



SDMS DocID 248120

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION I

RCRA RECORDS CENTER  
FACILITY Aerovox Inc  
I.D. NO. MAD062319777  
FILE LOC. Adm Kard #1  
OTHER (P-7)

IN THE MATTER OF:

Aerovox Facility  
New Bedford, Massachusetts

Aerovox Incorporated  
Respondent

ADMINISTRATIVE ORDER ON  
CONSENT

U.S. EPA Region I  
RCRA  
Docket No. RCRA-1-99-0054

Proceeding Under Section 7003  
of the Resource Conservation  
and Recovery Act, as amended,  
42 U.S.C. §§ 6973

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## I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Aerovox Incorporated ("Respondent") to protect public health and the environment pursuant to Section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), and further amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6973. Section 7003(a) of RCRA authorizes the Administrator of EPA to issue this Order whenever the Administrator receives evidence that the past or present handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment. The authority to issue this Order has been delegated to the Director of the Office of Site Remediation and Restoration and the Director of the Office of Environmental Stewardship by EPA Delegation Nos. 8-22-A and 8-22-C.
2. This Order provides for the performance of corrective action at property owned and operated by Respondent at 740 Belleville Avenue in New Bedford, Massachusetts (the "Site") to abate the potential for an imminent and substantial endangerment to health or the environment.
3. EPA has notified the Commonwealth of Massachusetts ("Commonwealth") of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).
4. EPA has notified the City of New Bedford ("New Bedford") of this action pursuant to Section 7003(c) of RCRA, 42 U.S.C. § 6973(c).
5. Respondent's participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that it will not contest the basis or validity of this Order or its terms.

## II. PARTIES BOUND

6. This Order applies to and is binding upon EPA, and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but

not limited to, any transfer of assets or of real or personal property shall not alter Respondent's responsibilities under this Order.

7. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.
8. Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondent agrees to require that the transferee comply with the immediately preceding sentence and Section VIII - Access and Institutional Controls.

### III. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Order which are defined in RCRA or in regulations promulgated under RCRA shall have the meaning assigned to them in RCRA or in such regulations. Whenever terms listed below are used in this Order or in the Attachments attached hereto and incorporated hereunder, the following definitions shall apply:

"Administrative Order on Consent" or "Order" shall mean this Administrative Order on Consent and any Attachments attached hereto.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Commonwealth" shall mean the Commonwealth of Massachusetts, including its departments, agencies and instrumentalities.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"National Contingency Plan" or "NCP" shall mean the

National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Net profits" shall mean the consolidated net income after tax of Respondent as reported in the audited annual financial statements of Respondent, calculated in accordance with generally accepted accounting principles.

"New Bedford" shall mean the City of New Bedford and its departments, agencies and instrumentalities.

"1982 Consent Order" shall mean the federal Consent Order (including the Supplemental Consent Order) (Docket No. 81-964) entered into by the Parties in May 1982.

"Paragraph" shall mean a portion of this Order identified by an arabic numeral or an upper or lower case letter.

"Plant" shall mean Respondent's manufacturing building located at 740 Belleville Avenue in New Bedford, Massachusetts.

"Parties" shall mean the EPA and the Respondent.

"PCBs" shall mean polychlorinated biphenyls, as defined under TSCA and 40 C.F.R. § 761.3.

"Section" shall mean a portion of this Order identified by a roman numeral.

"Site" shall mean the Aerovox Incorporated property, including the Plant and real property located at 740 Belleville Avenue in New Bedford, Massachusetts, with the exception of the property that was capped pursuant to the 1982 Consent Order. The Site encompasses approximately 9.2 acres, bounded by Acushnet Rubber Co. to the north, Titleist and Foot Joy Worldwide to the south, the New Bedford Harbor to the east and Belleville Avenue to the west. A diagram of the Site is attached as Attachment A to this Order.

"TSCA" shall mean the Toxic Substances Control Act, as amended, 15 U.S.C. §§ 2601 et seq.

"United States" shall mean the United States of America, including its departments, agencies and

instrumentalities.

"Waste Materials" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. §9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. §9601(33); (3) any solid waste under Section 1004(27) of RCRA, 42 U.S.C. §6903(27); and (4) any "hazardous material" under the Massachusetts Oil and Hazardous Material Release Prevention and Response Act.

"Work" shall mean all activities Respondent is required to perform under this Order, including but not limited to, the activities described in the Work Plans.

"Work Plans" shall mean the Worker Exposure Reduction Work Plan, the Plant Closure Work Plan, the Demolition and Cap Work Plan, the Maintenance Work Plan and any other workplans developed by the Parties, including any modifications or additions made in accordance with this Order.

#### IV. FINDINGS OF FACT

10. Respondent is a Delaware corporation that owns property and does business at the Site which is located in an industrial area.
11. At the Plant, Respondent currently manufactures electrical capacitors and employs approximately 400 employees working in three shifts. The Plant is a three-floor, flat-roof, brick building containing approximately 450,000 square feet. The first floor is generally used for storage, and the second and third floors are used for capacitor manufacturing.
12. Respondent currently manufactures oil-filled capacitors on the second floor. As part of the manufacturing process, the capacitors are filled with oil by placing the capacitors into an impregnation tank and applying a vacuum that allows oil in the impregnation tank to be drawn into the capacitor. The capacitors are then removed from the tank; the fill hole is soldered closed; and the capacitors are cleaned with solvents.
13. The Plant has been used for electrical component manufacturing since 1938. Beginning in approximately the 1940s, polychlorinated biphenyls ("PCBs") were used in the oil inserted in the capacitors. Use of PCBs in the manufacturing process at the Plant ceased on or about October 1978.

14. On May 29, 1997, EPA conducted a routine inspection of the Plant for compliance with the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 et seq. During the inspection, EPA representatives observed heavy oil staining in several areas, including the impregnation tank room and a nearby capacitor degreasing room. As part of the inspection, Respondent made its analytical data available for EPA's review. From that review, EPA learned that there were concentrations of PCBs in several waste streams, including a floor wash water outside the impregnation tank room, at concentrations of 170 parts per million ("ppm").
15. On June 25 and June 26, 1997, EPA inspectors took 20 wood floor shaving samples from the impregnation tank room. Tests of the samples indicated that the wood shavings contained PCB concentrations of 1,180 to 31,000 ppm.
16. In October, 1997, Respondent conducted sampling at the Plant by collecting 93 standard wipe tests for PCB analysis, and sampling for airborne PCBs. The analytical results of the wipe tests indicate widespread PCB levels above 10 micrograms per 100 square centimeters (the applicable TSCA Spill Cleanup Policy cleanup standard) within the Plant. The sampling for airborne PCBs detected PCBs in the air inside the Plant at levels up to 0.024 milligrams per cubic meter which is lower than the Occupational Safety and Health Administration's recommended standard of 0.1 milligrams per cubic meter but above the National Institute for Occupational Safety and Health's recommended standard of 0.001 milligrams per cubic meter.
17. Respondent has also taken soil samples at the Site and analyzed them for PCBs and volatile organic compounds ("VOCs"). PCBs have been detected in soil samples at concentrations above the applicable S-3 Soil Category standard established by the Commonwealth.
18. Based upon data derived from animal experiments and human studies, EPA has concluded that human exposure to PCBs constitutes a health threat at this Site. EPA has classified PCBs as a B2, probable human carcinogen, under its weight of evidence classification system. The risks that EPA believes are presented by exposure to PCBs are set forth in detail in the preamble to the Final Rulemaking on the Disposal of Polychlorinated Biphenyls, 63 Fed. Reg. 35385 (June 29, 1998) (which is attached as Attachment B).
19. EPA expects that inhalation, dermal exposure, and ingestion of PCBs may occur after an indoor spill. PCBs spilled indoors may be distributed into other areas of a

building in a number of ways, such as through ventilation equipment or ductwork or by tracking. Industrial equipment and other non-structural materials such as clothing also can become contaminated. As a result, workers can be subject to dermal exposure while handling machinery or other items, which may also lead to oral exposure while smoking and during meals. Inhalation of PCBs can also result from the inhalation of dust particles contaminated with PCBs and by PCB volatilization. A trespasser inside the Plant would also be subject to exposure through dermal contact and inhalation.

20. EPA has seen that PCBs have a variety of environmental effects.
21. PCBs may be released outside the Plant by workers wearing PCB contaminated shoes and clothing as they enter and exit the Plant. PCBs may also be released through volatilization and release of PCB contaminated dust out of a window or other opening. A trespasser at the Site could be subject to this exposure and exposure to contaminated soil. Exposure would be significantly increased in the event of a fire or other catastrophic event.
22. Respondent does not believe that employees or other persons have developed any adverse health effects due to the presence of PCBs at the Plant.
23. Respondent completed an Engineering Evaluation/Cost Analysis ("EE/CA") pursuant to the National Contingency Plan ("NCP"), 40 C.F.R. § 300.415. The EE/CA was prepared because EPA and Respondent expected at that time to conduct a response action as a non-time critical removal action under CERCLA.
24. In the EE/CA, Respondent concluded that the appropriate response action for source control at the Site was to demolish the Plant and cap the impacted soil while leaving the building slab in place. EPA agreed that the actions in the EE/CA, along with a long term groundwater monitoring program, are an appropriate non-time critical removal action for source control consistent with the NCP.
25. The EE/CA was issued to the public and a public comment period was held from October 8, 1998 through November 7, 1998. EPA did not receive any public comments.
26. EPA and Respondent have determined that the most appropriate approach to ensuring the performance of the Work is the issuance of this Order under Section 7003 of RCRA. This Order does not address groundwater at the Site.

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

27. Based on the Findings of Fact set forth above, EPA has determined that:
28. Respondent is a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
29. The PCBs detected at the Site constitute "solid waste" as that term is defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
30. The presence of PCBs in the Plant and at the Site resulted from the handling and/or disposal of PCBs at the Plant and the Site.
31. Present conditions at the Plant and the Site may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).
32. As a result of the continuing existence of PCBs at the Plant and the Site, Respondent has been and is currently contributing to the handling and/or disposal of PCBs at the Plant and the Site.
33. The PCBs at the Site have not been properly disposed of in accordance with TSCA and 40 C.F.R. Part 761.
34. The actions required by this Order are consistent with RCRA and TSCA and are necessary to protect health and/or the environment.

## VI. ORDER

35. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that Respondent shall comply with the following provisions, including but not limited to all attachments to this Order, and all documents incorporated by reference into this Order, and perform the actions ordered and agreed to in this Order. In the event of a conflict between this Order and any attachment, this Order shall control.
36. Designation of Project Coordinator. Within 30 days after the effective date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for administration of all of Respondent's actions required by this Order. The Project Coordinator shall have the

technical expertise sufficient to adequately oversee all aspects of the Work. Respondent shall submit the designated Project Coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondent if EPA does not believe that the Project Coordinator will adequately oversee all aspects of the Work. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within ten (10) working days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent. Respondent may change its designated Project Coordinator at any time subject to the requirements in this paragraph. Respondent shall notify EPA ten (10) working days before such a change is made. The initial notification may be made orally but it shall be followed promptly by a written notice.

