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EPA
REC'D

Washington, D.C. 20530

March 20, 1987

By DHL

Daniel J. Gleason
Mary K. Ryan
Nutter, McClennen & Fish
Federal Reserve Plaza
600 Atlantic Avenue
Boston, Massachusetts 02210

Re: United States v. AVX, et al.,
Civil Action No. 83-3882-Y,

Dear Mr. Gleason and Ms. Ryan:

In reference to your letter of March 5, 1987 to Charles Bering, and to follow up on our phone conversation of March 11, I am writing to respond to your request for discovery of sampling data at various laboratories purportedly used by EPA in the course of its Remedial Investigation/Feasibility Study for New Bedford Harbor.

Since November 1985, the governments have taken the position that judicial review of EPA's remedy decision should be limited to an administrative record. The passage of the recent amendments to CERCLA further support the governments' position. As a consequence, the information sought in your March 5 letter will become part of the administrative record in this matter to the extent the data is considered in the RI/FS process. At the time the RI/FS is issued, this information along with the other materials considered in preparing the RI/FS will be available for inspection and review by defendants and the public. A certified administrative record will be presented to the Court when the public comment process is complete and the Record of Decision has been issued.

Therefore, your request to obtain access to data at the various laboratories listed in your letter is premature for the remedy portion of this case. With regard to your follow-up letter of March 13, the governments take strong exception to your position that AVX can engage in discovery on the natural resource damages portion of the case pending approval of the partial consent decree. If you had indicated this inconsistent intent during our negotiations, we would have insisted on a stipulation to stay any discovery by AVX into the damages portion of the case pending approval of the decree. Moreover, since the first (and, perhaps, the only) trial of natural resource damages has not even begun, your expressed concern over the lengthy approval process seems implausible.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:



Ellen M. Mahan
Attorney, Environmental Enforcement
Section

cc: Evan Slavitt
Susan Bernard
Charles Bering