

**New Bedford Harbor Superfund Site
Supplemental Consent Decree with Defendant AVX Corporation
Frequently Asked Questions
October 10, 2012**

On October 10, 2012, the U.S. Environmental Protection Agency (EPA) and the Commonwealth of Massachusetts (the Commonwealth) announced a settlement with AVX Corp. (AVX) for \$366.25 million, plus interest, regarding the New Bedford Harbor Superfund Site in New Bedford, MA (the Site). The “cash-out” settlement will be paid to the United States and the Commonwealth jointly, and retained by EPA for use at the Site. If approved by the Court, this will be the largest single-site cash settlement in the history of the Superfund program.

With these settlement funds, EPA will greatly accelerate the pace of the cleanup of polychlorinated biphenyl (PCB) contaminated sediment in New Bedford Harbor, which will result in more rapid protection of public health and the environment.

This document provides additional information about the settlement, the Supplemental Consent Decree with Defendant AVX Corporation, lodged with the U.S. District Court for the District of Massachusetts.

What are the basic terms of the settlement?

AVX will pay \$366.25 million, plus interest, in three separate payments over two years. These funds will be used by EPA to perform the cleanup.

Does this settlement reduce the taxpayer burden for the cleanup?

Yes. When a polluting company pays for Superfund cleanup, the cost to the taxpayer is lowered.

Will the settlement funds be sufficient to fund the remainder of the cleanup?

The settlement is expected to fund over 90 percent of estimated future cleanup costs. Assuming operation of the dredging and dewatering facility at the Site at full capacity, the cleanup is estimated to cost between \$393 and \$401 million. This settlement will provide the bulk of the funds needed to complete the remedy for the Harbor Site.

Why did EPA and the Commonwealth agree to settle for less than 100% of the estimated cleanup costs?

The governments weighed many important factors in determining that this settlement is in the public interest, including the following:

- This settlement will greatly accelerate the pace of the cleanup. Assuming that the current funding by the Superfund continued at the current rate of

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\$15 million per year, it would take about 40 years to complete the cleanup. With the infusion of funds from the settlement, the bulk of the cleanup is expected to be completed within 5-7 years. The vastly increased level of immediate funding made available by this settlement will result in a reduction of the risks to human health and the environment far sooner than with the current annual funding levels of \$15 million from the Superfund.¹

- The longer it takes to perform the cleanup, the more the actual cost of the cleanup increases due to inflation. Assuming the current funding level of \$15 million from Superfund, and a 40-year cleanup, the actual cost of performing the remedy would be over one billion dollars. In short, there is a significant public interest in ensuring a large influx of money through this settlement, to ensure that the cleanup is performed as rapidly as possible.
- Failure to reach a settlement would likely mean years of complex litigation, including litigation over novel legal and significant technical issues, with an uncertain outcome. If this matter proceeded to litigation, it is expected that AVX would vigorously raise its legal defenses. As an example, the Court has never determined that AVX is a liable party at the Site since the governments' prior lawsuit against AVX was settled before trial. The governments believe the settlement is in the public interest because it avoids the cost, time and uncertain results from protracted litigation against AVX.

If the settlement is approved by the Court, will the Superfund continue to fund the cleanup?

No. If the settlement is approved, EPA will use the settlement funds to fund the cleanup, but the Harbor Site will not receive any funds from the Superfund.

What if the settlement funds are insufficient to complete the cleanup?

EPA would seek additional funding from the Superfund, as well as from the Commonwealth, for the remainder of the cleanup.

¹ In order to keep these FAQs easy to understand, they do not discuss the contributions of the Commonwealth of Massachusetts (Massachusetts Department of Environmental Protection) that have been made toward the cleanup as its statutory state 10% cost share of remedial action costs for Superfund financed remedial action activities consistent with the Superfund law.

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Why didn't EPA simply allow its Order against AVX to go into effect, and require AVX to perform the cleanup?

On April 18, 2012, EPA issued an Administrative Order requiring AVX to perform the cleanup. The Order had a delayed effective date, which was intended to encourage and allow for settlement negotiations. The governments and AVX did, in fact, enter into settlement negotiations with the assistance of a mediator, resulting in this cash-out settlement. Upon approval of the cash-out settlement by the Court, EPA will withdraw the Order. If instead of setting this matter EPA had let the Order go into effect, AVX would have likely sought relief from the Court. Since the outcome of AVX's potential challenge to the Order was uncertain, EPA has determined that this cash-out settlement is in the public interest.

After the settlement payments have been made by AVX, can EPA and the Commonwealth go back to AVX and ask for more money or can EPA issue another Order?

No. Except for a few limited reservations of rights contained in the settlement, EPA and the Commonwealth release AVX from any further obligations at the Site as long as AVX complies with all of the requirements of the settlement. Likewise, as long as AVX complies with the settlement, EPA cannot issue another Order to AVX. However, the settlement has no effect on rights reserved by the natural resource trustees (for example, by the National Oceanic and Atmospheric Administration and Massachusetts' Secretary of Energy and Environmental Affairs) in the prior 1992 settlement.

Will the Superfund continue to fund the cleanup until the settlement is approved by the Court?

