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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, v. AVX CORPORATION, et al., Defendants.	CIVIL ACTION NOS. 83-3882-Y
COMMONWEALTH OF MASSACHUSETTS, Plaintiff, v. AVX CORPORATION, et al., Defendants.	83-3889-Y

CONSENT DECREE WITH DEFENDANTS FEDERAL PACIFIC ELECTRIC COMPANY AND CORNELL DUBILIER ELECTRONICS, INC.

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 Federal Pacific Electric Company ("FPE") and Cornell Dubilier Electronics, Inc.("CDE") (also jointly referred to herein as "Settling Defendants" or "FPE and CDE").

Introduction

The United States, on behalf of the National Oceanic and Atmospheric Administration ("NOAA") as federal trustee, and the Commonwealth as state trustee filed complaints in these consolidated actions on December 9 and 10, 1983, respectively, seeking to recover for damages for alleged injury to, destruction of, and loss of natural resources resulting from releases and threatened releases of hazardous substances, including poly-

chlorinated biphenyls ("PCBs"), in New Bedford Harbor ("Harbor"), Massachusetts and adjacent waters under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607 ("CERCLA").

Thereafter, the United States and the Commonwealth filed amended complaints (hereinafter "Complaints") in these actions on February 27 and 28, 1984, respectively. The United States' First Amended Complaint sought damages on behalf of the federal trustee for alleged injury to, destruction of, and loss of natural resources resulting from releases and threatened releases of hazardous substances, including PCBs, in and into the Acushnet River Estuary ("Estuary"), the Harbor, Buzzards Bay ("Bay"), and Rhode Island and Vineyard Sounds (collectively "Sounds"), and added claims on behalf of the United States Environmental Protection Agency ("EPA") alleging releases and threatened releases of hazardous substances, including PCBs, in and into the Estuary, Harbor, Bay and Sounds, and seeking recovery of response costs under Section 107 of CERCLA and 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 United States' First Amended Complaint stated that the full nature and extent of the PCB contamination, and the extent and value of past and future damages to natural resources, were not yet known and had

not yet been determined. The United States' First Amended Complaint stated that the government agencies were in the course of investigating the contamination and assessing the damages.

The Commonwealth's First Amended Complaint set forth claims alleging releases or threatened releases of hazardous substances, including PCBs, in and into the Estuary, Harbor and adjacent waters or areas, and seeking natural resource damages and recovery of response costs incurred by the Commonwealth under Section 107 of CERCLA, 42 U.S.C. § 9607, and claims for recovery of response costs under Sections 1 through 13 of Chapter 21E, Massachusetts General Laws ("M.G.L."), and the earlier law that it superseded, M.G.L. c. 21, Sections 27(14) and 40 of the Massachusetts Clean Waters Act, and claims for abatement of a public nuisance and abatement of abnormally dangerous activities under state common law. The Commonwealth's First Amended Complaint stated that the Commonwealth had not yet determined the full nature and extent of the PCB contamination in the New Bedford Harbor, the extent and value of past and future damages to natural resources, or the costs of assessing damages to natural resources or implementing appropriate remedies.

The Complaints assert claims against five current defendants, FPE, CDE, AVX Corporation, Aerovox Incorporated, and Belleville Industries, Inc. This Decree is solely between and among the Plaintiffs and FPE and CDE.

The parties to this Decree agree, and the Court finds, that settlement of the claims in this case against FPE and CDE 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, before the taking of any testimony, without any admission of fact or law and upon the consent and agreement of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED:

Jurisdiction

1. For the purpose of entry and enforcement of this Decree, the 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 FPE and CDE which, solely for purposes of this Consent Decree, waive all objections and defenses they may have to jurisdiction of the Court or to venue in this District.

Parties

2. A. Defendant FPE is a Delaware corporation with its principal place of business in Cleveland, Ohio.

B. Defendant CDE is a Delaware corporation with its principal place of business in Wayne, New Jersey.

C. Plaintiff, United States of America, includes all departments, divisions, independent boards, administrations or

agencies and natural resource trustees of the Federal government.

D. Plaintiff Commonwealth of Massachusetts includes all departments, divisions, administrations or agencies and natural resource trustees of the State government to the extent permitted by law.

