UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, v. AVX CORPORATION, et al., Defendants. COMMONWEALTH OF MASSACHUSETTS, Plaintiff, v. AVX CORPORATION, et al., Defendants.	CIVIL ACTION NO. 83-3882-Y

CONSENT DECREE WITH DEFENDANT AVX CORPORATION

This Consent Decree ("Decree") is made and entered into by the United States of America ("United States") and the Commonwealth of Massachusetts ("Commonwealth") (collectively referred to as "Plaintiffs"), and AVX Corporation ("AVX").

Introduction

The United States, on behalf of the National Oceanic and Atmospheric Administration ("NOAA"), as a federal trustee, and the Commonwealth as state trustee ("Commonwealth" or "state trustee") filed complaints in these consolidated actions on December 9 and 10, 1983, respectively, seeking damages for injury to, destruction of, and loss of natural resources resulting from releases of polychlorinated biphenyls ("PCBs") and other hazardous substances in New Bedford Harbor, Massachusetts, and adjacent waters under Section 107 of the Comprehensive

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Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607 ("CERCLA").

Plaintiffs filed amended complaints (hereinafter "Complaints") in these actions on February 27 and 28, 1984. The United States' Complaint set forth, in addition to the claim for natural resource damages described above, claims on behalf of the United States Environmental Protection Agency ("EPA") for recovery of response costs under Section 107 of CERCLA, and for injunctive relief under Section 106 of CERCLA, 42 U.S.C. § 9606, Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973 ("RCRA"), Section 504 of the Clean Water Act, 33 U.S.C. § 1364 ("CWA"), and Section 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 407 ("1899 Act"). The Commonwealth's Complaint set forth, in addition to its claims for natural resource damages described above, claims for recovery of response costs incurred by the Commonwealth under Section 107 of CERCLA, 42 U.S.C. § 9607, Sections 5(a) and 13 of Chapter 21E, Massachusetts General Laws, and Section 27 of Chapter 21, Massachusetts General Laws, and claims for abatement of a public nuisance and abatement of an abnormally dangerous condition under state common law.

The Complaints assert claims against five current defendants, AVX, Aerovox Incorporated, Belleville Industries, Inc., Cornell-Dubilier Electronics, Inc., and Federal Pacific Electric Company. This Decree is solely between the Plaintiffs and AVX.

The parties to this Decree agree that settlement of the claims in this case against AVX is in the public interest and is made in good faith, and that entry of this Decree is the most appropriate means to resolve the matters covered herein.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED:

Jurisdiction

1. The United States District Court for the District of Massachusetts ("Court") has jurisdiction over the subject matter of this action and the parties to this Decree pursuant to 28 U.S.C. §§ 1331 and 1345, Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), Section 7003 of RCRA, 42 U.S.C. § 6973, Section 504 of the CWA, 33 U.S.C. § 1564, and Section 13 of the 1899 Act, 33 U.S.C. § 407, and has pendent jurisdiction over the claims arising under state law. This Court has personal jurisdiction over AVX which, for purposes of this Consent Decree, waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District.

Applicability of Decree

2. A. Defendant AVX is a Delaware corporation with its executive offices in New York, New York. AVX is the successor by merger of AVX Ceramics Corporation and Aerovox Corporation. Aerovox Corporation owned and operated the Aerovox Facility (as hereinafter defined) from 1938 until January 1, 1973. AVX Corporation, AVX Ceramics Corporation, and Aerovox Corporation (including both the New York and Massachusetts corporations which

operated under that name), together with Electrical Reactance Corporation, Precision Ceramics, Inc., Luther Manufacturing Co., Microcircuits, Inc., Wilkor Products, Inc., Acme Electronics, Inc., Henry L. Crowley & Co., Inc., and Owen Electrical Corp., and any other subsidiaries, and all divisions of each of said companies, shall be collectively referred to herein as AVX. For purposes of Paragraphs 14 and 15, AVX shall also refer to Aerovox Canada, Ltd., the corporation of that name whose assets were conveyed to Aerovox Industries, Inc., on January 1, 1973, but solely with respect to corporate activity prior to January 2, 1973.

B. Plaintiff United States of America includes all departments, divisions, independent boards, administrations or agencies of the Federal government.

C. Plaintiff Commonwealth of Massachusetts includes all departments, divisions, administrations or agencies of the State government to the extent permitted by law.

D. The provisions of this Decree shall apply to and be binding on the United States and the Commonwealth and on AVX and its successors and assigns. Changes in the ownership or corporate form or status of AVX shall have no effect on AVX's obligations under this Decree.

