Notwithstanding any other provision of this Decree, the United States and the Commonwealth, on behalf of their respective natural resource trustees, reserve the right to institute proceedings against Settling Defendants in this action or in a new action seeking recovery of Natural Resource Damages, based on (1) conditions with respect to the Site, unknown to Plaintiffs at the date of lodging of this Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of natural resources, or (2) information received after the date of lodging of the Decree which indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude substantially greater than was known, to Plaintiffs at the date of lodging of this Decree.
- 23. Notwithstanding any other provision of this Decree, Plaintiffs' covenants not to sue shall not apply to the following claims:
 - A. claims based on a failure by Settling Defendants to satisfy the requirements of the Decree;
 - B. claims for criminal liability; and
 - C. claims arising from the past, present, or future disposal, release or threat of release of hazardous substances or oil or hazardous materials outside of the New Bedford Harbor Site, including claims by the Commonwealth with respect to DEP site number 4-0127

(Substation Interceptors) and DEP site number 4-0601
(Aerovox Oil Bunker), but excluding claims for response costs incurred, or for injury to, destruction of, or loss of natural resources, in the New Bedford Harbor Site from any releases of PCBs resulting from conditions existing as of the date of lodging of the Consent Decree at DEP site numbers 4-0127 and 4-0601.

24. While consenting to the language of Paragraphs 20-22, Settling Defendants reserve the right to argue in any subsequent proceeding as to the proper interpretation of those Paragraphs in light of Section 122(f)(6) of CERCLA.

Covenants by Settling Defendants

25. Settling Defendants hereby release and covenant not to sue, or to bring any administrative action against, the United States or the Commonwealth for any claims relating to or arising from the New Bedford Harbor Site or this Consent Decree, including the counterclaims asserted in Settling Defendants' Answers to the Complaints, and including any direct or indirect claim pursuant to Section 112 of CERCLA, 42 U.S.C. § 9612, or pursuant to any other statute, regulation, common law, or legal theory, against the Hazardous Substances Superfund, for reimbursement relating to the New Bedford Harbor Site; provided that, in the event that Plaintiffs institute proceedings against Settling Defendants pursuant to Paragraphs 20-22, Settling Defendants reserve the right to reassert the counterclaims against the U.S. Army Corps of Engineers set forth in their

answers to the Complaints solely as, and to the extent of, a setoff against the claims asserted by Plaintiffs. Nothing in this Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611.

26. Settling Defendants waive any rights they may have to seek judicial or administrative review of the RODs issued by EPA and/or the Commonwealth for the New Bedford Harbor Site and of any actions taken to implement the RODs. Settling Defendants further waive any direct or indirect claim relating to the New Bedford Harbor Site pursuant to M.G.L. c. 30, §§ 61-62H and 301 C.M.R. § 11.00 et seq.

Access and Property Use Restrictions

- and departments, and their authorized representatives, including contractors and consultants, shall have access to the Aerovox Facility, except for the buildings located on the Aerovox Facility as of the lodging of the Decree, upon reasonable notice to Aerovox for any purpose for which access is authorized under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), or Section 8 of M.G.L. c. 21E, related to the New Bedford Harbor Site. This right of access is in addition to and not in lieu of, any right of entry or access which exists under federal or state law.
- 28. Aerovox agrees to abide by any property use restrictions selected by EPA or the Commonwealth in connection with implementation or operation and maintenance of the Remedial Action on the portion of the Aerovox Facility that is included in

the New Redford Marbor Site. Ipon determination of those property use restrictions, Aerovox shall file and record the applicable restrictions with the Registry of Deeds or other office where real estate title and transfer records are recorded and maintained for the Aerovox Facility.

Interest and Penalties for Late Payments

- 29. If any payment required by Paragraph 9 of this Decree is not made by the date specified in that Paragraph, the Settling Defendant(s) that failed to make timely payment shall be liable to Plaintiffs for interest on the overdue amount(s), from the time payment was due until full payment is made, at the higher of (a) the rate established by the Department of the Treasury under 31 U.S.C. § 3717 and 4 C.F.R. § 102.13, or (b) the commercially reasonable interest rate that applies to the Escrow or that would have applied to the Escrow if it had been timely established and funded.
- Decree is not made by the date specified in that Paragraph,

 Settling Defendants shall pay to EPA, for any payment overdue

 under Subparagraphs 10.A, 10.C, 11.A, 11.C, or 12.A; to the

 United States, for any payment overdue under Subparagraph 10.E or

 11.E; 50 percent to the United States and 50 percent to the

 Commonwealth, for any payment overdue under Subparagraphs 10.D,

 11.D, or 12.B; and to the Commonwealth, for any payment overdue

 under Subparagraphs 10.B, 11.B, or 11.F, stipulated penalties in

the following amounts for each day of each and every violation of said requirements:

Days of Delay	Penalty Per Violation Per Day
1-14	\$ 500/day
14-60	\$1,500/day
Revord 60 Days	\$3.000/day

31. Stipulated penalties due to the United States under this Decree shall be paid by certified or bank check made payable to "Treasurer of the United States" and shall be sent to:

Chief, Civil Division United States Attorneys' Office 1107 J.W. McCormack Post Office/Courthouse Boston, MA 02109

Stipulated penalties due to EPA or the Commonwealth under this Decree shall be paid in the manner described in Paragraphs 14 and 15 above.

32. Interest under Paragraph 29 and stipulated penalties under Paragraph 30 shall be in addition to any other remedies or sanctions that may be available to Plaintiffs on account of a Settling Defendant's failure to comply with the terms of the Decree.

Voidability

33. If for any reason the Court should decline to approve this Decree in the form presented, this Decree and the settlement embodied herein shall be voidable at the sole discretion of any party and the terms hereof may not be used as evidence in any litigation; provided, however, that this paragraph shall not apply if the sole ground for non-approval of the Decree is the

Court's disapproval of the allocation of Settling Defendants' payments under the Decree between Plaintiffs and/or among past and future response costs and/or natural resource damages.

Contribution Protection

34. Settling Defendants shall have the benefits of Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), Section 4 of Mass. Gen. Laws c. 231B, and any other applicable law limiting their liability to persons not a party to this Consent Decree or affording them rights of contribution or other rights to recover costs or damages relating to the New Bedford Harbor Site from such persons.

Retention of Response Authority

35. Except for the covenants not to bring certain actions against Settling Defendants set forth in Paragraphs 18-22, the Decree shall not be construed to limit the authority of the United States or the Commonwealth to take any and all response actions relating to the New Bedford Harbor Site authorized by federal or state law.

Compliance with Other Laws

36. The Decree shall not be construed in any way to relieve Settling Defendants or any other person or entity from the obligation to comply with any federal, state or local law.

Retention of Jurisdiction

37. The Court shall retain jurisdiction of this matter for the purpose of entering such further orders, direction, or relief

as may se appropriate for the construction, implementation. or enforcement of this Decree.

Public Comment

The Decree shall be subject to a 30-day public comment period in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right, in consultation with the Commonwealth, to withdraw its consent to the Decree if comments received disclose facts or considerations which show that the Decree is inappropriate, improper or inadequate: provided that comments which, in the judgment of the United States, show that the allocation of Settling Defendants' payments under the Decree between Plaintiffs and/or among past and future response costs and/or natural resource damages is inappropriate or improper shall constitute grounds for modification of the Decree to reallocate those payments but shall not, by themselves, constitute a ground upon which the United States may withdraw its consent to the Decree. Settling Defendants consent to the entry of the Decree without further notice.

THE FOREGOING Consent Decree among plaintiffs the United States of America and the Commonwealth of Massachusetts and defendants Aerovox Incorporated and Belleville Industries, Inc., in <u>United States v. AVX Corporation</u>, Civ. No. 83-3882-Y (D. Mass.), is hereby APPROVED AND ENTERED THIS 17th DAY OF Laboration, 1991.

WILLIAM G. YOUNG

United States District Judge District of Massachusetts [Consent Decree with Aerovox Incorporated and Belleville Industries, Inc. in <u>United States v. AVX Corporation</u>, Civ. No. 63-3682-Y (D. Mass.)]

FOR THE UNITED STATES OF AMERICA

Date: 12/17/90

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Environment and Natural Resources
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U.S. Department of Justice
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1107 J.W. McCormack Post Office/
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Boston, Massachusetts 02109

[Consent Decree with Aerovox Incorporated and Belleville Industries, Inc. in <u>United States v. AVX Corporation</u>, Civ. No. 83-3882-Y (D. Mass.)]

James M. Strock

Assistant Administrator for Enforcement U.S. Environmental Protection Agency 401 M Street, S.W. Washington, D.C. 20460

Julie Belaga

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Region I

JFK Federal Building

Boston, Massachusetts 02203

[Consent Decree with Aerovox Incorporated and Belleville Industries, Inc. in <u>United States 7. AVX Corporation</u>, Civ. No. 83-3882-Y (D. Mass.)]

FOR THE FEDERAL NATURAL RESOURCE TRUSTEES

John A. Knauss

Under Secretary for Oceans Administrator, National Oceanic and

Atmospheric Administration U.S. Department of Commerce Washington, D.C. 20230

Thomas A. Campbell

General Counsel

National Oceanic and Atmospheric Administration

Anton P. Gledt

Office of General Counsel

National Oceanic and Atmospheric

Administration

[Consent Decree with Aerovox Incorporated and Belleville Industries, Inc. in <u>United States v. AVX Corporation</u>, Civ. No. 83-3882-Y (D. Mass.)]

FOR THE COMMONWEALTH OF MASSACHUSETTS

Matthew T. Brock
Michael Mascis
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Environmental Protection Division
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Daniel 3. Greenbaum, Commissioner
Department of Environmental Protection
Commonwealth of Massachusetts
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Boston, Massachusetts 02108

FOR THE COMMONWEALTH OF MASSACHUSETTS NATURAL RESOURCE TRUSTEE

John DeVillars, Secretary

Executive Office of Environmental Affairs

Commonwealth of Massachusetts 100 Cambridge Street, 20th Floor Boston, Massachusetts 02202 [Consent Decree with Aerovox Incorporated and Belleville Industries, Inc. in <u>United States v. AVX Corporation</u>, Civ. No. 83-3882-Y 'D. Mass.)]

FOR AEROVOX INCORPORATED

Clifford H. Tuttle

President

Aerovox Incorporated

740 Belleville Avenue New Bedford, Massachusetts 02740

Paul B. Galvani

Roscoe Trimmier, Jr.

Ropes & Gray

One International Place

Boston, Massachusetts 02110

[Consent Decree with Aerovox Incorporated and Belleville Industries, Inc. in <u>United States v. AVX Corporation</u>, Civ. No. 83-3882-Y (D. Mass.)

FOR EELLEVILLE INDUSTRIES, INC.

David A. McLaughlin
McLaughlin & Folan, P.C.
448 County Street
New Bedford, Massachusetts 02740

61973

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff,

V.

AVX CORPORATION, et al., Defendants.

COMMONWEALTH OF MASSACHUSETTS, Plaintiff,

V.

AVX CORPORATION, et al., Defendants. CIVIL ACTION NOS. 83-3882-Y

83-3889-Y

CONSENT DECREE WITH DEFENDANTS FEDERAL PACIFIC ELECTRIC COMPANY AND CORNELL DUBILIER ELECTRONICS, INC.

This Consent Decree ("Decree") is made and entered into by the United States of America ("United States") and the Commonwealth of Massachusetts ("Commonwealth") (collectively referred to as "Plaintiffs"), and Federal Pacific Electric Company ("FPE") and Cornell Dubilier Electronics, Inc. ("CDE") (also jointly referred to herein as "Settling Defendants" or "FPE and CDE").

Introduction

The United States, on behalf of the National Oceanic and Atmospheric Administration ("NOAA") as federal trustee, and the Commonwealth as state trustee filed complaints in these consolidated actions on December 9 and 10, 1983, respectively, seeking to recover for damages for alleged injury to, destruction of, and loss of natural resources resulting from releases and threatened releases of hazardous substances, including poly-

chlorinated biphenyls ("PCBs"), in New Bedford Harbor ("Harbor"),
Massachusetts and adjacent waters under Section 107 of the
Comprehensive Environmental Response, Compensation and Liability
Act, 42 U.S.C. § 9607 ("CERCLA").

Thereafter, the United States and the Commonwealth filed amended complaints (hereinafter "Complaints") in these actions on February 27 and 28, 1984, respectively. The United States' First Amended Complaint sought damages on behalf of the federal trustee for alleged injury to, destruction of, and loss of natural resources resulting from releases and threatened releases of hazardous substances, including PCBs, in and into the Acushnet River Estuary ("Estuary"), the Harbor, Buzzards Bay ("Bay"), and Rhode Island and Vineyard Sounds (collectively "Sounds"), and added claims on behalf of the United States Environmental Protection Agency ("EPA") alleging releases and threatened releases of hazardous substances, including PCBs, in and into the Estuary, Harbor, Bay and Sounds, and seeking recovery of response costs under Section 107 of CERCLA and injunctive relief under Section 106 of CERCLA, 42 U.S.C. § 9606, Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973 ("RCRA"), Section 504 of the Clean Water Act, 33 U.S.C. § 1364 ("CWA"), and Section 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 407 ("1899 Act"). The United States' First Amended Complaint stated that the full nature and extent of the PCB contamination, and the extent and value of past and future damages to natural resources, were not yet known and had

not yet been determined. The United States' First Amended
Complaint stated that the government agencies were in the course
of investigating the contamination and assessing the damages.

The Commonwealth's First Amended Complaint set forth claims alleging releases or threatened releases of hazardous substances, including PCBs, in and into the Estuary, Harbor and adjacent waters or areas, and seeking natural resource damages and recovery of response costs incurred by the Commonwealth under Section 107 of CERCLA, 42 U.S.C. § 9607, and claims for recovery of response costs under Sections 1 through 13 of Chapter 21E, Massachusetts General Laws ("M.G.L."), and the earlier law that it superseded, M.G.L. c. 21, Sections 27(14) and 40 of the Massachusetts Clean Waters Act, and claims for abatement of a public nuisance and abatement of abnormally dangerous activities under state common law. The Commonwealth's First Amended Complaint stated that the Commonwealth had not yet determined the full nature and extent of the PCB contamination in the New Bedford Harbor, the extent and value of past and future damages to natural resources, or the costs of assessing damages to natural resources or implementing appropriate remedies.

The Complaints assert claims against five current defendants, FPE, CDE, AVX Corporation, Aerovox Incorporated, and Belleville Industries, Inc. This Decree is solely between and among the Plaintiffs and FPE and CDE.

The parties to this Decree agree, and the Court finds, that settlement of the claims in this case against FPE and CDE is

in the public interest and is made in good faith, and that entry of this Decree is the most appropriate means to resolve the matters covered herein.

NOW, THEREFORE, before the taking of any testimony, without any admission of fact or law and upon the consent and agreement of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED:

Jurisdiction

1. For the purpose of entry and enforcement of this
Decree, the Court has jurisdiction over the subject matter of
this action and the parties to this Decree pursuant to 28 U.S.C.
§§ 1331 and 1345, Section 113(b) of CERCLA, 42 U.S.C. § 9613(b),
Section 7003 of RCRA, 42 U.S.C. § 6973, Section 504 of the CWA,
33 U.S.C. § 1564, and Section 13 of the 1899 Act, 33 U.S.C.
§ 407, and has pendent jurisdiction over the claims arising under
state law. This Court has personal jurisdiction over FPE and CDE
which, solely for purposes of this Consent Decree, waive all
objections and defenses they may have to jurisdiction of the
Court or to venue in this District.

Parties

- 2. A. Defendant FPE is a Delaware corporation with its principal place of business in Cleveland, Ohio.
- B. Defendant CDE is a Delaware corporation with its principal place of business in Wayne, New Jersey.
- C. Plaintiff, United States of America, includes all departments, divisions, independent boards, administrations or

agencies and natural resource trustees of the Federal government.

D. Plaintiff Commonwealth of Massachusetts includes all departments, divisions, administrations or agencies and natural resource trustees of the State government to the extent permitted by law.

Applicability of Decree

3. The provisions of this Decree shall apply to and be binding on the United States and the Commonwealth and their agencies, departments and natural resource trustees and on FPE and CDE and their successors and assigns. Changes in the ownership or corporate form or status of FPE and CDE shall have no effect on FPE and CDE's obligations under this Decree or on Plaintiffs' obligations to FPE and CDE under this Decree.

Effect of Settlement/Entry of Judgment

4. This Decree was negotiated at arm's length and executed by the parties hereto in good faith to avoid the continuation of expensive and protracted litigation and is a fair and equitable settlement of claims which were contested, denied and disputed as to validity, liability and amount. The execution of this Decree shall not constitute or be construed as an admission of liability by any person for any purpose, nor is it a finding or admission or acknowledgment of the factual or legal allegations set forth in the Complaints or Counterclaims, or an admission of any violation of law, rule, regulation, or policy by any person, including the parties hereto, or their agents, successors or assigns, nor shall this Decree or the participation of any party hereto in

this Decree be admissible in evidence against any party hereto in any judicial or administrative proceeding, other than in a proceeding between the parties hereto to adjudicate, interpret or enforce this Decree or in any proceeding under Paragraphs 17, 18 or 19 of the Decree. The entry of this Decree shall not be construed to be an acknowledgement by either FPE or CDE that there has been a release or threatened release of a hazardous substance or oil and hazardous material at the Site or that any such release or threatened release constitutes an imminent and substantial endangerment to the public welfare or the environment.

Upon approval and entry of this Decree by the Court,
 the Decree shall constitute a final judgment.

Definitions

- 6. This Decree incorporates the definitions set forth in Section 101 of CERCLA, 42 U.S.C. § 9601. In addition, whenever the following terms are used in this Consent Decree, they shall have the following meanings:
- A. "Cornell Facility" means the land, the
 manufacturing plant and associated structures thereon (including
 subsurface structures), at 1605 East Rodney French Boulevard, New
 Bedford, Massachusetts, bordered on the east by the west side of
 East Rodney French Boulevard, on the north by the south side of
 David Street, on the south by the north side of Mott Street and
 on the west by a playground which borders on the east side of
 Cleveland Street.

- B. "DEP" means the Massachusetts Department of Environmental Protection.
- C. "Federal Trustees" means the Secretary of Commerce, acting through NOAA, and the Secretary of the Interior.
- D. "Final Approval of the Decree" shall mean the earliest date on which all of the following have occurred:

 (1) the Decree has been lodged with the Court and noticed in the Federal Register, and the period for submission of public comments has expired; (2) the Court has approved and entered the Decree as a judgment; and (3) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the time for further appeal has expired without the filing of a further appeal or no further appeal is allowed.
- E. "Natural Resources" shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).
- F. "Natural Resource Damages" means damages under
 Section 107 of CERCLA for injury to, destruction of, or loss of
 the Natural Resources with respect to the New Bedford Harbor
 Site.
- G. "New Bedford Harbor Site" or "Site" means the New Bedford Harbor Superfund Site, located in portions of New Bedford, Acushnet and Fairhaven, Massachusetts, including the Acushnet River Estuary, New Bedford Harbor, and any adjacent marine waters and sediments and shoreline areas, which are the subject of EPA's current Remedial Investigation and Feasibility

Study, including at least Areas 1, 2, and 3 as defined in 105 CMR 260.005 and as depicted on Exhibit A to the United States'

Complaint. The Site does not include any other DEP listed sites or any portion of the Cornell Facility.

- H. "Remedial Action" means those actions implemented or to be implemented pursuant to CERCLA with respect to the New Bedford Harbor Site as set forth in the RODs.
- I. "Response Costs" means all direct and indirect costs of response incurred with respect to the New Bedford Harbor Site, including the costs of operation and maintenance of remedial action components.
- J. "RODS" means the first operable unit record of decision for the New Bedford Harbor Site signed on April 6, 1990, and the second operable unit record of decision for the New Bedford Harbor Site for which a Feasibility Study was released on August 21, 1990, and for which a record of decision is presently expected to be signed in 1992 and, in the event the first two records of decision do not address all areas of the Site, any additional operable unit record(s) of decision that EPA considers necessary to provide a comprehensive initial remedial decision (including a no action decision) with respect to PCBs for all areas of the Site. "RODS" does not include any records of decision with respect to later-discovered conditions or information as described in Paragraph 17 and 18.
 - K. "State Trustee" means Secretary of the Executive

Office of Environmental Affairs, Commonwealth of Massachusetts.

Escrow Obligations

- Within ten (10) business days of their signing of the Decree, FPE and CDE shall establish an escrow account (the "Escrow") bearing interest on commercially reasonable terms in a federally or state chartered bank (the "Escrow Agent"), and FPE and CDE shall cause to be paid into the Escrow the amount of \$21 million. The escrow agreement between FPE and CDE and the Escrow Agent shall provide that the Escrow Agent submits to the jurisdiction and venue of the United States District Court for the District of Massachusetts in connection with any litigation involving the Plaintiffs arising out of the Escrow. FPE and CDE shall notify Plaintiffs in writing of the creation and funding of the Escrow immediately after the payment into the Escrow has been made. This notice shall be sent by hand or by overnight courier service to: Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, Room 1541 (EES Dockets), 10th and Pennsylvania Ave, N.W., Washington, D.C., 20530; and Chief, Environmental Protection Division, Department of Attorney General, One Ashburton Place, 19th Floor, Boston, MA 02108.
- B. All funds paid into the Escrow by FPE and CDE shall remain in the Escrow and may not be withdrawn by any person, except to make the payments required by Paragraphs 8-15, or unless one of the following events occurs: (1) the United States withdraws its consent to entry of the Decree after the

Decree has been lodged, pursuant to Paragraph 30; or (2) a final judicial determination is made that a legally binding agreement does not exist or that the Decree will not be approved and entered. If one of these events occurs, all sums in the Escrow shall be returned to FPE and CDE.

c. All interest accrued in the Escrow shall be paid to Plaintiffs in accordance with Paragraphs 8-15 at the time the principal payments under those paragraphs are made; provided, however, that costs and fees of the Escrow may be deducted from accrued interest by the Escrow Agent prior to making the payments, and provided that, if Plaintiffs fail to lodge the Decree within ninety (90) days of establishment of the Escrow, all interest accruing in the period after that ninety days and before the date of lodging shall not be due to Plaintiffs.

Payment Terms

8. Within fifteen (15) business days after Final Approval of the Decree, Settling Defendants shall cause the amount of \$21 million plus interest due thereon under Paragraph 7.C., to be disbursed to Plaintiffs or their designees in accordance with Paragraphs 9-15. This amount has been allocated by the Plaintiffs to Response Costs in the amount of \$1 million (plus interest due thereon), to Natural Resource Damages, including the costs of assessment, in the amount of \$10 million (plus interest due thereon), and to a Court Registry account in the amount of \$10 million (plus interest due thereon) to be allocated to Natural Resource Damages and/or Response Costs. These payments

shall be made by FPE and CDE as described in Paragraphs 9-15.

The obligations of FPE and CDE to make the payments to Plaintiffs under this Consent Decree are joint and several.

- 9. A. Settling Defendants shall pay the sum of \$608,000 (plus interest due thereon) to the EPA Hazardous Substances
 Superfund on account of past Response Costs incurred by the
 United States with respect to the New Bedford Harbor Site.
- B. The payment for past United States Response Costs shall be made by certified or bank check payable to "EPA Hazardous Substances Superfund." The check shall reference on its face the New Bedford Harbor Site and CERCLA No. MAD980731335 and shall be sent to:

EPA Region I Attn: Superfund Accounting P.O. Box 360197M Pittsburgh, PA 15251

- C. Settling Defendants shall cause copies of such check and of any transmittal letter accompanying the check to be sent to: Chief, Superfund Office, Office of Regional Counsel, EPA Region I, One Congress Street, Boston, MA 02203; Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.
- 10. A. Settling Defendants shall pay the sum of \$28,000 (plus interest due thereon) to the Commonwealth in reimbursement of past Response Costs incurred by the Commonwealth with respect to the New Bedford Harbor Site.

B. The payment for past Commonwealth Response Costs, shall be made by certified or bank check payable to "Commonwealth of Massachusetts," and shall be sent to:

Chief, Environmental Protection Division Massachusetts Department of Attorney General One Ashburton Place, 19th Floor Boston, MA 02108

- C. Settling Defendants shall cause copies of such check and of any transmittal letter accompanying the check to be sent to: Chief, Cost Recovery Section, Bureau of Waste Site Cleanup, Department of Environmental Protection, One Winter Street, Boston, MA 02108.
- 11.— A. Settling Defendants shall pay the sum of \$364,000 (plus interest due thereon) to Plaintiffs on account of future Response Costs to be incurred by the United States and the Commonwealth with respect to the New Bedford Harbor Site; provided that, pursuant to an allocation agreement between the EPA and the Commonwealth, certain portions of the amount paid on account of future Response Costs shall be applied toward satisfying the Commonwealth's operation and maintenance obligations at the Site under Section 104(c)(3) and toward the Commonwealth's obligation under Section 104(c)(3) of CERCLA to pay or assure payment of ten percent (10%) of the costs of the remedial action.
- B. Each payment for future Response Costs shall be made by certified or bank check payable to "EPA Hazardous Substances Superfund, Attn: New Bedford Harbor Special Account", and shall be sent to:

EPA Region I Attn: Superfund Accounting P.O. Box 360197M Pittsburgh, PA 15251

- C. Settling Defendants shall cause copies of each such check and of any transmittal letter accompanying the check to be sent to: Chief, Superfund Office, Office of Regional Counsel, EPA Region I, One Congress Street, Boston, MA 02203; Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.
- 12. A. Of the \$10 million allocated in Paragraph 8 to
 Natural Resource Damages, Settling Defendants shall pay the sum
 of \$9,670,192.25 (plus interest due thereon) into the Registry of
 the Court, United States District Court for the District of
 Massachusetts, to be administered by the Registry of the Court
 for the Federal and State Trustees. The amount paid under this
 Paragraph and any interest due thereon shall be administered and
 disbursed to the Federal and State Trustees in accordance with
 Paragraphs 12.D through 12.F below.
- B. The payment set forth in Paragraph 12.A shall be made by certified or bank check payable to "Clerk, United States District Court." The check shall include on its face a statement that it is a payment for Natural Resource Damages in Civil Action Nos. 83-3882-Y and 83-3889-Y (D. Mass.), and shall be sent to:

Office of the Clerk
United States District Court for the
District of Massachusetts
Room 707
J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

- C. Settling Defendants shall cause copies of the check referenced in Paragraph 12.B and of any transmittal letter accompanying the check to be sent to: Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; Regional Attorney, NOAA Office of General Counsel, One Blackburn Drive Suite 205, Gloucester, MA 01930; Regional Solicitor, U.S. Department of the Interior, Northeast Region, One Gateway Center Suite 612, Newton Corner, MA 02158; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.
- D. The Registry of Court shall administer all amounts paid for Natural Resource Damages under this Decree in an interest-bearing account ("Registry Account A") as provided in the Order Directing the Deposit of Natural Resource Damages Into the Registry of the Court ("Deposit Order A"), attached hereto, issued by this Court pursuant to Rule 67 of the Federal Rules of Civil Procedure, 28 U.S.C. § 2041, and Local Rule 67.2(c) of the Local Rules for the U.S. District Court for the District of Massachusetts.
- E. All funds and all interest accrued thereon in the Registry Account shall be held in the name of the "Clerk, United States District Court," for the benefit of the Federal and State

Trustees. Upon joint application by the United States and the Commonwealth, monies in the Registry account shall be disbursed to the Federal and State Trustees by further order of this Court for use by the trustees to plan, implement, and oversee actions to restore, replace, or acquire the equivalent of natural resources that have been injured, destroyed, or lost as a result of the release of hazardous substances at the New Bedford Harbor Site, in accordance with Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1). All disbursements from the Registry Account shall be made by order of the Court in accordance with the provisions of 28 U.S.C. § 2042 and Local Rule 67.3 of the Local Rules for the U.S. District Court for the District of Massachusetts.

F. In the event that it is later determined that the provisions of Paragraphs 12.D and 12.E are unlawful, the amounts in the Registry Account or payable under this Decree for Natural Resource Damages shall be distributed to the Federal and State Trustees as determined by further agreement of the United States and the Commonwealth or, if no such agreement is reached within a reasonable time, by an allocation of those amounts by this Court. In making any such allocation, the Court shall consider any Memorandum of Agreement between the United States and the Commonwealth concerning the use of amounts recovered for Natural Resource Damages, or, in the absence of any memorandum of agreement or understanding, the statute's goal to restore, replace, or acquire the equivalent of the injured or lost natural resources. All amounts recovered for Natural Resource Damages and all

interest accrued thereon shall be used in accordance with Section 107(f)(1) of CERCLA.

- 13. A. Of the \$10 million allocated in Paragraph 8 to Natural Resource Damages, Settling Defendants shall pay the sum of \$54,227.75 (plus interest due thereon) to NOAA in reimbursement of the federal costs of assessing Natural Resource Damages.
- B. This payment shall be made by certified or bank check payable to "Office of Marine Assessment, National Oceanic and Atmospheric Administration", and shall be sent to:

General Counsel
National Oceanic and Atmospheric
Administration
Room 5814 Herbert Hoover Building
14th & Constitution Avenue, N.W.
Washington, D.C. 20230

- C. Settling Defendants shall cause copies of the check referenced in Paragraph 13.B and of any transmittal letter accompanying the check to be sent to: Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.
- 14. A. Of the \$10 million allocated in Paragraph 8 to Natural Resource Damages, Settling Defendants shall pay the sum of \$275,580 (plus interest due thereon) to the Commonwealth in reimbursement of the state trustees' costs of assessing Natural Resource Damages.
 - B. This payment shall be made by certified or bank

check payable to "Commonwealth of Massachusetts", and shall be sent to:

Chief, Environmental Protection Division Department of the Attorney General One Ashburton Place, 19th Floor Boston, MA 02108

- 15. A. Settling Defendants shall pay the sum of \$10 million (plus interest due thereon) into the Registry of the Court, United States District Court for the District of Massachusetts, to be administered by the Registry of the Court for the United States and the Commonwealth in accordance with Paragraphs 15.D through 15.F below.
- B. The payment set forth in Paragraph 15.A shall be made by certified or bank check payable to "Clerk, United States District Court." The check shall include on its face a statement that it is a payment for Natural Resource Damages and/or Response Costs in Civil Action Nos. 83-3882-Y and 83-3889-Y (D. Mass.), and shall be sent to:

Office of the Clerk
United States District Court for the
District of Massachusetts
Room 707
J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

C. Settling Defendants shall cause copies of the check referenced in Paragraph 15.B and of any transmittal letter accompanying the check to be sent to: Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; Regional Attorney, NOAA Office of General Counsel, One Blackburn Drive - Suite 205,

Gloucester, MA 01930; Regional Solicitor, U.S. Department of the Interior, Northeast Region, One Gateway Center - Suite 612, Newton Corner, MA 02158; Chief, Superfund Office, Office of Regional Counsel, EPA Region I, One Congress Street, Boston, MA 02203; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.

- D. The Registry of Court shall administer all amounts paid for Natural Resource Damages and/or Response Costs in an interest-bearing account ("Registry Account B") as provided in the Order Directing the Deposit of Natural Resource Damages and/or Response Costs Into the Registry of the Court ("Deposit Order B"), attached hereto, issued by this Court pursuant to Rule 67 of the Federal Rules of Civil Procedure, 28 U.S.C. § 2041, and Local Rule 67.2(c) of the Local Rules for the U.S. District Court for the District of Massachusetts.
- E. All funds and all interest accrued thereon in the Registry Account shall be held in the name of the "Clerk, United States District Court," for the benefit of the United States and the Commonwealth. Upon joint application by the United States and the Commonwealth and upon order of this Court, monies in Registry Account B shall be disbursed in accordance with the joint application and order to EPA and the Commonwealth for Response Costs and/or to Registry Account A established under Deposit Order A and Paragraph 12 for use by the Federal and State Trustees in accordance with the provisions of Paragraph 12. All disbursements from the Registry Account shall be made by order of

the Court in accordance with the provisions of 28 U.S.C. § 2042 and Local Rule 67.3 of the Local Rules for the U.S. District Court for the District of Massachusetts.

F. In the event that it is later determined that the provisions of Paragraph 15 are unlawful, the amounts in Registry Account B may be allocated to Natural Resource Damages and/or Response Costs by order of the Court upon request of the United States and the Commonwealth. In making any such allocation, the Court shall consider any Memorandum of Agreement between the United States and the Commonwealth concerning the use of amounts in Registry Account B recovered for Natural Resource Damages and/or Response Costs.

Covenants Not To Sue By Plaintiffs

- 16. A. Covenants by the United States. For good and valuable consideration, and except as specifically provided in this Decree, the United States covenants not to sue or to take any other civil judicial or administrative action against FPE and CDE for:
 - recovery of past and future response costs incurred or to be incurred by the United States under Section 107(a) of CERCLA and Section 7003 of RCRA;
 - injunctive relief under Section 106 of
 CERCLA, Section 7003 of RCRA, Section 504 of the Clean
 Water Act, and the Rivers and Harbors Act of 1899; and
 - 3. damages for injury to, destruction of, or

loss of natural resources, including the costs of assessment, under Section 107(a) of CERCLA, with respect to the New Bedford Harbor Site, including any such claims for contamination set forth in Plaintiffs' Requests for Admissions to Settling Defendants in this lawsuit. Except with respect to future liability, these covenants not to sue shall take effect upon entry of the Decree by the Court. With respect to future liability, these covenants not to sue shall take effect upon EPA's certification of completion of the Remedial Action.

- B. <u>Covenants by the Commonwealth</u>. For good and valuable consideration, and except as specifically provided in this Decree, the Commonwealth covenants not to sue or to take any other civil judicial or administrative action against FPE and CDE for:
 - recovery of past and future response costs incurred or to be incurred by the Commonwealth under Section 107(a) of CERCLA, M.G.L. c. 21E, M.G.L. c. 21 Sections 27(14) and 40, or state common law;
 - injunctive relief under M.G.L. c. 21E Section
 M.G.L. c. 21 Section 46, and state common law;
 - 3. damages for injury to, destruction of, or loss of natural resources, including the costs of assessment, under Section 107(a) of CERCLA, M.G.L. c. 21E, M.G.L. c. 21 Sections 27(14) and 40, or state common law,

with respect to the New Bedford Harbor Site, including any such claims for contamination set forth in Plaintiffs' Requests for Admissions to Settling Defendants in this lawsuit. Except with respect to future liability, these covenants not to sue shall take effect upon entry of the Decree by the Court. With respect to future liability, these covenants not to sue shall take effect upon EPA's certification of completion of the Remedial Action.

- C. Plaintiffs' covenants not to sue shall not apply to the following:
 - Claims based on a failure by Settling
 Defendants to satisfy the requirements of the Decree;
 - 2. Claims for criminal liability;
 - 3. Claims with respect to areas outside the New Bedford Harbor Site arising from the past, present or future disposal, release or threat of release of hazardous substances or oil and hazardous materials to locations other than the New Bedford Harbor Site;
 - 4. Claims arising from any release or discharge from the Cornell Facility after the date of lodging of this Decree, including such claims for releases or discharges to the Site; but excluding claims under Section 107 of CERCLA for response costs or damages in the Site resulting from a federally permitted release; and
 - 5. Claims arising from any future release of hazardous substance or oil and hazardous material resulting from Settling Defendants' operations, which

operations take place after the date of lodging of this Decree, including such claims for releases to the Site.

Pre-certification reservations

- 17. Notwithstanding any other provision of this Decree, the United States and the Commonwealth (to the extent that the Commonwealth has such a right) reserve the right to institute proceedings in this action or in a new action seeking to compel FPE and CDE (1) to perform additional response actions at the New Bedford Harbor Site, and (2) to reimburse the United States and/or the Commonwealth for response costs, if, prior to EPA's certification of completion of the Remedial Action:
 - A. conditions at the New Bedford Harbor Site,
 previously unknown to the United States and the
 Commonwealth, are discovered after the issuance of the
 RODs, or
 - B. information is received, in whole or in part, after the issuance of the RODs.

and these previously unknown conditions or this information indicate, together with any other relevant information, that the Remedial Action is not protective of human health or the environment.

Post-certification reservations

18. Notwithstanding any other provision of this Decree, the United States and the Commonwealth (to the extent that the Commonwealth has such a right) reserve the right to institute proceedings in this action or in a new action seeking to compel

FPE and CDE (1) to perform additional response actions at the New Bedford Harbor Site, and (2) to reimburse the United States and/or the Commonwealth for response costs, if, after EPA's certification of completion of the Remedial Action:

- A. conditions at the New Bedford Harbor Site, previously unknown to the United States or the Commonwealth, are discovered after the certification of completion, or
- B. information is received, in whole or in part, after the certification of completion,

and these previously unknown conditions or this information indicate, together with any other relevant information, that the Remedial Action is not protective of human health or the environment.

Reservations concerning natural resource injury

19. Notwithstanding any other provision of this Decree, the United States and the Commonwealth, on behalf of their respective natural resource trustees, reserve the right to institute proceedings against FPE and CDE in this action or in a new action seeking recovery of Natural Resource Damages unknown to Plaintiffs at the date of lodging of this Decree.

Covenants by Settling Defendants

20. A. For good and valuable consideration, and except as specifically provided in this Decree, FPE and CDE covenant not to sue or bring any administrative action against the United States or the Commonwealth with respect to the New Bedford Harbor Site,

including the counterclaims asserted in FPE's and CDE's Answers to the Complaints and any claims or counterclaims set forth in their Requests for Admissions to Plaintiffs in this lawsuit, and including any claim pursuant to Section 112 of CERCLA, 42 U.S.C. § 9612, or any other statute, regulation, common law, or legal theory, against the Hazardous Substances Superfund, for reimbursement relating to implementation of the RODs at the New Bedford Harbor Site; provided however that, in the event that Plaintiffs assert a claim against FPE and CDE in an action with respect to the Site, FPE and CDE reserve the right to assert: (1) any new claims and counterclaims against the United States and the Commonwealth that arise after the lodging of the Decree; and (2) such portions of those claims and counterclaims that are the subject of Settling Defendants' covenants above that arise out of the same transaction or occurrence that is the subject matter of the new claim by the Plaintiffs in such an action, provided that such claims and counterclaims shall not seek recoupment of any settlement sums paid or to be paid by Settling Defendants pursuant to this Decree. For any such claims or counterclaims of Settling Defendants, all relevant statutes of limitations or repose shall be deemed to have been tolled, and any defense of laches waived, for the period from the date of entry of the Decree by the Court until the time at which Plaintiffs; or either of them, assert a claim against FPE or CDE in an action with respect to the Site, if such claims or counterclaims would be time barred solely as a result of the operation of the

Settling Defendants' covenants not to sue in this Paragraph. In addition, these covenants not to sue by Settling Defendants do not include claims based on failure by the United States or the Commonwealth to satisfy the requirements of this Decree. These covenants not to sue by Settling Defendants shall take effect upon entry of the Decree by the Court. Nothing in this Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611.

B. Except as specifically provided in this Decree, FPE and CDE waive any rights they may have to seek judicial or administrative review of the RODs or to challenge any actions taken to implement such RODs. FPE and CDE further waive any claim relating to the RODs and of any actions taken to implement such RODs pursuant to M.G.L. c. 30, §§ 61-62H and 301 C.M.R. § 11.00 et seq.

Interest and Penalties for Late Payments

- 21. If any payment required by Paragraphs 7-15 of this
 Decree is not made within the time(s) specified in Paragraphs 7
 and 8, FPE and CDE shall be liable to Plaintiffs for interest on
 the overdue amount(s), from the time payment was due until full
 payment is made, at the higher of (a) the rate established by the
 Department of the Treasury under 31 U.S.C. § 3717 and 4 C.F.R.
 § 102.13, or (b) the commercially reasonable interest rate that
 applies to the Escrow or that would have applied to the Escrow
 had it been timely established and funded.
 - 22. A. If Settling Defendants fail to meet their

obligations under Paragraph 7 of the Decree regarding the establishment of the Escrow, FPE and CDE shall pay stipulated penalties accruing from the date of lodging of this Decree in the following amounts for each day of each and every violation of said requirements:

Days of Delay	Penalty Per Violation Per Day
1-14	\$1000/day
15-30	\$3000/day
Beyond 30 Days	\$5000/day

B. If any payment required by Paragraphs 12 or 15 of this Decree is not made by the date specified in Paragraph 8, FPE and CDE shall pay stipulated penalties in the following amounts for each day of each and every violation of said requirements:

Days of Delay	Penalty Per Violation Per Day
1-14	\$1000/day
15-30	\$3000/day
Beyond 30 Days	\$5000/day

C. If any payment required by Paragraphs 9, 10, 11, 13, or 14 of this Decree is not made by the date specified in Paragraph 8, FPE and CDE shall pay stipulated penalties in the following amounts for each day of each and every violation of said requirements:

Days of Delay	Penalty Per Violation Per Day
1-14	\$500/day
15-30	\$1000/day
Beyond 30 Days	\$1500/day

- D. FPE and CDE shall make any such stipulated penalties payments: (1) to EPA, for any payment overdue under Paragraph 9; (2) 90% to EPA and 10% to the Commonwealth for any payment overdue under Paragraph 11; (3) to the United States, for any payment overdue under Paragraph 13; (4) fifty percent (50%) to the United States and fifty (50%) percent to the Commonwealth, for any payment overdue under Paragraphs 7, 12, or 15; and (5) to the Commonwealth, for any payment overdue under Paragraphs 10 and 14.
- 23. Stipulated penalties due to the United States under this Decree shall be paid by certified or bank check made payable to "Treasurer of the United States" and shall be sent to:

Chief, Civil Division
United States Attorneys' Office
1107 J.W. McCormack Post Office/Courthouse
Boston, MA 02109

Stipulated penalties due to EPA or the Commonwealth under this

Decree shall be paid in the manner described in Paragraphs 9 and

10, respectively.

24. Payment of interest under Paragraph 21 and stipulated penalties under Paragraph 22 do not preclude Plaintiffs from seeking any other remedies or sanctions that may be available to them on account of FPE's and CDE's failure to comply with the terms of the Decree.

Access Provision

25. The United States and the Commonwealth, their agencies and departments, and their authorized representatives, including their authorized contractors and consultants, shall have, upon

reasonable notice to CDE, such rights of access to the Cornell Facility as may be authorized under Section 104(e) of CERCLA, 42 U.S.C. § 9604, or Section 8 of M.G.L. c. 21E and as may be necessary for implementation of the Remedial Action, including operation and maintenance, at the New Bedford Harbor Site. Notwithstanding any other provision of this Decree, CDE specifically reserves and does not waive with respect to such access all rights which it has or may have under federal and/or state law. In the event of a dispute between CDE and the United States and/or the Commonwealth with respect to such access, any party may submit the dispute to this Court for resolution. This right of access is in addition to, and not in lieu of, any other right of entry or access which exists under federal or state law.

Contribution Protection

26. FPE and CDE shall have the benefits of Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), Section 4 of Mass. Gen. Laws c. 231B, and any other applicable law limiting their liability to persons not a party to this Consent Decree or affording them rights of contribution or other rights to recover costs or damages relating to the New Bedford Harbor Site from such persons.

Retention of Response Authority

27. Except for the covenants not to bring certain actions against Settling Defendants set forth in Paragraph 16, this Decree shall not be construed to limit the authority of the United States or the Commonwealth to take any and all response

actions relating to the New Bedford Harbor Site authorized by federal or state law.

Compliance with Other Laws

28. The Decree shall not be construed to in any way relieve FPE and CDE or any other person or entity from the obligation to comply with any federal, state or local law.

Retention of Jurisdiction

29. The Court shall retain jurisdiction of this matter between Plaintiffs and FPE and CDE for the purpose of entering such further orders, direction, or relief as may be appropriate for the construction, implementation, or enforcement of this Decree.

Public Comment

30. The Decree shall be subject to a 30-day public comment period consistent with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right, in consultation with the Commonwealth, to withdraw its consent to the Decree if comments received disclose facts or considerations which show to the United States that the Decree is inappropriate, improper or inadequate. FPE's and CDE's consent to the entry of the Decree is effective upon their signature of the Decree.

THE FOREGOING Consent Decree among plaintiffs the United States of America and the Commonwealth of Massachusetts and defendants FPE and CDE in <u>United States</u>, et al. v. <u>AVX Corporation</u>, et al., Civ. Nos. 83-3882-Y, 83-3889-Y (D. Mass.), is hereby APPROVED. There being no just reason for delay, this Court expressly directs, pursuant to Fed. R. Civ. P. 54(b), ENTRY OF FINAL JUDGMENT by this Consent Decree THIS $\frac{8^{77}}{2}$ DAY OF Office, 1992, and except as specifically provided herein, costs to be borne by each party.

WILLIAM G. YOUNG

United States District Judge District of Massachusetts

October 15, 1992.

Vacated!

Million A. young

November 24, 1992.

Consent decree approved William 1s. young District falge Consent Decree with FPE and CDE in <u>United States v. AVX</u> <u>Corporation</u>, Civ. Nos. 83-3882-Y, 83-3889-Y (D. Mass.)

FOR THE UNITED STATES OF AMERICA

Date: 9/3/92

Vicki O'Meara

Acting Assistant Attorney General Environment and Natural Resources Div.

U.S. Department of Justice Washington, D.C. 20530

Date:

Ellen M. Mahan Bruce C. Buckheit Senior Counsel

Environmental Enforcement Section Environment and Natural Resources Div.

U.S. Department of Justice Washington, D.C. 20530

Consent Decree with FPE and CDE in <u>United States v. AVX</u> <u>Corporation</u>, Civ. Nos. 83-3882-Y, 83-3889-Y (D. Mass.)

Date: \$24/93

Assistant Administrator for Enforcement U.S. Environmental Protection Agency

401 M Street, S.W.

Washington, D.C. 20460

Date: 8/12/52

Julie Belaga

Regional Administrator

U.S. Environmental Protection Agency,

Region I

JFK Federal Building

Boston, Massachusetts 02203

Date: 8/1/92

Gregory M. Kennan

Mark A. Lowe

Office of Regional Counsel

U.S. Environmental Protection Agency,

Region I

One Congress Street

Boston, Massachusetts 02203

Consent Decree with FPE and CDE in <u>United States v. AVX</u> <u>Corporation</u>, Civ. Nos. 83-3882-Y, 83-3889-Y (D. Mass.)

FOR THE FEDERAL NATURAL RESOURCE TRUSTEES

Date: 8	-16- 92	John A Known	
		John A. Knauss Under Secretary for Oceans a Atmosphere	nd
		Administrator, National Oceanic and Atmospheric Administration Department of Commerce	
		Washington, D.C. 20230	
Date: 5	5-21-92	Thomas A. Campbell	
		General Counsel National Oceanic and Atmospheric Administration	
Date: 8-	- 4 - 92	Xhut Paidh	
		Anton P. Giedt Attorney Office of General Counsel	
		National Oceanic and Atmospheric Administration	

Consent Decree with FPE and CDE in <u>United States v. AVX</u> Corporation, Civ. Nos. 83-3882-Y, 83-3889-Y (D. Mass.)

FOR THE COMMONWEALTH OF MASSACHUSETTS

Date: 7/22/92

Matthew T. Brock
Assistant Attorney General
Environmental Protection Division
One Ashburton Place
Boston, Massachusetts 02108

Date: 7/22/92

Commissioner

Department of Environmental Protection

Commonwealth of Massachusetts

One Winter Street

Boston, Massachusetts 02108

FOR THE COMMONWEALTH OF MASSACHUSETTS NATURAL RESOURCE TRUSTEE

Date: 7/22/92

Secretary

Executive Office of Environmental

Affairs

Commonwealth of Massachusetts 100 Cambridge Street, 20th Floor Boston, Massachusetts 02202

Consent Decree with FPE and CDE in United States v. AVX Corporation, Civ. Nos. 83-3882-Y, 83-3889-Y (D. Mass.)

FOR FEDERAL PACIFIC ELECTRIC COMPANY

Date:	5/28/92	Howard B. Ahmy
Date: _	6/1/92	Howard T. Weir Morgan, Lewis & Bockius 1800 M Street, N.W. Washington, DC 20036

FOR CORNELL DUBYLIER ELECTRONICS, INC.

James R. Kaplan President

Laurie Burt

Foley, Hoag & Eliot One Post Office Square

Boston, Massachusetts 02109

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiffs)))
v.)
AVX CORPORATION, et al., Defendants.	CIVIL ACTION NOS 83-3882-Y 83-3889-Y
COMMONWEALTH OF MASSACHUSETTS, Plaintiff,)))
v.)
AVX CORPORATION, et al., Defendants.	,))

ORDER DIRECTING THE DEPOSIT OF NATURAL RESOURCE DAMAGES
FROM DEFENDANTS FEDERAL PACIFIC ELECTRIC COMPANY AND
CORNELL DUBILIER ELECTRONICS, INC. INTO THE
REGISTRY OF THE COURT AND DIRECTING THE CLERK TO
DEPOSIT ALL NATURAL RESOURCE DAMAGES WITH THE COURT
REGISTRY INVESTMENT SYSTEM ("C.R.I.S.")

