



Mattapoissett Land Trust, Inc.

14 December, 2012

Assistant Attorney General
U.S. DOJ – ENRD
PO Box 7611
Washington, DC 20044-7611

RE: *United States and Massachusetts v. AVX Corporation*, D.J. Ref. No. 90-11-2-32/

On December 6, 2012, the board of directors for the Mattapoissett Land Trust voted unanimously to support the Buzzard Bay Coalition's position that the settlement between EPA and AVX must include a re-opener allowing EPA to reopen litigation with AVX in the event that a complete cleanup of New Bedford Harbor exceeds current estimates.

It is clear that \$366million falls short of a harbor cleanup for several reasons.


First, in 1998 EPA chose a cleanup level of 1ppm for those areas abutting and adjacent to residences and where contact with sediment is likely. The industrial harbor found in the early 1990's has been replaced by land uses dominated by residential, recreational, and permanently conserved. This community movement towards open space, recreation, and residential use requires EPA to remove larger amounts of sediments than initially estimated in 1998, thereby driving the cost beyond current estimates.

Second, EPA's past performance leaves us with serious doubts about future remedial action and leaves us with no confidence that the negotiated deal will adequately protect the interests of this community. \$366 million is nowhere near adequate to complete this cleanup. To date, EPA has spent approximately \$425 million to remove about 225,000 cubic yards (cy) of the total 900,000cy of sediment. The fact that EPA now states that it can remove the remaining 675,000cy for less than what they spent to remove 225,000cy does not appear reasonable.

Third, EPA has failed to select a cleanup plan or funding strategy to implement that cleanup plan for Outer New Bedford Harbor. Some of the most pristine waters for fishing and lobstering exist in the Outer harbor which has been closed to fishing since 1979. Unless and until there is a cleanup plan and funding to implement that plan on an expedited schedule a re-opener must be included.

Finally, according to research released by the Buzzards Bay Coalition, it appears that EPA failed to select the most protective remedy in 1998 which ultimately does not provide the community with a full cleanup. It is likely that after EPA completes the cleanup under the current remedy and exhausts the money from the settlement, the Harbor will remain closed to fishing and EPA will be required to take further action, action for which they will not be able to seek any funds from responsible parties due to the fact that there are no re-openers in this settlement.

Sincerely,


Gary P. Johnson
President

cc. The Buzzards Bay Coalition