Effect of Settlement

3. This Decree was negotiated and executed by the parties hereto in good faith to avoid the continuation of expensive and protracted litigation and is a fair and equitable settlement of

claims which were contested as to validity, liability and amount. Neither this Decree, nor any part thereof, nor the entry into, nor any performance under this Decree by AVX shall constitute or be construed as a finding or admission or acknowledgement of the factual or legal allegations contained in the Complaints or other pleadings in this case, or of any liability, fault or wrongdoing, or evidence of such, or an admission of violation of any law, rule, regulation, or policy, by AVX, or by its parent company, affiliates, subsidiaries or related entities, directors, officers, stockholders, employees, agents, assigns, trustees, contractors, or successors or predecessors (including their respective parent companies, affiliates, subsidiaries or related entities, directors, officers, stockholders, employees, agents, assigns, trustees, and contractors), nor shall this Decree nor any performance hereunder create any rights on behalf of any other person not a party to this Decree. AVX expressly reserves any and all rights (including any right to contribution), defenses, claims, demands, and causes of action which it may have with respect to any matter, action, event, claim or proceeding relating in any way to the New Bedford Harbor Site (as hereafter defined) against any other person not a party to this Decree. AVX further specifically reserves the right to contest any allegations in the Complaints, except as otherwise specified herein. Additionally, pursuant to Section 122(d)(1)(B) of CERCLA, 42 U.S.C. § 9622(d)(1)(B), the fact of AVX's participation in this Decree shall not be admissible in any

judicial or administrative proceeding other than as provided in this Decree, in a proceeding to enforce this Decree, or in a suit for contribution.

4. Upon approval and entry of this Decree by the Court, the Decree shall constitute a final judgment between and among Plaintiffs and AVX.

Definitions

5. This Decree incorporates the definitions set forth in Section 101 of CERCLA, 42 U.S.C. § 9601. In addition, whenever the following terms are used in this Consent Decree, they shall have the following meanings:

A. "Aerovox Incorporated" or "Aerovox" means the Delaware corporation which has owned and operated the Aerovox Facility since October 27, 1978.

B. "Aerovox Facility" means the manufacturing plant and associated structures and land at 740 and 742 Belleville Avenue, New Bedford, Massachusetts.

C. "Covered Matters" has the meaning set forth in Paragraph 15 below.

D. "DEP" means the Massachusetts Department of Environmental Protection.

E. "Federal Trustees" means the Secretary of Commerce, acting through NOAA, and the Secretary of the Interior.

F. "Final Approval of the Decree" shall mean the earliest date on which all of the following have occurred:

(1) the Decree has been lodged with the Court and noticed in the Federal Register, and the period for submission of public comments has expired; (2) the Court has approved and entered the Decree as a judgment; and (3) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the time for further appeal has expired without the filing of a further appeal or no further appeal is allowed.

G. "Natural Resources" shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

H. "Natural Resource Damages" means damages, excluding costs of assessment, recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of the Natural Resources of the New Bedford Harbor Site.

I. "New Bedford Harbor Site" or "Site" means the New Bedford Harbor Superfund Site, located in portions of New Bedford, Acushnet and Fairhaven, Massachusetts, including New Bedford Harbor, the Acushnet River Estuary extending north to the Wood Street Bridge, and any adjacent marine waters and sediments and shoreline areas which are the subject of EPA's current Remedial Investigation and Feasibility Study, including at least Areas 1, 2, and 3 as defined in 105 CMR 260.005. The Site does not include any portion of the Aerovox Facility westward (away from the Acushnet River Estuary) of the steel sheet pile wall which Aerovox installed along the length of the tidal mudflat

portion of the Aerovox Facility including any point source discharges originating on the Aerovox Facility.

J. "Remedial Action" means those response actions implemented or to be implemented pursuant to CERCLA at the New Bedford Harbor Site under the first operable unit record of decision for the New Bedford Harbor Site signed on April 6, 1990, and the second operable unit record of decision for the New Bedford Harbor Site for which a Feasibility Study was released on August 21, 1990, and which is presently scheduled to be signed in 1991.

K. "Remedial Costs" means all Response Costs incurred in connection with the Remedial Action, as defined above, from the dates of signature of the respective records of decision for the first and second operable units at the New Bedford Harbor Site, but excluding any increase in costs resulting from any amendments to the RODs (as hereafter defined) within the meaning of 40 C.F.R. § 300.435(c)(2)(ii).

L. "Response" shall have the meaning provided in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and shall include any actions taken under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

M. "Response Costs" means all direct and indirect costs of response incurred for the New Bedford Harbor Site, including the costs of operation and maintenance of remedial action components. "Future Response Costs" means all Response Costs incurred after the lodging of this Consent Decree,

including but not limited to the costs of remedial design/remedial action; indirect costs in overseeing the remedial design/remedial action; the costs of operation and maintenance of remedial action components; the costs the United States and the Commonwealth incur in overseeing and enforcing the obligations of parties in the above-captioned action; and including but not limited to payroll costs, contractor costs, travel costs, and laboratory costs.

N. "RODs" means the first operable unit record of decision for the New Bedford Harbor Site signed on April 6, 1990, and the second operable unit record of decision for the New Bedford Harbor Site for which a Feasibility Study was released on August 21, 1990, and which is presently scheduled to be signed in 1991.

