New Bedford Harbor Superfund Site
Supplemental Consent Decree with Defendant AVX Corporation
Additional Frequently Asked Questions
October 25, 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 to perform the cleanup at the Site. If approved by the Court, this will be the largest single-site cash settlement in the history of the Superfund program.

Also on October 10, 2012, EPA provided information about the settlement in a set of responses to "Frequently Asked Questions" (FAQs) (these FAQs are found at http://www.epa.gov/region1/superfund/sites/newbedford/507281.pdf). Since October 10, 2012, several members of the public have raised additional questions about the settlement, and also about EPA's cleanup of the Site. Although the cleanup of the Site is addressed in prior EPA decision documents that are not part of the cash-out settlement with AVX, these "Additional Frequently Asked Questions" are intended to respond to questions about both the settlement and the cleanup.

PART 1: FAQS ABOUT THE SETTLEMENT

Will the $366.25 million settlement provide enough money to clean up the Harbor?

EPA is confident that the settlement will fund over 90% of estimated future cleanup costs. In the event settlement funds are depleted, EPA will seek additional funding from the Superfund, as well as from the Commonwealth of Massachusetts, for the remainder of the cleanup.

If the $366.25 million settlement is not enough to clean up the Harbor, why is this settlement in the public interest?

This $366.25 million settlement is in the public interest because it will fund over 90% of the future cleanup costs and it will avoid litigation, which could continue for years with uncertain results. In addition, this settlement will greatly accelerate the pace of the cleanup. Dredging will no longer be limited to the typical 45 days per year under the $15 million per year funding scenario (which assumes the continuation of the $15 million in annual funding from the Superfund).[1] With the infusion of funds from the settlement,

[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 (MassDEP)) that have been made toward the cleanup as its statutory state 10% cost share of remedial action costs for

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dredging is expected to increase to approximately nine months per year. Because the cleanup of the Harbor would be expedited as a result of this cash-out settlement, the governments have determined that the $366.25 million settlement is preferable to protracted litigation.

What is the estimated cost to clean up the Harbor?

EPA estimates that the amount needed to clean up the Harbor ranges from $393 million to $401 million, depending on the annual amount of funding.[2]

Why are there other higher estimates for the Site cleanup?

The current estimate is the most accurate because it reflects the remedy in place right now. Previous higher estimates are obsolete because they were based on remedial components that are not in the current remedy. In the Fourth Explanation of Significant Differences for Use of a Lower Harbor CAD Cell (LHCC) for Operable Unit 1 (OU1 ESD4) that was issued in 2011, EPA selected the use of a Lower Harbor confined aquatic disposal (CAD) cell for disposal of a portion of the dredged sediment, which reduced the estimated cost of the remedy. Also, even for the current OU1 Remedy, assuming a limited annual funding rate of $15 million from the Superfund, the cleanup would cost an estimated $1.2 billion in "actual" costs and would take 40 years to complete.[3]

Since the cleanup costs for the Site have gone up from the original estimates in the 1990s, why is the $393 million cost estimate a reliable estimate?

At this time, EPA has extensive experience with or information about both hydraulic and mechanical dredging, offsite disposal, and CAD cell disposal and capping. For this reason, EPA believes these cost estimates have a high degree of accuracy.[4]

In contrast, at the time of EPA's and the Commonwealth's prior cash-out settlement with AVX in 1992, EPA had not issued the 1998 OU1 ROD, which was later modified by four

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Superfund financed remedial action activities consistent with the Superfund law. For example, along with the current annual funding of $15 million from the Superfund is a $1.5 million annual contribution from the Commonwealth.

[2] These cost estimates are net present value estimates. See the 2011 Fourth Explanation of Significant Differences for Use of a Lower Harbor CAD Cell (LHCC) for Operable Unit 1 (OU1 ESD4) for details about timing and cost estimates (http://www.epa.gov/region1/superfund/sites/newbedford/479471.pdf).

[3] See p. 12 of the OU1 ESD4 at http://www.epa.gov/region1/superfund/sites/newbedford/479471.pdf.

[4] See p. 17 of the OU1 ESD4 at http://www.epa.gov/region1/superfund/sites/newbedford/479471.pdf.

ESDs. In addition, since the OU1 ROD was issued in 1998, EPA has been performing the cleanup of the Harbor and has gained additional knowledge of the extent of sediment contamination and actual ongoing cleanup costs at the Site.

