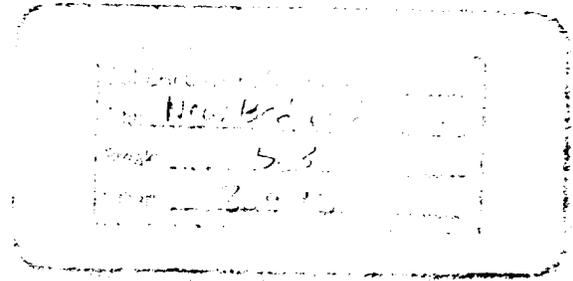




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April 10, 2002  
11478-122

**BY E-MAIL (comments.nbh@epa.gov) & U.S FIRST CLASS MAIL**

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One Congress Street  
Suite 1100 (HBO)  
Boston, Massachusetts 02114

**Re: New Bedford Harbor Superfund Site  
Upper and Lower Harbor Operable Unit  
Explanation of Significant Differences  
February 2002 Draft for Public Comment**

Dear Mr. Dickerson:

This letter provides the comments of AVX Corporation ("AVX") on the February 2002 Draft for Public Comment of an Explanation of Significant Differences for the Upper and Lower Harbor Operable Unit ("OU1") at the New Bedford Harbor Superfund Site in New Bedford, Massachusetts (the "proposed ESD"). These comments are timely based on the extension to the public comment period, which was noticed in the *New Bedford Standard-Times* on March 21, 2002, to April 10, 2002. AVX has had the expert technical assistance of URS Corporation in preparation of these comments.

In publishing the proposed ESD, the stated purpose of the Environmental Protection Agency ("EPA") is to solicit public comment "on EPA's assessment that offsite disposal for

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Mr. David J. Dickerson  
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April 10, 2002  
Page 2

the dredged sediments slated for CDF D is a better approach for the harbor cleanup than constructing CDF D and disposing PCB-contaminated sediments in it.” AVX appreciates the fact that EPA has put this ESD out for public comment even though the National Contingency Plan (“NCP”) requires public comment for a Record of Decision (“ROD”) Amendment but not for an ESD. This is because – in fact if not yet in name – the nature of the proposed changes are such that they should be treated as a ROD Amendment. Only a few short months ago, EPA issued another ESD (the “2001 ESD”) which extensively and fundamentally revised the OU1 remedy, and adopted it without the benefit of public comment.<sup>1</sup>

On this occasion, however, EPA seeks public review and comment of the proposed ESD, suggesting that the threshold has been crossed that warrants adherence to the formalities of public involvement and comment.<sup>2</sup> To the extent in the past there was any question concerning the nature and extent of the changes adopted through the 2001 ESD, it appears that there is now recognition that the proposed ESD cannot be similarly treated or treated in isolation, i.e., that the changes in the proposed ESD, independently and when joined with the very recently-adopted changes, are fundamental.

AVX’s purpose, then, in providing these comments is to ensure that included in the record is an unequivocal statement that the changes adopted in September 2001 and proposed in the ESD presently under review are wide-reaching and fundamentally alter the basic features of the cleanup plan documented in the September 25, 1998 Record of Decision (the “1998 ROD”) for OU1. In this context, it is essential for proper procedure and correct nomenclature to be used to ensure that the public is fully apprised of the nature of the changes being proposed. The changes to the 1998 ROD constitute a ROD Amendment and should be called such.

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<sup>1</sup> The 2001 ESD was approved by the Regional Administrator on September 27, 2001. On October 7, 2001, the *New Bedford Standard-Times* published the notice required by 40 CFR § 300.435(c) with respect to the 2001 ESD.

<sup>2</sup> “EPA believes that the appropriate threshold for amending a ROD is when a fundamentally different approach to managing hazardous wastes at a site is proposed. As a result, EPA has determined that a change in remedial approach sufficiently significant to require [a] ROD amendment *should have the benefit of consideration of public comments* and should, therefore, undergo the same public and support agency involvement as the original ROD, including the publication of a proposed plan and public comment period.” 55 Fed. Reg. 8666. 8771 (Mar. 8, 1990) (emphasis added).



Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 3

## **I. BACKGROUND.**

The 1998 ROD calls for the dredging of approximately 450,000 cubic yards of contaminated sediment from the upper and lower harbor. It also provides for the storage of the dredged sediments in up to four shoreline confined disposal facilities ("CDFs") and the seawater decanted from the sediments to be treated before discharge back into the harbor. EPA evaluated nine alternatives in detail during the feasibility study and remedy selection process, none of which included off-site disposal as a component of the remedy alternative.<sup>3</sup> The cost of the selected remedy – clearly stated in the 1998 ROD – was \$115,545,872.<sup>4</sup>

### **A. 2001 ESD.**

As described in the 2001 ESD, there are five “significant” differences between the 2001 ESD and the 1998 ROD. They are: (1) additional intertidal cleanup areas in the upper harbor to address dermal contact risks; (2) mechanical dewatering of dredged sediments; (3) use of the pilot study CDF at Sawyer Street as an interim Toxic Substances Control Act (“TSCA”) facility for PCB-contaminated sediments; (4) change in CDF D wall design; and (5) use of rail at CDF D. Our comments below will provide additional detail on a number of these items. Preliminarily, however, we note the following:

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<sup>3</sup> The nine alternatives were designated Alternatives 1, 2, 3, 3d, and 4 through 8. 1998 ROD at 17-21.

<sup>4</sup> The 2001 ESD and the proposed ESD both state that the cost of the selected remedy in the 1998 ROD was \$129,000,000. This number appears to be the approximate sum of the total present worth cost in Table 9 of the 1998 ROD (\$115,545,872) and additional costs associated with two collateral activities.

The total present worth cost of the selected remedy as listed in the November 1996 Proposed Plan was estimated to be approximately \$116 million (Table 9). As described below in section XIII, however, additional costs for a comprehensive solution to the cable crossing area (approximately \$4.3 million) and for CSO relocations at CDFs B and C (roughly \$10 million) have been identified. Costs associated with future land use for CDFs and water treatment facilities and for additional intertidal sampling and dredging have not yet been quantified. Thus total potential costs could be higher than the 1996 \$116 million estimate if these or other additional costs exceed the contingency factors in that estimate.

1998 ROD at 40. The total approximate cost of the two activities (\$14,300,000) was not included in the summary table in the 1998 ROD. Nor was the present value calculated. The only other indication in the 1998 ROD of a remedy cost greater than the total in Table 9 is the following: “The total present worth cost of the remedy is estimated to be between \$120 and \$130 million.” *Id.* at i. As discussed in section II.C. below, AVX uses the amount of \$115,545,872 because it is the only reliable, fully-explained number.



