



Statement on AVX and CDE Settlements
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Overview

The City of New Bedford ("City") recently reached settlements totaling \$8.5 million with AVX Corporation ("AVX") and Cornell-Dubilier Electronics, Inc. ("CDE") for claims relating to the North Terminal Rail Yard ("Rail Yard") and the Parker Street Waste Site.

The settlement with AVX is for \$6.5 million (with \$3.5 million to resolve Rail Yard claims, \$2.5 million to resolve Parker Street Waste Site claims, and \$500,000 to resolve other claims). The settlement with CDE is for \$2 million (with \$700,000 to resolve Rail Yard claims and \$1.3 million to resolve Parker Street Waste Site claims). Additional payments are also possible under the CDE settlement agreement.

Combined, the two settlements are the largest of their kind in New Bedford's history.

Uses of Settlement Funds

In 2008 the Lang Administration was authorized by the New Bedford City Council to issue municipal bonds to fund a cleanup of PCB contamination at the Rail Yard. The cleanup had been undertaken in the early 2000s with work continuing for more than a decade. The municipal bond authorizations allow for the proceeds from settlements to be used to pay down outstanding debt associated with the bonds.

- \$3.5 million of the AVX settlement will therefore be used by the City to reduce existing bond debt associated with the Rail Yard. This will save the City \$3.9 million in principal and interest payments over the next ten years, with an average annual savings of roughly \$380,000 beginning next fiscal year (FY2017).
- \$2.5 million of the AVX settlement will be used by the City for various costs associated with the Parker Street Waste Site, which may include debt reduction, remediation actions, and obligations to other parties.
- \$500,000 of the AVX settlement is allocated to resolve certain other City claims and the claims of the New Bedford Harbor Development Commission and the New Bedford Redevelopment Authority. Funds allocated to the two agencies will be used to reduce debts these agencies owe to the City of New Bedford.
- The \$2 million CDE settlement provides for a series of payments to the City over the next ten years. Uses of the funds may include debt reduction, remediation actions, and obligations to other parties. CDE funds will be divided 35/65, with \$700,000 (35%)

allocated to Rail Yard claims and \$1.3 million (65%) going toward Parker Street Waste Site claims.

Background on North Terminal Rail Yard Litigation

Through a series of investigations beginning in the 1980s, the City determined that the Rail Yard was highly contaminated with polychlorinated biphenyls (“PCBs”) and other oils/hazardous materials (“OHMs”), and that the PCB contamination most likely came from releases during off-loading of PCBs from railroad tank cars. The Rail Yard site consists of approximately 21.56 acres and 14 parcels located within a larger area (approximately 31 acres) bounded by Acushnet Avenue, Herman Melville Avenue, and Wamsutta Street.

In 2011, the City and related city entities (the New Bedford Redevelopment Authority, the New Bedford Harbor Development Commission, and Housing 70 Corp.) reached a \$3 million settlement for partial reimbursement of the Rail Yard response costs from American Premier Underwriters (“A.P.U.”), Consolidated Rail Corporation (“Conrail”), and CSX Transportation, Inc. (“CSX”). The settlement consisted of a \$2.6 million cash payment and a deed from CSX to the City for land located at the former Railroad Depot, valued at approximately \$400,000.

In October 2014, the City and the same related city entities filed a complaint against AVX for further reimbursement of the City’s response costs at the Rail Yard. At the same time, the City began to engage in negotiations with CDE regarding its liability for the City’s response costs at the Rail Yard. It is the City’s contention that Aerovox Corporation, whose corporate successor is AVX, and CDE both received PCB shipments at the Rail Yard in connection with their historical manufacturing operations.

Background on the Parker Street Waste Site Litigation

In October 2008, the City was sued by several private property owners in connection with the presence of PCBs and OHMs that allegedly were present at their properties, which were located near and/or on the former Parker Street Waste Site.

The City in turn sued a number of third-party defendants, including AVX and CDE, seeking to recover its past and future response costs associated with the assessment and remediation of not only the private properties, but also the entire Parker Street Waste Site. The City alleged that the third-parties were liable for a portion of its response costs because they (or entities for which they were legally liable) disposed of or transported waste at the Parker Street Waste Site or were otherwise responsible for the contamination there. This litigation is collectively known as the “DaRosa litigation.”