O. "State Trustee" means the Secretary of the Executive Office of Environmental Affairs, Commonwealth of Massachusetts.

Payment Terms

6. A. Within fifteen (15) business days after AVX and its counsel sign this Decree, AVX shall establish an escrow account (the "Escrow") bearing interest on commercially reasonable terms at a bank or trust company with assets in excess of $500 million, and AVX shall pay into the Escrow the principal amount of $66 million, plus interest on the amount at the rate of eight percent (8%) from August 23, 1990 to the date of deposit. The Escrow agreement between AVX and the escrow agent shall

provide that the escrow agent shall submit to the jurisdiction and venue of the United States District Court for the District of Massachusetts in connection with any litigation arising out of the Escrow agreement. AVX shall notify Plaintiffs in writing of the creation and funding of the Escrow immediately after the payment has been made. This notice shall be sent by hand or by overnight courier service to: Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, Room 1541 (EES Dockets), 10th and Pennsylvania Ave, N.W., Washington, D.C., 20530; and Chief, Environmental Protection Division, Department of Attorney General, One Ashburton Place, 19th Floor, Boston, MA 02108. AVX will be responsible for all fees, costs and charges of the escrow, and those amounts will not be deducted from the principal or interest owed from the escrow account to Plaintiffs.

B. Subject only to the provisions of subparagraph C of this Paragraph, AVX's obligation to establish the Escrow and to pay the amount specified above into the Escrow within the specified time is a contractual obligation to Plaintiffs effective as of the date that the parties have signed the Decree, and that obligation shall be enforceable as a matter of contract law regardless of when or whether the Decree is entered by the Court. The consideration for that contractual undertaking by AVX includes the immediate cessation of litigation activities until a determination is made whether this Decree will be entered and the

resolution of Plaintiffs' claims against AVX as set forth in the Decree, if the Decree is approved and entered by the Court.

C. All funds paid into the Escrow by AVX shall remain in the Escrow and may not be withdrawn by any person, except to make the payments required by Paragraphs 7-13, or unless one of the following events occurs: (1) the United States or the Commonwealth notifies AVX in writing that its authorized representative(s) will not sign the Decree; (2) the United States withdraws its consent to entry of the Decree after the Decree has been lodged, pursuant to Paragraph 31; or (3) a final judicial determination is made that the Decree will not be approved and entered. If one of these events occurs, all sums in the Escrow shall be returned to AVX.

7. Within fifteen (15) business days after Final Approval of the Decree, AVX shall cause the full principal amount of $66 million plus interest on that amount at the rate of eight percent (8%) from August 23, 1990 to the date of deposit into the Escrow under Paragraph 6 and all accrued interest thereon from the Escrow to be disbursed from the Escrow to Plaintiffs. This amount will be allocated to response costs in the amount of $59 million (plus interest on that amount at the rate of eight percent (8%) from August 23, 1990 to the date of deposit into the Escrow and all accrued interest on that portion from the Escrow), and to Natural Resource Damages and the costs of assessment in the amount of $7 million (plus interest on that amount at the rate of eight percent (8%) from August 23, 1990 to the date of

deposit into the Escrow and all accrued interest on that portion from the Escrow). These payments shall be made by AVX as described in Paragraphs 8-13.

8. A. AVX shall pay the sum of $8.56 million (plus interest on that amount at the rate of eight percent (8%) from August 23, 1990 to the date of deposit into the Escrow and all accrued interest on that portion from the Escrow) to the EPA Hazardous Substances Superfund on account of past Response Costs incurred by the United States with respect to the New Bedford Harbor Site.

B. The payment for past United States Response Costs shall be made by certified or bank check payable to "EPA Hazardous Substances Superfund." The check shall reference on its face the New Bedford Harbor Site and CERCLIS No. MAD980731335 and shall be sent to:

EPA Region I
Attn: Superfund Accounting
P.O. Box 360197M
Pittsburgh, PA 15251

C. AVX shall cause copies of such check and of any transmittal letter accompanying the check to be sent to: Chief, Superfund Office, Office of Regional Counsel, EPA Region I, JFK Federal Building (RCS), Boston, MA 02203; Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.

9. A. AVX shall pay the sum of $440,000 (plus interest on that amount at the rate of eight percent (8%) from August 23, 1990 to the date of deposit into the Escrow and all accrued interest on that portion from the Escrow) to the Commonwealth in reimbursement of past Response Costs incurred by the Commonwealth with respect to the New Bedford Harbor Site.

B. The payment for past Commonwealth Response Costs shall be made by certified or bank check payable to "Commonwealth of Massachusetts," and shall be sent to:

Chief, Environmental Protection Division
Massachusetts Department of Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108

C. AVX shall cause copies of such check and of any transmittal letter accompanying the check to be sent to: Chief, Cost Recovery Section, Bureau of Waste Site Cleanup, Department of Environmental Protection, One Winter Street, Boston, MA 02108.

10. A. AVX shall pay the sum of $50 million (plus interest on that amount at the rate of eight percent (8%) from August 23, 1990 to the date of deposit into the Escrow and all accrued interest on that portion from the Escrow) to Plaintiffs on account of Future Response Costs to be incurred by the United States and the Commonwealth with respect to the New Bedford Harbor Site; provided that ten percent (10%) of those amounts shall be applied toward the Commonwealth's obligation under Section 104(c)(3) of CERCLA to pay or assure payment of ten percent (10%) of the costs of the remedial action, including all

future operation and maintenance. These amounts applied toward the Commonwealth's obligation under Section 104(c)(3) of CERCLA are the subject of an agreement between the Commonwealth and the United States Environmental Protection Agency.