DEPOSIT ORDER A

Pursuant to Rule 67 of the Federal Rules of Civil

Procedure, 28 U.S.C. 2401, and Local Rule 67.2, and in accordance with the terms of the Consent Decree in the above captioned matter between Plaintiffs the United States and the Commonwealth of Massachusetts and Defendants Federal Pacific Electric Company and Cornell Dubilier Electronics, Inc. ("Settling Defendants"), entered by the Court on Massachusetts, 1992, it is hereby

ORDERED that Settling Defendants, upon final approval of the Consent Decree, pay to the Clerk of the Court all sums for Natural Resource Damages as specified in Paragraph 12.A. of the Consent Decree; and it is

ORDERED that Settling Defendants shall make the aforementioned payments for Natural Resource Damages by checks made payable to the Clerk of the Court in accordance with the procedures specified in Paragraph 12.B. of the Consent Decree; and it is

ORDERED that the Clerk of the Court, consistent with Paragraph 12.D. of the Consent Decree, shall deposit the aforementioned Natural Resource Damages payments with the Court Registry Investment System ("C.R.I.S.") administered through the United States District Court for the Southern District of Texas in accordance with the C.R.I.S. Operating Procedures Manual, United States District Courts for the Fifth Circuit; and it is

ORDERED that under the C.R.I.S., all monies deposited for Natural Resource Damages in the above captioned matter will be pooled together with those on deposit with the United States Treasury to the credit of other courts in the C.R.I.S. and used to purchase Treasury Securities which will be held at the Federal Reserve Bank of Dallas/Houston Branch, in a Safekeeping account in the name and to the credit of the Clerk, United States Court for the Southern District of Texas, hereby designated custodian for the C.R.I.S.; and it is

ORDERED that an account shall be established in the C.R.I.S. specifically for, and only for, all monies deposited for Natural Resource Damages in the above captioned matter and shall be titled "U.S. v. AVX Natural Resource Damages Account" ("U.S. v. AVX NRD Account"); and it is

ORDERED that all funds in the <u>U.S. v. AVX</u> NRD Account shall be invested in the "C.R.I.S.- Liquidity Fund" which provides weekly liquidity and a maximum of 100 day-term Treasury Securities; and it is

ORDERED that all income received from fund investments will be distributed to the <u>U.S. v. AVX</u> NRD Account on the ratio that the account principal and income has to the aggregate principal and income total in the fund each week; and it is

ORDERED that quarterly reports showing the income earned and the principal amounts contributed to the <u>U.S. v. AVX</u>

NRD Account will be prepared and distributed to the Clerk of this

Court and the Clerk of the United States District Court for the

Southern District of Texas and made available to counsel for the

United States and the Commonwealth of Massachusetts; and it is

ORDERED that funds in the <u>U.S. v. AVX</u> NRD Account shall remain on deposit with the C.R.I.S. until further order of this Court at which time all of the funds or a portion of the funds, together with any interest earned thereon, shall be retrieved by the Clerk of this Court and redeposited into the Registry of the Court for disposition by further order of this Court consistent with Paragraphs 12.E. and 12.F. of the Consent Decree; and it is

ORDERED that the custodian for the C.R.I.S. is authorized and directed by this Order to deduct for maintaining accounts in the "C.R.I.S.- Liquidity Fund" the fee on the above accounts as authorized in the Federal Register Vol. 55, No. 206 at page 42867. The fee may be deducted on a prorated basis over

the course of deposits into the "C.R.I.S .- Liquidity Fund;" and the United States may make application to the Court to have these fees restored to the United States pursuant to 55 Fed. Reg. 42867; and it is

ORDERED that a certified copy of this order shall be served upon the Clerk of this Court and the Clerk of the Court for the Southern District of Texas.

WILLIAM G. YOUNG

United States District Judge District of Massachusetts

Date: November 12 192

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiffs)	
v.	į	
AVX CORPORATION, et al., Defendants.)	CIVIL ACTION NOS. 83-3882-Y 83-3889-Y
COMMONWEALTH OF MASSACHUSETTS, Plaintiff,))	
V.)	
AVX CORPORATION, et al., Defendants.))	

ORDER DIRECTING THE DEPOSIT OF
NATURAL RESOURCE DAMAGES AND/OR RESPONSE COSTS
FROM DEFENDANTS FEDERAL PACIFIC ELECTRIC COMPANY
AND CORNELL DUBILIER ELECTRONICS, INC.
INTO THE REGISTRY OF THE COURT

DEPOSIT ORDER B

Pursuant to Rule 67 of the Federal Rules of Civil
Procedure, 28 U.S.C. 2401, and Local Rule 67.2, and in accordance
with the terms of the Consent Decree in the above captioned
matter between Plaintiffs the United States and the Commonwealth
of Massachusetts and Defendants Federal Pacific Electric Company
and Cornell Dubilier Electronics, Inc. ("Settling Defendants"),
entered by the Court on Manufact 13, 1992, it is hereby

ORDERED that Settling Defendants, upon final approval of the Consent Decree, pay to the Clerk of the Court all sums for Natural Resource Damages and/or Response Costs in accordance with Paragraph 15.A. of the Consent Decree; and it is

ORDERED that Settling Defendants shall make the aforementioned payments for Natural Resource Damages and/or Response Costs by certified or bank checks made payable to the Clerk of the Court in accordance with the procedures specified in Paragraph 15.B. of the Consent Decree; and it is

ORDERED that the Clerk of the Court, consistent with Paragraph 15.D. of the Consent Decree, shall deposit the aforementioned Natural Resource Damages and/or Response Costs payments with the Registry of the Court; and it is

ORDERED that such payments shall remain with the Registry of the Court until further order of the Court upon joint motion by counsel for the governments; and it is

ORDERED that a certified copy of this order shall be served upon the Clerk of this Court.

WILLIAM G. YOUNG

United States District Judge District of Massachusetts

Date: Movember 13 1992

Attachment 7

Declaration of Mark P. Rasmussen

- 1. My name is Mark Rasmussen. I make this declaration based on personal knowledge.
- 2. I was Executive Director of the Buzzards Bay Coalition (Coalition) from 1998 to 2008 and have been President of the Coalition since 2008. My business address is Buzzards Bay Coalition, 114 Front Street, New Bedford, MA 02740. My home address is, and since 2000 has been, 39 Fort Street, Fairhaven, MA 02719. I have been a member of the Coalition since 1993 and I live within 500 feet of the lower portion of New Bedford Harbor (Lower Harbor).
- 3. Founded in 1987, the Buzzards Bay Coalition is a membership-supported nonprofit organization dedicated to the restoration, protection and sustainable use and enjoyment of Buzzards Bay and its watershed. New Bedford Harbor is one of 30 main harbors and coves within Buzzards Bay. The Coalition works to improve the health of the Bay ecosystem for all through education, conservation, research and advocacy.

Buzzards Bay Coalition Membership

- 4. The Coalition has more than 8,000 individual, family, business, and organizational members. The great majority of its members are active users of Buzzards Bay and its shoreline for a wide variety of recreational and commercial purposes, including swimming, sunbathing, bird-watching, boating, rowing, paddling, windsurfing, fishing, shell fishing, aquaculture, tourism, and education. The Coalition and its members have a significant interest in sustaining and restoring these uses and the Bay's myriad natural resources.
- 5. Of the Coalition's more than 8,000 members, approximately 1,300 live in the Greater New Bedford Harbor watershed area, which includes the towns of Acushnet, Fairhaven, Dartmouth, and Freetown and the City of New Bedford.
- 6. Of those 1,300 members, 729 live in the three towns directly abutting New Bedford Harbor: Acushnet, Fairhaven, and the City of New Bedford. The addresses of these 729 members are plotted on the attached map, Exhibit A.

- 7. Nearly 250 Coalition members live or work within 1,000 yards of the edge of New Bedford Harbor. These members include those who have residences or businesses directly abutting the Harbor, commercial and recreational fishermen, and recreational boaters.
- 8. Based on the public record concerning the PCB contamination of the Harbor and the level of cleanup the U.S. Environmental Protection Agency is requiring in New Bedford Harbor, it is apparent to the Coalition that the 50 parts per million (ppm) cleanup level selected by EPA in its 1998 Record of Decision (ROD) is not protective of human health and the environment and that cleanup actions far beyond those required by the ROD and subsequent Explanations of Significant Differences will be necessary.
- 9. The Coalition believes that the appropriate remedy for the cleanup of the Harbor is hydraulic dredging, dewatering, and offsite disposal of the sediment in the Harbor contaminated with PCBs. Remedies other than disposal offsite of such sediments present additional risks to human health and the environment in the Harbor. Accordingly, the public interest requires EPA to avoid remedies involving in-situ disposal of highly-contaminated sediment such as confined disposal facilities and confined aquatic disposal (CAD) cells.
- 10. The Coalition and its members are dismayed about the PCB contamination of the Harbor and its devastating impact on its environment, recreational activities, education opportunities and commercial uses which the Harbor would otherwise provide. In support of a full cleanup of the Harbor, attached as Exhibit B is a petition signed over the past month by approximately 2,000 members of the community, including many Coalition members, asking that the settlement between AVX and EPA include a reopener to ensure that the Harbor receives a full cleanup.

Buzzards Bay Coalition Property Interests and Personnel

11. The Coalition has used and acquired several properties in the Harbor in order to further its mission to restore, protect and sustain the use and enjoyment of the Bay, including its watershed. The continuing existence of PCB contamination in the Harbor frustrates the Coalition's pursuit of this goal and its investment in such properties.

Headquarters

12.From 2004 to 2010 the Coalition's headquarters were located at 620 Belleville Avenue, New Bedford, MA 02745, just south of the facility from which AVX and its predecessors for decades released millions of pounds of PCBs, and directly on the banks of some of the worst PCB contamination in the upper portion of New Bedford Harbor (Upper Harbor), north of Coggeshall Bridge. Since 2010, the Coalition's permanent headquarters have been at 114 Front Street, adjacent to the Lower Harbor.

Personnel and Volunteers

- 13. The Coalition has 14 full time employees and 4 part time employees at its current headquarters. Full time employees spend at least 40 hours each week at the Coalition's office on the Lower Harbor.
- 14. Volunteers spend approximately 1,500 hours per year at the Coalition's office on the Lower Harbor every year. The continued contamination of the Harbor limits what volunteers are able to do for the Coalition.
- 15. Each year since 1992, the Coalition has consistently and regularly collected water quality samples throughout the upper, lower, and outer portions of the Harbor. Coalition employees and volunteers collecting samples in the PCB contaminated portions of the Harbor make contact with sediment and the water.

Research Vessel

16. Our research vessel, the R/V Baykeeper is docked at the Fairhaven Shipyard in Fairhaven, MA in the Lower Harbor.

Marsh Island Project

17.In December 2009 the Coalition acquired, in fee simple, 7.5 acres of Marsh Island, which is located in the Lower Harbor. The Coalition applied to the New Bedford Harbor Trustee Council and received funds to purchase that property to protect coastal and marine resources, to provide a location for native habitat restoration and to allow overall public access, shoreline access and the enjoyment of open space and natural resources. Attached hereto as

Exhibit C are the relevant portions of the Coalition's grant application.

- 18.In addition to the 7.5 acres of Marsh Island the Coalition now owns in fee simple, the Coalition also holds a Conservation Restriction (MGL c. 184 §§31-33) on the remaining 14.25 acres of Marsh Island owned by the Fairhaven-Acushnet Land Preservation Trust (and likewise acquired by the trust using New Bedford Harbor Trustee Council funding for the same reasons of resource protection, habitat restoration and public access). That Conservation Restriction, acquired in September 2003 and attached hereto as Exhibit D, states that permitted acts and uses of the northern portion of Marsh Island, like those similarly allowed on the southern portion, shall include, but not be limited to, passive recreational activities such as hiking, canoeing, fishing and wildlife observation and that the general public shall have access.
- 19.Under EPA's current remedy, a cleanup standard of 50 ppm PCBs is applied to saltmarshes throughout the Harbor. However, due to the acquisition and permanent protection of Marsh Island for the purposes of public access and exploration, it is evident that EPA should apply the lower cleanup standard of 1 ppm to the maximum extent possible while preserving the ecological integrity of the saltmarsh.
- 20. According to the 1998 ROD, a 1 ppm cleanup level is required when contact with sediment is likely. These properties were acquired with the intent to provide the public with full access to the property. The public, including small children, will be deterred from visiting the site and exploring the marshes unless a full cleanup is achieved.
- 21. Marsh Island, with its proposed restoration of 12 acres of saltmarsh, is the largest natural resource restoration project in the Harbor. Its completion will, if the Harbor's cleanup is adequate, greatly improve the community's access to the Harbor's natural resources. The purposes of this investment will not be realized unless and until the contamination is reduced.

Acushnet Sawmill Property

22.In March 2007 the Coalition purchased 21 acres at the Acushnet Sawmill Property and in July 2012 purchased 47 acres of the adjacent LaPalme Riverfront Farm. The Coalition purchased these properties with New Bedford Harbor Trustee Council funds for the specific purpose of

"undeveloping" the Sawmill Property by removing buildings and asphalt and managing the abandoned fields at LaPalme, thereby restoring both to their natural state and, as a result, improving the water quality of the Acushnet River at the head of New Bedford Harbor, maintaining wildlife habitat and gaining public access to 68 acres of critical riverfront land and their natural resources.

- 23. The purposes for which these properties were acquired will be frustrated if a full cleanup of the Upper Harbor is not achieved. The specter of contamination can reasonably be expected to dissuade many members of the public and the Coalition from fully exploring and exploiting these properties.
- 24. The grant funds awarded to the Coalition for the purchase of the Acushnet Sawmill and Marsh Island and for the restoration of natural resources at these sites were awarded by the New Bedford Harbor Trustee Council with monies obtained pursuant to the 1992 Consent Decree entered into by the United States, the Commonwealth, and AVX Corporation and approved and entered by the U.S. District Court for the District of Massachusetts (District Court) on February 3, 1992, for Civil Action No. 83-3882-Y; the 1991 Consent Decree entered into by the United States, the Commonwealth and Belleville Industries, Inc. and its legal successor, Aerovox Inc., and entered by the District Court on July 17, 1991 in the same case; and the 1992 Consent Decree entered into by the United States and the Commonwealth with Cornell-Dubilier Electronics, Inc. (CDE) and its parent company, Federal Pacific Electric Company (FPE), entered by the District Court on November 24, 1992 in the same case. If EPA fails to achieve a full cleanup of the Harbor, the purposes of the settlement agreements and the grants will be frustrated.

Changes in Land Use in the Harbor

Overview

- 25.A significant transition in land use has taken place in the upper portion of the Harbor since EPA began conducting its analysis for the cleanup of the Harbor in the late 1980s. The Upper Harbor, once defined by EPA as industrial, now is dominated by recreational and residential use.
- 26. This shift in the use of the Harbor including the increase in residential uses and in areas where contact with contaminated sediment is likely, should require EPA, under the 1998 ROD, to apply the more protective 1 ppm

cleanup level in lieu of EPA's original prescription of 10 to 50 ppm. The significant investments made by private real estate developers, the City, and the Coalition to utilize properties along the River will not be fully realized unless a full cleanup is achieved.

27. Coalition professionals trained in the use of GIS technology produced two maps to demonstrate the evolution in the Upper Harbor from industrial to recreational and residential use. One map illustrates land uses in 1985, and the other illustrates land uses in 2012 together with projects underway and projected to be complete by 2020. These maps illustrate that nearly 50% of the land use in the Upper Harbor is now residential or recreational, while in the mid-1980s the predominant land use was industrial. These maps are attached as Exhibit E and Exhibit F.

The City of New Bedford's River Walk

- 28. The City of New Bedford has plans, and has secured funds from the New Bedford Harbor Trustee Council, to construct, for recreational and natural resource restoration purposes, a public river trail along the shores of the Upper Harbor, linking the City's public parks with the Coalition owned Marsh Island and Acushnet Sawmill properties.
- 29. Attached as Exhibit G is a June 27, 2011 article from the New Bedford Standard Times describing the \$2.9 million received by the City from the New Bedford Harbor Trustee Council for the Riverwalk and quoting the Executive Director of the New Bedford Economic Development Council, saying, "This is really nothing short of a transformation for a whole section of the city."

Public Rowing and Sailing Programs

- 30. The Coalition supports public rowing and sailing programs in New Bedford Harbor. The full potential of these programs will not be realized until the Harbor receives a full cleanup.
- 31. The City also has plans to build a boathouse on the Harbor shore to promote increased recreational rowing and other boating. The *Boston Globe* reported in April 2012 that City officials hope through such plans "to transform the public perception of the harbor, long seen in a gritty, industrial light, to that of a recreational destination." The article is attached as Exhibit H.

Acushnet River Reserve

- 32.In December 2010, August 2011 and again in June 2012, the Coalition assisted in the private acquisition and permanent protection of an additional 11 acres of saltmarsh (along with 13 acres of buffering uplands) on the eastern shore of the Upper Harbor in the towns of Fairhaven and Acushnet for the purposes of resource protection and public access. Like Marsh Island and the Acushnet Sawmill, these properties were purchased with funds awarded by the New Bedford Harbor Trustees Council.
- 33. This property, known as the Acushnet River Reserve, is currently contaminated with PCBs of more than 50 ppm. Prior to this acquisition, EPA's cleanup goal for these properties was 50 ppm. Because human contact with sediment is likely at these properties, EPA should clean up the properties to a level of 1 ppm to the maximum extent possible while preserving the ecological integrity of the saltmarsh. If it does not, the purposes for which these properties were acquired and protected will not be realized.

Cost of Further Cleanup of Residential and Recreational Areas in Upper Harbor

- 34.Based on the cleanup standards used by EPA in its 1998 ROD, the Coalition's analysis shows that EPA should now clean up the Upper Harbor shoreline to the 1 ppm standard because of existing and reasonably foreseeable residential and recreational uses and risks of human exposure. Similarly, applying EPA's own 1998 standards requires cleaning up the Marsh Island and Acushnet River Reserve properties discussed above to the 1 ppm cleanup level.
- 35. The Coalition's analysis shows that simply applying the EPAs 1998 cleanup standards to current and foreseeable residential and recreational use in the areas discussed above could cost \$89 million more than EPA's most recent estimate of the cost of the cleanup of the Harbor.
- 36. The first step in calculating the additional cost is to estimate the increase in the cost of additional dredging needed to remove additional contaminated sediment. To make this estimate, the Coalition calculated a dollar amount

per cubic yard of sediment to be removed.

- a. The Coalition based its estimate on EPA's own 2010 estimate of the cost of dredging in connection with construction of a CAD cell in the Lower Harbor. EPA's estimate appears in its Explanation of Significant Differences (ESD) found in administrative record document number 466839 and dated June 21, 2010. For purposes of this estimate, the Coalition used EPA's total cost and present value estimates in Alternative 2, in which EPA assumed that it would spend \$80 million/year on the Harbor cleanup. Those EPA estimates appear most closely aligned to the six year cleanup time horizon and current cleanup plan outlined in the proposed EPA-AVX settlement.
- b. In Alternative 2, EPA estimates a net present value of \$395,433,155 to dredge and dispose of 692,864 cubic yards (cy) of material. This dollar figure does not include seafood and benthic monitoring costs. Dividing \$395,433,155 by 692,864 cy yields a dredging cost of \$570.72/cy, which rounds to \$571/cy.
- 37. The second step in calculating the additional cost of cleaning up the Upper Harbor to 1 ppm is to estimate the quantity of sediment that must be dredged.
 - a. EPA's estimate of the quantity (692,864cy) to be dredged in connection with the CAD is based on the cleanup levels selected in the 1998 Record of Decision, which are as high as 50 ppm. In an April 8, 1991 Memorandum for the Record by the Department of the Army Corps of Engineers, administrative record document No. 63765, EPA estimated that, in order to meet a cleanup level of 1 ppm in the Upper Harbor alone, approximately 737,000cy of material would need to be dredged. It is unclear whether the volume estimated in the 1991 memorandum includes the dredging of sediments in saltmarshes in the Upper Harbor to 1ppm and, therefore, volumes may be even higher than estimated here.
 - b. Under current cleanup levels, EPA is planning on dredging only 580,861cy in the Upper Harbor. EPA provided this estimate to the Coalition on June 12, 2012 in a letter attached here as Exhibit I.

- c. In order to estimate the increase in volume of sediment EPA will need to dredge in order to accommodate the new land uses in the Upper Harbor and meet a 1 ppm cleanup standard, the Coalition subtracted 580,861 cy from the 737,000cy estimate to yield a difference of 156,139 cy of additional dredging.
- d. In short, using EPA's own costing methodology and other publicly-available data, the cost of cleaning up just the Upper Harbor to 1 ppm would likely be in the range of the product of 156,139cy and \$571/cy, or about \$89,155,369.

Current New Bedford Harbor Cleanup Levels Likely Not Protective

Comparison of Cleanup Levels

- 38. The Coalition has assessed how the PCB cleanup levels set by EPA for the New Bedford Harbor Superfund site compare to the PCB cleanup levels set by EPA for the other Superfund cleanup sites involving aquatic environments. The result, based on information available on EPA's public website, is that EPA has set less stringent PCB sediment cleanup levels for New Bedford than for the vast majority of Superfund sites involving PCBs in aquatic environments in the United States.
- 39. The Coalition first identified all sites on the National Priorities List involving PCB contaminated sediments in aquatic environments. The Coalition searched EPA's Superfund Public Access Database ("CERCLIS") to identify sites that involve "PCBs" as a contaminant and "sediment" as the medium in which PCBs were found. The search identified 146 such sites.
- 40. The Coalition then reviewed the following EPA documents for each site to determine whether PCBs were listed as a "contaminant of concern" or to assess the extent of PCBs in sediments: the NPL Factsheet, EPA's most recent Five Year Report, the "Site Characteristics" and "Nature of Contamination" sections of the Record of Decision, and other formally adopted documents (RODs, ROD Amendments, ESDs, and Five Year Plans).
- 41. The Coalition excluded from its comparative analysis all sites having less than 1 ppm PCBs or involving less than 2,500 cubic yards of PCB contaminated sediment.

- 42. The Coalition's review and analysis identified 44 sites with at least 2,500 cubic yards of PCB contaminated sediments in aquatic environments with at least 1 ppm of PCBs.
- 43. Attached as Exhibit J is a bar graph for all comparable sites showing their PCB cleanup levels. Only one site in the Nation, the significantly smaller and less contaminated Fields Brook site in Ohio, appears to have sediment cleanup target levels as lax as New Bedford Harbor.

Cost of Cleaning Entire Harbor to Same Level as Other Aquatic PCB Sites

- 44.EPA found in the 1998 ROD, at page 16, that in order to meet a cleanup level of 1 ppm throughout the entire Harbor, approximately 2.1 million cy of material would need to be dredged.
- 45.If in the future EPA finds that to protect human health and the environment additional dredging is required, and if EPA establishes that the entire Harbor should be dredged to 1 ppm, an additional 1.2 million cy more sediment will likely need to be removed over and above the current 900,000 cy estimate. The Coalition arrived at this estimate by subtracting current estimated quantity of sediment to be dredged, 900,000 cy, from the amount it estimated would be necessary to dredge the whole Harbor to 1 ppm, 2.1million cy. This yields an additional 1.2 million cy to be dredged. The impact of such a large increase in sediment volumes on the total project cost would be dramatic.

Confined Aquatic Disposal Cells

EPA plans for Upper Harbor CAD cell

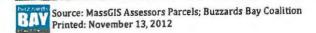
- 46.On August 28, 2012, the Coalition filed a Freedom of Information Act (FOIA) Request with EPA requesting certain information related to the New Bedford Harbor Superfund cleanup.
- 47. Documents EPA produced in response to the Coalition's FOIA request include a report produced by the US Army Corps of Engineers for EPA in December 2011 assessing contaminant loss and sizing for a proposed Upper Harbor CAD cell north of Coggeshall Street. Excerpts from that report are attached here as Exhibit K.

- 48.EPA personnel have stated both directly to me and in the press that the currently proposed AVX settlement funds will go towards the current cleanup plan. The current cleanup plan does not include an Upper Harbor CAD cell.
- 49.Based on the information EPA provided in response to the Coalition's FOIA request and statements made by EPA in the press and in the "Frequently Asked Questions" or FAQs it has released concerning its proposed settlement with AVX, the Coalition concludes that EPA is likely to change the remedy for the New Bedford Harbor Superfund site in the near future. Attached here as Exhibit L is an article from the New Bedford *Standard Times* from December 16, 2012, in which the EPA Region 1 Administrator states that the EPA will reopen the Record of Decision in July.
- 50.On November 8, 2012, the City Council for the City of New Bedford voted (a) in opposition to the use of CAD cells to store PCBs in the Harbor and (b) in favor of EPA's continuing to work with AVX Corporation to obtain the necessary funds to fully remove PCB sediments through the dredging process. The Council further asked the City Solicitor to advise the Council of any steps the Council may take to prevent the placement of CAD cells in the Upper Harbor. Attached as Exhibit M, are the relevant excerpts of the minutes of the City Council meeting held November 8, 2012.
- 51. The Coalition's concern about the appropriateness of in-situ disposal of PCB contamination was bolstered by the CAD cell experience in Puget Sound, WA. Coalition research revealed a February 19, 2004 EPA-issued Explanation of Significant Differences for the Bremerton Naval Complex, also known as Puget Sound, to address PCB contamination that had occurred because of the discharge of sediment into a CAD pit. EPA conducted a study to determine the extent of contamination and confirmed contaminated areas up to 600 feet beyond the CAD pit boundary. Further remediation was required in order to address this contamination.
- 52. Attached as Exhibit N are excerpts from the February 19, 2004 ESD for Bremerton Naval Complex.

I declare under penalty of perjury that foregoing is true and correct.

Dated: December 17, 2012 Mark P. Rasmussen

Buzzards Bay Coalition Membership (New Bedford, Fairhaven & Acushnet) FREETOWN ROCHESTER ACUSHNET MATTAPOISETT NEW BEDFOR DARTMOUTH



BUZZARDS BAY COALITION & HANDS ACROSS THE RIVER COALITION

We, the undersigned, join with the community-based organizations listed above in calling on the Court to reject the proposed Consent Decree between the U.S. Environmental Protection Agency and AVX Corporation regarding the cleanup of toxic PCBs from New Bedford Harbor. The failure of the Consent Decree to include a "reopener" would release AVX from responsibility and robs this community of a clean Harbor. The \$366 million payment outlined in the Consent Decree is not enough funding to fully cleanup our Harbor.

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Marilyn O'Brien	3950 Larkspur Dr. Allentown, Pa 18103
Name	Address
Elena Crifty	7 Fort Gt Fairhaven, MA 02719
Name	Address
Sara Couto	47 Fort St. Fairhaven mA 02719
Name	Address
ANNE NICHELSON	156 C-LEN RD, PORTSMOUTH, RI DZ871
Name	Address
HERB NICHELSON	156 GLEN RD; PORTSMOUTH RI 02871
Name	Address
Larry Harrey	Address Address
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Alice M FARIA	10 Humming bird TRAIL W. DARMOUTH 02747
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Anne Wichelson	156 Glean Rd, Portsmouth, PU 02871
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Roberta A. Dow 3	Address MAPLEST, New BEDFORD, MA D274
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	Name Walter Zembo	587A River Rd. Westport MA
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Claro (Managera)	32) Mellyhorn St. Rger
Name	Address Tout 19/10
Juleed King (Julee A. King	
Name	Address
Please Retu	n by 12/12/12

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BUZZARDS BAY COALITION & HANDS ACROSS THE RIVER COALITION

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submit our names in response to the US Dept of Justice Public Comment period which terminates on 12/17/2012.
Please Write Clearly
Rosean Stock 1/10 Olde Knoll, Marion 02738
Name Address
Margareta Riley 15 Dunfee Ct. 2e New Bedford, MA 02740
Name TRACY Address
Transform TARVERS 315 Garden, New BedFord, MA
Name Sharon Pomental Address
Sharon Pineulal 58 Fiable Rd Westport Maca
Naile JAC () A I W I Sulless!
And S. MARION, MA 02738
Mary Francis Ces Vavis Mary Francis Ces Vavis Twalnut St Fairhaven MA02719
Address BRKGS STANKOWHEND LA. MANION 02738
Name . Address
Sally L Sleeper Coltrell 30 Indian Core Road Marion, MA Name Address Address
Name Sheila S. Rubdi 10 Cottage Freet Marion MA Name 1791 Address 02738
sheria o i Rusar to tourse offer that in the
Name TOM Address 0 02738
Manson Musiful - 83 COUNTYRD, MINKION
Name Address
Please Return by 12/12/12

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Please Wite Conrlu Address 107R Marian Rd Mattapasett MA 02739 28 Champion Trirace Dartmouth, MA 02747 115 Nockland St. Dortmorta and 02748 NAOMI RAPPAPOM 115 BOCK LAND ST. DARTHOUTH, WA. 02748 KEVIN BROWN 16 Pinewood Drive Harion MA 0273 Jessica Govani 20 Elise Lane Darkmonth MA 02747 87 De-BRALEY Rd. E. FREETOWN, MAOSTIT MARY BAUNGARTNER 49 Mirasol Dr. Buzzards Bay, MA02532 KAREN RUNYON 949 County St N.B., MA Melissa Jordan 12/12/12 Please Return by

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Decree is not enough funding to fully cleanup our Harbor.

	ce Public Comment period which terminates on 12/17/2012.
Please	Write Clearly
Christian DoMaranville	1089 Bowles St. Mew Beafford
Name	Address
Name Name	24 Physpan St. New Bedfield Ma
	Address
Bethania Court 1	30 LOWELL St # DE Fall River, MH 0270
Name	Address
Autumn BIShoop	122 Acosmnet Ave
Name / //	Address
Misterhel Meaut	143 Wivision Street
Name /	Address
Breama Chartie	58 Apache CT
Name	Address
Cody Sules	334 Mainstreet AP+GF
Name OAA A COLLIA CIL	Address
700 9 LUK KID - 6156	» 26 bliss street
Name	Address
Michael Shea	North Attlebors
Name	Address
Aurora St. onge	700 CRAPO St April
Name	Address
Plasa Patin	. hii 12/12/17

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Please Wite Clearly
PIEME WITE CLEATTY
Peter Blanchard 9 Anthony St. New Bestard 02740
Name Address /
MANSECH YVIL Thee ward by Frish Aven MA
Name Address /
Katherine Gregory 274 Bullock Rd. E. Froetown MA 0271
Name O O Address
Tosemany larkin 137 Summer St. NB. HA 02740
Name Address
- Northum Grovard 96 Main Street
Name Address
Daryl Ramos 202 State St
Name Address
Melsie Cabral 31 Edna St
Name , Address
When there sy Roder St
Name Address
Jordan Vasconcelles 495 Summer 5+
Kerilombardi 23) Shaw St NB.
Name Address
Please Potin his 12/17/17

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Plei	tse Write Clearly
Denise Rodria	vez 207 Ashley BLVd N.B.
Name Vii	Address 87 Hazard ST
Name	Address
Susan Foster	591 Horsen of Rd West port
Name	Address
Barbari Marath	278 Wright KIL WISEPORT
Name	Address
Elis Comerford	93 State Street NB
Name	Address
Kendra Isaksen	167 Marimac Street NB
Name	Address
Vierox Markan	14 wilson St. S. Datentl'
Name ,	Address
Phil Lang	12 Howland St. S. Darkmouth Mbt
Name	Address
Stephany What	2 Seth Davis Way
Name	Address
Clamp Britis	32 Roverven Che
Name	Address

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	Justice Public Comment period which terminates on 12/17/2012. Le Wite Clearly
Matt Little	9 Laurel St., Fairhaven
Name	Address
Rachelle folgy	105 PleasntSt. Fairhaven
Name	Address
Flatton Lopes	255 Allen St New Bedford
Name	Address
Henry Fermins	51 Myrth St NewBedford Ma
Name	Address
Alisha Lemieux	452 Loftus St. Newbedford
Name	Address
JOHN MASSON	416 COUNTY ST., NEW BEDFURD
Name	Address
Minai Tripp	POBOX 8757, New Beafard MA, 02742-8751
Name ,	Address
Ryan Gallagher	83 Wilbur Ave, Dartmouth MA
Name	Address Charles Charles Charles Con Office
THRA PENNY	SICOHOGE Street, Apt 2 New Bedford MA 027
Name	Address
ROBERT SMITH	2 FOSTER LN. KINGSTON, MA 02364
Name	Address

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Please Potin his

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Submit our names in response to the os be	ease Write Clearly	it terminates on 12/1//2012.
Kreg M. EspiNOLA	7 47 Sounths	+ N.4 MH 02740
Name	Address	
Brooke Asthon	4208 Acustinet Au	R. N.B. MA 02745
Name	Address	
Scott Divon	70 Nelson St. A.	\$3 NB, MA OZTEA
Name	Address	
Candido Trinided	329 Myrtle St Address	NB, MA 02746
Name	Address	· ·
Peter Castonguy	2611 enuy st Address	NB, MA 07 796
Name	Address	/
Samuel Ackah	174 Walnut St Address	NB MA 02740
Name	Address	
BIDONO Textira	42 Concort of P	Fay River Ma 02724
Name /	Address	
JA-7	94 MerriMacst	Potown
Name /	Address	
Steph Russell	425 Smith Nock Ro	d Dartmouth MA 0274
Name	Address	
Cont Oynthia	WOOD 53 Pembrolo	e Ave. Gowhnet mass
Name	Address	02713
PleaseTe	Letur by 12/12	1

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	Please Wite Clearly
A. Peter So	Address 160 DAVIJSY MB MA. 02
Name	
Teresa Tava	eree 80 RIVEL ST N.BMAONT
Name	Address
5am Milai-	= 334 Edice ST (3-) N.B. 1-41 (2)
Name John A Cal	253 MILL ST NB. MASS. 0274
Name	Address
Pre Graph	195 ARNOLD ST
Name	Address
Sherry Saipe	9 316 Dartmouth St. N.B.
Name	Address
Named a N Syl	38 HAZHRD STAR
Name .	Address
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Name	Address
Name	Address
Name	Address
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Please	Return 64 12/12/12

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Please	Write Clearly
Charlotte artman PDR 39	Toeboro MA 02035
Name	Address
Joel Altman Po Box	.391 Foxboro, MY 02035
Name / / / / //	Address
Joban Altman	CHIPMAN ST MEDFORD, MY 800
Name /	Address
Mare Detumb	CHIPMAN ST MESTORD MA 02155
Name	Address
Roseman P. Lucas	Address Seneola St. New Bedford Me
Name ,	Address 02748
EMILY BRYANT	36 Morgan arcle Amhest MA 01002
Name	Address
Lucy Bly	290 SAWYER ST. NEW BEDFORD, MA.
Name	Address
Julith Rodengues	33 Plymouth ST. New Benford, MADERYO
Name	Address
Tannie E. Kerry	371 Herson St. Dew Bedford MADZYK
Name	Address
GRAHAM BERRY	22 WALLET ST. ASSONET, MA 02702
Name	Address
Retu	en by 12/12/12

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Please	write Clearly
Quelianne tolly	69 Codar St Fairhaver, MA 02719
	Address
Kaela Gisherman Name	35 Lakerood Rd, Dartmouts, MA
Wille Nopolitons	26 Maple Due Kingston MA
Sonet Tetrault	
Name	26 Kelly Avr. Westport, MA
BARLAXA A. CARREIRO	173 FORGE RD WESTPORT, MA 02790 Address
Parol A. Lorda	500 Bakerville Rd. Dartnereth 0274
Annette Gendreau Name	
Jean La Belle	9 Newton St. Steetfort, 02790 Address 20 Ryder St. Dartmouth 02747
Mary Sullivan Name	2 Basswood are Dartmouth Ma
Styanui Pullin Name	Address 2 Basswood are Dartmouth Ma Address 169 Reld Rd Wartmouth Address
Name	Address

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Please Wite Clearly or N. Dartmarth, Ma 118 Lincoln Avenue, Fall River, MA 02720
Address 7 Drisy Ave. Taunton MA 02780 72 Acorn St. New Bedford MA OUTHO 758 Purchase A #7 New Red Ford MA 02741 64 chrry Lane Timeron RI 02878 Address Justin Kenting 126 Quaker Ave Tiverton RI02878 Jessica Santos 9 PULASKI AVE, CANTENET NJ Address 12/12/12 Please Return by

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Please Wite Clearly
Joseph Desvochers 20 Egyth St Un Bod Ford Mc Name Address Shift St Un Bod Ford Mc
Jan Chappion 21 Janes & Tour for Ma 02780 Name Address
Name MARQUE I Tomes St TAINTON Address
May Descritors 53 Ashley St New Bod Food Ma Name) Address
Name Nello 53 Bhley St New Bed Sind Ma
Vame Stephen) Scoticut St Apt 9 Now Bedfurd Mc
Vame Address
Mike Creager 118 Andrew Way, Plymouth, Ma
Eurly Jourye 43 Center St Fast Taxentone
Tyle Coleman & Marble It Whitner Ma
Please Return by 12/12/12

CLEANUP TOXIC PCBs IN NEW BEDFORD HARBOR

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Stephen Lima	242 Sconticut neck Rd FHUN Address
Name	
In Francis	36 thompson St Apt 3 NB 02740 Address
Name	Address
Name Chile Duis	Address 1398 Globe St. Fall River, MA 02721
Name DENISE SMIS	
Dere Fr.	4M Adams Circle Middleboro MAD
Name Sarweh B. A	Address 14 Ke vin war May Carrier Easton May
Name	Address
Tracie (sleason	414 Elm St. Bridgewater May 02324
Name	Address
Bryan Thomas	13 Warr. Ave Ukreham Ma
Name ,	Address
Thris O'Connor	524 Washington St Abington MA Address
Name	Address
Tyter Kalman	Address St. Widdlebron, MA 00346
Sissau Bahar	2981 Acustrat Ave. New Bookord, MA 02741
Name	Address
Please	Return by 12/12/12

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Allen Messica 126 PERRY ST NEW Bed Ford Address Address Address Name Address Name Address Name Address Name Address Name Address Name Address Name

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	of Justice Public Comment period which terminates on 12/17/2012.
Volease	2 Write Clearly
JOHN FERNANDES	1219 RODNEY FRENCH GLYD, NEW BUSKERD
Name	Address
Sokralis Koumas	50 Charyls Way, Fall River MA
Daniel Walsh Name	48 Carriage Dr. New Budford, MA
Name	Address
SIDAFA CONDE	448 Maxfield St, NEW BEDFORD, MA
Meather Vieira	347 Holland Avo, Partmoulle MA
Name	Address
Francis Cabral	1634 Drift RJ. Westport Mg Address
Name	Address
Joe Stadnicki	285 Old Wesport Rd Dartmouth MA
Name	Address 03731
Patricia Gregory	30 Globe St Fou River MA
Name	Address
Kupali Sigh	35 C Cherry Free Lane New Bedfird 027-90 Address
Name	Address
Challe garria	20 West Street former MA 12
Name	Address

Return by 12/12/12

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	ept of Justice Public Comment period which terminates on 12/17/2012.
Rob O'Shoughhessy	285 oil westport of North Datmauth MA
Name	Address
Scott B. Smith	7 Captain Lumpert La. Centerville AMMA Address
	Address
Derdre Healy	2 Lufayelle St. Fairhaven, MA
Name	Address
Kathnyn Doan	85 Prospect St Dartmouth MA Address
Name ~	
GARY MARDEN	9 EIGHTH GREEN, DARMOUTH, MA 02747 Address
Name	Address
Kristen Kalbrener	1A Prospect St., Dartmouth MA 02748
Name	Address\
Middle Fernandes	147 NOTICE Rd NOOD BERFORD, MA Address 0274
ANNE B. BOISVERT	399 WOOD ST New Bed ford MA 02745
Name	Address
Olivia Farinha Name	14 Madison Ct Westport, MA 02790.
Meghan Hyland	ONT Stafford Rd IE FAU RIVEY MA 02721 Address
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Pleasel	Vrite Clearly
Aubrio Brault	28 Sycamore st. Fairhaven, MA 0271
Tara Ahluwalia . 8	Speachtree rd Levingston, MA 021/2
Pronam ahluaglo	8 seach Tree rd. Lexington mr Address
Saatvik Ahluwalia Name	8 peacetree rd. Lexington MA Address
Mohnder Ahlwert	Address Peacutive od. Lexington M. Address Pozing
Sancertha Inith	7 Captain Lumbert Lane, Centernille, N
Ben Blakemore Name	47 Ramblewood Drive, Ashland MA
Name TRENE MAHONEY Name	28 Sycamore St. Fairhaven ma 02719 Address
Wiley Alpaugh	LOO Coverage Hill Rd. Watertown MA 02472 Address
Sarah Mills Name	285 old Westport and North Dardmoute, MA Address 02747
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pleaseWr	ite Clearly
Streve McLarghan Roma	2 Lafayette St. fairhaven, MA Address
Name	Address
Cinn Hales 2 Lahry	Address Harringen, MA 52719
1	Address
Gabi Healy 2 Lafuyelle	St. Fairhaven, MA 02719
0,	
Steplen Olysted C	Flighth Green, Dautmouth, MA 02747
Name	Address
Timothy Doolars 3	150 ob westport rd, Darkmouth, Max 02747 Box 47-4149
Name	Address
Class Promey	290 old colonia Tours 1 M 02147
Name	Address
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Please U	Unite Clearly
Jason P. Lanagar	29 Union STREET
Name	Address
Ryan P. Dwan	42 N. WHW 57.
Nama	Address
Danielle Pouls	285 Old Westport Rd Ozi
Name	Address
Philip Dwane	42 N. Water St. NB
Name	Address
Lauren Lamontag	ne 26 Anthony St, 5. Dartmout Address
Name	Address /
Tammy Caravana 808	Fisher Rd. Dartmouth, MA 02747
Name	Address
N	Addison
Name	Address

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A.	
W. Dianel	159 Davis Rd LESPT MO 02780
Name	Address
Grown Church	203 Powder House Blud. Somerville, MA 02144
Name	Address
Sulvin Broude	106 Dinster Rel #1 Jameson Plan, MA 02130
Name	Address
Joyce M. nello	242 BOURN Ave. Somerset MA 02726
Name	Address
Hutt. Leulen	110 DESMOND AUC. SOMENSET MATTE
Name	Address
Connie Brodeix	110 Desmond Are. Somerset MA 02726
Name	Address
Faulence Jodriguer	
Name	Address
Beery Smith	103 Day St #1 Boston, MA 02130
Name	Address
Sugun Kolrique	
Name?	Address
Gabel Williams	169 Jan Qi Weslport, Mr.
Náme	Address

BUZZARDS BAY COALITION & HANDS ACROSS THE RIVER COALITION

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Name /41 /	for	128 Phillips Hock.
Name /	11 .	Address
My Rom	hm	2703 HOMTANGI W. DIGHTON
Name /	JAG.	Address
Barbaro	a Stuttos	22 Mandell & NB
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elalino	Surto	22 Mendell St V.B.
Name	7	Address
Mada	lena Ferren	14 (arter St Dartmorth
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submit our names in response	to the US Dept of Justice Public Comment period which terminates on 12/17/2012.
	Please Write Clearly
Marquereto	conastro 122 Bridge of hm.
Name /	Address
Man Met	1 974 Belles Man Della- Their
Name	Address
Eyan Karpuska	10 Manamet St N.B. OCT46
Name	Address
John Copie	5 Fort Fairhaum
Name	Address
antwa	t Mondall Rd., Acushnit
Name	Address
John Stretty	notter 262 Conduit St New Bedford
Name	Molette 85 hafayette S
dunda	
Name	Address
Ina N. +	Leath 42 Grope ST. NB
Name	Address
Sichard	Jaylos 260 ADELHID SI N.B.
Name .	Address
Reborcas	antiano 42 Holly St. NB
Name	Address
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Please	Write Clearly
Jano Vieira 751/2 att	entie St. new Beggod, ma. 02740
Vallo A. Blake 804 S	Address Smith Neck Rd., S. Dactmorth, MA 827 Address
Name Tim Lada 38F	Address Address Address Address
Name Einily Johns 1580 0	Purchase St. New Bedford M
Name Jessanyn Filmoran 32	Address Purchase Sta, New Bedford, MA Address Milton St., New Bedford, MA 023
Name ·	Address
Name	Address

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pleas	e Write Clearly
lames Tull	1 Hamlin St. Providence, RE
Name	Address
Mary Pendergast	99 Fillmore Pawtucket RI
Name 1	Address
NAMEY ANDFITE	54 CLIFFORD DR. W. LITA CI
Name /	Address
Eileene Phaneuf	54 Commings lane Westport MA
Name	Address
Paula Lazaroff 1	Ol Center St., Frirhauen, MA
Name	Address
Lende McMallen	38 School St. Rehoboth MA
Name	Address
Cindy Rounke	8 Pine Grove Rd. Rehoboth MA
Name /	
Lianna Schechter	- 365 Wickender St. Providence R1
Name	Address
Harry Malikin	11 Mang pund or Panticker RT
Name /	Address
KERRY BERGIN	28 SYCAMORE ST PROVIDENCE RI 02908
Name)	Address

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Pleas	se Write Clear	49
Jean Bennett	749 Purchas SI	New Bod Ford MIP 02718
Name	Address	
The Bennett	249 Purchase ST	NB CZZYK
Name RODNEY HUNT	Address 126 MIKL ST	02740
Name	Address le likit & Ki	
Man G And	- Karen Snyde	2r 02748
Name 25 to A	Address	
Theresa Tetre o it	335 Alien	5/-
Jean P. Totrault	- Address 328 Alle	a St
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Gromand N. Vi	era 58 Topla	r Rd. M. B. 02145
Name	Address	
Harry Harrison &	75 timberlar	21 Rd M.B 02745
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Jessica Kons	86 Carrol	(ST NB02745
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Please	Write Clearly
Barbara Mills	114 Adams St. Fairhaven
Name PICHITRO MARILI	Address 34 EMERY ST 4.13.
Name	Address
RACHAZI KOL3	52 SEVENTH ST N.B
Name	Address
Katharne Bennett-Weber	2 Jenny Lind St NB
Name	Andress /
Gordon Weber	2 " " " "
Harry Matelski	96 Madison St. NB 0274
Name	Address
FAITH Mafelshi	96 Wadison St. NB 02740
Name Thomas R Stritter	Address 52 7th ST. NB 02740
Thom R. Little	N .
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The a set of several several assessment
GOYP. Johnson S Cannon St. Mattapoisett, MA 02739
Namé Address
Guana Josvold Luana Josvold 5 Connon St Mattapoise # MA 02739
/ Name / Address
Bradford a. Bathaway 87 Aucoor Rd., Mattapoisett, MA 02739
Name Address
Jerald C to home 3 Pine Island Rd. Mattapoisett, MA 02739
Name Address
The Steeler 52 County Rol #24 Wollapoent MA 02739
Name Address Address
William Genter 4 Prospect Rd Matapoisett 02739
Name Address Address
Cauray Minest 16R OLIVERS LANE MATTAPEISETT
Name Address
tourn Stadinager S20 Print Rd. mapien, MA 02738
Name / Address
Luxuice 4 BAY VIEW AVE CS MATTAPOINTON
Name Address Address
John Rul Garber 7 FREEMAN ST NATISANISH/
L Name Address

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Name	Address
\$ 5 Bahn 5	2 COUNTY RD. MATT. MA 02739
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Sandraffry Name	19 10 Mechanic St Mattapoisett MA 00738
Skarld M. T	5 SAGAMORE RT MATTAMESSESS /4A 22738
Notes of Give	Address
Cent Cold	8 DAKLAUWAVE. MATTAPOISETT NA. 0273
Name	Address 01739
Kuchlun Bobon	5 Bay Vien Ave BB Ma Hapaisett MA
Name	Address
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Name '	Address
and the same of th	22 BURY BERY NE MISTRADISETT MISO2739
Marle Radile	11 Bethanklane Matlagoisett MA 02739
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PASE WITE Clearly
262 Jordan Rd. S. Davimen 72 0274
Address 0274
1197 Rucsell Mills Rd. S. Dartmouth
Address
7 Horseneck Rd. S. DAVH. 02748
Address
10 Martin Avenue Mattaposet/Mtc
Address
8 Rena View an lo Dastmont
OCS, COMAddress
56 N. Bed ford St East Dridgewater
Address
PO BOX 87128 S. Derbarata 02468
Address
ROBOX P-282 DARMOUTH 02748
Address
11 SUNSET (N SO. DARTMOUTH 0274
Address
Address

Please Return by 12/17/12

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Ple	ease Write Clearly 26 Center
TAMELA L. ABRUISA	98 LEVINGTON AVE N. DOHMOUL NEW BENGE
Name	Address
ELAINE OUPRE	6 SPRING HILL ROHA DARAMONAH, MA 02747
Name	Address
Susan Barges	5 7 MAIN St FAIRHURN MA
Name	Address
MARGS [GROEN	1612 main ROAN Westmet MO2790
Name	Address
Maura Cronin	123 Sawyer St New Bedford, MA
Name Ey. hal BUND	Address
Elizabeth L. Bennett	- 2 Reynolds Drive Forthwes, MA 02719
Name Tobalounett	Address
Muh Kenst	7 Cattage La lakeville MA UDBAR
Name	Address
Holly & Durscher	749 Purchase St. Lost 404, New Bedford Me 02740
Name /	Address A2740
MONIQUE DUROCHE	r 149 Purchase St. Loft 404 New Benford, MA.
Name	Address 02140
Erica L. Durocher	- 149 Purchase St. LOFT HOH NEW BEDFORD MA
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Cynthia Kochan	700 Russells Mills Rd
Name	Address
Maney Da Corta	696 Russells Mills Rd.
Name /	Address
KANTIA STIAL	800 PLEASANT ST. NEW MONTH
Name	Address
Minuda Previst	37 Churchi (D.
Name	Address
Sally Grave Grav	20 laurel lane Westfor MA
Name	Medervos
Dian Mederis	1305 DRIFT KILL (Nestown TIMA
Name	Address
Fronk Shaves Fronk	20 Lowel dan Wistport MA
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Agris Sepuka Pons Se	169 (nackland St Northwell, M4) 02788
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p Faith Sweetser Barry
Faith NESS Day 535 Smith Neck Rd 62748
Name Address Donna Basworth
Amya Willowa 275 Elm St Harmonk orns
Name Address 11 A 11 C + 02
Will Scott Dolo Russells Mills S. D. 7
Name, Jane Rheaume
The state of the s
Name Address Address
Name Name Sandra Halloss Soldit. 0224C
Name David Address Mary St. So. Partnerth 02748
Name Address Edmond Scott
Letmed & John 766 Russells 7.11 Rd. Nov. 11 17974
Name Address & 700 Russells Mills
Megan Sept 58 Elm St. Dortmorth MA
Name Address 02748
Frank Kachan III 700 Russells Mills Rd
Name Address
FRANK KOCHAN JL 700 Russells Hill Rd
Name Address

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	ce Public Comment period which terminates on 12/17/2012.
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Warre mooris	11 Stresbrok La SPortnis
Name	Address
Arthur B. 311-0	47 ROCK O Dunde Ro Datmat
Name	Address
Donna Ingalls	30 Sussel In. S. Dartmatta D
Name	Address
JOHN D. KELLEHIZA	12 CHIZSTN-T ST., SOUTH DARTHUTH
Name	Address
PETER C. BULLAD	47 ZOLKO DUNDET 2d J. DAN in Address
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Decree is not enough funding to fully cleanup our Harbor.

