

Environmental News



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UNITED STATES ANNOUNCES \$66 MILLION AGREEMENT IN PRINCIPLE WITH DEFENDANT IN NEW BEDFORD HARBOR PCB SUPERFUND CASE

BOSTON -- The Federal Government announced today that an agreement in principle has been reached with AVX Corporation (AVX), of New York, New York, a major defendant in the New Bedford (Massachusetts) Harbor Superfund litigation. The U.S. Department of Justice (DOJ) stated that, under the terms of the settlement, AVX will pay \$66 million to the United States, on behalf of the U.S. Environmental Protection Agency (EPA), the National Oceanic and Atmospheric Administration (NOAA), and to the Commonwealth of Massachusetts.

The money paid by AVX to the United States and the Commonwealth of Massachusetts will be used toward: 1) funding cleanup of the widespread polychlorinated biphenyl (PCB) contamination of New Bedford Harbor; 2) restoring injured natural resources of the Harbor area; and 3) reimbursing funds which the respective Governments have already spent in enforcement, remedial investigation, feasibility studies, and natural resource damage assessment costs.

The amount to be paid by AVX could increase if the total cleanup cost at New Bedford Harbor exceeds \$130.5 million, if new information emerges, or if currently unknown conditions present new problems at the site.

The formal settlement papers, embodied in a consent decree, are to be negotiated by AVX with DOJ, EPA, NOAA, and the Commonwealth of Massachusetts within one month. The consent decree, once filed in the U.S. District Court in Boston, will be open to public comment and subject to approval by the court.

The \$66 million payment will represent one of the largest settlements by a single defendant in the ten year history of Superfund.

In announcing the settlement U.S. Assistant Attorney General for the Environment and Natural Resources Division Richard B. Stewart said, "Once consummated, this agreement will represent a significant step toward cleanup of the contamination of New Bedford Harbor along with restoration of the damaged natural resources of the Harbor, both of which have long been priorities for the U.S. Government.

"This agreement also demonstrates that joint efforts between federal and state governments can result in mutually beneficial accomplishments; in this case, making a corporation accept responsibility for the consequences of its pollution and pay for the cleanup and damages," concluded Stewart.

"We are delighted with the results of our extensive negotiations with AVX. New Bedford Harbor has been one of the top priority Superfund sites in EPA's New

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England Region for the past seven years. This settlement provides substantial funds toward our cleanup effort," declared EPA Regional Administrator Julie Belaga.

In Washington, EPA Administrator William Reilly welcomed the agreement, noting, "Settlements such as this are the backbone of the Superfund program. EPA is committed to an aggressive policy of making those who pollute pay for the cleanup. We will continue to use every enforcement mechanism available to bring about more settlements and more private party cleanups."

Concerning the injury to natural resources in New Bedford Harbor, NOAA General Counsel Thomas A. Campbell remarked, "We are gratified that this settlement will provide substantial funds toward the effort to restore the natural resources of New Bedford Harbor and the adjacent waters of Buzzards Bay. The message is clear that the Government natural resource trustees will seek substantial monies from responsible parties for damages to natural resources."

The case has been in protracted litigation for several years, and has been a top enforcement priority for the federal agencies involved. Originally, DOJ filed a civil complaint in 1983, charging that five companies were responsible for the release of PCBs from manufacturing plants adjacent to the Harbor. The complaint alleged that the PCBs damaged the Harbor area's natural resources, including 18,000 acres of beaches and fishing and lobstering waters. The Commonwealth filed a similar complaint the following day, and the cases were later consolidated.

In addition to seeking damages for the injured natural resources, the two governments amended their complaints in 1984 to include claims for the cleanup costs as well as the related costs for studies and investigations.

Specifically, the complaints alleged that AVX, as well as the other defendants, owned and operated plants located adjacent to New Bedford Harbor that manufactured electrical capacitors. From 1947 through 1973, AVX owned and operated what is known as the Aerovox plant using PCBs, suspected carcinogens, in its manufacturing process.

The case against AVX charged that the plant became contaminated with PCBs when AVX operated the plant. The PCBs allegedly were released into the Harbor and onto the tidal mudflats from the Aerovox plant through sump pumps, drains, troughs, rain runoff, and dumping.

PCBs accumulate in fish and shellfish, and can be toxic to humans at certain levels. After EPA studies in the 1970s revealed high levels of PCBs in fish and shellfish from New Bedford Harbor, Massachusetts authorities closed a 10-square mile area of the harbor to lobstering as well as a smaller area to fishing for bottom-feeding species such as flounder, tautog, scup, and eels; and banned fishing entirely in a northern section of the Acushnet River Estuary.

Belaga stated that EPA's cleanup plans for the areas of the Harbor with the highest levels of PCB contamination were finalized in an April 1990 Record of Decision (ROD). The "hot spot" ROD calls for dredging of contaminated sediment, and incineration in a temporary treatment facility onshore in New Bedford. Belaga added that, in consultation with the natural resource trustees, EPA is now developing a proposed cleanup plan for the remaining portions of the New Bedford Harbor cleanup.

The Governments reached an agreement in principle with two other defendants, Aerovox, Incorporated, of New Bedford, and Belleville Industries, Inc., a dissolved Massachusetts corporation, in February 1990. The terms of that settlement are presently being embodied in a consent decree. This settlement is likely to be presented to the federal district court this fall.

A trial date of March 4, 1991, has been scheduled for the Governments' claims against the remaining two defendants, Federal Pacific Electric Company, a Delaware Corporation, and Cornell-Dubilier Electronics, Inc., of New Bedford.