37. Designation of EPA Coordinator. EPA has designated Kimberly Tisa of the Office of Ecosystem Protection as its EPA Coordinator. Respondent shall direct three copies of all submissions required by this Order (including submissions required by any attachments to this Order or documents incorporated into this Order by reference) to Ms. Tisa at EPA - New England Region - Region I, 1 Congress Street, Suite 1100 (Mail Code CPT), Boston, Massachusetts 02114-2023. EPA may change its EPA Coordinator at any time.
38. Protection of Employees. Respondent shall implement all the provisions of the Worker Exposure Reduction Work Plan attached as Attachment C until all employees and business and manufacturing operations have been relocated to a new facility.
39. Notice. Within five days of the Effective Date of this Order, Respondent shall post signs written in both English and Portuguese at appropriate entrances to the Plant (excluding the entrance to the main reception area), advising that EPA has determined that the Plant contains PCBs that may present an imminent and substantial endangerment to health and the environment. These signs shall be maintained until the Plant is demolished.
40. Relocation. As soon as feasible but no later than sixteen (16) months after the Effective Date of this Order, Respondent will relocate its manufacturing and business operations to another facility, and cease business

operations at the Site. The Plant shall be closed, and any equipment or other property removed from the Plant and relocated to Respondent's new facility must first be decontaminated in compliance with the requirements of TSCA and its regulations.

41. Interim Security. Upon cessation of manufacturing and business operations, and until the completion of Plant demolition work, Respondent will provide security and fire protection at the Site in accordance with the Plant Closure Work Plan attached as Attachment D. Until the commencement of demolition, Respondent will maintain the Plant's structural integrity to prevent unauthorized entry, and to minimize potential releases of PCBs from the Plant in accordance with the Plant Closure Work Plan.
42. Demolition and Cap Implementation. Respondent will complete the demolition of the Plant, the disposal of PCB waste, and the capping of the Site, all in accordance with the schedule set forth in this Order and the requirements set forth in the Demolition and Cap Work Plan which is to be submitted to EPA for approval by the earlier of sixty (60) days after the funds in the Trust Fund referred to in Section XII (including any funds deposited pursuant to Section XIII) reach \$4 million dollars or December 31, 2009. The Demolition and Cap Work Plan must include a current estimate of the costs to perform the Work required under this Work Plan. If EPA determines that the Demolition and Cap Work Plan is deficient, EPA shall so notify Respondent and provide Respondent with a list of the deficiencies. Respondent shall submit a modified Demolition and Cap Work Plan to EPA within twenty-one (21) days of receiving the list of deficiencies unless a different schedule is provided in EPA's notice. Upon approval, Respondent is required to implement the Demolition and Cap Work Plan in accordance with the schedule set forth in this Order and the Demolition and Cap Work Plan.
43. Schedule. By the earlier of twenty-one (21) days after the funds in the Trust Fund referred to in Section XII (including any funds deposited pursuant to Section XIII) reach the lesser of \$4.8 million or sixty (60) percent of the estimated cost to implement and complete the work required by the Demolition and Cap Work Plan (which estimate will be provided by Respondent in the Demolition and Cap Work Plan) or January 21, 2011, Respondent shall commence on-site physical activities pursuant to the Demolition and Cap Work Plan. A contractor must be in place and all required government permits and approvals must have been obtained by that date.
44. Respondent shall complete the work covered by the

Demolition and Cap Work Plan within nine (9) months of accumulating the required funds as set forth in the preceding paragraph. Notwithstanding any other provisions in this Order, including the preceding sentence, Respondent must complete the Work required in accordance with the Demolition and Cap Work Plan and submit a Notice of Completion to EPA by November 1, 2011.

45. Maintenance of Remedy. Respondent will maintain the remedy in accordance with the Maintenance Work Plan to be submitted to EPA for approval by the earlier of sixty (60) days after the funds in the Trust Fund referred to in Section XII (including any funds deposited pursuant to Section XIII) reach \$4 million dollars or December 31, 2009. The Maintenance Work Plan shall set forth the institutional controls that must be implemented to insure the integrity of the cap and the effectiveness of the remedy. If EPA determines that the Maintenance Work Plan is deficient, EPA shall so notify Respondent and provide Respondent with a list of the deficiencies. Respondent shall submit a modified Maintenance Work Plan to EPA within twenty-one (21) days of receiving the list of deficiencies unless a different schedule is provided in EPA's notice. Upon approval, Respondent is required to implement the Maintenance Work Plan in accordance with the schedule set forth in the Order and the Maintenance Work Plan.
46. Schedule and Notification. All actions taken by Respondent pursuant to this Order and the Work Plans shall be taken in accordance with the schedules set forth in this Order and the Work Plans. The Work Plans, the schedules, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the Demolition and Cap Work Plan and shall not commence or undertake any such work without prior EPA approval.
47. Health and Safety Plan. Respondent shall implement all provisions of the Health and Safety Plan contained in the Demolition and Cap Work Plan until EPA issues a Notice of Completion.
48. Off-Site Shipments. All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of in accordance with the Demolition and Cap Work Plan, and at a facility that is in compliance with all applicable federal, state and local environmental laws and regulations and that has been approved by EPA. Regional Offices will provide information on the acceptability of a facility.

49. Compliance With Other Laws. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state and federal laws and regulations.
50. Emergency Response and Notification of Releases. If any incident or change in Site conditions during the actions conducted pursuant to this Order causes or threatens to cause an additional endangerment to health or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such endangerment. Respondent shall also immediately notify the EPA Coordinator or, in the event of his/her unavailability, shall notify Marianne Milette at (617) 918-1854, of the incident or site conditions. EPA may respond to the endangerment and reserves the right to pursue cost recovery.
51. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the EPA Coordinator; the Emergency Response Office, Office of Site Remediation and Restoration, (617) 223-7265; and the National Response Center at telephone number (800) 424-8802. Respondent shall submit a written report to EPA within seven days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Sections 11001 et seq., and under 40 C.F.R. section 761.125 (the PCB Spill Cleanup Policy).
52. Quality Assurance and Sampling. In the event that data collection and analysis is performed pursuant to this Order, Respondent shall submit for EPA's review and approval a Quality Assurance/Quality Control Project Plan for these activities. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondent shall use the following documents, as appropriate, as guidance for QA/QC, sampling and analysis: PCB Regulations, 40 C.F.R. Part 761; Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846; Region 1 EPA-New England Compendium of

Quality Assurance Project Plan Guidance, September 1998; and Region 1 EPA-New England Data Validation Functional Guidelines for Evaluating Environmental Analyses, July 1996.

53. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing work under this Order. Respondent shall notify EPA not less than 7 days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.
54. Periodic Reporting. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every two months following the Effective Date of this Order, until all employees and manufacturing and business activities have been relocated to a new facility. Thereafter, and until the commencement of activities under the Demolition and Cap Work Plan, Respondent shall submit a written progress report to EPA every six months. After the commencement of activities under the Cap and Demolition Work Plan, Respondent shall submit a written progress report to EPA every month until termination of this Order, unless otherwise directed by the EPA Coordinator. These reports shall describe all significant developments during the preceding period, including the actions performed, the problems encountered and how the problems were addressed, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.
55. Final Report. Within 30 days after completion of all actions required under this Order (excluding actions required by the Maintenance Plan), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order ("Final Report"). The Final Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the Work (e.g., manifests, invoices, bills, contracts and permits). The Final Report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the Final Report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

56. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of work to be performed pursuant to the Maintenance Plan, EPA will provide a Notice of Completion to Respondent. If EPA determines that the Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan, if appropriate, and/or take any additional actions necessary to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and/or take any additional actions according to the schedule set forth in EPA's notice. Respondent shall then submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan and/or take the additional actions required by EPA shall be a violation of this Order.

#### VII. AUTHORITY OF THE EPA COORDINATOR

57. The EPA Coordinator shall be responsible for overseeing Respondent's implementation of this Order. The EPA Coordinator shall have the authority to halt, conduct, or direct any work required by this Order. Absence of the EPA Coordinator from the Site shall not be cause for stoppage of work unless specifically directed by the EPA Coordinator.

#### VIII. ACCESS AND INSTITUTIONAL CONTROLS

58. Commencing upon the Effective Date of this Order, Respondent agrees to provide the EPA, including its contractors, access at all reasonable times to the Plant and the Site and any other property to which access is required for either the implementation of this Order or the monitoring of compliance with this Order, to the extent access to the property is controlled by Respondent, for the purposes of conducting any activity related to this Order.
59. To the extent that any property to which access is required for the implementation of this Order is owned or controlled by persons other than Respondent or a

transferee referenced in Paragraph 8, Respondent shall use best efforts to secure from such persons access for Respondent, as well as for the EPA and its representatives, including, but not limited to, its contractors, as necessary to effectuate this Order. For purposes of this paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access.

60. Upon completion of all actions required under this Order (excluding actions required by the Maintenance Plan), Respondent shall refrain from using the Site in any manner that would interfere with or adversely affect the integrity or protectiveness of the cap and other Work to be implemented pursuant to this Order.
61. Upon completion of all actions required under this Order (excluding actions required by the Maintenance Plan), Respondent shall execute and record in the appropriate land records office for New Bedford an easement that grants the right to enforce the protectiveness of the Work to be performed pursuant to this Order to one or more of the following persons, as determined by EPA: (i) EPA and its representatives; (ii) the Commonwealth and its representatives; or (iii) other appropriate grantees.
62. Notwithstanding any provision of this Order, the EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under any applicable statute or regulations.

#### IX. ACCESS TO INFORMATION

63. Respondent shall provide to EPA upon request, copies of all documents and information within its possession or control, or that of its contractors or agents, relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

#### X. RETENTION OF RECORDS

64. Respondent shall preserve all documents and information relating to the Work performed under this Order, or relating to PCB use or presence at the Site, for ten years following completion of the actions required by this Order. At the end of this ten year period and 30 days

before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this paragraph at any time before expiration of the ten year period at the written request of EPA.

#### XI. CONFIDENTIALITY

65. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is accompanied by information that satisfies the items listed in 40 C.F.R. § 2.204(e)(4). EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

#### XII. FUNDING THE WORK

66. Within sixty (60) days of the Effective Date of this Order, Respondent shall deposit at least \$750,000 into a trust account ("Trust Fund") established pursuant to the Aerovox Incorporated Demolition and Relocation Trust Agreement attached as Attachment E ("Trust Agreement") which is incorporated into this Order by reference.
67. No later than December 31, 2000 and December 31, 2001, Respondent shall deposit \$200,000 into the Trust Fund for each year. In addition, no later than March 15, 2001 and March 15, 2002, Respondent shall deposit into the Trust Fund for each year the amount by which ten (10) percent of Respondent's net profits for the previous year exceeds \$200,000, based on Respondent's audited year-end financial results and generally accepted accounting principles.
68. No later than December 31, 2002 and on or before each December 31 thereafter until Respondent submits a Final report in accordance with Paragraph 55, Respondent shall deposit \$250,000 into the Trust Fund for each year. In addition, no later than March 15, 2003 and each March 15 thereafter until Respondent submits a Final Report in accordance with Paragraph 55, Respondent shall deposit into the Trust Fund for each year the amount by which twelve (12) percent of Respondent's net profits for the previous year exceeds \$250,000, based on Respondent's audited year-end financial results and generally accepted accounting

principles.

