



Superfund Records Center

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cc H. Haring
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11.9.1

Benedict P. Rosen
President
Chief Executive Officer

December 8, 1993

Mr. Paul Keough
Acting Regional Administrator
U.S. Environmental Protection Agency
EPA Region I
JFK Federal Building
Boston, Massachusetts 02203

RE: New Bedford Harbor Superfund Site

Dear Mr. Keough:

I am writing on behalf of AVX Corporation ("AVX") to express the company's interest in and concern about the ongoing dispute over Hot Spot remediation in New Bedford Harbor. As you know, AVX was one of the defendants in the litigation over who would pay for the Harbor cleanup. This litigation began in 1983 and was finally concluded in 1992. AVX paid \$66 million (with interest, \$72 million) as part of global settlement of approximately \$100 million collected from all defendants. Under the terms of its settlement, the United States and the Commonwealth of Massachusetts may reopen litigation against AVX if the cleanup costs for the first and second operable units at the New Bedford Harbor Superfund Site exceed \$130.5 million.

Throughout the course of the litigation and the administrative proceeding, which is still ongoing, AVX tried to make a constructive contribution to the Environmental Protection Agency's ("EPA's") assessment and resolution of the problems presented by contamination of New Bedford Harbor. AVX assembled a team of nationally known experts to study New Bedford Harbor and engaged in a series of meetings with EPA and the United States Army Corps of Engineers to consider the best remedial approach to the Hot Spot and the rest of the Harbor and Bay. AVX's efforts led to development of a remedial action proposal designed to address contamination throughout the entire Harbor, including the



Hot Spot and upper Acushnet River estuary through containment and isolation of PCB-contaminated sediments by capping them with clean material. One of the major reasons behind this proposal was that AVX's experts had concluded that dredging would cause far more significant problems, including handling contaminated dredge spoils through either incineration or on-site storage in Confined Disposal Facility or "CDFs."

AVX discussed its technical proposals not only with the City of New Bedford but also with the New Bedford Environmental Community Work Group, which received EPA's first Technical Assistance Grant at the New Bedford Harbor Superfund Site. Also, at EPA's suggestion, AVX's consultants presented its proposal at a public hearing in August 1989. Capping, however, was not selected as the remedy for the Hot Spot in the Record of Decision ("ROD") for the Hot Spot Operable Unit, adopted in April 1990. In 1992, AVX also submitted comments on EPA's proposed cleanup plan for the rest of the Harbor and Bay.

Over the last year, AVX has become aware of adverse community response to the prospect of incineration of dredge spoils from the Hot Spot, culminating in a mediation which reportedly commenced December 7, 1993. Because of the potential AVX faces for reopened litigation, it is appropriate that AVX express its concern that the legal and technical process, mandated by statute and regulation, by which EPA makes its decisions at Superfund sites may be circumvented by this proceeding. AVX can readily understand the community's concern and opposition to incineration, since AVX's position, on record in its October 1989 public comments, is that in-place containment of contaminated sediments is the preferred remedy, even for the Hot Spot. However, publicly available information suggests that at present there is no technical or legal basis for departing from the remedy selected by EPA in the Hot Spot Record of Decision Operable Unit. Among its statutory and regulatory mandates, EPA is required to select a remedy which is also cost effective. Were EPA to deviate now from the procedures of the National Contingency Plan, then in the event of reopened litigation, AVX would be required to challenge EPA's right to recover any additional costs caused by EPA's approach (in addition to such other challenges as may be appropriate). AVX is also deeply concerned that the present discussions may improperly influence the still-pending decision on selection of remedial action for the Harbor and Bay. We are confident that EPA is mindful of its obligations as it enters the mediation process but feel compelled to make our position clear.



I would be happy to speak to you further concerning this matter, as would Joan Prager, the company representative who has worked on this matter for a number of years. Thank you for your time and attention to this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'B. Rosen'. The signature is written in a cursive style with a large, looping initial 'B' and a circular flourish at the end.

Benedict Rosen
President

CC: Gayle Garman - Project Manager