What is the effect of the settlement on the components of EPA's selected cleanup?

As explained in the FAQs dated October 10, 2012, the settlement has no effect on what EPA will do to clean up the Harbor and does not limit the possibility of, nor require, future changes to the cleanup remedy.

How did EPA and the Commonwealth arrive at this new settlement with AVX? Are there other responsible parties?

The Supplemental Consent Decree supplements a 1992 cash-out settlement agreement with AVX which was approved by the Court after eight years of litigation. In the 1992 settlement, the governments reserved certain legal rights. The governments have asserted that the conditions giving rise to claims against AVX, as set forth in certain reservations of rights in the 1992 settlement, have occurred. On April 18, 2012, EPA issued to AVX a Unilateral Administrative Order, pursuant to the Superfund law and the reopener provisions in the 1992 settlement, directing AVX to perform the rest of the OU1 cleanup of the Harbor. After mediated negotiations to resolve the governments' allegations and rights under the 1992 settlement and the defenses and rights of AVX regarding the governments' claims, the parties arrived at this settlement.

In the early 1990s, in addition to the settlement with AVX, EPA entered into two other separate cash-out settlements for the Site: (1) with Belleville Industries, Inc. and its legal successor, Aerovox, Inc. (Aerovox, Inc. should not be confused with AVX or AVX's predecessor, Aerovox Corp.); and (2) with Cornell-Dubilier Electronics, Inc. (CDE) and its parent company, Federal Pacific Electric Company (FPE). Since these settlements in the early 1990s, the financial strength of these companies is in doubt. Aerovox, Inc. is bankrupt and no longer exists, while Belleville Industries, Inc. was dissolved in 1978. As for CDE and FPE, on August 28, 2012, the United States and the State of New Jersey entered into a settlement for the Cornell-Dubilier Electronics Superfund Site in South Plainfield, New Jersey, with CDE, which provide covenants not to sue to CDE and "its former corporate parent FPE," that was based on limited ability to pay

considerations. Of the three cash-out settlements from the early 1990s for the Site, the 1992 settlement with AVX is the only one that has a cost reopener provision.

What if there are additional unexpected costs that result in EPA spending more money than anticipated?

EPA acknowledges that there are risks inherent to settlement; however, EPA weighed this consideration when evaluating the settlement and determining that the settlement is in the public interest.

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

Electronic copies of the Supplemental Consent Decree can be found on EPA's New Bedford Harbor Superfund Site's webpage at http://www.epa.gov/nbh, specifically at http://www.epa.gov/region1/superfund/sites/newbedford/507280.pdf.

During the 30-day public comment period from October 17, 2012 to November 16, 2012, electronic copies will also be available on the U.S. Department of Justice website at http://www.usdoj.gov/enrd/Consent_Decrees.html. In addition, the U.S. Department of Justice will provide a paper copy of the Supplemental Consent Decree upon written request to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611. Please enclose a check or money order for $19.50 (25 cents per page reproduction cots) payable to the United States Treasury. For a paper copy without the exhibits, the cost is $6.50.

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

Notice of the settlement was published in the Federal Register on October 17, 2012, which began the 30-day notice-and-comment period that will end on November 16, 2012. 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:

To submit comments:	*Send them to:*
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.

PART 2: FAQS ABOUT EPA CLEANUP OF THE SITE

Since the announcement of EPA and the Commonwealth's settlement with AVX, several members of the public have asked questions about the cleanup. While these questions do not relate to the settlement itself, responses to these questions are provided below to ensure that the public has an accurate understanding of the cleanup.

What are the components of the OU1 Remedy?

Approximately 900,000 cubic yards (cy) of contaminated sediment are estimated to be above the OU1 ROD cleanup standards in New Bedford Harbor and have been or will be addressed in the following manner:

- 175,000 cy will be placed in Confined Disposal Facilities (CDFs) along the New Bedford shoreline in the Upper Harbor, as selected in the 1998 OU1 ROD;

- 425,000 cy have been or will be transported off-site for disposal, as selected in the 2002 OU1 ESD2[5]; and

- 300,000 cy will be placed in a Lower Harbor CAD cell (LHCC), as selected in the 2011 OU1 ESD4.