	Please Write Clearly
MARCIA HATHAWA	
MUCLA K Haha	uny 2B Howland Ave So. Dart. MA 02748
Name	Address
Mary Chen Larro	1 Clarks Cone Dr. S. Dartmently Mr. 02748 Address
NameU	1177.
Sandre C. Such	10 351 Hichland Al. W. Dartmouth
Name	
Virginia Suc	enex N1380 Drift Rd Westport MH 02790
Name \(\)	Address
Cha Martens	30 Devol AV. WestporTMa 02790
Name	Address
Joanne Medel	15 19 HGUFF Ney RC DGITMONN MA
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I HEODORE ING	
Name .	Address
leanie Mossis	11 Stoneybrao KLO 8. Dontmonth MA
Name SARA STEE	Address '
2010 Steele	GEF A Empille Rd, WesperMA
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Can B. Herner	
Name	Address
Please	Return by 12/12/12

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Name	Address
Sixa	n Fwhilan 50 Pardon Hilled - Dartmouth
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Amni	for M. Hall 167 Bakerille Rd Dartmouth
Name (Address
lisa	Civille 73 Jillian way WEST PORT, MA
Petrell	While So Vandar Hill Partment - Address
Name	Address
None	y Crosby 9 maps Dr. New Bedford, MA
Name	Address
	ch Broole 68 Hidden Bay Dartmouth MA
Name	GAWTHROPE Address
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Name HELL	EN ECANCIS . Address
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Please Write Clearly 18 Annald st S. Dantmouth, MA 02748 52 ROCK O'Dunder RdD. 472 OLD ULINTY 121). LIVIN WESTPORT, MAY 02790 WESTPORT, MH 02790 SARAH COGSWEL OLD COUNTY RD

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P	lease Write Clearly
Kimberly Lemand	285 Old Westport Road, Dartmouth Address elizabeth quasspirg students.org
Name	Address elizabeth emasspirg students ora
Elizabeth Rucker	1321 Tucker Road Dartmouth, MA
Name	Address
Erika Fisher	285 old Westport Road N Bartmouth MA
Name	Address
Courtney Lindhorst	22 Dudley St cambridge MA
Name	Address
Eric Chan	285 old Westport Road N. Dartmenth MA
Name	Address
David Gain	285 Old Westport Rd. N. Dartmouth MA
Name	Address
Knoty Landitte	285 Old Westport Rd. N. M. o toweth MA
Name ()	Address
Alun Sulkowski	285 Old begyport Rd N. 2-tmo the MX
Name	Address
Lole Raymon	2 PS DLO WESCADE NO WORDNUM
Name	Address
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Name		Borge	1	Address	Ash	5	N.B	02740
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Wendy	Wil	liams	113	Alle	y Rd.	POC	hester	3
Pan)			78	Coda	Stall	Fair	have	02719
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Bon G	inst	ida		30 Woo	lise F	Alwort	LMO	2540
Marie Name	tor	onuna_	1	21 Geo	& Neck &	2d War	eham M	A 02571
Name				Address				
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Clame Poirier	159 Lamen Dr. Sodlank MA, OZM)
Name	Address
Matt Buinn	Elmwood JSJC 285 OCDWGTPMTRD
Name	Address
Rahim ASKOU	23 Mengment Dure N. Dart MA 02749
Name	Address
CPY-TAL LUBINSKY	34 LUCAS ST NEWBEDFORD, MA 02744
Name	Address
Maria Mary de Ste	35 Orchard St. New Bedford, MA 02740
Name /	Address
Kathrynderme	339 Ridge St, Arlington ma
Name V	Address
Luke Pickerino	94 20nguier Pd. New Bedford Ma. Orx
Name	Address
Evan & Bubroch	1574 Padaroam Avenue, New Bed And
Name	Address
Brian Frias	662 Kempton St, New Bedford My Address O2740
	Address 1 02740
Nathan Bancroft	8/ Senward Igne, Fall River, MA
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BUZZARDS BAY COALITION & HANDS ACROSS THE RIVER COALITION

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	a Write Clearly
JESSICA "JMASS" MAS	SF 285 Old West part Rd. Address Nowith DALIMOUTH, MIT
Name	Address Notit DALIMOUTH MIT
Nicola Henry	285 old westport R.d. Address N. Dartmouth, MIT
Name	
Matecha Furguerson	Address N. DARTMONTH, MIT
Name /	Address N. DARTMOUTH, MIT
Cole Sherman	Address N. DARTMONTH, MA
Name	
Stephan Richardson	285 old Westport Road North Dartmouth
Name	Addrose
Brian Power	285 Old Westport Rd N. Dartmorth
*1	Address
Name Name	\$ 285 old westport Rd.
Erika Kruger	285 old west port Rd. M. Daiture
Name	Address
Rodney Chanax	285 Old Westpart Fal.
Name	Address Dactions
Jac Lopez	285 old restport Rd Dr.
Name	Address

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Please	Write Clearly
Hemesrach Habteglorgis	285 Old NRS FOR - Rd North Jorimath
Name	Address
Mame Partino	Address Old West Post Rd North dolting
Heather Y Dube	104 Tellette Stork Floris MA 02557 Address
0	
Benjamin Irwin	285 Old Wesport Road, N. Dartmorth, MA.
Name	
Alisa Gravito	MIG Alvina St. N.R. Mag 7400 Address
	Address
Bal M((ar van	185 old westpard 12 man
A :	Address
Olivia Woodell	Address 188 old MSTPUVT 100A., Address
Name D	Address / / / 2000
- Rapidge	Address Address Address
Name / /	Address
Ruth Desminapais	DGC SUMMER ST, N. B. 02740 Address
Name	(
Ali Lamara Name	19 Greene St. Warren R1 02850-
Name	Address
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Plea	se Write Clearly
Peter Craffey	20 vincent Rd W. Dartmouth
Name	Address
Kyle Mapas	149 Wonne Be, Bellingham MA
Name	Address
Nich Ternandez Name	9 VILLAGE DR. DARTMOUTH MA
Name .	Address
Citle Vandebrughe	213 Suransom Rd Sunnsea MA
Name /	Address
Dan Murphy	670 Elm St Mansfield MA
Name	Address
Enin Feeney Name	95 Rotch St New Bed God MA
Name /	Address
Ben Sampson	69 Turnpike Rd. Southbooush, MA
Name	Address
Christian Paste	144 Chastnut St, Everett MA
Name	Address
Kendra Santamaria	11 Columbus Ave Ashland MA
Name	Address
Cartis Freese	1660 Dott Relikestant
Name	Address
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Charola + Map &	
Name 1 1	Address
Richard Semon	- 159 Humout BUA
Name	Address
Your Holden	- 1193 RT 1757
Name	Address
Sin Sill	1476D Drist Rd.
Name	Address
David g. Sylvio	190 Walbrook are Dartworth
Name	Address
for Most	1056 Main Rd. Westport
Name	Address
Vole Cis Macel	927 old Golon Somaset
Name	Address
RICITARD PICAR	2 403 VALENTIEST F.R. MA
Name	Address

Name Address

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Vanha Calme	24 Collins Rd. E. Falmouth, MA 02536
Name	Address
John Ledle	Al 62. Atlantic feeme what part
Name	Address
hisalit Milit	11 Lakeside Avz., Dartmath, NA.
Name . O .	Address
Robert Could	27 Benefit St. Warren RI 02885
Name . C . 4	Address
apathia 1- Sebeller	1530 Just Pd. Wesport HA 0279
Name /	Address
Shar Austinhear	160 Cole Borok Rd Little Compton RI 02837
Name /	Address
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Melanie Pa	IMET 1809 Main Rd Westport P. 11/A Address 02791
Name	Address 02791
Ronald G. +	mapp 3 Hicks Cove LN Westport Pt1
Name	Address 02791
hillen van	Address 02791 1 55 Lawrence Dr. WESTPORT 17402 Address
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in remille Priebe 4 Costa Dr. FHUN MA
Name Address
Stepe 144 POTTER St. DARTMOUTH
Name Address Address
Susan Dinalla 24 flower Nd M. Davit My
Name Address
DAVID BRASEIS 24 Slocum Rd N. DARF. MA
Name Address Address
Brittany Brosello 24 Storum DXM. DAM
Name Address
Ama Prout 28 Galleon Dr. So. Dartmouth, ma
Name Address
STEVEN PROUT 28 GALLEON DR SO. Dartmouth, MA
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Michelle Samonais	524 Allen & New Bedford Mt 02740
Name	Address
time Withinish	147 1000 St Manhodor 1 M4 1774
Name (Mass)	Address
0	
PHILIP ARCOURTE SP.	1986 ACUSHNET AVE. N.B. 02745
Name	Address
JANI LOISH	167 TOWNSEND ST NB 02746
Napre ()	Address
thulatohen	22 James St-FARRIAGEN02719
Name	Address NOW ROCFUE
Man But	5 G & Vriene So. New Brdfor
Name	Address
Berahl, FSingle	2 73 Cushman J Houshnet
Name /	Address B
Luis Gil	Address 1617 Braley Rd D2745 Address
Name	Address
Parl Sylvia	80 Ge Be Herille Die 02746
Name	Address
Corey Tranan	9 Oakland Ave Westport 02790
Name	Address

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Name Address
Levy F Hathoway Sr. 19 Westland It Acustinet Me
Name / Address
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Name Address
Withe Momas 106 Eugen: A ST NewBolk
Name Address
Decapation 338 wood STred Bornerse
Name Address
Keith Garalies 733 broad way Full River
Sewel Melin 221 OSBORNST FALL RIVER Name Address
Name Address
Ady Booky 26 Gondson Road BORATTREE
Name / Address
Ove Que 73 ShAWMU + AUE NB
Name Address
Bolesta & Muller Bee Mystle St NB
Name Address

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Subinicour	Please Wite Clearly
Hodge	Jana 39 Pauline St, Dartmouth, MX 02747
Name	Address
Busine	Barres 365 Blin St 71. B. 02740
Name	Address
Patric	a V Grerity 60 EMMET Ave. DARTMONTH, MA 0874
Name	Address
· · Kyus	Lands 105, 11ian Place Northeuth, 14H 63747
Name 7	Address
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60	ce in Jeruse 670 Fisher No. 1) + through (274)
Name	Address
Cis	arch A Hall 23 13155 51 #3 Fall River 0277
Name	Address
Vurnu	Poursky thousen be Rockland Ma 02370
Name	Address
John	A. Spencer 37 Arch St. N.B. MA 02740
Name	Address
	Address Cottonwood R New Beful 02745-
Name	Address
	Please Return by 12/12/12

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Plea	se Write Clearly
Diane A. Berube	33 arch St. New Bedford, MA 0274
Name	Address
Pot Besull	24 Foley DR. N. Bedford MA COTYS Address
• • • • • • • • • • • • • • • • • • • •	Address
Charles Clatter Name	17/Bullanually 11/2 02740
Name	
Jacob Hatt.	2893 forsules for NB OtTUS
Name	Address
Minam J. Jaurie	29 Breh St New Bedford, MA 02740
Name	Address
Sough 2 Trankley IR	20 ARCH ST. New Bedford, MA 02740
Name 0	Address
Hopla Conferiero	29 Trel St Va Bedford 022 190
	Address
Roseman Bigsh	100 Gaffney RS 5 Dartmorth MACO 748
Name	Address
Rod Il Oloina	39 Pauline St. Datmonth, MA 02747
Name	Address
Michael Bigshi	100 Gattney Rd Sports MADETE
Name	Address

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SMYN WODO	32 BELOUSTERST S.DARTUMOT
Name CHIN BARADISE	76 USUS 87 DARMATAM
Name	Address A D + D D +
JACK PARADISE	76 ULMS 87 DAPMOTA
Name	Address Address Address Address Address
Name Variable P	146 Cottage St. NB, MA 02740 Address
Jacob Iwoney	14 losewood Terrace Daytney
KENNETH Richards	Address 103 CHESTNUTST. NEW BEDFORD NIA
Name JONATHAN RoLemik	Address 13 Bridge Street S. Dant.
Brett Costa	30 Thompson St. Fairhaven MA, OS
Name .	Address
Name	Address
Name	Address

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Please Write Clearly
10PES SOMES \$32 HIGHLAND ST DONET
Name Address
Malia Brown 6 HOWLAND AVE SDARTMONTH
Name Address
NATE BROWN to HOWLAND AVE S. DAMMONTH
Name Address
JURDAN BOUCHER USFERM ST NEWBEAFERD
Name Address
Amy Walters 535 County St New Bedford
Dubing Langen 78 Quails Crassing Marine
Gibria Rusia 115 Helland Ce. Det, M.
Name Address
Jason hanaan 29 Union St. NewBedter
Name Address
180819 BE 2 Wirson St DARTHOUT MA
Name / Address
Name Address

Please Return

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Name Mast Kigne	Address 11 Rockland St.	5 Duhuth.
Name ERESTANE GRAHAM	3 Penilese Un	S Dortmonth
Savan Phuda.	Address	Dartmouth
Name Chais THUM	706 Elm St	S Darsmort
Ben Graham	3 Penekese	S. Darmour
Stoppellon. Name	Address 196 Collect	t I flived
D. De Amoral	254 Tinkhon	5+ X1.B,
Michael Cardelo		51. 1.B
Name Et USSE WILLS	Address 109 RV SCUS MUL	S ROAD SOORT
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Submit our names in response to the 05 Dept of Just	Wite Clearly
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Alam Dowen Dort	5 Forest Lane, Duramouth, MA
Name	Address
Steve Daveyalt	5 Forgst Lave Durtmorth M
Name t t	Address
the Johnsty	23BRIDGE ST. DARTMONTH, MA
Name	Address
Jane Boucher	63 tern St. N.K. MH.
Name	Address
MIKR SIMMUNI	13, ROCKLAND ST DART MUTH MIL
Name	Address
1) & BRA ROTT	857 Smith Necle RD S. Doutmi
Wame	Address
Elaine Freedood	897 Sum Nech Rd Dermos 348
Name ,	Address
Adam Morgado	10 Slocin Farade fundos
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Con (hofar 1	1 Schnick KJ. So. Darbuist
Name \	Address
White John	51 Lucy Little Rd Continued
Name U	Address
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pleaseW	rite Clearly
Rahatt Piper	74 Hillman, Now Bedford MA 02740
Name /	Address
Ben Larbie	971 OSGOOD ST NEW 3EDFORD, NA-82745
Name	Address
Dorothy Beaumont	9710sgood St. New Bodford Was
Name	Address 0171/5
Richard A. Pline 2	.70 Maple St. New Bedford 02740.
Name	Address
aurore B Chace	Colob Elon SI, S. Dartmouth
Name 7/1/	Address
Chalo/Jal	398 Hurthan ST NB
Name	Address
Marsha Me Cake	35 North St. F.H. 02719
Name	Address a 2247
TR Loyer	828 Dartmouth woods Dr. Dartmouth
Name Y	Address
Arthur Christman	3315 Westport Pr Telforen, MD
Name	Address
Rachel Jakerba P	adule Spalle 18 Pine St North Falmath Mass
Name	Address U

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Submit our names in response	Please Write Clearly	
1718 HL001	1536 Potoinskin RI Address	Dr. Annuth MASS
Name	Address	/
USZ Blist	36 liesburntnist	Fairlesser M
Name	Address	
SUSAN LAJOIE	5GREENST. NE	WBEDFORD
Genevieve . H	ent 17 Grove St New Address	130d fiel MA 02740
Name	Address	, ,
DONNA PIMENTA	1 101 HOLLY ST NO	w Bartond MA0274
Name Cole	A 117 Clarkey St.	Dew Beston MA 0274
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Garbara Miller	15 Studies Street 02740
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MICHAEL P. MAHONEY	315 HAWTHORN St., NB 02740
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acollance	acushman Ave
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JOSAY CONDINO	570 Planguis
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Thomas (Sellines 13450 Second. NB 027)
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Marta T. Arridgo 67 Austin St. NB. Wa740
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Dayaneilis Navarro 67 Austin St. nB 02740
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Adam Saraiva	13 crescent st. Fall River MA
Name	Address
Jessica D'Conorr	524 Washington St Abington, MA Address
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Phylis cotes!	3111 Francis Ave ma 0204.t
	0
Ina Jones Name	345 Park St. #13 N. Attleboro, MA.
Name ,	Address
Christine Howe	35 Haux Llame St Fairhaven Ma,009119
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Kristin wouthacht	Address St. Middleboro, MA
DONNA Roche Name Pamera Mulvey	P.O. BOX 462 Raywham, MA. 02768 Address 6 winght in wareham, MA 02571
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Robin Rocka	544 Paramount Dr. RAYNHAM, MA Address
Name	Address / 02/6/
Heather Thomas	5 Alpine Aue. Fairhauen, MA 02719 Address.
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Amanda Butter	Le Highland Bd Lakeville MA 023-17
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Steven De Medeiros	215 Longueadow Rd wit 602 Taunton, MH
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orin lawrence	51-SamonPT lainten ma
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Marcia Galanti	314 North are Rochester Me
Name	Address
Bary Braca	83 Sherborne It Tounton Ma
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Dana Conner	359 Brock Ave New Bedford, Nr. 02744
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Paul Chiaverini	34 Hilly ew avenue north Snithfield, R Address UZB96
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Kaurs Bloke	50 Chancery St 027 60
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	Name / Colla / OSCA	Address / MA 02140
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Griz Souta	909 cally St. 02745
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CORA PEIRCE	24 Ham let st 7hvn 02719 Address
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Frani Keeley Name	123 Sauver St. #5 NB 02746
Daniel Kamman	123 Sanger ST#5, NB 02746-5403
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Tryan Cardona	189 Chancery ST NB 02740 Address
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Name/	Address
Rosemarie T. Koska	157 North St. N.B.
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& Carpentu.	158 Ruy nold St APT 23
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Jasmine Rodriguez	84 Symmon St.
Name	Address
HERBERT PICA	80 60 EIGT / SI
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Hoyd Do Bayos	558 GUNTY IT.
Name /	Address
Joseph andrade	725 Pleasant SX NB.MA
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Please	Write Clearly
Anthony Can verse	1242 pleasent st lv
Name	Address / Ol / #_
Trongelvan	174 Ashley Blick Apt 2
Name ()	Address
Myline Swein	174 Asher Bul Apt 3
Name 1 0 1	Address
Jakon N Jopenh	850 Pleasent It Apla
Name	Address
Costocha Wall	75 Rodney St.
Name	Address
marcher Burnes	418 SProos St.
Name	Address
Jason Monast	62 Rosevelt st
Name	Address
Melvina Santos	173 arnold It. NB.
Name	Address
Martha Roderiques	47 Luke St NB
Name	Address
Bruce Despres	179 Distincto
Name)	Address

Return by 12/12/12

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Name		Address		
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Name		Address		
Shayna	Santes 60	5. Second	St. NB. M	PES
Name		Address		
Zach Del Name	ha 13	South Se	eand StA	BMass
Name	\wedge	Address		
Lus	Dores	5/	Justin	
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Name	U	Address)
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Please Wite Clearly
Vivcent Doliveina 44 Huran Aux E. Freetown mA Name Address
MARY E. SULLIVAN 23 WALDO ST NEW BEDFORD. MA 0274
Name / Address
Retts my forly 1021 Russells Mells Rd S.D. 0274 Name Address
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Name of Smith 45 GOLF ST. N.D. 02747 Name Address
Name South 45 GOLF ST. N. DARTWOTH 02747 Address
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Name 35 Pine grovo St Farmores 0271
Same Netrogeller 32 Monique Dr. Westport, Ma 0 279
Name Address V
Mariano Mesino 32 Monique Dr. Westport, MA. 02790 Address
The state of the s
Name 1 e. araujo 62 ward St. New Bed Food, Mn6274
Walter augorus 33 Cox cright of Wan Bedfordo 274
Name Address
Please Return by 12/12/12

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	Please Write Clearly
Edva	ed & Jorosik 3842 Whitlow St NB 02746
Name	Address
Clan	les Metrin Michell 35 Hinong Are Fairhaven 02719
Name	Address
fred	Cil Downer 6 Allenst. Fairheven, 02719
Name	Address
Suso	or Vartomer 116 Goustinit Rd. Mattaprest
Name	Address
Lida	B. Cavanough 180 com Vinis any May May may may 180 0273"
Name	Address
Caro	a Wirmett & Thablite Af Farkenen Mu 02718
Name	Address
DWI	64T THOMAS 124 PRINCETON ST NEW BEDFORD 02745
Name	Address
Beth	any G. Mchonnigal 31 Striper Circle Dew Budford 02747 Address
Name	Address
Vono	L. Rigby 18 Stuant Rd. Rochester, MA 02770
Name	Address
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Name	Address
	Please Return by 12/12/12

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Please	Write Clearly
Matalie S. Hemisey wo	y gWoodside Ave, Fhun. MA
Name	Address
geffing Till	19 Run Fran Mis
Name (Address
Robert a. Paine	48 Cottage Sh. Fhun, Ma.
Name	Address
Kun Krantes	324 MWest At acoshur Ma.
Name	Address
Newly Bouch	- 56 CHESTNUT ST. FHUN, MA
Name	Address
Donald Hamel	8 Roy ST. FHUN, MA.
Name	Address
CW miles	29 LAUREL ST. FHUN MA
Name ,	Address
Finder of Sunstable	29 Lacul Se Thone MA
Name	6 Mattaparent Ma
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Mame P. Horizanta	61 LAWSIN AVE ACUSHNRT
1100000	
Name	Address
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Laurence Japaith 65 William St New Bedford WA Laurence
Name Address
Reter Martin 65 William St. New Sedford, Ma
Name \ \ \ Address
Nancy Alexander 13 North St. Mattapoisett, MA 0273
Name / Address
MANNY Wedeiros 6 Jackieln E. FreeTown MA 02717 Name Address
INVERD VASCONCELLOS CEMECHANICS LANE NEW PODFORD MA 0274
Name Address
Ryan Mitte 106 William Head NB Address
Jennier AN eman 100 William St N. E MA 02740
Name Address
Seth Rainille 105 white Och Run Derhouth Ma 02747
Name Address
Suato She Pleasant D. NB, MA 02740
Name Address
Jennifer Bolin 158 Highstonest, E. Tounton, DIA, 02718
Name Marie Balin Addhess

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Please Write Clearly 373 BELLEVUE MELISSA JAMES ST NEW LEDIND WILLIAM Address Address 157 Salviast

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Jasen Robinson	117 Hillman st
Name	Address
Controllage	24 Adams . St. Address
Name	Address
hisette Dougesh	24. Adres ST.
Carrel Respolo Oriol	76 Linder S. + #1 Kewbeatford M.A.
Name Stor phill	182 Broadway Dulers NY 11003
Name	Address
Insull lace	178 HAPELL VILLE RD
Name	Address
Joseph Jun	33 7th ST NI MASS
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Please	Write Clearly
Matt Coraccio	
Name	Address
Lisa Ross	60 Tinkham st. 02746 Address
Name	
Matt Ryckebusch	25 Chancery ST. 02740 Address
Name	Address
CORRIE IRUJO	705 OCEDN MOW 07719
Name	Address
Susan Roderick	128 Tinkham St 02746
Name,	Address
KENNETH RAMOS	ARNOLD STREET 02740
Name	Address
Blanche Thomas	37 Vine Street 02740
Name	Address
Gabrielle Monteiro	194 Central Ave 02745
Name	Address
Alvinhipset	Address GRICKOYSON 02744
Name	Address
Ronald Simpson	187 grove street 02744
Name	Address

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1 11	374 HILMAN St. NB MA 02740
Deremial Hernander	Address
Bruno A. Rodrigues trai	18 81 Summer = L. NB. MA (2796)
Name	Address
Dylan Fliming	120 Florence St. NB MA 02740
Name	Address
Fahio Tristao	147 redur St. NB. MA. 02740
Name,	Address
Leu Bushy	123 smith steet NBaring 02
Name	Address
Sistem Fernandes	4338 Acust rot Be New Bellins MA
Name under ned ette	Address
Linda Fredette.	- 364 Alden Rd Fairhaven MA 02719
Name /	Address
Jan Jone stan- De	6 121 COTTISCE ST NB MA 02 740
Name Jasmin	Fiefle HAddress
Yearst. Vist	Vincent 118 Arnold St. NB MA 02740
Name	Address
Wikki memaste	99 West VIEW St NB 02740
Name	Address

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ERIN Brungth	289 Br. Kerillo Kd. S Dartmith M.A.
Name	Address
Heidi Obolensky	810 Potomska Rd. S Dartmouth HA
ivame	Address
Noury Manley	Address Rd Dartonwill, M.
Name /	
ANDREW J. DEAN Name	Address LN S. Drestworth, MA
RUTH G. DEAW	address LN S. Davtmouth, MH
Hevin VieizA	18 Annold St S. Dantnouth MH Address
Name	Address
Cathi Rebello Name	1219 Russells Mills Bd. Startmouth Ma
Name	Address
DORIAN LIGHTBOWN	FOATORFAECKROADS.DARIMOTHMA.
Name	Address
Philip V Saher	57 HUNTINGTON AN DARTMOUTH, MA
Name /	Address
Name	250 Gaffrey Ret. S. Bonton to MA
Name	Address /

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please write clearly
Name 1 Late 401 Coan Meadows Fourhouse MA Address
Name / Address
KENNET KEBELLO 520 ALLEN ST. NEW BEDFORD, MA.
Name Address
Phea C. Teurs Cate 401 Ocean Meadow Foir haven Ma
Name Address
goannem, Rebello 520 allen Street New Bedford, Ma. 027
Name Address
Uga Schells 67 Ivy RI Hew Bodford, MAO274
Name Address
Karen Suprenant 31 Bornse St. Fairhaven, MA 02719
Name Address
DAMES SUPPREHANT 31 BERNESE ST. FAITHEUR J. MA. 03-119 Name Address
Name Address
Laura Surpremant 31 Bernese St. Fairhaven MA 02719
Name Address
Peter 1) Teves 15 Austin have Acushut MA. 02743 Name Address
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Barbara Hall 34	W. Rodney French Blvd New Bedford MA 02744 Address
Name	Address
MATTHEN CATE	241 REED STREET, NEW BEDFORD, MA 02740
Name	Address
MARY-CAROL CAS	TE 39 SLADES CORNER RA, DART. MA 027-18
Name	Address
JOHN CATE	39 SCAPES COR, RP, DART, MA 02448 Address
DENNIS BARLE &	
Name /	Address
CLAUSETTE J. TRIP	
Name	Address
Diane Eugenio	405 Cottage St. NB. MA UZZYO
Name	Address
Pase Marie Med	leiros 81 Bridge St Fhun MMO2719
Name /	Address
This	228 DAHMOUTH ST NB MA 02740
Name /	Address
The Sherda	120 MAH. NeckRel MAYERINET MA 02739
Name	Address

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Gunnar V. Berg	74 Reservation Rd Laihanem, Havering
Name	Address
Martha a. Berg	74 Reservation Rd., Fairhaven, MH 02719 Address
	Address
Fred / Wahira, fr.	4 RESERVATION CLIAY, MARION, N/A02738
Name	Address
Gerald & Daigle	148 Scontiautneckld Faishaven, My 02719 Address
Name	Address
Raph & mon	GIOZ OAK POINT DRIVE MIDDLE BORD, MADZ34
Name /	Address
Stanky M Boynton	75 Fourth St Jonnerset, MA 02726
Naprie /	Address
Pobert Garane	Address AVE Wattgroisett MA 02739
Name,	Address
Wagne Mieire	2 WAMPINGE DE FAIR HAVEN MA 02719 Address
Name //	Address
andrew R. Greene	70 RAYMOND ST. FAIRHAVEN MA 02719 Address
Name	Address
Joseph Rypac	32 Hotlestantre Fairhauen, MA 02719
Name \$ 7	Address

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George Flurinel	24 HARPING AVE. GIARRAM
Name 0 /	Address
frie 3 5 idor	35 K3K MAR DR WARRAGE
Name	Address
Michael M. McZwarl	8 Fleeth Rd, W. Wareham, 114 02578
Name	Address
Many Kratiners	6 Regen Ave Warehow 00571
Name O	Address
Thus him who	188 Hathaway Wareham 62571
Name	Address /
is Purset	17510gta Duin W, Wowhin
Name '	Address
Marilyn Lussell	17 Siesta Dr. Willarepour
Name '	Address
Elana Howard	10 Eighth ave, warcham,
Name	Address
Name	Address
Name	Address

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NA Ducas Cod	194 GAFFNEY RD. DARTMOUTH, MAO274
Name	Address
CAITLIN GILLESPIE	137 HORSENECK PD WPT, MATOR 741
Name	Address
Brooks Larvield	194 Gaffney Rd. Dartmouth, M/0
Name : TOHN CACFIELD	Address ()
	194 Golfrey vod 5 Dartwooth, MA 02748
Name	Address
Helan Broom	21 Bradford St. #2 Boston, NHO2118
Name	Address
Veronica Dequien	273. develand &. N.B.
Name	Address 02794
Helen 16	2 Aquidneck St. Dow Bed Ford ma, OJA
Name	Address
The state of the s	2 Ellen St Nav Red Food IKSSO274X
Name	Address
Jana Cine	13 MILL RIVERLY PART MA 02747
Name	Address
Rodney VSI Colles	31 FNARA RO Rochester, MA 02790
Name /	Address

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Mary Tripp	PC Box 250 Westport PT, MA can
Name	Address
Constant Coda	10 3, 124 Lestant DT. MA 02
Name	Address
MAY 4 JOONE?	POBOX 15 WESTROET P. IK 42
Name	Address
Wayne a. Showderland	P.E. But 86 Westport PT. Me. 02791
Name On - O	Address
Purhaul B. Emile	P.O. But 178 hestert PD, Ma. 02791
Name	Address
Sisan Dexter	ruscople Westport WIA 0279
Name	Address
Tiny Limoner	POINT Welfort Pt, MA 02791 Address
Name 1	Address
ana Carolero	box 356 Westpirt pt Ma 02791
William Caterial	PIBOX 407 World P. MA 02791
Name	Address
Borary France	PCBn. 403 Westerilt. MA 02791
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Name) Fri. I. Ja.	Address 795 Pine Hill Rd Westport HA Address
Name)	
Sophie Emilita Name	795 Pine Hill Rd Westput MA 02790
Name 1	Address
Mardi & Russell	P.O. BOX 315 8 Westport MA 12790 Address
Name V Collins	Address Address
Name	
Priscilla Gay Gillaspii	1634 Main Rd Westpart MACI;
	Valentine Ln. Westport Point MA 0279
Name	Audiess
anne 2 Durkhola	- 1550 DRIFTRD, WPont, 007.
Name	Address
1:128/	Address 1643 Main Read Westport Mit 62790 1643 Main Rd. Westport Mp02790
Name	Address 62790
'e Sculge Colding	1643 MAIN Rd. Westport Mp02790
Name	Address

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Write Clearly

•	0-7	•		
Caroline	Komanecky	9 Park Vale	Ave#6, Allston	1, MA 02134
Name	3	Address		
SUZANT	le consier	9328 W	HEISEL DI	POTOMAL MD
Name		Address		
	Richardson Y	Anousead Lone	Bevery MA	0915
Name		Address		
Sarah	Branz 21	Nicholas Rd	Hoplanton, 1	MA 01748
Name		Address		
Emmanu	el Pérez	· 11 Walter St.	. Bostindale	MA 02131
Name		Address		
Timothy	Lord	20 Greenless	f St Amestic	wy MA 01013
Name Janes o	1-000	34 Sunsey Rose	1	02332
TANET	LAWSON A	10. Box 96	Duxbury	MA 02331
Name		Address	/ /	
NED L	AWSON 3	4 SUNSET R	O. DU+BURY	Y, MA 02332
Name	•	Address		
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Return by 12/12/12

BUZZARDS BAY COALITION & HANDS ACROSS THE RIVER COALITION

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	Charl. Later	43 Lucas St, 02744
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	Dan Hand	- 12 RUNNING DEER RD
	Name	Address
	Bitch Retaller	9 Hamlet St FHUR
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Submit our names in response	to the 03 Dept of Justice Fublic confinent period which terminates on 12/17/2012.
im leffer	11 Agres St. Now Bedford
Name	Address
Buth Clay	34 County Rd Bourne
Name	Address
STEPHEN FERNA	USEY 1146 OLD PLAINVILLE Rd NEW BEDFORD MA.
Name	Address
Nows Stam	e 4516 Acoshuet AU. N. B. MASS. A
Name	Address
MONIQUE CO	ERIVERIA 4514 acustinet Are NB02745
Name	Address
Robert F. Tayl	or 68 MECCAWAY ACCESHIET MA, 02743
Name")	Address
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Name /	Address
Mille	36 GANFIELD ST
Name A A	Address
MIKE	WILCOL FLITS BRALEY RDH
Name	Address
DAVIDTA	ruloe 31 Boylstonst Acushnet MA 02743
Name	Address

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Patricia Gofford New Bedford High Shool Name Name Name			
Patricia Gofford	New Bedford Hat & hool		
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Submit our names in response to the US Dep	PASE Wite Clearly
Paula Faria	226 Idanlin St arewsket Ma 02743
Name	Address
Pam Jordan	22 Cove St. New Bedford, MA
Name	Address
CINAL GARCIA.	65 Cromesett Rd Warehem MA 02
Name /	Address
Sara Wirksm	8 orde Logging Rd Marin Ma 0273
Name	Address
Allie Medina	8 olde logging Rd marion ma 02738
Name	Address
Name Yermalovich	43 Tower Drive New Boford My 02740
Name	Address
Michele Prott	43 Tower Drue New Bed Ford. MA 02
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	Please Wite Clearly		
Andy Harling Name	18 Smith Rd S Dartmorth MA		
Name	Address		
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Please Write Clearly MIO HIGH HILL Address Name Address 362 Maple street, new Bedford, MACD" Gabrielle Monteiro Address Name Address Name Address Name Address Name 19/19/12 DIEASE Return by

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Plea	se Write Clearly
Jeanetto Epstein	1460 Pine St. Dighton, MA 02715
Indihilaier	447 Wood ward Nr. Seehinh MA OZ
Dawn Kelliher	1350 Pine St. Dighton MA 02715
Name	10 DALB ST. TAVATION, MA 62780
Name	Address

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Setty &	full	P.O. Box 51 -338	2111 . 013
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14lls 5	h		hoboth, mA 02769
Name	4	Address	
Katherin	MS. Daby		Road So. Dartmouth, MA02748
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Sou	1- 12	2 Columbus Are	N. Erstn., MA 02356
Name /	61.01	Address	,
Strong	Wild	1401 Williams St.	Dighton, MA 02715
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Tusa	Mello	.32 Orswell St.	Fall River MA
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Nathaniel	Page Stites	451 Rock O'Durdee Ro	J., S. Dertmonth, MA 02748
Name	J	Address	
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Ple	Ase Write Clearly
KAREN Relihan	1056 WEStgate St. New Bedford, MH 027US
Maureen Glowa Name	70 Seabreeze Dr. South Dartmouth, Ma. Address
Ti Con Consolis	or a no into and no in a large
THONY CAMOREO	3860 ACUSTMENT AVE NEWBORFORD OF THE
Name	
Mana Alica Freitas	17 Eliza Lane Dartmouth, Mass 02747
Name	Address NA 1
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Name	
2	2 Heyaconts #7 New Bed F.1 (274)
Han Olsly	79 Dunell At NB02740
Name ,	Address
David Ben	133 Alva St. NB 02740
Name	Address
Matt Huberman	40 Mosher St. NB 02740
Name	Address
Kristen Hoer	New Bedford High School
Name	Address
Please Re	tun by 12/12/12

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1	de 18/ Hill man st MB.
Name	Address
Seth Couto 21	Philips ave. Non Bookerd
Name	Address
Luis Class 25	83 Hillman St New Bodford
Name	Address
TRAVIS Mello	1615tate St
Chad Santos	89 Holly St
Name ,	Address
Luis Carela	88 Kempton ST
Name	Address
ERICK Roman	88 Kemplon St
Name	Address
Joshon Mariles	102 PartocsE
Name	Address
Bryan Briston	85. Newcombe St.
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2. chard Pampbell	314 Chancry A. NB Md. 8274
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Pleasell	Orite Clearly
JOE RODA Name	32 FUCEYDA. NEWBENFORD MA 02745
Laurent a Mareuw	15 MIDDLEFIELD PL. ACUSHINET WITH . CAN'S Address
JOSE FAFIRE	177 CRINNELL ST N/B Address
33://y Monterno	25 Jolland voth A. Darl. MA
Name KEITHER PLASUN	4 harriatas St 473
Name Soe Comes	GOS UNION ST ND.
TUAN SOARES	318 MAXFIELD STINIB.
William Longs	e43 Rowen of Foll Rueray
Raymond & Buchelod	1257 Main St aughnot Mu. Address
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JEFF HOLLEY	145hirlzy5+, 027tip	
Name	Address	
Curtis WILSon) 114 mills+ 02740	
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Derex Rodrigo Name	ier 32 Durfee St	
Name		
GUIS LOMO	an 101 Rivet St	
Name	Address	
Richard Silva Name	494 County Sta	
Name	Address	
M. m. m.	60 UALEtine St	
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Edwin Rus	ura 173 ARNOID ST NEW BEOFE	200
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Volea	se Write Clearly
CONATHAN 10 - MENA	Address 18 Chatham St. L'an Budford, MA 02745
Name	Address
ANNED BULLARD	19 JEVING ST. NEW BENFORD, MA 02740
Name	Address
Down Christens	CALCO HIM Trootes Or Westport MIA 02 190
Cement Bille	I 144 Front St. Weymorth, MA 02188
Name K	Address
Stacy Reidy	75 Wamsotta St #324 New Bedford, MA 0274
Name /	Address
Lathryn Bilvie Name	25 Harvard St. Fairhaven, MA 02719
Name	Address
Caldy Reardon	41 Larkspur Lane Plymouth MA02360
Name	Address V
Inne Eisennunger	125 Coursett Rd Wareham MA 02571
Name	Address
Paul A. Hoey	45 Lake St. New Bedford, MA 02740
Name /	Address

Address

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submit our names in response to the US Dept of Justice	With Clearly
Molythan	129 Clinton Street Naw 26/2
Name	Address
America Marrial-Santingo	Address Noney St. New Bedford MH 02
	7.00-7.00
Martin W Johnson	213 North STNB MA 02740
Name	Address
Andrew Mornhill	452 Arnold St NB MA 0274
FREDERICK WILSON	96 DAVID ST NEW BEDFORD
Name ,	Address
Name	Address

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Plea	se Wite Clearly Street address
Karen Andersen	
DONNA GAMBLE P.D. BO,	X 7819 NEW BEDFORD 14-02742-7819 Address
-Samuel M. Barrows	Sarting MA Address
Chance Perhs	South End New Dedford 63 Coloner ST.
Name	Address
Michael Murphy	Address Mills MA
Michele Saivtus	170 Bellevue St W.B Ma.
David Santos	170 Bellevue St. N.B.Ma
Name On	350 W. Chink NB
Name Themas Theful	468 Brock AV NB
Stephania Rousch	Address Calumet & New Bedford
Please Ret	address

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408 BrockAUE Address Address Address Name Name Address Address Name Address Name Address Name 12/12/12 Please Return

BUZZARDS BAY COALITION & HANDS ACROSS THE RIVER COALITION

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We have lived with the toxic legacy of AVX Corp's actions in New Bedford for decades now. An entire generation has lost use and enjoyment of a clean Harbor and we all continue to be exposed to the harmful health effects of these PCBs each day. We urge the Court to require that AVX pay for the entire cleanup of the toxic mess they left in our community and not let them off the hook forever with an inadequate cash payment today and release from all future responsibility. We submit our names in response to the US Dept of Justice Public Comment period which terminates on 12/17/2012.

	PASE WITE Clearly	
tanice McDonough	6 Thatcher St. Dartnorth, MA 027	148
Naple	Address #1 MA	
Henry Gatlin	Address Al N Orchard St New Bedford 0274 Address	63
Name /	Address	
Dori Legg	19 Delano Way Daitmouth MA 02: Address (ARCH) War Bolford 22 MA 27 Charles 45. Bolford 22	14
Name	Address (ARCIT) New	
Name Lagger	- 37 Chal 88. Ballord 27	2 41
Name	Address	
Name	Address	-
Name	Address	-
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Name	Address	
Name	Address	-
Name	Address	-
	. 1001 500	
		-
Name	Address	
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Motion bu 12/12/12

BUZZARDS BAY COALITION & HANDS ACROSS THE RIVER COALITION

We, the undersigned, join with the community-based organizations listed above in calling on the US Department of Justice and the Court to reject the proposed Consent Decree between the U.S. Environmental Protection Agency and AVX Corporation regarding the cleanup of toxic PCBs from New Bedford Harbor. The failure of the Consent Decree to include a "reopener" releases AVX from responsibility and robs this community of a clean Harbor. The \$366 million payment outlined in the Consent Decree is not enough funding to fully cleanup our Harbor.

We have lived with the toxic legacy of AVX Corp's actions in New Bedford for decades now. An entire generation has lost use and enjoyment of a clean Harbor and we all continue to be exposed to the harmful health effects of these PCBs each day. We urge the Court to require that AVX pay for the entire cleanup of the toxic mess they left in our community and not let them off the hook forever with an inadequate cash payment today and release from all future responsibility. We submit our names in response to the US Dept of Justice Public Comment period which terminates on 12/17/2012.

	Please Write Clearly
Davil &	Corraino 90 RIVERSIDE AVE, NEW BEOFORD, MI
Name	Address
Caitlin M	
Name	Address
Patrick)	Maghado 64 Oceanst MNew Melford MA. 0274
Name	Krimer 427 O/ NER ST. New Bedisod. 05
Name	
Darothy	Julia 18 green Or Dectmonth (274)
Name	Address
	Masson 33 Hamlet St. Fairhaven, M 027
Name J	Address
Name	Address

Return by 19/19/10

change.org

To: U.S. Department of Justice, Assistant Attorney General, Environment and Natural

Resources Division

Subject: Make AVX pay to clean up toxic PCBs in New Bedford Harbor

Letter: Greetings,

We, the undersigned, join with the community-based organizations Buzzards Bay Coalition and Hands Across the River Coalition in calling on the Court to reject the proposed Consent Decree between the U.S. Environmental Protection Agency and AVX Corporation regarding the cleanup of toxic PCBs from New Bedford Harbor. The failure of the Consent Decree to include a "reopener" would release AVX from responsibility and robs this community of a clean harbor. the \$366 million payment outlined in the Consent Decree is not enough funding to fully clean up our harbor.

We have lived with the toxic legacy of AVX Corp.'s actions in New Bedford for decades now. An entire generation has lost use and enjoyment of a clean harbor, and we all continue to be exposed to the harmful health effects of these PCBs each day. We urge the Court to require that AVX pay for the entire cleanup of the toxic mess they left in our community and not let them off the hook forever with an inadequate cash payment today and release from all future responsibility. We submit our names in response to the U.S. Department of Justice public comment period, which terminates on 12/17/2012.