69. Respondent shall report to EPA in writing within ten (10) working days after the funds in the Trust Fund reach \$4 million. Respondent shall again report to EPA in writing within ten (10) working days after the funds in the Trust Fund reach \$4.8 million.
70. At the time Respondent submits each deposit into the Trust Fund, Respondent shall provide EPA with a copy of the deposit documents and any other appropriate written confirmation of the deposit. In addition, Respondent shall provide EPA with a copy of Respondent's audited year end financial results as soon as they are available but no later than when Respondent makes any additional deposits based on net profits pursuant to Paragraphs 67 and 68.
71. Respondent shall submit to EPA a written report semiannually on January 15 and July 15 of each year, commencing January 15, 2000, that includes the following information: (i) all investments, receipts and disbursements and other transactions effected by the Trustee during the reporting period covered; (ii) an exact description of all cash and securities contributed, purchased, sold or distributed and the cost or net proceeds of sale; and (iii) all cash, securities and other investments held at the end of the reporting period and the cost and fair market value of each item thereof as carried on the books of the Trustee. After the Work has commenced pursuant to the Demolition and Cap Work Plan, Respondent shall submit these written reports to EPA monthly by the fifteenth of the month and the reports should also include an estimate of the amount of funds necessary to complete the remaining Work under the Demolition and Cap Work Plan and an explanation of the manner in which Respondent intends to fund the succeeding three (3) months of Work.
72. Funds shall be distributed from the Trust Fund in accordance with a proper Requisition submitted by Respondent to the Trustee in accordance with the provisions of the Trust Agreement.
73. Respondent shall, at the time of presentation to the Trustee, provide EPA with a copy of any Requisition that Respondent presents to the Trustee. EPA shall notify Respondent within ten (10) working days of any objection it may have to the Requisition and the grounds for any such objection. Respondent shall thereafter have ten (10) working days to provide EPA with any justification it may have for the purpose and/or the amount of the Requisition. If EPA then reasonably determines that Respondent has not provided sufficient justification for the Requisition, Respondent shall within seven (7) working days refund to

the Trust Fund the disputed amount of the Requisition.

74. If Respondent does not begin or complete the Work in accordance with Paragraphs 43 and 44, and such failure is not due to a force majeure event, EPA shall be entitled to use the funds in the Trust Fund to pay for the costs of the Work or any other appropriate response action to be taken at the Site and the Trustee shall make disbursements from the Trust Fund to cover such costs and expenses upon presentation to the Trustee of an EPA Requisition pursuant to the Trust Agreement.
75. Upon termination of the Trust Fund in accordance with the Trust Agreement, the Trustee shall liquidate the assets of the Trust Fund and distribute them to Respondent in accordance with the Trust Agreement.
76. The funds in the Trust Fund can be used only for those costs expressly authorized by the Trust Agreement.

#### XIII. ADDITIONAL FUNDS

77. During the period prior to Respondent's completion of the Work, if Respondent recovers or obtains any funds relating to the contamination at the Site, including, but not limited to, funds derived from claims based upon its liability at the Site, indemnity, insurance, or contribution for other parties' liability at the Site, all such funds shall be placed in the Trust Fund established pursuant to Paragraph 66 hereof. Such funds shall be accumulated and used in the same way as the annual deposits made by Respondent pursuant to Paragraphs 66, 67 and 68.
78. During the period prior to Respondent's completion of the Work, if the United States recovers or obtains any funds relating to the contamination at the Site, such funds may be used completely, or in part, at the sole discretion of the United States, to fund response actions at the Site or to reimburse EPA for any costs it has incurred at the Site.
79. Respondent shall cooperate with EPA with respect to performance of the Work and with respect to attempts by the Parties to obtain additional funds to be used toward performance of response actions at the Site or to reimburse EPA for any costs it has incurred at the Site. Such cooperation shall include, but not be limited to, Respondent providing to EPA, upon request, information and copies of all documents within its possession or control or that of its contractors or agents, relating to its, or any other party's, past or present activities at the Site, past ownership or operations at the Site, the implementation of this Order, and/or the Work. If requested by EPA, Respondent shall also make available, for purposes of

investigation, information gathering, or testimony, its present and, to the extent feasible, past employees, agents, or representatives with knowledge of the same subject matters set forth above in this paragraph.

#### XIV. DISPUTE RESOLUTION

80. The Parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order, including without limitation any disagreement about the imposition and amount of stipulated penalties. If the Respondent objects to any EPA action taken pursuant to this Order, the Respondent shall notify EPA in writing of its objection and the reasons for the objection within seven days of such action, unless the objection has been informally resolved.
81. EPA and Respondent shall attempt to resolve the dispute through formal negotiations ("Negotiation Period"). The Negotiation Period shall not exceed fourteen (14) days from EPA's receipt of Respondent's written objection. The Negotiation Period may be extended at the sole discretion of EPA. EPA's decision regarding an extension of the Negotiation Period shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review.
82. Any agreement reached by the Parties pursuant to this section shall be in writing, signed by both Parties, and shall upon the signature by both Parties be incorporated into and become an enforceable element of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level will issue a written decision on the dispute to the Respondent.
83. The Division Director's decision shall be considered binding and shall be incorporated into and become an enforceable element of this Order unless, within fourteen (14) days after receiving the Division Director's decision, Respondent serves on EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Respondent.
84. Within fourteen (14) days after receipt of Respondent's written Statement of Position, EPA will serve on Respondent its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA.
85. The Regional Administrator of EPA, Region I-New England,

will issue a final administrative decision resolving the dispute based on the Parties' written Statements of Position. This decision shall be binding upon the Parties and shall be incorporated into and become an enforceable element of this Order.

86. The invocation of dispute resolution procedures under this section shall not extend, postpone or affect in any way any obligation of Respondent under this Order, not directly in dispute, unless EPA agrees otherwise.
87. Following resolution of the dispute, as provided by this section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No EPA decision made pursuant to this section shall constitute a final agency action giving rise to judicial review.

#### XV. FORCE MAJEURE

88. Respondent agree(s) to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work or increased cost of performance. However, force majeure could include a delay in the construction of, and/or relocation to, Respondent's new facility resulting from a delay in a government entity's issuance of any necessary approval, license or permit if the delay was beyond the control of Respondent and Respondent did not contribute to the delay.
89. If any event occurs or has occurred that delays or may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent shall notify orally the EPA Coordinator, or in his or her absence, Marianne Milette ((617) 918-1854), within 48 hours of when Respondent first knew that the event might cause a delay. Within seven (7) days thereafter, Respondent shall provide EPA with written notice. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice

provision of this section shall waive any claim of force majeure by the Respondent. Respondent shall be deemed to have notice of any circumstance of which, Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.

90. If EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

#### XVI. STIPULATED AND STATUTORY PENALTIES

91. For each day, or portion thereof, that Respondent fails to perform fully any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondent shall be liable as follows:
- a. for failure to decontaminate any equipment relocated from the Plant to the new facility in compliance with TSCA, \$2,000 per day;
  - b. for failure to complete the relocation of all manufacturing and business operations by sixteen (16) months after the Effective Date of this Order:
    - (i) \$1,000 per day for the first fourteen (14) days;
    - (ii) \$2,500 per day for the next fourteen (14) days; and
    - (iii) \$5,000 per day for the next fifty (50) days;
  - c. for failure to close the Plant, provide security and fire protection, and/or maintain the Plant in accordance with Paragraph 41 and the Plant Closure Work Plan, \$1,000 per day;
  - d. for failure to commence the activities required by the Cap and Demolition Work Plan by the date required in paragraph 43, \$1,500 per day;
  - e. for failure to perform the Work in accordance with the Demolition and Cap Work Plan, \$1,000 per day;
  - f. for failure to submit timely or complete

- reports, \$750 per day, subject to Paragraph 92;
- g. for failure to submit timely or correct deposits into the Trust Fund pursuant to Section XII, \$1,500 per day, subject to Paragraph 92;
  - h. for failure to reimburse the Trust Fund for inappropriate disbursements pursuant to Paragraph 73, \$1,000 per day; and
  - i. for failure to complete the Work required by the Demolition and Cap Work Plan and submit a Notice of Completion to EPA by the date required in Paragraph 44, \$1,500 per day.
92. With the exception of failure(s) to submit complete reports or correct deposits in accordance with Paragraphs 91(f) and (g), all penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. With respect to failure(s) to submit complete reports or correct deposits in accordance with Paragraphs 91(f) and (g), penalties shall not begin to accrue until at least fourteen (14) days after Respondent receives a written notice from EPA setting forth the deficiencies in the report or five (5) working days after Respondent receives a written notice from EPA setting forth the deficiencies in the deposit, whichever is applicable.
93. Subject to Paragraph 94 below, Respondent shall make payments to EPA within thirty (30) days of receiving a written demand from EPA. Interest shall accrue on late payments at the then current annual rate prescribed and published by the Secretary of the Treasury, pursuant to 31 U.S.C. Section 3717, in the Federal Register and the Treasury Fiscal Requirements Annual Bulletin. Interest shall accrue during the entire period during which the stipulated penalties accrue.
94. Penalties shall continue to accrue as provided in Paragraphs 91 and 92 during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved through an agreement between the parties, or if not resolved by agreement, then fifteen (15) days after Respondent receives the decision of the Division Director or the Regional Administrator, if appealed to that level.
95. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day.

Subject to Paragraph 92, penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation(s) to complete the performance of the Work required under this Order.

96. Violation of any provision of this Order may subject Respondent to civil penalties of up to five thousand and five-hundred dollars (\$5,500) per violation per day, as provided in section 7003(b) of RCRA, 42 U.S.C. § 6973(b) (as adjusted by EPA's Civil Monetary Penalty Inflation Adjustment Rule which implemented the Debt Collection Improvement Act of 1996, codified at 40 C.F.R. Part 19).
97. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

#### XVII. OTHER CLAIMS

98. Nothing in this Order precludes the United States or Respondent from asserting any claims, causes of action or demands against any persons not Parties to this Order for indemnification, contribution, or cost recovery.
99. By issuance of this Order, the United States assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.
100. Respondent waive(s) any claim to payment under sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.
101. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review.

#### XVIII. COVENANT NOT TO SUE

102. In consideration of the actions that will be performed by Respondent under the terms of the Order, and except as specifically provided in Paragraphs 103 and 104, the United States, on behalf of EPA, covenants not to sue or to take administrative action against Respondent pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and Sections 16 and 17 of TSCA, relating to the Site soils and the

presence of PCBs in the Plant. This covenant not to sue shall take effect upon the issuance of a Notice of Completion by EPA pursuant to Paragraph 56. This covenant not to sue is conditioned upon the satisfactory performance by Respondent of its obligations under this Order. This covenant not to sue extends only to Respondent and does not extend to any other person.

103. United States' pre-Notice of Completion reservations. Notwithstanding any other provision of this Order, the United States reserves, and this Order is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Respondent to perform further response actions relating to the Site or to reimburse the United States for additional costs of response if, prior to issuance of a Notice of Completion by EPA under Paragraph 56:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with any other relevant information indicates that the actions to be taken under this Order will not abate the risk of an imminent and substantial endangerment to health or the environment at the Site.

104. United States' post-Notice of Completion reservations. Notwithstanding any other provision of this Order, the United States reserves, and this Order is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Respondent to perform further response actions relating to the Site or to reimburse the United States for additional costs of response if, subsequent to the issuance of a Notice of Completion by EPA under Paragraph 56:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with any other relevant information indicates that the actions to be taken under this Order will not abate the risk of an imminent and substantial endangerment to health or the environment at the Site.

105. For purposes of Paragraph 103 of this Section, the

information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the Order was signed by EPA. For purposes of Paragraph 104 of this Section, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of issuance of a Notice of Completion by EPA under Paragraph 56.

106. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 102 of this Section. The United States reserves, and this Order is without prejudice to, all rights against Respondent with respect to all other matters, including but not limited to, the following:
- a. claims based on a failure by Respondent to meet a requirement of this Order;
  - b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
  - c. liability for future disposal of Waste Materials at the Site, other than as provided in the Work Plans, or otherwise ordered by EPA;
  - d. liability for future costs incurred by EPA including but not limited to all direct and indirect costs that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing or enforcing this Order;
  - e. liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss;
  - f. liability for past costs incurred by the United States in connection with matters covered by this Order;
  - g. obligations undertaken pursuant to the 1982 Consent Order;
  - h. criminal liability; and
  - i. liability for violations of federal or state law which occur during or after implementation of the Work.

**XIX. COVENANT BY RESPONDENT**

107. Respondent hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Work or this Order, including without limitation, any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities.

**XX. EPA PERFORMANCE OF WORK**

108. EPA reserves the right to perform any portion of the Work consented to herein and other work as it deems necessary to protect health and/or the environment. In the event that Respondent ceases to or fails to adequately perform the requirements contained in this Order, EPA may exercise its authority to undertake response actions at any time. In that event, EPA reserves its right to seek reimbursement from Respondent for the costs of any response actions taken or authorized by EPA.

**XXI. ADDITIONAL ACTIONS**

109. If EPA determines that additional actions not included in an approved plan are necessary to perform the Work and/or abate any endangerment to health or the environment posed by the Plant or the Site soils, EPA will notify Respondent of that determination. Additional actions in the Site soils and Plant may only be required if they are consistent with the scope of the Work required under the Plant Closure Work Plan, the Demolition and Cap Work Plan and/or the Maintenance Work Plan. Unless Respondent initiates dispute resolution and unless otherwise stated by EPA, within thirty days of receipt of notice from EPA that additional actions are necessary to abate an endangerment to health or the environment, Respondent shall submit for approval by EPA a work plan for the additional actions. Upon EPA's approval of the plan, Respondent shall implement the plan in accordance with the provisions and schedule contained therein.

**XXII. INDEMNIFICATION**

110. Respondent agree(s) to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on

account of, acts or omissions of Respondent, Respondent's officers, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any persons for performance of work on or relating to the Site, including claims on account of construction delays. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in this paragraph.

111. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

#### XXIII. INSURANCE

112. At least seven (7) days prior to commencing any on-site Work under the Demolition and Cap Work Plan, the Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of five (5) million dollars and two (2) million dollars respectively. Within the same time period, the Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then the Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

#### XXIV. ADMINISTRATIVE RECORD

113. This Order is based upon the Administrative Record compiled by EPA, which is available for public examination at the New Bedford Public Library or through the Freedom of Information Act at the EPA-New England-Region I offices at One Congress Street, Suite 1100, Boston, Massachusetts during normal business hours.

XXV. NOTICES

114. Unless directed otherwise by any provision of this Order, whenever written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

As to EPA:

Kimberly Tisa  
EPA Coordinator  
United States Environmental Protection Agency  
New England, Region I  
1 Congress Street  
Suite 1100 (CPT)  
Boston, MA 02114-2023

As to Respondent:

Mr. Robert D. Elliott  
President and CEO  
Aerovox Incorporated  
740 Belleville Avenue  
New Bedford, MA 02745-6194

With a copy to:

Colburn T. Cherney, Esq.  
Ropes & Gray  
One Franklin Square  
1301 K Street, NW  
Suite 800 East  
Washington, DC 20005-3333

XXVI. COMMUNITY RELATIONS

115. Respondent shall participate to the extent determined appropriate by EPA in any community relations plan developed by EPA. Respondent shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondent shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

## XXVII. MODIFICATIONS

116. Modifications to the Work Plans may be made in writing by the EPA Coordinator or at the EPA Coordinator's oral direction to effectuate an agreement reached or decision issued pursuant to the dispute resolution procedures set forth in Section XIV or if such modifications are reasonably necessary to address an emergency situation at the Site. An emergency is considered one in which actions must be taken immediately to address a threat to health or the environment and there is not sufficient time to discuss the modifications with Respondent. If the EPA Coordinator makes an oral modification, it will be memorialized in writing within seven days; provided, however, that the effective date of the modification shall be the date of the EPA Coordinator's oral direction.
117. All other modifications to the Work Plans and requirements of this Order may be modified in writing by mutual agreement of the Parties.
118. If Respondent seeks permission to deviate from any approved Work Plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed Work Plan modification and its basis.
119. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

## XXVIII. PUBLIC COMMENT

120. Final acceptance by EPA of this Order shall be subject to Section 7003(d) of RCRA, 42 U.S.C. §6973(d), which requires EPA to publish notice of the proposed settlement; provide an opportunity for a public meeting in New Bedford; and a reasonable opportunity for the public to comment on the proposed settlement. After consideration of any comments filed during the public comment period, EPA may withhold consent to all or part of this Order if comments received disclose facts or considerations which indicate that this Order is inappropriate, improper or inadequate.

## XXIX. SEVERABILITY

121. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient

cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

**XXX. ATTACHMENTS**

122. The following attachments are attached to and incorporated into this Order:

"Attachment A" is a diagram of the Site.

"Attachment B" is an excerpt from Final Rulemaking on the Disposal of Polychlorinated Biphenyls (63 Fed. Reg. 35385 (June 29, 1998)).

"Attachment C" is the Worker Exposure Reduction Work Plan.

"Attachment D" is the Plant Closure Work Plan.

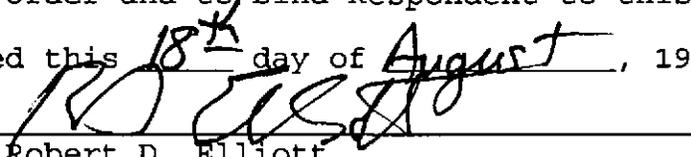
"Attachment E" is the Trust Agreement.

**XXXI. EFFECTIVE DATE**

123. Subject to Section XXVIII, this Order shall become effective when EPA issues notice to Respondent that the public comment period has closed and EPA has responded to all comments received during the comment period.

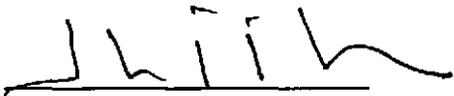
The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this Order and to bind Respondent to this document.

Agreed this 18<sup>th</sup> day of August, 1999.

By:   
Robert D. Elliott

Title: President and CEO

It is so ORDERED and Agreed this \_\_\_ day of \_\_\_\_\_, 1999.

BY: 

DATE: 9/15/99

John P. DeVillars  
Regional Administrator  
Region I  
U.S. Environmental Protection Agency

BY: 

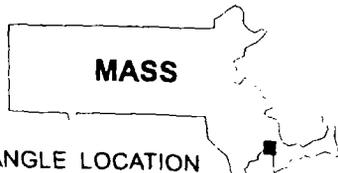
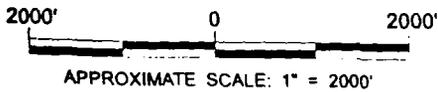
DATE: 9/15/99

Ira Leighton  
Director, Office of Environmental Stewardship  
Region I  
U.S. Environmental Protection Agency

**EFFECTIVE DATE:** \_\_\_\_\_



REFERENCE: NEW BEDFORD NORTH, MASS. USGS QUADS., 7.5 MIN. SERIES, 1979.



QUADRANGLE LOCATION

**Aerovox** INC.  
 740 BELLEVILLE AVE., NEW BEDFORD, MA 02745 USA  
 ENGINEERING EVALUATION/COST ANALYSIS (EE/CA)

## SITE LOCATION PLAN

**BBL** BLASLAND, BOUCK & LEE, INC.  
 engineers & scientists

FIGURE  
**2**

proposed amendments to better acquaint potential commenters with the potential impacts so that they could better formulate their comments. On June 6 and 7, 1995, EPA held a public hearing on the proposed amendments. A transcript of that hearing is in the public record. Almost all commenters supported the objectives EPA proposed for the PCB program, but they also provided numerous comments on how to better achieve those objectives.

EPA has prepared a Response to Comments document which addresses comments not otherwise discussed in this preamble. You may review the Response to Comments document in the TSCA Public Docket (OPPTS docket control number 6009A), Rm. B-07, Northeast Mall at the Environmental Protection Agency, 401 M St., SW., Washington, DC.

### B. Overview of Final Rule

This rulemaking promulgates significant amendments affecting the use, manufacture, processing, distribution in commerce, and disposal of PCBs.

These amendments add regulatory provisions authorizing certain uses of PCBs; authorizing the manufacture, processing, and distribution in commerce of PCBs for use in research and development activities; specifying additional alternatives for the cleanup and disposal of PCBs; and clarifying the processing for disposal exemption.

These amendments also add sections establishing standards and procedures for disposing of PCB remediation waste and certain products manufactured with PCBs; establishing procedures for determining PCB concentration; establishing standards and procedures for decontamination; establishing controls over the storage of PCBs for reuse; and establishing a mechanism for coordinating TSCA disposal approvals for the management of PCB wastes among various Federal programs. These amendments also update several marking, recordkeeping, and reporting requirements.

The regulatory requirements that apply to materials containing PCBs depend in part on the PCB concentration. To ensure a consistent and reproducible basis for determining PCB concentrations, § 761.1(b)(4) provides that the concentration of non-liquid PCBs must be determined on a dry weight basis; the concentration of liquid PCBs must be determined on a wet weight basis; and the concentration of multi-phasic (i.e., both non-liquid and liquid) PCBs must be determined by separating the phases and analyzing each phase.

### C. Statutory Authorities

This final rule is issued pursuant to sections 6(e)(1), 6(e)(2)(B), 6(e)(3)(B) and 18(b) of TSCA. Section 6(e)(1)(A) gives EPA the authority to promulgate rules regarding the disposal of PCBs (15 U.S.C. 2605(e)(1)(A)). TSCA section 6(e)(1)(B) provides broad authority for EPA to promulgate rules that would require PCBs to be marked with clear and adequate warnings (15 U.S.C. 2605(e)(1)(B)). TSCA section 6(e)(2)(B) gives EPA the authority to authorize the use of PCBs in other than a totally enclosed manner based on a finding of no unreasonable risk of injury to health or the environment (15 U.S.C. 2605(e)(2)(B)). TSCA section 6(e)(3)(B) provides that any person may petition EPA for an exemption from the prohibition on the manufacture, processing, and distribution in commerce of PCBs (15 U.S.C. 2605(e)(3)(B)). EPA may grant an exemption based on findings that an unreasonable risk of injury to health or the environment will not result, and that the petitioner has made good faith efforts to develop a substitute for PCBs.

