

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	
)	
AVX CORPORATION, <i>et al.</i> ,)	CIVIL ACTION NO. 83-3882-Y
Defendants.)	
)	
COMMONWEALTH OF MASSACHUSETTS,)	
Plaintiff,)	
)	
v.)	
)	
AVX CORPORATION, <i>et al.</i> ,)	
Defendants.)	
_____)	

EXHIBIT 2

DECLARATION OF ELAINE T. STANLEY
IN SUPPORT OF MOTION TO ENTER SUPPLEMENTAL CONSENT DECREE

I, Elaine T. Stanley, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am employed by the United States Environmental Protection Agency (“EPA”), Region 1, as a Remedial Project Manager (“RPM”) in the Office of Site Remediation and Restoration. I received a B.S. degree in biology, minor in chemistry and anthropology, from Boston State College in 1978 and a B.S. degree in civil engineering from University of Massachusetts at Amherst in 1985. I have been employed at EPA since 1989 and have worked as an RPM since June 1994. As an RPM, I coordinate, monitor, and direct remedial actions at contaminated sites in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA,” commonly known as

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“Superfund”), 42 U.S.C. § 9601 *et seq.*, and 40 C.F.R. Part 300, “National Oil and Hazardous Substances Pollution Contingency Plan” (“NCP”).

2. One of the sites that I am assigned to is the New Bedford Harbor Superfund Site (the “Site”). I have worked as an RPM for this Site since October 2007. In connection with my duties as an RPM for the Site, I am responsible for maintaining the Site file and have reviewed documents in the Site file. During the past six years of working as an RPM for the Site, I have become familiar with EPA’s response actions at the Site. I am submitting this declaration in support of the motion requesting that the Court enter the proposed Supplemental Consent Decree for the Site based upon my personal knowledge and review of the records related to the Site and to the best of my information and belief.

3. Designated by the Commonwealth of Massachusetts (the “Commonwealth”), pursuant to 40 C.F.R. § 300.425(c)(2), as its highest priority site, the New Bedford Site was proposed for inclusion on the Superfund National Priorities List in 1982.

4. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the New Bedford Site on the NPL, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658-40673.

5. On December 9, 1983, the United States filed a complaint on behalf of the National Oceanic and Atmospheric Administration (“NOAA”) under CERCLA § 107, 42 U.S.C. § 9607, seeking damages for injury to natural resources at and near the Site caused by the releases of polychlorinated biphenyls (“PCBs”), against six defendants, including Defendant AVX Corporation (“AVX”), that at various times, owned and/or operated either of the two capacitor manufacturing facilities (the Aerovox Facility and the Cornell-Dubilier Facility) that

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disposed of PCBs at the Site. On December 10, 1983, the Commonwealth filed a complaint under CERCLA § 107, 42 U.S.C. § 9607, against the same defendants. The cases were subsequently consolidated. On March 9, 1984, the United States amended its 1983 complaint against the six defendants to include claims on behalf of EPA for recovery of response costs incurred, or to be incurred at the Site under CERCLA § 107, 42 U.S.C. § 9607, and for injunctive relief under CERCLA § 106, 42 U.S.C. § 9606, and other environmental statutes. The Commonwealth subsequently filed an amended complaint which included claims for recovery of response costs under Section 107 of CERCLA and Sections 5(a) and 13 of Mass. General Laws Chapter 21E.

6. On April 6, 1990, EPA issued the Record of Decision (“ROD”) for the Hot Spot Operable Unit (“OU2”) of the Site (“OU2 ROD”), on which the Commonwealth gave its concurrence. The OU2 ROD was issued based on an Administrative Record which was developed in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k).¹

7. On February 3, 1992, the U.S. District Court for the District of Massachusetts approved and entered a Consent Decree which the United States and the Commonwealth entered into with AVX (the “1992 Consent Decree”), which required, *inter alia*, that AVX pay \$66 million, plus interest, to the governments for past and future response costs and natural resource damages at the Site.

¹ The OU2 ROD is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/218788.pdf>. The OU2 ROD Administrative Record is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/288686.pdf>.