Signatures

Name	Location	Date
Mark Rasmussen	Fairhaven, MA, United States	2012-11-19
Daniel Vasconcellos	Pembroke, MA, United States	2012-11-19
John Vasconcellos	New Bedford, MA, United States	2012-11-19
Joanne Friar	Somerset, MA, United States	2012-11-19
Stasia Powers	Fairhaven, MA, United States	2012-11-19
Gregory Esteve	Lake Wales, FL, United States	2012-11-20
Angela Vasconcellos	New Bedford, MA, United States	2012-11-20
Ryan Coons	San Diego, CA, United States	2012-11-20
Todd Snyder	San Francisco, CA, United States	2012-11-20
Yasiu Kruszynski	Chicago, IL, United States	2012-11-20
Logan Dodson	Deland, FL, United States	2012-11-20
malik griffin	Knightdale, NC, United States	2012-11-20
Daniela Bress	Niedersachsen, Germany	2012-11-21
Erik Attaway	New Lenox, IL, United States	2012-11-21
Chantal Buslot	Hasselt, Belgium	2012-11-21
Elisabeth Bechmann	St. Pölten, Austria	2012-11-21
Edward Laurson	Denver, CO, United States	2012-11-21
Tom Gidwitz	S. Dartmouth, MA, United States	2012-11-22
Maddie Shannon	Fresno, CA, United States	2012-11-22
Zachary Hardy	Macon, GA, United States	2012-11-22
James Mulcare	Clarkston, WA, United States	2012-11-22
Megan DePerro	Buffalo, NY, United States	2012-11-24
robyn scheuffele	san diego, CA, United States	2012-11-24
dinda evans	san diego, CA, United States	2012-11-24
Lacey Levitt	Baltimore, MD, United States	2012-11-24
Michael Steele	Morrice, MI, United States	2012-11-25
Priscilla Calle	Miami, FL, United States	2012-11-25
David Jenkins	Edmond, OK, United States	2012-11-25
linda aguiar	new bedford, MA, United States	2012-11-26
Maria Teixeira	Assonet, MA, United States	2012-11-27

Name	Location	Date
Lynn Coish	New Bedford, MA, United States	2012-11-27
Brooke Syvertsen	New Bedford, MA, United States	2012-11-27
robert Duarte	Tallahassee, FL, United States	2012-11-27
Kalia Lydgate	Shelburne Falls, MA, United States	2012-11-27
jed oberry	Carver, MA, United States	2012-11-27
phil Macramos	New Bedford, MA, United States	2012-11-27
john gamache	new bedford, MA, United States	2012-11-27
Zoe Hansen-DiBello	Providence, RI, United States	2012-11-27
Bruce Almeida	New Bedford, MA, United States	2012-11-27
max cover	South Dartmouth, MA, United States	2012-11-27
Kate Korolenko	Westport, MA, United States	2012-11-27
Andy Erickson	Dartmouth, MA, United States	2012-11-27
michael newsome jr,	New Bedford, MA, United States	2012-11-27
Peter Lynch	Boston, MA, United States	2012-11-27
Sarah Holbrook	New Bedford, MA, United States	2012-11-27
Latham Bakerink	New Bedford, MA, United States	2012-11-27
Megan Amsler	Hatchville, MA, United States	2012-11-27
Joseph Ionno	New Bedford, MA, United States	2012-11-27
Alan Palm	Mattapoisett, MA, United States	2012-11-27
Christopher Blake	New Bedford, MA, United States	2012-11-27
Sarah Medeiros	Acushnet, MA, United States	2012-11-27
Jen Grantham	Westport, MA, United States	2012-11-27
Elizabeth Chevalier	Tucson, AZ, United States	2012-11-27
Rebecca Garfield	Cuttyhunk, MA, United States	2012-11-28
Molly Powers	Falmouth, MA, United States	2012-11-28
Nicole Adriance	Roslindale, MA, United States	2012-11-28
Allison Beck	Little Compton, RI, United States	2012-11-28
Sarah Hall	cuttyhunk, MA, United States	2012-11-28
Mary Beth Gamache	New Bedford, MA, United States	2012-11-28
Sarah Mollo-Christensen	New York, NY, United States	2012-11-28
audrey burns	mattapoisett, MA, United States	2012-11-28
Judy Barto	Cammal, PA, United States	2012-11-28

Name	Location	Date
helen park	london, United Kingdom	2012-11-28
Donna Cobert	New Bedford, MA, United States	2012-11-28
William Jenney	fairhaven, MA, United States	2012-11-28
Laura Schaefer	Wareham, MA, United States	2012-11-28
Michael Swenson	Richmond, TX, United States	2012-11-28
Catherine DeTerra	Dartmouth, MA, United States	2012-11-29
Ed Ready	dover, NH, United States	2012-11-29
Tiffany Chang	Chino Hills, CA, United States	2012-11-29
paul loiselle	new bedford, MA, United States	2012-11-29
alyssa prachniak	new bedford, MA, United States	2012-11-29
Kathleen Webb	Fairhaven, MA, United States	2012-11-29
ddelanea fumo	new bedford, MA, United States	2012-11-29
Jane Renwick	Portsmouth, RI, United States	2012-11-29
Joanna Krystman	tiverton, RI, United States	2012-11-29
Jason Resendes	raynham, MA, United States	2012-11-29
Paul DaSilva	Fall River, MA, United States	2012-11-29
Eric Brocklehurst	Newport, RI, United States	2012-11-29
Larissa Funfas	Teaticket, MA, United States	2012-11-29
Peter Tatarian	Lakeville, MA, United States	2012-11-29
Sarah C Lemelin	So Dartmouth, MA, United States	2012-11-29
rebecca matusiak	providence, RI, United States	2012-11-29
Dianne Mosher	South Dartmouth, MA, United States	2012-11-29
Roberta Hazen Aaronson	Cranston, RI, United States	2012-11-29
Cally Wolk	Attleboro, MA, United States	2012-11-29
John Cox	New Bedford, MA, United States	2012-11-29
Rob Karsch	Bristol, RI, United States	2012-11-29
karen moriarty	plymouth, MA, United States	2012-11-29
gail vidito	rehoboth, MA, United States	2012-11-29
Cheryl Burtch	Acushnet, MA, United States	2012-11-29
Natalie Wagner	Sandwich, MA, United States	2012-11-29
John Softcheck	Fairhaven, MA, United States	2012-11-29
kristine keegan	plymouth, MA, United States	2012-11-29

Name	Location	Date
Marco Pedulli	Fairhaven, MA, United States	2012-11-29
Kerri Rodriguez	Westport, MA, United States	2012-11-29
Lori Herman	Edgartown, MA, United States	2012-11-29
Rebecca Connors	N Kingstown, RI, United States	2012-11-29
David Ames	Providence, RI, United States	2012-11-29
Donna Vaughan	Carver, MA, United States	2012-11-29
Eric Smith	Kingston, MA, United States	2012-11-29
alfred aniello	east providence, RI, United States	2012-11-29
David Neves	Seekonk, MA, United States	2012-11-29
Maria Souza	New Bedford, MA, United States	2012-11-29
Greg Cucino	Providence, RI, United States	2012-11-29
doug savage	Marion, MA, United States	2012-11-29
William Costa	Vineyard Haven, MA, United States	2012-11-29
Victoria Waterhouse	Forestdale, MA, United States	2012-11-29
Joe Farley	West Warwick, RI, United States	2012-11-29
Tammy marques	fairhaven, MA, United States	2012-11-29
Laura Troll	Buzzards Bay, MA, United States	2012-11-29
Zelia Medeiros	New Bedford, MA, United States	2012-11-29
Joe Cuddy	Plympton, MA, United States	2012-11-29
Kelly Moran	Saunderstown, RI, United States	2012-11-30
Beth Milham	Newport, RI, United States	2012-11-30
Brian Messier	Dartmouth, MA, United States	2012-11-30
Katrina Turick	Little Compton, RI, United States	2012-11-30
Heidi Horlbogen	Northkingstown , RI, United States	2012-11-30
Travis Ouellette	Carver, MA, United States	2012-11-30
Jennifer DeBarros	New Bedford, MA, United States	2012-11-30
Gina Sootkoos	Fairhaven, MA, United States	2012-11-30
Zachary Paquette	Attleboro, MA, United States	2012-11-30
Michelle Kovarik	East Falmouth, MA, United States	2012-11-30
Francis Daly	vineyard haven, MA, United States	2012-11-30
Gary Frankel	Bristol, RI, United States	2012-11-30
suzanne allison	providence, RI, United States	2012-11-30

Name	Location	Date
raye king	plymouth, MA, United States	2012-11-30
Eve Marie Eells	Pawtucket, RI, United States	2012-11-30
susan tangen	south dartmouth, MA, United States	2012-11-30
Craig Marin	Providence, RI, United States	2012-11-30
Frances Smith	E. Falmouth, MA, United States	2012-11-30
Janet Handford	West Warwick, RI, United States	2012-11-30
Suzanne Feeney	Sandwich, MA, United States	2012-11-30
debbie sirois	carver, MA, United States	2012-11-30
Rose Mellino	Ossipee, NH, United States	2012-11-30
Melanie Dupre	Providence, RI, United States	2012-11-30
Sara Polaski	Cranston, RI, United States	2012-11-30
pamela tarallo	fairhaven, MA, United States	2012-11-30
Frank Macera	east Greenwich, RI, United States	2012-11-30
Janet Blair	Attleboro, MA, United States	2012-11-30
Nancy Moreira	Warwick, RI, United States	2012-11-30
Kellie Ferreira	New Bedford, MA, United States	2012-11-30
Ambar Sanchez	Providence, RI, United States	2012-11-30
Paul Rasmussen	Providence, RI, United States	2012-11-30
Cathy Bowers	Mattapoisett, MA, United States	2012-11-30
Sally F	East Bridgewater, MA, United States	2012-11-30
gayle maginnis	norton, MA, United States	2012-11-30
Michael Talbot	Mashpee, MA, United States	2012-11-30
betsy macdonald	West Tisbury, MA, United States	2012-11-30
Jonathan Martins	Sandwich, MA, United States	2012-11-30
David Dow	East Falmouth, MA, United States	2012-11-30
david maroni	Cranston, RI, United States	2012-11-30
Raymond Del Colle	Bristol, RI, United States	2012-11-30
Melissa Justice	Middletown, RI, United States	2012-11-30
Nora Healy	Plymouth, MA, United States	2012-11-30
Scout Perry	Sandwich, MA, United States	2012-11-30
Molly Draffone	Plymouth, MA, United States	2012-11-30
virginia dionne	cranston, RI, United States	2012-11-30

Name	Location	Date
Mackendy Mondesir	New Bedford, MA, United States	2012-11-30
Carolyn Clarke	Pawtucket, RI, United States	2012-11-30
Peter Connolly	Attleboro, MA, United States	2012-11-30
Carol Batchelder	East Providence, RI, United States	2012-11-30
P Turick	adamsville, RI, United States	2012-11-30
Stephen DeCesare	East Providence, RI, United States	2012-11-30
Pauline Theberge	Berkley, MA, United States	2012-11-30
Jessica Brown	Warwick, RI, United States	2012-11-30
Ashley Allan	West Chester, PA, United States	2012-11-30
Tess Hebert	New bedford, MA, United States	2012-11-30
George N Correia	New Bedford, MA, United States	2012-11-30
Paula Quigley	Saunderstown, RI, United States	2012-11-30
Juan Moore	Providence, RI, United States	2012-11-30
Robert Foley Jr	Attleboro, MA, United States	2012-11-30
Jessica Oliver	New Bedford, MA, United States	2012-11-30
Maret Gable	Mashpee, MA, United States	2012-11-30
Susan Sakash	PROVIDENCE, RI, United States	2012-11-30
Laurie McKenna	Fall River, MA, United States	2012-11-30
Jennifer Boone	Providence, RI, United States	2012-11-30
Tim FitzGibbons	Fall River, MA, United States	2012-11-30
Rogrr Seguin	New Bedford, MA, United States	2012-11-30
Marguerite Benoit	Providence, RI, United States	2012-11-30
Elias Lieberman	East Falmouth, MA, United States	2012-11-30
Theodore A Romanosky	North Kingstown, RI, United States	2012-11-30
Jane Unsworth	Westport, MA, United States	2012-11-30
Scott Sharland	Lakeville, MA, United States	2012-11-30
Angela Marschall	Falmouth, MA, United States	2012-11-30
Bridget Travers	Tiverton, RI, United States	2012-11-30
Cindy Azevedo	East Taunton, MA, United States	2012-11-30
Nina Fernandes	Tiverton, RI, United States	2012-11-30
Dana Leslie	Providence, RI, United States	2012-11-30
Charles Feldman	Providence, RI, United States	2012-11-30

Name	Location	Date
Michele Harvey	Taunton, MA, United States	2012-11-30
Patricia Lake	Fall River, MA, United States	2012-11-30
Stephanie Hannum	South Dartmouth, MA, United States	2012-11-30
P. Brett Fortin	Fairhaven, MA, United States	2012-11-30
Miranda Cook	Attleboro, MA, United States	2012-11-30
Alison Guzman	Pawtucket, RI, United States	2012-11-30
Esther Menz	Rehoboth, MA, United States	2012-11-30
Natalia Choquette	Pawtucket, RI, United States	2012-11-30
Karen Feldman	Providence, RI, United States	2012-11-30
jl keith	Providence, RI, United States	2012-11-30
Ariel Robert	New Bedford, MA, United States	2012-11-30
Slader Merriman	Bourne, MA, United States	2012-11-30
Joel Wool	Dorchester, MA, United States	2012-11-30
Gail Cohee	Cranston, RI, United States	2012-11-30
Bigg Meech	freetown, RI, United States	2012-11-30
Mikel Arambarri	Newport, RI, United States	2012-11-30
Alison King	Boston, MA, United States	2012-11-30
Katharine Stark	Warwick, RI, United States	2012-11-30
Beverly Baccelli	Mattapoisett, MA, United States	2012-11-30
Edward Croft	Lakeville, MA, United States	2012-11-30
laura worrick	providence, RI, United States	2012-11-30
Monica Suarez	Cranston, RI, United States	2012-11-30
Kathi Reed	Warwick, RI, United States	2012-11-30
Hillarie Gaynor-Clarke	E.Falmouth, MA, United States	2012-11-30
Edward Benson	Pawtucket, RI, United States	2012-11-30
Roberta D'Andrea	West Warwick, RI, United States	2012-11-30
Joelene Marinone	Mattapoisett, MA, United States	2012-11-30
Jean Coombs	Plymouth, MA, United States	2012-11-30
Heidy Campos	Providence, RI, United States	2012-11-30
Louis Rourke	Fall River, MA, United States	2012-11-30
Lisa Maloney	Providence, RI, United States	2012-11-30
Ed Unsworth	Westport, MA, United States	2012-11-30

Name	Location	Date
Michael Jameson	Carver, MA, United States	2012-11-30
Melanie Scalera	Cranston, RI, United States	2012-11-30
Megan MacDonald	Middletown, RI, United States	2012-11-30
Rayana Grace	New Bedford, MA, United States	2012-11-30
Emily Earnshaw	Warwick, RI, United States	2012-11-30
Diane Looney	Edgartown, MA, United States	2012-11-30
John Benoit	Cranston, RI, United States	2012-11-30
anthony velino	providence, RI, United States	2012-11-30
Gwendolyn Spencer	Providence, RI, United States	2012-11-30
Carlton Pimentel	New Bedford, MA, United States	2012-11-30
Suzanne French	Warwick, RI, United States	2012-11-30
Fran Ledoux	Marstons Mills, MA, United States	2012-11-30
Wesley Oliveira	Taunton, MA, United States	2012-11-30
Joel Greene	Fall River, MA, United States	2012-11-30
Susan Nulman	Providence, RI, United States	2012-11-30
Connie M	Pocasset, MA, United States	2012-11-30
Erin Farrell	Cranston, RI, United States	2012-11-30
Patricia Brennan	Providence, RI, United States	2012-11-30
Mary Murphy	Cranston, RI, United States	2012-11-30
Karen Miller	Fall River, MA, United States	2012-11-30
Debra Shrader	Fairhaven, MA, United States	2012-11-30
Chelsea Seiders	Marion, MA, United States	2012-11-30
Corinn Williams	New Bedford, MA, United States	2012-11-30
Lilian Robinson	Vineyard Haven, MA, United States	2012-11-30
david walker	n. dartmouth, MA, United States	2012-11-30
Daniel Miller	Halifax, MA, United States	2012-11-30
Karin buckley	dartmouth, MA, United States	2012-11-30
Mary McDonald	Portsmouth, RI, United States	2012-11-30
Marc Carver	Providence, RI, United States	2012-11-30
reginald spengler	raynham, MA, United States	2012-11-30
Aaron Schiff	East Freetown, MA, United States	2012-11-30
Thomas Smusz	Providence, RI, United States	2012-11-30

Name	Location	Date
Elizabeth & Robert Wentzell	Pawtucket, RI, United States	2012-11-30
Kelcie Andrade	Tiverton, RI, United States	2012-11-30
Muriel Reilly	Attleboro, MA, United States	2012-11-30
Shazad Khan	Chicago, IL, United States	2012-11-30
Theodore Waitt	Taunton, MA, United States	2012-11-30
Stephen Mahoney	Carver, MA, United States	2012-11-30
Alan Yabroudy	South Easton, MA, United States	2012-11-30
M. Norden	New Bedford, MA, United States	2012-11-30
jeffrey coelho	tiverton, RI, United States	2012-11-30
Lynn Schwartz	New Bedford, MA, United States	2012-11-30
Tyler Sardinha	Fall River, MA, United States	2012-11-30
Robert Belota	WARWICK, RI, United States	2012-11-30
fran reed	providence, RI, United States	2012-11-30
Philip Moniz	Somerset, MA, United States	2012-11-30
Bill Howell	Oak Bluffs, MA, United States	2012-11-30
Claudia Kirk	Fairhaven, MA, United States	2012-11-30
Sandra Leger Silva	Assonet, MA, United States	2012-11-30
Danielle TetreaultDanielleT	Warwick, RI, United States	2012-11-30
Jonathan Thomas	Providence, RI, United States	2012-11-30
Rick Spencer	Cranston, RI, United States	2012-11-30
john west	mashpee, MA, United States	2012-11-30
low taylor	cuttyhunk, MA, United States	2012-11-30
Dorothy Tongue	Westport Pt., MA, United States	2012-11-30
Kerri Furtado	North Providence, RI, United States	2012-11-30
Emma Jean Middendorf	Kingston, MA, United States	2012-11-30
Eleanor McNally	Fall River, MA, United States	2012-11-30
Liz Place	Acushnet, MA, United States	2012-11-30
Zak Mettger	Cranston, RI, United States	2012-11-30
christopher scott	newport, RI, United States	2012-11-30
DOROTHY KASHK	PAWTUCKET, RI, United States	2012-11-30
Elyse Baggen	Dartmouth, MA, United States	2012-11-30
Melissa Guimont	Middleboro, MA, United States	2012-11-30

Name	Location	Date
CARL BUGARA	FALL RIVER, MA, United States	2012-11-30
Ann DeNardis	Fairhaven, MA, United States	2012-11-30
Andrew Reikes	Tisbury, MA, United States	2012-11-30
Julie Bannister	East Falmouth, MA, United States	2012-11-30
Korrin Petersen	Middleboro, MA, United States	2012-11-30
joseph hall jr	baltimore, MD, United States	2012-11-30
Leila Gustin	SOUTH DARTMOUTH, MA, United States	2012-11-30
Jason McNett	Taunton, MA, United States	2012-11-30
stefan michael ziewacz	providence, RI, United States	2012-11-30
Scott DeAscentis	Middletown, RI, United States	2012-11-30
Chris Murray	Newport, RI, United States	2012-11-30
Erin Hedges	Fairhaven, MA, United States	2012-11-30
Alan Souza	New Bedford, MA, United States	2012-11-30
Dale Robertson	Osterville, MA, United States	2012-11-30
Lloyd Guptill	Westport, MA, United States	2012-11-30
Emma Manley	Plymouth, MA, United States	2012-11-30
Frank DeMello	Lakeville, MA, United States	2012-11-30
heather cruz	New Bedford, MA, United States	2012-11-30
rachel cocroft	newport, RI, United States	2012-11-30
Anita Randall	Bristol, RI, United States	2012-11-30
Andrew Caradimos	wareham, MA, United States	2012-11-30
Rachel Bell	Providence, RI, United States	2012-11-30
saira ruiz	new bedford, MA, United States	2012-11-30
Christine Sherman	Gloucester, MA, United States	2012-11-30
Frank Merllo	Attleboro, MA, United States	2012-11-30
Cynthia Velez	Fall River, MA, United States	2012-11-30
michael langlais	west warwick, RI, United States	2012-11-30
judy rivers	Mashpee, MA, United States	2012-11-30
Gerry D'Amore	Newport, RI, United States	2012-11-30
Katie Chuckran	Raynham, MA, United States	2012-11-30
Jeff Berard	Cranston, RI, United States	2012-11-30
William Cantor	Mattapoisett, MA, United States	2012-11-30

Name	Location	Date
Elizabeth Capwell	Cranston, RI, United States	2012-11-30
Taylor Field	New York, NY, United States	2012-11-30
Dean Paton	New Hope, PA, United States	2012-11-30
Warren Briggs	Marion, MA, United States	2012-11-30
Barbara Christian	Fairhaven, MA, United States	2012-11-30
Lori Mattos	New Bedford, MA, United States	2012-11-30
Charles McGowan	Venice, FL, United States	2012-11-30
Virginia Snow	Newport, RI, United States	2012-11-30
Jillian Pimental	Plymouth, MA, United States	2012-11-30
Suzanne Kuffler	Woods Hole, MA, United States	2012-11-30
Robert Bates	E. falmouth, MA, United States	2012-11-30
Nancy Smith	North Falmouth, MA, United States	2012-11-30
John Short	N Falmouth, MA, United States	2012-11-30
Christopher Pires	Acushnet, MA, United States	2012-11-30
Joanne Garfield	Fairhaven, MA, United States	2012-11-30
michael joyce,jr	Edgartown, MA, United States	2012-11-30
Hilary Hamlin	Tucson, AZ, United States	2012-11-30
Deirdre Healy	Fairhaven, MA, United States	2012-11-30
Denise Rollinson	South Dartmouth, MA, United States	2012-11-30
Gib Hammond	Duxbury, MA, United States	2012-11-30
Kathryn Balistrieri	Templeton, MA, United States	2012-11-30
Athena Aicher	Woods Hole, MA, United States	2012-11-30
Kathleen Hickey	New Bedford, MA, United States	2012-11-30
norman macleod	needham, MA, United States	2012-11-30
Christopher Riely	Providence, RI, United States	2012-11-30
Sylvia Vatuk	Falmouth, MA, United States	2012-11-30
Temple Fawcett	Providence, RI, United States	2012-11-30
Harold Burstyn	Woods Hole, MA, United States	2012-11-30
M. C. Rosenfield	Mattapoisett, MA, United States	2012-11-30
diana macphail	rochester, MA, United States	2012-11-30
Margot Fitzgerald	Fairhaven, MA, United States	2012-11-30
jolene vieira	Fall River, MA, United States	2012-11-30

nomas Garfield van pinto argaret Cooney	New Bedford, MA, United States Harvard,, MA, United States jamestown, RI, United States Plymouth, MA, United States Annandale, VA, United States Marion, MA, United States	2012-11-30 2012-11-30 2012-11-30 2012-11-30 2012-11-30
van pinto j argaret Cooney	jamestown, RI, United States Plymouth, MA, United States Annandale, VA, United States	2012-11-30 2012-11-30
argaret Cooney	Plymouth, MA, United States Annandale, VA, United States	2012-11-30
,	Annandale, VA, United States	
avid Correiro		2012-11-30
avid Carreiro	Marion, MA, United States	
usannah Davis		2012-11-30
avid Tatelbaum	South Dartmouth, MA, United States	2012-11-30
llian Anderson	Oak Bluffs, MA, United States	2012-11-30
at Ross	West Falmouth, MA, United States	2012-11-30
ana Cassar	Barrington, RI, United States	2012-11-30
harles Nichols	Waquoit, MA, United States	2012-11-30
enneth Cabral	Norton, MA, United States	2012-11-30
n Lufkin	West Bridgewater, MA, United States	2012-11-30
ark Ryan	Bridgewatet, MA, United States	2012-11-30
ichael Godles	Little Compton, RI, United States	2012-11-30
n Cheung	providence, RI, United States	2012-11-30
achel Durfee	North Kingstown, RI, United States	2012-11-30
usan Allison	Pawtucket, RI, United States	2012-11-30
nil Maseda	Mashpee, MA, United States	2012-11-30
hn cioe	east providende, RI, United States	2012-11-30
andra Kimokoti	Providence, RI, United States	2012-11-30
stin rizzuto	Providence, RI, United States	2012-11-30
atiana Cumplido	Rumford, RI, United States	2012-11-30
oshua Hatfield	Warwick, RI, United States	2012-11-30
ck nichols	boston, MA, United States	2012-11-30
nilip Smith	Providence, RI, United States	2012-11-30
endie Howland	pocasset, MA, United States	2012-11-30
athleen Gibbs	West Tisbury, MA, United States	2012-11-30
atricia Drusin	Carver, MA, United States	2012-11-30
avid Anderson	Mattapoisett, MA, United States	2012-11-30
eather Andersen	Fairhaven, MA, United States	2012-11-30
idith Apone	Sagamore beach, MA, United States	2012-11-30

Name	Location	Date
Elizabeth Brightman	New Bedford, MA, United States	2012-11-30
ANGELA CARVALHO	WEST WARWICK, RI, United States	2012-11-30
Kevin Del Cid	Providence, RI, United States	2012-11-30
Richard Terry	Plymouth, MA, United States	2012-11-30
Sharon Souza	Fairhaven, MA, United States	2012-11-30
Karly McAvenia	Plymouth, MA, United States	2012-11-30
M Mazer	Mattapoisett, MA, United States	2012-11-30
katrhy michaud	lakeville, MA, United States	2012-11-30
Ian Sigman	Fall River, MA, United States	2012-11-30
Mary Bobrowski	Bristol, RI, United States	2012-12-01
Alexander Belmore	Middleboro, MA, United States	2012-12-01
Elizabeth Rock	Cranston, RI, United States	2012-12-01
Rick Richards	Providence, RI, United States	2012-12-01
Eric Takakjian	Fairhaven, MA, United States	2012-12-01
sheena mcnamara	Fall River, MA, United States	2012-12-01
Dr. B. Biggs	Providence, RI, United States	2012-12-01
Cheryl Marble	Plymouth, MA, United States	2012-12-01
Dyer Monroe	Providencde, RI, United States	2012-12-01
Karen McGee-Brown	Newport, RI, United States	2012-12-01
Marybeth Stlaurent	Pawtucket, RI, United States	2012-12-01
Fred Kozak	Marstons Mills, MA, United States	2012-12-01
Christine Cochard-Frietas	Attleboro, MA, United States	2012-12-01
Nancy Richard	Bristol, RI, United States	2012-12-01
don guimelli	barrington, RI, United States	2012-12-01
Muse en Lystrala	Providence, RI, United States	2012-12-01
Nicole Maynard	Barrington, RI, United States	2012-12-01
Melissa Kievman	Providence, RI, United States	2012-12-01
erika mesa	providence, RI, United States	2012-12-01
april gramolini	Providence, RI, United States	2012-12-01
jennifer roderigues	fall river, MA, United States	2012-12-01
paul mattera	providence, RI, United States	2012-12-01
Erica Depina	westport, MA, United States	2012-12-01

Name	Location	Date
Mary Rapoza	New Bedford, MA, United States	2012-12-01
Dennis Tweedy	Taunton, MA, United States	2012-12-01
Robert Bartlett	West Bridgewater, MA, United States	2012-12-01
erin glynn	north dartmouth, MA, United States	2012-12-01
Bryan Horsley	Cotuit, MA, United States	2012-12-01
Tina Egloff	Woods Hole, MA, United States	2012-12-01
Devin Wells	Little Compton, RI, United States	2012-12-01
Robert Ortiz	Phoenix, AZ, United States	2012-12-01
jeffrey gomes	East Providence, RI, United States	2012-12-01
Paige Dickinson, CPM	New Bedford, MA, United States	2012-12-01
lois shea	westport, MA, United States	2012-12-01
Victoria Wood	Acushnet, MA, United States	2012-12-01
Laura Rosenthal	Barrington, RI, United States	2012-12-01
John Masson	New Bedford, MA, United States	2012-12-01
Ed Macedo	Fairhaven, MA, United States	2012-12-01
melynda Schudrich	new bedford, MA, United States	2012-12-01
Agnes Figueira	New Bedford, MA, United States	2012-12-01
Sharon Horton	Westport, MA, United States	2012-12-01
Kristen Allen	North Kingstown, RI, United States	2012-12-01
Joshua Garvey	Plymouth, MA, United States	2012-12-01
Nicole Morell	Fall River, MA, United States	2012-12-01
Darleen Medeiros	Warren, RI, United States	2012-12-01
Lorrie Mello	Fall River, MA, United States	2012-12-01
Regina McNerney	Providence, RI, United States	2012-12-01
Jared DeMello	Swansea, MA, United States	2012-12-01
Stephen Lewin	New Bedford, MA, United States	2012-12-01
Leslie Simonelli	Cranston, RI, United States	2012-12-01
Anna Martin	Lakeville, MA, United States	2012-12-01
sylvia ann soares	providence, RI, United States	2012-12-01
Katy Archibald	West Bridgewater, MA, United States	2012-12-01
Dale Mello	Fairhaven, MA, United States	2012-12-01
Amy Craig	Attleboro, MA, United States	2012-12-01

Name	Location	Date
Lorne Whiting	Plymouth, MA, United States	2012-12-01
Alyssa St. Gelais	New Bedford, MA, United States	2012-12-01
Jason Danielson	Oak Bluffs, MA, United States	2012-12-01
lauren lake	Bristol, RI, United States	2012-12-01
Justine Pinckard	Providence, RI, United States	2012-12-01
Melissa Hanmer	Bristol, RI, United States	2012-12-01
Nicole Solas	Bristol, RI, United States	2012-12-01
Jennifer Hall	Dartmouth, MA, United States	2012-12-01
Alexander Ballard	Westport, MA, United States	2012-12-01
Michelle Silva	Taunton, MA, United States	2012-12-01
Michelle Gonzalez	Dartmouth, MA, United States	2012-12-01
Suzy Morandi	New Bedford, MA, United States	2012-12-01
Timothy McLaughlin	Plymouth, MA, United States	2012-12-01
Steven James	East Sandwich, MA, United States	2012-12-01
Kelley Turner-Murray	New Bedford, MA, United States	2012-12-01
Lisa Kunsch	Attleboro, MA, United States	2012-12-01
valerie voner	east wareham, MA, United States	2012-12-01
William Farrell	Newport, RI, United States	2012-12-01
Christian Sidlevicz	Fall River, MA, United States	2012-12-01
Anthony Frisella	Cranston, RI, United States	2012-12-01
Eric Couto	East Providence, RI, United States	2012-12-01
Gabrielle Healy	Fairhaven, MA, United States	2012-12-01
Julia Kiechel	Dartmouth, MA, United States	2012-12-01
Jared Franklin	Harwich, MA, United States	2012-12-01
suzanne maurici	e wareham, MA, United States	2012-12-01
Robert Araujo	Fairhaven, MA, United States	2012-12-01
Christopher Ihlefeld	West Warwick, RI, United States	2012-12-01
John Sundman	Vineyard Haven, MA, United States	2012-12-01
Vincent Savino	New Bedford, MA, United States	2012-12-01
Fabienne Riesen	N KINGSTOWN, RI, United States	2012-12-01
Peter Fournier	North Kingstown, RI, United States	2012-12-01
Katelyn Curt	Fall River, MA, United States	2012-12-01

		Date
Molly Beauchemin	Charlottesville, VA, VA, United States	2012-12-01
Chandra Perez-Gill	mattapoisett, MA, United States	2012-12-01
Paula Daigle	Fairhaven, MA, United States	2012-12-01
Lauren Carlson-Ferguson	Middletown, RI, United States	2012-12-01
JoAnn & Henry Rosemont, Jr.	Newport, RI, United States	2012-12-01
Matthew Gladding	Jamestown, RI, United States	2012-12-01
Lynn Costa	Warwick, RI, United States	2012-12-01
Craig Coelho	Riverside, RI, United States	2012-12-01
Joyce Soares	Swansea, MA, United States	2012-12-01
Anthony Teixeira	East Freetown, MA, United States	2012-12-01
Michael Cote	Seekonk, MA, United States	2012-12-01
Linda Norman-Lyman	Warwick, RI, United States	2012-12-01
Nancy C. Faria	Pocasset, MA, United States	2012-12-01
Peter Ajemian	Bridgewater, MA, United States	2012-12-01
Alan Reynolds	Pawtucket, RI, United States	2012-12-01
tom tolman	plympton, MA, United States	2012-12-01
Diana Paccheco	Fairhaven, MA, United States	2012-12-01
Kevin Gravelle	Plymouth, MA, United States	2012-12-01
Denise Drapeau-Walker	Jamestown, RI, United States	2012-12-01
Paula Long	Sagamore, MA, United States	2012-12-01
Christine Lyons	No.Kingstown, RI, United States	2012-12-01
Dana Ridgley	Portsmouth, RI, United States	2012-12-01
Viki Merrick	woods hole, MA, United States	2012-12-01
Ken Cheitlin	Pocasset, MA, United States	2012-12-01
Richard Einig	East Greenwich, RI, United States	2012-12-01
Chad Underhill	Rochester, MA, United States	2012-12-01
Elizabeth Conde	New Bedford, MA, United States	2012-12-01
Jack Thomas	mattapoisett, MA, United States	2012-12-01
Dylan Treleven	Providence, RI, United States	2012-12-01
Deb Fahey	Warwick, RI, United States	2012-12-01
Destiny Page	Somerset, MA, United States	2012-12-01
Sherrill Wright	Cranston, RI, United States	2012-12-01

Name	Location	Date
Jennifer Kelton	Bridgewater, MA, United States	2012-12-01
Donna Arsenault	New Bedford, MA, United States	2012-12-01
Abby Squires	Hanson, MA, United States	2012-12-01
mark grayko	pawtucket, RI, United States	2012-12-01
richard hardawy	newton, MA, United States	2012-12-01
Kimberly Zahora	Warwick, RI, United States	2012-12-01
Marilyn Penney	Little Compton, RI, United States	2012-12-01
Cyndi Doyle	Providence, RI, United States	2012-12-01
Maura Ferreira	New Bedford, MA, United States	2012-12-01
dawn carvalho	fall river, MA, United States	2012-12-01
tom oatway	newport, RI, United States	2012-12-01
lanie and jack flaherty	plymouth, MA, United States	2012-12-01
Katherine Tardiff	Waltham, MA, United States	2012-12-01
Scott Machado	Seekonk, MA, United States	2012-12-01
Laurie Schaper	N. Kingstown, RI, United States	2012-12-01
Sherry kelly	plymouth, MA, United States	2012-12-01
Donald MacLean	Bourne, MA, United States	2012-12-01
Michael Jackson	West Falmouth, MA, United States	2012-12-01
Michaela Mello	Fairhaven, MA, United States	2012-12-01
Therese Jungels	Providence, RI, United States	2012-12-01
joanna reppucci	Plymouth, MA, United States	2012-12-01
Phyllis Buckley	Barrington, RI, United States	2012-12-01
Meghan Lamarre	Newport, RI, United States	2012-12-01
Deborah Pacini	Onset, MA, United States	2012-12-01
DAVID FILIPEK	DARTMOUTH, MA, United States	2012-12-01
David B. Barker	Marion, MA, United States	2012-12-01
kelly doyle	providence, RI, United States	2012-12-01
Tracy Faria	Fall River, MA, United States	2012-12-01
Chris Galvin	Hanson, MA, United States	2012-12-01
Andrew Wolsky	Raynham, MA, United States	2012-12-01
R O'Neill	Fall River, MA, United States	2012-12-01
Melissa Alves	New Bedford, MA, United States	2012-12-01

Name	Location	Date
M. Stoddard	Rochester, NY, United States	2012-12-01
Nicholas Brissette	pawtucket, RI, United States	2012-12-01
Kate Mahoney	Dartmouth, MA, United States	2012-12-01
Joan Akin	Acushnet, MA, United States	2012-12-01
malcolm boyd	vineyard Haven, MA, United States	2012-12-01
Michele Rajotte	North Kingstown, RI, United States	2012-12-01
Deborah Lipman	providence, RI, United States	2012-12-01
Roger Linke	Daytona Beach, FL, United States	2012-12-01
John Mota	Fairhaven, MA, United States	2012-12-01
Linda Molfesi	West Warwick, RI, United States	2012-12-01
SUSAN DYSON	WARWICK, RI, United States	2012-12-01
Christine Szuszkiewicz	South Dartmouth, MA, United States	2012-12-01
DONNA DAVID	FAIRHAVEN, MA, United States	2012-12-01
Chris Jackson	Seekonk, MA, United States	2012-12-01
Bill McGrath	Oak Bluffs, MA, United States	2012-12-01
hayley ross	Dartmouth, MA, United States	2012-12-01
Basilisk RLSH	Carver, MA, United States	2012-12-01
Taylor McClure	Bristol, RI, United States	2012-12-01
Tracy Lovendale	KINGSTON, MA, United States	2012-12-01
Patrick Meehan	Providence, RI, United States	2012-12-01
pamela desmarais	north providence, RI, United States	2012-12-01
Gayle Mandle	South Dartmouth, MA, United States	2012-12-01
sylvia white	new bedford, MA, United States	2012-12-01
Jody Josephson	Pawtucket, RI, United States	2012-12-01
Nicki Sahlin	Providence, RI, United States	2012-12-01
antonia melendez	New Bedford, MA, United States	2012-12-01
joseph bevilacqua	Little Compton, RI, United States	2012-12-01
ALVIN HOWER	RIVERSIDE, RI, United States	2012-12-01
Bernadette Ericson	Cataumet, MA, United States	2012-12-01
Lorieann costa	lakeville, MA, United States	2012-12-01
Lucy Hirsch	North Kingstown, RI, United States	2012-12-01
Nancy Peresta	Middletown, RI, United States	2012-12-01

Name	Location	Date
David Clarke	New Bedford, MA, United States	2012-12-01
Ivy Powers	providence, RI, United States	2012-12-01
Francisco Galvao	East Providence, RI, United States	2012-12-01
Thaw Malin	Chilmark, MA, United States	2012-12-01
Van Blakeman, Once A Marine	East Sandwich, MA, United States	2012-12-01
Dan Fitzgerald	Providence, RI, United States	2012-12-01
Frank A Maiorana	West Warwick, RI, United States	2012-12-01
teralyn siller	arlington, TX, United States	2012-12-01
donna goodwin	warwick, RI, United States	2012-12-01
naomi rappaport	dartmouth, MA, United States	2012-12-01
Jamie Sylvander	North Kingstown, RI, United States	2012-12-01
Gordon Wade	Providence, RI, United States	2012-12-01
Hannah Blakeman	Myrtle Beach, SC, United States	2012-12-01
Linda Veiga	Plymouth, MA, United States	2012-12-01
Sophie Markovich	Cotuit, MA, United States	2012-12-01
Bruce Stowers	Providence, RI, United States	2012-12-01
Bruce Lackey	New Bedford, MA, United States	2012-12-01
Ben Gilbarg	New Bedford, MA, United States	2012-12-01
Melvin Vargas	New Bedford, MA, United States	2012-12-01
ann keefe	providence, RI, United States	2012-12-01
Maggie McCormick	Middletown, RI, United States	2012-12-01
Bonnie Phinney	Little Compton, RI, United States	2012-12-01
joanne ray	riverside, RI, United States	2012-12-01
Bridget Murphy	Plymouth, MA, United States	2012-12-01
Da vid Korb	Boston, MA, United States	2012-12-01
David Small	Barrington, RI, United States	2012-12-01
Brock Cordeiro	Dartmouth, MA, United States	2012-12-01
Brittany Wardell	West Warwick, RI, United States	2012-12-01
Terence Smith	Raynham, MA, United States	2012-12-01
Brenda Ross	Dartmouth, MA, United States	2012-12-01
John Corvello	Seekonk, MA, United States	2012-12-01
william rogers	sandwich, MA, United States	2012-12-01

Name	Location	Date
Frank Rose	Cranston, RI, United States	2012-12-01
Robert Garzillo	Providence, RI, United States	2012-12-02
Daniel Ferro	WARREN, RI, United States	2012-12-02
Jacob Katz	Providence, RI, United States	2012-12-02
Jessica Ramsey	Wareham, MA, United States	2012-12-02
Rachel Epstein	Providence, RI, United States	2012-12-02
Alycia Metz	North Kingstown, RI, United States	2012-12-02
Daria Hemmings	Attleboro, MA, United States	2012-12-02
j roies	westport, MA, United States	2012-12-02
Carolyn Erickson	Salt Lake City, UT, United States	2012-12-02
Judith Knilans	Barrington, RI, United States	2012-12-02
Sean G.	Mesquite, TX, United States	2012-12-02
SUSAN ELSTOB	CATAUMET, MA, United States	2012-12-02
Susan Benesch	Tiverton, RI, United States	2012-12-02
Mary-Ellen Shervo	Fairhaven, MA, United States	2012-12-02
christine Lenzi	Fall River, MA, United States	2012-12-02
Richard Israel	Great Barrington, MA, United States	2012-12-02
lydia raposo	Fall River, MA, United States	2012-12-02
Ellen G	Sussex, WI, United States	2012-12-02
Denis Luken	Northampton, MA, United States	2012-12-02
Debra DePietro	Wareham, MA, United States	2012-12-02
Stephanie Trenholm	fall river, MA, United States	2012-12-02
Marian Downs	Riverside, RI, United States	2012-12-02
Leland Hoisington	Warwick, RI, United States	2012-12-02
Robert Samuelson	Chatham, MA, United States	2012-12-02
john boustani	btidgewater, MA, United States	2012-12-02
patrick kelly	providence, RI, United States	2012-12-02
Kirby Allen	New York, NY, United States	2012-12-02
Amanda Martin	New Bedford, MA, United States	2012-12-02
Travis Price	Providence, RI, United States	2012-12-02
Beth Taylor	Norton, MA, United States	2012-12-02
Dawn Corby	Halifax, MA, United States	2012-12-02

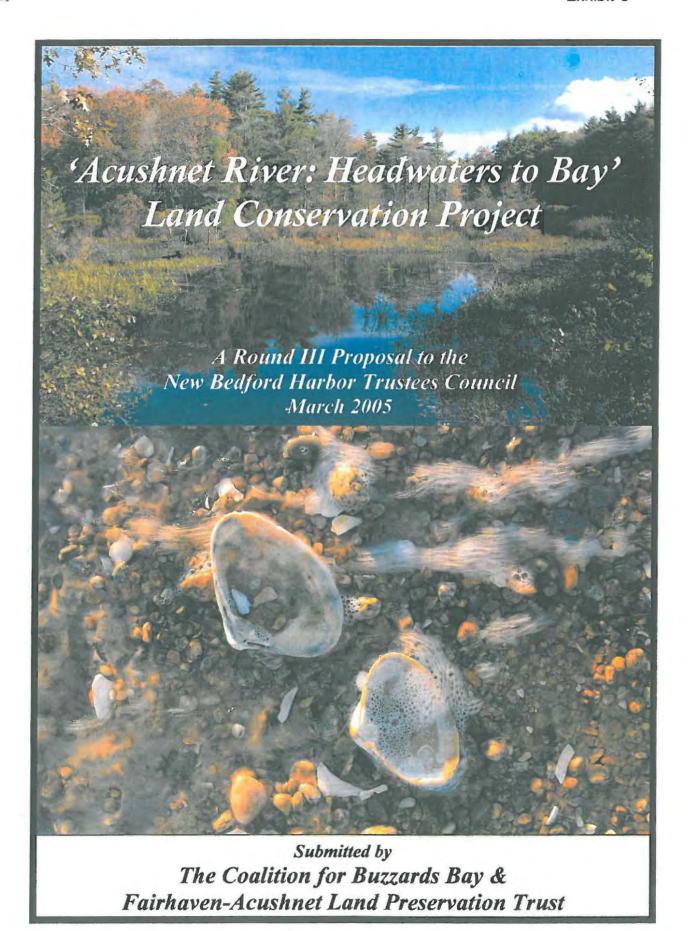
Name	Location	Date
Patrick Vincent	Fall River, MA, United States	2012-12-02
Marianne DeSouza	New Bedford, MA, United States	2012-12-02
Dale Freedman	Fall River, MA, United States	2012-12-02
David Dias	Fairhaven, MA, United States	2012-12-02
thomas mccoy	manomet, MA, United States	2012-12-02
Joanne Corrigan	Plymouth, MA, United States	2012-12-02
Nils Bruzelius	Westport Point, MA, United States	2012-12-02
Beth McAlpine	Dartmouth, MA, United States	2012-12-03
keith mayes	newport, RI, United States	2012-12-03
Alyssa Browning	Pawtucket, RI, United States	2012-12-03
Wanda Walker	Providence, RI, United States	2012-12-03
Joseph N Frezza	dartmouth, MA, United States	2012-12-03
Robin Joubert	Dartmouth, MA, United States	2012-12-03
Matthew Goldblatt	New Bedford, MA, United States	2012-12-03
Chris Suchmann	Providence, RI, United States	2012-12-03
Eli Reznekervitz	East Freetown, MA, United States	2012-12-03
BRian Klambt	Pawt, RI, United States	2012-12-03
stephen reise	newport, RI, United States	2012-12-03
Judy Cromwell	New Bedford, MA, United States	2012-12-03
Tina JAILLET	Lexington, MA, United States	2012-12-03
Matthew Correira	North Dartmouth, MA, United States	2012-12-03
Joan Thompson	Dartmouth, MA, United States	2012-12-03
Kathi Mirza	Taunton, MA, United States	2012-12-03
tom wilson	plymouth, MA, United States	2012-12-03
Lyndsay Famariss	West Tisbury, MA, United States	2012-12-03
Gail Koerber	Wilmington, MA, United States	2012-12-03
Pauline Wasserman	Providence, RI, United States	2012-12-03
Anita Sanchies	East Falmouth, MA, United States	2012-12-03
Jennifer Sperry	New Bedford, MA, United States	2012-12-03
edward nardi	Cataumet, MA, United States	2012-12-03
Samantha McNulty	New Bedford, MA, United States	2012-12-03
Bernadette McHugh	Norton, MA, United States	2012-12-03

Name	Location	Date
Stephanie Trott	Mystic, CT, United States	2012-12-03
Brian Battisti	Providence, RI, United States	2012-12-03
nichole paluda	marion, MA, United States	2012-12-03
Elinor Vacchino	Plymouth, MA, United States	2012-12-03
Buzzards Bay Coalition	New Bedford, MA	2012-12-03
Linda Blake	Milford, MA, United States	2012-12-03
Allison Maynard	Swansea, MA, United States	2012-12-03
Melinda Berg	Mattapoisett, MA, United States	2012-12-03
Angela Vaudry	New Bedford, MA, United States	2012-12-03
Ryan Brenner	Kingston, MA, United States	2012-12-03
Anita Mendes	Hancock, NH, United States	2012-12-03
cheryl bancroft	Swansea, MA, United States	2012-12-03
Christina Restante	Warwick, RI, United States	2012-12-04
Justin Cifello	Buzzards Bay, MA, United States	2012-12-04
dauna noble	Providence, RI, United States	2012-12-04
Brendon Jones	Rochester, MA, United States	2012-12-04
Donald Shotz	Plymouth, MA, United States	2012-12-04
John Greene	Plymouth, MA, United States	2012-12-04
Ian Rubinstein	Bourne, MA, United States	2012-12-04
Lara Amaral	Scituate, MA, United States	2012-12-04
Kathy Grandmaison	Swansea, MA, United States	2012-12-04
Fran Bordonaro	Falmouth, MA, United States	2012-12-04
James Briley	East Bridgewater, MA, United States	2012-12-04
Alisa Lyford	Halifax, MA, United States	2012-12-04
Virginia Britton	Alexandria, VA, United States	2012-12-04
Concerned Citizen	New City, NY, United States	2012-12-04
mary Heilman	Plymouth, MA, United States	2012-12-04
Kate Patrolia	Buzzards Bay, MA, United States	2012-12-04
David Leshan	Fort Washington, PA, United States	2012-12-04
Malcolm Young	Washington, DC, United States	2012-12-04
Susan Chakmakian	Cranston, RI, United States	2012-12-05
Miriam Jzcob	Falmouth, MA, United States	2012-12-05

Name	Location	Date
Nancy Soares	New Bedford, MA, United States	2012-12-05
margaret kane	south dartmouth, MA, United States	2012-12-05
Shanon Dilloway	Providence, RI, United States	2012-12-05
Diane Duprey	New Bedford, MA, United States	2012-12-05
Maureen Morin	Taunton, MA, United States	2012-12-05
Anneke Andries	Fountain, MI, United States	2012-12-05
NANCY SPINDLER	DARTMOUTH, MA, United States	2012-12-05
B Earle	Dartmouth, MA, United States	2012-12-05
Bianca Santana	Providence, RI, United States	2012-12-05
Diane Zentner	East Greenwich, RI, United States	2012-12-05
Brandy Fallgren	New Bedford, MA, United States	2012-12-05
Gary Boehk	West Falmouth, MA, United States	2012-12-05
Donna Hamilton	Great Yarmouth, United Kingdom	2012-12-05
Chuck Dade	New Bedford, MA, United States	2012-12-05
Jim Wilson	New Bedford, MA, United States	2012-12-05
Linda Simpson	Chartley, MA, United States	2012-12-05
Tracy Marlue	Pawtucket, RI, United States	2012-12-05
Steven Mello II	Swansea, MA, United States	2012-12-05
Nelson Torres	Fort Worth, TX, United States	2012-12-05
Marie Hernandez	San Antonio, TX, United States	2012-12-05
Tatiana Torres	Bogota, Colombia	2012-12-06
alice paduch	warren, RI, United States	2012-12-06
Glenn Sharp	Palmdale, CA, United States	2012-12-06
Joel Finley	Ogdensburg, NY, United States	2012-12-06
maureen sullivan	cranston, RI, United States	2012-12-06
Christopher Welch	Newport, RI, United States	2012-12-06
Ken Resendes	New Bedford, MA, United States	2012-12-06
Jasmina Cuk	Solna, Sweden	2012-12-06
Anna Bashkirova	Moscow, Russian Federation	2012-12-06
Constance Franklin	Los Angeles, CA, United States	2012-12-06
Anders Johnson	Asheville, NC, United States	2012-12-06
Kurt Frees	Cincinnati, OH, United States	2012-12-06

Name	Location	Date
susan czernicka	westport, MA, United States	2012-12-06
Karen Sankey	Plymouth, MA, United States	2012-12-06
Eva Fidjeland	Orrefors, Sweden	2012-12-06
Janet Henderson	New Salem, MA, United States	2012-12-06
Joshua Louro	Dartmouth, MA, United States	2012-12-06
Robert Xifaras	New Bedford, MA, United States	2012-12-07
Evan Davenport	Durham, NH, United States	2012-12-07
nancy galbraith	falmouth, MA, United States	2012-12-07
Misty Costa	New Bedford, MA, United States	2012-12-07
Jeffrey Felty	Falmouth, MA, United States	2012-12-07
Marilyn Alferes	Fairhaven, MA, United States	2012-12-08
John Doucette	Providence, RI, United States	2012-12-08
John Richard Young	East Norriton Township, Norristown, PA, United States	2012-12-08
Robert and Katherine Hart	Barrington, RI, United States	2012-12-09
Christine Williams	Coningsby, Lincs, United Kingdom	2012-12-09
Sam Most	sagamore beach, MA, United States	2012-12-10
Joan Rokicki	Providence, RI, United States	2012-12-10
Heather Demers	Rochester, MA, United States	2012-12-10
Ryan Almeida	New Bedford, MA, United States	2012-12-10
Brandon Cote	new bedford, MA, United States	2012-12-10
Noah Doerr	Westport, MA, United States	2012-12-10
David Burton	Lake Leelanau, MI, United States	2012-12-11
Jennifer Downing	Acushnet, MA, United States	2012-12-11
Justin Brodeur	New Bedford, MA, United States	2012-12-11
Thomas Cardoza	Wareham, MA, United States	2012-12-11
Gerry Payette	Fairhaven, MA, United States	2012-12-11
richard toole	oak Bluffs, MA, United States	2012-12-12
Andrea Sreiber	Subotica, Serbia	2012-12-12
sue sch.	Germany	2012-12-12
Christopher Evans	Near Byton Hand, United Kingdom	2012-12-12
Jenell Black	Shreveport, LA, United States	2012-12-12