### D. Unreasonable Risk Standard

Under TSCA section 6(e), EPA makes decisions using the concept of "unreasonable risk." In evaluating whether a risk is unreasonable, EPA considers the probability that a regulatory action will harm health or the environment, and the costs and benefits to society that are likely to result from the action. See generally, 15 U.S.C. 2605(c)(1). Specifically, EPA considers the following factors:

1. *Effects of PCBs on human health and the environment.* EPA considers the magnitude of exposure and the effects of PCBs on humans and the environment. The following discussion summarizes EPA's assessment of these factors.

a. *Health effects.* EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, can circulate throughout the body, and can be stored in the fatty tissue. Available animal studies indicate an oncogenic potential. EPA has also found that PCBs may cause reproductive effects and developmental toxicity in humans. Chloracne may also occur in humans exposed to PCBs.

b. *Environmental effects.* Certain PCB congeners are among the most stable chemicals known, which decompose very slowly once they are released in the environment. PCBs are absorbed and stored in the fatty tissue of higher organisms as they bioaccumulate up the food chain through invertebrates, fish,

and mammals. This ultimately results in human exposure through consumption of PCB-containing food sources. PCBs also have reproductive and other toxic effects in aquatic organisms, birds, and mammals.

c. *Risks.* Toxicity and exposure are the two basic components of risk. EPA has concluded that any exposure of humans or the environment to PCBs may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure. Minimizing exposure to PCBs should minimize any eventual risk. EPA has quantified risks from certain exposure scenarios (See for example, Refs. 1 and 2). For example, assessments of the risks from exposure to PCBs in soil have been used as the basis for several of today's regulatory actions.

2. *Benefits of PCBs and the availability of substitutes.* The benefits to society of particular activities involving PCBs vary. PCBs were used principally because they had excellent dielectric properties. The dielectric properties were supplemented by thermal stability and even the ability to retard burning, a considerable problem with the most commonly used alternative dielectric fluid. For other uses, thermal stability and flame retardancy were enhanced by resistance to degradation by chemical oxidizers, acids and bases. Although it is difficult to estimate the financial benefits from the reduction in industrial fires from the use of PCBs, it is clear that there were far fewer fires from the use of PCBs as alternatives to other commonly used flammable and ignitable fluids. These benefits are especially significant in uses where heat was generated or where a fire from another source would be augmented and intensified by the presence of flammable fluids.

Unfortunately, the properties of thermal stability and resistance to chemical degradation which made PCBs so useful industrially, make PCBs a problem when they are released to the environment, where they and their toxic effects persist for long periods. The toxic effects of PCBs do not play a role in most uses where there is little, if any, actual exposure. So long as the PCBs are used inside containers and are not available for potential exposure or release to the environment, the benefits from their continued use, versus the cost to decontaminate or dispose of and replace them, can outweigh the risks.

While some electrical equipment manufactured to contain PCBs prior to 1978 is still in use, most of the equipment in use that contains PCBs

## ATTACHMENT C

### WORKER EXPOSURE REDUCTION WORKPLAN

From the effective date of the Administrative Order on Consent, and continuing on each day the Plant is used for business and manufacturing operations, Respondent shall employ the following measures to reduce the risks of employee exposure to PCBs:

#### A. General Measures

1. Employees working in areas used for product manufacturing, assembly, painting, stocking, packaging, and shipping and receiving, and employees performing building maintenance and cleaning, shall be advised that EPA recommends wearing gloves whenever feasible, to reduce contact with PCBs. At a minimum, this advisory shall be communicated by posting written notices in prominent locations within the facility (such as bulletin boards, bathrooms, entryways to vending machine rooms and cafeteria, and glove-dispensing areas).
2. At all times, Respondent shall make gloves available to employees for use while performing work at the facility. Gloves shall be dispensed in locations that promote convenience of use during normal work activities. Respondent shall also provide convenient receptacles for the disposal of used gloves.
3. The advisory notices described in paragraph 1, above, shall also state that foods and drink shall only be consumed in the vending machine rooms and cafeteria, and recommend that employees wash their hands with soap and water before eating or drinking.
4. Vinyl or disposable table cloths must be used on the cafeteria and vending machine room tables, and cleaned or replaced daily. Cafeteria and vending machine room tables must be washed using disposable paper towels rather than cloth towels.

#### B. Tank and Pump Room Employees

1. Upon arriving at work, employees must change into their safety shoes in the tank room employee locker room area.
2. Immediately outside of the locker room area, the safety shoes are to be covered by rubber overshoe protective footwear. Disposable gloves are to be worn when putting on or removing protective footwear.
3. This protective footwear is to be worn when in the Restricted Areas. See attached Layout.
4. When leaving the Restricted Areas for material handling,

breaks, meetings, etc. The protective footwear must be removed.

5. When returning from these various functions, the protective footwear must be put back on.

6. At the end of the shift, the protective footwear is to be removed and left in the assigned area outside of the locker room.

7. Any time protective footwear is put on or removed, disposable gloves must be worn.

8. Disposable gloves are to be placed in the proper disposal containers located in the assigned areas.

9. Up to twelve employees may be authorized to work in the Tank and Pump Rooms.

C. Maintenance Employees and Other Employees Performing Tasks in Tank Room or Pump Room:

1. Employees needing to do work or perform a certain task in the Restricted Areas must use protective footwear. Spare protective footwear in various sizes will be located in the area outside of the tank room and near the entrance of the tank room. Such employees will:

- a. Go to the areas where the protective footwear is located.
- b. Put on the footwear over work shoes. Disposable gloves must be worn when putting on or removing footwear.
- c. Perform task.
- d. Remove protective footwear when task is completed or when it is necessary to leave the Restricted Areas. Disposable gloves are to be placed in the proper disposal containers located in the assigned areas.

D. Production Flow:

1. Assembled capacitors in baskets from Lines 1, 3, 4, 5, 7 and 9, as well as EDC capacitors from Line 10, are to be delivered to the queuing area directly outside of the tank room. This function can be done by either material handlers or tank room employees without protective footwear.

2. Tank room employees with protective footwear are to move the capacitors from the queuing area (see attached Layout) to the tank room for impregnation.

3. After impregnation, the capacitors are to be transferred

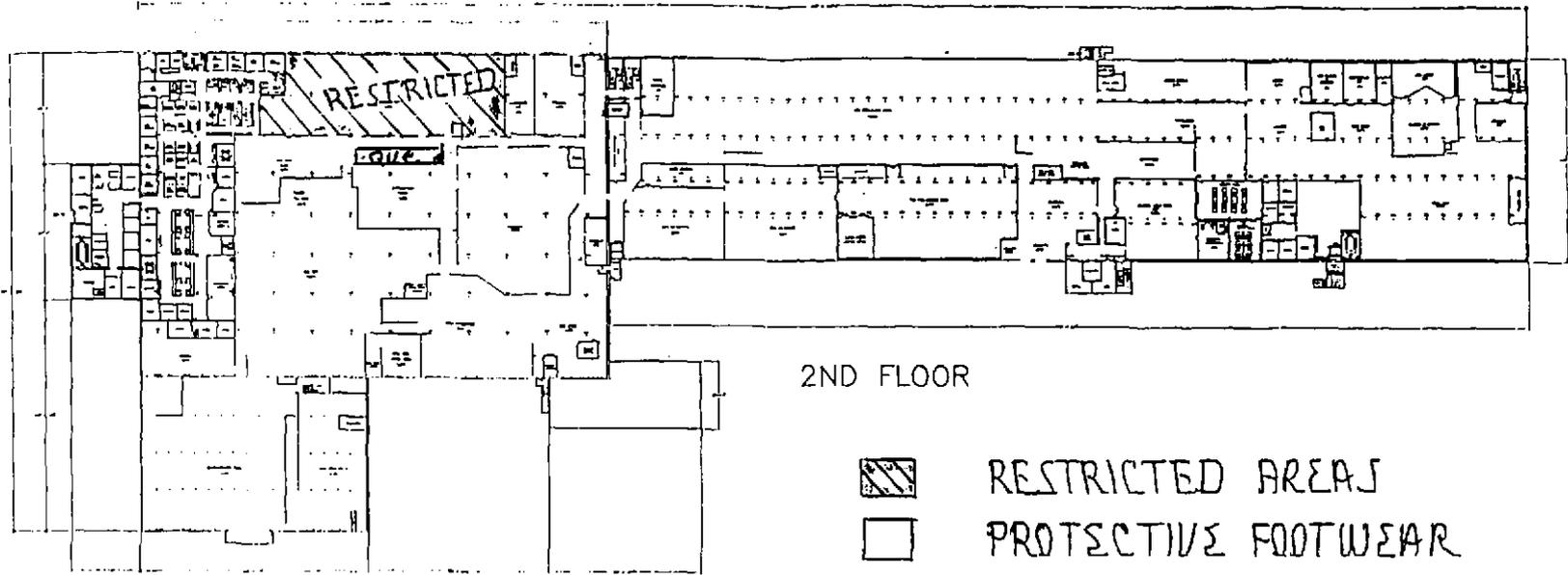
to the queuing area by tank room employees with protective footwear.

4. Distribution to fill hole soldering or Line 10 can be done by material handlers or tank room employees without protective footwear.

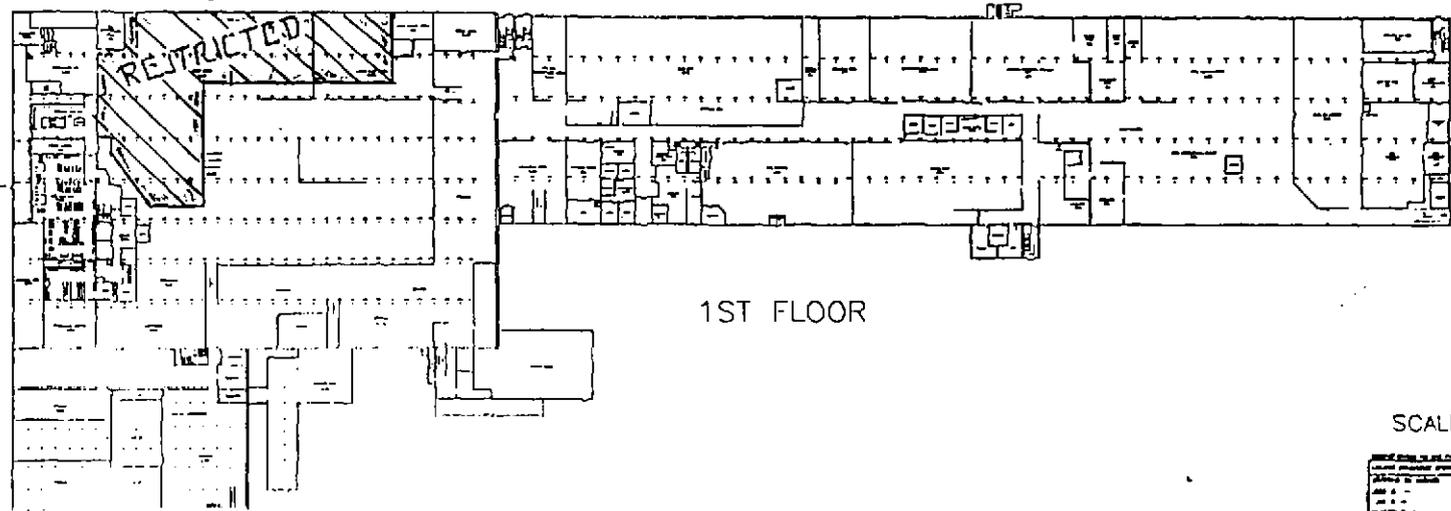
E. Restricted Areas:

1. Restricted Areas (see Layout) will be posted with signs containing the PCB large M<sub>L</sub> mark.

2. Restricted Areas will be delineated by red lines on the floor and will be roped or chained off.



-  RESTRICTED AREAS
-  PROTECTIVE FOOTWEAR
-  QUEUING AREA



SCALE: 1/32" = 1'

|      |    |         |          |
|------|----|---------|----------|
| DATE | BY | CHKD BY | APP'D BY |
|      |    |         |          |
|      |    |         |          |
|      |    |         |          |

E  
D  
C  
B  
A

## ATTACHMENT D

### PLANT CLOSURE WORK PLAN

Within five (5) days of evacuating the Aerovox Incorporated facility at 740 Belleville Avenue, New Bedford, Massachusetts, Aerovox will implement the measures described below and maintain them until demolition of the facility is commenced.

