

From: [Chuck Dade](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: Re: CIVIL ACTION NO. 83-3882-Y
Date: Monday, December 17, 2012 11:59:30 PM
Attachments: [letter2AVX-UNITED STATES DISTRICT COURT.pdf](#)
[letter2AVX-UNITED STATES DISTRICT COURT.pdf](#)

Please accept this as my comment letter in the above referenced case:



Chuck Dade

**CHUCK DADE
398 HAWTHORN ST
NEW BEDFORD, MA 02740**

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO. 83-3882-Y

AVX CORPORATION, et al.,
Defendants.

Greetings:

Please accept these comments to the above referenced case

- 1) My name is Chuck Dade and I am writing to this court because of my concern for what is going on with the cleanup efforts of the EPA Superfund site at the Acushnet River/ New Bedford Harbor.
- 2) I am a native of the area (born in New Bedford), a resident of the South Coast for most of my life, a US armed forces Veteran, and a direct descendant of the (Eleanor Roosevelt awarded) mother (Maria Teresa Barboza) of 10 children from this same area who served in the US military

during WW II. As (a child, a grand child, a person from) a family who lived and/or worked in the area contaminated and as an area educated (BA Psychology) active citizen who has had some experience with hard sciences and engineering (having attended some physics and electronics courses (I am also an Army Engineer> Power Generation).

I mention all of this because I think it lays a foundation to ask (for the many others that are in any way or part connected),

3) “When do we become entitled to equity with regard to government protection (in all of the ways government does such) including environmentally.

4) And I ask (for all)

“When do we become entitled to have a real voice in determining our future”.

5) I believe I can offer some perspective to this case from the position of J.Q. Public..

6) But before I do I would like to say that since the AVX Corporation has

entered into this proposed settlement that they have already established that they are ready, willing and able to satisfy the monetary outlay as described in Paragraphs 7, of the Case filing 1:83-cv-03882-WGY Document 2617-1 Filed 10/10/12 (but they are attempting to leverage an escape clause for some of the liability that they deserve).

- 7) As such, I would ask that the court consider a directed finding/verdict/decreed in the amount stated therein unconditionally and immediately to be accomplished and completed in the time table agreed upon forthwith without any provisions that close any re-opener clauses. Let's get the funding for this in place for the cleanup, and worry about the added costs and best design as needed. And let's do it the right way with no shortcuts that disenfranchises the average citizens of the area, a multitude environmentally deprived for decades (which makes this an Environmental Justice issue and a infringement on civil rights because of the comparative inequity that has occurred for so long).
- 8) *I want New Bedford Harbor cleaned to the highest, safest standard. Time or cost are not the priorities; doing it right is. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.*
- 9) In as much as the slogan for the United States Justice Department website is "The Common Law is the will of mankind issuing from the Life of the people", keeping to that theme can only be accomplished when a court finds in such a way that the protection of and the restitution to the

people is carried through ensuring that those (particularly those with the wherewithal) that have damaged others (or the public good) be held fully liable for the damages suffered. It should be mandatory that the people are made whole; AVX has the wherewithal. Who speaks better for Lady Justice than the court. Please find/decreed in a way that aids in fulfilling that end completely

10)Of great concern is that, for some time now, it seems that no government entity has really spoken for the people effectively. Certainly NOT the EPA ; at least for a few years. And certainly NOT in this proceeding. The people do not want to let responsible parties off the hook. As a government agency, EPA's responsibility is to protect the people (a constitutional imperative) by protecting and restoring the environment (an agency responsibility). Recent policies by the EPA with regard to new initiatives have acted in contradiction toward that end and have turned a deaf ear to local government bodies, grassroots community groups,NGO's and citizen's that have tried to speak for the people.

11)The EPA's latest idea is what they call Confined Aquatic Disposal cells (CAD cells). Despite opposition that includes official comments by the City Council of the City of New Bedford, MA who are unanimously against CAD cells and have said so officially at least 3 times, the EPA is on track to bury 300,000 cubic yards (over 8,100,000 cubic feet) of sediment: 15,000 lbs of PCBs in an excavation in the river bed covered with just 3 ft. of sand despite that true popular opinion is against it . When community groups

questioned this they were told more than once “If you understood science then you would know that it will work” Well science says : Blood worms live from the Gulf of St Lawrence (Canada) to the Gulf of New Mexico, they are burrowers and a bloodworm's body can grow to be fifteen inches in. I doubt they figured that (just one idea of an unforeseen future occurrence) into the EPA computer modeling.