Applicability of Decree

3. The provisions of this Decree shall apply to and be binding on the United States and the Commonwealth and their agencies, departments and natural resource trustees and on FPE and CDE and their successors and assigns. Changes in the ownership or corporate form or status of FPE and CDE shall have no effect on FPE and CDE's obligations under this Decree or on Plaintiffs' obligations to FPE and CDE under this Decree.

Effect of Settlement/Entry of Judgment

4. This Decree was negotiated at arm's length 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, denied and disputed as to validity, liability and amount. The execution of this Decree shall not constitute or be construed as an admission of liability by any person for any purpose, nor is it a finding or admission or acknowledgment of the factual or legal allegations set forth in the Complaints or Counterclaims, or an admission of any violation of law, rule, regulation, or policy by any person, including the parties hereto, or their agents, successors or assigns, nor shall this Decree or the participation of any party hereto in

this Decree be admissible in evidence against any party hereto in any judicial or administrative proceeding, other than in a proceeding between the parties hereto to adjudicate, interpret or enforce this Decree or in any proceeding under Paragraphs 17, 18 or 19 of the Decree. The entry of this Decree shall not be construed to be an acknowledgement by either FPE or CDE that there has been a release or threatened release of a hazardous substance or oil and hazardous material at the Site or that any such release or threatened release constitutes an imminent and substantial endangerment to the public welfare or the environment.

5. Upon approval and entry of this Decree by the Court, the Decree shall constitute a final judgment.

Definitions

6. 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. "Cornell Facility" means the land, the manufacturing plant and associated structures thereon (including subsurface structures), at 1605 East Rodney French Boulevard, New Bedford, Massachusetts, bordered on the east by the west side of East Rodney French Boulevard, on the north by the south side of David Street, on the south by the north side of Mott Street and on the west by a playground which borders on the east side of Cleveland Street.

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

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

D. "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.

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

F. "Natural Resource Damages" means damages under Section 107 of CERCLA for injury to, destruction of, or loss of the Natural Resources with respect to the New Bedford Harbor Site.

G. "New Bedford Harbor Site" or "Site" means the New Bedford Harbor Superfund Site, located in portions of New Bedford, Acushnet and Fairhaven, Massachusetts, including the Acushnet River Estuary, New Bedford Harbor, 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 and as depicted on Exhibit A to the United States' Complaint. The Site does not include any other DEP listed sites or any portion of the Cornell Facility.

H. "Remedial Action" means those actions implemented or to be implemented pursuant to CERCLA with respect to the New Bedford Harbor Site as set forth in the RODs.

I. "Response Costs" means all direct and indirect costs of response incurred with respect to the New Bedford Harbor Site, including the costs of operation and maintenance of remedial action components.

J. "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 for which a record of decision is presently expected to be signed in 1992 and, in the event the first two records of decision do not address all areas of the Site, any additional operable unit record(s) of decision that EPA considers necessary to provide a comprehensive initial remedial decision (including a no action decision) with respect to PCBs for all areas of the Site. "RODs" does not include any records of decision with respect to later-discovered conditions or information as described in Paragraph 17 and 18.

K. "State Trustee" means Secretary of the Executive

Office of Environmental Affairs, Commonwealth of Massachusetts.

Escrow Obligations

7. A. Within ten (10) business days of their signing of the Decree, FPE and CDE shall establish an escrow account (the "Escrow") bearing interest on commercially reasonable terms in a federally or state chartered bank (the "Escrow Agent"), and FPE and CDE shall cause to be paid into the Escrow the amount of $21 million. The escrow agreement between FPE and CDE and the Escrow Agent shall provide that the Escrow Agent submits to the jurisdiction and venue of the United States District Court for the District of Massachusetts in connection with any litigation involving the Plaintiffs arising out of the Escrow. FPE and CDE shall notify Plaintiffs in writing of the creation and funding of the Escrow immediately after the payment into the Escrow 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.

B. All funds paid into the Escrow by FPE and CDE shall remain in the Escrow and may not be withdrawn by any person, except to make the payments required by Paragraphs 8-15, or unless one of the following events occurs: (1) the United States withdraws its consent to entry of the Decree after the

Decree has been lodged, pursuant to Paragraph 30; or (2) a final judicial determination is made that a legally binding agreement does not exist or that the Decree will not be approved and entered. If one of these events occurs, all sums in the Escrow shall be returned to FPE and CDE.

