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NUTTER, McCLENNEN & FISH

MAY 26 1992

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May 22, 1992  
11478-122

BY HAND

Ms. Gayle Garman  
Remedial Project Manager  
U.S. Environmental Protection Agency, Region I  
Waste Management Division (HRM-CAN 3)  
JFK Federal Building  
Boston, MA 02203

RE: Proposed Plan for Buzzards Bay Cleanup,  
New Bedford Harbor Superfund Site

Dear Ms. Garman:

I am writing on behalf of AVX Corporation, one of the Settling Defendants in the related litigation, to request an extension of the deadline for public comments on the Proposed Plan/Addendum for remediation of the estuary, lower harbor and upper bay. A 30-day period is not sufficient to respond to the Addendum and AVX hereby requests that the comment period for the Proposed Plan and Addendum be extended for a 90-day period to and including September 14 (September 12 is a Saturday).

Although the Proposed Plan for cleanup in the estuary and lower harbor was released in late January of this year, the Addendum was not made available until the public meeting held by EPA in New Bedford on May 13. I did not receive a copy of it in the mail until May 15. The Addendum proposes remediation in the upper bay involving both dredging and capping to a target cleanup level of 10 part per million ("ppm"). This proposed remediation substantially deviates from the approach previously adopted by EPA in the Proposed Plan for the estuary and lower harbor, particularly with respect to the cleanup level.

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As best one can tell based on the skeletal information provided in the Addendum, this critical distinction is premised on nothing more than a qualitative back-of-the-envelope analysis. EPA has apparently not even relied upon its highly touted hydrodynamic and food chain model as the basis for its decision, but rather on a whole new set of evaluations based only loosely on good quantitative analysis. As we know, the Battelle physical/chemical modelling efforts were not successfully calibrated with the Upper Buzzards Bay portion of the model, nor were they successfully "interfaced" to the food chain model in this area. This fact has apparently required that EPA take an entirely different approach to making calculations or predictions of either physical/chemical or environmental conditions for the upper bay. The basis for this different approach is unknown at the present time.

From AVX's perspective as a reviewer, this means it must attempt to relate the conclusions that form the basis for the Addendum Proposed Plan for Upper Buzzards Bay not only to a very sparse and selective database from the Remedial Investigation (which I note EPA has finally conceded, after AVX has expended hundreds of hours and considerable time and expense challenging, can only legitimately include post-1985 data), but that it must also try to reconcile it with what data is available from the Battelle model and, more importantly, to a greater body of data available from a host of other physical/chemical and biological oceanographic studies in Buzzards Bay conducted over the last several decades. This task cannot possibly be accomplished within thirty days.

Moreover, to the extent there is either a quantitative or explicitly described qualitative basis for EPA's proposed cleanup, virtually none of the underlying substantiating material has previously been released. Once the adversarial litigation process came to a halt because of settlement discussions, EPA's open door policy of providing the PRPs/Settling Defendants with prompt access to critical decisional material ceased. There are numerous documents mentioned in the addendum which must obtain from the Administrative Record depository in order to comment on the Addendum Proposed Plan. These include:

- Supplemental Feasibility Study (page 1),
- NRD Trustees "Evaluation of Effectiveness" (page 1),

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- 1990-1991 NOAA memos (page 7; we assume these are the same memos provided to AVX in response to its FOIA request after the Proposed Plan was published),
- study re: fish congregating at the outfall (page 7), and
- City of New Bedford data to the same effect (page 7).

Indeed, without reviewing these documents, particularly the Supplemental Feasibility Study, it is very hard for AVX to determine what level of effort is necessary to meaningfully evaluate and comment on the Addendum Proposed Plan. For example, will independent field data collection be necessary? Will independent analysis of EPA collected data or data collected by other scientists be necessary? The opportunity to comment, mandated both by statute and constitutional requirements, is a mockery if sufficient time is not allowed.

EPA is also soliciting comments on two very broad issues: the use of marine sediment from Buzzards Bay dredging projects, or other dredging projects, for cap material in the proposed 17-acre area to be capped near the wastewater treatment plant outfall, and the use of institutional controls to minimize alleged public health risks from the ingestion of contaminated seafood. Both of these points could involve considerable research into experience and precedents involving other sites.

For the foregoing reasons, AVX's rights will be severely prejudiced if the comment period is not extended. The issues raised by the Addendum Proposed Plan are substantial. Given the extraordinary length of time EPA has already spent on the Remedial Investigation/Feasibility Study for the New Bedford Harbor Superfund site, it would be foolhardy to needlessly accelerate the public comment period now to the detriment of AVX's right to an informed basis on which it can comment. If EPA insists on adherence to June 12 as the deadline date, the only fair way to proceed is to treat the geographical area of Upper Buzzards Bay, which is the subject of the Addendum Proposed Plan, as a separate operable unit, to establish a more reasonable period of time for public comment, and to issue a separate Record of Decision for that area. Any other course of action would be imprudent and wasteful.

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Thank you for your consideration of this request. Please place this letter in the administrative record.

Very truly yours,

  
Mary K. Ryan

MKR/jjc:2518e  
cc: Weldon Bosworth