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8. On April 27, 1992, EPA issued an Explanation of Significant Differences (“ESD”) to modify the selected remedy for OU2 (“OU2 ESD1”), on which the Commonwealth gave its concurrence. The OU2 ESD1 was issued based on an Administrative Record which was developed in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k).²

9. On October 30, 1995, EPA issued a second ESD to modify the selected remedy for OU2 (“OU2 ESD2”), on which the Commonwealth gave its concurrence. The OU2 ESD2 was issued based on an Administrative Record which was developed in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k).³

10. On September 25, 1998, EPA issued the ROD for the Upper and Lower Harbor Operable Unit (“OU1”) of the Site (“OU1 ROD”), on which the Commonwealth gave its concurrence, for the final remedy for the Upper and Lower Harbors, as well as an interim remedy for the Outer Harbor. The OU1 ROD was issued based on an Administrative Record which was developed in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k).⁴

11. On April 27, 1999, EPA issued the Amended ROD for the Hot Spot Operable Unit (“OU2 Amended ROD”), on which the Commonwealth gave its concurrence. The OU2

² The OU2 ESD1 is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/284094.pdf>. The OU2 ESD1 Administrative Record is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/288689.pdf>.

³ The OU2 ESD2 is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/269683.pdf>. The OU2 ESD2 Administrative Record is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/294211.pdf>.

⁴ The OU1 ROD is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/38206.pdf>. The OU1 ROD Administrative Record is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/494734.pdf>.

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Amended ROD was issued based on an Administrative Record which was developed in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k).⁵

12. On September 27, 2001, EPA issued an ESD to modify the selected remedy for OU1 (“OU1 ESD1”), on which the Commonwealth gave its concurrence. The OU1 ESD1 was issued based on an Administrative Record which was developed in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k).⁶

13. On August 15, 2002, EPA issued a second ESD to modify the selected remedy for OU1 (“OU1 ESD2”), on which the Commonwealth gave its concurrence. The OU1 ESD2 was issued based on an Administrative Record which was developed in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k).⁷

14. On September 30, 2005, EPA issued the First Five-Year Review Report for the Site. This five-year review was conducted by EPA pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).⁸

⁵ The OU2 Amended ROD is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/9721.pdf>. The OU2 Amended ROD Administrative Record is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/34437.pdf>.

⁶ The OU1 ESD1 is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/25344.pdf>. The OU1 ESD1 Administrative Record is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/ar/34589.pdf>.

⁷ The OU1 ESD2 is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/33633.pdf>. The OU1 ESD2 Administrative Record is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/ar/35028.pdf>.

⁸ The First Five Year Review Report is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/237034.pdf>.

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15. On March 4, 2010, EPA issued a third ESD to modify the selected remedy for OU1 (“OU1 ESD3”), on which the Commonwealth gave its concurrence. The OU1 ESD3 was issued based on an Administrative Record which was developed in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k).⁹

16. On March 25, 2010, EPA entered into an Administrative Settlement Agreement and Order on Consent for Non-Time Critical Removal Action, CERCLA Docket No. 01-2010-0017 (“Settlement Agreement”), with AVX for the Aerovox Facility¹⁰, which is the primary source of PCB contamination to New Bedford Harbor.¹¹ Under the Settlement Agreement, AVX agreed to, among other things, achieve a controlled demolition of the vacant, deteriorated, and contaminated building at the Aerovox Facility Site. The Settlement Agreement was effective June 3, 2010. The demolition activities pursuant to the Settlement Agreement were performed by AVX in 2011.

17. Also in 2010, AVX entered into an Administrative Consent Order and Notice of Responsibility in the Matter of AVX Corporation, File No. ACO-SE-09-3P-016, Release Tracking Number 4-0601 (“ACO”), with the Commonwealth’s Department of Environmental Protection to investigate and address the nature and extent of the remaining contamination at the Aerovox Facility, and to remediate the Aerovox Facility Site in accordance with the

⁹ The OU1 ESD3 is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/462542.pdf>. The OU1 ESD3 Administrative Record is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/462689.pdf>.

¹⁰ The term “Aerovox Facility” is defined in Paragraph 6(A) of the proposed Supplemental Consent Decree.

¹¹ The March 25, 2010 Settlement Agreement is available at the EPA-maintained website for the Aerovox Facility Site at: <http://www.epa.gov/region1/superfund/sites/aerovox/462586.pdf>.

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requirements of Mass. General Laws Chapter 21E and the Massachusetts Contingency Plan, 310 Code of Massachusetts Regulations 40.0000 (“MCP”). The ACO was effective June 3, 2010. In order to satisfy its obligations under the ACO, Chapter 21E and the MCP, AVX must achieve control of all sources of contamination at the Aerovox Facility.