Richard Burk Tucson, CA, United States 2012-12-12 tressa reisberg Medina, OH, United States 2012-12-13 Sandra Tetenburg Den Haag, Aruba 2012-12-13 Emily Pitman Clinton, NY, United States 2012-12-13 Nicholas Moore Middletown, RI, United States 2012-12-14 Daniel Anjo New Bedford, MA, United States 2012-12-14 Chris Oliveira Dartmouth, MA, United States 2012-12-15 John Wheeler New Bedford, MA, United States 2012-12-15 Lucas Medeiros New Bedford, MA, United States 2012-12-15 susan spalding Sagamore Beach, MA, United States 2012-12-15 Anne Smith Fairhaven, MA, United States 2012-12-15 Anne Smith Fairhaven, MA, United States 2012-12-15 A Bedser Mattapoisett, MA, United States 2012-12-15 kevin lynch east falmouth, MA, United States 2012-12-16 lan Cooke Acton, MA, United States 2012-12-16 Deb Bariteau Nashua, NH, United States 2012-12-16 Carroline Hawthorne Fairhaven, MA, United Sta	Name	Location	Date
Sandra Tetenburg Den Haag, Aruba 2012-12-13 Emily Pitman Clinton, NY, United States 2012-12-13 Nicholas Moore Middletown, RI, United States 2012-12-14 Daniel Anjo New Bedford, MA, United States 2012-12-15 John Wheeler New Bedford, MA, United States 2012-12-15 John Wheeler New Bedford, MA, United States 2012-12-15 Lucas Medeiros New Bedford, MA, United States 2012-12-15 susan spalding Sagamore Beach, MA, United States 2012-12-15 Anne Smith Fairhaven, MA, United States 2012-12-15 Anse Smith Fairhaven, MA, United States 2012-12-15 ABedser Mattapoisett, MA, United States 2012-12-16 kevin lynch east falmouth, MA, United States 2012-12-16 lan Cooke Acton, MA, United States 2012-12-16 Deb Bariteau Nashua, NH, United States 2012-12-16 Carolline Hawthorne Fairhaven, MA, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 Fich Medicke New Bedford, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	Richard Burk	Tucson, CA, United States	2012-12-12
Emily Pitman Clinton, NY, United States 2012-12-13 Nicholas Moore Middletown, RI, United States 2012-12-14 Daniel Anjo New Bedford, MA, United States 2012-12-15 Chris Oliveira Dartmouth, MA, United States 2012-12-15 John Wheeler New Bedford, MA, United States 2012-12-15 Lucas Medeiros New Bedford, MA, United States 2012-12-15 susan spalding Sagamore Beach, MA, United States 2012-12-15 Anne Smith Fairhaven, MA, United States 2012-12-15 mark whalen new bedford, MA, United States 2012-12-15 A Bedser Mattapoisett, MA, United States 2012-12-16 kevin lynch east falmouth, MA, United States 2012-12-16 lan Cooke Acton, MA, United States 2012-12-16 Deb Bariteau Nashua, NH, United States 2012-12-16 Carolline Hawthorne Fairhaven, MA, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	tressa reisberg	Medina, OH, United States	2012-12-13
Nicholas Moore Middletown, RI, United States 2012-12-14 Daniel Anjo New Bedford, MA, United States 2012-12-15 Uchris Oliveira Dartmouth, MA, United States 2012-12-15 John Wheeler New Bedford, MA, United States 2012-12-15 Lucas Medeiros New Bedford, MA, United States 2012-12-15 Susan spalding Sagamore Beach, MA, United States 2012-12-15 Anne Smith Fairhaven, MA, United States 2012-12-15 Anne Smith Fairhaven, MA, United States 2012-12-15 Mark whalen new bedford, MA, United States 2012-12-15 A Bedser Mattapoisett, MA, United States 2012-12-16 kevin lynch east falmouth, MA, United States 2012-12-16 Ian Cooke Acton, MA, United States 2012-12-16 Deb Bariteau Nashua, NH, United States 2012-12-16 Caroline Hawthorne Fairhaven, MA, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 Sich Medicke New Bedford, MA, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	Sandra Tetenburg	Den Haag, Aruba	2012-12-13
Daniel Anjo New Bedford, MA, United States 2012-12-14 Chris Oliveira Dartmouth, MA, United States 2012-12-15 John Wheeler New Bedford, MA, United States 2012-12-15 Lucas Medeiros New Bedford, MA, United States 2012-12-15 susan spalding Sagamore Beach, MA, United States 2012-12-15 Anne Smith Fairhaven, MA, United States 2012-12-15 mark whalen new bedford, MA, United States 2012-12-15 A Bedser Mattapoisett, MA, United States 2012-12-16 lan Cooke Acton, MA, United States 2012-12-16 lan Cooke Acton, MA, United States 2012-12-16 Caroline Hawthorne Fairhaven, MA, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Kate Levin New Bedford, MA, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Kate Levin New Bedford, MA, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Kate Levin New Bedford, MA, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Kate Levin New Bedford, MA, United States 2012-12-16 Kate Levin Pembroke, MA, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17	Emily Pitman	Clinton, NY, United States	2012-12-13
Chris Oliveira Dartmouth, MA, United States 2012-12-15 John Wheeler New Bedford, MA, United States 2012-12-15 Lucas Medeiros New Bedford, MA, United States 2012-12-15 susan spalding Sagamore Beach, MA, United States 2012-12-15 Anne Smith Fairhaven, MA, United States 2012-12-15 Anne Smith Fairhaven, MA, United States 2012-12-15 mark whalen new bedford, MA, United States 2012-12-15 A Bedser Mattapoisett, MA, United States 2012-12-16 kevin lynch east falmouth, MA, United States 2012-12-16 lan Cooke Acton, MA, United States 2012-12-16 Deb Bariteau Nashua, NH, United States 2012-12-16 Carolline Hawthorne Fairhaven, MA, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 jeremiah tyler fairhaven, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	Nicholas Moore	Middletown, RI, United States	2012-12-14
John Wheeler New Bedford, MA, United States 2012-12-15 Lucas Medeiros New Bedford, MA, United States 2012-12-15 susan spalding Sagamore Beach, MA, United States 2012-12-15 Anne Smith Fairhaven, MA, United States 2012-12-15 mark whalen new bedford, MA, United States 2012-12-15 A Bedser Mattapoisett, MA, United States 2012-12-16 kevin lynch east falmouth, MA, United States 2012-12-16 lan Cooke Acton, MA, United States 2012-12-16 Deb Bariteau Nashua, NH, United States 2012-12-16 Caroline Hawthorne Fairhaven, MA, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 jeremiah tyler fairhaven, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 Siecksonville nc, NC, United States 2012-12-16 Show Bedford, MA, United States 2012-12-16 Shaven Ramann Cary, NC, United States 2012-12-16	Daniel Anjo	New Bedford, MA, United States	2012-12-14
Lucas Medeiros New Bedford, MA, United States 2012-12-15 susan spalding Sagamore Beach, MA, United States 2012-12-15 Anne Smith Fairhaven, MA, United States 2012-12-15 mark whalen new bedford, MA, United States 2012-12-15 A Bedser Mattapoisett, MA, United States 2012-12-16 kevin lynch east falmouth, MA, United States 2012-12-16 lan Cooke Acton, MA, United States 2012-12-16 Deb Bariteau Nashua, NH, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 jeremiah tyler fairhaven, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Kate Levin New Bedford, MA, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 New Bedford, MA, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Kate Levin New Bedford, MA, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States	Chris Oliveira	Dartmouth, MA, United States	2012-12-15
Susan spalding Sagamore Beach, MA, United States 2012-12-15 Anne Smith Fairhaven, MA, United States 2012-12-15 mark whalen new bedford, MA, United States 2012-12-16 kevin lynch lan Cooke Acton, MA, United States Acton, MA, United States 2012-12-16 Deb Bariteau Nashua, NH, United States 2012-12-16 Caroline Hawthorne Fairhaven, MA, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 New Bedford, MA, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Cary, NC, Unit	John Wheeler	New Bedford, MA, United States	2012-12-15
Anne Smith Fairhaven, MA, United States 2012-12-15 mark whalen new bedford, MA, United States 2012-12-15 A Bedser Mattapoisett, MA, United States 2012-12-16 kevin lynch east falmouth, MA, United States 2012-12-16 lan Cooke Acton, MA, United States 2012-12-16 Deb Bariteau Nashua, NH, United States 2012-12-16 Caroline Hawthorne Fairhaven, MA, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 jeremiah tyler fairhaven, MA, United States 2012-12-16 Xatherine Osterloh Orinda, CA, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Holly Hasseyy Harwinton, CT, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	Lucas Medeiros	New Bedford, MA, United States	2012-12-15
mark whalen new bedford, MA, United States 2012-12-15 A Bedser Mattapoisett, MA, United States 2012-12-16 kevin lynch east falmouth, MA, United States 2012-12-16 lan Cooke Acton, MA, United States 2012-12-16 Deb Bariteau Nashua, NH, United States 2012-12-16 Caroline Hawthorne Fairhaven, MA, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 jeremiah tyler fairhaven, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 Shedy berrios jacksonville nc, NC, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Holly Hasseyy Harwinton, CT, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	susan spalding	Sagamore Beach, MA, United States	2012-12-15
A Bedser Mattapoisett, MA, United States 2012-12-16 kevin lynch east falmouth, MA, United States 2012-12-16 lan Cooke Acton, MA, United States 2012-12-16 Deb Bariteau Nashua, NH, United States 2012-12-16 Caroline Hawthorne Fairhaven, MA, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 jeremiah tyler fairhaven, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 shedy berrios jacksonville nc, NC, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 State Levin Westport, MA, United States 2012-12-16 State Levin Westport, MA, United States 2012-12-16 State Sunday Edwards Lincoln, NE, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	Anne Smith	Fairhaven, MA, United States	2012-12-15
kevin lynch east falmouth, MA, United States 2012-12-16 lan Cooke Acton, MA, United States 2012-12-16 Deb Bariteau Nashua, NH, United States 2012-12-16 Caroline Hawthorne Fairhaven, MA, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 jeremiah tyler fairhaven, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 shedy berrios jacksonville nc, NC, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Holly Hasseyy Harwinton, CT, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 Courtney Edwards Lincoln, NE, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	mark whalen	new bedford, MA, United States	2012-12-15
lan Cooke Deb Bariteau Nashua, NH, United States 2012-12-16 Caroline Hawthorne Fairhaven, MA, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 jeremiah tyler fairhaven, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Holly Hasseyy Harwinton, CT, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17	A Bedser	Mattapoisett, MA, United States	2012-12-16
Deb Bariteau Nashua, NH, United States 2012-12-16 Caroline Hawthorne Fairhaven, MA, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 jeremiah tyler fairhaven, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 shedy berrios jacksonville nc, NC, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Holly Hasseyy Harwinton, CT, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 Courtney Edwards Lincoln, NE, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	kevin lynch	east falmouth, MA, United States	2012-12-16
Caroline Hawthorne Fairhaven, MA, United States 2012-12-16 Gwendolyn Hancock Bristol, RI, United States 2012-12-16 Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 jeremiah tyler fairhaven, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 Shedy berrios jacksonville nc, NC, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Holly Hasseyy Harwinton, CT, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 Courtney Edwards Lincoln, NE, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17	Ian Cooke	Acton, MA, United States	2012-12-16
Gwendolyn Hancock Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 jeremiah tyler fairhaven, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 shedy berrios jacksonville nc, NC, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Holly Hasseyy Harwinton, CT, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 Courtney Edwards Lincoln, NE, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17	Deb Bariteau	Nashua, NH, United States	2012-12-16
Christy LaGue Wareham, MA, United States 2012-12-16 Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 jeremiah tyler fairhaven, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 shedy berrios jacksonville nc, NC, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Holly Hasseyy Harwinton, CT, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 Courtney Edwards Lincoln, NE, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	Caroline Hawthorne	Fairhaven, MA, United States	2012-12-16
Taran Riggs-Hart New Bedford, MA, United States 2012-12-16 jeremiah tyler fairhaven, MA, United States 2012-12-16 Jacob denney Marion, MA, United States 2012-12-16 Katherine Osterloh Orinda, CA, United States 2012-12-16 shedy berrios jacksonville nc, NC, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Holly Hasseyy Harwinton, CT, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 Courtney Edwards Lincoln, NE, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	Gwendolyn Hancock	Bristol, RI, United States	2012-12-16
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shedy berrios jacksonville nc, NC, United States 2012-12-16 Shavaun Ramann Cary, NC, United States 2012-12-16 Holly Hasseyy Harwinton, CT, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 Courtney Edwards Lincoln, NE, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	Jacob denney	Marion, MA, United States	2012-12-16
Shavaun Ramann Cary, NC, United States 2012-12-16 Holly Hasseyy Harwinton, CT, United States 2012-12-16 Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 Courtney Edwards Lincoln, NE, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	Katherine Osterloh	Orinda, CA, United States	2012-12-16
Holly Hasseyy Harwinton, CT, United States 2012-12-16 Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 Courtney Edwards Lincoln, NE, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	shedy berrios	jacksonville nc, NC, United States	2012-12-16
Kate Levin Westport, MA, United States 2012-12-16 Rich Medicke New Bedford, MA, United States 2012-12-16 Courtney Edwards Lincoln, NE, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	Shavaun Ramann	Cary, NC, United States	2012-12-16
Rich Medicke New Bedford, MA, United States Courtney Edwards Lincoln, NE, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	Holly Hasseyy	Harwinton, CT, United States	2012-12-16
Courtney Edwards Lincoln, NE, United States 2012-12-17 Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	Kate Levin	Westport, MA, United States	2012-12-16
Suzanne Tjoelker Pembroke, MA, United States 2012-12-17 patricia carrasco providence, RI, United States 2012-12-17	Rich Medicke	New Bedford, MA, United States	2012-12-16
patricia carrasco providence, RI, United States 2012-12-17	Courtney Edwards	Lincoln, NE, United States	2012-12-17
	Suzanne Tjoelker	Pembroke, MA, United States	2012-12-17
Bart Hoppenbrouwers Dublin, , Ireland 2012-12-17	patricia carrasco	providence, RI, United States	2012-12-17
	Bart Hoppenbrouwers	Dublin, , Ireland	2012-12-17



NARRATIVE PROJECT DESCRIPTION

Acushnet River: Headwaters to Bay Land Conservation Project

I. Project Importance

Land Protection is Critical to New Bedford Harbor Restoration
Acquisition of riverfront and coastal habitats serves to protect the Acushnet River Estuary
and New Bedford Harbor environment against development and acquire the equivalent of
river lands lost or injured due to PCB and other contamination along the estuary.
Furthermore, the protection of riparian and coastal lands help to prevent the further
degradation of water quality in the Harbor thereby enhancing the potential for success of
adjacent or downstream restoration efforts.

The goal of this project is to preserve 334 acres of river and harborfront lands for permanent conservation and for future habitat restoration purposes. Spanning from the headwaters of the Acushnet River to the broad saltmarshes of Outer New Bedford Harbor, the four properties proposed for acquisition represent the full spectrum of natural habitats that define the New Bedford Harbor environment: upland hardwood forests, wooded swamp, emergent freshwater and riparian marshes, cranberry bogs, saltmarsh, open fields, beach and tidal flats. The project also presents the opportunity to preserve exciting future restoration projects on these lands and to expand public access for passive recreation.

Without protection of these lands via fee acquisition and/or conservation restrictions, these lands are likely to be sold for commercial and residential development thereby further reducing uncontaminated, natural habitats within the New Bedford Harbor environment. Land values are increasing dramatically in the area around the Harbor and the real estate market may soon outstrip the ability of New Bedford Harbor restoration funds to support land and conservation restriction purchases. There is a closing window of opportunity to preserve the most important uncontaminated natural habitats in New Bedford Harbor.

History of Land Protection in New Bedford Harbor

Together, The Coalition for Buzzards Bay (CBB) and the Fairhaven-Acushnet Land Preservation Trust (FALPT) have established a strong track record of land protection in the Acushnet River/New Bedford Harbor environment and have worked in partnership with the New Bedford Harbor Trustees Council (NBHTC) to protect 382 acres of land in the past seven years. These lands include Winsegansett Marshes (160 acres, 1998), Marsh Island North (14 acres, 2003), the Govoni Forest (30 acres), Zyskowski/Long Plain (19 acres) and Keith's Tree Farm (163 acres) also in 2003. Many of the lands proposed for acquisition in this proposal complement these earlier projects.

C. Marsh Island South

Project Significance

As the New Bedford Harbor Trustees Council has noted, "Marsh Island has the potential to be a signature restoration project for the New Bedford Harbor Trustees Council."

Marsh Island is a 22-acre peninsula jutting into New Bedford Harbor just south of Interstate 195 in Fairhaven. As discussed below, the island has been significantly altered over the past 80 years through the disposal of dredged spoil materials.

With funding from the NBHTC, the FALPT and CBB acquired the northern 14.25 acres of Marsh Island in December 2003 and have protected it with a permanent CR. At the same time, the NBHTC has pursued feasibility level



planning to identify restoration opportunities at Marsh Island. The goal of that effort is to "restore as much salt marsh on the island as feasible by removing the dredged material and reestablishing intertidal elevations, as well as creating other vegetated wetland and upland habitats providing ecological services and passive recreation opportunities." (from NBHTC Feasibility Study Request for Proposals, 2002). A "Marsh Island Restoration Concept" was completed in mid-2003.

Through this proposal, the FALPT and CBB seek to complete the acquisition and permanent protection of Marsh Island as publicly-accessible open space by purchasing the southern 7.68 acres of the island. In doing so, the NBHTC will secure the opportunity to pursue restoration of the entire peninsula as a whole ecological unit.

The Marsh Island South parcel is comprised predominantly of dredge spoils which have created a low-quality upland 'sandplain' habitat. The parcel's 1,366 feet of direct frontage along New Bedford Harbor is bordered by patches of saltmarsh, rocky intertidal shore and stands of common reed (*Phragmites australis*).

As the largest remaining undeveloped stretch of land in the inner Harbor, Marsh Island is a likely target for development – particularly for a marina complex. The acquisition of a CR today will ensure that the property is saved from development and available for future restoration activities.

Historic/Existing Conditions

Until the late 1930s, Marsh Island was an upland island connected to the land by a broad saltmarsh. Once a rich coastal habitat - a portion of which was subject to tidal flooding and composed of tidal creeks and saltmarsh habitats - Marsh Island became a disposal site for harbor dredge spoils in the late 1930s and early 1950s. This dumping buried the indigenous natural features, connected the island to the mainland and changed the function and habitat value of the land. The extent, character and elevation of this introduced soil material has permanently changed soil drainage and created conditions leading to an inundation of alien

invasive vegetation. Today, Marsh Island is dominated by low quality upland habitat and much of the remaining marsh is dominated by common reed (*Phragmites australis*).

While the land remains predominately in an open, undeveloped state, two radio tower installations accessible by motorized vehicle occupy a small footprint on the southern portion of the site. Under the terms of our agreement with the present owners of the parcel, the radio towers will remain in place until the end of their existing lease (12 years, plus option to extend for additional 15 years) at which time they will be removed. The location and nature of the radio tower operation on the land does not need to postpone natural resource restoration of the site as the owners have indicated a willingness to work with the NBHTC, CBB and FALPT to accommodate both restoration activities and maintenance of their lease.

Site Goals & Objectives

- Prevent the commercial, residential or industrial development of the Marsh Island South property.
- Secure the opportunity to restore natural resources on the entire 22 acre Marsh Island –
 one of the largest potential restoration sites in New Bedford Harbor.
- Expand passive recreation opportunities and access to the New Bedford Harbor environmental for use by the general public.

Land Protection Method

Under the terms of the Marsh Island South property agreement, CBB will acquire the 7.68 acre site in fee simple and open the property to the public for passive recreational use. The parcel will likely be transferred to FALPT and further protected through the recording of a permanent CR to be held by CBB. This will establish the same ownership and protection regime that presently exists on the northern 2/3 of the island.

CBB's Land Protection Staff will oversee the completion of all due diligence for the property's acquisition including completion of a title examination, fair market real estate appraisal, environmental site assessment, survey and conservation restriction drafting to preserve the property in perpetuity. All of this work will be done in accordance with NBHTC requirements and coordinated with Council staff.

Restoration Planning & Property Stewardship

As noted above, the acquisition of the 7.68 acre Marsh Island South property will open up the full restoration potential of the peninsula. Included in this proposal is a \$50,000 request to continue the restoration planning already begun by the NBHTC for this site, allowing the project to move beyond feasibility study to design and consolidating the scope of planning to include the entire peninsula. We would expect that NBHTC staff would continue to drive the restoration planning process and we look forward to working with them.

Property management and stewardship will begin on the Marsh Island property upon acquisition and CR recording. The high visibility of the site from the Harbor and Interstate 195 coupled with decades of property neglect makes Marsh Island a greater management challenge than the other properties outlined in this proposal. Our goal will be to provide as broad a level of public access as possible while preventing misuse of the property.

Stewardship activities will include sign installation identifying the land as publicly-accessible open space funded by the NBHTC. Removal of trash, monitoring the impacts of public use and coordination of that use with restoration will be ongoing. All of these stewardship activities represent significant responsibilities for the FALPT and CBB in perpetuity.

Fairhaven CR#2

GRANT OF CONSERVATION RESTRICTION

PRESERVATION TRUST, with an address of P.O. Box 491, Fairhaven, MA 02719, (along with its heirs, devisees, successors and assigns) (hereinafter "Grantor") hereby grants with quitclaim covenants to THE COALITION FOR BUZZARDS BAY, with an address of 620 Belleville Avenue, New Bedford MA 02745 (together hereinafter "Grantee"), in perpetuity and exclusively for conservation purposes, as defined below, a conservation restriction, within the meaning of and with the benefit of Sections 31, 32 and 33 of Chapter 184 of the General Laws of Massachusetts, on and to land in Fairhaven, Bristol County, Massachusetts, containing approximately 14.25 acres more or less, described as Fairhaven Assessor's Map 17 as Lot 129, a reduced copy of which is attached hereto and incorporated herein as Exhibit A (hereinafter the "Premises"). For Grantor's title see a deed recorded in the Bristol County (Southern District) of Deeds at Book 5894 Page 220.

I. Purpose

The Grantors intend that this Conservation Restriction will assure that the Restricted Premises will be retained forever in its predominately natural and open space condition. This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purposes of this Conservation Restriction are to meet the plan to restore New Bedford Harbor as determined by the New Bedford Harbor Trustee Council as follows:

- 1) to further the protection of coastal and marine resources
- to provide a location for restoration of salt marsh, tidal or non-tidal wetlands, and a maritime plant community;
- for wildlife conservation and native habitat protection;
- 4) to allow public access, shoreline access and enjoyment of coastal and marine resources, wildlife and open space as specifically provided for herein.

The consideration for the acquisition of this property was funded by the Federal and State Trustees for Natural Resources from the proceeds of a court-approved settlement concerning an injury to natural resources due to the release of hazardous substances and materials into the New Bedford Harbor Environment and surrounding environs under the federal Comprehensive Environmental Response, Compensation and liability Act (CERCLA), 42 USC 9601, et seq. and Chapter 21E of the General Laws of Massachusetts (United States, et al., v. AVX Corporation, et al., Civil Action No. 83-3882-Y (D. Mass) The Premises is in no way the subject of that settlement; however, through a submitted grant proposal, the Trustees identified the natural resource values of the Premises and funded this acquisition to further the restoration, replacement or acquisition of the equivalent of the natural resources, and the associated services provided, that were injured as a result of the releases that were the subject of the referenced settlement (although not incorporated herein, see 64 FR 44505-9 for more information concerning the settlement, restoration activities and grant proposals, and the Trustees). The funding disbursement was submitted by the Trustees to and approved by the United States District Court for the District of Massachusetts. To preserve the land in perpetuity, the Trustees require that the owner transfer a Conservation Restriction to a qualified conservation entity. In accepting this Conservation Restriction, therefore, the Grantee

expressly acknowledges that Grantee holds the Conservation Restriction in perpetuity consistent with the intent of the motion approved by the Court.

II. Prohibited Acts and Uses, and Exceptions Thereto.

- A. <u>Prohibited Acts and Uses.</u> Except as provided for in Section II B, the Premises will at all times be held, used, and conveyed subject to the following restrictions, and Grantor shall not perform or permit the following acts or uses on the Premises, as the following acts and uses are prohibited on the Premises:
- (1) Constructing or placing any residential dwelling, building, tennis court, landing strip, mobile home, swimming pool, fence, paved parking areas, sign billboard or other advertising display, utility pole or tower, conduit, line, fence, barrier, wall, septic system, or any other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposits, except as in section B (3);
- (3) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, hazardous substances, wastes or materials, oil, or any other substance or material whatsoever, including but not limited to the installation of underground storage tanks;
- (4) Activities detrimental to drainage, flood control, water conservation, erosion control, or soil conservation;
- (5) The use of automobiles, trucks, motorcycles, motorized trail bikes, snowmobiles, or any other motorized vehicles;
- (6) Removal or destruction of trees, shrubs, or any other vegetation thereon, except as in section B (2):
 - (7) Any commercial, industrial, or institutional use;
- (8) The storage or application of pesticides, herbicides, insecticides, fungicides, or other chemicals on the Premises;
- (9) Any other uses of or activities on the Premises which would be inconsistent with the intent of the Trustees Council, the purposes of this Conservation Restriction or detrimental to the conservation interests which are the subject of this Conservation Restriction;
- (10) Conveyance of a part or portion of the Premises alone (as compared to conveyance of the Premises in its entirety which shall be permitted), or division or subdivision of the Premises,

without the prior written consent of the Grantee;

- (11) Use or inclusion of the Premises or any portion thereof as part of a lot or area of property for the purposes of satisfying or determining building densities, septic system densities, ground coverage, zoning (including variances therefrom) or other development or future mitigation requirements;
- (12) The installation and maintenance of groundwater extraction wells and associated equipment and pipelines and similar equipment for use in extracting groundwater, collecting surface water, and/or transporting said water for sale or use off the Premises for public or private use;
- (13) Planting, release, cultivation, maintenance, or other activity that would result in the intentional introduction, intentional establishment, and/or intentional enhancement of plant, animal, insect, or other species that are not native to the Commonwealth of Massachusetts;
 - (14) Tillage, grazing or sheltering of livestock or animals;
- (15) Any other use or activity which would materially impair the significant conservation interests of the Premises unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction.
- B. <u>Permitted Acts and Uses.</u> The following acts and uses otherwise prohibited in Section II (A) are permitted on the Premises but only if such acts and uses do not materially impair the purposes of this Conservation Restriction (except for the public access uses in Section III, which shall be permitted in accordance with their terms in any case):
- (1) Non-commercial recreational and educational use of the Premises (except for *de minimis* commercial use which is permitted by Grantor) for activities including but not limited to hiking, canoeing, snowshoeing, cross-country skiing, fishing, hunting, hiking, and wildlife observation. Such activities shall also include the right to construct, operate and maintain unpaved trails and footpaths, unpaved parking areas, and access facilities for recreational boating, and appurtenant necessary structures, provided that the construction for any such facility or structure under this sentence is approved by the Grantee.
- (2) Removal and replacement of soils, sand, gravel and vegetation as needed to improve, restore and maintain coastal wildlife habitat, water quality and human use of the property and temporary use of same for other properties in the surrounding New Bedford Harbor. Work should be guided by a natural resource restoration management plan approved by the grantee.
- (3) Removal of gravel, sand, soil and rocks from sites on the Premises for use on the Premises for activities and purposes expressly authorized herein, such as improvements to existing trails and parking areas, provided Grantor uses adequate erosion control measures and restores to a

natural condition all areas from which said gravel, sand, soil and rocks are removed to the satisfaction of the Grantee. The restoration of the gravel, sand, soil and rock area to its natural condition shall include but not necessarily be limited to the grading of cut banks to a natural angle of repose, the respreading of topsoil over the disturbed area, the stabilization of said area against erosion, and the revegetation of the disturbed area with native plant species. Any topsoil removed in said activities shall be stockpiled to be used in restoration of the removal site. No gravel, sand, soil, rocks or topsoil shall be removed from the Premises, unless the retention of excess will prohibit return of the land to the original contours. In the event of excess fill, the removal will be guided by the natural resource restoration plan.

- (4) The erection and maintenance of signs identifying ownership of the Premises; its status as a conservation reservation; the restrictions on the use of the Premises; the identity or location of trails, areas of interest, history, natural features or other characteristics of the Premises; for educating the public about New Bedford Harbor, its coastal resources or restoration; and for providing other like information.
- (5) Use of motorized vehicles for conducting any of the uses and activities permitted by Section III hereunder, as necessary by the Grantor in responding to emergencies, and as necessary by the Grantee, police, firemen, and other governmental agents in responding to emergencies or otherwise carrying out their lawful duties. In the event that an unpaved parking lot is constructed for visitors use, motor access will be allowed, but shall be monitored by the Grantor to be sure impacts will not affect the purposes of this restriction.
- (6) The sale, lease or mortgage of the Premises, provided that notwithstanding any such sale, lease, or mortgage, the Premises shall remain subject to the terms of this Conservation Restriction.
- (7) The control, management, and eradication of animal or plant species not native to the Commonwealth of Massachusetts under a Non-Native, Noxious or Nuisance Species Control Plan approved by the Grantee.
- (8) <u>Archaeological investigations</u>. Conducting archaeological investigations and activities, including without limitation, surveys, excavation and artifact retrieval, under the direction of a qualified organization or person, following submission of an archaeological field investigation plan and its approval by State Archaeologist of the Massachusetts Historical Commission, and in accordance with Massachusetts Regulations 950 CMR 70.00.
- (9) The maintenance and use of existing ways, trails, fences, bridges, gates and stone walls on the premises, substantially in their present condition, as well as the creation of same, so long as the creation, construction, maintenance or use is not significantly detrimental to conservation of coastal and marine resources, water quality, soil conservation, wildlife conservation, or public access.
 - (10) Subject to the approval of the Grantee in Grantor's sole discretion, development and

implementation (either on its own or jointly with Grantee) of a management plan for the Premises consistent with the Purpose of this Conservation Restriction referenced in Section I. Said management plan may allow the Grantor to undertake all management responsibilities for the Premises, including managing public access, and the Grantee may provide an express approval and authorize associated procedures therein for allowable activities, in furtherance of the Purpose of this Conservation Restriction and subject to the terms of the Conservation Restriction. Grantee's written approval of the plan may substitute for any notice and approval requirements under Section VII.

The exercise of any permitted activity or use by the Grantor under this Section II shall be in compliance with the then-current Zoning Bylaw applicable to the Premises, the Wetlands Protection Act (General Laws Chapter 131, Section 40), and all other applicable federal, state, and local environmental protection and other laws and regulations, and the Grantee agrees not to seek a variance therefrom for any purpose without written consent of the Grantee. The inclusion of any permitted activity or use in this Section II requiring a permit from a public agency does not imply that the Grantee takes any position on whether such permit should be issued. Any activity or use not permitted herein is prohibited without the express written consent (either in accordance with Section VII or under an approved management plan pursuant to Section II (B)(10)) of the Grantee stating that such activity or use is not inconsistent with the purposes of this Conservation Restriction.

III. Access and the General Public.

The Grantee through its duly designated officers, directors, employees, representatives, and agents shall have the right to enter the Premises at reasonable times and in a reasonable manner, including access by foot and/or by motorized vehicle, for the purpose of inspecting the Premises, determining compliance with the terms of this Conservation Restriction, and preventing, abating or remedying any violations thereof.

The Grantee shall also have the right, at its sole expense and with the prior written consent of the Grantor, to access the Premises and to perform acts to preserve, conserve, research, study, and promote the natural habitat of wildlife, fish and plants located on the Premises or on nearby properties.

The Grantee shall also have the right to access the Premises for locating, collecting samples, and otherwise studying and documenting any rare species, vernal pools, and natural communities which exist on the Premises; conducting biological surveys; and monitoring the natural communities, habitats and species thereon, provided that no such activities by the Grantee may unreasonably interfere with the use of the Premises by the Grantor in accordance with the terms of this Conservation Restriction.

The Grantee and the general public shall have the right to enter the Premises at reasonable times and in a reasonable manner, for passive recreation such as hiking, boating, birdwatching, etc, provided that such activities are consistent with the purposes of this Conservation Restriction.

IV. Legal Remedies.

Legal and Injunctive Relief.

The rights herein granted include the right of the Grantee to take any reasonable actions with respect to the Premises as may be necessary or appropriate to remedy, abate or otherwise enforce any violations hereof, including the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Premises to its condition prior to the violation complained of (it being agreed that the Grantee may have no adequate remedy at law), which rights shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee.

B. Reimbursement of Costs of Enforcement.

In any action by the Grantee to enforce the terms of this Conservation Restriction, if the grantee obtains judgment from a Court of law ruling that the Grantor has violated any of the terms of this Conservation Restriction, Grantor shall reimburse the grantee for all reasonable costs and expenses incurred in connection with obtaining and enforcing such judgment, including reasonable counsel fees and reasonable costs incurred in remedying or abating the violation.

C. Grantee Disclaimer of Liability.

By its acceptance of this Conservation Restriction, Grantee does not undertake any liability or obligation relating to the condition or permitted uses of the Premises.

D. Non-Waiver.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this Conservation Restriction shall not be deemed or construed to be a waiver.

E. Acts Beyond Grantor's Control.

Nothing contained in this Conservation Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Premises resulting from causes beyond Grantor's control, including fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes.

V. Subsequent Transfers.

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in

any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Premises, including without limitation, a leasehold interest. The Grantor further agrees to give written notice to the Grantee of the proposed transfer of any interest at least thirty (30) days prior to the date of such transfer. Failure of the Grantor to do so shall not impair the validity of this Conservation Restriction nor limit its enforceability in any way. Should either the Grantee, their successors or assigns, come to own all or a portion of the fee interest subject to this Conservation Restriction, (i) the doctrine of merger shall not apply to or extinguish the Conservation Restriction, and (ii) the owner of the fee interest shall be bound by the obligations, easements and restrictions imposed upon the Premises by this Conservation Restriction.

VI. Representations of the Grantee

The Grantee represents that it is a qualified, 501 (C)(3) non-profit organization incorporated as a and operated for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and for other charitable, scientific and educational purposes, and that it is an eligible holder under MGL ch 184, s 31, has both the necessary funds and commitment to hold this Conservation Restriction for conservation purposes in perpetuity and to enforce its terms.

VII. Required Notification, Consent & Approvals

The Grantor shall notify the Grantee in writing at least thirty (30) days prior to undertaking any act or use for which Grantee's approval is required or any act or use not otherwise addressed in this Conservation Restriction which Grantor has a good faith reason to believe may materially impair the conservation interests associated with and protected by this Conservation Restriction (and which has not been allowed pursuant to an approved management plan under Section II (B)(10). Whenever the Grantor or the Grantee's consent or approval is required under the terms of this Conservation Restriction for any matter or action and the time in which consent or approval is to be given is not otherwise addressed in this Conservation Restriction, the Grantee shall grant or withhold such consent or approval in writing within thirty (30) days of postmark of mailing the written request therefor, and the Grantor shall not undertake the activity in question until the expiration of said thirty (30) day period. Any such requested consent or approval shall not be unreasonably withheld so long as the granting of said consent or approval is consistent with the terms and purposes of this Conservation Restriction. Grantee's failure to act in writing within the stated thirty (30) day time period shall constitute consent or approval (Grantee's action in writing shall be deemed to have occurred at the earlier of (i) Grantee's placing notice in the U.S. mail or (ii) Grantor's actual receipt of notice through an alternative means (e.g. tele-fax). Any written notice required hereunder shall be sent by certified mail, return receipt requested, postage prepaid, to the following addresses:

Grantee: Mark Rasmussen, Executive Director

The Coalition for Buzzards Bay

620 Belleville Avenue, New Bedford, MA 02745 Tel: (508) 999-6363 Fax: (508) 984-7913

VIII. Binding Effect

The burdens of this Conservation Restriction shall be deemed to run with the Premises in perpetuity and in gross and shall be binding upon and enforceable against the Grantor and all future owners of any interest in the Premises. The Grantee is authorized to record and file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction, and the Grantor hereby appoints the Grantee as Grantor's attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

IX. Costs and Liabilities

Except for any costs associated with any activities of the Grantee on the Premises, the Grantor retains all responsibilities and shall bear all costs of any kind related to the ownership, operation, upkeep, and maintenance of the Premises, including the payment of all taxes and assessments and conformance with all applicable federal, state, and local laws and regulations.

X. Amendments

This Conservation Restriction may be amended by the Grantor and the Grantee, or their successors in interest, only insofar as the amendment is not intended to and/or does not have a material adverse effect on the conservation purposes of this Conservation Restriction. The grantee or its successors shall execute a written confirmation concluding that the amendment meets this criterion and explaining in detail the reasons for this conclusion. Any amendment shall be in writing, signed under seal, and recorded at the appropriate registry of deeds, after any administrative approvals have been obtained, along with the written confirmation of the appropriateness of said amendment.

XI. Proceeds from Extinguishment; Eminent Domain

Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise for purposes of this Paragraph XI to a legal interest in the Grantee for purposes of enforcing the terms of this Conservation Restriction but does not vest any beneficial interest or property right in the Grantee. If any occurrence gives rise to an extinguishments or other release of the Conservation Restriction under applicable law, the Grantor and Grantee shall be reimbursed from the proceeds, once recovered, for their respective share of reasonable legal or other expenses, if any, associated with the recovery of said proceeds. The remaining proceeds, once recovered, shall be returned to the Fairhaven-Acushnet Land Preservation Trust, to be used for land protection or restoration within the Acushnet River Watershed, as described in the Purpose paragraph of this restriction.

Whenever all or part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting

from such action. All related expenses incurred by the Grantor and Grantee under this paragraph shall be first paid out of the proceeds, and the remaining shall be distributed to the Grantor to be used for land protection or restoration within the Acushnet River Watershed, as described in the Purpose paragraph of this restriction.

XII. Duration and Assignability.

The burdens of this Conservation Restriction shall run with the Premises and shall be enforceable against Grantor and Grantee in perpetuity. Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The benefits of this Conservation Restriction shall be in gross and shall not be assignable by Grantee, except in the following instances from time to time: (i) as a condition of any assignment, Grantee requires that the purpose of this Conservation Restriction continue to be carried out, and (ii) the assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations there under, and under Section 32 of Chapter 184 of the General Laws as an eligible donee to receive this Conservation Restriction directly. Grantor and Grantee intend that the restrictions arising hereunder shall take effect when all requisite signatures pursuant to Section 32 of Chapter 184 of the General Laws have been obtained and this document has been recorded in the Bristol County Registry of Deeds.

XIII. Estoppel Certificates.

Upon request by Grantor, Grantee shall, within forty-five (45) days of receipt of grantee's request, execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction as may be requested by Grantor.

XIV. Miscellaneous.

- A. <u>Controlling Law</u>. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- **B.** <u>Liberal Construction</u>. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purpose of Mass. Gen. Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. <u>Severability</u>. If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

- D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations. understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.
- E. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- F. Pre-existing Rights of the Public. The grant and acceptance of this Conservation Restriction pursuant to section 32 of Chapter 184 of the General Laws is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

Executed under seal this 1st day of August, 2003.

Fairhaven-Acushnet Land Preservation Trust

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

Then personally appeared the above named Laurell Farinon and acknowledged the foregoing to be her free act and deed, before me,

Notary Public Verolliea Latreniere

My Commission Expires: Opil 16, 2016

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this 1st day of Argust, 2003, by

The Coalition for Buzzards Bay

By: Male Parmush

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss

August 1, 2003

Then personally appeared the above-named Mark Rasmussen, to me known to be the Executive Director of The Coalition for Buzzards Bay, and acknowledged the foregoing instrument to be the free act and deed of Mark Rasmussen, before me

Notary Public

My Commission Expires:

Laurell J. Farinon
NOTARY PUBLIC
Expires January 22, 2010

APPROVAL OF SELECTMEN

We, the undersigned, being a majority of the Selectmen of the Town of Fairhaven, Massachusetts, hereby certify that at a meeting duly held on Society 22, 2003, 2003 the Selectmen voted to approve the foregoing Conservation Restriction to The Coalition for Buzzards Bay pursuant to M.G.L. Chapter 184, Section 32.

Selectmen

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to The Coalition for Buzzards Bay has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32.

Date: 1/2 24 , 2003

Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared the above-named

_ and acknowledged the

foregoing instrument to be her free act and deed, before me.

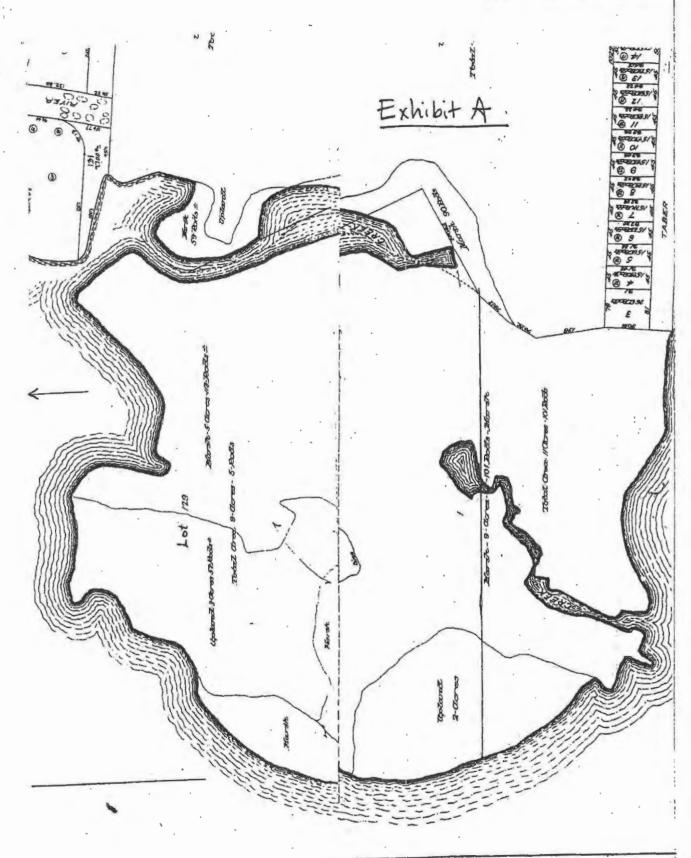
Notary Public

My commission expires:

NICOLE SICARD

Notary Public

My Commission Expires December 31, 2004

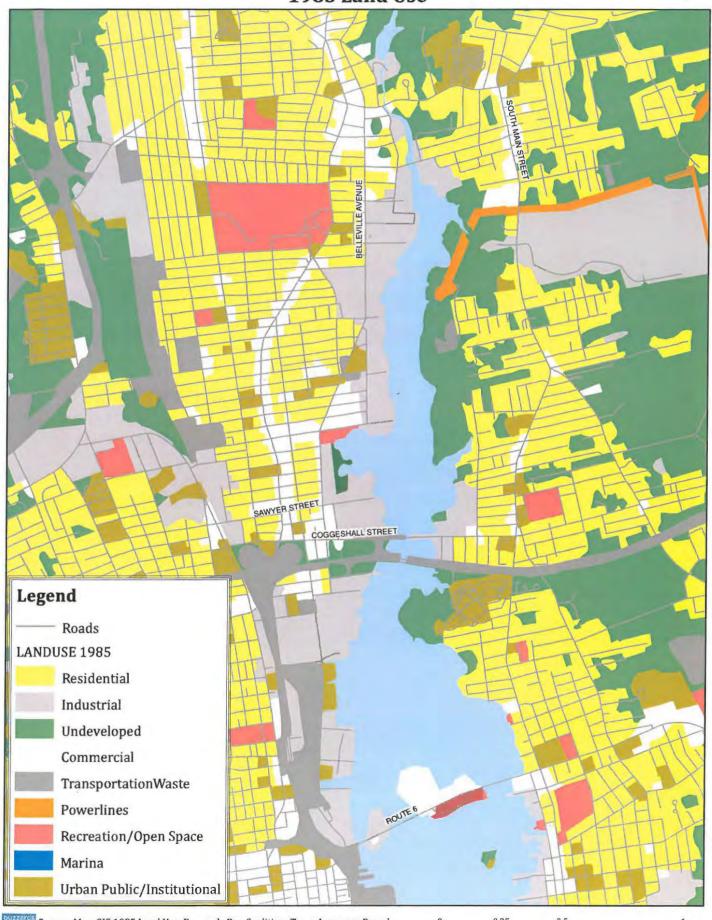


Said premises contain 14.25 acres more or less and are shown as "Plat 17 Lot 129" on a plan entitled "Plan of Land in Fairhaven, Massachusetts prepared for Dover Broadcasting, Inc., by Seekonk Engineering, Inc., Scale 1" = 100', March 20, 1990 recorded in said Registry of Deeds in Plan Book 125 Page 75.

Fairhaven Assessor's Map 17

New Bedford Harbor 1985 Land Use

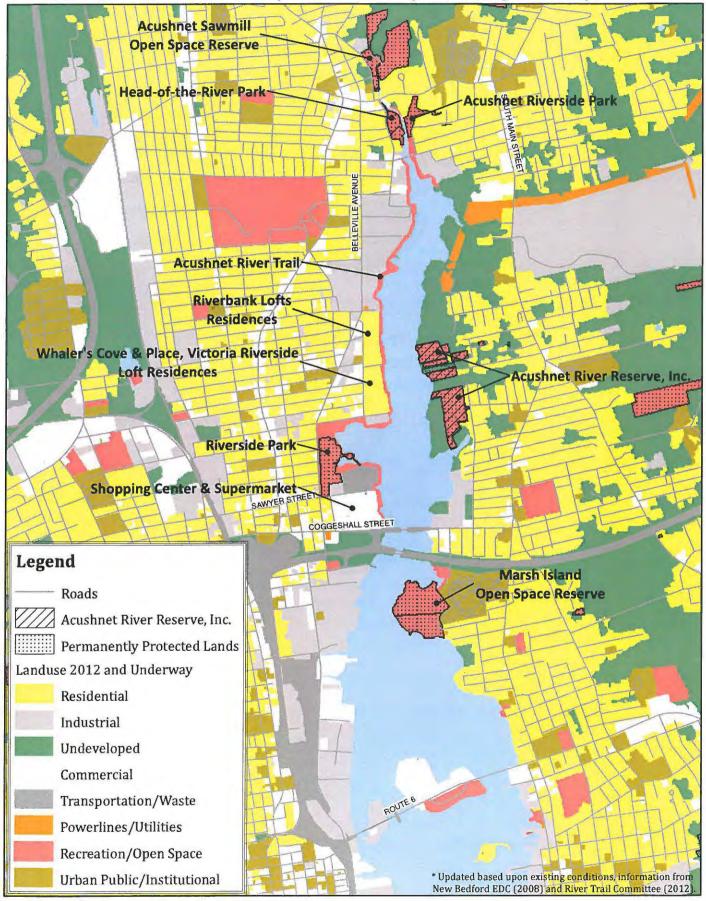


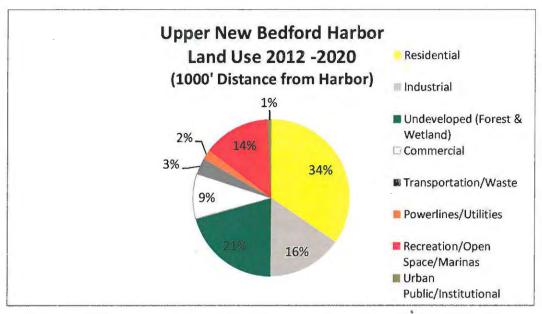


New Bedford Harbor Exhibit F



2012 Land Use Plus Projects Underway for Completion by 2020





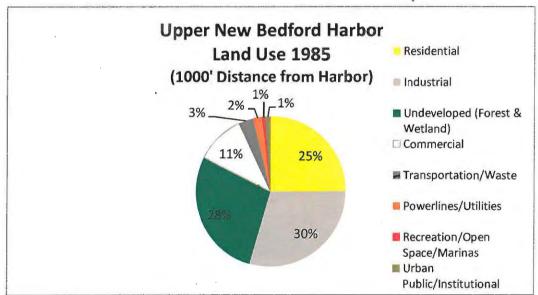


Exhibit G

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Funding allows New Bedford to advance riverwalk project



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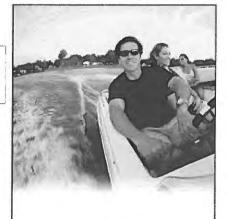
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By Brian Boyd bbovd@s-t.com June 27, 2011 12:00 AM

NEW BEDFORD - With nearly \$3 million in funding lined up, city officials can move forward with their vision to transform the upper Acushnet River shore with a scenic and accessible riverwalk

However, they still have many details to work out before they take their plan for a 1.6-mile riverwalk and make it a reality. The project requires further planning and permitting, and it could be a few years before residents can stroll along the completed walkway.

Even with the challenges, though, officials are excited about the opportunity to reconnect North End neighborhoods - and the growing residential and commercial development in the area near the river - with the water.

"It takes advantage of one of our most tremendous resources, which

is the beauty of the Acushnet River," Mayor Scott W. Lang said. "It's really something that enhances our city and takes advantage of a resource we were precluded from using for the past 100 years."

New Bedford Harbor Trustee Council announced Wednesday it will be providing \$6.6 million for local environmental restoration projects, including \$2.9 million for the riverwalk project. The council distributes money from a settlement reached with electrical parts manufacturers over past contamination of the harbor.

The walkway would start around the Riverside Landing development, where Market Basket is located, and run along the shore. It would go past Riverside Park and the mill buildings and end south of Tarkiln Hill Road.

"We are going to be incredibly aggressive in terms of getting the project moving," said Matthew Morrissey, executive director of the New Bedford Economic Development Council.

While the timeline is uncertain, the restoration project could take three years. First, the city needs to enter an agreement with the Harbor Trustee Council as the last step of securing the funding. Then the city has to work with property owners to get easements on their land, said Scott Alfonse, the city's director of environmental

It also has to finish the design process and seek permits from the New Bedford Conservation Commission and the state Department of Environmental Protection.

All along, the city will coordinate with the U.S. Environmental Protection Agency to avoid conflicts with the federal cleanup of the harbor. Alfonse said

In order to build the riverwalk, the city will have to do an environmental assessment to see if remediation is needed on the river's edge, he said.

Here's a loan that will keep you above water!



The riverwalk area would be 25 feet wide, from the high water mark to the interior. The walkway itself would be less than 10 feet wide, with the river and a buffer of native grass on one side and native shrubs on the other side, according to Alfonse. "We don't want to significantly alter the shoreline," he said.

The walkway would be made of pea stone or other pervious surfaces to minimize storm runoff into the river.

Officials envision a bustling river and shoreline, with boats sailing the river and families taking a stroll on the riverwalk. They anticipate that the riverwalk will attract new residents and tourists, giving the city's economy a

"This is really nothing short of a transformation for a whole section of the city," Morrissey said.

HOME





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Exhibit H





Posted on May 29, 2012



Source: The Boston Globe

By Peter Schworm

NEW BEDFORD – On the count of three, the rowers hoisted the eight-man shell high above their heads and rumbled down the metal ramp to the dock. A teammate bundled the oars like kindling and ran to catch up.

The crew team lowered the boat gingerly into the water and they were on their way, skimming over the shimmering water past a line of weathered scallopers.

People lining the shore Saturday looked on in amazement.

New Bedford Harbor, once among the nation's most polluted, and the Acushnet River that flows into it, were hosting a high school crew race, a graceful symbol of the water's revival and this port city's renewed sense of promise.

"This is what we've been striving for," said Paul L'heureux, who has worked for decades to clean up the harbor, a former Superfund site, as a civil engineer for the Army Corps of Engineers.

From a bench in the sun, L'heureux took in the scene with a clear sense of accomplishment, even as he cautioned that the harbor still has a ways to go.

"This was the most highly polluted waterway in the United States, if not the most polluted site," he said. "But it's good to see it coming back to life."

Launched two years ago amid improved water quality, the crew program has marked a series of milestones this spring. For the first time, high school league teams from outside the region traveled to New Bedford to compete Saturday, boosting the city's hopes that the restored waterway could become a regular venue for competition.

On Sunday, it will host a championship race among five area colleges.

And this summer, New Bedford Community Rowing, a city-sponsored program that organizes the events, will hold three weeklong rowing programs for city teenagers.

"By the end of summer, we hope to expose hundreds of New Bedford kids to rowing," said Anne Eisenmenger, the group's director.

More broadly, the program seeks to transform the public perception of the harbor, long seen in a gritty, industrial light, to that of a recreational destination.

"Certainly, supporting the fishing industry is priority number one," said Matthew Morrissey, executive director of the New Bedford Economic Development Council. "But this river is just a natural course."

