

From: [Straus, William - Rep. \(HOU\)](#)
To: [ENRD_PUBCOMMENT-EES \(ENRD\)](#)
Subject: Comment Letter on AVX Settlement
Date: Monday, December 17, 2012 2:53:53 PM
Attachments: [image001.png](#)
[image002.png](#)
[20121217141024777.pdf](#)

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

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

Dear Sir or Madam:

Attached to this email is my written comment regarding the pending settlement agreement before the Court seeking approval of a resolution of financial responsibility for AVX as a responsible party for the improper discharge of toxic materials into the Acushnet River/New Bedford Harbor. I have also pasted the full text of my comment letter below.

Thank you for your attention.

William M. Straus
Massachusetts State Representative



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December 17, 2012

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U.S. DOJ—ENRD
P.O. Box 7611
Washington, DC 20044-7611

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

Dear Sir or Madam:

I am writing in regard to the pending \$366 million settlement of the parties in the above-entitled litigation. This has been described as a "cash out" settlement by the EPA in its recent press statements. My comment is provided as a part of the public comments now being accepted following the October 2012 Consent Decree filed with the U.S. District Court in Boston.

I represent communities on both sides of the New Bedford Harbor with a district that includes a portion of the New Bedford harbor front, and the Town of Fairhaven on the eastern side of the harbor.

I have reviewed the original 1991 Consent Decree approved by Judge Young arising from the 1984 action brought by the United States and the Commonwealth of Massachusetts against certain responsible parties including AVX Corporation. I am aware of the prior responsible party payments which were intended to fund the cleanup of the harbor along with Federal Superfund monies following the 1991 Consent Decree. Unfortunately, those financial sources have proved insufficient to complete the cleanup on a realistic schedule in order to properly deal with the public health threat and natural resource damages posed by the polluted harbor sediments. Pursuant to the 're-opener' contained in the 1991 Decree additional (but final) monies are now being sought from AVX by the Plaintiffs. **For reasons stated below, I do not believe that it is appropriate to eliminate a 're-opener' clause from the pending Decree before the Court.**

I have been active for twenty years in the issues surrounding the appropriate cleanup remedy for the New Bedford Harbor Superfund Site. Although the original Record of Decision (ROD) by the Environmental Protection Agency had called for on-site incineration of the PCB and heavy metal laden waste sitting on the harbor floor, community objections resulted in a reopened ROD during the 1990's; a revised cleanup decision process of the EPA resulted in enhanced community participation through a publicly mediated panel, in which I was proud to participate. That decision making process resulted in the permanent removal from the harbor of the most highly contaminated and toxic materials (some areas in excess of 200,000 ppm of PCB deposits) for off-site disposal.

The already completed dredging, dewatering and off-site removal of polluted sediment which constitutes the core concept of the earlier ROD proved to be more costly and time consuming than originally contemplated. Coupled with the declining availability of Superfund monies to sustain the removal of the remaining sediments, the government Plaintiffs have exercised their 're-opener' rights to seek more monies from this responsible party. I applaud that effort. The difficulty is that the full details of the EPA cleanup remedy for the remaining polluted sediments in the harbor have not been completed; as a result, no one can say with certainty what that total project cost will be. Published newspaper accounts suggest that additional remedy decisions relating to the design and placement of on-site disposal options are yet to be concluded within the EPA, much less made available to the public for comment.

I do believe, however, that a range of cleanup options under consideration by the EPA and the Commonwealth of Massachusetts can result in an informed assessment of the range of cleanup costs (depending on remedies chosen) which remain. Therefore, I recommend that the Court consider approval of the settlement monies now before it, **but** with a further set contingency amount to be considered for payment by AVX; disbursement of which would depend upon further petition to the Court by the Plaintiffs. In this way, the unknowns of an open-ended 're-opener' clause are avoided, but the public is protected by allowing a quicker paced cleanup to begin promptly for the remaining polluted sediments. This would also provide the public with some assurance that a calculated amount of monies will still be available should the final remedy costs escalate.

The EPA and the Commonwealth of Massachusetts are in a very different position in calculating cleanup costs than existed in 1991 when the original Decree was concluded with the inclusion of a re-opener clause. Since that time, over a quarter of the most polluted harbor sediments have been removed, and there is a much greater amount of understanding of the technology and facets of working to remove underwater harbor sediments as found in the New Bedford Harbor. Under this approach, the Court should request a further cleanup cost assessment from the parties on a prompt submission schedule which would still allow for initiation of on-site cleanup as soon as practicable.

Thank you for consideration of this comment.

Sincerely,



William M. Straus
State Representative