C. All interest accrued in the Escrow shall be paid to Plaintiffs in accordance with Paragraphs 8-15 at the time the principal payments under those paragraphs are made; provided, however, that costs and fees of the Escrow may be deducted from accrued interest by the Escrow Agent prior to making the payments, and provided that, if Plaintiffs fail to lodge the Decree within ninety (90) days of establishment of the Escrow, all interest accruing in the period after that ninety days and before the date of lodging shall not be due to Plaintiffs.

Payment Terms

8. Within fifteen (15) business days after Final Approval of the Decree, Settling Defendants shall cause the amount of $21 million plus interest due thereon under Paragraph 7.C., to be disbursed to Plaintiffs or their designees in accordance with Paragraphs 9-15. This amount has been allocated by the Plaintiffs to Response Costs in the amount of $1 million (plus interest due thereon), to Natural Resource Damages, including the costs of assessment, in the amount of $10 million (plus interest due thereon), and to a Court Registry account in the amount of $10 million (plus interest due thereon) to be allocated to Natural Resource Damages and/or Response Costs. These payments

shall be made by FPE and CDE as described in Paragraphs 9-15. The obligations of FPE and CDE to make the payments to Plaintiffs under this Consent Decree are joint and several.

9. A. Settling Defendants shall pay the sum of $608,000 (plus interest due thereon) 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 CERCLA No. MAD980731335 and shall be sent to:

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

C. Settling Defendants 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, One Congress Street, 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.

10. A. Settling Defendants shall pay the sum of $28,000 (plus interest due thereon) 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. Settling Defendants 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.

11. A. Settling Defendants shall pay the sum of $364,000 (plus interest due thereon) 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, pursuant to an allocation agreement between the EPA and the Commonwealth, certain portions of the amount paid on account of future Response Costs shall be applied toward satisfying the Commonwealth's operation and maintenance obligations at the Site under Section 104(c)(3) and 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.

B. Each payment for future Response Costs shall be made by certified or bank check payable to "EPA Hazardous Substances Superfund, Attn: New Bedford Harbor Special Account", and shall be sent to:

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

C. Settling Defendants 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, One Congress Street, 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.

12. A. Of the $10 million allocated in Paragraph 8 to Natural Resource Damages, Settling Defendants shall pay the sum of $9,670,192.25 (plus interest due thereon) 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. The amount paid under this Paragraph and any interest due thereon shall be administered and disbursed to the Federal and State Trustees in accordance with Paragraphs 12.D through 12.F below.

B. The payment set forth in Paragraph 12.A 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 Nos. 83-3882-Y and 83-3889-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. Settling Defendants shall cause copies of the check referenced in Paragraph 12.B 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 A") as provided in the Order Directing the Deposit of Natural Resource Damages Into the Registry of the Court ("Deposit Order A"), attached hereto, 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.

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 12.D and 12.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 between the United States and the Commonwealth concerning the use of amounts recovered for Natural Resource Damages, 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 and all

interest accrued thereon shall be used in accordance with Section 107(f)(1) of CERCLA.

13. A. Of the $10 million allocated in Paragraph 8 to Natural Resource Damages, Settling Defendants shall pay the sum of $54,227.75 (plus interest due thereon) 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 "Office of Marine Assessment, 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. Settling Defendants shall cause copies of the check referenced in Paragraph 13.B 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.

14. A. Of the $10 million allocated in Paragraph 8 to Natural Resource Damages, Settling Defendants shall pay the sum of $275,580 (plus interest due thereon) to the Commonwealth in reimbursement of the state trustees' 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

15. A. Settling Defendants shall pay the sum of $10 million (plus interest due thereon) 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 United States and the Commonwealth in accordance with Paragraphs 15.D through 15.F below.

B. The payment set forth in Paragraph 15.A 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 and/or Response Costs in Civil Action Nos. 83-3882-Y and 83-3889-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. Settling Defendants shall cause copies of the check referenced in Paragraph 15.B 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; Chief, Superfund Office, Office of Regional Counsel, EPA Region I, One Congress Street, Boston, MA 02203; 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 and/or Response Costs in an interest-bearing account ("Registry Account B") as provided in the Order Directing the Deposit of Natural Resource Damages and/or Response Costs Into the Registry of the Court ("Deposit Order B"), attached hereto, 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.