The city has been marketing itself as a layover for boaters and is targeting the shoreline of the Acushnet for a major overhaul. Plans for a river walk are underway, with construction to begin this summer, and old mill buildings are slated for redevelopment.

City officials are also hoping the river, which lends itself perfectly to crew races, will become a prime draw for big races and help spur tourism.

"I think the growth will be geometric," Morrissey said.

As the starting times drew near, racers rigged their boats and cars poured into the marina parking lot. Spectators gathered along the banks of the nation's largest fishing port – as judged by value of catch – to watch a sport considered thoroughly Ivy League.

As he watched the shells on the water, Morrissey savored the moment.

"Eights all over the harbor," he said with admiration. "In an old industrial port."

Edward Anthes-Washburn, director of the city's harbor development commission, said the upper Acushnet was one of the nation's worst Superfund sites in the 1980s, a casualty of years of industrial contamination. Years of dredging has brought the river back to life, although the recovery is far from complete.

"All of the really bad areas have been taken care of," he said. "But the scope of the contamination is pretty widespread."

The water itself is clean, but the sediment remains polluted, officials said. Fishing in the harbor remains largely catch-and-release, L'heureux said.

"We still have a long way to go," he said.

But given the extent of the contamination, the water's recovery has been striking. He used to see sickly, ulcerated fish that could barely make their way through the water.

"Now you see the blues and stripers come up and they're breaking water," he said.

Dave Darmofal, harbor master in neighboring Fairhaven, said water quality has dramatically improved in just a matter of a few years.

"Visibility in the inner harbor can be 14 feet," he said. "A few years back, two would have been good. It's getting better and better every day."

As quality has improved, officials have begun to see the possibilities.

Volunteers in recent years have worked to encourage recreational boaters to lay over in New Bedford and enjoy the sights of an authentic fishing town.

"It's been a huge outreach effort and it's been very successful," she said. "Shell rowing just seemed like the next step."

Laurie Bullard, who chairs the rowing program's board, said the races mark a new day for the harbor, and a new vision for the city.

"We're still the number one fishing port in the country," she said. "But it's much more than that."

Looking out at the pleasure boats docked at the marina, she took an expansive view.

"There's lot of room to share," she said.

April 29, 2012

Source URL:

http://articles.boston.com/2012-04-29/metro/31449110 1 crew-program-waterway-acushnet-river

- New Bedford seeks a wind power niche
- Yachting magazine named New Bedford in top 50
- Major step cleared for New Bedford terminal

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Region 1 5 Post Office Square, Suite 100 Boston, MA 02109-3912

June 12, 2012

Mr. Mark Rasmussen President, Buzzard's Bay Coalition 114 Front Street New Bedford, MA 02740

Dear Mr. Rasmussen:

Thanks for your recent communication regarding the volumes of sediment remaining to be dredged in the Upper Harbor at New Bedford. Specifically, you requested that EPA provide figures for the mass of PCBs contained in this sediment.

EPA traditionally has not tracked sediment PCB mass with regard to the progress in removal of sediments at the New Bedford Harbor Site. The focus has been on volumes (cubic yards) of sediment removal required to meet cleanup levels, which is the basis of our work planning, budgeting, and accounting.

I have attached a table entitled "Upper Harbor Estimated Removal Volumes and Mass". It contains estimated volumes of sediment (in cubic yards) generated by Foster Wheeler, (the Corps of Engineers previous consultant) to require removal as of 2003 (Column 1). The table also includes the estimated volumes in the same sub-areas accounting for expected over-dredging volumes (column 3). Based on these volumes and an average PCB concentration, an estimated mass figure for PCBs in each sub-area of the upper harbor prior to dredging was generated in columns 2 and 4. These estimates are all based on data which existed prior to the start of annual dredging in 2004 in the Upper Harbor.

In the final column (column 5), a figure is given for the total volume actually removed from each of the subareas to date.

Summarizing, based on the pre-2004 data set, there were originally between 496,000 and 580,000 cubic yards to be dredged from the harbor; that was estimated to contain between 459,000 and 530,000 pounds of PCBs in the Management Units (MUs) listed. In accordance with column 5, EPA estimates that approximately 210,000 cubic yards of sediment has been dredged from these MUs. According to the ROD, and the 4 ESDs for the project, some of the remaining material will be dredged, while the remainder will be placed in Confined Disposal Facilities (CDFs) along the shoreline of the Upper Harbor. As a result of this and other complications, it would be difficult at this point to accurately project the quantity of PCBs remaining to be remediated in these areas of the Harbor.

Let me know if you have any further questions. I can be reached at 617-918-1325 or at lederer.dave@epa.gov.

Sincerely,

David O. Lederer

Remedial Project Manager

US EPA

Cc: David Peterson, OES

Upper Harbor Estimated Removal Volumes and Mass

		2	3	4	5
Management	Theoretical	Theoretical	Total Volume with	Total Mass with	Total Volume Removed
Unit	Volume (CY)	Mass (lbs)	Overdredge (CY)	Overdredge (lbs)	to Date (CY)
MU-102	36,574	21,911	44,299	26,539	38,021
MU-1	25,950	106,106	29,925	122,359	44,806
MU-2	26,837	66,370	29,842	73,802	31,309
MU-103	9,173	5,829	11,185	7,108	0
MU-3	19,005	40,683	21,642	46,328	22,547
MU-4	12,850	23,914	14,994	27,904	15,467
MU-5	7,329	14,460	8,973	17,704	0
MU-6	19,428	12,909	21,791	14,479	0
MU-7	22,916	57,342	26,453	66,193	0
MU-8	8,214	8,376	9,146	9,326	0
MU-9	13,187	4,789	15,527	5,639	0
MU-10	31,651	17,807	34,859	19,612	0
MU-11	15,331	9,122	17,962	10,687	17,768
MU-12	13,208	3,217	15,700	3,824	0
MU-13	14,106	2,684	16,297	3,101	20,639
MU-14	16,706	4,238	18,954	4,808	0
MU-15	17,296	3,792	19,635	4,305	0
MU-16	19,700	6,409	22,462	7,308	0
MU-17	16,333	6,277	18,948	7,282	0
MU-18	15,027	4,872	17,376	5,634	0
MU-19	12,650	2,335	15,624	2,884	1,244
MU-20	11,860	2,841	14,505	3,475	0
MU-21	14,700	3,644	16,953	4,202	0
MU-22	7,911	2,070	10,001	2,617	0
MU-23	16,306	2,627	18,983	3,058	14,923
MU-24	17,869	2,336	20,475	2,677	3,731
MU-104	9,158	1,023	11,462	1,280	0
MU-105	7,108	628	8,912	787	0
VU-1	12,797	6,701	15,805	8,276	0
VU-2	7,628	9,839	9,143	11,793	0
VU-3	11,146	2,700	14,312	3,467	0
VU-4	6,845	1,248	8,716	1,589	0
TOTAL	496,799	459,099	580,861	530,046	210,455

REFERENCES

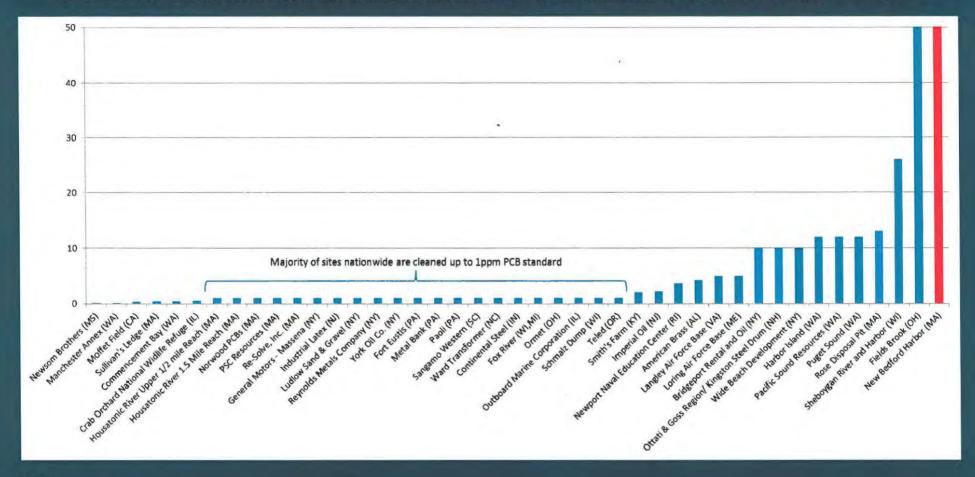
Volumes, Areas and Properties of Sediment by Management Units New Bedford Harbor Superfund Site, Revision 2: June 2003

Final Dredging Basis of Design/Design Analysis Report , October 2002, Rev1 App I

Exhibit J

National Comparison of PCB-Contaminated Aquatic Sediment Superfund Site Cleanup Levels

US EPA-Selected Cleanup Levels in ppm representing the Maximum Level of PCB Contamination Left Behind by EPA after "Cleanup"



Notes:

(1) For the sites above, EPA selected a cleanup level based on a target PCB concentration in sediments after removal action was taken. Depending on the site, these cleanup levels are referred to as a 'remedial action level', a 'cleanup standard', a 'sediment target level', a 'sediment quality criteria' or a 'cleanup goal'. The Hudson River (NY) and Onandaga Lake (NY) Superfund Sites also met our search criteria for this national comparison but were not included in this graph as EPA did not specify a 'cleanup value' for PCBs in sediment but rather selected, in the case of the Hudson, a "mass per unit area (MPA)" method of cleanup and at Onandaga, a "probable effect quotient" rather than selecting a concentration. Therefore, they are not readily comparable to the sediment target level used at the vast majority of sites across the country.

(2) Fields Brook, OH and New Bedford Harbor are dramatically different sites. New Bedford Harbor contains more than 900,000 cubic yards of sediment at PCB-contamination levels of up to 10,000ppm. The Fields Brook site in Ohio is 53,000 cubic yards with maximum PCB-contamination levels of 610 ppm. Also, Fields Brook is a relatively small site in active industrial use which bears little, if any, resemblance to the complexity of residential, recreational, commercial and industrial land uses surrounding New Bedford Harbor.



December 2011

US Army Corps of Engineers Engineer Research and Development Center

Assessment of Contaminant Loss and Sizing for Proposed Upper Harbor Confined Aquatic Disposal (CAD) Cell

New Bedford Harbor Superfund Site Massachusetts

Paul R. Schroeder, Susan E. Bailey, Earl Hayter, Carlos E. Ruiz and Thomas J. Fredette

Environmental Laboratory US Army Engineer Research and Development Center 3909 Halls Ferry Rd Vicksburg, MS 39180-6199

Prepared for U.S. Environmental Protection Agency, Region 1



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Preface

This report describes the modeling and assessment of the upper New Bedford Harbor CAD cell for sizing and contaminant loss, using composite sediment characteristics from testing reported in Assessment of Contaminant Loss and Sizing for Proposed Lower Harbor Confined Aquatic Disposal (CAD) Cell (Schroeder et al. 2010) for DMU composites 1, 2 and 3 from MUs 1 to 24. The design of the upper New Bedford Harbor CAD cell was based on the design presented by Apex and Jacobs (2006), but its footprint was reduced based on the ongoing annual dredging and upland disposal which has decreased the volume of dredged material and the predicted consolidation which will occur in the CAD cell. Two scenarios provided by EPA Region 1 were modeled: 5 years of mechanical dredging and placement by a small bottom dump split hull barge followed by installation of a 3-ft sand cap, and 10 years of mechanical dredging and placement by a small bottom dump split hull barge followed by installation of a 3-ft sand cap. In addition, two controls specified by EPA Region 1 to reduce the transport of suspended sediment during dredged material placement were examined: a silt curtain and a sheet pile wall enclosing 90 to 95 percent of the perimeter of the CAD cell. Consolidation modeling for sizing, dredged material placement, and contaminant fate and transport modeling for contaminant loss were performed by ERDC EL. Hydrodynamic modeling of the tidal exchange and mixing within the CAD cell was modeled using a 3D version of EFDC with a high resolution grid by ERDC CHL. The EPA Remedial Project Managers were Mr. Dave Dickerson and Ms. Elaine T. Stanley of EPA Region 1. The USACE project managers were Mr. Mark J. Anderson, Jr. and Mr. Peter Hugh of the New England District.

Dr. Paul R. Schroeder, Ms. Susan E. Bailey and Dr. Thomas J. Fredette of the Environmental Engineering Branch (EP-E), Environmental Processes and Engineering Division (EPED), EL; Dr. Carlos E. Ruiz of the Water Quality and Contaminant Modeling Branch (EP-W), EPED, EL; and Dr. Earl Hayter of the Coastal Processes Branch, Flood and Storm Protection Division, Coastal and Hydraulics Laboratory wrote this report.

This study was conducted under the direct supervision of Mr. W. Andy Martin, Chief of EP-E, and under the general supervision of Mr. Warren Lorentz, Chief of EPED, Dr. Beth Fleming, Director of EL, Dr. Jeffery P. Holland, Director of ERDC, and Col. Kevin J. Wilson, EN, Commander of ERDC.

Abstract

EPA Region 1 is evaluating the use of CAD cells as a sediment management alternative for PCB and copper contaminated sediments at the New Bedford Harbor Superfund Site (NBHSS). This report provides EPA with short- and long-term modeling results on estimated contaminant losses and physical sediment behavior during and after filling of a potential upper harbor CAD cell (UHCC) based on either a 5-year dredging schedule or a 10-year dredging schedule. This report also provides verification of CAD cell size for containment of the contaminated sediment and capping materials. The report also evaluates the use of either silt curtains or sheet pile walls surrounding the CAD cell to reduce transport of suspended sediments generated during the disposal process.

The sizing evaluation determined the surficial footprint of the CAD cell required to contain the sediment and capping material considering the side slope requirements, depth to bedrock, the potential for bulking during dredged material placement, and the potential spreading of the dredged material from its kinetic energy during its collapse in the CAD cell following placement. The contaminant loss evaluation included both short-term losses (prior to capping) and long-term losses (following capping). Short-term losses include displacement of CAD cell water contaminated by resuspension and stripping of dredged material during placement, consolidation of the dredged material, diffusion from the exposed dredged material, diffusion of contaminants to the upper water column from the contaminated CAD cell water, and mixing of the contaminated CAD cell water with the upper water column by turbulent diffusion and thermally induced overturning. Long-term losses include the diffusive flux of contaminants and the advective flux of contaminants from the expulsion of contaminated pore water from consolidation of the dredged material induced by the pressure load of the thick deposit of dredged material and capping material in the CAD cell, as well as entrainment of water in the dredged material during placement.

A 570 ft x 730 ft x 52 ft CAD cell is sufficiently large to contain 352,000 cubic yards of sediment and 38,000 cubic yards of capping materials plus the potential bulking during dredging and placement. About 2.4 ft, or 10%, bulking is expected, but this volume of bulking will be recovered (i.e., reduced to initial volume) along with another 4 to 5 ft within both the proposed five and ten years of placement operations by consolidation of the deeper CAD cell sediment. About 6 to 7 ft of additional consolidation is expected within the first forty years after capping, and as much as 9 ft in the long term beyond 40 years after capping as predicted using the U.S. Army Corps of Engineers (USACE) Primary Consolidation, Secondary Compression and Desiccation of Dredged Fill (PSDDF) model (a total of 15-16 ft post-capping).

Short-term contaminant losses to the water column above the CAD cell resulting from placement operations are predicted to be about 0.087% of the total PCB mass and 0.044% of the total copper mass placed in the CAD cell for the 5-year operations schedule, and about 0.139% of the total PCB mass and 0.062% of the total copper mass placed in the CAD cell for the 10-year

schedule, when nearly fully enclosed by a sheet pile wall. The PCB losses using a 10-year schedule are predicted to be 55% greater than using a 5-year schedule, while copper losses are predicted to 35% greater. When silt curtains are used as the enclosure instead of a sheet pile wall, the total PCB losses are predicted to be about 22% greater and the total copper losses are predicted to be about 66% greater. The difference in losses between the silt curtains and sheet pile walls are comparable to the difference in losses between a 5-year schedule and a 10-year schedule.

Resuspension and stripping of dredged material during placement will increase the dissolved contaminant concentrations in the CAD cell water to be approximately equal to the existing insitu sediment pore water contaminant concentrations. The losses were predicted using the USACE STFATE model (Short-Term FATE of dredged material placed in open water) to predict sediment resuspension, a contaminant partitioning spreadsheet model to compute dissolved contaminant concentrations, and the USACE RECOVERY model to predict losses by diffusion.

Capping with a 3-ft sand layer is sufficient to provide long-term isolation of the contaminants in the dredged sediment from the water column. After capping, the contaminants expelled from the dredged material by consolidation would be contained in the lower foot of the cap. Without consideration of burial (covered by sediment deposited over time), contaminant breakthrough of the cap at a concentration of 0.01% of the pore water contaminant concentration (e.g., 0.01% of 16 ppb PCB or 0.0016 ppb PCB) as predicted by the USACE RECOVERY model will not occur for total PCBs. However, the individual Aroclor PCB 1242 was predicted to reach breakthrough (0.00137 ppb) at 6700 years, but only for the 5-year placement scenario. Breakthrough of copper at 0.006 ppb will occur at approximately 820 years. With burial promoted by the dredged material settlement, the low-level transport of contaminants through the cap and burial material will take tens of thousands of years.

1 — Executive Summary

Objectives

This work is an evaluation of a proposed CAD cell in upper New Bedford Harbor (shown in Figure 1) using the same modeling approach performed by ERDC on a proposed CAD cell in Lower New Bedford Harbor (Schroeder et al. 2010). Sediments in the upper harbor are more contaminated than those in the lower harbor and water depths are shallower, necessitating additional evaluations for a potential upper harbor CAD cell (UHCC) shown in Figures 2, 3, and 4. The work (1) confirms the CAD cell size/capacity by consolidation modeling, (2) predicts short-term contaminant loss by open water placement/surge modeling, hydrodynamic modeling, and contaminant partitioning, (3) predicts potential losses between dredging seasons, (4) predicts long-term contaminant loss following capping, (5) predicts the time to achieve contaminant breakthrough, and (6) predicts the contaminant flux concentrations at breakthrough.

Containment includes not only storage of the deposited dredged material and capping materials, but also capture of the bulk of the stripped or suspended materials during placement and the dynamic spreading of the dredged material from the kinetic energy of the discharge during its collapse in the CAD cell. Contaminant losses during placement includes (1) the partitioning of contaminants to the water column from stripped or suspended dredged material during placement, (2) discharge of pore water from the settled dredged material by consolidation (considering the entrainment of water in the dredged material during placement), (3) diffusion of contaminants from the dredged material and through the cap, and (4) the exchange of water in the CAD cell with the overlying water column. Modeling scenarios evaluated both 10-year placement and 5-year placement schedules to evaluate a range of potential budget possibilities. Additionally, two containment options for controlling mixing and water exchange within the CAD cell were considered: sheet pile walls and silt curtains.

Modeling

The contaminant partitioning data were based on the partitioning findings for the 2009 ERDC sediment composites 1 through 3 reported in the Lower Harbor CAD Cell report (Schroeder et al. 2010). Likewise the consolidation data were based on the consolidation findings for the 2009 ERDC sediment composites 1 through 3 provided by Jacobs Engineering (2009) and analyzed in the Lower Harbor CAD Cell report (Schroeder et al. 2010).

Sizing and Filling

Several modeling tasks were conducted to analyze the CAD filling, sizing and contaminant losses. A cut and fill spreadsheet analysis was perform to determine the size of CAD cell needed to contain the proposed volume of dredged material and to estimate the lift thicknesses of the

annual fills for consolidation analysis. A 570' x 730' surface footprint was selected with a side slope of 1V:6H for the top 8 ft of depth and 1V:3H for the remaining 44 ft of depth below the existing sediment surface.

Consolidation

The consolidation of the dredged material was analyzed using the USACE PSDDF model. The PSDDF model results showed that the CAD cell size was appropriate to contain the proposed volume of dredged material, considering the entrainment of water in the dredged material, the volume of capping material, spreading of dredged material from the placement dynamics, suspended solids retention, and consolidation prior to capping. The consolidation results were analyzed to determine the predicted pore water expulsion rates for contaminant loss predictions both prior to and after capping.

The CAD sizing analysis showed that the upper harbor CAD cell would be filled with 51.2 ft of dredged material based on its in situ density. Analysis of potential water entrainment in the dredged material during both dredging and placement through the water column actually predicted no bulking; however, a conservative bulking factor of 10% was assumed. This would result in placement of 53.7 ft of dredged material and 3 ft of capping material, a total of 56.7 ft of material in our cell that is 52 ft deep. However, the PSDDF model predicted that 6.0 ft (5-year) or 7.4 ft (10-year) of pore water would be expelled from the placed dredged material prior to capping, two to three times as much water as predicted to be entrained during dredging and placement through the water column (mostly at depth from the first lift placed). Therefore, the depth of fill immediately after capping is 50.7 or 49.3 ft for the 5- and 10-year scenarios, providing a freeboard of 1.3 or 2.7 ft, respectively. After capping, an additional 3.9 or 2.8 ft of pore water is predicted to be expelled in the first 10 years, 5.6 or 4.5 ft of pore water in the first 20 years and 6.9 or 5.6 ft of pore water in the first 40 years. At 40 years, the dredged material is predicted to be nearly 70% consolidated. Up to 9 ft of additional consolidation is expected beyond 40 years (a total of 15-16 ft post-capping). Based on the PSDDF model results, much of the contaminant losses would be expected to occur during placement and prior to capping.

Placement

The open water placement of dredged material in the upper harbor CAD cell was modeled using the STFATE model to predict the entrainment of water in the deposited dredged material, the mass of dredged material suspended in the water column, the suspended solids concentration in the water column, the settling time, and the vertical and lateral distribution of suspended solids following a barge discharge of dredged material. STFATE model runs were conducted on 200-cubic yard barge discharges at the beginning and end of each dredging season to simulate the range of placement impacts for each dredging season and to estimate annual contaminant losses during placement. Suspended solids losses between the beginning and end runs were assumed to exhibit a linear response based on past experience with the model.

The STFATE model results show that about 2 to 6% of the fine-grained fraction of the dredged material remains in suspension about 3 to 4 hours after the barge discharge and disperses in the CAD cell water below the loaded draft depth of the barge, resulting in average total suspended solids (TSS) concentrations ranging from about 14 mg/L for the first season to 54 mg/L for the

fifth season for the 5-year dredging plan, or 13 mg/L to 38 mg/L for the 10-year plan. The upper 10 ft of the CAD cell water, which is potentially exchangeable with the overlying water column based on higher resolution hydrodynamic modeling of the CAD cell with silt curtains and its surrounding area, is predicted to have average TSS concentrations of about 5 mg/L until the end of the last dredging season when the TSS may be as high as 76 mg/L. In a shallow saline environment such as New Bedford Harbor and the CAD cell, the TSS concentration will typically decrease to 50 mg/L within a day and to 10 mg/L within a week (NOTE: see results of field plume surveys in Section 4).

Surge dynamics of disposal into the upper harbor CAD cell were evaluated in comparison to earlier modeling efforts for the lower harbor CAD cell. The discharge plume collapse dynamics were modeled for the lower harbor CAD cell (Schroeder et al. 2010) using the USACE SURGE model to examine whether the momentum of the discharged material was sufficient to cause the dredged material to run up the side slope and out of the CAD cell. All discharges were assumed to be within the area of the level bottom, a 326-ft square, and no closer than 160 ft horizontally from the lip of the CAD cell. The dynamics were examined for sediment composites 3, 4, and 5 across the range of water depths that would exist during their placement. In all cases, the discharged material was not predicted to run up the slope above a depth of about 11 ft below the lip or about 55 ft horizontally from the lip because the difference between the elevation of the bottom of the loaded discharge barge and the elevation of the lip of the CAD cell yields insufficient potential energy to overcome the frictional and gravitational losses. Since the depth of water at the upper harbor CAD cell is even shallower than at the site of the lower harbor CAD cell, the upper harbor CAD cell is also expected to be capable of confining the dredged material during placement.

Short-Term Partitioning and Contaminant Loss

The contaminants associated with the TSS will partition with the CAD cell water. It is unlikely that the partitioning reaches equilibrium before the particles interact with particles from subsequent discharges, flocculate, and settle. The kinetics of PCB desorption in a stagnant water column is sufficiently slow that it may take weeks to reach equilibrium; however, 10 to 20% of the PCB may desorb in the first day. The partitioning of contaminants to the CAD cell water over the large number of discharges in a dredging season is predicted to be sufficient to achieve a contaminant concentration in the CAD cell water approximately equal to the pore water concentration of the sediment or dredged material, regardless of the number of dredging seasons or the type of enclosure method employed.

Short-term losses include all of the losses from placement of dredged material in the CAD cell prior to and during capping of the cell. These losses result from a number of processes including entrainment of upper CAD cell water into the flow over the CAD cell, displacement of CAD cell water by the placement of dredged material, vertical turbulent diffusion, and thermal overturn.

Entrainment. Entrainment exchanges water from the flow over the CAD cell with a portion of the CAD cell contaminated by the stripped or suspended solids of the dredged material placement. The quantity of entrainment is a function of the enclosure method and its ability to control velocities. The total entrainment loss is a function of the water exchange rate, the solids

concentration in the water just below the lip of the CAD cell, the contaminant concentration associated with the solids in suspension, the duration of the placement season (placement rate), and the number of placement seasons. The solids concentration in suspension increases as the storage capacity is depleted; therefore the losses of solids increase from one placement season to the next, particularly in the last placement season.

High resolution hydrodynamic modeling of the CAD cell environ using the 3-D Environmental Fluid Dynamic Code (EFDC) model set up for NBHSS sediment transport modeling was performed to quantify the entrainment exchange rates and vertical turbulent diffusion. The hydrodynamic modeling yielded only low velocitics in the water column above the CAD cell, typically less than 0.1 fps. The tidally induced velocities are sufficiently great to exchange the water above the CAD cell, typically in six to twelve hours; however, the velocity is sufficiently low to limit any mixing below the lip of the CAD cell water, mostly in the top few feet below the lip. The differences in the hydrodynamics between enclosing the CAD cell with a silt curtain and with a sheet pile wall are predicted to be small because the CAD cell is located within a cove where the currents are predominantly tidally driven. However, under peak mixing conditions during the tidal cycle, the upward velocities in the CAD cell are sufficient to overcome the settling velocity of flocs in the top six feet of the CAD cell and entrain a fraction of the suspended solids into the overlying flow when a silt curtain is used, while this mixing is limited to the top three feet when a sheet pile wall is used. Additionally, the hydrodynamic modeling showed the potential to set up a slow vertical eddy in the CAD cell that could provide slow vertical turbulent diffusion to a depth of 10 feet below the lip of the CAD cell. Therefore, dissolved contaminants in the top ten feet of the CAD cell were subjected to turbulent dispersion and exchange with the water column above the lip of the CAD cell at the end of each dredging season in addition to the daily entrainment during the dredging season. The 0.1-fps current speed from the hydrodynamic modeling was somewhat greater than, but similar to, currents measured during 2009 CAD cell field monitoring inside a deployed silt curtain (Dragos 2009). On five separate monitoring events, currents inside the silt curtain were less than 0.07 fps while observed currents west and east of the CAD were up to 1.0 and 0.5 fps, respectively.

The annual losses due to entrainment by the flow over the CAD cell are given in Tables 7a and 7b for a CAD cell with a sheet pile enclosure, and in Tables 8a and 8b for a CAD cell with a silt curtain enclosure. The overall entrainment losses are summarized in Table 9. Entrainment losses are most sensitive to the enclosure method, but are also a weak function of the length of the placement schedule. PCB losses (Aroclors 1242, 1248 and 1254) for a sheet pile wall enclosure are predicted to be 5.0 kg and 6.6 kg, respectively, for 5- and 10-year schedules, while PCB losses for a silt curtain enclosure are predicted to be 14.0 kg and 18.7 kg, respectively. Copper losses for a sheet pile wall enclosure are predicted to be 28.8 kg and 31.9 kg, respectively, for 5- and 10-year schedules, while copper losses for a silt curtain enclosure are predicted to be 81.6 kg and 90.3 kg, respectively. Entrainment accounts for 5- and 10-year schedules about 12% of the PCB losses when a sheet pile wall is used for an enclosure and 28% of the PCB losses when a silt curtain is used. Analogously, entrainment losses account on average about 36% of the copper losses when a sheet pile wall is used for an enclosure and 61% of the copper losses when a silt curtain is used. Entrainment causes a larger percent of the losses of copper because the bulk sediment copper concentration increases throughout the placement project while the bulk sediment PCB concentration decreases throughout the placement project.

Displacement. The dissolved contaminants and particulate-associated contaminants in the upper portion of the CAD cell will be lost as the CAD cell water is displaced by subsequent barge discharges. The displacement volumes are likely to be about 10 to 20% greater than the volume of sediment being dredged due to entrained water in the mechanical dredge/excavator bucket. This would amount to about 70,000 to 94,000 cubic yards per year for the 5-year dredging scenario or about 44,000 cubic yards per year for the 10-year dredging scenario. An additional 40,000 cubic yards of CAD cell water will be displaced in the final year by cap placement.

The annual losses due to displacement of the CAD cell water by the placed dredged material are given in Tables 7a and 7b for a CAD cell with a sheet pile enclosure, and in Tables 8a and 8b for a CAD cell with a silt curtain enclosure. The overall displacement losses are summarized in Table 9. Displacement losses are insensitive to the enclosure method, but weakly sensitive to the storage capacity and therefore the placement schedule. Annual displacement losses are a function primarily of the annual volume placed and the annual bulk sediment concentration. The total predicted displacement losses of PCB (Aroclors 1242, 1248 and 1254) are 12.8 kg and 11.1 kg for the five or ten years of filling schedules, respectively. PCB displacement losses represent about 30% of the total losses for a 5-year placement scenario and about 17% of the total losses for a 10-year placement scenario. Annual displacement losses range from 6.0 kg in Year 1 down to 0.8 kg in Year 4 for the 5-Year scenario, and from 2.8 kg in Year 2 down to 0.35 kg in Year 7 for the 10-Year scenario. While TSS concentrations in the CAD cell tend to increase slightly from year to year throughout the dredging, PCB losses decrease throughout the dredging because dredging proceeds from the more highly contaminated (about 660 mg/kg in Composite 1) to the less contaminated (about 106 mg/kg in Composite 3) as given in Tables 1, 2, and 3. Additionally, the fraction of PCBs that are more mobile (Aroclor 1242 fraction) also decreases throughout the dredging from 65% in the first year to 44% in the last year. For the 5-year scenario, the released PCBs are about 87% Aroclor 1242 (mass loss about 0.05% of Aroclor 1242 total mass placed), 7% Aroclor 1248 (mass loss 0.006% of Aroclor 1248 total mass placed) and 6% Aroclor 1254 (mass loss about 0.012% of Aroclor 1254 total mass placed). Similarly for the 10-year plan, released PCBs are about 86% Aroclor 1242 (mass loss about 0.04% of Aroclor 1242 total mass placed), 8% Aroclor 1248 (mass loss 0.006% of Aroclor 1248 total mass placed) and 7% Aroclor 1254 (mass loss about 0.011% of Aroclor 1254 total mass placed). About 95% of the released PCBs are predicted to be dissolved.

The total predicted displacement losses of copper are 20.7 kg and 19.0 kg for the five or ten years of filling schedules, respectively. Copper displacement losses represent about 29% and 19% of the total losses from a sheet pile wall enclosed CAD cell for 5-year and 10-year placement scenarios, respectively. For a CAD cell enclosed by a silt curtain, copper displacement losses represent about 17% and 12% of the total losses for 5-year and 10-year placement scenarios, respectively. Annual displacement losses range from 3.2 kg in Year 1 down to 5.4 kg in Year 5 for the 5-Year scenario, and from 1.5 kg in Year 1 down to 2.8 kg in Year 10 for the 10-Year scenario. The copper displacement losses represent about 0.012 % of the total mass of copper removed from the associated dredging for the 5-Year scenario, with about 83% of the released copper predicted to be dissolved.

<u>Turbulent Diffusion.</u> Contaminant losses from the CAD cell after placement of the annual lift is driven by turbulent diffusion from the upper ten feet below the lip of the CAD cell to the upper

exchangeable water column. The annual loss of contaminants by turbulent diffusion from the lower water column is predicted to be limited to about the top 106,600 cubic yards (10 feet) of contaminated CAD cell water after the annual placement operation ceases. These losses are expected to be largely independent of the enclosure method and are predicted to be nearly all in dissolved form because the TSS concentrations should decrease rapidly by settling each year after disposal operations cease. Because the CAD cell water becomes as contaminated as the sediment pore water, loss of contaminants from the CAD cell water by turbulent diffusion are comparable to the contaminant losses by displacement during dredged material placement. The annual losses due to turbulent diffusion of the CAD cell water are given in Tables 7a and 7b for a CAD cell with a sheet pile enclosure, and in Tables 8a and 8b for a CAD cell with a silt curtain enclosure. The total turbulent diffusion losses are summarized in Table 9. Turbulent diffusion losses are insensitive to the enclosure method, but are a function of the bulk sediment contaminant concentration and the number of placement seasons. The total predicted turbulent diffusion losses of PCB (Aroclors 1242, 1248 and 1254) are 10.4 kg and 22.4 kg for the five or ten years of filling schedules, respectively. PCB turbulent diffusion losses represent about 25% of the total losses for a 5-year placement scenario and about 34% of the total losses for a 10-year placement scenario. The total predicted turbulent diffusion losses of copper are 9.2 kg and 23.1 kg for the five or ten years of filling schedules, respectively. Copper turbulent diffusion losses represent about 10% of the total losses for a 5-year placement scenario and about 19% of the total losses for a 10-year placement scenario.

Thermal Overturn. An additional potential loss of contaminants independent of the enclosure method is the exchange of CAD cell water in the fall or winter by the cold dense water diving into the CAD cell and thermally overturning the contaminated CAD cell water and subjecting the contaminated water to flow from the CAD site. However, due to the shallow depth of the overlying water column and the mixing that would occur, this mechanism is likely to limit the exchange to no more than 5 feet of water or 65,500 cubic yards in the CAD cell. Any losses between dredging seasons would be partially offset by decreasing the predicted losses during the next dredging season because the initial contaminant concentration in the CAD cell water at the start of the next dredging season would be lower.

The annual losses due to thermal overturn of the CAD cell water are given in Tables 7a and 7b for a CAD cell with a sheet pile enclosure, and in Tables 8a and 8b for a CAD cell with a silt curtain enclosure. The total thermal overturn losses are summarized in Table 9. Thermal overturn losses are insensitive to the enclosure method, but are a function of the bulk sediment contaminant concentration and the number of placement seasons. The total predicted thermal overturn losses of PCB (Aroclors 1242, 1248 and 1254) are 10.2 kg and 20.2 kg for the five or ten years of filling schedules, respectively. PCB thermal overturn losses represent about 24% of the total losses for a 5-year placement scenario and about 31% of the total losses for a 10-year placement scenario. The total predicted turbulent diffusion losses of copper are 12.6 kg and 26.6 kg for the five or ten years of filling schedules, respectively. Copper turbulent diffusion losses represent about 14% of the total losses for a 5-year placement scenario and about 22% of the total losses for a 10-year placement scenario.

<u>Total Short-term Losses.</u> Table 10 presents the overall potential contaminant losses resulting from placement for the four scenarios modeled. For a CAD cell nearly fully enclosed in a sheet

pile wall using a 5-year dredging plan, the total predicted losses are 38.3 kg PCB and 71.2 kg copper. For the 10-year sheet pile enclosure scenario, the total losses are 60.4 kg PCB and 100.6 kg copper. For the 5-year plan, these losses represent 0.087% of the mass of the three PCB Aroclors placed in the CAD cell (0.136% of Aroclor 1242, 0.026% of Aroclor 1248 and 0.039% of Aroclor 1254), and 0.044% of the copper placed in the CAD cell. For the 10-year plan, the losses represent 0.14% of the three PCB Aroclors (0.22% of Aroclor 1242, 0.038% of Aroclor 1248 and 0.062% of Aroclor 1254), and 0.062% of the copper placed in the CAD cell. The PCB losses using a 10-year schedule are predicted to be 55% greater than using a 5-year schedule, while copper losses are predicted to 35% greater. When silt curtains are used as the enclosure instead of a sheet pile wall, the total PCB losses are predicted to be about 22% greater and the total copper losses are predicted to be about 66% greater. The difference in losses between the silt curtains and sheet pile walls are comparable to the difference in losses between a 5-year schedule and a 10-year schedule. The PCB mass loss rates are more than an order of magnitude lower than reported PCB losses from dredging operations at other Superfund sites.

Long-Term Contaminant Loss from Capped CAD Cell

The contaminant fate and transport from the capped CAD cell were evaluated in two parts. The first part was evaluated during the period of dredged material consolidation based on partitioning and contaminant transport associated with pore water advection induced by consolidation. In the center section, sixty-six percent or seventy-four percent of the consolidation for the five and ten year dredging scenarios is completed 40 years after capping, but meaningful contaminant transport by pore water expulsion is limited to the first two to four years. The second part was evaluated for the long term, after significant pore water advection ceases. During the long term, contaminant transport is dominated by diffusion of contaminants from the dredged material and into the sand cap. Long-term contaminant fate and transport from the capped CAD cell was modeled without considering contaminant degradation or transformation using the USACE RECOVERY model. In reality, contaminant degradation and transformation can be expected to occur over the long-term and therefore losses are likely to be lower than predicted.

Contaminant fluxes associated with the advection of water resulting from dredged material consolidation were estimated for a 52-ft deep UHCC using a spreadsheet based on CAP modeling results for the LHCC (Schroeder et al. 2010). The contaminant concentration associated with the sand capping material in equilibrium with the surficial dredged material pore water was calculated. Then, the thickness of the sand cap contaminated by the mass of contaminants in the expelled pore water during the initial forty years of consolidation was computed for each contaminant of concern. The CAD pit will expel water only upward for the four cell sections as the native harbor bottom sediments forming the walls of the CAD have very low porosity relative to the dredged sediment and therefore the native sediments will resist flow of pore water. The results showed that the contaminants transported from the dredged material by pore water advection and diffusion would be contained in the bottom of the cap. This is true for all sections of the cap, even in the center section, which had the largest settlement. The contaminant and sediment profiles from the end of the advection dominated period (up to 5 years when advection is greater than 10 cm/yr) were used as the initial conditions for the long-term, diffusion dominated modeling using the RECOVERY model.

The RECOVERY model was used to compute contaminant concentrations in the cap as a function of time and to predict the time required for breakthrough of the contaminants for three of the four separate sections of the CAD cell due to differences in dredged material thickness and predicted settlement. Each section represents about one quarter of the area of the CAD cell, with the center section being 17.5% of the area and rings 1, 2 and 3 being 25%, 29%, and 28.5% of the area, respectively. The first section represents the center of the CAD cell and includes the entire part of the cell that has a level bottom. The next three sections are concentric bands around the center covering the remainder of the sloped area of the CAD cell. Each band has successively thinner dredged material thicknesses and smaller settlements. Contaminant breakthrough, as applied here, is based on a limiting contaminant flux of surficial pore water concentration that might start to pose a meaningful risk to receptors; in this case, a relative flux or concentration of 0.01% of the original flux or in-situ pore water concentration of the sediment was used to define breakthrough. The RECOVERY model showed that the most mobile of the contaminants in the cap was copper, followed by PCB Aroclors 1242, 1248 and 1254. Contaminant breakthrough through the 3-foot cap by copper at a concentration of 0.006 ppb is predicted to occur only after 820 years of diffusion. The peak concentration in copper is predicted to be 0.07% of its initial concentration (about 0.028 to 0.038 ppb) and occurs at 2200 years. Breakthrough for Aroclor 1242, a pore water concentration of 0.00137 ppb in the surficial layer of the cap, was predicted to occur only for the 5-year schedule, occurring at 6700 years, just before reaching its peak concentration of 0.00139 ppb at 7100 years. Pore water concentrations Aroclors 1248 and 1254 in the surficial layer of the cap peaked at about 17,000 and 15,000 years, respectively, with concentrations on the order of 10⁻¹⁵ and 10⁻⁹ ppb, and therefore did not reach the breakthrough concentrations of 0.0001 ppb PCB Aroclor 1248 and 0.00012 ppb PCB Aroclor 1254. The model shows that a stable 3-foot cap is highly effective in isolating the contaminated dredged material. Since about 14 to 16 ft of settlement is predicted for the center section of the CAD cell, there is a very large potential for at least 14 to 16 ft of burial over the life of the CAD cell. If this burial were considered in the long-term fate and transport modeling, the CAD cell would be effective for all contaminants for tens of thousands of years. In reality, the contaminant concentrations in the bioactive zone will be controlled by the deposition of surrounding contaminated materials onto the cap, and not by contaminant migration by the buried dredged material.

Conclusions

- 1. The proposed 570-foot by 730-foot rectangular CAD cell excavated 52 ft below the existing sediment surface is sufficient in size to hold the sediments and cap proposed for an upper harbor CAD cell and to contain the lateral spread and collapse of the dredged material discharge during placement.
- 2. About 2.4 ft of water will be entrained in the dredged material during placement, but all of this water along with 4 to 5 ft of pore water is predicted to be expelled from the consolidating dredged material during the five or ten years of placement.
- 3. An additional 5.5 to 7 ft of settlement and pore water expulsion is predicted to occur within 40 years after cap placement. Up to 9 ft of additional consolidation is expected beyond 40 years.

- 4. Dredged material resuspension will occur during placement, resulting in predicted average TSS concentrations ranging from 14 to 54 mg/L for the 5-year scenario and 13 to 38 mg/L for the 10-year scenario, and both dissolved and particulate-associated contaminant release to the water column overlying the CAD cell. The TSS concentrations just below the lip of the CAD cell are predicted to be about 5 mg/L except during the last year of placement when it will increase to about an average of 40 mg/L.
- 5. The resuspension predictions appear to be a reasonable and conservative representation of the behavior of actual plumes observed during similar dredged material placement in a City of New Bedford CAD cell in 2009.
- 6. Hydrodynamic modeling yielded only low velocities in the water column above the CAD cell, typically less than 0.1 fps when enclosed in a silt curtain and less than 0.05 fps when enclosed in a sheet pile walls. The velocity is sufficiently great to exchange the water above the CAD cell, typically in three to six hours when enclosed in a silt curtain and in twelve to twenty-four hours when enclosed in a sheet pile walls.
- 7. The predicted velocities in the CAD cells are sufficiently low to limit mixing below the lip of the CAD cell water, mostly in the top few feet. However, higher resolution hydrodynamic modeling of the CAD cell environ performed using the 3-D EFDC model set up for sediment transport modeling showed the potential to set up a slow vertical eddy in the CAD cell. The eddy could provide slow mixing to a depth of 10 feet below the lip of the CAD cell. The upward currents in the eddy exceed the settling velocities of the suspended solids in only a small fraction of the area, over a shallow depth and only for a small fraction of the time. The extent of the area, depth and time are a function of the enclosure. With a sheet pile wall, the area is about 10%, the depth is about 3 feet, and the time is 13%, while with a silt curtain, the area is about 15%, the depth is about 6 feet, and the time is 20%. The differential velocities between settling and upflow are 0.1 mm/sec or less for the sheet pile wall enclosure and 0.5 mm/sec or less for the silt curtain enclosure. Therefore, use of silt curtains rather than a sheet pile wall would potentially cause up to ten times as much loss of suspended solids and their associated contaminants, but the loss of suspended solids is restricted to the supply of suspended solids by turbulent diffusion of the discharge plume at the bottom of the CAD cell. The difference in flow through velocity for the two enclosures would yield an increase in suspended solids supply by a factor of two to three.
- 8. The slow vertical eddy in the CAD cell with either enclosure was predicted to provide slow mixing to a depth of 10 feet below the lip of the CAD cell. Therefore, dissolved contaminants in the top ten feet of the CAD cell were subjected to turbulent diffusion and exchange with the water column above the lip of the CAD cell.
- 9. Dissolved contaminant concentrations in the CAD cell water (but not the overlying water) during filling will become approximately equal to the sediment pore water being placed in the CAD cell.
- 10. Short-term contaminant losses were predicted for four mechanisms: entrainment by overlying flow, displacement by placed material, post-placement turbulent diffusion, and thermal

overturn. All four mechanisms contribute significantly to PCB losses but their relative contributions are dependent on the placement scenario.

- 11. PCB entrainment losses (Aroclors 1242, 1248 and 1254) for a sheet pile wall enclosure are predicted to be 5.0 kg and 6.6 kg, respectively, for 5- and 10-year schedules, while PCB losses for a silt curtain enclosure are predicted to be 14.0 kg and 18.7 kg, respectively. Copper entrainment losses for a sheet pile wall enclosure are predicted to be 28.8 kg and 31.9 kg, respectively, for 5- and 10-year schedules, while copper losses for a silt curtain enclosure are predicted to be 81.6 kg and 90.3 kg, respectively.
- 12. The total predicted displacement losses of PCB (Aroclors 1242, 1248 and 1254) are 12.8 kg and 11.1 kg for the five or ten years of filling schedules, respectively. For the 5-year scenario, the released PCBs are about 87% Aroclor 1242 (mass loss about 0.05% of Aroclor 1242 total mass placed), 7% Aroclor 1248 (mass loss 0.006% of Aroclor 1248 total mass placed) and 6% Aroclor 1254 (mass loss about 0.012% of Aroclor 1254 total mass placed). Similarly for the 10-year plan, released PCBs are about 86% Aroclor 1242 (mass loss about 0.04% of Aroclor 1242 total mass placed), 8% Aroclor 1248 (mass loss 0.006% of Aroclor 1248 total mass placed) and 7% Aroclor 1254 (mass loss about 0.011% of Aroclor 1254 total mass placed). About 95% of the released PCBs are predicted to be dissolved. The total predicted displacement losses of copper are 20.7 kg and 19.0 kg for the five or ten years of filling schedules, respectively. Copper displacement losses represent about 29% and 19% of the total losses from a sheet pile wall enclosed CAD cell for 5-year and 10-year placement scenarios, respectively. For a CAD cell enclosed by a silt curtain, copper displacement losses represent about 17% and 12% of the total losses for 5-year and 10-year placement scenarios, respectively.
- 13. Contaminant losses from the CAD cell after placement of the annual lift is driven by turbulent diffusion from the upper ten feet below the lip of the CAD cell (the top 106,600 cubic yards) to the upper exchangeable water column. Turbulent diffusion losses are insensitive to the enclosure method, but are a function of the bulk sediment contaminant concentration and the number of placement seasons. The total predicted turbulent diffusion losses of PCB (Aroclors 1242, 1248 and 1254) are 10.4 kg and 22.4 kg for the five or ten years of filling schedules, respectively. PCB turbulent diffusion losses represent about 25% of the total losses for a 5-year placement scenario and about 34% of the total losses for a 10-year placement scenario. The total predicted turbulent diffusion losses of copper are 9.2 kg and 23.1 kg for the five or ten years of filling schedules, respectively.
- 14. An additional potential loss of contaminants independent of the enclosure method is the exchange of CAD cell water in the fall or winter by the cold dense water diving into the CAD cell and thermally overturning the contaminated CAD cell water and subjecting the contaminated water to flow from the CAD site. However, due to the shallow depth of the overlying water column and the mixing that would occur, this mechanism is likely to limit the exchange to no more than 5 feet of water or 65,500 cubic yards in the CAD cell. The total predicted thermal overturn losses of PCB (Aroclors 1242, 1248 and 1254) are 10.2 kg and 20.2 kg for the five or ten years of filling schedules, respectively. The total predicted turbulent diffusion losses of copper are 12.6 kg and 26.6 kg for the five or ten years of filling schedules, respectively.

- 15. For a sheet-pile enclosed CAD cell, the total losses based on all four processes for the 5-year dredging plan are predicted to be 38.3 kg PCB and 71.2 kg copper, which is 0.087% of the PCB and 0.044% of the copper mass being placed in the CAD cell. About 97% of the PCB losses and 86% of the copper losses are predicted to be dissolved. For the 10-year dredging schedule, the total losses are predicted to be 60.4 kg PCB (0.139% of mass placed) and 100.6 kg copper (0.062%). About 98% of the PCB and 90% of the copper mass loss is predicted to be dissolved.
- 16. For a silt curtain enclosed CAD cell, the total losses of PCBs are predicted to be 22% greater than the losses for a sheet pile wall enclosed CAD cell. Likewise, the total losses of copper from a silt curtain enclosed CAD cell are predicted to be 66% greater than the losses for a sheet pile wall enclosed CAD cell.
- 17. The predicted losses of PCBs from a 10-year disposal schedule are predicted to be 55% greater than the predicted losses from a 5-year disposal schedule, while the predicted losses of copper from a 10-year disposal schedule are predicted to be 35% greater than the predicted losses from a 5-year disposal schedule.
- 18. All combinations of schedules and enclosures have losses that are at least an order of magnitude smaller than typical mechanical dredging losses. The worst combination (silt curtain and 10-year schedule) has losses that are about twice as large as the best combination (sheet pile wall and 5-year schedule). The losses did not consider the potential losses from installation and removal of the enclosures.
- 19. After capping, the contaminants expelled from the dredged material by consolidation would be contained in the lower foot of the cap by adsorption on the capping media.
- 20. A stable 3-ft cap would be highly effective in isolating the contaminated dredged material. Without consideration of burial (i.e., the additional sediment deposition that will take place over time into the bowl-shaped CAD cell depression formed by consolidation after the cap is placed), copper is predicted to break through the cap in approximately 820 years, while PCB 1242 is predicted to just barely break through at 6700 years. The breakthrough PCB 1242 concentration is nearly the same as the predicted peak concentration in the cap's bioactive zone. No breakthroughs of PCB Aroclors 1248 and 1254 are predicted. Again, breakthrough, as used here, is defined as the condition when the contaminant flux or bioactive zone pore water concentration increases to levels of 0.01% of the original flux or sediment pore water contaminant concentration. With burial promoted by the estimated 14 to 16 feet of post-capping settlement, the transport of contaminants through the cap and burial material will take tens of thousands of years to achieve the breakthrough.