1. Table 1 of the 2001 ESD indicates that the volume of sediment to be dredged under the modified remedy is 472,700 cubic yards (“CY”) On its face, this appears to be a limited increase from the volume set in the 1998 ROD (450,000 CY), apparently due to the additional intertidal cleanup areas, as well as the sediment from the Acushnet River residential area. There are, however, several indications in the text of the 2001 ESD that the new volume figure is a very shaky estimate. For example, one of the justifications given for construction of the rail spur is that computer modeling indicates that sediment volume could be as much as 800,000 CY, in which case the four CDFs would provide insufficient storage capacity requiring off-site disposal. Finally, in revising the CDF D design, EPA laid the groundwork for off-site disposal of sediments as the “most likely option.” The likely option of off-site disposal of 300,000 CY of foundation sediments (which may or may not be contaminated) begs the question of why off-site disposal of the 473,000 CY of dredged harbor sediments is not also “likely.”
2. The 2001 ESD states that mechanical dewatering was evaluated as potentially useful in the 1990 Feasibility Study for the site, but not selected in the 1998 ROD because “EPA believed that the remedy could be implemented without the added expense of the mechanical dewatering step.”<sup>5</sup> The 1998 ROD, however, is considerably less muted in its explanation for why the mechanical dewatering alternative (3d) was not selected, stating that the “cost would be substantially higher than either . . . the selected remedy, or any other dredging without treatment alternative.”<sup>6</sup>
3. The OU1 remedy as revised by the 2001 ESD continues to provide for sediment disposal in four CDFs. Indeed, one of the primary components of the 2001 ESD is the re-engineering of CDF D’s wall design to handle the very weak, silty sediments underlying the area of the harbor proposed for the CDF. At the same time, the 2001 ESD reduces the footprint area of CDF D (although the exact reduction is not provided), and assumes the elimination of CDFs A and B. It states in the discussion concerning the use of rail at CDF D that the 57,000 CY of sediments that must be removed should CDFs A and B not be needed due to the benefits of mechanical dewatering “are included in the updated 473,000 cy

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<sup>5</sup> 2001 ESD at 6.

<sup>6</sup> 1998 ROD at 26.



estimate.”<sup>7</sup> Their inclusion can only mean that the two CDFs have been eliminated, if not *de jure*, then *de facto*. These inconsistencies are never explained.

4. EPA states in the 2001 ESD that the cost of the remedy as modified is acceptable because it does not exceed applicable guidance limiting such changes to the +50%/-30% range. While the increase in cost may lie within acceptable limits, there is no explanation offered as to why the cost has increased \$102,000,000. The cost escalation – for the moment assuming the adequacy of EPA’s revised estimates – may be under the +50% ceiling, but at +47.74% it is perilously close. In the 1998 ROD, remedial alternatives were rejected and/or chosen for their cost-effectiveness. Now, because a change does not hit the +50% parameter, EPA appears to believe that it is not only acceptable but requires no explanation.
5. In accepting the Sawyer Street Debris Disposal Area as an interim TSCA facility, EPA specifically notes that another later decision document will be required to determine its final disposition (as a permanent CDF). EPA does not define what type of decision document (ESD or ROD Amendment) will be used, but acknowledges that it will solicit public comment on a proposed decision.
6. The addition and use of rail transportation at CDF D is highlighted as an appropriate contingency for off-site disposal of harbor sediments. While the 2001 ESD states the contingency would be useful in case the overall volume of sediments exceeds the capacity of the CDFs, it is clear that this contingency could also be exercised for disposal of all harbor sediments.

**B. Proposed ESD.**

Different from the 2001 ESD, which adopted several large-scale changes to the OU1 cleanup plan, the proposed ESD involves one major revision, i.e., the complete elimination of CDF D which, at 17 acres, is the largest of the four CDFs.<sup>8</sup> Within a few short months of expending time, resources and significant expense to modify the design of CDF D, EPA now

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<sup>7</sup> 2001 ESD at 9.

<sup>8</sup> EPA has eliminated, however, the other three CDFs from its cost estimate in justifying the cost effectiveness of the proposed changes. Proposed ESD at 9-10, and Table 1.



Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 6

concludes that the new design will not work and that the sediments that were to have been placed in CDF D should be sent off-site for disposal by railroad. This major modification thereby further justifies the decision in the 2001 ESD to extend the rail spur into the area of CDF D.

### C. Future ESD(s).

Both the 2001 ESD and the proposed ESD forecast the likelihood of one or more future ESDs, further modifying the selected remedy. The 2001 ESD indicates that the status of CDFs A and B is undecided: "Thus, given this volume reduction due to mechanical dewatering, the proposed CDFs A and B may not be needed provided the current estimate of total *in situ* sediment volume requiring disposal (473,000 cy) is reasonable."<sup>9</sup> The proposed ESD indicates the future possibility, even likelihood, of the elimination of CDFs A, B and C, but defers such a determination to future annual re-evaluations.<sup>10</sup>

## II. PROPOSED CHANGES IN REMEDY CONSTITUTE A FUNDAMENTAL ALTERATION REQUIRING A ROD AMENDMENT.

Specific regulations and guidelines govern the procedures by which changes are made to the remedies selected through a record of decision, such as those that have been finalized and proposed by EPA over time with respect to both operable units at the New Bedford Harbor Superfund Site. For changes other than the most minor, the regulations require EPA to choose between the use of an ESD or a ROD Amendment. According to 40 CFR § 300.435(c)(2), an ESD is required when there is a "significant change" in the "scope, performance, or cost" of a remedy.<sup>11</sup> In contrast, a ROD Amendment is mandated when the proposed change

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<sup>9</sup> 2001 ESD at 6. *See also* 2001 ESD at 9.

<sup>10</sup> "It should be emphasized that this proposal only addresses the elimination of CDF D, and proposes off-site disposal of only those sediments that would have been disposed in it. While the current cost-estimate (see Table 1) indicates that it would cost-effective to dispose all site sediments at an offsite facility, thus eliminating construction of CDFs A, B and C as well as D, EPA stresses that this cost estimate will need to be reevaluated at least annually once actual offsite disposal costs are determined. Other project factors will be included in these reevaluations along with these actual disposal costs, such as the compliance status of the offsite facility(ies), potential growth of the total sediment volume requiring disposal, and annual funding levels for the harbor cleanup. If in the future construction and filling of one or more of CDFs A, B or C is deemed no longer necessary, EPA will issue an additional decision document." Proposed ESD at 2.

<sup>11</sup> A similar discussion of remedy update types is contained in UPDATING REMEDY DECISIONS AT SELECT SUPERFUND SITES: BIENNIAL SUMMARY REPORT FY 1998 AND FY 1999, EPA 540-R-01-00 (March 2001)[hereinafter 1999 Remedy Summary Report]. A similar report was issued for fiscal years 1996-1997. U.S.