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 United States and the Commonwealth. Upon joint application by the United States and the Commonwealth and upon order of this Court, monies in Registry Account B shall be disbursed in accordance with the joint application and order to EPA and the Commonwealth for Response Costs and/or to Registry Account A established under Deposit Order A and Paragraph 12 for use by the Federal and State Trustees in accordance with the provisions of Paragraph 12. 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 Paragraph 15 are unlawful, the amounts in Registry Account B may be allocated to Natural Resource Damages and/or Response Costs by order of the Court upon request of the United States and the Commonwealth. In making any such allocation, the Court shall consider any Memorandum of Agreement between the United States and the Commonwealth concerning the use of amounts in Registry Account B recovered for Natural Resource Damages and/or Response Costs.

Covenants Not To Sue By Plaintiffs

16. A. Covenants by the United States. For good and valuable consideration, and except as specifically provided in this Decree, the United States covenants not to sue or to take any other civil judicial or administrative action against FPE and CDE for:

1. recovery of past and future response costs incurred or to be incurred by the United States under Section 107(a) of CERCLA and Section 7003 of RCRA;

2. injunctive relief under Section 106 of CERCLA, Section 7003 of RCRA, Section 504 of the Clean Water Act, and the Rivers and Harbors Act of 1899; and

3. damages for injury to, destruction of, or

loss of natural resources, including the costs of assessment, under Section 107(a) of CERCLA,

with respect to the New Bedford Harbor Site, including any such claims for contamination set forth in Plaintiffs' Requests for Admissions to Settling Defendants in this lawsuit. Except with respect to future liability, these covenants not to sue shall take effect upon entry of the Decree by the Court. With respect to future liability, these covenants not to sue shall take effect upon EPA's certification of completion of the Remedial Action.

B. Covenants by the Commonwealth. For good and valuable consideration, and except as specifically provided in this Decree, the Commonwealth covenants not to sue or to take any other civil judicial or administrative action against FPE and CDE for:

1. recovery of past and future response costs incurred or to be incurred by the Commonwealth under Section 107(a) of CERCLA, M.G.L. c. 21E, M.G.L. c. 21 Sections 27(14) and 40, or state common law;

2. injunctive relief under M.G.L. c. 21E Section 11, M.G.L. c. 21 Section 46, and state common law;

3. damages for injury to, destruction of, or loss of natural resources, including the costs of assessment, under Section 107(a) of CERCLA, M.G.L. c. 21E, M.G.L. c. 21 Sections 27(14) and 40, or state common law,

with respect to the New Bedford Harbor Site, including any such claims for contamination set forth in Plaintiffs' Requests for Admissions to Settling Defendants in this lawsuit. Except with respect to future liability, these covenants not to sue shall take effect upon entry of the Decree by the Court. With respect to future liability, these covenants not to sue shall take effect upon EPA's certification of completion of the Remedial Action.

C. Plaintiffs' covenants not to sue shall not apply to the following:

1. Claims based on a failure by Settling Defendants to satisfy the requirements of the Decree;

2. Claims for criminal liability;

3. Claims with respect to areas outside the New Bedford Harbor Site arising from the past, present or future disposal, release or threat of release of hazardous substances or oil and hazardous materials to locations other than the New Bedford Harbor Site;

4. Claims arising from any release or discharge from the Cornell Facility after the date of lodging of this Decree, including such claims for releases or discharges to the Site; but excluding claims under Section 107 of CERCLA for response costs or damages in the Site resulting from a federally permitted release; and

5. Claims arising from any future release of hazardous substance or oil and hazardous material resulting from Settling Defendants' operations, which

operations take place after the date of lodging of this Decree, including such claims for releases to the Site.

Pre-certification reservations

17. Notwithstanding any other provision of this Decree, the United States and the Commonwealth (to the extent that the Commonwealth has such a right) reserve the right to institute proceedings in this action or in a new action seeking to compel FPE and CDE (1) to perform additional response actions at the New Bedford Harbor Site, and (2) to reimburse the United States and/or 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 these previously unknown conditions or this information indicate, together with any other relevant information, that the Remedial Action is not protective of human health or the environment.