Why was the Lower Harbor CAD cell (as well as the Confined Disposal Facilities) selected for the placement of dredged sediment?

LHCC will be protective of human health and the environment. In the 2011 OU1 ESD4, EPA explained the basis for finding that the use of the LHCC would be protective. Data collected and evaluated during the construction of other CAD cells, including in New Bedford for navigational dredging, supported EPA's determination that the LHCC will be a safe, permanent solution for disposing of contaminated Harbor sediment.[6] EPA also conducted computer modeling that showed that the LHCC will be stable and not subject to leakage to the environment. In addition, EPA explained that the remedy with the LHCC would be cost-effective, decreasing the time and cost to complete the Harbor cleanup. The basis for selecting confined disposal facilities (CDFs) and their protectiveness is explained in the 1998 OU1 ROD.[7]

Is the LHCC (as well as the CDFs) being proposed or is it part of the selected remedy for the Harbor?

The LHCC and CDFs have been selected as a part of the OU1 Remedy, in the 2011 OU1 ESD4 and 1998 OU1 ROD, respectively. EPA wants to make clear that neither

[5] Included in the 425,000 cy estimate is 10,000 cy of contaminated sediment in the Outer Harbor just south of the New Bedford Hurricane Barrier near the New Bedford shore that has been addressed by a pilot underwater cap.

[6] In the OU1 ESD4, EPA noted the Commonwealth's use of CAD cells for navigation dredging as part of the OU1 ROD's "state enhanced remedy" (SER):

> Although these navigational sediments primarily fall below the 50 ppm lower harbor cleanup level (and thus have minimal or no overlap with sediments slated for remedial dredging) they are nevertheless contaminated with heavy metals and lower levels of PCBs. Under the SER, which is implemented using state and local funding (not Superfund money), CAD cells have been approved and developed for the permanent disposal of dredged navigational sediments within the harbor. The New Bedford Harbor Development Commission (HDC) has, with MassDEP oversight, constructed and filled three navigational CAD cells created through the SER, with additional navigational CAD cells anticipated in the future.

See p. 6 of the OU1 ESD4 at http://www.epa.gov/region1/superfund/sites/newbedford/479471.pdf.

[7] See the OU1 ESD4 at http://www.epa.gov/region1/superfund/sites/newbedford/479471.pdf and the OU1 ROD at http://www.epa.gov/region1/superfund/sites/newbedford/38206.pdf.

the LHCC nor the CDFs are merely proposed EPA actions, but rather they have been selected. EPA issued these remedy decisions in accordance with the Superfund law and regulations, and provided the community with extensive input and the opportunity to submit public comments. Prior to finalizing these decisions, EPA considered and responded to the public comments.

At this time, the design for the construction of the LHCC is well underway.

With respect to the CDFs, which have not yet been built, within the next six months, EPA expects to begin a Focused Feasibility Study, which will consider whether there are any protective, cost-effective alternatives for the disposal of contaminated sediment other than the selected CDFs. EPA expects to consider a range of possible practicable alternatives to the CDFs for sediment disposal in the Focused Feasibility Study, and EPA will seek public comment in accordance with Superfund law.

What are the cleanup levels for PCBs at the Site?

There are separate PCB cleanup levels for different areas of the Harbor[8]:

- For subtidal areas, the cleanup levels, to attain applicable water quality and seafood consumption standards, are the following:
    - 10 parts per million (ppm) PCBs for subtidal sediment in the Upper Harbor (north of the Coggeshall Street bridge), which has most of the PCB contamination; and
    - 50 ppm PCBs for subtidal sediment in the Lower Harbor (between the Coggeshall Street bridge and the New Bedford Hurricane Barrier); and

- For the shoreline intertidal areas, the cleanup levels, to reduce risk from human contact with contaminated sediment, are the following:
    - 1 ppm PCBs for areas bordering residential areas;
    - 25 ppm PCBs for shoreline areas bordering recreational areas; and
    - 50 ppm PCBs for other shoreline areas with little or no public access.

[8] Contaminated subtidal sediment is located below low tide, while contaminated intertidal sediment is located between low tide and high tide.