18. On September 30, 2010, EPA issued the Second Five-Year Review Report for the Site. This five-year review was conducted by EPA pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).¹²

19. On March 14, 2011, EPA issued a fourth ESD to modify the selected remedy for OU1 (“OU1 ESD4”), on which the Commonwealth gave its concurrence. The OU1 ESD4 was issued based on an Administrative Record which was developed in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k).¹³ The OU1 ROD and the four ESDs are collectively referred to as the “OU1 Remedy.”

20. On April 18, 2012, EPA issued a CERCLA § 106(a) Unilateral Administrative Order (“UAO”), requiring AVX to perform the OU1 Remedy. The Administrative Record for the UAO includes all documents on which EPA relied when issuing the UAO, and incorporates by reference the Administrative Records for all of the decision documents for OU1 and OU2.¹⁴ The UAO included a delayed effective date.

¹² The Second Five-Year Review Report is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/470549.pdf>.

¹³ The OU1 ESD4 is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/479471.pdf>. The OU1 ESD4 Administrative Record is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/479464.pdf>.

¹⁴ The UAO is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/507998.pdf>. The Administrative Record for the UAO is

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21. After participating in several mediation sessions through the assistance of a JAMS mediator with significant experience in resolving environmental matters, including complex Superfund cases,¹⁵ the United States, the Commonwealth, and AVX reached a settlement, memorialized in the proposed Supplemental Consent Decree, lodged with the United States District Court for the District of Massachusetts on October 10, 2012, which supplements and modifies the 1992 Consent Decree. In the Supplemental Consent Decree negotiations, AVX was represented by sophisticated legal counsel and technical experts.

22. The OU1 Remedy includes a State Enhanced Remedy (“SER”), consistent with 40 C.F.R. § 300.515(f). The SER consists of navigational dredging and disposal activities within the Site. These SER activities are integrated into the OU1 Remedy as documented in the OU1 ROD, and the Commonwealth is responsible for securing all funding of the SER activities. On November 19, 2012, EPA issued the Final Determination for the South Terminal Project, which modified the SER so that it includes the South Terminal Project. As part of the South Terminal Project, the Commonwealth will construct a 28.45-acre marine terminal, consisting of a confined disposal facility and upland area in the South Terminal location of the New Bedford Harbor, as well as the dredging and filling associated with the construction of confined aquatic disposal cells. The Final Determination for the South Terminal Project was issued based on an

(... cont'd)

available at the EPA-maintained website for the New Bedford Harbor Superfund Site at:
<http://www.epa.gov/region1/superfund/sites/newbedford/509322.pdf>.

¹⁵ See <http://www.jamsadr.com/> (accessed on May 1, 2013).

Administrative Record which was developed in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k).¹⁶

23. Following lodging of the proposed Supplemental Consent Decree, EPA issued a press release, a community update, and two documents addressing “frequently asked questions” in order to provide the public with information about the public notice and comment period for the proposed settlement and the process before the Court.¹⁷

24. Since EPA began full-scale dredging (hydraulic dredging, desanding, dewatering, wastewater treatment, and off-site disposal of PCB-contaminated sediment) in 2004 until the present, EPA has been implementing the OUI Remedy with funding from EPA’s trust fund known as the “Hazardous Substance Superfund” (also commonly known as “Superfund”) and the statutory state 10% cost share of remedial action costs paid by the Commonwealth in accordance with contractual agreements pursuant to CERCLA § 104(c). With the typical annual funding rate from Superfund of approximately \$15 million, EPA has been able to perform full-scale dredging for only approximately two and a half to three months per year (or an average of about 40-45 days of dredging). At this level of annual funding, EPA estimates that it will take 40 years

¹⁶ The Final Determination for the South Terminal Project is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/525556.pdf>. The Administrative Record for the Final Determination for the South Terminal Project is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www.epa.gov/region1/superfund/sites/newbedford/532080.pdf>.

¹⁷ The press release is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://yosemite.epa.gov/opa/admpress.nsf/0/F2E569434F4428B685257A930063AC45>. The community update is available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www2.epa.gov/sites/production/files/documents/521884.pdf>. The two documents addressing “frequently asked questions” are available at the EPA-maintained website for the New Bedford Harbor Superfund Site at: <http://www2.epa.gov/sites/production/files/documents/507281.pdf> and <http://www2.epa.gov/sites/production/files/documents/507282.pdf>.

to complete the OU1 cleanup and cost \$1.2 billion.¹⁸ However, if the Site's dredging and treatment facility can be operated at full capacity, the OU1 Remedy can be completed in five to seven years at an estimated net present value cost of \$393 million. Because EPA has been performing the cleanup at the Site pursuant to the two RODs, as modified, for almost two decades, EPA has a high degree of confidence in its cost estimates, which are based on years of experience and actual cost data.