12) Beyond that we have, recently, learned that some PCBs have already buried some in CAD cells though most people were unaware of until after it was already done. They were kind of snuck in. Because this is an environmental justice area and as such the government needs to go to a higher degree of effort to inform the public than the ‘barely legal’ notices in the legal section of the newspaper since this has federal oversight even the states part should live up to these federal guidelines.

13) Since part of the cleanup is being done by state authorities (under EPA oversight) and some is done by the EPA themselves this division of procedure and public engagement made it possible for it to be slipped in because most of the concerned engaged citizens and NGOs solely attended the federal EPA hosted public meetings expecting, since EPA were the overseers, to be enlightened about all aspects of the PCB cleanup under their purview.

14) This turned out to be an incorrect assumption. Apparently, there were separate meetings for the MassDEP navigational dredging that were not well attended by the public. MassDEP got their CAD cells approved pretty

- much with little to no public turnout because the public's continued focus was on the Federal meetings. But this was only touched on with EPA saying that the PCB levels were below the EPA guidelines (which turns out not to be completely true).
- 15) At the federal meetings, activists from the grassroots community group: Hands Across the River Coalition (HARC) (recognized in citation by the State Senate of Massachusetts as "the Caretakers of the Acushnet River and its Banks") also tried to ask more questions than the EPA would allow time for. EPA would schedule programmed information with just a short amount of time for Q & A.
- 16) HARC requested that there be more meetings just for the purpose of Q&A. EPA scheduled a meeting (in October or November 2010) for that purported purpose, then cancelled it, then scheduled another in February 24, 2011 which was a presentation of spoon fed info and a short Q & A. Again there were requests for more time (this is well documented on video).
- 17) From "The Rituals of Public Meetings." (McComas, Katherine, et al. Public administration review 70.1 (2010) it is said," The relationship between public participation and social solidarity lies in the nature of the participation process. In general, the opportunity for group discussion and interaction opens up the possibility for collective understanding of the issue of concern"
- 18) The EPA process seemed instead to be attempting to ritualize

dissemination of their already decided outcome without any real public participation at arriving at the outcome; a minimization of Q&A..

19)EPA's next meeting was held May 26, 2012 and this cited video (http://www.youtube.com/watch?v=8f1Yq_d18W4) shows reaction to them not fulfilling the request for more time. They were asked for more time, beforehand and despite repetitive requests they stalled for months and they steered around providing it.

20)In the particular situation in the video the speaker questions who EPA meant when they said that the city wanted some things done with regards to some efforts to stage a few projects. It was suspected that it was the former Mayor Lang whose pet project was a river walk along a new real estate development and a fulfillment of part of another controversial real estate deal (where the mayor overturned a committee designation as to who the developer would be) citing a boathouse adjacent to the EPA where PCBs in the water are likely around 50 ppm. Again the **City Council** was on the record for being **against** CAD cells multiple times; it wasn't the City council who was making the requests.

21)New Bedford is an area of multiple minorities and many with English as a second language or no English at all. At many of the meetings activists pointed this out stating that there were Environmental Justice directives and (civil rights issues) that say that the government is supposed to be proactive in notification and education of the PCB situation. There are also

minority (possibly) subsistence fishers (from Central America) observed; most likely some with children .

22)New Bedford is an area with no clear majority but it has historically been administered by descendants of hierarchical Yankee Whaling and somewhat later by, amongst others) people with strong ties to the Boston Irish political 'machinery'.