Exhibit L

Silence shrouds EPA plans for Upper Harbor CAD cell in New Bedford

By ARIEL WITTENBERG awittenberg@s-t.com December 16, 2012 12:00 AM

NEW BEDFORD — The Environmental Protection Agency has taken significant steps toward developing an Upper Harbor CAD cell to be located above Coggeshall Street near Riverside Park.

The CAD cell, an alternative to sending contaminated sediments off-site, would hold some of the most contaminated sediment in the harbor, according to EPA documents obtained by the Buzzards Bay Coalition through a Freedom of Information Act request that were given to The Standard-Times.

The documents include emails dating as far back as 2006 between EPA and Army Corps of Engineers officials and a 2011 Army Corps of Engineers assessment detailing the dimensions of an Upper Harbor CAD cell that Buzzards Bay Coalition President Mark Rasmussen contended is "just short of an actual contract to build it."

Confined Aquatic Disposal (CAD) Cells are specially engineered holes to contain contaminated sediment, which have been opposed by local environmental groups who question their safety. So far, the EPA has almost exclusively publicly discussed using the technology for Superfund cleanup in the Lower Harbor. These documents outline internal planning for an Upper Harbor CAD cell by the EPA.

When asked about the documents, EPA Region 1 Administrator Curt Spalding said "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."

IN THE BEGINNING

CAD cells were first proposed in public at a meeting on Oct. 30, 2008, as a way to clean the cancer-causing polychlorinated biphenyls (PCBs) that currently render the harbor unusable for recreation and fishing. During the meeting, the EPA presented CAD cells as a way to drastically accelerate the harbor cleanup using less money than previously planned.

An EPA slideshow at that meeting showed possible locations for CAD cells with bright yellow boxes. One was located in the Lower Harbor above Pope's Island, and the other was located in the Upper Harbor between Sawyer Street and Coffin Avenue.

Since that time, all public discussions of CAD cells have centered on the Lower Harbor, with digging scheduled to begin this summer.

Environmental groups oppose the use of CAD cells for Superfund cleanup anywhere in the harbor, saying that the cells themselves will be too contaminated. They are also concerned about the risk of

humans inhaling PCBs when the PCB-contaminated sediment is exposed to air while it temporarily sits on a split-hulled barge before being dumped into the CAD cell.

"We don't know of any other site in the country that has successfully buried the concentrations of PCBs planned for the Lower Harbor," Rasmussen said.

EPA officials have maintained that a Lower Harbor CAD cell is a safe alternative to shipping contaminated material off site-to be disposed of in a landfill in Michigan, in part because it would contain only sediment with PCB levels of 50 to 190 parts per million parts sediment.

In contrast, the potential Upper Harbor CAD cell would include sediment that is 68 times more contaminated, with PCB concentrations reaching as high as 13,000 parts per million and averaging in the thousands, according to the December 2011 Army Corps of Engineers assessment.

Also according to that assessment, the Upper Harbor CAD cell would contain 15,000 more cubic yards of contaminated sediment than the Lower Harbor CAD cell.

"Basically they want to take the hottest stuff we have in the harbor — the most dangerous stuff — and bury it right next to Riverside Park," Rasmussen said.

PUBLIC KNOWLEDGE

Since the 2008 meeting in which the EPA introduced CAD cells to New Bedford, agency officials have publicly kept mum about the possibility of an Upper Harbor CAD cell.

On Oct. 24, 2008, six days prior to the first CAD cell meeting, Army Corps of Engineers Manager Robert Leitch sent an email to various Corps and EPA officials, including then-EPA Project Manager David Dickerson, detailing a conference call earlier that day.

Leitch's email describes Dickerson telling call participants that "the final CAD cell report should focus on the LHCC (Lower Harbor CAD cell) and not include any info/reference on/to the Upper Harbor CAD cell."

In the four years since the email was sent, the EPA has moved forward with research of both an Upper Harbor CAD cell and a Lower Harbor CAD cell. Emails between EPA and Army Corps of Engineers officials provided to the Standard-Times by the Buzzards Bay Coalition are dated as recently as June 4, 2010, with the Army Corps' Upper Harbor CAD assessment dated December 2011.

During its community events, the EPA has focused on the Lower Harbor plans. Asked Wednesday if he was aware of a plan for an Upper Harbor CAD cell, Mayor Jon Mitchell said he was not.

But, he said, "It is somewhat premature to be talking about specific details concerning disposal of sediments" because the EPA's settlement with contaminator AVX has not yet been approved by a federal judge.

Edwin Rivera, president of Hands Across the River, said he had not heard about an Upper Harbor CAD cell in any public meeting with the EPA. But, he said "CAD cells are absolutely unacceptable, particularly if they want to put it in front of a park."

"This isn't in front of a fish processing plant where you don't have kids playing, this is next to a park," he said. "If the mayor lets this happen, he is not advocating for the safety of this city."

The EPA's Army Corps of Engineers assessment of a Lower Harbor CAD cell, completed in 2010, is readily available on the EPA's New Bedford Harbor website. However, the same study for the Upper Harbor CAD cell was not on the site as of 2 p.m. Thursday. That assessment was only obtained through a Freedom of Information Act request by the Buzzards Bay Coalition.

"It certainly doesn't look good"

EPA Spokesman Jim Murphy said that the Lower Harbor assessment was put online as part of the public comment period on the EPA decision to use a CAD cell in the Lower Harbor. The Upper Harbor assessment was not put online "because people have not asked for it," he said.

"Each region has restrictions on how much stuff we can put on the website. We just can't put everything up there," he said. "It's not like we are trying to hide anything, but 1 get that it certainly doesn't look good." He added that the Upper Harbor assessment would be uploaded shortly.

At a Sept. 21, 2012, meeting with the Standard-Times editorial board, EPA administrator Spalding denied any intent by the EPA to place a CAD cell in the Upper Harbor.

"I've seen some letters written to us with people suggesting we are going to CAD the whole thing; that is not going to happen and will not happen," he said. "It never was under consideration and nobody ever thought we were going to take these high levels of contamination that are in the upper harbor and put them in CADs."

On Thursday, Murphy clarified Spalding's September comments, saying that the Region 1 administrator "didn't know" about the assessment.

"It's not Curt's job to know about every document," he said.

On Wednesday, Spalding told The Standard-Times that the EPA has neglected to mention considerations for an Upper Harbor CAD cell because "no one was thinking about it very seriously."

"It might have been helpful to share that (the assessment) was being done, but the point of view of the team is that they weren't seriously considering it," Spalding said. "They were talking about things that they were really thinking about doing, and not things they weren't seriously thinking about."

Emails between the EPA and Army Corps of Engineers indicate that The Army Corps assessment of the Upper Harbor cost the EPA somewhere between \$10,000 and \$12,000.

That document, like its Lower Harbor counterpart, details not only the dimensions and PCB concentrations of the CAD cell, but also describes ways to prevent contamination while filling the CAD cell, and also calculates the percentage of PCBs that could seep out of the CAD cell over the next 40 years.

Emails between EPA and Army Corps of Engineers officials discuss the possibility of buying equipment that could be used to dig both the Upper and Lower Harbor CAD cells.

Buzzards Bay Coalition President Rasmussen said he believes the EPA's silence about an Upper Harbor CAD cell is purposeful.

"While we were all discussing the Lower Harbor CAD cell, they were going ahead and doing this work for the Upper Harbor," Rasmussen said. "How can they hold public meetings and not even mention they are considering this? They were making a conscious decision not to talk about it."

AVX's INVOLVEMENT

Though the public was not apprised of the EPA's Upper Harbor CAD cell considerations, AVX was.

AVX is the successor to Aerovox, the party responsible for contaminating the harbor with PCBs.

In August 2008, Weldon Bosworth, the principal scientist to AVX for its independent evaluation of the EPA's harbor cleanup, wrote an email to then-EPA Project Manager Dickerson.

"Hi Dave, AVX has asked me to evaluate the likelihood and potential cost of siting a CAD in the Upper Estuary as a potential alternative to off-site disposal that you had discussed as at our last meeting," he wrote.

Dickerson responded by asking EPA scientists to forward Bosworth information about the upper harbor's geology.

Reached at his New Hampshire-based office, Bosworth said he could not comment on an Upper Harbor CAD cell until AVX's \$366 million settlement to pay for the harbor's cleanup has been approved by a federal judge. "With what's going on right now relative to the settlement, I've been asked not to talk about it," he said.

In March 2011, the EPA released an Explanation of Significant Differences, which officially allowed the use of a Lower Harbor CAD cell.

During the public comment period on that document, AVX filed multiple complaints that the EPA had not gone ahead with an Upper Harbor CAD cell at the same time. The agency responded that, "EPA will continue its evaluation of an additional CAD cell, located in the Upper Harbor."

"Since this evaluation is not currently complete, while the evaluation of the Lower Harbor CAD cell is, EPA is only proceeding with the Lower Harbor CAD cell at this time," the agency responded.

WHAT DOES THIS MEAN?

Rasmussen said that he is worried about the existence of plans for an Upper Harbor CAD cell and, in particular, AVX's knowledge of those plans. Rasmussen, who said he believes that the \$366 million settlement between EPA and AVX is not enough money to clean the harbor, said he fears that once the settlement is approved in federal court the EPA will change its cleanup plan to include the Upper Harbor CAD cell.

"The only way that \$366 million makes sense to me is if the EPA thinks they can get away with an Upper Harbor CAD cell," Rasmussen said.

Spalding said Wednesday he could not comment "on specifics regarding the settlement" because its public comment period lasts until Dec. 17.

"What's at issue in this settlement is that we had a \$15 million per year budget with no prospect for more money," he said. "We saw the opportunity to get more money and that is what we have pursued legally."

Spalding did say that in July, the EPA plans to conduct a "focus feasibility study" that would reassess the use of Confined Disposal Facilities (CDFs), which would hold contaminated sediment in bulkheads lining the banks of the Upper Harbor.

Replacing CDFs with off-site disposal of sediment was briefly considered by the EPA in 2001. In 2002, the EPA decided to use three CDFs, instead of the originally proposed four. The current remedy still includes placing 175,000 cubic yards of sediments in CDFs.

The feasibility study would look at whether the EPA should use CDFs in harbor remediation. As part of that, the EPA is required to look at alternatives to replace the CDFs, which could include an Upper Harbor CAD cell.

"We have to ask the questions about all of the alternatives because of due diligence requirements," Spalding said.

In the event that the EPA decides to change the current cleanup methods there would not necessarily be a public comment period.

If the agency decides that replacing CDFs with an Upper Harbor CAD cell constitutes "a fundamental change ... to the basic features of the remedy selected," a public comment period would be part of that process.

If the EPA decides the replacement is not a "fundamental change," it can switch the remedies using an Explanation of Significant Differences (ESD), which is described as "only a notice of change" in EPA Guidelines and does not require a public comment period.

In 2010, when the EPA used an ESD in its decision to use a CAD cell in the Lower Harbor, it included a public comment period in an effort to assuage community fears.

Spalding said that while a public comment period could be optional in changing harbor cleanup practices, "There will be a full and open conversation about what is best for the harbor and what's best for the community."

For Rasmussen, though, the EPA will have to work to regain community trust.

"The EPA often expresses shock and dismay that we don't take what they say at face value," he said. "But how does planning this CAD cell behind our back build a record of trust?"



Council Meeting - Minutes

CITY COUNCIL CALENDAR

Chambers of the City Council Municipal Building Thursday, November 8, 2012 - 7:05 p.m.

View Agenda

PRESENT: Council President Martins, Councillors Alves, Bousquet, Coelho, Duarte, Gomes, Gonsalves, Lopes, Oliveira and Saunders.

LATE: No One.

ABSENT: Councillor Lawrence.

Council President Martins called the meeting to order and presided.

Reverend Dalton Said, St. Luke's Hospital Religious Ministries, led the Assembly in Prayer.

James D. Oliveira, Councillor Ward One led the Assembly in the Pledge of Allegiance to the Flag.

COMMUNICATION, Councillor Lawrence, to Members of the City Council, informing that he will be absent for the City Council Meeting held on Thursday, November 08, 2012, due to a business related matter.

Received and Placed on File. (#1955)

The following resolution honoring Whaler's Cove was presented by Council President Martins.

CITY OF NEW BEDFORD

IN CITY COUNCIL

NOVEMBER 08, 2012

RESOLUTION HONORING WHALER'S COVE ON THE OCCASION OF THEIR 10TH ANNIVERSARY

WHEREAS, Whaler's Cove, a Safe Harbor in Assisted Living, is located in New Bedford, Massachusetts, in the historical Herman L. Bishins building bordering the Acushnet River; and

WHEREAS, Whaler's Cove is comprised of one hundred and twenty spacious apartments and is one of the largest Assisted Living facilities in the area; and

WHEREAS, Since its inception in 2002, Whaler's Cove has flourished to become a well-known and reliable option for Seniors and their families to turn to when seeking additional care, its direct resident care is first-rate and unmatched on the Southcoast; and

WHEREAS, In addition to the traditional private paying residents, Whaler's Cove assists many economically disadvantaged Seniors by providing the Group Adult Foster Care Program to those who qualify; and

WHEREAS, Ms. Maureen Costa, Executive Director for Whaler's Cove has been a strong advocate for the Veteran's Aid and Attendance Program, which assist Veterans and surviving spouses in receiving the help they need in an Assisted Living Facility; and

WHEREAS, Whaler's Cove employs the highest standard of healthcare professionals to tend to its residents and a large number of the staff is bilingual, helping to eliminate the language barriers between residents and their providers, and the facility's staff to resident ratio is one of the highest in the State; and

WHEREAS, Whaler's Cove has ties to several local vendors who help supply services and products for the betterment of the residents and is well-known to area hospitals and rehabilitation facilities as a safe harbor for those in need of additional oversight, but not yet ready for long-term care; and

WHEREAS, Whaler's Cove prides itself on promoting independence among residents who are capable and for providing support and caring attention to those who may require a little extra assistance; and

WHEREAS, In recognition of these efforts, Whaler's Cove has been the recipient of the 2003 Preservation Award from the Massachusetts Historical Commission, the New Bedford Preservation Society Elm Award and the Sara R. Delano Preservation Award:

NOW, THEREFORE, BE IT RESOLVED, That the New Bedford City Council hereby congratulates and commends WHALER'S COVE ON THE OCCASION OF THEIR 10TH ANNIVERSARY, thanks them for a decade of work on behalf of the Seniors of our area and wishes them continued success in the future.

of work on behalf of the Seniors of our area and wishes them co	ontinued success in the future.
Adopted.	(#1956)

HEARING, on NSTAR ELECTRIC COMPANY, for	location of two (2) 4" Conduits in ACUSHNET AVENUE,
South of Harwich Street.	
Donna Rosa-Gonsalves, Right of Way Representative	of NSTAR Electric was present and in favor and answered
questions.	
No One Opposed; Hearing closed.	
Petition Placed on File.	(#1957)
ORDER,	
Adopted and ordered recorded in Book of Location Ordered	der Records and Rule 40 Waived - Yeas 10, Nays 0.
Presented to the Mayor for approval November 09, 201	2.
Approved November 09, 2012.	(#1958)
COMMUNICATION, Mayor Mitchell, to City Coun	icil, submitting a request from the Department of Public
Infrastructure that the vacant land denoted as Parcels "C", "D"	, and "F" located off of E. Chipaway Road, Freetown, MA
be declared as surplus City property.	
Referred to the Committee on City Property.	(#1959)
222224	

(#1960)

ORDER,

Referred to the Committee on City Property.

COMMUNICATION, Mayor Mitchell, to City Council, submitting a WAIVER OF RESIDENCY for CATHERINE VERDADEIRO, Fall River, MA, as an ADMINISTRATIVE SPECIALIST with the Department of Community Services.

One-Year Waiver of Residency Granted - Yeas 10, Nays 0.

Presented to the Mayor for approval November 13, 2012.

Approved November 20, 2012.

(#1961)

COMMUNICATION, Mayor Mitchell, to City Council, submitting the APPOINTMENT of CARLOS A. DACUNHA, New Bedford, MA 02744, to the AIRPORT COMMISSION, replacing Pamela Bourgault, whose term has expired; this term will expire December 2014.

Referred to the Committee on Appointments and Briefings.

(#1962)

COMMUNICATION, Mayor Mitchell, to City Council, submitting the APPOINTMENT of ESPERANZA ALEJANDRO-BERUBE, New Bedford, MA 02744, to the COUNCIL ON AGING, replacing Maria Hernandez, who has resigned; this term will expire December 2013.

Rule 38 Waived and Appointment Confirmed – Yeas 10, Nays 0.

Rule 40 Waived - Yeas 10, Nays 0.

(#1963)

COMMUNICATION, Mayor Mitchell, to City Council, submitting the APPOINTMENT of COREY PACHECO, New Bedford, MA 02740, to the HISTORICAL COMMISSION, replacing Derek Santos, who has resigned; this term will expire February 2013.

Referred to the Committee on Appointments and Briefings.

(#1964)

COMMUNICATION, Mayor Mitchell, to City Council, submitting the APPOINTMENT of BRANDON CABRAL, New Bedford, MA, as a SPECIAL POLICE OFFICER.

Received and Placed on File.

(#1965)

APPLICATION, BRANDON CABRAL, New Bedford, MA, for APPOINTMENT as a SPECIAL POLICE OFFICER.

Appointment made and confirmed.

(#1966)

COMMUNICATION, Mayor Mitchell, to City Council, submitting the APPOINTMENT of KEVIN LAVOIE, Swansea, MA, as a SPECIAL POLICE OFFICER.

Received and Placed on File.

(#1967)

APPLICATION, KEVIN LAVOIE, Swansea, MA, for APPOINTMENT as a SPECIAL POLICE OFFICER.

Appointment made and confirmed.

(#1968)

WRITTEN MOTION, Council President Martins, requesting that the City Council Waive City Council Rule 38 and CONFIRM the REAPPOINTMENT of DENNIS W. FARIAS, 1092 Pelletier Street, New Bedford, MA 02745, as CLERK OF THE COMMITTEES for a ONE-YEAR TERM to expire APRIL 2013.

Rule 38 Waived, Appointment Confirmed and Rule 40 Waived - Yeas 10, Nays 0.

(#1969)

WRITTEN MOTION, Councillor Gomes, on behalf of Dr. Patricia Andrade, requesting she be allowed to appear before the Board of Park Commissioners for approval to plant two (2) trees at Buttonwood Park in memory of her mother, Isabel Andrade, along with a memorial plaque; and further, that all fees accompany this project will be paid by Dr. Andrade. (To be Referred to the Board of Park Commissioners.)

Adopted.

Presented to the Mayor for approval November 13, 2012.

Approved November 20, 2012.

(#1970)

WRITTEN MOTION, Councillor Duarte, requesting, on behalf of The Santa Sightings Fun Run/Geoffrey Smith, that the following street(s) be CLOSED: PLEASANT STREET AT CITY HALL, North to Octopus/Route 6 intersection proceeding along Purchase Street toward Clasky Common Park/left on Pope Street to County Street/left on County Street, left on Pearl Street/right at Purchase Street heading towards the Octopus/right onto Kempton Street to the intersection of County Street, left on County Street to School Street/left on South Water Street to North Water Street/left on Elm Street, right on Acushnet Avenue/left on Middle Street, left on Pleasant Street, returning to CITY HALL, ON SATURDAY, DECEMBER 08, 2012, FROM 6:00 A.M. TO 3:00 P.M., for the purpose of The Santa Sightings 5K Road Race.

Permission Granted.

Presented to the Mayor for approval November 13, 2012.

Approved November 21, 2012.

(#1971)

WRITTEN MOTION, Councillor Duarte, requesting, on behalf of the Zeiterion Theatre, that the following street(s) be CLOSED: PURCHASE STREET, from School Street to Spring Street, ON SATURDAY, NOVEMBER 10, 2012, from 4:00 P.M. TO 11:00 P.M., for the purpose of an Antique Car Show for the Performance of Doo Wop being shown at the Zeiterion Theatre.

Permission Granted.

Presented to the Mayor for approval November 13, 2012.

Approved November 21, 2012.

(#1972)

WRITTEN MOTION, Councillor Duarte, requesting, on behalf of Downtown New Bedford Inc., that the following street(s) be CLOSED: PLEASANT STREET, from Union Street to Elm Street; MARKET STREET, from North Sixth Street to Pleasant Street; WILLIAM STREET, from North Sixth Street to Water Street and WATER STREET, from Union Street to Elm Street, ON SATURDAY, DECEMBER 01, 2012, FROM 4:00 P.M. TO 6:00 P.M., for the purpose of The Downtown Christmas Tree Lighting.

Permission Granted.

Presented to the Mayor for approval November 13, 2012.

Approved November 21, 2012.

(#1973)

WRITTEN MOTION, Councillors Gonsalves, Oliveira, Lopes, Alves, Council President Martins, Councillors Bousquet, Lawrence, and Gomes, requesting that the City Council thank the DPF Staff and DPF Assistant Superintendent Richard Correira, / and Donald Rex, Rex Monumental Works, Inc. for removal of the graffiti that was on the Holocaust Memorial located at Buttonwood Park; and further requesting, that the City Council DPF Assistant Superintendent Richard Correira meet with interested parties for information on removal of the remaining stains on the Holocaust Memorial.

Adopted.

Presented to the Mayor for approval November 13, 2012.

RETURNED UNSIGNED November 30, 2012.

(#1974)

RELATED MOTION, Councillors Gomes, Bousquet, Council President Martins, Councillors Alves, Coelho, Duarte, Gonsalves, Lopes, Oliveira and Saunders, requesting, that ONCE MORE, the City Council ask our State Delegation to review the laws regarding the defacing of monuments and gravestones across the Commonwealth; and further, requesting that our State Delegation impose stiffer penalties for those who commit these types of crimes.

Adopted.			4	(#1975)

WRITTEN MOTION, Councillor Alves, requesting that the Department of Inspectional Services, investigate and monitor the noise complaint made by residents around the McDonald's Restaurant on the corner of Elm and County Streets, said noise is made by early morning delivery trucks to the McDonald's Restaurant prior to the authorized City Ordinance time limits and that the disturbance made by the delivery trucks are presenting a problem to neighbors and residents in the area prior to the appropriate time allowed; and further, requesting that the Department of Inspectional Services notify the facility of the violation and report back to this City Councillor as to the action taken within 30 days so that residents can be notified of said action taken.

Referred to the Department of Inspectional Services.

Presented to the Mayor for approval November 13, 2012.

RETURNED UNSIGNED November 30, 2012.

(#1976)

WRITTEN MOTION, Councillor Alves, *Council President Martins, Councillors Saunders and Coelho*, in light of the local reality that there is a Citywide need for additional fields in the City of New Bedford on which local residents, both youth and adult can play soccer, requesting that the City Council ask that the Administration work with the City's Environmental personnel and the Federal EPA personnel to see if the City can cover a portion of the recently blacktopped

former AVX site on Belleville Avenue with approximately 6 to 8 inches of soil to develop and use the area, for 2 or 3 community soccer fields and parking area; and further, requesting that as we look for additional fields that the EPA, Harbor Trustee Council and Community Development consider two fields that are artificial turf.

Referred to the Mayor, E.P.A., Environmental Stewardship, Harbor Trustee Council and Community Development.

Presented to the Mayor for approval November 13, 2012.

RETURNED UNSIGNED November 30, 2012.

(#1977)

RELATED MOTION, Councillor Saunders, requesting that the Special Committee on Soccer Fields address the maintenance issues at the Riverside Park Soccer Field.

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Adopted.

(#1978)

WRITTEN MOTION, Councillor Alves, requesting on behalf of the residents on Norfolk Street that the Department of Public Facilities evaluate the current dark and potentially dangerous environment at night in the residential area and that they look to install another light pole in the area to enhance the visibility and insure the safety for the residents in the area.

Adopted.

Presented to the Mayor for approval November 13, 2012.

RETURNED UNSIGNED November 30, 2012.

(#1979)

WRITTEN MOTION, Councillors Duarte and Alves, requesting, that the Traffic Commission consider the installation of a "NO PARKING" Sign at the Boa Vista Apartments on 134 South Second Street; and further, that Police patrolling the area pay close attention and issue Citations to any vehicle parked at the crosswalk in front of the Boa Vista Apartments.

Adopted.

Presented to the Mayor for approval November 13, 2012.

RETURNED UNSIGNED November 30, 2012.

(#1980)

WRITTEN MOTION, Council President Martins, requesting, on behalf of Mr. David Macedo, President, Club Madeirense S.S. Sacramento, that Plot 105/Lot 80 (64 Tinkham Street), New Bedford, MA, be REZONED from RESIDENCE "C" to "MIXED USE BUSINESS". (To be Referred to the Committee on Ordinances and the Planning Board.)

Referred to the Committee on Ordinances and the Planning Board.

(#1981)

WRITTEN MOTION, Councillor Duarte, requesting, that Scott Downing, Executive Director, Traffic Commission, come before the Committee on Appointments and Briefings to discuss and update the Committee on the

progress that has or has not been made relative to Downtown parking issues since the previous meeting held earlier in the year.

Referred to the Committee on Appointments and Briefings and the Traffic Commission.

(#1982)

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RELATED MOTION, Councillor Lopes, requesting that the City reinstitute Validated Parking, if a customer buys something in the Downtown Area, that they get their parking stub validated for free parking, if using the Zeiterion Parking Lot or Elm Street garage, as a way for people to use the parking garages again.

Referred to the Committee on Appointments and Briefings and the Traffic Commission.

(#1983)

WRITTEN MOTION, Councillors Lopes, Lawrence, Oliveira, Alves, Coelho, Gonsalves, Council President Martins, Councillors Gomes and Duarte, requesting, that the New Bedford City Council go on record ONCE AGAIN, in opposition to the use of CAD cells to dispose of PCBs in our Harbor and that the EPA continue to work with AVX Corporation for the necessary funds to fully remove PCB sediments through the dredging process; and further, requesting that the City Solicitor provide this Council with any steps that may be taken to prevent the movement of CAD cells placement in the Upper Harbor.

Adopted – Yeas 9, Nays 1. (Councillor Bousquet OPPOSED.)

(#1984)

WRITTEN MOTION, Councillor Gomes, Council President Martins, Councillors Coelho, Gonsalves, Lopes, Duarte and Bousquet, requesting, that letters be sent on behalf of St. John the Baptist Parish, located on County Street, asking that Bishop Coleman, Diocese of Fall River reverse his decision to close St. John the Baptist Parish and re-open the Church, giving the parishioners of that Church, which is the oldest Portuguese-American Church in the United States the opportunity to continue the good work that they have done in raising money to keep the Church open and make necessary repairs; and further, that this request be made to Dr. Miguel Humberto Diaz, U. S. Ambassador to the Holy See, His Excellency Archbishop Carlo Maria Vigano, the Papal Nuncio to the United States, Bishop Coleman, Diocese of Fall River and Pope Benedict the XVI, along with the Vatican, in an effort to reverse the decision of the closing of St. John the Baptist Parish and give the Parishioners the opportunity to raise funds to re-open St. John the Baptist Parish and to continue to support the Portuguese community and the community at large, the historical value of this Church means a great deal to the City of New Bedford and to the people of the Portuguese community; and further, requesting, that Members of the City Council meet with Bishop Coleman to discuss a reversal of the decision of the closing of St. John the Baptist Parish and bring a resolution to this matter; and further, requesting, that a plea be made to Pope Benedict the XVI regarding the closing of this historic Church.

Adopted and Rule 40 Waived - Yeas 10, Nays 0.

(#1985)

COMMUNICATION, City Engineer David J. Fredette, to City Council, submitting copies of the Acceptance Plan, Metes and Bounds, Recommendation of Acceptance and Request to Take Land and Award of Damages for **TABITHA LANE**. (Copies of all paperwork including maps provided to all Councillors 11/01/2012 – To be Received and Placed on File.)

Received and Placed on File.

(#1986)

COMMUNICATION, City Engineer David J. Fredette, to City Council, submitting RECOMMENDATION OF ACCEPTANCE, for the LAYOUT AND ACCEPTANCE of TABITHA LANE, 50 feet wide, from Peckham Street 234.14 feet northerly to Coggeshall Street; reporting that owner(s) New Bedford Housing Authority have conformed to all Rules & Regulations as required by City Code, Section 22-35, relative to the acceptance of new streets.

Received and Placed on File.

(#1987)

COMMUNICATION, City Engineer David J. Fredette, to City Council, submitting REQUEST TO TAKE LAND, for the LAYOUT AND ACCEPTANCE of TABITHA LANE, 50 feet wide, from Peckham Street 234.14 feet northerly to Coggeshall Street for easement or fee for highway purposes in land belonging to New Bedford Housing Authority, in accordance with City Code, Section 22-35.

Received and Placed on File.

(#1988)

COMMUNICATION, City Engineer David J. Fredette, to City Council, submitting AWARD OF DAMAGES, for the LAYOUT AND ACCEPTANCE of TABITHA LANE, 50 feet wide, from Peckham Street 234.14 feet northerly to Coggeshall Street to the owners (New Bedford Housing Authority) because the remainder has appreciated in value as a result of the layout to an amount which exceeds the value of the land dedicated and taken.

Received and Placed on File.

(#1989)

COMMUNICATION, City Engineer David J. Fredette, to City Council, submitting METES AND BOUNDS for the LAYOUT AND ACCEPTANCE of TABITHA LANE, 50 feet wide, from Peckham Street 234.14 feet northerly to Coggeshall Street. (Map Included.)

Received and Placed on File.

(#1990)

CITY OF NEW BEDFORD IN CITY COUNCIL

NOVEMBER 08, 2012

WHEREAS, This City Council has received a request from New Bedford Housing Authority, for the taking of required land for the layout and acceptance of contemplated TABITHA LANE, 50 feet wide, from Peckham Street 234.14 feet northerly to Coggeshall Street.

ORDERED, That due notice be given to NEW BEDFORD HOUSING AUTHORITY, owner of land included in the taking and to all other persons who may be interested, that the City Council will hold a public hearing on said layout and acceptance in City Council Chambers, on Second Floor of City Hall, on TUESDAY, NOVEMBER 20, 2012 at 7:00 P.M.

Adopted.

(#1991)

EXHIBIT N

EPA/ESD/R10-04/710 2004

EPA Superfund Explanation of Significant Differences:

PUGET SOUND NAVAL SHIPYARD COMPLEX EPA ID: WA2170023418 OU 02 BREMERTON, WA 02/19/2004

EXPLANATION OF SIGNIFICANT DIFFERENCES BREMERTON NAVAL COMPLEX OPERABLE UNIT B MARINE

February 2004

EXPLANATION OF SIGNIFICANT DIFFERENCES BREMERTON NAVAL COMPLEX OPERABLE UNIT B MARINE

I. INTRODUCTION

A. Purpose

The Record of Decision (ROD) for Bremerton Naval Complex (BNC) Operable Unit (OU) B Marine was signed June 13, 2000. The selected remedy for the cleanup of marine sediments included a combination of dredging with disposal in a Confined Aquatic Disposal (CAD) pit, capping, enhanced natural recovery, monitored natural recovery and institutional controls. The purpose of this Explanation of Significant Differences (ESD) is to:

- (1) identify a change in the boundary of OU B Marine to address additional sediment cleanup areas,
- (2) modify action levels for the response action on Washington State Owned Aquatic Lands (SOAL) adjacent to the Navy's CAD pit, and
- (3) address institutional control requirements on SOAL.

This ESD will not change any of the remedial action objectives stated in the ROD.

B. Lead and Support Agencies

Department of the Navy (Navy) - Lead Agency

U.S. Environmental Protection Agency (EPA) - Regulatory oversight agency

Washington State Department of Ecology (Ecology) -Regulatory oversight agency

C. Statutory Authority

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 117(c) and National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Section 300.435(c)(2)(i).

II. BACKGROUND

A. Site Name, Location, and History

The BNC is located in the City of Bremerton, in Kitsap County, Washington. The Complex includes the Puget Sound Naval Shipyard (PSNS) and Naval Station Bremerton (NSB). The Navy controls a total of 1,350 acres of property located along the shoreline and approximately 230 acres of subtidal land within Sinclair Inlet, an arm of Puget Sound. The primary role of NSB is to serve as a deep draft home-port for aircraft carriers and supply ships. The primary role of PSNS is to provide overhaul, maintenance, conversion, refueling, defueling, and repair services to the naval fleet.

The BNC was proposed for inclusion on the National Priorities List (NPL) on May 10, 1993, and formally listed on May 31, 1994. The BNC has been assigned the facility identification number WA2170023418. BNC is divided into operable units, OU A, OU B, OU C, OU D and OU NSC. Decision documents are complete for OU A and OU NSC and the remedy is in place for these OUs. OU C is a petroleum site managed under the state cleanup program. A separate decision document will be completed for OU D.

The OU B Remedial Investigation (RI) was initiated to address both the marine and terrestrial portions of the OU. The Navy, EPA, and Ecology agreed to accelerate the cleanup of the marine portion of OU B to seize the opportunity to coordinate cleanup with a planned navigational dredging project. The OU B Marine ROD was completed as an early action ROD to address cleanup of marine sediment within OU B.

The OU B Marine Proposed Plan was issued on March 13, 2000 and the OU B Marine ROD was signed on June 13, 2000. The ROD for the terrestrial portion of OU B, OU B Terrestrial, is pending signature.

B. Relevant Elements of the OU B Marine ROD

OU B Marine Boundary

OU B Marine includes approximately 230 acres of subtidal land within Sinclair Inlet and extends up to 1,500 feet offshore of the terrestrial portions of the BNC to depths of approximately 40 feet below mean lower low water (MLLW). OU B Marine, as described in the ROD, is bounded to the north by the Sinclair Inlet shoreline and is bounded to the south by the Navy property line as shown in Figure 1.

OU B Marine Remedial Action Objectives

The OU B Marine ROD established the following remedial action objectives for the OU:

- Reduce the concentration of polychlorinated biphenyls (PCBs) in sediments to below the
 minimum cleanup level of 3 mg/kg OC in the biologically active zone (0- to 10-cm depth) within
 OU B Marine, as a measure expected to reduce PCB concentrations in fish tissue
- Control shoreline erosion of contaminated fill material at Site 1
- Selectively remove sediment with high concentrations of mercury collocated with PCBs

Marine Sediment Response Actions and Action Levels

The ROD established action levels to define areas of sediment for active remediation and to develop remedial action alternatives. They were developed based on relative risk reduction, consistency with action levels for other regional marine sediment cleanups, implementability, and cost-effectiveness. The sediment action level triggered a particular response action. The ROD action levels for OU B Marine sediments are summarized in Table 1.

Table 1: Action Levels for OU B Marine Sediments

Chemical of Concern	Response Actiona	Action Level b	Basis of Determination
PCBs	Dredging and disposal or in situ capping	>12 mg/kg OC PCBs	Relative risk reduction Sediment quality standard
PCBs	Enhanced natural recovery	>6 mg/kg OC PCBs	Resource agency concern and Relative risk reduction
Mercury	Dredging and disposal	>6 mg/kg OC PCBs and >3 mg/kg mercury	Resource agency concern and Practicability

^a Exceptions are noted in the OU B Marine ROD, Section 10.

Notes: mg/kg OC - milligram per kilogram organic carbon

PCB - polychlorinated biphenyl

Though a wide variety of marine studies completed during the RI indicate little or no ecological or human health risk from mercury, additional information available at the time of the OU B Marine ROD suggested that mercury concentrations could have an impact on human health. Mercury sediment concentrations did not trigger remedial action; however, remedial action levels were adjusted to include coincidental removal of mercury with PCBs.

Selected Remedy Components

The selected remedy for OU B Marine included the following components:

 Dredge and dispose in on-site excavated CAD pit approximately 200,000 cubic yards (cy) of sediment containing PCBs from an area of approximately 32 acres. Cap CAD pit with a 1-foot sand cap followed by a 2-foot native sediment cap.

^b Action levels based on composite samples

- Place clean sediment over approximately 13 acres in a combination of thick-layer sediment cap (3feet of material) and enhanced natural recovery (20 cm of material).
- Shoreline stabilization in areas at Site 1 to minimize the potential for erosion of contaminated fill
 material into the marine environment.
- Monitoring of marine tissue and sediments to document progress toward and attainment of the cleanup goals.
- Implementation of land-use restrictions by the Navy to maintain the integrity of the CAD pit and the shoreline stabilization measures.

C. Construction of the CAD Pit and Related Monitoring Results

The CAD pit was created on Navy property with the southwestern edge on the border between Navy property and SOAL. Removed sediment from the creation of the pit was stockpiled adjacent to the CAD for use as final capping material. Following construction of the CAD pit, dredged contaminated sediment was placed in 1,500-cy capacity split-hull bottom-dump barges, towed to the CAD pit by tugboat, positioned over the CAD pit, and released through the hydraulically powered split-hull. A total of approximately 400,000 cy of dredged sediment, including both CERCLA and unsuitable navigational dredging sediments, were placed inside the CAD pit.

After placement of a nominal 1-foot-thick imported sand cap on the CAD pit and prior to placement of the final sediment cap, sediment samples were collected approximately 20 feet from the perimeter of the CAD pit and the results were compared to pre-construction sediment samples. The data indicated elevated concentrations of PCBs and mercury in the sediment beyond the CAD pit boundary on Navy property and SOAL compared to the baseline samples. The Navy notified the Washington State Department of Natural Resources (DNR), the manager of SOAL, and the Suquamish Tribe of the impact to non-Navy property.

Over the next several months, additional samples were collected at points approximately 50, 95, 100, 125, 155, 200, and 300 feet from the perimeter of the CAD pit in order to delineate the extent of the elevated levels of PCB and mercury concentrations outside the CAD pit boundary. The PCB concentrations of the sediment ranged from <2 mg/kg OC to 40.7 mg/kg OC and mercury concentrations ranged from 0.5 to 3.3 mg/kg. To address the contamination beyond the CAD pit boundary on Navy property, the Navy extended the CAD cap by placing approximately 2-feet of clean sediment up to 100 feet from the CAD pit boundary on the three sides of the CAD pit (Figure 2). The CAD pit remedial design originally included a 20-foot buffer zone around the pit boundary. Extending this buffer zone to 100 feet was determined an acceptable response action consistent with the remedial design. The placed material was from stockpiled material excavated from the CAD pit. No action was taken for the SOAL hordering the CAD pit, pending further study. DNR requested additional evaluation and characterization of the material prior to remedial decisions being made on SOAL.

Further evaluation of collected data was completed to determine if the source of the contamination outside the CAD pit could be identified. There had been no deviations from the approved work plan and water quality protocols. EPA conducted a Sediment Profile Imaging (SPI) study radiating out from the CAD pit boundary to determine the lateral extent of sediment deposition beyond the CAD pit boundary on SOAL. The study confirmed that recently deposited sediment existed beyond the CAD pit footprint and extended up to 600 feet on SOAL from the edge of the CAD pit (Figure 2). The area of impacted sediment on SOAL is approximately 13.2 acres. Based on discussions with the SPI contractor, the likely cause for the deposition beyond the CAD pit boundary was the instantaneous movement of material along the mudline surface, a "wave" of turbid material originating from the deposited material as it made contact with the bottom of the pit. The SPI data indicated several layers of deposition; however, SPI cannot differentiate between contaminated or clean material.

The Navy, EPA and Ecology developed a detailed sampling analysis plan to identify the extent of contamination within the deposited material and support subsequent remedial action decisions for SOAL. DNR and the Suquamish Tribe participated in the development of the plan. A total of 31 discrete sample locations were identified in the impacted area. The discrete sampling strategy, as opposed to the composite

strategy used during development of the OU B Marine action levels, provides greater resolution and allows spatial evaluation of the data. Samples were collected in September 2003.

Results of the sampling on the SOAL indicated that total PCB concentrations ranged from undetected to 17.3 mg/kg OC and mercury concentrations ranged from 0.29 mg/kg dry weight to 2.2 mg/kg dry weight. Spatial interpolation of the PCB organic carbon normalized data was conducted using two-dimensional spherical kriging to estimate PCB concentrations and develop contour lines. Contour lines were drawn for PCB concentrations of 12 mg/kg OC, 9 mg/kg OC and 6 mg/kg OC. The contours are included in Figure 3. Based on these results, it appears that previous placement of the clean sediment cap on and around the CAD pit on Navy property served to significantly lower the concentrations immediately adjacent to the CAD pit on SOAL. The results indicated that coincidental remediation of sediments on SOAL occurred at approximately 120 to 210 feet beyond the perimeter of the CAD pit. This conclusion was drawn based on a comparison of the SOAL characterization results to results obtained prior to placement of clean sediment on and around the CAD pit on Navy property.

Based on the contour lines, the area with PCB concentrations greater than or equal to 12 mg/kg OC equates to 12 percent of the total SOAL impacted area. The area with PCB concentrations greater than or equal to 9 mg/kg OC equates to 29 percent of the total area, and for concentrations greater than or equal to 6 mg/kg OC, the area is 51 percent.

III. Description of Significant Differences

The remedial construction for OU B Marine resulted in the unplanned release of contaminated material on to SOAL. The Navy has completed characterization of the impacted area, evaluated the potential response actions, and selected a response action to address the contaminated material. The significant changes from the OU B Marine ROD are identified in the subsections below.

OU B Marine Boundary

The boundary of OU B Marine is extended to include the area of impacted sediment on SOAL. The revised boundary of OU B Marine in the area of the CAD pit is depicted in Figure 3.

OU B Marine Remedial Action Objectives

This ESD does not change the established remedial action objectives for OUB Marine.

Response Actions and Action Levels

The Navy is adjusting the action levels for the SOAL portion of the OUB Marine ROD to address sediment contamination. The action level for SOAL marine sediments is summarized in Table 2.

Table 2: Action Levels for SOAL Marine Sediments

Chemical of Concern	Response Action	Action Level	Basis of Determination
PCBs	Enhanced natural recovery	≥9 mg/kg OC PCBs	Relative risk reduction, implementability, and cost

As indicated in Table 1, the OUB Marine ROD required dredging or thick-layer capping for PCBs greater than 12 mg/kg OC. For this action, dredging was eliminated as a response action where concentrations exceed 12 mg/kg OC because the deposited sediments are surficial and dredging of less than 2 feet of contaminated sediments is not a cost effective means of risk reduction. This is due to the fact that the volume of material actually requiring removal is substantially less than what would be dredged and the costs associated with dredging and disposal of the non-impacted material would be substantial and disproportionate to the benefit gained from removal of the surficial material. Thick-layer capping was also eliminated as a response action because this area falls within the no-capping boundary defined in the OU B Marine ROD. Therefore, enhanced natural recovery (i.e., placement of 1-foot of clean material) was selected as the appropriate response action for sediments on SOAL with PCB concentrations greater than 12 mg/kg OC.

The OU B Marine ROD also required enhanced natural recovery if PCBs were greater than 6 mg/kg OC. For this action, areas with sediment PCB concentrations greater than or equal to 9 mg/kg OC will be remediated using enhanced natural recovery. Areas with sediment PCB concentrations between 6 and 9 mg/kg will not be specifically targeted because:

- Placement of 1-foot of clean material in the areas with PCB concentrations greater than or equal to 9 mg/kg OC is anticipated to coincidentally remediate areas greater than 6 mg/kg OC. (The SOAL characterization documented coincidental remediation of sediment on SOAL between 120 and 210 feet beyond the perimeter of the CAD pit. The approximate distance between the 6 and 9 mg/kg OC contour lines range from approximately 30 to 120 feet).
- A portion of the impacted area has already been successfully capped by incidental coverage from the CAD capping activities.
- The revised action levels are based on discrete sample data. The discrete sampling strategy generally
 provides a more conservative determination of action when compared to action levels generated based
 on composite sampling.
- Following the remedial action, the SOAL is expected to meet the overall area-weighted average ROD
 OU B Marine cleanup level of 3 mg/kg OC for sediments.

This action applies only to SOAL. As noted in above, the Navy completed a response action to address contamination on Navy property as a result of CAD filling activities.

Remedy Components

The response action selected to address contaminated sediment on SOAL includes:

- Placement of 1-foot of clean material (enhanced natural recovery) in areas with sediment PCB concentrations of 9 mg/kg OC or greater.
- Clean material will come from undredged navigational turning basins that were previously characterized and approved for open-water disposal by the Dredged Material Management Office (DMMO). This material was beneficially used as capping material on the CAD pit. Figure 4 shows the proposed Dredged Material Management Units (DMMUs) that will be dredged to provide the sediment to complete the enhanced natural recovery. The turning basins are considered "on-site" in accordance with the "on-site" definition of NCP Section 300.5. The turning basins are immediately adjacent to OU B Marine and less than 1/3 of a mile from the impacted SOAL and meet the requirements of the definition to be "in very close proximity to the contamination" and "necessary for implementation of the response action."
- Verification of sediment placement through performance of pre- and post-bathymetric surveys on the impacted area on SOAL. Dredged volume calculations will also be performed to verify placement of 1-foot of material.
- Monitoring through the OU B Marine Monitoring program. As part of OU B Marine, contaminant
 concentrations in the SOAL impact area are included in the OU B Marine area-weighted average
 calculations to determined attainment of the established cleanup goal.

No land use restrictions will be required on the SOAL portion of OU B Marine. This ESD does not change the ROD specified land use restrictions.

DNR and the Suquamish Tribe support this remedial action. Both agencies have been closely involved in the design, review and analysis of the data.

Expected Outcomes

Completion of the remedial construction using the revised action levels will effectively reduce the concentration of contaminants on SOAL consistent with the post-remedial construction goal for OU B Marine. Combined with the remedial construction activities, natural recovery is expected to reduce the OU B Marine area-weighted average PCB concentrations to below the minimum cleanup level within 10 years. This action is not anticipated to impact the 10-year natural recovery window. The 10-year natural recovery window, however, does not commence until completion of remedial construction and this response action. The total time to meet the clean up goal is therefore extended.

Remedy Costs

Construction of the remedial components identified in this ESD is estimated to cost \$879,000.

IV. SUPPORT AGENCY COMMENTS

Ecology supports this remedial action.

V. AFFIRMATION OF THE STATUTORY DETERMINATION

Since the remedy selected in this ESD will meet the remedial action objectives for OU B Marine, this selected remedy is protective of human health and the environment; complies with Federal, State and Tribal requirements that are applicable, or relevant and appropriate to this remedial action as identified in the ROD; and is cost-effective. This remedy utilizes permanent solutions and alternative treatment technologies to the maximum extent practicable for this site. However, because treatment was not found to be practicable, this remedy does not satisfy the statutory preference for treatment as a principle element. Consistent with the OU B Marine ROD, since the remedy will result in hazardous substances remaining onsite above health-based levels, a review will be conducted within five years after commencement of the remedial action to ensure that the remedy continues to provide adequate protection of human health and the environment.

VI. PUBLIC PARTICIPATION ACTIVITIES

A public notification on the availability of this ESD will be published in the local newspaper in accordance with NCP Section 300.435(c)2(i).

Attachment 8

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA and STATE OF WISCONSIN.

Plaintiffs,

V.

Case No. 10-C-910

NCR CORP. and APPLETON PAPERS INC. et al.,

Defendant.

DECISION AND ORDER ON THE PROPRIETY OF THE REMEDY

In this CERCLA enforcement action, the United States and State of Wisconsin have moved for summary judgment on the question of the propriety of the remedy they imposed in a Unilateral Administrative Order issued with respect to the Lower Fox River Superfund site. This Court has already ruled that the administrative record pertaining to the remedy is sufficient to allow the deferential review required by statute. Although other rulings have found that limited additional trial testimony could be relevant, I am persuaded that summary judgment in favor of the Plaintiffs is appropriate at this time. Accordingly, the Plaintiffs' motion for summary judgment will be granted. The Defendants have also filed motions for summary judgment; these will be denied.

¹ Several of the documents referred to herein have several page numbers and/or Bates stamp numbers on them. Where possible, citations in this opinion are to the ECF page number added by the Court's computer system.

I. Background

As recounted elsewhere, the Lower Fox River Site has been the subject of intense governmental scrutiny since it was revealed that significant quantities of sediment containing PCBs exist in the riverbed in both Little Lake Butte des Morts and in the Fox River itself. Because PCBs are now known to cause significant health problems for those who are exposed to the water or who eat fish caught in the river, the Site has been selected for remediation; a herculean and expensive cleanup effort has been underway for several years.

A companion case has focused on a struggle between the various potentially responsible parties ("PRPs") over which of them should bear the brunt of the cost of cleaning up the River. By contrast, this case is not about money so much as it is about action: here, the United States and the State of Wisconsin have sought to enforce the selected remedy against the PRPs.

The remedy—a combination of dredging and capping the riverbed—was selected as the result of a partnership between the Environmental Protection Agency and the Wisconsin Department of Natural Resources ("WDNR"), which was designated as the lead agency in developing the remedial project. The WDNR began investigating the Site in 1998. During its Remedial Investigation, the WDNR noted (among many other things) that the risks to human health relating to PCB's arising out of the consumption of fish were greater than the acceptable levels (despite the fact that eating fish has other health benefits). (ECF No. 507-2 at 5-6.) An extensive feasibility study considered all of the conceivable options. These included everything from "no action" and active monitoring to dredging and capping. (ECF No. 507-5 and 6.) Each alternative was assessed based on a number of criteria, which included key considerations such as effectiveness, feasibility, and cost. The agencies did not rely exclusively on paper analyses,

however: they also undertook two studies of the River and removed some 88,000 cubic yards of sediment to determine whether the sediment could be dredged safely.