B. Each payment for Future Response Costs shall be made by certified or bank check payable to Plaintiffs in a manner to be directed by Plaintiffs. Plaintiffs shall provide AVX with such directions for payment in writing by certified mail or overnight courier no later than fifteen (15) business days prior to the date payment is due to: Chief Financial Officer, AVX Corporation, 750 Lexington Avenue, New York, NY, 10022-1208. AVX is not required to make any payment for Future Response Costs, nor do the provisions of Paragraphs 23 and 24 take effect for purposes of payment of Future Response Costs, until fifteen (15) business days after Plaintiffs provide AVX with such directions for payment. A copy of the directions for payment shall be sent to counsel for AVX to: Mary K. Ryan, Nutter, McClennen & Fish, One International Place, Boston, Massachusetts, 02110-2699.

C. AVX shall cause copies of each such check and of any transmittal letter accompanying the check to be sent to: Chief, Superfund Office, Office of Regional Counsel, EPA Region I, JFK Federal Building (RCS), Boston, MA 02203; Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.

11. A. AVX shall pay the sum of $6,668,812.67, (plus interest on that amount at the rate of eight percent (8%) from August 23, 1990 to the date of deposit into the Escrow and all accrued interest on that portion from the Escrow) into the Registry of the Court, United States District Court for the District of Massachusetts, to be administered by the Registry of the Court for the Federal and State Trustees, in payment for Natural Resource Damages. The amount so paid and any interest accrued thereon shall be available to the Federal and State Trustees in accordance with Paragraphs 11.D. through 11.F. below.

B. The payment for Natural Resource Damages shall be made by certified or bank check payable to "Clerk, United States District Court." The check shall include on its face a statement that it is a payment for natural resource damages in Civil Action No. 83-3882-Y (D. Mass.), and shall be sent to:

Office of the Clerk
United States District Court for the
District of Massachusetts
Room 707
J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

C. AVX shall cause copies of the check for Natural Resource Damages and of any transmittal letter accompanying the check to be sent to: Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; Regional Attorney, NOAA Office of General Counsel, One Blackburn Drive - Suite 205, Gloucester, MA 01930; Regional Solicitor, U.S. Department of the Interior, Northeast Region, One Gateway Center - Suite 612, Newton Corner,

MA 02158; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.

D. The Registry of Court shall administer all amounts paid for Natural Resource Damages under this Decree in an interest-bearing account ("Registry Account") as provided in the Order Directing the Deposit of Natural Resource Damages Into the Registry of the Court ("Deposit Order") issued by this Court pursuant to Rule 67 of the Federal Rules of Civil Procedure, 28 U.S.C. § 2041, and Local Rule 67.2(c) of the Local Rules for the U.S. District Court for the District of Massachusetts. The Deposit Order shall be attached to this Decree.

E. All funds and all interest accrued thereon in the Registry Account shall be held in the name of the "Clerk, United States District Court," for the benefit of the Federal and State Trustees. Upon joint application by the United States and the Commonwealth, monies in the Registry account shall be disbursed to the Federal and State Trustees by further order of this Court for use by the trustees to plan, implement, and oversee actions to restore, replace, or acquire the equivalent of natural resources that have been injured, destroyed, or lost as a result of the release of hazardous substances at the New Bedford Harbor Site, in accordance with Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1). All disbursements from the Registry Account shall be made by order of the Court in accordance with the provisions

of 28 U.S.C. § 2042 and Local Rule 67.3 of the Local Rules for the U.S. District Court for the District of Massachusetts.

F. In the event that it is later determined that the provisions of Paragraphs 11.D through 11.E are unlawful, the amounts in the Registry Account or payable under this Decree for Natural Resource Damages shall be distributed to the Federal and State Trustees as determined by further agreement of the United States and the Commonwealth or, if no such agreement is reached within a reasonable time, by an allocation of those amounts by this Court. In making any such allocation, the Court shall consider any memorandum of agreement or memorandum of understanding between the United States and the Commonwealth concerning the use of amounts recovered for Natural Resource Damages at the New Bedford Harbor Site, or, in the absence of any memorandum of agreement or understanding, the statute's goal to restore, replace, or acquire the equivalent of the injured or lost natural resources. All amounts recovered for Natural Resource Damages at the Site and all interest accrued thereon shall be used in accordance with Section 107(f)(1) of CERCLA.

12. A. AVX shall pay the sum of $ 205,946.47 (plus interest on that amount at the rate of eight percent (8%) from August 23, 1990 to the date of deposit into the Escrow and all accrued interest on that portion from the Escrow) to NOAA in reimbursement of the federal costs of assessing Natural Resource Damages.

B. This payment shall be made by certified or bank check payable to "The National Oceanic and Atmospheric Administration", and shall be sent to:

General Counsel
National Oceanic and Atmospheric Administration
Room 5814 Herbert Hoover Building
14th & Constitution Avenue, N.W.
Washington, D.C. 20230

C. AVX shall cause copies of this check and of any transmittal letter accompanying the check to be sent to: Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.

13. A. AVX shall pay the sum of $ 125,240.86, (plus interest on that amount at the rate of eight percent (8%) from August 23, 1990 to the date of deposit into the Escrow and all accrued interest on that portion from the Escrow) to the Commonwealth in reimbursement of the state costs of assessing Natural Resource Damages.

