



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

**VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)**

April 18, 2012

John S. Gilbertson  
Chief Executive Officer and President  
AVX Corporation  
1 AVX Boulevard  
Fountain Inn, SC 29644

Re: New Bedford Harbor Superfund Site—Unilateral Administrative Order for Remedial Design, Remedial Action, and Operation and Maintenance  
U.S. EPA Docket No. CERCLA-01-2012- 0045

Dear Mr. Gilbertson;

Enclosed please find an Administrative Order (“Order”) directing AVX Corporation (“AVX”) to perform the Remedial Design and to implement the Remedial Design by performing the Remedial Action and performing Operation and Maintenance of such Remedial Action for Operable Unit 1 (Upper and Lower Harbor Operable Unit or “OU1”) of the New Bedford Harbor Superfund Site (the “Site”). This Order is issued pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9606(a), and the 1992 Consent Decree in United States v. AVX Corp., Civil Action No. 83-3882-Y (D. Mass.).

Please note that a number of important deadlines are stated in the Order. While, pursuant to Section XXXIV of the Order, the Order will become effective sixty (60) days after today, the date of signature of the Order by EPA, the deadline for requesting a conference to discuss the Order, pursuant to Section XXXV, is ten days after today, in this case April 30, 2012. In addition, pursuant to Section VII, the deadline for submission of AVX’s notice of intent to comply with the terms of the Order is not later than five (5) days after the effective date of the Order.



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As you are aware, the United States of America (on behalf of U.S. Environmental Protection Agency ("EPA") and the National Oceanic and Atmospheric Administration), the Commonwealth of Massachusetts, and AVX entered into a Consent Decree, which was approved and entered by the U.S. District Court ("1992 Consent Decree"). The 1992 Consent Decree required that AVX pay \$66 million dollars, plus interest, to the United States and the Commonwealth for past and future response costs and natural resource damages for the New Bedford Harbor Superfund Site. In addition, pursuant to reopener provisions of the 1992 Consent Decree, the United States and the Commonwealth reserved legal rights against AVX under CERCLA.

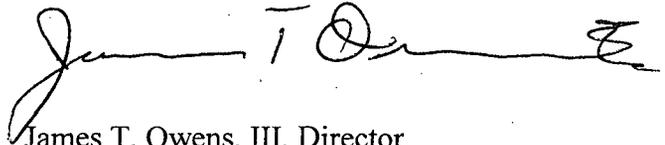
Following the issuance of the OU1 Record of Decision for the Site in 1998, EPA has performed and continues to perform the remedial design and remedial action for OU1. EPA used settlement funds received from AVX and other settling defendants to finance this work (and work for Operable Unit 2, the Hot Spot Operable Unit) until these funds were depleted. As of December 31, 2011, approximately \$456 million has been spent on all aspects of the cleanup at the Site, with the vast majority of these funds from the Hazardous Substance Superfund. Under the Explanation of Significant Differences for OU1 issued by EPA in March 2011, EPA explained that the net present value estimate of additional costs to complete the OU1 remedy ranged from \$362 million to \$401 million.

Since 2008, EPA and the Commonwealth of Massachusetts (hereinafter collectively referred to as "the Governments") have been engaged in settlement negotiations with AVX concerning the extent to which AVX would pay for and/or perform the OU1 Remedy. While these negotiations have been cordial, they have not resulted in a settlement or significant progress toward settlement. As it is EPA's longstanding policy to pursue enforcement first to promote the "polluter pays" principle and to conserve the resources of the Hazardous Substance Superfund for the cleanup of those sites where viable responsible parties do not exist, EPA is compelled to issue the enclosed Order to AVX to ensure the expeditious cleanup of the New Bedford Harbor Superfund Site. Nonetheless, the Governments remain willing and committed to negotiate in good faith to reach a settlement with AVX, and continue to be receptive to proposals for resolving AVX's CERCLA liability at the Site.

If AVX wishes to confer pursuant to Section XXXV of the Order, please contact Man Chak Ng, EPA Senior Enforcement Counsel, at (617) 918-1785, [ng.manchak@epa.gov](mailto:ng.manchak@epa.gov), to schedule such a conference with EPA. With regard to other matters concerning the Order and related discussions concerning the Site, please note that counsel from the United States Department of Justice have already been in communication with Mary K. Ryan and Gary L. Gill-Austern of Nutter McClennen & Fish LLP and are also writing to them today, under separate cover.

Your prompt attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "James T. Owens, III". The signature is fluid and cursive, with a large initial "J" and a distinct "O" and "W".

James T. Owens, III, Director  
Office of Site Remediation and Restoration  
U.S. Environmental Protection Agency  
Region 1

Enclosure

cc (via email only):

Kurt P. Cummings, AVX  
John Lawing, AVX  
Mary K. Ryan, Esq., Nutter McClennen & Fish LLP  
Gary L. Gill-Austern, Esq., Nutter McClennen & Fish LLP  
Paul D. Wilson, Mintz Levin  
Elaine T. Stanley, EPA Remedial Project Manager  
Man Chak Ng, Esq., EPA Senior Enforcement Counsel  
Cynthia Catri, Esq., EPA Senior Enforcement Counsel  
Maximilian Boal, Esq., EPA Enforcement Counsel  
Keith T. Tashima, Esq., U.S. Department of Justice  
Jerry W. MacLaughlin, Esq., U.S. Department of Justice  
Bradley Levine, Esq., U.S. Department of Justice  
Matthew Brock, Esq., Massachusetts Attorney General's Office  
Andy Cohen, Esq., MassDEP  
Paul Craffey, Project Manager, MassDEP