23)Since at least the 1950's the "greatest minority" (in that it is the largest single ethnicity) is Portuguese and 'in sum' the city is over 40% Lusitanic when you add other Portuguese speaking ethnicities like Cape Verdean people (2010 Census: Portuguese 33,308; Cape Verdean 7,156; French (except Basque) 5,692; French; Canadian 4,947; English 4,349; Irish 4,267; Polish 1,992; Italian 1,778); we have an unusual situation where we have this greater minority that historically existed under the specter of classic minority disadvantages without out any of the typical legislated minority advantages. Many Portuguese (paradoxically, some through pride and some through embarrassment) do not appreciate being considered a minority. They do not want to be considered "the other".

24)Even at the turn of the 19th to 20th century when the Portuguese population was 16% in New Bedford, they still outnumbered those in government leadership, City Council has had an increasingly better representation by people of Lusitanic derivation in the last couple decades. Representation is good now (and on the PCB matter they have made formal declarations that they are **against CAD cells 3 times**) but, to

date, there has never been a Portuguese surnamed Mayor.

- 25) The former and current Mayors and the local Economic Council Development Council (contrarily) wrote letters supporting CAD cells
- 26) Government attention/action/nonaction by the state and federal governments may have chronically responded inequitably to the community in this regard and many other ways over the years; in respect to this cleanup, it is less than dubious that this is part of the problem.
- 27) Another area that overlaps this and is an example of questionable equity is with respect to train service to Boston that has been held up by EPA. They are holding up approval for a commuter train through a swamp where a track has existed but not been used for years. But they rushed through an approval for the New Bedford South terminal project which will create yet another CAD cell. (The irony is that when the terminal is done they are going to need the train.)
- 28) Again this is done for the benefit of business preeminently Cape Wind (though there are no guarantees that New Bedford will be the port that is used). So again the safety (thus equity) of the community is being compromised by burying more PCBs just for the possibility. Here, on spec, they rushed approval and are going to bury 225,000 yards of PCB contaminated sediment even though there is no contract by any wind developer to any governmental body ensuring that New Bedford will be the chosen location. Quonset Pt. and Davisville are other workable locations.

29)The designer of this project is the same as the other CAD Cell project (Apex). The supportrs are leveraging the promise of job,jobs,jobs to bury PCBs for a company with a sole ownership of a single billionaire. Profits for one above safety for all. But it's a falsely mutually exclusive. They can still do the build out but instead of digging a in another CAD cell by hauling the PCBs off (which is what the Community wants). AVX should have to pay for this removal as well. If this non-reopener clause gets approved there would be no way to keep the burden where it belongs: AVX.

30)How is it that with such powerful legislative powerhouses as Ted Kennedy and Barney Frank were reps for the area, yet, for decades New Bedford has remained such a depressed place. I submit there has been some defect in governance, probably in all arenas.

31)In "Community Stress, Psychosocial Hazards, and EPA Decision-Making in Communities Impacted by Chronic Technological Disasters", (*Couch, Stephen R., PhD., and Charlton J. Coles PhD. "Community Stress,." American Journal of Public Health 101 (2011)*), investigators consider myriad sociological effects that happen to communities affected by **Chronic Technological Disaster** (CTD).

32)According to Couch & Cole (Ibid,142, **Chronic Technological Disaster** "refers to conditions of perceived or known man-made contamination of an environment that persists over time. Tornadoes race through a community in a matter of minutes, hurricane impact is measured in hours. A CTD,

such as a Superfund site, lasts months, years, even decades---“ “---CTDs characterized CTDs as complex events because such environmental contamination is often cumulative; may be latent and not identified as a problem for several years; has impacts on humans that may be delayed, dynamic, or multiple and certain --“

33)The decades long contamination of the greater New Bedford area by massive amounts of PCBs is probably the definitive CTD. This is an area where self deprecation is a common phenomena.

34)I would suggest that the combination of the unusual sociological/political paradigm mentioned above together with the fact that the area has suffered a (CTD) caused by the PCBs that there has been a sustained depression of self esteem and hence a diminished social capital of the people to be able to wage an adequate fight to be able to counter the efforts of (AVX Corp., the local business interests who support CAD cells and) those that lobby against the grassroots community's wishes for an equitably clean and safe environment.