Mr. David J. Dickerson  
Remedial Project Manager  
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April 10, 2002  
Page 7

“fundamentally alters” the “basic features” of a remedy with respect to the same three variables.<sup>12</sup> EPA guidelines emphasize that the categorization of a post-ROD change to a selected remedy is a “site-specific determination.”<sup>13</sup> As the following analysis will show, EPA’s proposed changes to the OU1 remedy constitutes a fundamental alteration in the scope, performance and cost of the original remedy and therefore necessitates the use of a ROD Amendment rather than an ESD.

**A. Proposed Change in Remedy Represents a Fundamental Alteration of Scope.**

According to well-established EPA guidelines, an alteration in the scope of a remedy occurs when any of the following aspects change: (1) type of treatment or containment technology; (2) the physical area of the response; (3) remediation goals to be achieved; (4) type and volume of wastes to be addressed.<sup>14</sup> In the present context, the shift to off-site disposal with mechanical dewatering, involving as it does the first two of these changes in remedial scope, is so fundamental that the use of a ROD Amendment is necessary to implement the changes.

**1. Type of treatment and containment technology has changed.**

It is clear that EPA’s proposed remedy involves a radical change in the type of treatment and containment technology. The 1998 ROD prescribed the construction of four CDFs along the shore of the Acushnet River for the containment of sediments dredged from

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ENVTL PROT. AGENCY, EPA 540-R-98-017, UPDATING REMEDY DECISIONS AT SELECT SUPERFUND SITES: SUMMARY REPORT FY 1996 AND FY 1997 (March 2001) [hereinafter 1997 Remedy Summary Report]. According to the EPA Superfund Hotline, a report has not yet been issued for 2000-2001.

<sup>12</sup> More fully, 40 CFR § 300.435(c)(2) states: “After the adoption of the ROD, if the remedial action or enforcement action taken, or the settlement or consent decree entered into, differs significantly from the remedy selected in the ROD with respect to scope, performance, or cost, the lead agency shall consult with the support agency, as appropriate, and shall either: (i) Publish an explanation of significant differences when the differences in the remedial or enforcement action, settlement, or consent decree significantly change but do not fundamentally alter the remedy selected in the ROD with respect to scope, performance, or cost. . . . (ii) Propose an amendment to the ROD if the differences in the remedial or enforcement action, settlement, or consent decree fundamentally alter the basic features of the selected remedy with respect to scope, performance, or cost.”

<sup>13</sup> U.S. ENVTL. PROT. AGENCY, EPA 540-R-98-031, A GUIDE TO PREPARING SUPERFUND PROPOSED PLANS, RECORDS OF DECISION, AND OTHER REMEDY SELECTION DECISION DOCUMENTS 7-1 (July 1999) [hereinafter EPA Guide].

<sup>14</sup> *Id.* at 7-1.



Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 8

the harbor and the continual decanting and treatment of seawater from these CDFs at four separate facilities. EPA now proposes to eliminate CDF D in favor of mechanical dewatering at two facilities and the off-site disposal of dredged sediment at a licensed landfill. It is not the mere fact that the treatment and disposal technology proposed by EPA is different from that in the 1998 ROD that necessitates the use of a ROD Amendment to implement these changes, but the fact that the planned technology previously was evaluated and expressly eliminated. The mechanical dewatering of sediments was evaluated in the 1998 ROD and eliminated (Alternative #3d) because “short term effectiveness and implementability concerns would be greater due to the added dewatering step” and “costs would be substantially higher than either Alternative # 3, the selected remedy, or any other dredging without treatment alternative.”<sup>15</sup> Off-site disposal was rejected as a candidate treatment technology during the screening process in the Feasibility Study.<sup>16</sup>

As EPA stated in response to concerns in the rulemaking process that “the distinction between significant difference and ROD Amendment was not clear,” a ROD Amendment is the appropriate procedural vehicle for remedial change where “the action, decree, or settlement fundamentally alters the ROD in such a manner that the proposed action, with respect to scope, performance, or cost, *is no longer reflective of the selected remedy in the ROD.*”<sup>17</sup> Certainly, technologies such as mechanical dewatering and off-site disposal do not “reflect the selected remedy in the ROD” since these same technologies were considered and rejected in the 1998 ROD and the Feasibility Study. For this reason, a ROD Amendment rather than an ESD is required.

The switch from on-site to off-site disposal is an important factor. Such a change has proven to be an important, even determinative, consideration in the selection of a ROD Amendment over an ESD at Superfund sites across the country, and should play a similar role here. Thus, for example, ROD Amendments rather than ESDs were used at the General Motors and Reynolds Metals Company Study Area Superfund Sites, located in Massena, New York, when EPA decided to change from on-site to off-site disposal of PCB-contaminated river sediments at both locations.<sup>18</sup> Similarly, a ROD Amendment was used at the Harbor Island

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<sup>15</sup> 1998 ROD at 26.

<sup>16</sup> Feasibility Study at 5-43.

<sup>17</sup> 55 Fed. Reg. 8771, 8772 (Mar. 8, 1990)(codified at 40 C.F.R. § 300.435(c)(2)).

<sup>18</sup> U.S. DEP’T OF COMMERCE, NAT’L. TECHN. INFO. SERVICE, EPA-ID NYD002245967, ROD AMENDMENT FOR REYNOLDS METALS COMPANY SITE STUDY AREA (Sept. 27, 1993); U.S. ENV’T L. PROT. AGENCY, NATIONAL PRIORITY SITE FACT SHEET FOR GENERAL MOTORS (CENTRAL FOUNDRY DIVISION), <http://www.epa.gov/region02/superfund/npl/0201644c.htm>.



Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 9

Superfund Site in Seattle, Washington in order to provide for the off-site disposal of non-dangerous soil.<sup>19</sup> As at the New Bedford Harbor Site, off-site disposal at the Harbor Island Site was to be achieved by rail, and like the change to mechanical dewatering in the 2001 ESD, it was a remedy considered but rejected in the original ROD. Furthermore, EPA has stated on at least one occasion that it considers the selection of an “on-site disposal option to be a fundamental difference from off-site disposal.”<sup>20</sup> Thus, a change in treatment and disposal location can play an important role in determining whether a ROD Amendment or an ESD is used. As discussed more fully below, a ROD Amendment was the vehicle used to change the treatment and disposal location for dredged sediments at the “Hot Spot” operable unit. The same procedural protection should be extended to the remedial changes covered in the proposed ESD.