To better understand the 50 ppm PCB cleanup level for the Lower Harbor subtidal sediment, two points need to be highlighted. First, the Lower Harbor is a designated port area, as New Bedford has a working waterfront. Among other factors, EPA considers the current and future use of an area, such as an urban port, in selecting cleanup levels. Second, much of the Lower Harbor will over time be dredged for navigational purposes, as provided in the 1998 OU1 ROD's "state-enhanced remedy." The navigational dredging of approximately 1.7 million cubic yards of sediment contaminated with heavy metals and lower levels of PCBs (between 10 to 50 ppm PCBs) will enhance the cleanup remedy at this Site.[9] Through the removal of PCB-contaminated sediment below the 50 ppm PCB level, navigational dredging in the Lower Harbor to date has resulted in post-dredging PCB levels around 1 ppm or less at these locations.

Based on modeling, after the cleanup is complete, the Harbor and surrounding areas are expected in the long term to become open for safe seafood consumption in regards to the reduction of PCB contamination. The national recommended water quality criterion (formerly known as ambient water quality criterion) for PCBs in surface water of 0.03 parts per billion (ppb) is expected to be attained throughout the Harbor ten years after the cleanup is complete.[10]

Are the cleanup levels for the Harbor old and in need of revision?

Under the Superfund law, EPA is required to conduct reviews of Superfund sites every five years to determine if the remedy remains protective of human health and the environment.[11] EPA has conducted two five-year reviews of the New Bedford Harbor Site so far, in 2005 and 2010.[12] In the most recent Five-Year Review in 2010, after a thorough evaluation, EPA determined that "the remedy for OU1 is expected to be

[9] See pp. 33-34 of the OU1 ROD at http://www.epa.gov/region1/superfund/sites/newbedford/38206.pdf.
[10] See pp. 34-35 of the OU1 ROD at http://www.epa.gov/region1/superfund/sites/newbedford/38206.pdf.
[11] See EPA's June 2001 "Comprehensive Five-Year Review Guidance" (OSWER No. 9355.7-03B-P) at http://www.epa.gov/superfund/accomp/5year/guidance.pdf, which was issued to assist EPA Headquarters, Regional staff, and support agencies responsible for conducting five-year reviews, as required under Section 121 of CERCLA, 42 U.S.C. § 9621, and the Superfund regulations, for remedial actions which result in any hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure.
[12] See http://www.epa.gov/region1/superfund/sites/newbedford/237034.pdf and http://www.epa.gov/region1/superfund/sites/newbedford/470549.pdf.

protective of human health and the environment upon completion." The 2010 Five-Year Review addressed the following three questions:

- Is the remedy functioning as intended by the decision documents (the 1998 OU1 ROD, 2001 OU1 ESD1, 2002 OU1 ESD2, and 2010 OU1 ESD3)?
    - Yes. The remedy is being implemented in accordance with the decision documents and design specifications. The remedy is expected to be protective when it is completed. Long term benthic monitoring shows an improvement in overall benthic quality in the Lower and Outer Harbor areas compared to 1993 baseline data.

- Are the exposure assumptions, toxicity data, cleanup levels, and remedial action objectives used at the time of remedy selection still valid?
    - Yes, the exposure assumptions, toxicity data, cleanup levels, and remedial action objectives used at the time of remedy selection are still valid. Based on a review of the most current state and federal regulations, as well as other PCB-contaminated sediment sites nationally, the target sediment cleanup levels remain valid. The overall long term goals of the remedy also remain appropriate (*e.g.*, eventual lifting of the state fishing bans in regards to the reduction of PCB contamination, reduction of human health risks associated with dermal contact with and incidental ingestion of shoreline sediment, and compliance with the PCB national recommended water quality criterion).

- Has any other information come to light that could call into question the protectiveness of the remedy?
    - No, no other information has come to light that could call into question the protectiveness of the remedy. According to the data reviewed for this five-year period and the on-going site inspections, the remedy is functioning as intended. There have been no changes in regulatory statutes that affect the target sediment cleanup levels, and no new pathways for exposure identified, that would call into question the goals of the remedy.

In the 2010 Five-Year Review, EPA noted that for the Upper Harbor, an issue over the long term will be the well documented trend towards changes in shoreline land use from commercial/industrial to residential and recreational. To date, EPA's cleanup has focused on subtidal dredging, primarily addressing the worst areas first. EPA has not yet evaluated the shoreline intertidal areas (except north of the Wood Street bridge, where final cleanup has been achieved) and the current land uses of these areas.