35)Hands Across the River Coalition President Edwin Rivera Sr. has told me multiple times that when he began fighting for the cleanup he was the youngest member of the then fairly strong group. It was the group that got EPA (through more effective community participation) to reverse the decision to set up an incinerator to burn the PCBs in New Bedford. They instead got them taken off site to TSCA facility (which is what they are trying to maintain now). After 28 years the group has aged and there are

- only a few still active. Mustering number lately has been hard. Mr. Rivera says everyone wants to be paid today.
- 36)Its widely know that PCBs cause cancer in humans. In fact one past study had showed that Winter flounder from New Bedford Harbor had, 26 %, of liver neoplasms (cancer). Fifty-seven percent of all flounder collected from New Bedford Harbor then had some liver disease.
- 37)Other research shows that PCBs exposure correlate with cognitive impairment throughout life. There have been studies of both developing infants and the elderly that both have shown that those that were PCB contaminated had significantly diminished cognitive capabilities compared to those with normal exposure levels.
- 38)The New Bedford School system has 2 schools placed on or near the former Parker Street Waste Site a waste dump that had been contaminated with PCBs (some coming from Aerovox as well). The newest Keith Middle School was built since 2004. The area was supposed to be cleaned to 1 part per million (the EPA residential standard, and testing conducted by confirmed in 2006 that the effort had been successful.
- 39)But more recently in 2008 and 2011 they found PCB levels hundreds of times higher than expected. Some tested areas had PCB levels up to 834 parts per million.
- 40)At a “City Council Appointments & Briefings meeting on 3/29/11 the New

Bedford City Council went on record in opposition to the use of CAD Cells for the purpose of PCB removal in the Harbor; and further that it notify the Administration, the HDC Director, Fairhaven Selectmen, EPA Director and the Massachusetts DEP of its opposition. This motion passed on a roll call vote of Yeas 9, Nays 0, with Councilors Coelho and Saunders not present for vote” (quoted from the official record).

41) On or about the time the EPA made their decision to implement using CAD cells, it was revealed that MassDEP had already buried some PCBs in CAD cells as part of their navigational dredging. This was used as part of an argument for EPA to bury more (it's been done before). Some local activists (myself included) then began going to the state MassDEP meetings where they learned that, in fact, some of that buried was considerably above the guidelines of 50 parts per million (ppm) which was the cutoff level that determined whether handling was to be performed by the state or the Federal government. More recently Buzzards Bay Coalition has found that on top of that the level of cleanup performed in other areas was to a higher standard (1-2 ppm); New Bedford had been slighted again (50ppm) which certainly questions equity and is indicative of environmental injustice (again).

42) Having the PCBs removed from the area was a hard fought objective initially; the city's NGO's and community groups had thought that that was finally resolved. Now EPA is reversing its decision. At the time of

determination it was also the case that the harmful PCB contaminated sediment was being taken off site. Currently, currently the sediments are still being shipped away to a Toxic Substances Control Act (TSCA) licensed facility in Michigan (Wayne Disposal). This is the method acceptable by the community and the City Council. This method also follows the Federal Guidelines under 40 CFR 761.75 which enables, not only monitoring, but complete leachate collection. Wayne Disposals facility incorporates a cell with in a cell facility for this and it is all above a natural clay bed of a minimum of 11 ft. depth. When things go wrong they can be remediated. How would you remediate an underwater problem?

43)CAD cells are in no way mentioned in the 40.CFR 761 except by extending provisions for administrators to make decisions. 40.CFR 761.61. in special circumstances allows for EPA to do it by decision. This is a long stretch from democracy (and prone to inequity). Their stance is that peer reviewed scientific inquiry makes it alright, but its been noted before that peer reviewed expert knowledge can be wrong. I would like to discuss the limits of expert knowledge.

44)Although AVX in their comment letter (Sept 24, 2010) advocating for CAD cells quotes EPA and says that CAD cells have been proven to be effective, it hasn't.