## **2. Physical area has increased.**

A change in the physical area of a treatment response is also listed in the relevant EPA guidance as an example of a change in scope that warrants the use of a ROD Amendment rather than an ESD.<sup>21</sup> EPA has defined the dredge areas (and consequently the estimated sediment volume) at the New Bedford Harbor site based on target PCB cleanup levels of 1, 10, 25 and 50 ppm for residential areas, upper harbor areas, beach-combing areas, and lower harbor areas, respectively. In the 2001 ESD, EPA changed the application of these target levels based on new information obtained from additional environmental monitoring and proposed future shoreline uses within the site boundaries. The net result has been to incorporate additional sediment areas into the remedy.

As briefly discussed in section I.A.1. above, the 2001 ESD provided a revised estimate of the quantity of the additional sediments that would result from the change in target cleanup levels for such discrete areas and the implementation of mechanical dewatering. The proposed

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<sup>19</sup> HARBOR ISLAND SUPERFUND SITE AMENDED RECORD OF DECISION, INTRODUCTION (Jan. 25, 1996), available on Superfund Public Information System CD-ROM (NTIS Order Number SUB-5462).

<sup>20</sup> KOPPERS CO., INC. (CHARLESTON PLANT) RECORD OF DECISION DECLARATION, RESPONSIVENESS SUMMARY, EPA ID SCD980310239, 313 (April 29, 1998)(EPA response to Beazer comment that selected remedy should include the option for either on-site or off-site disposal). Similarly, a ROD Amendment was used at the Outboard Marine Corp. Superfund Site in Waukegan, Illinois to change from off-site to on-site treatment and disposal of PCB contaminated sediments dredged from the Waukegan harbor. FED’L ENVT’L SUPERFUND RECORDS, EPA-ID ILD000802827, ROD AMENDMENT FOR OUTBOARD MARINE CORP. JOHNSON (Mar. 31, 1989).

<sup>21</sup> EPA Guide, *supra* note 13, at 7-1.



Mr. David J. Dickerson  
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U.S. Environmental Protection Agency  
April 10, 2002  
Page 10

ESD also provides a revised sediment volume estimate. Volumes in both the 2001 ESD and the proposed ESD are not significantly more than in the 1998 ROD, i.e., 472,700 CY and 507,100 CY respectively, versus 450,000 CY in the 1998 ROD. This is, however, an improper comparison because with the addition of mechanical dewatering, the 1998 ROD volume is actually reduced to 332,000 CY.<sup>22</sup> Therefore, the increase is actually 141,000 and 175,000 CY respectively, despite the fact that these numbers actually reflect a further reduction due to the use of mechanical dewatering.

EPA has also failed to explicitly acknowledge that by not constructing CDF D, there will be additional sediment to dredge from the area where the CDF would have been. The 1998 ROD states that CDF construction (all 4) saves the need to dredge 126,000 CY.<sup>23</sup> Table 1 of the proposed ESD indicates that 507,100 CY now require dredging, an increase that presumably includes the additional sediment from the CDF D footprint. These numbers, in and of themselves, may not be deemed in all situations to represent “fundamental” change, but volumes of these proportions made a critical difference in the evaluation of remedial alternatives in the 1998 ROD.

The above discussion makes clear that just as there will be an increase in the physical size of the response area, there also will be an increase in the volume of sediment to be treated and disposed. This increase heightens the need to pursue the remedial change by ROD Amendment rather than through an ESD

**B. Proposed Change in Remedy Represents a Fundamental Alteration of Performance.**

In addition to a fundamental alteration in the scope of a remedy, a ROD Amendment is required where a remedial change involves a fundamental alteration of performance.<sup>24</sup> According to EPA’s own standards, a fundamental alteration of performance occurs when there is a change in (1) the treatment levels to be attained, or (2) the long-term reliability of a remedy.<sup>25</sup> If the new remedies proposed by EPA for OU1 are approved, the long-term reliability of the remedy will be greatly enhanced according to EPA’s own assessment of the nine performance criteria considered in the original ROD. A summary of EPA’s analysis of

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<sup>22</sup> This number is derived by applying a proportionate reduction to 450,000 based on the 2001 ESD’s claim that mechanical dewatering reduces 473,000 CY to 349,000 CY.

<sup>23</sup> 1998 ROD at 18 and 29.

<sup>24</sup> EPA Guide, *supra* note 13, at 7-1.

<sup>25</sup> *Id.*



Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 11

these changes in performance is included below. It is clear from this summary that EPA believes that the expansion of the remedy area and the elimination of the need to maintain and monitor CDFs along the New Bedford Harbor shoreline will greatly enhance remedial performance. Therefore, according to EPA's own guidelines, a ROD Amendment rather than an ESD should be used.

<b>CERCLA Criteria</b>	<b>Fundamental Change in Performance with "New" Remedy</b>
1. Protection of human health and the environment	<ul style="list-style-type: none"><li>• "New" remedy expands the area within which the lower cleanup goals apply in order to increase protectiveness.</li><li>• "New" remedy eliminates the potential for human and environmental exposure to air and groundwater emissions from the CDFs.</li></ul>
2. Compliance with ARARs	<ul style="list-style-type: none"><li>• "New" remedy is actually the best practicable and least damaging alternative for compliance with the federal Clean Water Act and corresponding Massachusetts statues and regulations because it will minimize the discharge of fill material along the shore.</li><li>• "New" remedy provides greater control of particulate and pollutant emissions and will more likely meet national emissions standards, ambient air quality standards and air pollution control requirements.</li><li>• "New" remedy will, by definition, meet the standards for treatment, storage and disposal of hazardous waste, since the off-site disposal facility must be in compliance with these regulations.</li><li>• "New" remedy will no longer require a TSCA waiver, since the chemical waste landfill standards will be met by the off-site disposal facility.</li><li>• "New" remedy will provide greater compliance with Massachusetts wetland protection and waterways laws and coastal zone management policies by eliminating the CDF shoreline impacts.</li></ul>
3. Long term effectiveness, permanence	<ul style="list-style-type: none"><li>• "New" remedy will have far greater long term effectiveness and permanence with respect to the harbor cleanup. With the planned elimination of CDF D and probable elimination of A, B and C, operation, maintenance and periodic remedy reviews for the CDFs will no longer be required.</li><li>• Greater long term beneficial use of the shoreline areas (for businesses and open space) will be possible after elimination of the CDFs.</li></ul>
4. Reduction of toxicity, mobility or volume through treatment	"New" remedy includes the addition of mechanical dewatering as a treatment step. This will significantly reduce the volume of contaminated sediment that requires disposal.
5. Short term effectiveness	<ul style="list-style-type: none"><li>• "New" remedy will provide a significant performance improvement in regards to short term effectiveness by improving the timeliness of the response action and the reliability of the action in the face of the potential</li></ul>



Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 12

CERCLA Criteria	Fundamental Change in Performance with "New" Remedy
	loss of funding. <ul style="list-style-type: none"><li>• "New" remedy will eliminate the majority of short-term adverse impacts caused by emissions during construction. Adverse impacts to the aesthetic uses and business enterprises of abutters to the CDFs will be minimized or eliminated.</li></ul>
6. Implementability	"New" remedy will have far greater implementability given that the availability of transportation services will be enhanced and the technical feasibility issues regarding the stability of sediments underlying the CDFs will be minimized or eliminated.
7. Cost	"New" remedy overall costs are projected to be within the acceptable range of +50%/-30% than the costs provided by 1998 ROD remedy.
8. State acceptance	It is unclear based on the current record what level of state acceptance accompanies the aggregate changes to the ROD remedy.
9. Community acceptance	The 1998 ROD responsiveness summary contains numerous comments and references to community opinion opposed to the siting of the CDFs along the harbor shoreline. The "new" remedy will provide significantly greater community acceptance.