Absent severe budgetary changes, EPA expects that the Superfund will continue to fund the cleanup of the Site until the settlement is approved by the Court.

What was the amount of funding and work provided by AVX in prior settlements concerning both the Site and the adjacent Aerovox facility?

Upon approval by the Court, this settlement supplements and modifies the settlement entered into by the United States and the Commonwealth with AVX in 1992 following a lawsuit. In the 1992 settlement, AVX paid \$66 million, plus interest, for past and future response costs and natural resource damages. The governments reserved certain rights in the 1992 settlement, which they exercised to bring about this supplemental settlement.

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In addition, in 2010, AVX entered into a settlement with EPA to demolish the Aerovox facility, which was accomplished in 2011, and entered into a separate settlement with the Massachusetts Department of Environmental Protection to address the remaining contamination at the Aerovox property. The value of the work performed and to be performed by AVX in these two settlements is estimated at \$24 million. From the 1940's to the 1970's, AVX's corporate predecessor, Aerovox Corp., owned and operated the Aerovox facility, an electrical capacitor manufacturing facility from which it discharged hazardous substances, including PCBs, into the Harbor.

How will the settlement affect what EPA will do to clean up the Site?

This cash-out settlement has no effect on the selection of the remedy. The remedy was selected in a 1998 Record of Decision, which was later modified in four Explanations of Significant Differences (altogether, referred to as the Operable Unit 1 Remedy or OU1 Remedy). All components of the selected OU1 Remedy—including dredging, dewatering, off-site disposal, future disposal in Confined Disposal Facilities A, B, and C, and disposal in a Lower Harbor Confined Aquatic Disposal (CAD) cell—have been previously determined by EPA to be protective of human health and the environment.

A more complete description of the remedy is found on EPA's website at <http://www.epa.gov/nbh/>.

With respect to recent activities at the Site, from May to September 2012, EPA performed its annual dredging, dewatering and off-site disposal of contaminated sediment. On September 28, 2012, EPA completed its review of the Lower Harbor CAD cell design, and provided a copy of the design to the Lower Harbor CAD Cell Technical Working Group for review. EPA expects to begin the bidding process, during the upcoming winter, for construction of the Lower Harbor CAD cell, using funding available from the Superfund. Within the next six months, EPA also expects to begin a Focused Feasibility Study at the Site, a process which has not yet begun. This study as planned will consider whether there are any cost-effective, protective alternatives for the disposal of contaminated sediment other than the selected Confined Disposal Facilities A, B, and C. EPA expects to consider a range of possible practicable alternatives for sediment disposal in the Focused Feasibility Study, and EPA will seek public comment in accordance with Superfund law.

How will the settlement affect the development of shoreline areas abutting the Harbor?

The settlement will have a positive impact on shoreline development and use of the Harbor in that it enables EPA to address the contamination in significantly less time than

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would be possible with the yearly \$15 million funding EPA has been receiving from the Superfund. As EPA completes the cleanup, we will continue to coordinate and cooperate with the City and private developers in their efforts to promote economic and recreational growth in and abutting the Harbor.

Will the settlement affect the navigational dredging work being conducted through the State Enhanced Remedy portion of the ROD?

The settlement will not impact the State Enhanced Remedy (SER) work. The SER work is conducted and funded by the Commonwealth of Massachusetts in parallel with the Superfund remedial action. In conducting the Superfund cleanup, EPA will continue to coordinate and cooperate with the Commonwealth to ensure that the SER work does not conflict with or interfere with the Harbor Superfund cleanup.

Does this settlement affect the community's participation in the Site cleanup?

No. EPA will continue to provide periodic updates of its work and to hold public informational meetings to keep the public informed about all work activities. EPA has provided funding, through a Superfund Technical Assistance Grant, to the Buzzards Bay Coalition to assist the community's understanding of technical issues and provide EPA with feedback on remedy implementation plans. In addition, if EPA opts to consider changes to the remedy, there will be public outreach during the process, including a public comment period on any EPA proposed remedy change.

What is the process for the public notice-and-comment period and the Court's review of the settlement?

Notice of the settlement will be published in the Federal Register, which will begin the 30-day notice-and-public comment period. Any person may submit comments on the terms of the cash-out settlement within the public comment period, addressed to the Assistant Attorney General, Environment and Natural Resources Division, and referred to *United States and Massachusetts v. AVX Corporation* (D.J. Ref. No. 90-11-2-32/2), as follows:

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<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

EPA and the Commonwealth are required to consider comments prior to filing a motion with the Court to enter the settlement. If, after consideration of all comments received during the notice-and-comment period, the governments ask the Court to enter the settlement, the Court's role will be to review the settlement terms, to consider the public comments and the governments' responses, and to approve the settlement if the Court finds that it is fair, reasonable, and faithful to the objectives of the Superfund statute.

Where are copies of the Supplemental Consent Decree available to the public?

Electronic copies can be found on EPA's New Bedford Harbor Superfund Site's website at <http://www.epa.gov/region1/superfund/sites/newbedford/507280.pdf>.

Once notice of the settlement is published in the Federal Register, electronic copies of the Supplement Consent Decree will also be available on the U.S. Department of Justice website at http://www.usdoj.gov/enrd/Consent_Decrees.html during the public comment period.