Post-certification reservations

18. Notwithstanding any other provision of this Decree, the United States and the Commonwealth (to the extent that the Commonwealth has such a right) reserve the right to institute proceedings in this action or in a new action seeking to compel

FPE and CDE (1) to perform additional response actions at the New Bedford Harbor Site, and (2) to reimburse the United States and/or 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 or the Commonwealth, are discovered after the certification of completion, or

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

and these previously unknown conditions or this information indicate, together with any other relevant information, that the Remedial Action is not protective of human health or the environment.

Reservations concerning natural resource injury

19. Notwithstanding any other provision of this Decree, the United States and the Commonwealth, on behalf of their respective natural resource trustees, reserve the right to institute proceedings against FPE and CDE in this action or in a new action seeking recovery of Natural Resource Damages unknown to Plaintiffs at the date of lodging of this Decree.

Covenants by Settling Defendants

20. A. For good and valuable consideration, and except as specifically provided in this Decree, FPE and CDE covenant not to sue or bring any administrative action against the United States or the Commonwealth with respect to the New Bedford Harbor Site,

including the counterclaims asserted in FPE's and CDE's Answers to the Complaints and any claims or counterclaims set forth in their Requests for Admissions to Plaintiffs in this lawsuit, and including any claim pursuant to Section 112 of CERCLA, 42 U.S.C. § 9612, or any other statute, regulation, common law, or legal theory, against the Hazardous Substances Superfund, for reimbursement relating to implementation of the RODs at the New Bedford Harbor Site; provided however that, in the event that Plaintiffs assert a claim against FPE and CDE in an action with respect to the Site, FPE and CDE reserve the right to assert: (1) any new claims and counterclaims against the United States and the Commonwealth that arise after the lodging of the Decree; and (2) such portions of those claims and counterclaims that are the subject of Settling Defendants' covenants above that arise out of the same transaction or occurrence that is the subject matter of the new claim by the Plaintiffs in such an action, provided that such claims and counterclaims shall not seek recoupment of any settlement sums paid or to be paid by Settling Defendants pursuant to this Decree. For any such claims or counterclaims of Settling Defendants, all relevant statutes of limitations or repose shall be deemed to have been tolled, and any defense of laches waived, for the period from the date of entry of the Decree by the Court until the time at which Plaintiffs, or either of them, assert a claim against FPE or CDE in an action with respect to the Site, if such claims or counterclaims would be time barred solely as a result of the operation of the

Settling Defendants' covenants not to sue in this Paragraph. In addition, these covenants not to sue by Settling Defendants do not include claims based on failure by the United States or the Commonwealth to satisfy the requirements of this Decree. These covenants not to sue by Settling Defendants shall take effect upon entry of the Decree by the Court. 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 specifically provided in this Decree, FPE and CDE waive any rights they may have to seek judicial or administrative review of the RODs or to challenge any actions taken to implement such RODs. FPE and CDE further waive any claim relating to the RODs and of any actions taken to implement such RODs pursuant to M.G.L. c. 30, §§ 61-62H and 301 C.M.R. § 11.00 et seq.

Interest and Penalties for Late Payments

21. If any payment required by Paragraphs 7-15 of this Decree is not made within the time(s) specified in Paragraphs 7 and 8, FPE and CDE 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) the commercially reasonable interest rate that applies to the Escrow or that would have applied to the Escrow had it been timely established and funded.

22. A. If Settling Defendants fail to meet their

obligations under Paragraph 7 of the Decree regarding the establishment of the Escrow, FPE and CDE shall pay stipulated penalties accruing from the date of lodging of this Decree 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	$1000/day
15-30	$3000/day
Beyond 30 Days	$5000/day

B. If any payment required by Paragraphs 12 or 15 of this Decree is not made by the date specified in Paragraph 8, FPE and CDE 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	$1000/day
15-30	$3000/day
Beyond 30 Days	$5000/day

C. If any payment required by Paragraphs 9, 10, 11, 13, or 14 of this Decree is not made by the date specified in Paragraph 8, FPE and CDE 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	$1000/day
Beyond 30 Days	$1500/day

D. FPE and CDE shall make any such stipulated penalties payments: (1) to EPA, for any payment overdue under Paragraph 9; (2) 90% to EPA and 10% to the Commonwealth for any payment overdue under Paragraph 11; (3) to the United States, for any payment overdue under Paragraph 13; (4) fifty percent (50%) to the United States and fifty (50%) percent to the Commonwealth, for any payment overdue under Paragraphs 7, 12, or 15; and (5) to the Commonwealth, for any payment overdue under Paragraphs 10 and 14.