B. This payment shall be made by certified or bank check payable to "Commonwealth of Massachusetts", and shall be sent to:

Chief, Environmental Protection Division
Department of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108

Covenants Not To Sue By Plaintiffs

14. In consideration of the payments to be made by AVX under Paragraphs 6-13 above, and except as specifically provided in Paragraphs 16-20, the United States and the Commonwealth covenant not to sue or to take any other civil judicial or administrative action against AVX for Covered Matters, as defined in Paragraph 15. With respect to liability for Covered Matters other than future liability, these covenants not to sue shall take effect upon receipt by the Plaintiffs of the payments required in Paragraphs 7-13 above. With respect to any future liability of AVX, these covenants not to sue shall take effect upon EPA's certification of completion of the Remedial Action.

15. Covered Matters means any civil judicial or administrative liability of AVX to the United States or the Commonwealth for (1) damages for injury to, destruction of, or loss of Natural Resources at the New Bedford Harbor Site, including costs of assessment, under Section 107(a) of CERCLA, M.G.L. c. 21E, M.G.L. c. 21, § 27, and federal and state common law; (2) reimbursement of response costs incurred or to be incurred by the United States or the Commonwealth with respect to the New Bedford Harbor Site under Section 107(a) of CERCLA, Section 7003 of RCRA, M.G.L. c. 21E, M.G.L. c. 21, §§ 27, 40, and state common law; and (3) injunctive relief with respect to the New Bedford Harbor Site under Section 106 of CERCLA, Section 7003 of RCRA, Section 504 of CWA, the 1899 Act, and state common law.

16. Pre-certification reservations. Notwithstanding any other provision of this Decree, the United States and the Commonwealth reserve the right, jointly or separately, to institute proceedings in this action or in a new action, including issuance by EPA of an administrative order, seeking to compel AVX (1) to perform response actions at the New Bedford Harbor Site, and (2) to reimburse the United States and the Commonwealth for response costs, if, prior to EPA's certification of completion of the Remedial Action:

A. conditions at the New Bedford Harbor Site, previously unknown to the United States and the Commonwealth, are discovered after the issuance of the RODs, or

B. information is received, in whole or in part, after the issuance of the RODs,

and the EPA Administrator or his delegate finds, in consultation with the Commonwealth, based on these previously unknown conditions or this information, together with any other relevant information, that the Remedial Action is not protective of human health or the environment.

17. Post-certification reservations. Notwithstanding any other provision of this Decree, the United States and the Commonwealth reserve the right, jointly or separately, to institute proceedings in this action or in a new action, including issuance by EPA of an administrative order, seeking to compel AVX (1) to perform response actions at the New Bedford

Harbor Site, and (2) to reimburse the United States and the Commonwealth for response costs, if, after EPA's certification of completion of the Remedial Action:

A. conditions at the New Bedford Harbor Site, previously unknown to the United States, are discovered after the certification of completion, or

B. information is received, in whole or in part, after the certification of completion,

and the EPA Administrator or his delegate finds, in consultation with the Commonwealth, based on these previously unknown conditions or this information, together with any other relevant information, that the Remedial Action is not protective of human health or the environment.

18. Reservations in the event that Remedial Costs exceed $130.5 million. Notwithstanding any other provision of this Decree, the United States and the Commonwealth reserve the right, jointly or separately, to institute proceedings against AVX in this action or in a new action seeking to compel AVX (1) to perform additional response actions in connection with the Remedial Action to the extent that the total Remedial Costs exceed $130.5 million, and (2) to reimburse the United States and the Commonwealth for any Remedial Costs over and above the first $130.5 million in Remedial Costs.

19. Reservations concerning natural resource injury. Notwithstanding any other provision of this Decree, the United States and the Commonwealth, on behalf of their respective

natural resource trustees, reserve the right, jointly or separately, to institute proceedings against AVX in this action or in a new action seeking recovery of Natural Resource Damages, based on (1) conditions with respect to the Site, unknown to Plaintiffs at the date of lodging of this Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of natural resources, or (2) information received, in whole or in part, after the date of lodging of the Decree which, together with any other relevant information, indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude greater than was known, to Plaintiffs at the date of lodging of this Decree; provided that the damages which Plaintiffs may seek to recover in any such proceedings shall be limited to damages for conditions that were unknown to Plaintiffs at the date of lodging, or for injury to, destruction of, or loss of, natural resources that was unknown, or of a magnitude greater than was known, to Plaintiffs at the date of lodging.

20. The covenants not to sue set forth in Paragraph 14 above do not apply to matters other than those expressly specified as Covered Matters. The United States and the Commonwealth reserve all rights against AVX with respect to all other matters. In addition, the following are specifically identified as matters that are not Covered Matters:

A. claims based on a failure by AVX to satisfy the requirements of the Decree;

B. claims for criminal liability;

C. claims arising from the past, present, or future disposal, release or threat of release of hazardous substances or oil or hazardous materials outside of the New Bedford Harbor Site, including claims by the Commonwealth with respect to DEP site number 4-0127 (Substation Interceptors) and DEP site number 4-0601 (Aerovox Oil Bunker), but excluding claims for response costs incurred, or for injury to, destruction of, or loss of natural resources, in the New Bedford Harbor Site from any releases of PCBs resulting from conditions existing as of the date of lodging of the Decree at DEP site numbers 4-0127 and 4-0601; and

D. claims arising from the past, present, or future disposal, release or threat of release of hazardous substances or oil or hazardous materials taken from the New Bedford Harbor Site.