25. The proposed Supplemental Consent Decree's settlement funds of \$366.25 million plus interest, to be paid by AVX to the United States and the Commonwealth under this settlement, will be deposited into a site-specific account that will allow EPA to accelerate cleanup of the Upper and Lower Harbors by providing over 90% of the estimated future cleanup funds needed to complete the OU1 Remedy in five to seven years.

26. The acceleration of the PCB cleanup of the Harbor as a result of the \$366.25 million in settlement funds will have a positive impact on reducing risks posed by PCB contamination in the Harbor since PCB contaminated sediment above cleanup levels will be removed over a 5-7 year period rather than a 40 year period, and facilitating the use of the Harbor by the community and local businesses much sooner, including shoreline development.

27. If the settlement funds are insufficient to complete the cleanup, EPA Region 1 will seek additional Superfund funding from EPA Headquarters' Office of Solid Waste and Emergency Response ("OSWER"), as well as the statutory cost share from the Commonwealth, for the remainder of the cleanup.

¹⁸ It should be noted that for the \$15 million annual funding level estimate, over the approximately 40 years, the annual \$15 million in funding has been adjusted every year to account for inflation.

28. Under the current OU1 Remedy, approximately 900,000 cubic yards (“cy”) of contaminated sediment at the Site are estimated to be above the OU1 ROD cleanup standards and have been or will be addressed in the following manner:

- a. 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;
- b. 425,000 cy have been or will be transported off-site for disposal, as selected in the 2002 OU1 ESD2; and
- c. 300,000 cy will be placed in a Lower Harbor confined aquatic disposal (“CAD”) cell, as selected in the 2011 OU1 ESD4.

29. Through 2012, EPA has addressed approximately 250,000 cy of the 425,000 cy of sediment slated for off-site disposal. In addition, in 2013 or 2014, EPA expects to construct the Lower Harbor CAD cell for the disposal of approximately 300,000 cy of sediment. With the accelerated pace of the cleanup expected with the \$366.25 million of proposed settlement funds, which as explained in Paragraph 25 above will provide over 90% of the estimated future cleanup funds needed to complete the OU1 Remedy in five to seven years, EPA may complete the dredging of the volumes slated for off-site and CAD cell disposal within two to three years.

30. Under the current OU1 Remedy, EPA would dispose of the sediment volumes not slated for off-site and CAD cell disposal by constructing CDFs along the shoreline. However, in part due to the passage of time since the Agency selected the CDFs in 1998, if the cleanup is indeed accelerated due to the availability of the settlement funds, EPA anticipates accelerating the initiation of a Focused Feasibility Study, within the 2-3 year period described in the

Paragraph above¹⁹, in order to consider other protective, more cost-effective measures which may be appropriate, including alternatives for the disposal of contaminated sediment other than the selected CDFs. EPA expects to consider a range of possible practicable alternatives for sediment disposal in the Focused Feasibility Study, and EPA will seek public comment at that time, in accordance with CERCLA.

31. EPA has undertaken activities to enhance public outreach at and near the Site, including the following:

- a. Sponsoring a professionally mediated Community Forum process, which began in 1993 and culminated in the issuance of the 1998 OU1 ROD;
- b. Holding several public meetings each year for Superfund sites in the greater New Bedford community, including the New Bedford Harbor Superfund Site, the Aerovox Facility removal site, and the Parker Street Waste Site (an EPA-lead CERCLA removal action site in New Bedford);
- c. Attending monthly meetings, open to the public, regarding the State Enhanced Remedy;
- d. Holding periodic neighborhood meetings at the Bullard Street Association and Brooklawn Association;
- e. Providing technical assistance funds and services to local groups to help educate the public about EPA's cleanup activities, including to the Buzzards Bay Coalition for

¹⁹ If the OU1 Remedy cleanup continues to be funded at the "typical" \$15 million annual funding rate, however, EPA will not need to consider alternatives to the selected CDFs for approximately ten years or more.

