

60206

NUTTER, McCLENNEN & FISH, LLP

ATTORNEYS AT LAW

ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2699

TELEPHONE: 617 439-2000 FACSIMILE: 617 973-9748

CAPE COD OFFICE
HYANNIS, MASSACHUSETTS

DIRECT DIAL NUMBER
(617) 439-2250

January 3, 1997
11478-122

VIA FACSIMILE AND REGULAR MAIL

David Dickerson
Remedial Project Manager
U.S. Environmental Protection Agency
Region I, HBO
JFK Federal Building
Boston, Massachusetts 02203

Re: EPA Proposed Cleanup Plan for Upper and Lower New Bedford Harbor

Dear Mr. Dickerson:

On behalf of AVX Corporation ("AVX"), and for the reasons stated below, I request that EPA extend the public comment period with respect to the proposed cleanup plan for the upper and lower New Bedford harbor beyond January 23, 1997. AVX believes that the extension should run at least until 30 days after EPA makes the site file available for AVX's review. Such amount of time would provide the "reasonable opportunity" contemplated by §300.430(f)(3)(i) of the National Contingency Plan ("NCP"), based on the same regulation's requirement that the proposed plan as well as the "supporting analysis and information" is to be made available in the administrative record file at the beginning of the comment period. EPA did not update the administrative record file until December 10, 1996, one day after the last day of the original comment period. A substantial number of additional documents were added on December 20, 1996, copies of which AVX did not have until December 24, 1996. As of today, additional documents that form a basis for the selection of the proposed plan reside in the site file, specifically, backup data for the first operable unit's costs to date, costs only summarized in the material documenting the Community Forum Poster Session of November 29, 1995. Thus, AVX has every reason to believe that the site file continues to hold documents rightly belonging in the administrative record file, documents that the NCP affords AVX the opportunity to comment on.

David Dickerson
January 3, 1997
Page 2

AVX's request (Mary Ryan letter of November 19, 1996) for a 90-day extension to the comment period was timely, as well as appropriate, reasonable, and necessary. EPA's response, providing a 45-day extension, was inadequate. The NCP, at §300.430(f)(3)(i)(C), obligates EPA to provide an automatic 30-day extension at a minimum, provided only that the request is timely. EPA's willingness to extend the comment period by only 15 days more than the minimum failed to acknowledge the complexity of the site, failed to deal with EPA's delay in making central documents available through the administrative record file, and failed to compensate for the time of year. The 15 days beyond the 30-day minimum were largely consumed by the holidays, which impacted, among other things, the availability of EPA staff as well as AVX's expert consultants. Fairness requires EPA to afford AVX additional time in order that it may have a reasonable opportunity to comment. Given the length of time since EPA released the first proposed plan for the second operable unit in January 1992 -- more than 4½ years -- it is difficult to understand EPA's reluctance to extend the comment period for a fraction of the time that the Region took for its deliberations.

Cynthia Catri's letter to Mary Ryan of November 27, 1996 apparently questions the timing of AVX's involvement in critiquing the new proposed plan. As you know, AVX paid \$66 million (with interest, more than \$70 million) to settle this case with a cost reopener that no one thought would be approached. To protect its due process rights, AVX has at all times relied on the established administrative process, which provides the opportunity for it to submit comments on a proposed plan. AVX did precisely that, first in 1989, and then again in 1992. Surely the government cannot reasonably expect AVX to have spent thousands of dollars to be actively involved in ongoing informal community participation activities, particularly when EPA has never responded to the extensive comments AVX submitted in 1992. AVX's participation in the community forum was certainly never solicited, nor did EPA invite AVX's participation in the Remedy Review Board's process. The first full paragraph on page 4 of the September 26, 1996 memorandum from Stephen D. Luftig, Director of the Office of Emergency and Remedial Response, regarding the National Remedy Review Board, states with respect to PRP involvement that "[t]he Board recognizes that PRPs who do not conduct the RI/FS may conduct studies that might also be valuable to the Board's review process. In these cases, the Region may, at its discretion, solicit similar input from these stakeholders." In light of AVX's earlier comprehensive and detailed comments (in both 1989 and 1992), including extensive technical work, such an exercise of the Region's discretionary authority would have been reasonable and appropriate.

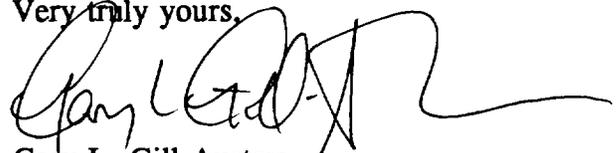
This, then, is the time -- not an earlier time -- for AVX to bear its responsibility. It cannot be asked, however, to carry an unreasonable burden. For AVX to articulate its comments comprehensively and clearly, it must have additional time. At a minimum, AVX requires an additional 45 days, to and including March 17, 1997.

NUTTER, McCLENNEN & FISH, LLP

David Dickerson
January 3, 1997
Page 3

In order that AVX may plan its activities, please let me know at your earliest convenience whether this request for an extension will be granted. Please include this letter in the administrative record file.

Very truly yours,



Gary L. Gill-Austern

314037_1.WP6

cc: Cynthia E. Catri, Esq. (EPA Region I)