#### Coordination with Local Authorities

Copies of this Work Plan shall be provided to the New Bedford police and fire departments. Keys to all locks shall be provided to the police and fire departments.

#### Security

A six (6)-foot high security fence will be constructed and maintained around the perimeter of the facility, except for that portion of the facility facing Belleville Avenue. Three strands of barbwire will be placed atop the fence. Each gate and the entry and all windows on Belleville Avenue will be secured by locks, that can be unlocked from the inside without a key in case of emergency. Access to the facility will be limited to persons authorized by Aerovox's Project Coordinator or EPA's Coordinator.

The facility will be monitored on a daily basis by a mobile security force. This security force will enter the facility if it appears that any damage, vandalism or unauthorized entry may have occurred.

### Fire Protection

A fire suppression sprinkler system will be maintained. Aerovox will convert the existing wet system to a pressurized air or other dry system to allow for elimination of a heating system. The current underground water supply will be maintained and would be released to suppress a fire if a change in air pressure was identified. The existing fire alarm system that alerts the city fire department and sounds throughout the facility will be maintained.

### Building Maintenance

Maintenance personnel will enter the facility on a monthly basis to determine if any damage from weather, vandalism, or unauthorized entry has occurred. Any such damage will be promptly repaired.

### Utilities

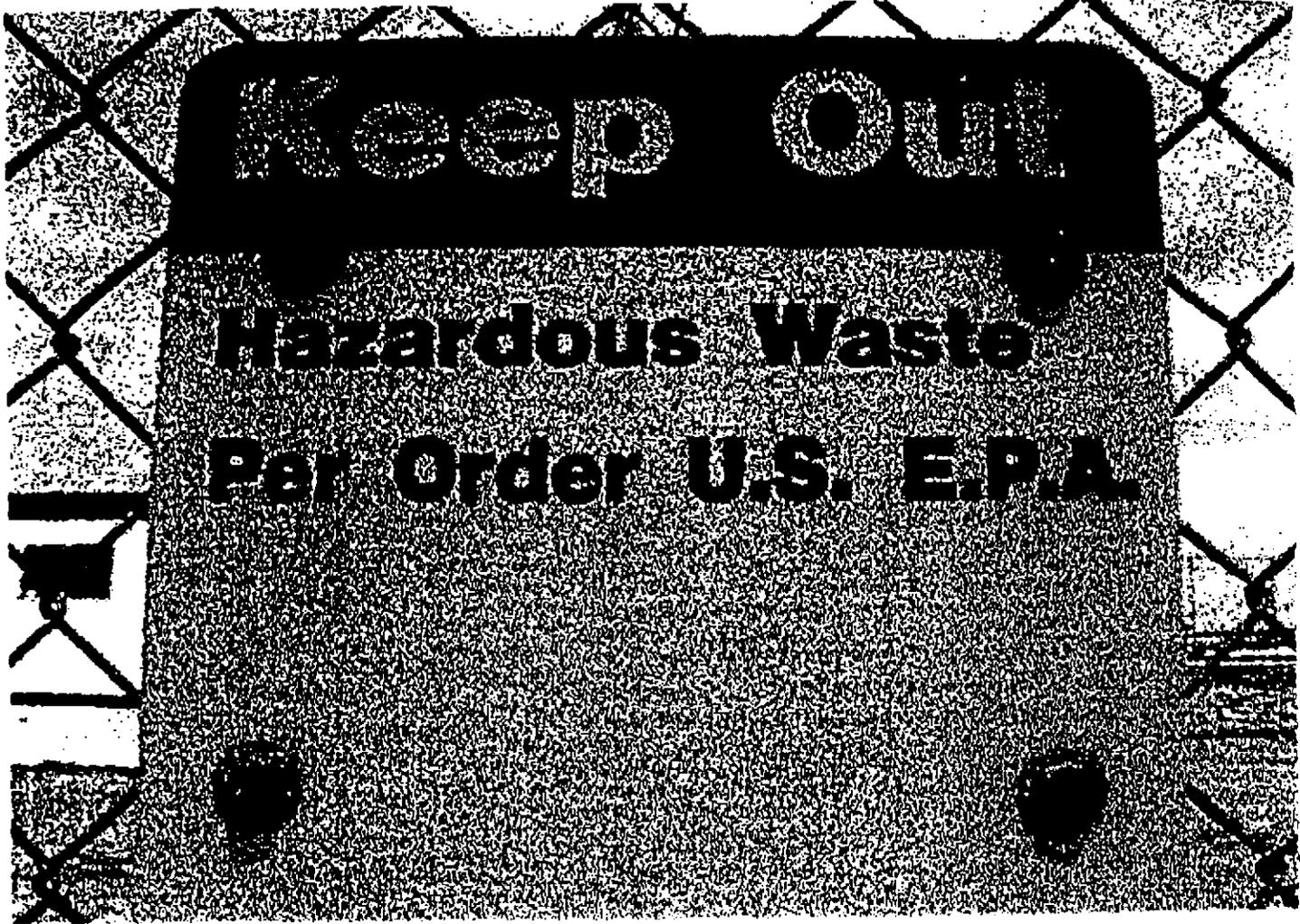
Electrical power sufficient to support interior and exterior security lighting and fire protection will be maintained.

One direct telephone line will be kept on premises for emergency use.

Domestic water, sewer, gas, and fuel oil will be disconnected and discontinued.

### Signage

The attached sign shall be posted and maintained at each entry point to the facility.



ATTACHMENT E

**AEROVOX INCORPORATED  
DEMOLITION AND RELOCATION TRUST AGREEMENT  
FOR AEROVOX MANUFACTURING FACILITY,  
NEW BEDFORD, MASSACHUSETTS**

Dated: September 27, 1999

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## DEMOLITION AND RELOCATION TRUST AGREEMENT

THE DEMOLITION AND RELOCATION TRUST AGREEMENT (this "Agreement") made as of this 27th day of September, 1999 between AEROVOX INCORPORATED, a Delaware corporation (the "Company"), and STATE STREET BANK AND TRUST COMPANY, as Trustee (the "Trustee"), a Massachusetts banking corporation having trust powers.

WHEREAS, the Company is the owner of the manufacturing facility and real property located at 740 Belleville Avenue in New Bedford, Massachusetts, including the approximately 9.2 acres bounded by Acushnet Rubber Co. to the north, Titleist and Foot Joy Worldwide to the south, the New Bedford Harbor to the east and Belleville Avenue to the west (the "Aerovox Facility"); for purposes of this Agreement, the Aerovox Facility shall not include the property that was capped pursuant to the 1982 Consent Order (as defined in the Order which is defined below);

WHEREAS, the Aerovox Facility is presently used to manufacture electrical capacitors;

WHEREAS, the Environmental Protection Agency (the "EPA") has concluded that hazardous substances are present in the Aerovox Facility;

WHEREAS, the EPA and the Company have entered into an Administrative Order on Consent signed on September 15, 1999 (the "Order") pursuant to which the Company is required, among other things, to relocate its manufacturing and business operations to another location and to cease such operations at the Aerovox Facility;

WHEREAS, the Order further requires the Company to demolish the Aerovox Facility, to cap certain areas of the Aerovox Facility and to properly dispose of contaminants from the Aerovox Facility (such activities are referred to collectively herein with the activities set forth in the previous Recital and the other Work (as defined in the Order) as the "Demolition");

WHEREAS, the EPA and the Company intend that the Company establish a trust fund (the "Trust") to accumulate and hold in trust funds sufficient to accomplish the Demolition pursuant to the terms of the Order and the Demolition and Cap Work Plan for the Aerovox Facility (as described in the Order); and

WHEREAS, State Street Bank and Trust Company is willing to serve as Trustee under the Trust on the terms and conditions herein set forth.

NOW THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

the Trustee hereby agrees to accept, from and after the Order Effective Date (as defined below), contributions to the Trust delivered to it from time to time by or on behalf of the Company;

TO HAVE AND TO HOLD such assets; and

TO INVEST AND REINVEST the same as provided herein;

IN TRUST NEVERTHELESS, for the uses and purposes and upon the terms and conditions, as hereinafter set forth; and

TO PAY OR DISTRIBUTE from the Trust as provided herein. The parties further agree as follows:

## I. DEFINITIONS

1.01 Definitions. As used in this Agreement, the following terms shall have the meanings set forth below. Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Order.

(1) "Applicable Law" shall mean all applicable laws, statutes, treaties, rules, codes, ordinances, regulations, certificates, orders, interpretations, licenses and permits of any Governmental Authority and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other judicial or quasi-judicial tribunal of competent jurisdiction (including those pertaining to health, safety, the environment or otherwise).

(2) "Authorized Representative" shall mean the person(s) designated by the Company to serve as its authorized representative(s) pursuant to Section 2.05 hereof.

(3) "Business Day" shall mean a day that is not a Saturday, Sunday or legal holiday in the Commonwealth of Massachusetts.

(4) "Code" shall have the meaning set forth in Section 6.06 hereof.

(5) "Contribution" shall mean any cash given by or on behalf of the Company to the Trustee for deposit in the Fund as provided in this Agreement.

(6) "Demolition" shall have the meaning set forth in the Recitals.

(7) "Demolition Costs" shall mean all costs and expenses relating or allocable to, or incurred in connection with, the Demolition.

(8) "EPA Requisition" shall mean a document properly completed and executed by an authorized representative of the EPA and substantially in the form of Exhibit 4.06 hereto, as it may from time to time be amended.

(9) "Fund" shall mean the fund established under Section 2.02(b) hereof for the Aerovox Facility to be titled the "Aerovox Facility Fund."

(10) "Fund Activity Report" shall have the meaning set forth in Section 6.05.

(11) "Governmental Authority" shall mean any federal, state, county, municipal, foreign, international, regional or other governmental authority, agency, board, body, instrumentality or court, including, without limitation, the EPA.

(12) "Net Profits" shall mean the consolidated net income after tax of the Company as reported in the audited annual financial statements of the Company, calculated in accordance with generally accepted accounting principles.

(13) "Order" shall have the meaning set forth in the Recitals. A copy of the Order is attached hereto as Exhibit 1.01-A.

(14) "Order Effective Date" shall mean the effective date of the Order as set forth in Section XXXI of the Order.

(15) "Permitted Investments" shall mean those investments permitted to be made by the Company pursuant to Section 3.03 and as set forth in Exhibit 3.03.

(16) "Requisition" shall mean a document properly completed and executed by an Authorized Representative and substantially in the form of Exhibit 1.01-B hereto as it may from time to time be amended.

(17) "Trust" shall have the meaning set forth in the Recitals hereof.

(18) "Trustee" shall have the meaning set forth in the Recitals and shall include any successor thereto appointed pursuant to Section 6.01 hereof.

## II. TRUST PURPOSE, NAME AND FUND

2.01 Trust Purpose. The exclusive purposes of this Trust are to accumulate and hold funds for the contemplated Demolition of the Aerovox Facility and to invest and disburse funds for that purpose.

2.02 Establishment of Trust. By execution of this Agreement, the Company hereby:

(a) establishes the Trust for the retention, investment and disbursement of the assets of the Fund, which shall be effective as of the date hereof;

(b) establishes a Fund for the Aerovox Facility; and

(c) appoints State Street Bank and Trust Company as Trustee under the Trust.