the New Bedford Harbor Superfund Site and to the Citizens Leading Environmental Action Network (“C.L.E.A.N.”) for the Parker Street Waste Site;

- f. Holding public Technical Workgroup meetings focused on the Lower Harbor confined aquatic disposal cell;
- g. Funding professional facilitators to lead public meetings;
- h. Holding office hours at EPA’s Sawyer Street facility during the 2011 and 2012 dredging seasons and during the Aerovox Facility removal action;
- i. Promoting the Fish Smart Campaign regarding local seafood consumption recommendations;
- j. Providing educational training, in collaboration with University of Massachusetts Dartmouth’s Center for University, School & Community Partnerships; the Lloyd Center for the Environment; and New Bedford School Department’s Sea Lab, about the Harbor for local teachers, including lesson plan ideas to bring back to the classroom, and for students;
- k. Setting up an educational kiosk about the Site at the New Bedford Ocean Explorium, a center for ocean science public education, located in downtown New Bedford;
- l. Maintaining informational kiosks and warning signs about the Site along the Harbor;
- m. Sponsoring numerous small business open houses and outreach efforts;
- n. Providing two Brownfields grants to the City of New Bedford, Bristol Community College and New Directions to develop and implement a Brownfields Environmental Job Training Pilot Program (a 17-week Environmental Tech Aid Program that

provided a comprehensive education in both technical expertise as well as professional and life skill development to residents living in communities impacted by brownfields);

- o. Meeting with New Bedford Community Rowing and the New Bedford Harbor Development Commission to educate rowers about the Site and to assist in the planning of safe races at the Site, and providing staff at the Site during races to oversee and answer questions about the Site, as well as removing sheet piles in the Harbor for the sole purpose of facilitating rowing races;
- p. Maintaining a detailed website for the Site, including links that provide the public with access to hundreds of documents about the cleanup;
- q. Issuing fact sheets, press releases, and e-mail updates about the Site;
- r. Arranging for Lisa Jackson, then Administrator of EPA, to visit the New Bedford Harbor Superfund Site in 2009 and meet with local community groups; and
- s. Arranging for Lisa Garcia, EPA's Senior Advisor to the Administrator for Environmental Justice, and Curt Spalding, EPA's Region 1 Administrator, to visit New Bedford to attend public meetings for both the New Bedford Harbor Superfund Site and the Parker Street Waste Site.

32. Cleanup levels at Superfund Sites are site-specific determinations that take into account the specific facts and characteristics of individual sites. Principle 7 of EPA's 2002 *Principles for Managing Contaminated Sediment Risks at Hazardous Waste Sites* is to "Select Site-specific, Project-specific, and Sediment-specific Risk Management Approaches that will

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Achieve Risk-based Goals.”²⁰ EPA took into account the specific facts and characteristics of the New Bedford Harbor Superfund Site in selecting the cleanup levels for the OU1 Remedy. Moreover, the target cleanup levels, dredging remedy, and on-site CDF disposal component of the remedy selected in 1998 OU1 ROD were subjected to review by Sea Change, Inc. (a local non-profit organization), the New Bedford Harbor Community Forum (a professionally mediated process, initiated in 1993 to consider cleanup plans and made up of a wide variety of site stakeholders, including citizen group leaders, local and state elected officials, business representatives, EPA, MassDEP, and other relevant state and federal agencies), and EPA’s National Remedy Review Board (a cross-regional, management-level body), all of which supported the 1996 Proposed Plan for the OU1 ROD.

33. In its December 17, 2012 comments on the proposed Supplemental Consent Decree, the Buzzards Bay Coalition (“BBC”) compares the New Bedford Harbor Superfund Site’s OU1 Remedy to three other sites: the Lower Fox River and Green Bay Site in Green Bay, Wisconsin; the Outboard Marine Corporation Site in Lake County, Illinois; and the GE-Pittsfield/Housatonic River Site in Pittsfield, Massachusetts. I have reviewed certain EPA site documents concerning these three sites found on EPA’s websites, including (a) the EPA-maintained website for the Lower Fox River and Green Bay Site, available at: <http://www.epa.gov/region5/cleanup/foxriver/index.html>; (b) the EPA-maintained website for the Outboard Marine Corporation Site, available at:

²⁰ EPA’s 2002 *Principles for Managing Contaminated Sediment Risks at Hazardous Waste Sites* is available at the EPA-maintained website for key EPA Remedy Selection Guidance Documents and Directives for Superfund at: <http://www.epa.gov/superfund/policy/remedy/pdfs/92-85608-s.pdf>.