Applicable guidance documents also cite, as an example of a change in performance, "new technology not considered in the original ROD."<sup>26</sup> As described above, EPA's proposed elimination of CDF D in favor of off-site disposal and mechanical dewatering involves technology *considered and rejected* in the 1998 ROD. This creates a strong argument that a fundamental alteration of performance would occur if the changes in the proposed ESD are approved. This same rationale appears to have been applied at the JFD Electronics/Channel Master Superfund Site in Oxford, North Carolina, where a ROD Amendment was used to formalize a remedial change from on-site treatment and disposal of contaminated sludge to off-site treatment and disposal, in part because an alkaline chlorination treatment considered and ruled out in the original ROD had been re-introduced.<sup>27</sup> Similarly, had the two most significant remedy modifications, mechanical dewatering and elimination of the CDFs in exchange for off-site disposal, been discussed in the 1998 ROD and included as contingency response actions, their implementation now might more appropriately be within the realm of an

<sup>26</sup> 1999 Remedy Summary Report, *supra* note 1, at 4.

<sup>27</sup> U.S. DEP'T OF COMMERCE, NAT'L. TECHN. INFO. SERVICE, EPA-ID NCD122263825, ROD AMENDMENT FOR JFD ELECTRONICS/CHANNEL MASTER SITE (May 4, 1999).



Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 13

ESD. However, because off-site disposal was considered and eliminated during the technology screening in the Feasibility Study,<sup>28</sup> and mechanical dewatering was considered and eliminated in the comparative analysis of remedial alternatives,<sup>29</sup> their resurrection now as key components of the “new” remedy fundamentally alters the basic features of the selected remedy. Therefore, EPA’s proposed re-introduction of off-site disposal with mechanical dewatering should be handled not by an ESD but by a ROD Amendment.

**C. Proposed Change in Remedy Represents a Fundamental Alteration in Cost.**

As discussed above with respect to the 2001 ESD, EPA states that the cost of the remedy as modified is acceptable because it does not exceed applicable guidance limiting such changes to the +50%/-30% range. EPA articulates the same conclusion in the proposed ESD. For the moment, again assuming the adequacy of EPA’s revised estimates, the \$94,000,000 increase in cost entailed in the proposed ESD represents a major escalation in cost. As with the 2001 ESD, while the increase in cost may lie within acceptable administrative guidelines, EPA provides no explanation as to why the cost has increased by +42.15%.

Two things are required to understand and evaluate the numbers that EPA uses in both ESDs under the section heading “Update Cost Estimate” and that are presented in the “Table 1” attached to each ESD: fuller review of the costs associated with the OUI cleanup plan; and a detailed comparison of the costs, on the one hand in the 1998 ROD (in the original “present worth” form as well as adjusted to the “fully funded” form that is used in the 2001 ESD and the proposed ESD), and, on the other hand in the two ESDs.

**1. Costs of the remedy in the 1998 ROD.**

In the proposed ESD, EPA begins with the cost in the 1998 ROD which it states is \$129,000,000, on a present worth basis and at 1995 price levels. EPA recalculates the amount by removing the present worth basis and then revising the number for inflation, finding that the fully-funded cost of the 1998 ROD remedy in 2001 dollars is \$223,000,000. EPA then concludes that the cost of the remedy as modified by the proposed ESD (\$317,000,000) is within the applicable standard because it is less than the cost of the original remedy plus fifty percent (\$335,000,000).<sup>30</sup>

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<sup>28</sup> Feasibility Study at 5-43, 1998 ROD Responsiveness Summary at A-70.

<sup>29</sup> 1998 ROD at 26.



Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 14

The credibility, however, of the +50%/-30% standard that EPA, based on its guidance, applies to the evaluation of cost impacts as part of an effort to categorize a proposed change in remedy is only as good as the numbers being compared. There are two flaws in EPA's understanding of the cost of the 1998 ROD cleanup plan. First, as stated above,<sup>31</sup> the 1998 ROD indicates that the cost of the selected remedy is \$115,545,872. Exhibit 1, attached hereto, displays in row 38 that this amount, recalculated to remove the present basis and adjust for inflation, is approximately \$200,000,000. The estimated cost of the OU1 remedy as revised by the proposed ESD is 58.5% more than this amount, and, therefore, outside the applicable guideline.

As acknowledged above, the inclusion of the two collateral activities (relocation of electric power cables and CSOs), with a total approximate future cost estimate of \$14,300,000, might explain the difference between \$129,000,000 and \$115,545,872. It would be improper, however, to include the costs for the two items without at a minimum reducing them to a present worth basis. Presumably this was what was intended by the only other comment regarding cost in the 1998 ROD when it states that the total cost of the remedy could be between \$120,000,000 and \$130,000,000.

Second, the recalculation in the proposed ESD converting the costs in the 1998 ROD from a present worth basis to a fully-funded basis used 1995 as the beginning year for purpose of backing out the present worth discount and adjusting for inflation. The 1998 ROD, however, clearly indicates that the costs it is referencing are 1996 costs.<sup>32</sup> We cannot quantify

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<sup>31</sup> See *supra* note 4 and accompanying text.

<sup>32</sup> This is confirmed by the following statement in the 1998 ROD's Responsiveness Summary:

"Consistent with the NCP's definition of cost-effective (e.g., see 40 CFR 300.430(f)(5)(ii)(D): cost-effectiveness equates to a remedy providing overall effectiveness proportional to its costs), EPA believes the remedy to be highly cost-effective. It avoids the hundreds of millions of dollars that would be required for sediment treatment, or, if a capping remedy were pursued (as discussed below in Parts II and III) the extensive costs for CSO and storm drain modifications. As the Administrative Record reflects, once the CDF locations had been finalized, EPA in 1996 directed that the cost estimates for the various ROD 2 alternatives (as well as the proposed remedy) be updated to reflect the experience of the hot spot remedy, among other factors. This cost updating was performed and finalized prior to the release of the Proposed Plan and invitation for public comment in November 1996. EPA was in receipt of these cost updates and had reviewed the first draft of them as early as June 1996 (see section 4.4 of the Administrative Record).



Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 15

the precise impact this error would have on EPA's calculations, as the proposed ESD does not display the underlying conversion. Nonetheless, even if the revised figures might not result in an exceedance of the +50% standard, the cost increase will be a yet larger percentage.

## 2. OU1 cleanup plan costs.

A close review of the detailed cost comparison presented in Exhibit 1 raises a number of questions that require explanation. Without such explanation, the totals used in both ESDs for the cost of the revised remedy, would be meaningless. We enumerate below the most prominent of such questions:

- The cost for harbor dredging (row 3) in the proposed ESD is 41.4% more than in the 2001 ESD, yet sediment volume has increased by only 7.2%.
- The cost in row 15 for filling CDFs and implementing associated emissions controls has been reduced to zero in the proposed ESD, although it recommends the elimination of CDF D only.
- The 2001 ESD includes a line item of \$59,714,500, representing a 40% contingency amount. Inexplicably, the proposed ESD includes for contingency an amount more than \$18,500,000 lower because it applies the 40% only to three remedial activities (dredging, dewatering and transport and disposal).
- The proposed ESD (as well as the 2001 ESD) fails to include operation and maintenance ("O&M") costs in the "bottom line" number of the cleanup plan's total cost. This contrasts with the 1998 ROD which did include O&M costs in the \$115,545,872 total.
- The cost for inflation at 3% per year over the design and construction period (row 32) is almost \$7,000,000 more in the proposed ESD than in the 2001 ESD although they were issued within a few months of each other. Further, the proposed ESD remedy cost is less than that in the 2001 ESD, which would suggest that the amount would be lower in the proposed ESD.

On a more general level, as between the 1998 ROD and the ESDs, the line items are categorized differently, making it extremely difficult to compare the numbers. For example, the 1998 ROD breaks out costs for air monitoring, health and safety, engineering, services during construction, and legal, administrative and permitting costs. The ESDs do not.

Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 16



In summary, the above analysis makes clear that the proposed changes in the OU1 cleanup plan represent a fundamental alteration in cost.

**III. PROPOSED CHANGES IN REMEDY ARE INDISTINGUISHABLE FROM CHANGES IN HOT SPOT OPERABLE UNIT REMEDY FORMALIZED IN 1999 ROD AMENDMENT.**

The imperative that EPA implement the proposed remedial changes by ROD Amendment is supported not only by the practice at other Superfund sites around the country, as discussed above, but by the precedent established at the New Bedford Harbor Superfund Site itself. Specifically, in April 1999 EPA utilized a ROD Amendment (the "1999 Hot Spot ROD Amendment") to modify the remedy at the Hot Spot operable unit to include off-site disposal of contaminated waste. A comparison of this previous remedy change with the changes in the proposed ESD leaves no room for doubt that a ROD Amendment is the correct procedural mechanism this time as well.

The 1999 Hot Spot ROD Amendment and the proposed ESD involve virtually identical elements. First, the 1999 Hot Spot ROD Amendment included in the selected remedy the upgrading of existing site facilities to accommodate sediment handling and dewatering activities. At the time, it was anticipated that treatment pads, temporary buildings and upgrades to site utilities might be needed. Similarly, the proposed ESD combined with the 2001 ESD refers to the construction of a sediment dewatering and rail car loading facility. Second, the 1999 Hot Spot ROD Amendment provided for sediment dewatering and water treatment. Mechanical dewatering was specifically incorporated as a treatment method. As discussed above, this same treatment method forms a critical aspect of the proposed ESD. Third, the 1999 Hot Spot ROD Amendment elects to transport dewatered contaminants to an off-site TSCA permitted landfill. Similarly, off-site landfilling by truck or rail is the disposal method of choice in the proposed ESD. Finally, the 1999 Hot Spot ROD Amendment established a "comprehensive ambient air monitoring program" to protect site workers and the local community during the sediment removal and dewatering operations. Similar precautions are planned under the proposed ESD. Thus, for the simple reason that the 1999 Hot Spot ROD Amendment and the proposed ESD share the same remedial modifications, they should also mirror each other procedurally.

A review of the August 1998 Proposed Plan for the 1999 Hot Spot ROD Amendment further illustrates the similarities. The comparison of Hot Spot sediment cleanup alternatives



Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 17

explicitly defines off-site disposal as a preferred alternative (Alternative 6 in the Proposed Plan) over the use of the CDF for permanent disposal (Alternative 5 in the Proposed Plan). EPA indicates that Alternative 5 (the exact same solution for treatment and disposal of sediments as proposed for OU1 in the 1998 ROD) does not fully meet all nine NCP criteria, and furthermore does not have state agency or community acceptance, particularly when compared with the off-site disposal option.

The larger historical and community context of the New Bedford Harbor Superfund Site, and the place of the 1999 Hot Spot ROD Amendment and the proposed ESD within this saga, confirm the present need to proceed by way of a ROD Amendment rather than an ESD. Both the 1999 Hot Spot ROD Amendment and the proposed ESD follow in the wake of the public outcry that led to the elimination of on-site incineration in the 1995 ESD. Thus, the root motivation behind the 1999 Hot Spot ROD Amendment and the proposed ESD is the same: the desire to reach a timely and cost-effective remedial solution that adequately reflects community needs and preferences. Like the earlier decision to eliminate on-site incineration, there is little reason to doubt that elimination of CDF D more fully honors the community's preference for a long-term solution to the problem of contaminated sediments remaining within city boundaries and the protection and preservation of the existing shoreline. Given EPA's acknowledgement in the 1999 Hot Spot ROD Amendment that "Community Participation in the decision-making process has always been and continues to be at a high level for this Site," and avowed willingness to go "far beyond the regulatory requirements for public involvement" on previous occasions,<sup>33</sup> it would be deeply incongruous for this same public process to be shortchanged now with respect to the upper and lower harbor operable unit, a far larger and more costly cleanup.

**IV. PROPOSED CHANGES IN REMEDY ARE SIGNIFICANT CHANGES THAT IN AGGREGATE CONSTITUTE A FUNDAMENTAL ALTERATION REQUIRING A ROD AMENDMENT.**

In addition to the arguments that a ROD Amendment is required because the change from on-site containment to off-site disposal with mechanical dewatering is itself a fundamental alteration, and that to use an ESD with respect to CDF D would be flagrantly inconsistent with the procedure chosen for an identical change in remedy for the Hot Spot, the need to use a ROD Amendment to document the proposed changes in the OUI remedy stands on a third leg. Specifically, EPA guidelines state that "*[a]n aggregation of nonsignificant or significant*

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<sup>33</sup> 1999 Hot Spot ROD Amendment at 4.



Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 18

*changes could result in a fundamental change overall.*<sup>34</sup> Thus, a ROD Amendment is required not only when one remedial change constitutes a fundamental alteration, but when a series of lesser changes meet this standard when considered in the aggregate. EPA recently invoked this justification for a ROD Amendment at the Norwood PCB Superfund site in Norwood, Massachusetts.<sup>35</sup> Instead of removing PCB contaminants from an industrial building and excavating, treating, and re-disposing all the contaminated soil on-site, EPA proposed to demolish the building, excavate and treat the most highly contaminated soil off-site, install a protective cap, consolidate soil from a nearby location, and impose long-term monitoring measures. EPA acknowledged that “[a]nalyzed individually, not all of the five components of the proposed alternative . . . constitute fundamental changes [to the original ROD].”<sup>36</sup> Nevertheless, EPA stated that “together these five components constitute the most important aspects of the proposed remedy change.”<sup>37</sup> It therefore proceeded to implement the changes via a ROD Amendment rather than an ESD. Similarly, although not each aspect of EPA’s proposed remedial changes at OUI may constitute independently a fundamental alteration, when considered collectively they cross the threshold from discrete significant changes to a fundamental change, and therefore require a ROD Amendment.

Before examining the various changes recommended in the proposed ESD and their aggregate effect in more detail, it is worth considering the rationale behind the rule that significant and non-significant changes may together constitute a fundamental alteration. One likely reason for this rule is that it guards against the temptation to circumvent the public review and comment process by using a series of incremental changes to cloud otherwise clear perceptions of the fundamental alteration. Reasonable indications that such frustration of the purpose of providing for public review and comment is taking place include the use of multiple ESDs within a short time-span of one another, and the use of any single ESD when there is the clear expectation that more will follow. Because the changes in the proposed ESD follow closely upon the heels of those in the 2001 ESD, and because the elimination of additional CDFs is clearly anticipated, EPA is treading dangerously close to thwarting the public process mandated by the NCP. The fact that EPA has allowed for public comment on the proposed

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<sup>34</sup> 1999 Remedy Summary Report, *supra* note 11, at 4 (emphasis added). See also EPA Guide, *supra* note 13, at 7-2 (allowing that a fundamental change “may be a number of significant changes that together have the effect of a fundamental change”).

<sup>35</sup> RECORD OF DECISION AMENDMENT NORWOOD PCB SUPERFUND SITE, EPA ID MAD980670566, Part VII B (May 17, 1996), available on Superfund Public Information System CD-ROM (NTIS Order Number SUB-5462).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*



Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 19

ESD is a positive step, but the nature of the designation given to a remedy change – ESD or ROD Amendment – makes a crucial difference in the attention it receives. EPA should acknowledge that the proposed changes in the proposed ESD, when considered in the context of the changes in the 2001 ESD and those that are likely to follow, constitute a fundamental alteration in the aggregate and should be adopted only through a ROD Amendment.

**A. Description of the significant changes proposed by the proposed ESD.**

The following constitute the significant changes in EPA's proposal which, when considered in the aggregate, constitute a fundamental alteration of the 1998 ROD.<sup>38</sup>

**1. Elimination of CDF D and use of off-site disposal.**

As discussed above, the most important change in the proposed ESD is the elimination of CDF D and the implementation of off-site disposal of contaminants in a licensed landfill. Even if this change is not considered a *fundamental* alteration with respect to scope, performance, or cost, it is certainly a *significant* change, for a change in disposal site is expressly cited as an example of a significant change in EPA guidance documents.<sup>39</sup> Moreover, the substantial nature of the switch to off-site disposal is apparent from the long list of reasons EPA offers to validate the proposal: (1) reduction in the amount of filling of subtidal and intertidal areas; (2) better reliability given funding constraints; (3) fewer adverse impacts on abutting waterfront businesses and shoreline users; (4) greater beneficial reuse of the CDF area(s); (5) expedited construction and cleanup compared to CDF construction work; and (6) lower overall costs (assuming cost assumptions presented in the draft ESD are accurate). AVX takes no position on these anticipated developments, but believes that they are most appropriately pursued via a ROD Amendment which properly characterizes the fundamental changes in remedial approach EPA now seeks to implement.

**2. Use of mechanical dewatering.**

The 1998 ROD defined the operation of the CDFs as involving the continual decanting of seawater and the pumping and treatment of the decanted water in one of four treatment facilities. The remedy as revised does not include the decanting of seawater, but instead has added a treatment step, namely, mechanical dewatering. As previously mentioned, mechanical

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<sup>38</sup> Even if some of the listed changes are ultimately found to be nonsignificant according to EPA guidelines, they may still constitute a fundamental alteration when considered in aggregate, as indicated by the reference to "nonsignificant or significant" changes in the 1999 Remedy Summary Report, *supra* note 11, at 4.

<sup>39</sup> EPA Guide, *supra* note 13, at 7-3.



dewatering was specifically considered and eliminated in the 1998 ROD. The addition of mechanical dewatering as a treatment step for dredged sediment is therefore, at the very least, a significant change in the OU1 hazardous waste management process.

**3. Increase in physical area to be cleaned-up.**

The incorporation of additional sediment areas into the remedy as a result of the proposed change in the application of PCB cleanup target levels will substantially increase not only the physical area of the treatment area, but the volume of material to be treated and disposed. (*See Section II.A.2. above.*) This increase in the size of the treatment area and volume constitutes a significant change in the remedy.

**4. Elimination of preliminary capping and sediment consolidation.**

This component of the original remedy has been substantially eliminated through the implementation of the combined ESDs. Since CDF D will not be built, the need for sediment consolidation and capping for this, the largest of the originally-proposed CDFs, no longer exists. In all likelihood, the remaining CDFs will not be built, eliminating this task entirely. These constitute significant changes in the remedy that must be taken into account in any assessment of the aggregate effect of the changes to the OU1 remedy.

**5. Elimination of final capping, long-term monitoring, and beneficial re-use of the CDFs.**

The capping and reuse of CDF D is also being eliminated under the proposed ESD. It should be noted that the reduction in adverse impacts caused by the CDFs and the potential for beneficial reuse of the facilities – particularly the rail yard improvements at CDF D – are used as valid arguments in support of the proposed ESD. Assuming the elimination of CDF D will be followed by the elimination of the remaining CDFs, long-term monitoring and maintenance of the CDFs will not be required. The potential for groundwater and air emissions from the CDFs will also be eliminated. Again, these proposals constitute significant remedial changes that must be factored into any assessment of the aggregate effect of the changes to the OU1 remedy.

**6. Elimination of institutional controls for the CDF properties.**

The seafood advisories and fishing restrictions incorporated into the 1998 ROD will still be needed. However, institutional controls for the CDF properties will be eliminated since long-term integrity of the CDF caps will not be an issue. This constitutes at least a non-



Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 21

significant change in remedy that must be added to the assessment of the aggregate effect of the changes to the OU1 remedy.

