

From: [Neil Mello](#)
To: [ENRD, PUBCOMMENT-EES \(ENRD\)](#)
Subject: United States and Massachusetts v. AVX Corporation, D.J. Ref. No. 90-11-2-32/2
Date: Monday, December 17, 2012 9:04:39 PM
Attachments: [Mayor Mitchell Letter to Asst. AG Moreno re AVX settlement.pdf](#)

Please find attached a letter from John Mitchell, Mayor of New Bedford, MA, to Assistant Attorney General Ignacia Moreno in the above referenced case.

Thank you.

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CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

December 17, 2012

Ignacia S. Moreno
Assistant Attorney General
U.S. DOJ-ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

sent via email: pubcomment-ees.enrd@usdoj.gov

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

Dear Ms. Moreno:

I am writing to express the support of the City of New Bedford for the supplemental Consent Decree under which the AVX Corporation will pay \$366 million with interest for PCB contamination at the New Bedford Harbor Superfund Site. The accelerated cleanup made possible by the Consent Decree is clearly in the interest of a City whose citizens have suffered severe economic harm, damage to a unique natural resource, and loss of other opportunities due to contamination of the harbor by the AVX Corporation.

At this historic juncture it is important to recognize that the citizens of New Bedford have endured a protracted legal process stretching decades. Lengthy, complex litigation and negotiation has itself contributed to the environmental and economic threat posed by the contamination as the annual downstream migration of PCBs into the outer harbor and Buzzards Bay has continued all the while.

New Bedford's potential as a City and as a place to live and work has been hampered for far too long by the uncertainties surrounding the funding and pace of a cleanup of the harbor. For the first time, the primary source of funds for a comprehensive harbor cleanup can be secured. For the first time, we are poised to engage in a serious program of cleanup action. And, for the first time, the cleanup can be pursued on a timetable in which residents living today—not decades from now—will witness measurable progress and enjoy conspicuous results.

In short, my assessment is that it is time to get to work cleaning up our harbor. This judgment is also informed by personal experience as an Assistant United States Attorney. Having served as lead prosecutor on some of the nation's major environmental contamination cases in recent years, I well appreciate the risks of protracted litigation in cases like the AVX case and its implications for resources expended and a diminished likelihood of future recovery. The possibility that a settlement of this size and scope might not present itself again argues strongly for its adoption.

The proposed \$366 million settlement makes possible not merely a new chapter in the story of our harbor, but a new chapter in the life of the City of New Bedford. At the same time, I respectfully request consideration be given to two issues in the context of the settlement. First, the settlement should contain no elements that might constrain the ability of the Environmental Protection Agency in developing a creative, thoughtful cleanup and restoration plan. Flexibility in the use of settlement funds is important so that innovative approaches to the cleanup, including public access solutions, can be developed and pursued.

The goal of the cleanup ought to be nothing less than the transformation of a long-standing environmental challenge into a unique natural asset that benefits generations of residents to come. Toward that end, the City encourages the Department of Justice to ensure that agreement language submitted to the Court includes definitions of remedy, response, and method sufficiently broad that a range of approaches can be considered without limitation by the Court Order. Alternatively, language could be added to the current draft agreement that makes clear that neither the Court, nor the parties, object to such approaches.

Second, it is important to recognize that—by its nature—a cleanup of this magnitude and complexity will confound to a certain degree the ability of today's project managers to predict precisely how much and when funding is needed to keep the effort on track. By any measure, the \$366 million being contemplated represents a monumental leap forward from the modest \$15 million cleanup now implemented annually with federal funds.

That said, we should adopt a financing path that insulates the cleanup effort from vagaries in the availability of future federal funding, if such federal funds ever become required. The best way to do so is to maintain annual federal appropriations and spending at the current level (or greater as necessary) simultaneous with the spending of settlement monies. Doing so will go a long way toward instilling public confidence in the federal government's commitment to a final, complete cleanup whatever the future may hold.

Thank you for your consideration in these matters.

Sincerely,



Jon Mitchell
Mayor