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<http://www.epa.gov/region5/cleanup/outboardmarine/>; and, (c) the EPA-maintained website for the GE-Pittsfield/Housatonic River Site, available at: <http://www.epa.gov/region1/ge/>.

34. While EPA has developed presumptive remedy guidance for some types of sites, including municipal landfills, wood treating sites, and sites with volatile organic compounds in soils, “EPA’s policy has been and continues to be that there is no presumptive remedy for any contaminated sediment site, regardless of the contaminant or level of risk.”²¹ Caution must be used when comparing Superfund sites, including sediment sites contaminated with PCBs, because of the significant site- and sediment-specific issues that influence remedial actions and attainment of risk-based goals. However, there are differences and similarities between the New Bedford Harbor Superfund Site and the sites described in the Paragraph above.

35. There is factual information distinguishing the Lower Fox River and Green Bay Site cleanup from the New Bedford Harbor Superfund Site’s OU1 cleanup. The Lower Fox River and Green Bay Site’s cleanup includes “a significant use of capping (3.3 million cubic yards) and no longer [relies] exclusively on dredging.”²² In contrast, at the New Bedford Harbor Superfund Site, the OU1 cleanup relies solely on dredging to achieve the selected cleanup levels in the Upper and Lower Harbors. In order to achieve a 1 ppm PCB target cleanup level for OU1 immediately upon completion of remedial activities, almost the entire Upper and Lower Harbors would have had to be either dredged or capped.²³ EPA determined that dredging to 1 ppm PCBs

²¹ *Contaminated Sediment Remediation Guidance for Hazardous Waste Sites* (December 2005) (available at the EPA-maintained website regarding contaminated sediments in Superfund at <http://www.epa.gov/superfund/health/conmedia/sediment/pdfs/guidance.pdf>) at v.

²² Lower Fox River and Green Bay Superfund Site decision, *United States v. NCR Corp. and Appleton Papers, Inc., et al.*, 2012 U.S. Dist. LEXIS 166347, *30 (E.D. Wis. Nov. 21, 2012).

²³ OU1 ROD at 16 and 34.

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throughout the Harbor would cause severe adverse environmental impacts to the Harbor and would cause more harm than good.²⁴ Of particular concern is the destruction of sensitive wetland habitats as a result of remediation, which would likely cause profound effects on the whole harbor ecosystem by eliminating essential habitat for reproduction of many species, protective areas for juveniles, buffer for storm events, and other critically important functions.²⁵ A capping-based remedy of the magnitude required to achieve a 1 ppm PCBs throughout the Harbor would completely change the hydrodynamics and habitat structure of the Harbor, especially the Upper Harbor (*i.e.*, certain subtidal areas would become intertidal areas, and certain intertidal areas would become upland areas).²⁶ In addition, capping would severely interfere with navigation and associated commercial activities in the Lower Harbor, which is a state designated port area.²⁷ Over time, after EPA completes significant dredging, the sediment PCB levels will approach or achieve 1 ppm in the Upper Harbor via natural sedimentation and in the Lower Harbor with the enhancement of navigational dredging.²⁸

²⁴ OUI ROD at 34-36.

²⁵ Draft Final Feasibility Study of Remedial Alternatives for the Estuary and Lower Harbor/Bay, New Bedford Harbor, Massachusetts, Volume I (August 1990) (part of the Administrative Record for the OUI ROD and available at the EPA-maintained website for the New Bedford Harbor Superfund Site at <http://www.epa.gov/region1/superfund/sites/newbedford/63937.pdf>), at 4-25.

²⁶ OUI ROD at A-24.

²⁷ See OUI ROD at A-5-A-6 and A-119.

²⁸ OUI ROD at 34, and A-10, see Post-Dredge/Existing Conditions Report, New Bedford Harbor Dredge Project Phase II, January 2007, Apex Companies, LLC (part of the Administrative Record for the Final Determination for the South Terminal Project and available at the EPA-maintained website for the New Bedford Harbor Superfund Site at <http://www.epa.gov/region1/superfund/sites/newbedford/517959.pdf>), at 14; and see also Post-Dredge/Existing Conditions Report, New Bedford Harbor Dredge Project Phase III, March 2010, Apex Companies, LLC (part of the Administrative Record for the OUI ESD4 and available at the EPA-maintained website for the New Bedford Harbor Superfund Site at <http://www.epa.gov/region1/superfund/sites/newbedford/466823.pdf>), at 11.