2.03 Acceptance of Appointment. Upon the terms and conditions herein set forth, State Street Bank and Trust Company accepts the appointment as Trustee of the Trust. The Trustee declares that it will hold all estate, right, title and interest it may acquire hereunder exclusively for the purposes set forth in this Article II. The Trustee shall receive any Contributions deposited with it by or on behalf of the Company in trust for the benefit of the Company or, pursuant to Section 4.06, of the EPA, as appropriate, and shall deposit such Contributions in the Fund. The Trustee shall hold, manage, invest and administer such Contributions, together with earnings and appreciation thereon, in accordance with this Agreement.

2.04 Name of Trust. The Contributions received by the Trustee from the Company together with the proceeds, reinvestments and appreciation thereof shall constitute this Trust which shall be called the "Aerovox Incorporated Demolition and Relocation Trust."

2.05 Duties of Authorized Representatives. The Company has empowered the Authorized Representatives and their delegates to act for the Company in all respects hereunder. The Authorized Representatives may act as a group or may designate one or more Authorized Representative(s) or delegate(s) to perform the duties described in the foregoing sentence. The Company shall provide the Trustee with a written statement setting forth the names and specimen signatures of the Authorized Representatives. The Authorized Representatives shall provide the Trustee with a written statement setting forth the names and specimen signatures of any delegate of the Authorized Representatives. Until otherwise notified in writing by the Company, the Trustee may rely upon any written notice, instruction, direction, certificate or other communication believed by it to be genuine and to be signed or certified by any one or more Authorized Representatives or their designated delegate(s), and the Trustee shall be under no duty to make any investigation or inquiry as to the truth or accuracy of any statement contained therein.

2.06 No Authority to Conduct Business. The purpose of this Trust is limited specifically to the matters set forth in Section 2.01 hereof, and there is no objective to carry on any business unrelated to the Trust purposes set forth in Section 2.01 hereof or to divide the gains therefrom.

2.07 No Transferability of Trust. The interest of the Company in the Trust is neither transferable, whether voluntarily or involuntarily, by the Company nor subject to the payment of the claims of creditors of the Company; provided, however, that any creditor of the Company as to which a Requisition has been properly completed and submitted to the Trustee may assert a

claim directly against the Trust in an amount not to exceed the amount specified in such Requisition.

### III. CONTRIBUTIONS AND INCOME

3.01 Annual Contributions. The Company shall make annual Contributions to the Fund in immediately available funds in accordance with the following schedule:

| <u>Deposit Date</u>   | <u>Deposit Amount</u>   |
|---|---|
| Within 60 days of the Order Effective Date  | \$750,000   |
| On or prior to December 31, 2000  | \$200,000   |
| On or prior to March 15, 2001   | 10% of Net Profits for fiscal year 2000 <u>minus</u> \$200,000                      |
| On or prior to December 31, 2001  | \$200,000   |
| On or prior to March 15, 2002   | 10% of Net Profits for fiscal year 2001 <u>minus</u> \$200,000                      |
| On or prior to December 31, 2002 and on or prior to each December 31st thereafter | \$250,000   |
| On or prior to March 15, 2003 and on or prior to each March 15th thereafter       | 12% of Net Profits for the immediately preceding fiscal year <u>minus</u> \$250,000 |

The Company shall make Contributions pursuant to this Section 3.01 and Section 3.02 until the earlier of such time that (i) the aggregate amount paid into the Fund from the Contributions and any investment earnings thereon equals \$8,300,000 or (ii) the Company receives and delivers to the Trustee a copy of a Notice of Completion (as defined in the Order) from the EPA and has fully paid its contractors for the Work (as defined in the Order) and delivers to the EPA and the Trustee lien waivers from each contractor or other evidence of payment reasonably acceptable to the EPA and the Trustee. After such time, the Company shall have no further obligations to make Contributions to the Fund pursuant to this Agreement.

3.02 Additional Contributions. (a) The Company shall also make Contributions to the Fund of any amounts it receives with respect to any refunds of amounts expended for environmental remediation measures for the Aerovox Facility, including but not limited to amounts relating to claims based on liability at the Aerovox Facility, indemnification monies and

insurance payments. The Company shall deposit with the Trustee any such Contributions within thirty (30) days of its receipt thereof.

(b) The Company otherwise may make Contributions to the Fund from time to time as the Company may determine.

3.03 Allocation of Net Income. The Trustee may pool the assets within the Fund for investment purposes in accordance with the written instructions of the Company, subject to the list of Permitted Investments contained in Exhibit 3.03 hereto. The Trustee may rely upon the written opinion of legal counsel of the Company, who may be an employee of the Company, or upon the advice or opinion of counsel to the Trustee (which may include in-house counsel) with respect to any question arising under this Section 3.03.

#### IV. DISTRIBUTIONS

4.01 Requisitions. (a) *General Requisition Process.* Disbursements from the Fund to cover Demolition Costs shall be made by a Requisition or an EPA Requisition, as appropriate. The Company shall promptly provide the EPA with a copy of any Requisition that the Company presents to the Trustee. The Trustee shall be entitled to rely on any such Requisition it receives and to make disbursements from the Fund in accordance therewith without any obligation on the part of the Trustee to conduct an independent investigation as to the validity of or justification for the Requisition, and regardless of whether the EPA or any other entity objects to or questions any such Requisition.

The EPA shall notify the Company within ten (10) business days of its receipt of a Requisition of any objection it may have thereto and the grounds for any such objection. The Company shall thereafter have ten (10) business days to provide the EPA with any justification it may have for the purpose and/or the amount of the Requisition. If the EPA then reasonably determines that the Company has not provided sufficient justification for the Requisition, the Company shall promptly and in any event within seven (7) business days refund to the Fund the disputed amount of the Requisition.

(b) *EPA Requisitions Pursuant to Section 4.06.* In the event of a failure by the Company to satisfy its obligations under Section 4.06, the EPA shall be entitled to submit an EPA Requisition to the Trustee pursuant to Section 4.06. Promptly after such submission, the EPA shall provide the Company with a copy of the EPA Requisition. The Trustee shall be entitled to rely on any such EPA Requisition it receives and to make disbursements from the Fund in accordance therewith without any obligation on the part of the Trustee to conduct an independent investigation as to the validity of or justification for the EPA Requisition.

4.02 Demolition Costs. The Trustee promptly shall make payments out of the Fund upon presentation to the Trustee of a Requisition signed by the Company or the EPA in accordance with Section 4.01(b) instructing the Trustee to disburse amounts in the Fund in a manner designated in such Requisition. If the assets of the Fund are insufficient to permit the payment in full of amounts to be paid pursuant to a Requisition, the Trustee shall have no liability with respect to such insufficiency and no obligation to use its own funds to pay the same.

4.03 Administrative Expenses of the Trust. In addition to the payment of Demolition Costs pursuant to Section 4.01 hereof, the Trustee shall from time to time make payments of all administrative expenses of the Trust (including taxes and reasonable out-of-pocket expenses in connection with the operation of the Trust pursuant to this Agreement) provided, however, that the Trust may not be used to pay any penalties for the failure to properly pay taxes in connection with the Trust. Any such penalties shall be paid by the Company.

The Company contemplates that the Trust will be treated as a "grantor trust" for income tax purposes; the parties agree that the Trust will be responsible for its share of any income tax payable by the Company with respect to the Trust's income and the Trustee will promptly reimburse the Company from the Fund for any such tax payable by the Company.

4.04 Trustee Fees and Expenses. The Trustee shall receive as exclusive compensation for its services and as reimbursements such amounts as from time to time may be due to the Trustee. The Company shall not use any monies in the Trust to pay such costs.

4.05 Prohibitions on Use of the Trust. The Trustee shall not make any payments from the Trust that are not expressly authorized by this Agreement. Without exception and without limitation, monies in the Trust shall not be disbursed to pay costs associated with any dispute resolution proceeding pursuant to the Order, any stipulated penalties imposed against the Company under the Order, the initial establishment of the Trust, attorneys fees, litigation costs or any other non-Work related costs of the Company.

4.06 Distributions Upon Default. If the Company does not begin or complete the Demolition in accordance with the schedules referenced in paragraphs 43 and 44 of the Order and such failure is not due to a "force majeure event" as that term is defined in the Order, the EPA shall be entitled to use the monies in the Trust to pay the costs and expenses of the Work or any other appropriate response action to be taken by the EPA at the Aerovox Facility, and the Trustee shall make disbursements from the Trust to cover such costs and expenses upon presentation to the Trustee of an EPA Requisition, signed solely by the EPA.

4.07 Liquidation of Investments. At the direction of the Company, the Trustee shall sell or liquidate such investments of the Fund as may be specified.

## V. TERMINATION

5.01 Termination of Fund and Trust in General. The Fund established hereunder shall terminate only upon the earlier of (i) the completion of the Demolition which shall be evidenced by the Company's receipt from the EPA of a Notice of Completion (as defined in the Order) pursuant to the Order or (ii) twenty-one (21) years after the death of the last survivor of each person who was an officer or director of the Company on the date of this Agreement and each of their descendants born on or prior to that date. The Company shall promptly notify the Trustee of any such Notice of Completion and shall provide the Trustee with a copy thereof. The Trust shall terminate upon the termination of the Fund. Prior to its termination the Trust shall be irrevocable.

5.02 Distribution of Trust and Fund Upon Termination. Upon termination of the Trust or of the Fund, the Trustee shall liquidate the assets of the Trust or the Fund, as the case may be, and distribute them (including accrued, accumulated and undistributed net income) in such manner as is consistent with any terms and conditions imposed by the EPA or any other Governmental Authority with jurisdiction over the Aerovox Facility or the Fund, less all reasonable final administrative costs and expenses (including accrued taxes), to the Company.

## VI. TRUSTEES

6.01 Designation and Qualification of Successor Trustee(s). At any time during the term of this Trust, the Company shall have the right to remove the Trustee (at the Company's sole discretion) acting hereunder and appoint another qualified entity as a successor Trustee upon thirty (30) days' notice in writing to the Trustee, or upon such shorter notice as may be acceptable to the Trustee. In the event that the bank or trust company serving as Trustee or successor Trustee shall:

- (a) become insolvent or admit in writing its insolvency;
- (b) be unable or admit in writing its inability to pay its debts as such debts mature;
- (c) make a general assignment for the benefit of creditors;
- (d) have an involuntary petition in bankruptcy filed against it;
- (e) commence a case under or otherwise seek to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law, statute, or proceeding; or
- (f) resign,

the Company shall appoint a successor Trustee as soon as practicable. In the event of any such removal or resignation, the Trustee or successor Trustee shall have the right to have its accounts finalized as provided in Section 6.05 hereof. Any successor to the Company, as provided herein, shall have the same right to remove and to appoint any Trustee or successor Trustee.

Any successor Trustee shall be a bank or trust company incorporated and doing business within the United States of America and having a combined capital and surplus of at least \$250,000,000, if there be such an institution willing, able and legally qualified to perform the duties of the Trustee hereunder upon reasonable or customary terms.

Any successor Trustee shall qualify by a duly acknowledged acceptance of this Trust, delivered to the Company. Upon acceptance of such appointment by the successor Trustee, the Trustee shall assign, transfer and pay over to such successor Trustee the assets then constituting the Trust. Any successor Trustee shall have all the rights, powers, duties and obligations herein granted to the original Trustee.