45)From that letter “

- i. **II. ESD #4 - SETTING THE RECORD STRAIGHT.**
 - a. **CAD Cells Have Been a Proven Technology for Years.**
- ii. **ESD #4 states that CAD cell technology is a "recognized, protective contaminated**
- iii. **sediment disposal approach. ,,**
- iv. **18 While EPA implies, however, that this technology has only**
- v. **recently reached the point where its use could seriously be considered, the potential use of CAD cells for disposal of New Bedford Harbor sediments has a long history dating back to the early 1980s. The record of its previous consideration and evaluation is on the one hand substantial, and on the other hand disappointing, as EPA never provides a clear record explaining why it rejected the use of CAD cells, not once but at least twice. “**

46)Cad Cell techniques have only been utilized for a short period of time; in fact, there has only been one case of any magnitude where they were expressly utilized for the storage of PCB's being contained in the US. That was just in 2000 so there is no long term data available (and they want to bury this stuff forever). It was placed at a Naval facility in Puget sound (Palmerton et, Contained Aquatic Disposal (CAD) - An analysis of Their Advantages, Limitations, and Costs, Palmerton Group, 2000,pg 18); concurrently, PCBs are being attributed to the diminishing whale population there.

47)New Bedford will be the test case of putting them near a population; the guinea pigs, another wave of environmental injustice.

48)Because CAD cells as a technology to contain PCB contamination at the high level proposed for at the New Bedford site has no precedent, **research on point is not available.** It's proposed on computer modeling and projective science (**expert knowledge**).

49) This being the case, studies on expert knowledge exist in other technological arenas where grave consequences are possible. In review, much is to be learned about the presumptions of expertise, the typical disposition of players, the typical discourse.

50) The most influential risk analysis document, the Atomic Energy Commission's 1975 Reactor Safety Study (RSS), sometimes known as the **Rasmussen** report (after its director, Norman Rasmussen), on nuclear power plants show that the experts campaigned vehemently to allow a nuclear power plan and they employed subjective manipulated science to arrive at the desired ends of government and business technocrats. Carol R. Miller in "The Presumptions of Expertise: The Role of Ethos in Risk Analysis" writes:

"We can thus understand the RSS, and the use of subjective probabilities, as part of an ongoing negotiation over the burden of proof in public argument about risk. Risk analysis was born in a very tight rhetorical corner, boxed in by four severe constraints:

- (1) political pressure to produce a risk analysis friendly to nuclear power by a congressional deadline;**
- (2) the need to use "expert opinion" in lieu of failure data because there were few data from actual reactor failures;**
- (3) long-standing skepticism of engineers and scientists**

about the value of opinion; and
(4) a dramatic reduction in public willingness to defer to
technology and its experts.”ⁱ

51) Certain there are parallels in this CAD case to 1 and 2 political reassurance and the need for expert opinion because there is no real longitudinal experimental data with reference to the success of CAD cells.

52) More over in Miller's essay on Risk Analysis she elaborates in classical Socratic terms “ethos/pathos/ logos” on how the players (the government, the experts, and contractors) shift techniques to sell their preconceived idea. For reference these are the basic concepts:

Ethos: the source's credibility, the speaker's/author's authority

Logos: the logic used to support a claim (induction and deduction); can also be the facts and statistics used to help support the argument.

Pathos: the emotional or motivational appeals; vivid language, emotional language and numerous sensory details.

53) Pathos is not generally useful in this type of interaction. It's more the stock of a feel good charismatic. In essence what's significant is that the public generally believes “the authority”. People go to Doctors, for instance, because they are experts at medicine. So people are trained to think that way. So when they are presented with information that way it rings true. The exception, though, is the engineer or scientist who wants the presentation to ring true via logos.

54) But beyond that, there are times when a merge or a shift of ethos and

logos occurs i.e., when subjective manipulation of what logic is presented by an authority: "**Lies, damned lies, and statistics**".

55)And NOW There is **Computer modeling**.

56)Also to be considered is how experts can fall in to a type of tunnel vision in their own discipline. This is a differing phenomena it's not so much a conscious sales technique but more of a position as a true believer. Just as religious cults believe their way the "cult of experts" serve the beliefs of the knowledge of their discipline believing that theirs is the superior knowledge .

