



U.S. Department of Justice

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New Bedford
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Washington, D.C. 20530

December 3, 1986

Mr. Paul Galvani
Ropes & Gray
225 Franklin Street
Boston, MA. 02110

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

Dear Mr. Galvani:

Thank you for your October 27, 1986 response to Evan Slavitt's September 12, 1986 request for further identification of references in the ASA report. There are still a few references which require clarification, and a few reports and other information which we can only obtain through you. We hope that we can resolve these issues through this follow-up request, but, if not, we will consider these communications to constitute satisfaction of Local Rule 16(d).

First, some of our confusion regarding references may be a result of the fact that we have never received the reference list to the ASA report to which you refer in your October 27th response. Consequently, your references to Spaulding, et al., 1982, and Hoffman and Quinn, 1984, remain ambiguous. In addition, we cannot locate in the general literature the references made in the ASA report to Mooers (1978) and Mooers, et al. (1976), and Santschi et al. (1984). Please provide us with the reference list to the report promptly so that we can identify and locate these reports, and, for those reports which are not generally available in the literature, please provide us with copies.

Second, we requested further identification of the reference to Cornillion et al., 1979, and you sent us a copy of Cornillion et al., 1984. Was the reference in the ASA report incorrect, or have you sent us the wrong report?

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Third, the ASA report relies upon what appear to be other reports prepared for Aerovox concerning New Bedford Harbor. Those reports include references such as the ASA report (1983), an appendix to that report, Heavers (1983), Hawley 1982, and Isaji et al. (1985). Your experts' opinions which rely on these reports will be excluded unless these reports have been attached to your Requests for Admission which have been provided to plaintiffs. The Court was very clear on this point in the April 29, 1986 Status Conference. See Transcript at 30-32. ("But when we come to this case, every single scrap of paper and data upon which every single one of these opinions, of course, I talk to you because you raise the question but it applies to them just as much, I'm simply not going to hear the opinion.") Please provide us with these further reports and all the underlying data immediately, since these should have been included as attachments to your July 7, 1986 Requests.

Similarly, the ASA report which you did provide relies upon tidal flow measurements performed on June 20, 1986. Again, under the Court's order, all such case-specific underlying data on which your experts intend to rely should have made available to plaintiffs on July 7, 1986. Please provide us with this underlying data immediately. Note that even if you proffer the ASA report as a Rule 1006 summary, it is inadmissible unless all the underlying data has been made available to us.

Fourth, Attachment VII-61 of your Requests for Admission include chromatograms from analyses of sediment samples taken in June 1986. While Dr. Brown is apparently relying upon these samples to base an opinion concerning a pattern of changes in the PCB isomer distribution from one end of the Harbor to the other, you have provided no information on the actual locations where the samples were taken, except for two locations vaguely identified in Request for Admission #7653. Clearly, Dr. Brown's opinion must be based in part on the sample locations and, as such, that information must be made available to plaintiffs. In addition, Requests for Admission #7629-7631 appear to indicate that all fifty-four samples were analyzed and the results disclosed in Attachment VII-61. However, Attachment VII-61 contains only twelve chromatograms. At your insistence, the governments have made all of our sampling results available to you at our laboratories, and have produced in attachments to our Requests for Admission the sampling data and documentation which we may rely upon in the case. Aerovox is under the same obligation to make available all of its data and to include as attachments to its Requests all the underlying data and documentation which it may rely upon.

Fifth, in Aerovox Request for Admission #7710, a reference is made to a report called Bush (1985), in #7711-7712 to a report called Brown et al. (draft 1983), in Request #7758 to a report called Zen (1983), in Request #7759 to a report called Stone and Peper (1982), and in Request #7764 to a report called Oldale and O'Hara (1980). These reports cannot be located in the general literature. Please provide us with copies promptly.

Thank you for your prompt attention to these important matters. Please contact me (202/633-3581) to let me know when we will receive your response.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:



Ellen M. Mahan
Attorney, Environmental Enforcement
Section

cc: Evan Slavitt
Charles Bering
Susan Bernard