23. 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 9 and 10, respectively.

24. Payment of interest under Paragraph 21 and stipulated penalties under Paragraph 22 do not preclude Plaintiffs from seeking any other remedies or sanctions that may be available to them on account of FPE's and CDE's failure to comply with the terms of the Decree.

Access Provision

25. The United States and the Commonwealth, their agencies and departments, and their authorized representatives, including their authorized contractors and consultants, shall have, upon

reasonable notice to CDE, such rights of access to the Cornell Facility as may be authorized under Section 104(e) of CERCLA, 42 U.S.C. § 9604, or Section 8 of M.G.L. c. 21E and as may be necessary for implementation of the Remedial Action, including operation and maintenance, at the New Bedford Harbor Site. Notwithstanding any other provision of this Decree, CDE specifically reserves and does not waive with respect to such access all rights which it has or may have under federal and/or state law. In the event of a dispute between CDE and the United States and/or the Commonwealth with respect to such access, any party may submit the dispute to this Court for resolution. This right of access is in addition to, and not in lieu of, any other right of entry or access which exists under federal or state law.

Contribution Protection

26. FPE and CDE 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 their liability to persons not a party to this Consent Decree or affording them 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

27. Except for the covenants not to bring certain actions against Settling Defendants set forth in Paragraph 16, this 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

28. The Decree shall not be construed to in any way relieve FPE and CDE or any other person or entity from the obligation to comply with any federal, state or local law.

Retention of Jurisdiction

29. The Court shall retain jurisdiction of this matter between Plaintiffs and FPE and CDE 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

30. 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. FPE's and CDE's consent to the entry of the Decree is effective upon their signature of the Decree.

THE FOREGOING Consent Decree among plaintiffs the United States of America and the Commonwealth of Massachusetts and defendants FPE and CDE in United States, et al. v. AVX Corporation, et al., Civ. Nos. 83-3882-Y, 83-3889-Y (D. Mass.), is hereby APPROVED. There being no just reason for delay, this Court expressly directs, pursuant to Fed. R. Civ. P. 54(b), ENTRY OF FINAL JUDGMENT by this Consent Decree THIS 8TH DAY OF October, 1992, and except as specifically provided herein, costs to be borne by each party.

William G. Young
WILLIAM G. YOUNG
United States District Judge
District of Massachusetts

October 15, 1992.
Vacated.
William G. Young
District Judge

November 24, 1992.
Consent decree approved.
William G. Young
District Judge

Consent Decree with FPE and CDE in United States v. AVX Corporation, Civ. Nos. 83-3882-Y, 83-3889-Y (D. Mass.)

FOR THE UNITED STATES OF AMERICA

Date: 9/3/92

Vicki O'Meara
Acting Assistant Attorney General
Environment and Natural Resources Div.
U.S. Department of Justice
Washington, D.C. 20530

Date:

Ellen M. Mahan
Bruce C. Buckheit
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Div.
U.S. Department of Justice
Washington, D.C. 20530

Consent Decree with FPE and CDE in United States v. AVX Corporation, Civ. Nos. 83-3882-Y, 83-3889-Y (D. Mass.)

Date: 8/24/92

Assistant Administrator for Enforcement
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Date: 8/12/92

Julie Belaga
Regional Administrator
U.S. Environmental Protection Agency,
Region I
JFK Federal Building
Boston, Massachusetts 02203

Date: 8/11/92

Gregory M. Kennan
Mark A. Lowe
Office of Regional Counsel
U.S. Environmental Protection Agency,
Region I
One Congress Street
Boston, Massachusetts 02203

Consent Decree with FPE and CDE in United States v. AVX Corporation, Civ. Nos. 83-3882-Y, 83-3889-Y (D. Mass.)