57)It was shown in another study on river basins in Europe that in analysis of risk assessment to exposure to various toxins that there was a dichotomy between project definition uncertainty and true uncertainty. True uncertainty is uncertainty due to lack of knowledge; **things the scientist can't predict**. It further showed that there was a significant probability of underestimating the true risks. It also considered inter individual variability so as to take specific actions to reduce the risk of subpopulations This study also lauded the benefits of participatory research, in helping to define problem definitions and in finding management solutions acceptable to all stakeholders. (Ad, M. J. Ragas, et al. "Uncertainty in Environmental Risk Assessment: Implications for Risk-Based

Management of River Basins." Integrated Environmental Assessment and Management 5.1 (2009): 27-37.)

58) Although the theater of public comment occurred, the spirit of the law was dubiously carried out. Former EPA director Dave Dickerson said there were more letters for than against and there may have been but in terms of individual letters. But, when reviewing in terms of evaluating 'through representation' I would opine that a letter from the City Council of New Bedford (representing a population of 95,000 people) should be considered to have substantially more weight than many others.

59) Beyond that there is the bias of profiteers whose conflicts of interests should be considered (in some cases they were from out of the area so of lesser standing). Some included were: Pioneer Mooring, Smith Marine (3 letters), AGM Marine Contractors, Seaport Inn, Moby Dick Marina Co. Inc., Lighthouse Marine,

60) In fact one of the comment letters

(<http://www.epa.gov/region1/superfund/sites/newbedford/472667.pdf>) is by AVX through their law firm. It is a 158 page letter saying how they support CAD cells and how many and the cost analysis, etc. (the cart leading the horse).

61) An interesting fact is that according to the 2006 "Analysis of Impediments Report City of New Bedford, Massachusetts", The third largest employer in

New Bedford was Aerovox Industries “.

- 62) Then there was a series of comment letters in support of CAD cells that were very much carbon copy form letters that someone began walking around on Sept. 2, 2010; some were exact copies some were modified slightly.
- 63) One even showed up on the DA's letter head:
(<http://www.epa.gov/region1/superfund/sites/newbedford/472687.pdf>) but with the same exact text. And Town officials (administrators not the population) from Fairhaven used a variation that you can tell was based on the same letter.
- 64) Another (<http://www.epa.gov/region1/superfund/sites/newbedford/472688.pdf>) exact copy was signed by a member of the engineering firm that designed the CAD cell project. A couple of other Civil Engineer's signed it; the waterfront companies or the designing engineering firm may be connected.
- 65) Though it's not illegal to use form letters to comment, the government (of the people by the people for the people) should consider what the people's concerns are and their safety. They should make decisions that protect people ahead of business and consider their common sense experience (better participatory process), as well as their sociological and physical well being and give their position weight in good measure against fallible (and capable of bias) expert knowledge making determinations for what the good of the true community is, those that have to live at or near a contaminated site, over a small band of contractors,

and business owners, the responsible party –all who have conflicts of interest and most often live far away from the site.

66) In any decision, agency or court we should keep other forms of remediation possible.

- a. Biological remediation in the Keelung River has shown success in the Republic of China (Bea-Ven Chang, Tzu-Chuan Chiu, and Shaw-Ying Yuan. "Dechlorination of Polychlorinated Biphenyl Congeners by Anaerobic Microorganisms from River Sediment." *Water Environment Research* 78.7 (2006): 764-9.)

67) Another test treatment that showed promise is by using phytoremediation i.e., the treatment of environmental problems through the use of plants (bioremediation) that mitigate the environmental problem sometimes without the need to excavate the contaminant material. (K. E. Smith, P. Schwab A, and K. Banks M. "Phytoremediation of Polychlorinated Biphenyl (PCB)-Contaminated Sediment: A Greenhouse Feasibility Study." *Journal of environmental quality* 36.1)

68) When future remediation is considered with respect to the examples just mention, CAD cells negate the capability by 'canning' the PCBs underwater where they are hard to access and they are not exposed to

biota than can degrade and neutralize them. PCBs at an upland facility can be accessed with typical heavy equipment as future tech is improved.

In conclusion, I re-iterate:

“I want New Bedford Harbor cleaned to the highest, safest standard. Time or cost are not the priorities; doing it right is. The settlement between the EPA and AVX should include a reopener clause to ensure a full cleanup of the harbor.”

Submitted by

Chuck Dade

cdade@umassd.edu

774.849.7802