In addition to the feasibility and health studies, the governments also created models of what they call "fate and transport" of PCBs within the river system. In brief, the PCBs were introduced into the river in a number of different locations, and the vicissitudes of the River's current, dams, weather, and proximity to release sites all played (and continue to play) a role in where the PCBs ultimately ended up. The governments' models were used in an effort to establish how the PCBs were transported throughout the river and Green Bay. The result was a 2,500-page report explaining the models, their use, and the conclusions drawn therefrom. (ECF No. 439-14 at 8.) A summary of the model's use is also part of the administrative record. (ECF No. 439-15.)

The remedy ultimately selected is documented in a number of lengthy public documents, including two Records of Decisions ("RODs"), two ROD Amendments, and an Explanation of Significant Differences. These decisions followed health assessments and feasibility studies designed to link resource expenditures with measurable public impact results. For example, the ROD issued in June 2003 addressed the remedy for areas known as OU3 through OU5, or roughly the part of the Fox River between Little Rapids and Green Bay. (ECF No. 404-2.) The ROD, a 154-page document that is typical of the other public documents addressing the remedy, explains that the remedy selected was the culmination of several years of study, remedial investigations and feasibility studies, many of which were subjected to public comment and input from the PRPs themselves. The ROD concluded that the remedy for OU3-5 would involve dredging some 6.5 million cubic yards of contaminated sediment and taking it to a landfill for disposal. This is what the parties refer to as an "all-dredging" remedy.

The "remedial action level" ("RAL") that would trigger the need for sediment removal was established at 1 part per million, meaning that sediment containing that amount or more would be targeted for removal. (*Id.* at 14.) Other action levels considered were 0.125 ppm, 0.25 ppm, 0.5 ppm, 5 ppm, and, of course, the "no action" alternative that would leave the PCBs untouched. Naturally, the action level would dictate how much sediment needed to be removed—a higher action level would require much less dredging than a more stringent threshold. The governments determined that 1 ppm was an appropriate benchmark. For example, at a concentration of 1 ppm, walleye would be safe for consumption within one year, whereas at the 5 ppm level they would not be safe to eat for 29 years. (ECF No. 439-12 at 98-100.) On the other side of the coin, the ROD observed that concentrations *lower* than 1 ppm would have only marginal reductions on PCBs in fish tissue, and thus concluded that "there is limited risk reduction achieved by selecting an RAL of less than 1 ppm." (*Id.* at 99; ECF No. 404-2 at 155.)²

The 2003 ROD estimated that the cost of the dredging remedy would be approximately \$325 million, with an understanding that the estimate could be off by as much as minus-30 percent and plus-50 percent. (ECF No 404-2 at 151.) On a per-unit basis, this figure was actually lower than might otherwise be expected. In response to public comments, the agencies explained that the lower-than-expected costs would arise out of economies of scale; the theory was that a project as large as this one would produce efficiencies not present in smaller dredging projects, and of course almost *every* other project had been smaller than this one. (ECF No. 439-5 at 24.)

² The selection of the remedy was immensely complicated and data-intensive, and it varied in different portions of the Site. This background section is merely a thumbnail sketch of the process, which is explained in much more detail in the RODs and other record documents themselves.

Circumstances changed after NCR and Georgia-Pacific (two of the key PRPs) undertook extensive sampling work, the upshot of which was that the governments determined that a much larger volume of sediment would need to be removed in order to achieve the PCB reductions set out in the earlier RODs. The two companies proposed a new remedy that incorporated a hybrid approach to the problem, namely, a mixture of dredging, sand covering, and capping. Their proposal indicated that the new cost estimate would reach some \$432 million (in 2009 dollars). Following public comment, the agencies issued a ROD Amendment in 2007 that incorporated the proposed changes. (ECF No. 404-3.) A hybrid remedy for OU1 was also adopted in a later ROD. In response to comments questioning the viability of capping, the agencies observed that capping could effectively contain sediments and would improve water quality.

By 2009, however, it became clear that even the recently-increased cost estimates had been overly optimistic. New estimates, based on "real world" bids from contractors, showed that the remedy would now cost some \$701 million dollars, roughly 62 percent more than estimated in the 2007 ROD. Estimates prepared by defense expert Jeffrey Zelikson demonstrate how the cost estimates of capping-versus-dredging remedies changed over time. (ECF No. 501-1 at 21.) By 2009, it had become clear that capping, which was estimated to cost \$484 million, would have been much cheaper than the \$701 million hybrid remedy. (Had the agencies pressed for the full dredging remedy, that cost had now skyrocketed to \$957 million, or almost one billion dollars.)

Despite the 62 percent cost increase, the agencies decided not to issue an ROD amendment, as they had in 2007. An ROD amendment is a formal process requiring reevaluation of circumstances and opening up the process to public comment; it is required when a new approach fundamentally changes a remediation project. Instead of issuing an ROD, the agencies issued an

"Explanation of Significant Differences" ("ESD"), which is a more streamlined approach. See 40 C.F.R. § 300.435. The 2010 ESD noted the large increase in cost, but found that because the increase was close to the 50 percent overrun already built into the original estimate, the cost increase did not pose a "fundamental" change to the project and thus did not require an ROD amendment. (ECF No. 147-1 at 15.) The ESD, along with a Criteria Analysis Memorandum, explained several areas on which the original estimates proposed by Georgia-Pacific and NCR understated the actual costs. These included increased costs for site support costs, residual dredging, and shoreline caps. (Id. at 13-14.) The ESD also noted the complexities inherent in such a project, given the lengthy time span and the combination of capping, dredging and sand covering. (Id. at 14.) The remedy described in the 2010 ESD is the essence of the remedy the governments are now seeking to impose.

II. Analysis

At issue are four separate motions for summary judgment: one filed by the United States and the State of Wisconsin, and three filed by the Defendants. Because the burden is on the Defendants, I concentrate my focus on their arguments.

A. Arbitrary and Capricious Standard

Section 113(j) of CERCLA provides that judicial review of response actions is based on the administrative record and is limited to determining whether the response action is arbitrary and capricious. 42 U.S.C. § 9613(j). Specifically, it provides that "the court shall uphold the President's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law." *Id.* at (j)(2). This means that the government's selected response action is

presumed valid unless the Defendants can meet their burden to demonstrate otherwise. *United States v. Burlington Northern R. Co.*, 200 F.3d 679, 692 (10th Cir. 1999).

As I concluded in a previous ruling, arbitrary and capricious are terms that describe the manner of remedy selection more than they do the result, although the two are often intertwined. "Arbitrary means the Government simply threw darts or flipped a coin, selecting the remedy without a basis in reason or science. Capricious means it rushed through the process or made a sudden, knee-jerk decision without hearing enough evidence." (ECF No. 498 at 7.) Of course no one expects that government officials are actually flipping coins or throwing darts; the point is that courts give the government agency significant discretion to select a remedy and will only overturn that remedy if it appears to be outside the bounds of what is reasonable. Moreover, the statute requires the challenging party to show that the remedy is arbitrary and capricious. This is perhaps a technical point, as the two often go hand-in-hand, but it underscores Congress' sensible policy of leaving decisions like remedy selection to agencies that have the technical expertise and experience to render them. As this particular administrative record reveals, no court in the land has the ability or expertise to even scratch the surface of the detail and study needed to craft a remedy in the first instance. Instead, judges are asked merely to provide a check on what would otherwise be the largely unrestrained power of the executive agency. I now turn to the motions filed by three separate groups of defendants.3

³ Although NCR filed a motion on its own, there is substantial overlap between those joining the briefs supporting the other two motions. The arguments are divided in part because some parties participated in the remedy selection process and thus have a somewhat compromised ability to effectively challenge it.

B. NCR

Defendant NCR focuses its remedy challenge on the process the agencies used to impose its most recent remedy changes. Specifically, it argues that the changes imposed in 2010 were "fundamental" changes that required the issuance of a formal ROD amendment rather than the Explanation of Significant Differences the agencies used.

As suggested above, the applicable regulations provide for two alternatives when a remedy requires significant changes:

- (2) After the adoption of the ROD, if the remedial action or enforcement action taken, or the settlement or consent decree entered into, differs significantly from the remedy selected in the ROD with respect to scope, performance, or cost, the lead agency shall consult with the support agency, as appropriate, and shall either:
- (i) Publish an explanation of significant differences when the differences in the remedial or enforcement action, settlement, or consent decree significantly change but do not fundamentally alter the remedy selected in the ROD with respect to scope, performance, or cost. To issue an explanation of significant differences, the lead agency shall:
- (A) Make the explanation of significant differences and supporting information available to the public in the administrative record established under §300.815 and the information repository; and
- (B) Publish a notice that briefly summarizes the explanation of significant differences, including the reasons for such differences, in a major local newspaper of general circulation; or
- (ii) Propose an amendment to the ROD if the differences in the remedial or enforcement action, settlement, or consent decree fundamentally alter the basic features of the selected remedy with respect to scope, performance, or cost.

40 C.F.R. § 300.435.

Thus, under subsection (ii), an amendment to the ROD is required if the differences "fundamentally alter the basic features of the selected remedy." *Id.* In a previous decision and order

addressing the governments' motion for a preliminary injunction, I agreed with the governments that the cost increases adopted in the ESD likely did not amount to a fundamental change in the basic features of the remedy and thus found that the Defendants had a low likelihood of success on that argument. Little has changed since then.

NCR argues that a 62 percent increase over prior estimates—more than a quarter of a billion dollars—is a fundamental enough change to require issuance of a ROD amendment. In fact, the cost of the *increase* is itself greater than the cost for almost every CERCLA cleanup ever undertaken, and, according to NCR's expert, the increase exceeds that of *all* cost increases combined on Superfund sites between 2004 and 2005. (ECF No. 501-1 at 10 n.25.) In Mr. Zelikson's opinion, based on more than 25 years at EPA, a cost increase of this magnitude would require an ROD amendment, public comment, and review of other remedial options. The EPA's own guidance suggests that an amendment would be required when there was "an appreciable change or changes, in the scope, performance, and/or cost." In fact, he suggests, the governments implicitly conceded as much when they issued an ROD amendment in 2007, which had the same 62 percent cost increase.

Although the experts Jeffrey Zelikson and Paul Fuglevand add more context to the issue, I remain satisfied than an ROD amendment was not required and that genuine issues of material fact do not exist. (ECF No. 501-1; 519-2.) First, the key language in the regulation uses not one but two stark and related terms: "fundamental" and "basic." For an amendment to "fundamentally alter the

⁴"A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents"; EPA 540 R 98 031, July 1999, at 7.2, available at http://www.epa.gov/superfund/policy/remedy/rods/pdfs/guide_decision_documents_071999.pdf (last visited November 16, 2012).

basic features" of a remedy, the change must be so drastic that the *essence* of the remedy—its *basic* features—has been "fundamentally" changed. Such a change is not just significant or even crucial, but must go to the very core or definition of what the remedy is. When something is merely more expensive than predicted, it does not change the "basics" of the remedy unless the change is truly a drastic one.

Second, the EPA's own guidance document, relied on by Zelikson, does not suggest that the recent changes were fundamental. In a non-exclusive set of examples, the document lists only as "significant" a situation involving a "large increase in cost." *Id.* (see footnote 2) at Highlight 7-1. For example, if "[s]ampling during the remedial design phase indicates the need to significantly increase the volume of contaminated waste material to be incinerated . . . thereby increasing the estimated cost of the remedy," that would constitute a "significant" but not "fundamental" change. By contrast, the guidance lists a number of examples of "fundamental" changes, but none of these are based solely on cost overruns. Instead, the examples of fundamental changes tend to involve changes to the *nature* of the remedy, for example, from a soil-washing or natural attenuation remedy to an excavation remedy. Id. Thus, when in 2007 the EPA decided to issue an amendment rather than an ESD, it likely did so because it had changed from a purely dredging remedy to a hybrid remedy employing capping as well. The fundamentals of the remedy were changed in 2007. Here, by contrast, there were no material changes to the nature of the remedy, the changes only went to estimates of what the remedy would cost. Thus, the very guidance NCR relies on does not support its argument that the cost increase was per se a fundamental change. Ultimately, it is doubtless true that the cost of the remedy is everything if you're the one paying for it, and 62 percent is undeniably a very expensive change. But cost is hardly dispositive of the triggers set forth in the applicable

regulations, which consider many things other than cost, including the method of remediation, the public impact, feasibility, and the like. After all, these are the sorts of other factors that might be amenable to public comment, which is the very purpose of the ROD amendment procedures in the first place. Public comments on increased cost are likely to be limited to the predictable and well-known protests from the companies who have to shoulder the burden.

United States v. Burlington Northern is not to the contrary. There, the Tenth Circuit determined that a cost overrun of roughly 60% fundamentally altered the remedy and that the EPA should have issued an ROD amendment. 200 F.3d 679, 694 (10th Cir. 1999). But once again, the remedy change there was not a "mere" cost increase but a change in the nature of the remedy itself. For example, instead of remediating tar sludge, the sludge was incinerated at an increased cost of roughly one million dollars. Incineration had been part of the original ROD, but it was eliminated in an amendment after it proved too costly. Thus, the change to the incineration remedy that had already been rejected, was, in the district court's words, a "significant deviation from the selected remedy." Id. at 692. The Tenth Circuit agreed: "[t]he EPA acted arbitrarily and capriciously by failing . . . to propose an amendment regarding the significant cost increase associated with the additional boxes of liners and the tar heels and by failing to propose an amendment regarding the decision to incinerate rather than remediate a significant amount of the impoundment sludge." Id. Thus, the change in Burlington Northern involved not just cost but a fundamental change in the nature of the remedy itself—just as in 2007, when the agencies in this action issued a ROD amendment.

Finally, as I found in a previous decision, the 62 percent cost increase does not stand in a vacuum. Recall that the original estimates had already built in a very large "fudge factor" that

would account for as much as a 50 percent cost overrun. The original 2007 estimate was \$432 million in 2009 dollars. (ECF No. 501-1 at 18, Table 1.) Adding 50 percent onto that figure results in a maximum estimate of \$648 million. In the 2010 Explanation of Significant Differences, the new estimate was \$701 million, "only" \$53 million more than the original estimate, or about eight percent. Thus, when we include the original fudge factor into the comparison, the 2010 cost increase was only eight percent higher than originally proposed. NCR has not cited any cases or guidance that would even come close to suggesting that an eight-percent overrun constituted a "fundamental" change in the project.

Perhaps recognizing that the math is against it, NCR argues that by 2007 the remediation process had become much more concrete and thus it was not reasonable to build such a large amount of wiggle room into the estimates. The estimate, in its view, should have only included a +15 percent figure, not +50 percent. But that is nothing more than Monday morning quarterbacking. The fact is that, by NCR's own admission, this is a project of unique scale and complexity, and the +50 percent range was built into the 2007 estimates. The question in 2010 was not what the estimate range in 2007 should have been, it was whether the new estimates were fundamental changes to the estimate that had actually been provided in 2007. When we are reviewing changes to estimates to determine how large the change is, it does not make sense to go back and reexamine the original estimate to determine what it should have been. The only salient question is what that original estimate was. In sum, the language of the regulations and the EPA's own guidance suggests

⁵ NCR is correct in some sense that a 62 percent increase is 24 percent higher than a 50 percent increase, but the salient comparison here is not between the two percentages of increase but between the increases *plus* the original amounts. Thus, we compare 162% (the actual estimate) to 150% (the original estimate) to find that the 2010 figure was only eight percent higher than the estimate (12 divided by 150).

that a cost increase, even a "significant" one, does not necessarily trigger the need to issue a ROD.

And the fact that the applicable estimate included a very large amount of flexibility brings the changes proposed in 2010 much closer to that estimate. In sum, I conclude that the EPA did not err in issuing an ESD rather than an amendment to the ROD.

C. Glatfelter and Other Defendants

1. Delegation to the WDNR

Some Defendants, led by Glatfelter, argue that the EPA failed to properly delegate authority to the Wisconsin DNR to conduct the remedial investigation and feasibility study ("RI/FS"). CERCLA itself allows the EPA to designate a state to take the lead in a remediation project like this one, but in this case the EPA did not formally do so. "Absent an express delegation by the EPA, a state has no CERCLA authority." W.R. Grace & Co.-Conn. v. Zotos Intern., Inc., 2005 WL 1076117, *4 (W.D.N.Y. 2005). Section 104(d)(1) of CERCLA provides:

A State or political subdivision thereof or Indian tribe may apply to the President to carry out actions authorized in this section. If the President determines that the State or political subdivision or Indian tribe has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 9605(a)(8) of this title and to carry out related enforcement actions, the President may enter into a contract or cooperative agreement with the State or political subdivision or Indian tribe to carry out such actions. The President shall make a determination regarding such an application within 90 days after the President receives the application.

42 U.S.C. § 9604(d)(1).

Because there is no formal contract or cooperative agreement in the administrative record, Glatfelter argues that the State of Wisconsin lacked the authority to conduct the remedial investigation and feasibility study. Without a formal delegation of authority, state officials answered to the Governor, not to the President, and it was thus arbitrary and capricious for EPA to

have relied on the state's RI/FS in selecting the remedy. Although CERCLA grants a great deal of authority and deference to the EPA in such matters, Glatfelter argues that it does *not* do so to state agencies that have no formal contractual relationship with EPA.

The agencies argue that there was, in fact, a cooperative agreement in place. In 1998, the WDNR submitted s "Superfund Fox River Cooperative Agreement Application" to the EPA, and it was quickly approved in February 1998. The agreement provided as follows:

The purpose of this Superfund Cooperative Agreement is to develop a scientifically sound and defensible risk assessment (RA), remedial investigation / feasibility study (RI/FS) and to afford the appropriate levels of public participation for this part of the federal Superfund process. . . . The goal is to compile the data necessary to select an approach for site remediation and then to use this information in a well-supported Record of Decision (ROD).

(ECF No. 620-1 at 21.) Among other things, the Cooperative Agreement noted that "CERCLA section 104(c) requires that CERCLA-funded actions provide a cost-effective response, balancing the need for protection of public health, welfare, and the environment against the availability of amounts from the fund to respond to other sites." (*Id.* at 11, ¶ 6.) It further provided that "[a]ll activities conducted under this Agreement shall not be inconsistent with the revised National Contingency Plan (NCP)." (*Id.* at 12, ¶ 13.) The agreement was signed by George Meyer, DNR Secretary, and William Muno, Director of the EPA Superfund Division, Region 5. (ECF No. 620-2.)

The Defendants argue that this "Cooperative Agreement" is not actually a cooperative agreement. A number of their arguments apparently resulted from some confusion in the record, however, which a corrective letter from the government has now explained. (See ECF No. 621.)

The Cooperative Agreement refers to CERCLA's requirements and was signed by appropriate government officials. All of the correspondence refers to the document as a cooperative agreement, and the cover letter from the DNR Secretary describes it as a "Superfund Fox River Cooperative Agreement." (ECF No. 620-1 at 1.) The agreement refers to the "goal" of producing a Record of Decision by conducting a feasibility study and risk assessment. (*Id.* at 21.) The fact that the DNR was motivated to become the point agency on the project by certain local political considerations does not change the fact that this was a cooperative agreement. Presumably in every case in which a state agency takes the lead, it does so because its governor has determined that his state's public is best served if the state is involved. That the governor might not have the specific nine CERCLA criteria in mind when directing his DNR to take the lead is hardly surprising.⁶

The Defendants also argue that even if the agreement is considered a proper cooperative agreement, its absence from the administrative record means that it cannot be considered at this stage of review. But a cooperative agreement between a state and the federal government is not part of the decision-making process that a court reviews. It is a legal precursor to that process, perhaps, but its substance will be reviewed (if at all) *de novo*, rather than with "deference" to the agency. If a proper agreement exists, it does not need to be part of the administrative record in order for a court to conclude that the lead agency actually had the authority to conduct the remedial project.

⁶ There has been some late wrangling about the Cooperative Agreement, due to its very recent inclusion in *this* record (ECF No. 620-1) by the United States. Some Defendants have protested the new document the government filed. (ECF No. 623.) Given the flurry of activity in advance of trial and the lateness of the submission, the Defendants may take any additional discovery on the document they reasonably need after the trial. If it appears that there is some basis to question the document's legitimacy, they may ask for reconsideration on this point as part of their post-trial submissions.

Any other result (for which there is no precedent) would needlessly elevate technical minutiae over substance.⁷

2. WDNR's Assumptions About Dredging and Reliance on WDNR's RI/FS

Glatfelter and some of the Defendants also argue that the WDNR made overly optimistic assumptions about the efficacy and cost of dredging. For example, the WDNR assumed that the cleanup would result in a SWAC (surface weighted average concentration) of 0.25 ppm, a level that had never been obtained in river dredging projects. When assumptions about the effectiveness of a given remedy are overly optimistic, it skews that remedy selection process by placing too much weight on that remedy, regardless of cost. These Defendants also argue that the cost estimates were optimistic as well. Thus, when the remedy is deemed more effective and less expensive than it actually is, the resulting selection is doubly skewed.

The government argues that the SWAC estimates were reasonable. Although the initial estimates of a 0.25 ppm have proved unattainable, that was one of the reasons the ROD was amended in 2007. The ROD Amendment explained:

Recent experience with dredging in OU1 and other projects has shown that dredging equipment cannot completely remove contaminated sediment from dredged areas. Thus, residual contaminant concentrations often remain after dredging is completed in an area. For that and related reasons, the dredging remedy selected by the 2003 ROD probably would not achieve the PCB Surface Weighted Average Concentration (SWAC) goals established by the 2003 ROD.

(ECF No. 404-3 at 8, ¶ 5.)

⁷ Even if such a document *were* required to be part of the administrative record, that would present a suitable opportunity to supplement the record to include it. Unlike the "supplements" proposed by the Defendants, which consisted of *new* information and opinions, this document was actually in existence and is a proper candidate for supplementation.

The ROD Amendment further explained that experience had shown that, even if the dredging had been done down to the 1.0 ppm level, the dredging process re-deposits some PCB-containing sediment in a this layer on top of the dredged area. That amount of residual PCBs would increase the SWAC calculation. In addition, experience had shown that there would remain a small amount of PCBs on the surface of *un*dredged areas (areas with less than the 1.0 ppm RAL). This small amount of residual PCBs, which had not been expected, would also impact the final SWAC estimate. (ECF No. 404-3 at 16.) These factors influenced the governments' decision to adopt the amended remedy, which included a significant use of capping (3.3 million cubic yards) and no longer relied exclusively on dredging. (ECF No. 404-3.)

The Defendants also argue that in 2007 the governments should have gone back to the drawing board and reevaluated the remedy from a fresh perspective. Although they determined that the new hybrid remedy was more efficacious than the 2003 all-dredging remedy, they failed to consider a more extensive capping remedy once they learned, through experience, that their estimates about the virtues of dredging had proven overly rosy. This is especially true given that the Plaintiffs acknowledged in 2010 that capping, sand covering and dredging would all meet minimum requirements for long-term protectiveness and permanence.

Yet even if the governments took a more favorable view towards capping in 2010 than they did in 2003, it does not show that the dredging-plus-capping remedy was arbitrary and capricious. As the 2010 Criteria Analysis Memorandum explains, there were other considerations. Primary among these is the fact that dredging actually *removes* the toxic PCBs from the River for all time and places them in a secure off-site facility. (ECF No. 147-2 at 3.) Even if caps provide an adequate solution, they will require maintenance in the long-term, and these long-term costs are less

certain than dredging (although OU1 capping costs might have provided some guidance). Caps can also affect the navigability of the River in shallow areas or shipping channels, which adds further uncertainty especially if the water levels would decline. The CAM further explained that sand covering, like capping, reduces PCB concentrations but does not remove the PCBs from the River. Finally, as the original ROD noted, capping could be susceptible to catastrophic events like floods. (ECF No. 404-2 at 124.)

Ultimately the Defendants do a convincing job of showing that capping was not as unfavorable an option as it seemed in 2003. They also have explained that dredging was not as effective at lowering PCB levels as had been hoped. But that is a far cry from showing that the remedy actually imposed was arbitrary and capricious. The documents cited above reveal that the agencies conceded that their original SWAC estimates had not borne out, and they show that they adapted by choosing a remedy that included more capping in order to save costs. The agencies also conceded throughout this process that dredging was not a panacea: it could disrupt long-dormant PCBs and redistribute them, which would result in some resuspension of the PCBs. (See, e.g., ECF No. 404-2 at 142.) Similarly, the agencies found that many of the risks of capping could be mitigated. (Id. at 124.) The Defendants have suggested throughout that the agencies had an irrational bias in favor of dredging, but the documents show that the agencies frankly and extensively considered the costs and benefits of both methods of remediation. It was not as though the agencies believed dredging was an "A+" solution and capping was an "F"—instead, it was clear that they adopted a mild preference for the benefits of dredging and viewed these as being worth their added expense. It is of course natural that those who have to bear the expense would disagree, but the agencies explained that the hybrid remedy selected was the most cost-effective because it

balanced the permanence of dredging with the cost savings of capping and sand covering in places that were more amenable to those remedies, such as areas with deposits of sediment covered by clean sediment. (ECF No. 147-2 at 4-5.) Their explanations are common-sense ones: removal of PCBs is inherently better than trying to contain them, even if the dredging solution is not perfect. This solution speaks to more than the mechanical cost-benefit ratio that the Defendants rely on. That is, although the Defendants can cite the virtues of capping versus dredging, these cannot overcome the inherent advantages of dredging, namely the "permanence" of the solution, which has not just a scientific but common-sense appeal as well. The "insurance" provided by actually removing the toxic PCBs from the River is not an insignificant consideration. The NCP says that the "purpose of the remedy selection process is to implement remedies that *eliminate*, reduce, or control risks to human health and the environment." 40 C.F.R. § 300.430(a). That the agencies chose a remedy that eliminates much of the risk in some parts of the river and reduces it in others is not irrational.

3. Reliance on 1 ppm Remedial Action Level

Finally, Glatfelter argues that reliance on the 1 ppm RAL was arbitrary and capricious because it adopted a "one size fits all" approach to the River. PCBs are harmful only inasmuch as humans are exposed to them. Exposure risks differ depending on which part of the River we are talking about. For example, sediment that is buried deep in the riverbed is much less risky to humans than sediment near the surface because the buried sediment is less likely to be ingested by fish. As such, the Defendants argue that requiring a 1 ppm level for each type of PCBs is arbitrary because it treats differing risks in an identical manner.

This objection was raised and addressed ten years ago. In a White Paper, the DNR explained that the RAL is only one factor used in achieving an appropriate "healthy" level of PCBs in the water. (ECF No. 578-9.) It was not as though the government actually believed all PCBs were equally dangerous; instead, it used the 1 ppm level as a metric that would impact the other thresholds such as sediment quality and SWAC. In other words, removing sediments that had 1 ppm or greater was deemed crucial in achieving the sediment quality and SWAC numbers the government deemed important for public health. (See, e.g., ECF No. 439-12 at 96.) "Studies conducted as part of the Lower Fox River and Green Bay RI/FS indicate that a 1 ppm RAL shows the greatest decrease in projected surface water concentrations relative to the other action levels." (Id. at 97.) Nowhere does any agency suggest that it believed all PCBs, wherever buried, were equally dangerous. Accordingly, Glatfelter's motion will be denied.

D. Menasha and Other Defendants

1. Assumptions about River Temperature

Menasha and some of the other Defendants argue the remedy was arbitrary and capricious because the agencies used an average water temperature of 20 degrees (Celsius) in their model, called the FRFood model. In warmer months, the River might be that warm or even warmer, but in the colder months temperatures are near-freezing and bring the average temperature down much lower than 20 degrees.

Menasha argues that this is not an academic point about water warmth but about the danger of the PCBs as a toxin. As noted above, PCBs are dangerous to humans primarily because fish consume the PCBs and then humans consume the fish. In warmer temperatures, fish consume more food than they do in colder months, which means they ingest more of the PCBs that are lingering

in the River sediments. According to Menasha, if the temperature is overstated in the model, the model will also overstate the amount of food fish eat and thus the amount of PCBs they ingest. In short, Menasha believes the assumption about a higher river temperature improperly boosted the level of fish toxicity and thus exaggerated the dangers of PCBs overall. And when the dangers are exaggerated, so is the response.

The agencies argue that their FRFood model was tested and provided accurate results of PCB accumulation, and they suggest that the Defendants' focus on a single data point misses the boat entirely given the deferential level of review to be applied here. The agencies note that the model was based on a model developed for Lake Ontario, which has been successfully applied to predicting PCB concentrations in fish elsewhere. The 2002 Final Model Documentation Report explains that, although the Lake Ontario model was developed for use in lake systems, "the mathematical relationships have been successfully applied to predicting fish tissue concentrations in some river systems." (ECF No. 578-13 at 4-5.) "Applications of this model in other systems include derivation of bioaccumulation factors, bioconcentration factors, and food chain multipliers in the development of the Great Lakes Water Quality Initiative criteria." (*Id.*) The Report further explained that although the model had overpredicted PCB concentrations in some fish, in other fish it had underpredicted. Ultimately, the model was deemed suitable based on its prediction of observed fish tissue concentrations in the Fox River as well as the Sheboygan and Hudson Rivers. (*Id.*) at 4-6.)

Although the Defendants are undoubtedly correct that 20 degrees is not the actual average temperature of the Fox River, I am satisfied that the figure is not so far off that it materially impacted the choice of remedy. If the summer months are 20 degrees or warmer, that means the

model actually under-predicted PCB consumption for those months, which would partially balance out any error that occurred during the winter. More importantly, the agencies have explained adequately how the entire model has been used elsewhere in similar climates with success. It cannot be overstated that when a reviewing court is viewing these sorts of issues through arbitrary-and-capricious lenses, it is typically not enough to argue that a single data point or assumption was erroneous or that it could have been more accurate. And when the matter is as complex as predicting fish toxicity based on releases of PCBs into a dynamic river system decades earlier, it will require more to show that the governments' approach was so unreasonable as to render it arbitrary and capricious.

2. Octanol-Water Partitioning Coefficient

Relatedly, Menasha argues that the agencies used an improper value to measure the toxicity of the PCBs in OU1-OU4. In short, not all PCBs are equally harmful. In OU5, for example, the WDNR used an approach to remedy selection that was tailored to the PCBs that were actually in the Site. This produced what is known as a "log Kow value" of roughly 5.6 to 5.7. By contrast, for OU1-OU4, the agencies adopted a log Kow value of 6.6. These values are measured on a logarithmic scale, meaning that an increase in I is actually a 10-fold increase.

The log K_{ow} value, according to Menasha, is one of the most important factors affecting how PCBs move through the environment. (ECF No. 557, ¶ 89.) The figure measures a chemical's tendency to dissolve in water, which can be indicative of how the chemical accumulates in the fatty tissue of fish. The 6.6 figure appears to have come from one of the models used in the remediation of Lake Ontario (described above), and because the makeup of PCBs at that Site is different from that of the Fox River Site, the Defendants argue that the figure should not have been used to create

a remedy. Practically speaking, according to Menasha, the difference in the 5.6 versus 6.6 log K_{ow} values resulted in a dredging remedy for OU1-OU4 but a "monitored natural attenuation" remedy (no dredging) for OU5.

The agencies explain that the 6.6 log K_{ow} value they used in some of the model runs did not exaggerate PCB accumulation in fish tissue. Log K_{ow} values between 4.4 and 8.2 were found in the River, and thus 6.6 was well within the range actually observed. (Aroclor 1242 is listed at 6.3.) (ECF No. 578-15.) And the fact that a 5.6 figure was used in some applications while 6.6 was used in others is not dispositive of anything because the lower value was used to determine the transfer rate of PCBs between blood and water in fish gill tissue, and that value was specific to the species of fish.

I am satisfied once again that the Defendants have not adequately explained why a figure of 6.6 would have been improper, much less arbitrary and capricious. As the agencies note, there is little science behind their argument, and the suggestion that the 6.6 figure actually impacted the remedy selected is wholly speculative. Put another way, there is little scientific basis to conclude that a different figure would even have been more appropriate, and as such it is impossible to find that the use of 6.6 was arbitrary and capricious.

3. Model Calibration

Menasha also argues that the model was not calibrated properly (or at all) because it had failed a key test in the calibration process. According to the 1998 Technical Memorandum 1 (the "Tech Memo"), the model had to be within plus or minus 30 percent of the conditions actually observed in the Fox River. (ECF No. 557-60.) Moreover, the model had to be able to be "hindcast"

to compare its predictions to the conditions actually observed over time. According to the Defendants, the model failed these calibration tests.

The agencies note, however, that the calibration methods detailed in the Tech Memo were not an exhaustive series of pass-fail tests. That is, the methods and metrics described were to be viewed *in toto* in order to determine whether the model would be adequately predictive. (ECF No. 568-1 at 2-3.) The Tech Memo did not say, in other words, that "failing" a single metric would necessarily disqualify a model.

Even so, according to the Model Development Report, the model did meet the 30 percent threshold for data within the water column, even if it did not do so for data derived from sediment. (ECF No. 568-2 at 1.) The Report elaborates:

Relative differences for the sediment column were much larger [than plus or minus 30 percent]. Nonetheless, the wLFRM was able to capture the trend and magnitude of inferred PCB concentration changes over time in surface sediments. Given these considerations, the wLFRM calibration was judged to adequately meet the criteria identified in Technical Memorandum 1.

(Id.)

The Report further explained that quantification of PCB concentration trends in sediment was a "complex process." (Id. at 63.) Addressing the failure to achieve much success with sediment, the Report notes that the sediment samples were not collected with an eye towards estimating PCB trends over time. Moreover, the Report identified a number of "caveats" with sediment data, including "[d]ifferences attributable to spatial heterogeneity, temporal variability, and analytical bias confound direct analysis and makes clear identification of possible trends challenging." (Id.)

The report as a whole indicates that the agencies considered the problems of sediment data and concluded that the prospect of ever having adequate results with such data was dim, given the complexities and caveats the Report identified. In actuality, given the obvious complexity of the task, the process was the opposite of arbitrary and capricious. Instead of pretending the problem didn't exist or attempting to obscure it, the agencies explained the issue and further articulated why it wasn't fatal to their adoption of the model. The Report evidences not arbitrariness but care and concern that a record be made identifying the problem and the agencies' response to that problem. And of course the very metrics the Defendants now cite were never intended to be disqualifying in the fashion they suggest. Calibration means running the model through a series of tests and then determining whether the final result warrants approval; it does not mean that performance on a single test would throw the entire model out the window, particularly given the inherent difficulties the agencies identified at the time with that particular metric. The calibration described in the Report could be analogized to a job posting in which the employer identifies a number of criteria it is looking for in a candidate. In some cases a given criterion could be disqualifying, for instance if the applicant lacks a needed license or certification. But others are more flexible and, depending on the circumstances, a weak performance in one area could be overcome by stronger performances in others. The Defendants portray calibration as though it were a pre-launch NASA safety punch list, in which the slightest discrepancy will ground the shuttle. Instead, calibration, as the administrative record itself explains, is a more nuanced process designed to deal with a very complex issue. Focusing very narrowly on a single criterion—which the agencies themselves did not view as disqualifying—does not under these circumstances suffice to generate a genuine issue

of material fact. Viewing the model calibration as a whole, it is clear that the agencies had ample reasons for believing it to be adequately predictive.

In sum, viewing the process through the narrow lenses Menasha proposes, it would be hard to imagine a remedy *ever* being satisfactory. Finding answers to problems as complex as the ones at issue here will be never be easy or without controversy. But, as I have emphasized repeatedly above, it is not enough to point out issues here and there that might be arguable—the challenger must point to fundamental flaws in the process that are suggestive of arbitrariness and caprice. The ones identified above do not even come close. In reviewing the administrative record, I have found an almost breathtaking level of scientific detail and careful analysis supported by palpable evidence of the incredible effort brought to bear by countless agency employees and hired scientific advisors.

4. Cost Contingencies and Estimates

Finally, Menasha argues that the remedy selection was arbitrary and capricious because it failed to include important cost contingencies and failed to account for certain dredging costs. Menasha's argument on cost contingencies is supported by little other than misquoted EPA guidance suggesting that cost contingencies may be appropriate in some circumstances. The "guidance" document it relies upon explains on the very first page that "it does not impose legally binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the specific circumstances." (ECF No. 536-6 at i.) Without citation, and despite this cautionary language (as well as the fact that the document is described merely as "guidance"), Menasha argues that the guidance document says that such contingencies are "required" (ECF No. 557 at ¶ 109-110) and "must be included." (Id. at 114.) I cannot find any

basis in law to conclude that a failure to include cost contingencies could be deemed arbitrary and capricious.

Defendants also argue that EPA and WDNR erred by failing to include a cost estimate associated with overdredging in the 2003 ROD. "Over-dredge" is the material dredged several inches below the sediment believed to actually contain PCBs. Several inches of over-dredge adds up to lots of material when we are talking about a massive riverbed. By failing to account for all of the costs associated with dredging this extra material, the 2003 ROD was off by some \$176 million, according to the Defendants. In addition, Defendants argue that the agencies underestimated the per-unit costs of dredging in the 2003 ROD, which improperly tipped the scales in favor of a dredging remedy.

The agencies note, however, that the 2003 remedy is not the remedy that was actually adopted. Instead, a hybrid remedy was adopted after the 2007 ROD Amendment and 2010 ESD. When this replacement remedy was ultimately adopted, over-dredge costs were included. In fact, it was this information, along with other information learned about the nature of other PCB deposits, that led to the ROD Amendment in the first place. It is thus unclear how any errors in the original ROD, which was not imposed, could be deemed arbitrary and capricious. As discussed earlier, the point of ROD Amendments and ESDs is to modify earlier models and remedy selections, and as such an original ROD is simply an initial step in the process.

As for the cost estimates themselves, the Defendants argue that the agencies ignored the actual costs incurred for dredging at other sites, including the pilot projects undertaken on the Fox River itself. Other projects cost hundreds of dollars per cubic yard ("cy"), and the average cost per yard on the Fox River itself had been \$318 in the pilot projects. Nevertheless, the agencies adopted

a cost estimate of only \$44 per cubic yard. They explain that the vastness of this project would lead to large economies of scale not seen in other, smaller, projects.

Once again, however, it is unclear why any errors made in the earliest cost estimates would result in a finding that the ultimate remedy selected was arbitrary and capricious. Later estimates, which were adopted, accounted for the increased costs that experience had borne out. In fact, it was the increased dredging cost estimates (including large volume increases) that caused the agencies to adopt a hybrid remedy employing much *less* dredging than had originally been planned. (ECF No. 404-3 at 27.) Thus, to focus narrowly on an original estimate of cost on a per-cubic-yard basis does not make sense when the entire project was changing over time and when the ultimate remedy was not based on the offending estimate in the first place. For these reasons, Menasha's motion for summary judgment will be denied.

D. The Plaintiffs

Above I have addressed the reasons why the Defendants' motions for summary judgment will be denied. Although they argue that the governments' motion for summary judgment cannot be granted because genuine issues of material fact remain, they do not elaborate on what those facts might be. After all, the review at this stage is limited to the administrative record (i.e., paper), making the matter amenable to summary judgment (as their own motions on that score appear to concede).8

Having found that the Defendants have not met their burden to demonstrate that the remedy was arbitrary and capricious, it follows that the governments' motion for summary judgment will

⁸ As noted earlier, I have reviewed the reports of the two experts I allowed to testify on a limited basis regarding costs and conclude they do not raise a genuine issue of material fact requiring a trial. (ECF No. 501-1; 519-2.)

be granted and the remedy must be upheld. Even so, it is worth fleshing out my conclusion that the governments are entitled to summary judgment. The discussion above only scratches the surface of the complexity involved in crafting a remedy for such a difficult problem and in meeting the demands of the public and the PRPs themselves, many of whom participated in the remedy selection process. The comments received during this process were answered and the concerns were addressed. That the PRPs did not win the day on many of their proposals is not surprising.

Many of the Defendants appear to view their failure in the debate over capping and dredging not as a product of an honest disagreement among professionals and public servants but as the result of some sort of nefarious government plot perpetrated by individuals who put their thumb on the scales in favor of dredging at the very earliest stages and then buried their heads in the sand to avoid coming to grips with dredging's costs and limitations. If there were evidence of such a phenomenon, I would certainly consider granting the Defendants' motions or at least holding a trial on the matter. However, as discussed above, the record is simply devoid of any such evidence. The remedies were crafted by countless individuals—not just in the government but at private environmental contractors—and of course the process spanned more than a decade and involved both state and federal officials. On that score alone, it is simply implausible to believe that so many different individuals could come up with a result that was based solely on an irrational prejudice in favor of dredging.

Of course we do not have to speculate about the agencies' motives because we have an extensive administrative record. Were results fudged? Was data hidden? Were shortcomings glossed over and were successes trumped up? No. The Defendants have cited a few instances where data input (e.g. temperature) was not perfect, or where a model did not perfectly calibrate,

but in a fantastically complex process like this perfection is unattainable. The record reveals that rather than some kind of irrational bias against capping, the agencies were readily admitting that capping had certain advantages and that dredging was not a perfect solution. The agencies frankly conceded that capping was a "feasible" solution that "can be effective in reducing the risks posed by PCB-contaminated sediments at the Site." (ECF No. 147-2 at 3.) The Defendants point to this clause as though it should end all discussion on the matter, but they ignore the fact that the agencies cited other reasons (on the very same page, in fact) why capping was *not* preferred and why dredging was superior. The record demonstrates that the governments gave an honest assessment of the pros and cons of the different types of remedy, and in fact they *agreed* with the remedy proposed by some of the Defendants when they adopted a remedy that included massive amounts of capping.

In short, the record demonstrates a colossal effort to "get it right" and to consider all options fairly and honestly—without prejudice, without arbitrariness and without caprice. And the Defendants have failed to acknowledge that their argument was always an uphill battle: no matter how one spins it, they were demanding that more poisonous chemicals be allowed to *stay* in the River. Although it is certainly conceivable that some of the Defendants' arguments might have carried the day during the remedy creation process (and some of them *did*), at this stage the only question is whether the governments were operating within the bounds of the law and whether their decisions and processes were rational ones given the array of choices they had to make and the complexity and scope of this unprecedented undertaking. I conclude that they were. For that reason, the governments' motion for summary judgment will be granted.

III. Conclusion

For the reasons given above, the Defendants' motions for summary judgment on the Fifth Claim for Relief (ECF Nos. 534 and 541) are **DENIED**. The Plaintiffs' motion for summary judgment as to propriety of the remedy (ECF No. 508) is **GRANTED**.

SO ORDERED this 21st day of November, 2012.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court

To: <u>ENRD, PUBCOMMENT-EES (ENRD)</u>

Subject: Buzzards Bay Coalition Comments United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-

32/2 Email No. 1

Date: Monday, December 17, 2012 4:49:02 PM

Attachments: Transmittal Letter.pdf

Buzzards Bay Coalition Comments.pdf

To Whom it May Concern -

Please find attached to this email the transmittal letter and comments from the Buzzards Bay Coalition regarding the proposed supplemental consent decree, *United States and Massachusetts* v. *AVX Corporation*, D.J. Ref. No. 90-11-2-32/2.

These comments include 8 attachments. Due to their size, I was unable to include them all in one email. However, I will attach them to 9 subsequent emails, for a total of 10 emails, in the order in which they are to be read. The order is as follows:

Attachment 1

Attachment 2

Attachment 3

Attachment 4

Attachment 5

Attachment 6

Attachment 7

Exhibit A

Exhibit B

Exhibit C

Exhibit D

Exhibit E

Exhibit F

Exhibit G

Exhibit H

Exhibit I

Exhibit J

Exhibit K

Exhibit L

Exhibit M

Exhibit N

Attachment 8

Please contact me with any questions or concerns about this filing.

Korrin

Korrin N. Petersen Esq., Senior Attorney

BUZZARDS BAY COALITION

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Cape - 21 Luscombe Avenue, Woods Hole, MA 02540

Tel - 508-999-6363 x.206

www.savebuzzardsbay.org

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To: <u>ENRD, PUBCOMMENT-EES (ENRD)</u>

Subject: Buzzards Bay Coalition Comments United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-

32/2 Attachments 1-4 Email No. 2

Date: Monday, December 17, 2012 4:50:20 PM

Attachments: Attachment 1.pdf

Attachment 2.pdf Attachment 3.pdf Attachment 4.pdf

Email No. 2 of 10

Buzzards Bay Coalition Comments on United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2 Attached to this email. are Attachments 1-4.

Korrin N. Petersen Esq., Senior Attorney

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Subject: Buzzards Bay Coalition Comments United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-

32/2 Attachments 5-6 Email No. 3

Date: Monday, December 17, 2012 4:50:43 PM

Attachments: Attachment 5.pdf

Attachment 6.pdf

Email No. 3 of 10

Buzzards Bay Coalition Comments on United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2.

Attached to this email are Attachments 5 and 6.

Korrin N. Petersen Esq., Senior Attorney

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Subject: Buzzards Bay Coalition Comments United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-

32/2 Attachment 7 - Exhibit A Email No. 4

Date: Monday, December 17, 2012 4:50:34 PM

Attachments: Exhibit A.pdf

Attachment 7.pdf

Email No. 4 of 10

Buzzards Bay Coalition Comments on United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2 .

Please find attached to this email, Attachment 7. Attachment 7 includes 14 Exhibits. Exhibit A is included here with Attachment 7. The following emails will contain Exhibits B - N to Attachment 7.

Korrin N. Petersen Esq., Senior Attorney

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Subject: FW: Buzzards Bay Coalition Comments United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-

11-2-32/2 Attachment 7, Exhibit B Email No. 5

Date: Monday, December 17, 2012 5:06:34 PM

Attachments: Pages from Exhibit B Part 1A.pdf

This email continues to fail due to size. I have split Exhibit B Part 1 into two different parts. Exhibit B Part 1A, and Exhibit B Part 1B.

Korrin

Korrin N. Petersen Esq., Senior Attorney

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From: Korrin Petersen [mailto:<u>petersen@savebuzzardsbay.org</u>]

Sent: Monday, December 17, 2012 4:59 PM

To: 'Pubcomment-ees.enrd@usdoj.gov'

Subject: FW: Buzzards Bay Coalition Comments United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2 Attachment 7, Exhibit B Email No. 5

The email below failed, likely due to size. I have broken this email into two different emails for Attachment 7, Exhibit B. This is a retry, email 1 of 2.

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From: Korrin Petersen [mailto:petersen@savebuzzardsbay.org]

Sent: Monday, December 17, 2012 4:49 PM **To:** 'Pubcomment-ees.enrd@usdoj.gov'

Subject: Buzzards Bay Coalition Comments United States and Massachusetts v. AVX Corporation, D.J.

Ref. No. 90-11-2-32/2 Attachment 7, Exhibit B Email No. 5

Email No. 5

Buzzards Bay Coalition Comments on United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2.

Attached to this email is Attachment 7 - Exhibit B.

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Subject: Buzzards Bay Coalition Comments United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-

32/2 Attachment 7 Exhibit C-F Email No. 6

Date: Monday, December 17, 2012 4:54:02 PM

Attachments: Exhibit C.pdf

Exhibit D.pdf Exhibit E.pdf Exhibit F.pdf

Email No. 6 of 10

Buzzards Bay Coalition Comments on United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2.

Attached to this email are Exhibits C through F to Attachment 7.

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Subject: Buzzards Bay Coalition Comments United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-

32/2 Attachment 7 Exhibit G-J Email No. 7

Date: Monday, December 17, 2012 4:53:13 PM

Attachments: Exhibit G.pdf

Exhibit H.pdf Exhibit I.pdf Exhibit J.pdf

Email No. 7 of 10

Buzzards Bay Coalition Comments on United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2. Attached to this email are Exhibits G through J for Attachment 7.

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Subject: Buzzards Bay Coalition Comments United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-

32/2 Attachment 7 Exhibit K-L Email No. 8

Date: Monday, December 17, 2012 4:54:43 PM

Attachments: Exhibit K.pdf

Exhibit L.pdf

Email No. 8 of 10

Buzzards Bay Coalition Comments on United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2. Attached to this email are Exhibits K and L for Attachment 7.

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32/2 Attachment 7 Exhibit M-N Email No. 9

Date: Monday, December 17, 2012 4:54:44 PM

Attachments: Exhibit M.pdf

Exhibit N.pdf

Email No. 9 of 10

Buzzards Bay Coalition Comments on United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2. Attached to this email are Exhibits M and N for Attachment 7. This concludes the Exhibits for attachment 7.

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Subject: Buzzards Bay Coalition Comments United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-

32/2 Attachment 8 Email No. 10

Date: Monday, December 17, 2012 4:54:48 PM

Attachments: Attachment 8.pdf

Email No. 10 of 10

Buzzards Bay Coalition Comments on United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2.

Attached to this email is Attachment 8 and is the final email attachment in the Coalition's submission.

Thank you. Korrin

Korrin N. Petersen Esq., Senior Attorney

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Subject: FW: Buzzards Bay Coalition Comments United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-

11-2-32/2 Attachment 7, Exhibit B Email No. 5

Date: Monday, December 17, 2012 5:06:54 PM

Attachments: Pages from Exhibit B Part 1B.pdf

Exhibit B Part IB.

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Subject: FW: Buzzards Bay Coalition Comments United States and Massachusetts v. AVX Corporation,

D.J. Ref. No. 90-11-2-32/2 Attachment 7, Exhibit B Email No. 5

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Ref. No. 90-11-2-32/2 Attachment 7, Exhibit B Email No. 5

Email No. 5

Buzzards Bay Coalition Comments on United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2.

Attached to this email is Attachment 7 - Exhibit B.

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11-2-32/2 Attachment 7, Exhibit B Email No. 5

Date: Monday, December 17, 2012 5:01:34 PM

Attachments: Exhibit B Part 2.pdf

Email 2 of 2 in an attempt to resend Exhibit B.

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Email No. 5

Buzzards Bay Coalition Comments on United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2.

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