Background on the AVX Settlement

Under the AVX Settlement, AVX is paying the City \$6.5 million, to be allocated as follows:

- (1) \$3.5 million to resolve the Rail Yard litigation;
- (2) \$2.5 million to resolve any claims the City might have against AVX relating the Parker Street Waste Site; and

- (3) \$500,000 to resolve other claims that the City and AVX could have against each other based on conduct that took place before the effective date of the settlement agreement. Of this \$500,000, \$125,000 will be allocated to the New Bedford Harbor Development Commission and \$125,000 will be allocated to the New Bedford Redevelopment Authority as credits against their respective debts to the City of New Bedford.

Background on the CDE Settlement

The settlement between the City and CDE provides that the City will receive a percentage of the proceeds which CDE is presently seeking under numerous insurance policies issued by three groups of insurers, with a guaranteed payment to the City of \$2 million over the next ten years.

The City's settlement with CDE is built upon a consent decree between the United States Environmental Protection Agency ("EPA") and CDE that was approved by the United States District Court for the District of New Jersey on October 2, 2014.

In the consent decree, there is a judgment against CDE that establishes CDE's liability to the United States and the State of New Jersey for \$367,453,449 in connection with the CDE Superfund Site in South Plainfield, New Jersey. The federal government conducted an ability-to-pay analysis of CDE and made a determination, as stated in the consent decree, that "CDE had limited financial ability to pay for response costs incurred and to be incurred and Natural Resource Damages" at the South Plainfield Site.

Given CDE's inability to pay, the consent decree established that CDE was required to pay \$4,360,000 to the United States and the State of New Jersey in connection with the South Plainfield Site and to use its best efforts to maximize recovery on its claims against insurers in an insurance coverage case in New Jersey, *Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, Home C.A. No. MER-L-5192-96, MER-L-2773-02, and MER-L-463-05 (N.J. Super. Mercer County) (the "New Jersey Coverage Action").

The consent decree further requires that 80% of the funds recovered in the New Jersey Coverage Action be paid to the United States and the State of New Jersey for the South Plainfield Site and that the remaining 20% of the insurance proceeds be placed in an interest-bearing escrow account. Under the consent decree, the funds in the escrow account shall be used by CDE for certain specified purposes, including the resolution of environmental claims at other sites.

The City's settlement agreement with CDE provides that the City shall receive 14% of the proceeds deposited in the escrow account, with a minimum guaranteed payment of \$2 million over ten years. Beginning on the first anniversary of the effective date of the settlement, the City will receive annual payments from CDE in amounts that will bring the average annual total payment to the City to \$200,000 per year. Should the City's share of the escrow account exceed \$2 million, the City will receive that higher amount.

In negotiating the settlement with CDE, the City thoroughly reviewed information that enabled it to evaluate and verify both the current extent and limitations of CDE's ability to pay and the nature, scope, and prospects of CDE's potential recovery in the New Jersey Coverage Action. The City's independent review of this information, combined with the federal district court's approval of the

consent decree and EPA's determination of CDE's limited ability to pay, satisfied the City that the terms of the settlement agreement represent the City's best means of recovery. The City also believes, based on its independent analysis of CDE's claims in the New Jersey Coverage Action and the course of that litigation to date, that there is a substantial possibility that the City's recovery from CDE will ultimately exceed the guaranteed sum of \$2 million.

All settlement payments received from CDE will be allocated as follows:

- (1) 35% of each payment to resolve the Rail Yard litigation (a minimum of \$700,000);
- (2) 65% of each payment to resolve claims relating to the Parker Street Waste Site (a minimum of \$1.3 million).

Other Claims Still Being Pursued

Following the recent settlements with AVX and CDE, the following third-party defendants will remain in the DaRosa Litigation: Tutor Perini Corporation, Goodyear Tire and Rubber, Co., NSTAR Gas Company and NSTAR Electric Company (now Eversource), and ABC Disposal Services, Inc. At this time, no trial date has been set.