36. The circumstances present for OU1 of the New Bedford Harbor Superfund Site are also different from those at the Outboard Marine Corporations Site's Waukegan Harbor. Some of the distinguishing factors between these two sites are: (1) The geographic area of PCB contamination at Waukegan Harbor is significantly smaller in size than the Harbor's OU1 cleanup area—37 acres²⁹ versus 1,000 acres, and the total volume of contaminated sediment required to be dredged to reach a 1 ppm cleanup level at Waukegan Harbor (approximately 195,200 cy)³⁰ is much less than the volume of sediment that would have to be dredged to reach the same 1 ppm cleanup level for the New Bedford Harbor Superfund Site's OU1 (approximately 2.1 million³¹ to 2.87 million³² cy). (2) Waukegan Harbor is an artificial harbor³³ which lacks ecologically sensitive wetland habitats and shellfish habitats that are present in New Bedford Harbor, which would suffer severe adverse environmental impacts from extensive dredging or capping, as discussed in the Paragraph above.

37. At the GE-Pittsfield/Housatonic River Site's "Rest of River" area, EPA has not yet selected a final cleanup remedy. However, EPA's May 2012 Status Report entitled

²⁹ Fourth Five-Year Review Report, Outboard Marine Corporate Superfund Site (June 2012) (available at the EPA-maintained website for the Outboard Marine Corporation Site at http://www.epa.gov/R5Super/fiveyear/reviews_pdf/illinois/outboard_marine_corp_410945.pdf), at 4 and Figure 1.

³⁰ ROD Amendment, Waukegan Harbor Site (Operable Unit #1), Outboard Marine Corporation Site (October 2009) (available at the EPA-maintained website for the Outboard Marine Corporation Site at http://www.epa.gov/region5/cleanup/outboardmarine/pdfs/rod_amendment20091030.pdf), at 15.

³¹ 1996 Proposed Plan for the OU1 ROD (part of the Administrative Record for the OU1 ROD and available at the EPA-maintained website for the New Bedford Harbor Superfund Site at <http://www.epa.gov/region1/superfund/sites/newbedford/55614.pdf>) at 18.

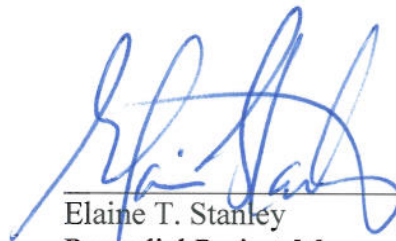
³² *Memo Regarding Technical Impracticability of Attaining 1 ppm Residual PCB Concentration* (April 8, 1991) (part of the Administrative Record for the OU1 ROD and available at the EPA-maintained website for the New Bedford Harbor Superfund Site at <http://www.epa.gov/region1/superfund/sites/newbedford/63765.pdf>) at 2.

³³ ROD Amendment, Waukegan Harbor, Outboard Marine Corporation Site (2009), at 8.

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“Potential Remediation Approaches to the GE-Pittsfield-Housatonic River Site ‘Rest of River’ PCB Contamination” includes a potential conceptual approach for cleanup, using a range of site-specific cleanup standards that are designed in part to minimize damage to high priority habitat areas while remaining protective of human health.³⁴ This is very similar to the approach taken in the New Bedford Harbor Superfund’s OU1 Remedy, which includes less stringent, but still protective, cleanup levels for ecologically valuable and remote salt marshes with little or no public access. Consistent with the approach taken in the New Bedford Harbor Superfund Site’s OU1 Remedy, EPA is considering a range of cleanup levels for use at the GE-Pittsfield/Housatonic River Site “Rest of River” cleanup that vary depending on land use, area-specific exposure scenarios, and habitat value.

I declare upon penalty of perjury that the foregoing is true and correct. Executed on this 30th day of May, 2013.



Elaine T. Stanley
Remedial Project Manager
U.S. Environmental Protection Agency
Region 1
Office of Site Remediation and Restoration
5 Post Office Square, Suite 100
Boston, MA 02109

³⁴ EPA’s May 2012 Status Report is available at the EPA-maintained website for the GE-Pittsfield/Housatonic River Site at: <http://www.epa.gov/region1/ge/thesite/restofriver/reports/508662.pdf>.