**7. Elimination of CDF D remedy reviews every five years.**

Because contaminated sediments will no longer remain in CDF D, the need for remedy review every five years for this CDF is eliminated. Given the likely outcome of eliminating the remaining CDFs, the periodic review for this operable unit can be completely avoided. Hence, a greater degree of permanence will be achieved, and the statutory requirement for periodic review will no longer apply. This development constitutes a significant change from the original selected remedy, which must be considered in any assessment of the aggregate effect of the changes to the OU1 remedy.

**B. Serial Nature of the Proposed Changes Further Supports the Finding of a Fundamental Alteration.**

When the multiple significant as well as non-significant changes that are part of the proposed ESD are considered in the aggregate, they unequivocally constitute a fundamental alteration requiring a ROD Amendment. As is evident from the example set at other Superfund sites, the absolute necessity for a ROD Amendment is amplified when these same changes are considered in the context of the serial nature of remedial changes proposed by EPA.<sup>40</sup> Specifically, and as previously described, the proposed ESD follows closely upon the heels of related changes in the 2001 ESD, and less than three years after the Hot Spot ROD Amendment. Moreover, it is clear from language in the proposed ESD that EPA is already anticipating the elimination of the remaining CDFs in the near future. Not only does the same rationale for eliminating CDF D apply to the other CDFs, but the community has repeatedly gone on record saying it does not want and does not support CDFs to be operated in perpetuity along the shores of the harbor.<sup>41</sup> EPA would face stiff community opposition to the construction of CDFs A through C now that it has published a strong technical argument that CDF D is neither required nor preferred. EPA should be required to address all these changes at once by a ROD Amendment rather than incrementally through multiple ESDs. It should not

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<sup>40</sup> See e.g. RECORD OF DECISION AMENDMENT #3 ALLIED CHEMICAL/IRONTON COKE SUPERFUND SITE, EPA ID 541-R98-156, Part II (Sept. 30, 1998)(describing a series of three ROD Amendments, the second of which involved the introduction of off-site disposal), *available on* Superfund Public Information System CD-ROM (NTIS Order Number SUB-5462).

<sup>41</sup> See e.g. Article 2 of the New Bedford Harbor Superfund Site Community Forum Agreement; 1998 ROD Responsiveness Summary, Sections 2.1 and 3.1.

Mr. David J. Dickerson  
Remedial Project Manager  
U.S. Environmental Protection Agency  
April 10, 2002  
Page 22



circumvent the statutory process by using serial discrete and overlapping modifications when one – a ROD Amendment – will do.

V. CONCLUSION.

In summary, while AVX is cognizant of the fact that the implementation of a cleanup plan over time may require revisions, it does not believe that such changes can or should be accomplished bit by bit over the course of two or more ESDs. The changes to the OU1 cleanup plan involving the use of mechanical dewatering, the elimination of CDF D, off-site disposal, and so on, are fundamentally different than the remedy selected in the 1998 ROD, and as such should be published and documented as a ROD Amendment.

Thank you for the opportunity to submit these comments.

Very truly yours,

Gary L. Gill-Austern

Attachment

cc: Mr. Kurt Cummings  
Mr. Dennis Oldland  
Weldon S. Bosworth, Ph.D.  
Marilyn Wade, P.E., LSP  
Mary K. Ryan, Esq.  
Edward Baker, Esq.

**Exhibit 1 to April 10, 2002 Comments of AVX Corporation Re:  
New Bedford Harbor Superfund Site, Upper and Lower Harbor Operable Unit,  
Explanation of Significant Differences, February 2002 Draft for Public Comment**

#	activity	1998 ROD	1998 ROD**fully funded**	2001 ESD	2/02 ESD
1	debris disposal area (surcharge & cap)	0	0	0	574,000
2	dredging	22,320,348	38,584,788	0	0
3	harbor dredging & excavation (w/ early action & confirmatory sampling)	0	0	24,027,000	33,969,100
4	dewater/water treatment	27,123,051	46,887,135	0	0
5	build water treatment plant & water treatment	0	0	2,825,000	2,589,000
6	build de-watering bldg, So. Lobe & Sawyer St., mobilize, remove vessels	0	0	12,720,000	21,972,200
7	dewater harbor sediments	0	0	18,855,000	24,500,000
8	transport & dispose harbor sediments off-site (T&D) incl. to Pierce Mill	0	0	3,189,000	43,459,000
9	CDF construction	27,121,318	46,884,139	0	0
10	CDF D w/o cap	0	0	23,258,000	0
11	CDF D wharf (loading/unloading dock)	0	0	6,604,000	0
12	CDF C w/o cap	0	0	11,084,000	0
13	CSO for CDF D (CSO D) w/ mark-ups	0	0	3,636,000	2,736,380
14	CSO @ CDF C (CSO C) w/ mark-ups	0	0	2,233,000	2,614,900
15	Fill CDFs & emissions controls	0	0	7,753,000	0
16	CDF D surcharging & CDFs Final RCRA caps & O&F	0	0	12,349,000	0
17	wetland habitat restoration	0	0	4,178,000	4,370,000
18	relocate commonwealth electric power cables	0	0	6,499,600	6,855,113
19	air monitoring	2,148,000	3,713,209	0	0
20	health & safety	3,935,676	6,803,533	0	0
21	legal, admin, permitting	7,871,352	13,607,066	0	0
22	engineering	7,871,352	13,607,066	0	0
23	services during construction	7,871,352	13,607,066	35,058,034	39,090,130
24	site/home office mgt, eng. during construction, SS&H, QC, admin., overhead, site operations (15% on construc costs &	0	0	34,383,300	36,107,600
25	air/water quality, ecological, seafood monitoring & confirmatory sampling	0	0	7,068,000	9,194,710
26	soccer field w/ fence	0	0	415,000	415,000
27	real estate acquisition	0	0	3,411,000	1,043,000
28	turnkey contractor fees	11,807,028	20,410,599	15,117,323	9,091,521
29	contingency (20%)	23,614,055	40,821,196	0	0
30	contingency (40%)	0	0	59,714,500	0
31	contingency on RA dredging, dewatering & T&D	0	0	0	41,071,066
32	inflation @ 3%/yr over design/construction period	0	0	30,268,674	37,169,356
33	total capital cost	141,685,530	244,929,250	0	0
34	present worth (1996 (@7% for 8 yrs)	105,754,956	182,816,707	0	0
35	O&M cost	1,095,795	1,894,281	6,300,000	2,000,000
36	monitoring program	8,695,122	15,031,102	0	0
37	total present worth cost	115,545,873	0	0	0
38	total project fully funded		199,742,091	330,946,431	318,822,076