Covenants by Settling Defendant

21. A. AVX hereby releases and covenants not to sue or assert any claims, or to bring any administrative action, against the United States or the Commonwealth for any claims arising from the New Bedford Harbor Site or any response actions taken at the Site, including but not limited to the counterclaims asserted in AVX's Answers to the Complaints, and including but not limited to any direct or indirect claim pursuant to Section 112 of CERCLA, 42 U.S.C. § 9612, or pursuant to any other statute, regulation,

common law, or legal theory, against the Hazardous Substances Superfund, for reimbursement relating to the New Bedford Harbor Site; provided that, in the event that Plaintiffs institute proceedings against AVX pursuant to Paragraph 16, 17, or 19, AVX reserves the right to reassert the counterclaim against the U.S. Army Corps of Engineers set forth in its Answer to the Complaints solely as, and to the extent of, a setoff against the claims asserted by Plaintiffs. AVX reserves its rights to assert, and this Decree is without prejudice to, claims against the United States arising out of the implementation of the RODs or any amendments thereto after the date of approval of the Decree based on grossly negligent or intentional acts or omissions of the United States, provided that such claims are brought pursuant to a statute other than CERCLA and the waiver of sovereign immunity is found in a statute other than CERCLA, and provided that such claims may not be based upon a theory of derivative or vicarious liability. Nothing in this Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611.

B. Except as provided in subparagraph C below, AVX waives any rights it may have to seek judicial or administrative review of the RODs and of any actions taken to implement the RODs, except for any rights AVX may have to seek review of any amendments to the RODs, within the meaning of 40 C.F.R. § 300.435(c)(2)(ii), in the event the Plaintiffs institute proceedings pursuant to Paragraph 16 or 17. AVX further waives

any direct or indirect claim relating to the New Bedford Harbor Site pursuant to M.G.L. c. 30, §§ 61-62H and 301 C.M.R. § 11.00 et seq.

C. If, pursuant to Paragraph 18, Plaintiffs (1) seek to compel AVX to perform response actions at the New Bedford Harbor Site, or (2) seek payment of additional Remedial Costs over and above the payments provided for in Paragraphs 7-13, AVX reserves, solely for the purpose of proceedings pursuant to Paragraph 18, all legal rights, defenses, and counterclaims, in the nature of setoffs, it may have under law; provided, however, that under no circumstances will AVX be entitled to any reimbursement of monies paid or reduction of monies to be paid under Paragraphs 7-13 of this Decree or to assert any challenge to Response Costs other than Remedial Costs or any challenge to response actions other than those that Plaintiffs seek to compel AVX to undertake pursuant to Paragraph 18. This reservation to AVX's covenants not to sue does not reserve any rights or defenses with respect to the payments provided for in Paragraphs 7-13. Without limiting the generality of the foregoing language, among the legal rights, defenses, and counterclaims which are hereby reserved solely for the purposes of proceedings pursuant to Paragraph 18 are the following:

1. the right to reassert the counterclaim against the U.S. Army Corps of Engineers set forth in AVX's Answer to the Complaints solely as, and to the extent of, a setoff against an action by the Plaintiffs seeking to compel AVX to

perform response actions or seeking payment of additional Remedial Costs; and

2. the right to seek judicial or administrative review of the RODs or of any actions taken to implement the RODs solely to the extent it constitutes a challenge to Remedial Costs or to the response actions that Plaintiffs seek to compel AVX to undertake.

D. For the purposes of any proceedings instituted by the United States or the Commonwealth pursuant to Paragraph 16 or 17, nothing in this Consent Decree shall be construed to affect or to establish the appropriate scope and standard of review that the Court should apply to a finding of the EPA Administrator or his delegate that the Remedial Action is not protective of human health or the environment.

Offset in Event of Reopener

22. A. Because settlement of this action has been negotiated in advance of issuance of the second operable unit ROD for the Harbor, and the amount of Future Response Costs is not known, the United States and the Commonwealth agree that, in the event the United States or the Commonwealth institutes proceedings pursuant to Paragraph 16 or 17 of this Decree against AVX and receives a judgment for monies or for injunctive relief against AVX in the subsequent proceeding, or EPA issues an administrative order to AVX pursuant to Paragraph 16 or 17 of this Decree, AVX will be entitled to a setoff if the Plaintiffs have not expended the amounts recovered from all parties on

account of Future Response Costs plus interest calculated annually on the unexpended balance at a rate for each year following payment equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the anniversary date of the lodging of this Decree. Notwithstanding any other provision of this Decree, in the event EPA issues an administrative order to AVX pursuant to Paragraph 16 or 17 of this Decree, AVX shall be entitled to implement any right it has to an offset under this Paragraph by, inter alia, petitioning EPA for reimbursement pursuant to Section 106(b) of CERCLA. The amount of the setoff shall be equal to AVX's pro rata share of the following: the total amounts recovered from all parties on account of Future Response Costs in the above-captioned action, together with interest calculated as described above, minus the total amounts expended, or obligated if thereafter expended, for Future Response Costs (excluding Department of Justice enforcement costs, other than any unreimbursed costs incurred to enforce AVX's obligations under this Decree).