FOR THE FEDERAL NATURAL RESOURCE TRUSTEES

Date: 8-26-92

John A. Knauss
Under Secretary for Oceans and Atmosphere
Administrator, National Oceanic and Atmospheric Administration
Department of Commerce
Washington, D.C. 20230

Date: 8-21-92

Thomas A. Campbell
General Counsel
National Oceanic and Atmospheric Administration

Date: 8-4-92

Anton P. Giedt
Attorney
Office of General Counsel
National Oceanic and Atmospheric Administration

Consent Decree with FPE and CDE in United States v. AVX Corporation, Civ. Nos. 83-3882-Y, 83-3889-Y (D. Mass.)

FOR THE COMMONWEALTH OF MASSACHUSETTS

Date: 7/22/92

Matthew T. Brock
Assistant Attorney General
Environmental Protection Division
One Ashburton Place
Boston, Massachusetts 02108

Date: 7/22/92

Commissioner
Department of Environmental Protection
Commonwealth of Massachusetts
One Winter Street
Boston, Massachusetts 02108

FOR THE COMMONWEALTH OF MASSACHUSETTS
NATURAL RESOURCE TRUSTEE

Date: 7/22/92

Secretary
Executive Office of Environmental Affairs
Commonwealth of Massachusetts
100 Cambridge Street, 20th Floor
Boston, Massachusetts 02202

Consent Decree with FPE and CDE in United States v. AVX Corporation, Civ. Nos. 83-3882-Y, 83-3889-Y (D. Mass.)

FOR FEDERAL PACIFIC ELECTRIC COMPANY

Date: 5/28/92

Date: 6/1/92

Howard T. Weir
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, DC 20036

FOR CORNELL DUBILIER ELECTRONICS, INC.

Date: 5/26/92

James R. Kaplan
President

Date: 6/9/92

Laurie Burt
Foley, Hoag & Eliot
One Post Office Square
Boston, Massachusetts 02109

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiffs v. AVX CORPORATION, et al., Defendants. COMMONWEALTH OF MASSACHUSETTS, Plaintiff, v. AVX CORPORATION, et al., Defendants.	)	CIVIL ACTION NOS. 83-3882-Y 83-3889-Y

ORDER DIRECTING THE DEPOSIT OF NATURAL RESOURCE DAMAGES FROM DEFENDANTS FEDERAL PACIFIC ELECTRIC COMPANY AND CORNELL DUBILIER ELECTRONICS, INC. INTO THE REGISTRY OF THE COURT AND DIRECTING THE CLERK TO DEPOSIT ALL NATURAL RESOURCE DAMAGES WITH THE COURT REGISTRY INVESTMENT SYSTEM ("C.R.I.S.")

DEPOSIT ORDER A

Pursuant to Rule 67 of the Federal Rules of Civil Procedure, 28 U.S.C. 2401, and Local Rule 67.2, and in accordance with the terms of the Consent Decree in the above captioned matter between Plaintiffs the United States and the Commonwealth of Massachusetts and Defendants Federal Pacific Electric Company and Cornell Dubilier Electronics, Inc. ("Settling Defendants"), entered by the Court on November 13, 1992, it is hereby

ORDERED that Settling Defendants, upon final approval of the Consent Decree, pay to the Clerk of the Court all sums for Natural Resource Damages as specified in Paragraph 12.A. of the Consent Decree; and it is

ORDERED that Settling Defendants shall make the aforementioned payments for Natural Resource Damages by checks made payable to the Clerk of the Court in accordance with the procedures specified in Paragraph 12.B. of the Consent Decree; and it is

ORDERED that the Clerk of the Court, consistent with Paragraph 12.D. of the Consent Decree, shall deposit the aforementioned Natural Resource Damages payments with the Court Registry Investment System ("C.R.I.S.") administered through the United States District Court for the Southern District of Texas in accordance with the C.R.I.S. Operating Procedures Manual, United States District Courts for the Fifth Circuit; and it is

ORDERED that under the C.R.I.S., all monies deposited for Natural Resource Damages in the above captioned matter will be pooled together with those on deposit with the United States Treasury to the credit of other courts in the C.R.I.S. and used to purchase Treasury Securities which will be held at the Federal Reserve Bank of Dallas/Houston Branch, in a Safekeeping account in the name and to the credit of the Clerk, United States Court for the Southern District of Texas, hereby designated custodian for the C.R.I.S.; and it is