B. The decision of the Plaintiffs as to the amount of any settlement proceeds from any party in this action to allocate among past response costs, Future Response Costs, and natural resource damages is within their discretion, and may not be challenged by AVX.

C. There shall be no setoff if any part of the Remedial Action, including long-term operation and maintenance, remains to be performed and has not been abandoned or superseded, unless (1) AVX assumes without reservation the obligation to finance all of the remaining Remedial Action activities, or (2) Plaintiffs agree at that time that AVX may instead assume, and AVX assumes without reservation, the obligation to perform those remaining Remedial Action activities.

D. No setoff is available to AVX for any claims by the Plaintiffs against AVX other than claims under Paragraphs 16 and 17. This paragraph may not be construed to entitle AVX to a refund or reimbursement of any amounts paid to the Plaintiffs under Paragraphs 7-13.

E. This offset provision does not give AVX any rights to challenge the manner in which the monies recovered on account of Future Response Costs may be used, except as provided in Paragraph 21.C. This provision does not require either the United States or the Commonwealth to establish a separate fund to hold monies recovered on account of Future Response Costs or otherwise to segregate funds recovered in this action from any other funds.

F. In the event that the United States and the Commonwealth institute proceedings against AVX pursuant to Paragraphs 16 and 17, the Plaintiffs agree that they will at that time provide to AVX a summary of Future Response Costs incurred for the Site, for the purpose of enabling AVX to

calculate the setoff under this Paragraph. AVX also reserves whatever rights it may have under the federal Freedom of Information Act and the state Public Records Act to obtain cost information from Plaintiffs.

Interest and Penalties for Late Payments

23. If any payment required by Paragraphs 7-13 of this Decree is not made by the date specified in those Paragraphs, AVX shall be liable to Plaintiffs for interest on the overdue amount(s), from the time payment was due until full payment is made, at the higher of (a) the rate established by the Department of the Treasury under 31 U.S.C. § 3717 and 4 C.F.R. § 102.13, or (b) ten percent per annum.

24. A. If any payment required by Paragraph 6 of this Decree is not made by the date specified therein, or required by Paragraph 8, 10, or 11 of this Decree is not made by the date specified in Paragraph 7, AVX shall pay stipulated penalties in the following amounts for each day of each and every violation of said requirements:

Days of Delay	Penalty Per Violation Per Day
1-14	$ 5,000/day
15-30	$ 10,000/day
Beyond 30 Days	$ 15,000/day

B. If any payment required by Paragraphs 9, 12, or 13 of this Decree is not made by the date specified in those Paragraphs, AVX shall pay stipulated penalties in the following

amounts for each day of each and every violation of said requirements:

Days of Delay	Penalty Per Violation Per Day
1-14	$ 500/day
15-30	$ 1,000/day
Beyond 30 Days	$ 1,500/day

C. AVX shall make any such stipulated penalties payments: (1) to EPA, for any payment overdue under Paragraph 8; (2) 90% to EPA and 10% to the Commonwealth for any payment overdue under Paragraph 10; (3) to the United States, for any payment overdue under Paragraph 12; (4) fifty percent (50%) to the United States and fifty (50%) percent to the Commonwealth, for any payment overdue under Paragraphs 6 or 11; and (5) to the Commonwealth, for any payment overdue under Paragraphs 9 and 13.

25. Stipulated penalties due to the United States under this Decree shall be paid by certified or bank check made payable to "Treasurer of the United States" and shall be sent to:

Chief, Civil Division
United States Attorneys' Office
1107 J.W. McCormack Post Office/Courthouse
Boston, MA 02109

Stipulated penalties due to EPA or the Commonwealth under this Decree shall be paid in the manner described in Paragraphs 8 and 9, respectively.

26. Interest and stipulated penalties shall accrue from the due date of the payment regardless of whether Plaintiffs have notified AVX of the overdue payment. AVX shall pay any stipulated penalties that have accrued within fifteen (15) days

after receipt of a demand by either Plaintiff for payment. Such demand shall be sent by certified mail or overnight courier to: Chief Financial Officer, AVX Corporation, 750 Lexington Avenue, New York, NY, 10022-1208. A copy of any demand shall be sent to counsel for AVX to: Mary K. Ryan, Nutter, McClennen & Fish, One International Place, Boston, Massachusetts, 02110-2699. Interest under Paragraph 23 and stipulated penalties under Paragraph 24 do not preclude Plaintiffs from seeking any other remedies or sanctions that may be available to them on account of AVX's failure to comply with the terms of the Decree.

Contribution Protection

27. Upon court approval of this settlement, AVX shall have the benefits of Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), Section 4 of Mass. Gen. Laws c. 231B, and any other applicable law limiting its liability to persons not a party to this Consent Decree or affording it rights of contribution or other rights to recover costs or damages relating to the New Bedford Harbor Site from such persons.