ORDERED that an account shall be established in the C.R.I.S. specifically for, and only for, all monies deposited for Natural Resource Damages in the above captioned matter and shall be titled "U.S. v. AVX Natural Resource Damages Account" ("U.S. v. AVX NRD Account"); and it is

ORDERED that all funds in the U.S. v. AVX NRD Account shall be invested in the "C.R.I.S.- Liquidity Fund" which provides weekly liquidity and a maximum of 100 day-term Treasury Securities; and it is

ORDERED that all income received from fund investments will be distributed to the U.S. v. AVX NRD Account on the ratio that the account principal and income has to the aggregate principal and income total in the fund each week; and it is

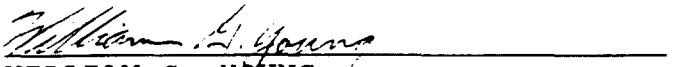
ORDERED that quarterly reports showing the income earned and the principal amounts contributed to the U.S. v. AVX NRD Account will be prepared and distributed to the Clerk of this Court and the Clerk of the United States District Court for the Southern District of Texas and made available to counsel for the United States and the Commonwealth of Massachusetts; and it is

ORDERED that funds in the U.S. v. AVX NRD Account shall remain on deposit with the C.R.I.S. until further order of this Court at which time all of the funds or a portion of the funds, together with any interest earned thereon, shall be retrieved by the Clerk of this Court and redeposited into the Registry of the Court for disposition by further order of this Court consistent with Paragraphs 12.E. and 12.F. of the Consent Decree; and it is

ORDERED that the custodian for the C.R.I.S. is authorized and directed by this Order to deduct for maintaining accounts in the "C.R.I.S.- Liquidity Fund" the fee on the above accounts as authorized in the Federal Register Vol. 55, No. 206 at page 42867. The fee may be deducted on a prorated basis over

the course of deposits into the "C.R.I.S.- Liquidity Fund;" and the United States may make application to the Court to have these fees restored to the United States pursuant to 55 Fed. Reg. 42867; and it is

ORDERED that a certified copy of this order shall be served upon the Clerk of this Court and the Clerk of the Court for the Southern District of Texas.



WILLIAM G. YOUNG
United States District Judge
District of Massachusetts

Date: November 13, 1992

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiffs v. AVX CORPORATION, et al., Defendants.	)	CIVIL ACTION NOS. 83-3882-Y 83-3889-Y
COMMONWEALTH OF MASSACHUSETTS, Plaintiff, v. AVX CORPORATION, et al., Defendants.	)	

ORDER DIRECTING THE DEPOSIT OF NATURAL RESOURCE DAMAGES AND/OR RESPONSE COSTS FROM DEFENDANTS FEDERAL PACIFIC ELECTRIC COMPANY AND CORNELL DUBILIER ELECTRONICS, INC. INTO THE REGISTRY OF THE COURT

DEPOSIT ORDER B

Pursuant to Rule 67 of the Federal Rules of Civil Procedure, 28 U.S.C. 2401, and Local Rule 67.2, and in accordance with the terms of the Consent Decree in the above captioned matter between Plaintiffs the United States and the Commonwealth of Massachusetts and Defendants Federal Pacific Electric Company and Cornell Dubilier Electronics, Inc. ("Settling Defendants"), entered by the Court on November 13, 1992, it is hereby

ORDERED that Settling Defendants, upon final approval of the Consent Decree, pay to the Clerk of the Court all sums for Natural Resource Damages and/or Response Costs in accordance with Paragraph 15.A. of the Consent Decree; and it is

ORDERED that Settling Defendants shall make the aforementioned payments for Natural Resource Damages and/or Response Costs by certified or bank checks made payable to the Clerk of the Court in accordance with the procedures specified in Paragraph 15.B. of the Consent Decree; and it is

ORDERED that the Clerk of the Court, consistent with Paragraph 15.D. of the Consent Decree, shall deposit the aforementioned Natural Resource Damages and/or Response Costs payments with the Registry of the Court; and it is

ORDERED that such payments shall remain with the Registry of the Court until further order of the Court upon joint motion by counsel for the governments; and it is

ORDERED that a certified copy of this order shall be served upon the Clerk of this Court.

WILLIAM G. YOUNG
United States District Judge
District of Massachusetts

Date: November 13 1992