Retention of Response Authority

28. The Decree shall not be construed to limit the authority of the United States or the Commonwealth to take any and all response actions relating to the New Bedford Harbor Site authorized by federal or state law.

Compliance with Other Laws

29. The Decree shall not be construed to in any way

relieve AVX or any other person or entity from the obligation to comply with any federal, state or local law.

Retention of Jurisdiction

30. The Court shall retain jurisdiction of this matter between Plaintiffs and AVX for the purpose of entering such further orders, direction, or relief as may be appropriate for the construction, implementation, or enforcement of this Decree.

Public Comment

31. The Decree shall be subject to a 30-day public comment period consistent with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right, in consultation with the Commonwealth, to withdraw its consent to the Decree if comments received disclose facts or considerations which show to the United States that the Decree is inappropriate, improper or inadequate. AVX consents to the entry of the Decree without further notice.

THE FOREGOING Consent Decree among plaintiffs the United States of America and the Commonwealth of Massachusetts and defendant AVX Corporation in United States v. AVX Corporation, Civ. No. 83-3882-Y (D. Mass.), is hereby APPROVED AND ENTERED THIS 3rd DAY OF February, 1991.

WILLIAM G. YOUNG
United States District Judge
District of Massachusetts

Consent Decree with AVX Corporation in United States v. AVX Corporation, Civ. No. 83-3882-Y (D. Mass.)

FOR THE UNITED STATES OF AMERICA

Date: 9/12/92

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Acting Assistant Administrator for Enforcement
U.S. Environmental Protection Agency
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Julie Belaga
Regional Administrator
U.S. Environmental Protection Agency, Region I
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Boston, Massachusetts 02203

Consent Decree with AVX Corporation in United States v. AVX Corporation, Civ. No. 83-3882-Y (D. Mass.)

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Consent Decree with AVX Corporation in United States v. AVX Corporation, Civ. No. 83-3882-Y (D. Mass.)

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Consent Decree with AVX Corporation in United States v. AVX Corporation, Civ. No. 83-3882-Y (D. Mass.)

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Chairman, Chief Executive Officer

Daniel J. Gleason
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Nutter, McClennen & Fish
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PLAINTIFFS

UNITED STATES OF AMERICA

±

DEFENDANTS

AVX; BELLEVILLE INDUSTRIES; AEROVOX, INC.; RTE CORPORATION; CORNELL-DUBILIER ELECTRONICS CO; and FEDERAL PACIFIC ELECTRIC CO.

COUNTERCLAIM 7/3/84

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CAUSE

(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

OTHER - Comprehensive Environmental Response, Compensation and Liability Act of 1980

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CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARD	
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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 83-3882-Y
IN RE: ACUSHNET RIVER AND NEW BEDFORD HARBOR...		PAGE 65 OF ___ PAGES

DATE	NR.	PROCEEDINGS
1992		
Jan 29		**US-58** **YOUNG,D.J.** re: #2372 Motion allowed. This present dispute raises the same legal issues as this Court addressed and resolved in UNITED STATES v. AVX CORP. appeal pending. If anything, the factual record as to this aspect of the case is even stronger for settlement than was the case there. The various factors favoring approval of the consent decree here are all learned in In re Acushnet River 712 F.Supp. 1019(D.MaSS. 1989) ("Acushnet IV") and the bar to settlement noted there no longer exists. There is no occasion for delay. Unlike fine wine, litigation does not improve with age. cc/cl
Feb 3	2378	**YOUNG,D.J.** Consent Decree, Approved and Entered) AVX)
10	2379	**NW-* US-59** Supplemental filing in support of Intervenor National Wildlife Federation's Opposiiton to Motions of US and Commonwealth of Mass to enter consent decree with AVX Corp, filed.
10	2380	**NW* US-59** **P;s Response** to Supplemetnal filing of NWF with respect to standing and Memo in Supp of Motion for Summary Judgment against Intervenor NWF with respect to standing, filed.
10	2381	**NW*** **US-59** Response of AVX to Affidavits filed by NWF in support of standing, f
Feb 26	2382	**US-59** **Motion** of US for Summary Judgment against intervenor NWF with respect to standing
26	2383	**NW*- US-59** P's memo in supp of #2382, filed.
26	2384	**US-59** Opposition of Intervenor NWF to #2382, filed.
26	2385	**US-59** US Reply in supp of #2382, filed.
26	2386	**US-59** Reply of AVX in support of #2382, filed.
Mar 2	2387	**Q-28** **MOTION** of AVX for Summary Judgment against Intervenor NWF,filed.
2	2388	**Q-28** Memo in supp of #2387, filed.
2	2389	**Q-28** **Oppo** of NWF to #2387, filed.
2	2390	**Q-28** **reply** of AVX to #2387, filed.
Mar 6	2391	**YOUNG,D.J.** **JUDGMENT ENTERED** ... in accordance with the terms of the Consnet Decree entered Feb. 3, 1992...The separate judgment is necessary and in the interests of justice because the duty to disburse monies to the government is triggered under the consent decree by the entry of such judgment.cc/cl