6.02 Exoneration from Bond. No bond or other security shall be exacted or required of any Trustee or successor Trustee appointed pursuant to this Agreement.

6.03 Resignation. The Trustee or any successor Trustee hereof may resign and be relieved as Trustee at any time without prior application to or approval by or order of any court by a duly acknowledged instrument, which shall be delivered to the Company by the Trustee no less than thirty (30) days prior to the effective date of the Trustee's resignation or upon such shorter notice as may be acceptable to the Company. If for any reason the Company cannot or does not appoint a successor trustee within such 30 day or agreed upon shorter notice period, then the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee and the cost of making such application shall be an administrative expense to be paid pursuant to Section 4.03.

6.04 Transactions with Third Parties. No person or organization dealing with the Trustee hereunder shall be required to inquire into or to investigate its authority for entering into any transaction or to see to the application of the proceeds of any such transaction.

6.05 Accounts and Reports.

(a) *General.* The Trustee shall keep accurate and detailed accounts of all investments, receipts and disbursements and other transactions hereunder with respect to the Fund in accordance with specifications of the Company, and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times during the Trustee's normal business hours by any person designated by the Company.

(b) *Semi-Annual and Monthly Reports.* The Trustee shall prepare a written report ("Fund Activity Report") semiannually as of January 1 and July 1 of each year, commencing July

1, 1999. After the Work commences under the Demolition and Cap Work Plan, the Trustee shall prepare Fund Activity Reports on a monthly basis as of the first day of each month. Each Fund Activity Report shall (i) be submitted to the Company and the EPA by the fifth (5th) business day following the period covered, (ii) set forth all investments, receipts and disbursements and other transactions effected by the Trustee during the reporting period covered, (iii) contain an exact description of all cash and securities contributed, purchased, sold or distributed and the cost or net proceeds of sale, and (iv) show all cash, securities and other investments held at the end of the reporting period and the cost and fair market value of each item thereof as carried on the books of the Trustee. The Fund Activity Reports shall cover transactions in the Fund for the immediately preceding six (6) months or month, as appropriate, shall be based on the accrual method of reporting net income and expenses and shall identify all deposits to and disbursements from the Fund.

(c) *No Liability of Trustee.* Upon the expiration of ninety (90) days from the date of filing such written reports with the Company, the Trustee shall be forever released and discharged from all liability or accountability to anyone with respect to all acts and transactions shown in such written reports, except such acts or transactions as to which the Company shall take exception by written notice to the Trustee within such ninety (90) day period; provided, however, that nothing contained in this Section 6.05 shall be deemed to relieve the Trustee of any liability imposed pursuant to Section 6.07 hereof. In the event that any exception taken by the Company cannot be amicably adjusted, the Company may, within one year of the date of such exception, file the written report in a court having jurisdiction and upon the audit thereof any and all such exceptions which may not have been amicably settled shall be heard and adjudicated. Any exception not so filed within one year shall be deemed waived and any liability of the Trustee with respect thereto shall be deemed released.

(d) *Preservation of Records.* All records and accounts maintained by the Trustee with respect to the Trust and the Fund shall be preserved for such period as the Company reasonably shall specify and in the absence of any instructions from the Company shall be preserved for a period of four (4) years. Upon the expiration of any such required retention period, the Trustee shall have the right to destroy such records and accounts after first notifying the Company in writing of its intention and transferring to the Company any records and accounts requested by the Company. Notwithstanding any provision hereof to the contrary, the Trustee may deliver all records and accounts with respect to the Trust, or copies thereof, to the Company following a termination of the Trust pursuant to Section 5.01 hereof, or the designation of a successor trustee pursuant to this Article VI, in full compliance with the requirements of this Section 6.05(d).

#### 6.06 Tax Returns and Other Reports.

(a) *General.* The Company, or the Trustee at the Company's direction, shall prepare and file all federal, state and local income or franchise tax returns or other reports (including estimated tax returns and information returns) as may be required from time to time

with respect to the Fund. The Trustee agrees to provide the Company in a timely manner with any information which is necessary to such filings which is not in the possession of the Company. The Trustee shall prepare and submit to the Company in a timely manner all information requested by the Company regarding the Fund required to be included in the Company's federal, state and local income tax returns or other reports (including estimated tax returns and information returns). The Trustee may employ independent certified public accountants or other tax counsel to prepare or review such returns and reports and the reasonable cost thereof shall be an administrative cost pursuant to Section 4.01. The Trustee agrees to sign any tax returns or other reports where required by law to do so or arising out of the Trustee's responsibilities hereunder, and to remit from the Trust appropriate payments or deposits of federal, state and local income or franchise taxes directly to the taxing agencies or authorized depositaries or to the Company, in the event that the Company has directly paid such taxes. Any interest or penalty charges assessed against the Trust pursuant to Chapters 67 or 68 of the Internal Revenue Code of 1986, as amended (the "Code") or pursuant to any similar state or local tax provisions, as a result of the Trustee's failure to comply with this Section 6.06 shall be paid by the Company pursuant to Section 4.02 unless caused by the Trustee's gross negligence or willful misconduct, in which case such interest or penalty charges shall be borne by the Trustee and not the Company or the Trust. The Trustee agrees to notify the Company in writing within 10 days of the commencement of the audit of the Fund's federal, state, or local tax returns of which it has received notice, and to participate with the Company on behalf of the Fund in such audit and related inquiries. The Trustee further agrees to provide the Company with any additional information in its possession regarding the Trust which reasonably may be requested by the Company to be furnished in an audit of the Company's federal, state, or local tax returns.

(b) *Certification of Tax Identification Number.* The Company agrees to provide the Trustee with a certified tax identification number by signing and returning a Form W-9 (or Form W-8, in case of non-U.S. persons) to the Trustee prior to the date on which any income earned on the investment of the Fund is credited to the Fund. The parties hereto understand that, in the event the Company's tax identification number is not certified to the Trustee, the Code may require withholding of a portion of any interest or other income earned on the investment of the Fund.

(c) *Tax Indemnification.* The Company agrees (i) to assume any and all obligations imposed now or hereafter by any applicable tax law with respect to any payment or distribution of the Fund or performance of other activities under this Agreement, (ii) to instruct the Trustee in writing with respect to the Trustee's responsibility for withholding taxes and other taxes, assessments or other governmental charges, and to instruct the Trustee with respect to any certifications and governmental reporting that may be required under any laws or regulations that may be applicable in connection with its acting as Trustee under this Agreement, and (iii) to indemnify and hold the Trustee harmless from any liability or obligation on account of taxes, assessments, additions for late payment, interest, penalties, expenses and other governmental charges that may be assessed or asserted against the Trustee in connection with or relating to any payment made or other activities performed under the terms of this Agreement, except for any

liability or obligation arising from the gross negligence or willful misconduct of the Trustee, including without limitation any liability for the withholding or deduction of (or the failure to withhold or deduct) the same, and any liability for failure to obtain proper certifications or to report properly to governmental authorities in connection with this Agreement, including costs and expenses (including reasonable legal fees and expenses), interest and penalties. The foregoing indemnification and agreement to hold harmless shall survive the termination of this Agreement.

#### 6.07 Liability.

(a) The Trustee shall not be liable for any loss or injury resulting from its actions or its performance of its duties hereunder or for its investment decisions except for any loss or injury resulting from the willful misconduct or gross negligence of the Trustee. In no event shall the Trustee be liable (i) for acting in accordance with instructions from the Company's Authorized Representative or pursuant to the advice or legal opinion of counsel to the Trustee or to the Company (which in either event may be in-house counsel), or (ii) for special or consequential damages or (iii) for the acts or omissions of The Depository Trust Company, The Federal Reserve Bank, Participants Trust Company or any clearing agency or depository regulated by the Securities and Exchange Commission.

(b) The Company shall indemnify the Trustee (and its directors, officers and employees) and hold it (and such directors, officers and employees) harmless against any and all claims, losses, liabilities, excise taxes, damages or reasonable expenses (including attorneys' fees and expenses) howsoever arising from or in connection with this Agreement or the performance of its duties hereunder, together with any income taxes imposed on the Trustee as a result of any indemnity paid by it hereunder; provided, however, that nothing contained herein shall require that the Company indemnify the Trustee for any liability resulting from the Trustee's willful misconduct or gross negligence. Nothing contained herein shall limit or in any way impair the right of the Trustee to indemnification under any other provision of this Agreement.

(c) The Company understands that when and if the Trustee delivers property against payment, it may deliver such property prior to receiving final payment and that, as a matter of bookkeeping convenience, the Trustee may credit the Fund with anticipated proceeds of sale prior to actual receipt of final payment. The risk of non-receipt of payment shall be the Company's and the Trustee shall have no liability therefor.

(d) All credits to the Fund of the proceeds of sales and redemptions of property and of anticipated income from property shall be conditional upon receipt by the Trustee of final payment therefor and may be reversed to the extent that final payment is not received. In the event that the Trustee in its discretion advances funds to the Trust to facilitate the settlement of any transaction or elects to permit the Trust to use funds credited to the Fund in anticipation of final payment, the Trust shall, immediately upon

demand, reimburse the Trustee for such amounts **plus** any interest thereon. To secure such obligations as well as any other obligations of the Trust hereunder, the Company hereby grants a continuing security interest in and pledges to the Trustee the property in the Fund.

(e) The Company and the EPA acknowledge and agree that the Trustee (i) shall not be responsible for any of the agreements referred to or described herein (including without limitation the Order) or for determining or compelling compliance therewith, and shall not otherwise be bound thereby, (ii) shall be obligated only for the performance of such duties as are expressly and specifically set forth in this Agreement on its part to be performed, each of which, unless specifically provided for otherwise by the terms of this Agreement, is ministerial (and shall not be construed to be fiduciary) in nature, and no implied duties or obligations of any kind shall be read into this Agreement against or on the part of the Trustee, (iii) shall not be obligated to take any legal or other action hereunder which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification, (iv) may rely on and shall be protected in acting or refraining from acting upon any written notice, instruction (including, without limitation, wire transfer instructions, whether incorporated herein or provided in a separate written instruction), instrument, statement, certificate, request or other document furnished to it hereunder by or on behalf of the Company or the EPA and believed by it to be genuine and to have been signed or presented by the proper person, and shall have no responsibility for determining the accuracy thereof, and (v) under no circumstances shall the Trustee be required to release or distribute funds or property (or to take similar action, such as making a draw on an underlying letter of credit) sooner than two (2) business days after the Trustee has received the requisite notices or paperwork in good form, or passage of the applicable claims period or release date, as the case may be.

(f) The Trustee shall not be liable to anyone for any action taken or omitted to be taken by it hereunder except in the case of the Trustee's gross negligence or willful misconduct in breach of the terms of this Agreement. In no event shall the Trustee be liable for indirect, punitive damages or any consequential loss (including but not limited to lost profits) whatsoever, even if the Trustee has been informed of the likelihood of such loss or damage and regardless of the form of action.

(g) The Trustee shall have no more or less responsibility or liability on account of any action or omission of any book-entry depository, securities intermediary or other sub-escrow agent employed by the Trustee than any such book-entry depository, securities intermediary or other sub-escrow agent has to the Trustee, except to the extent that such action or omission of any book-entry depository, securities intermediary or other sub-escrow agent was caused by the Trustee's own gross negligence, bad faith or willful misconduct in breach of this Agreement.

(h) The provisions of this Section 6.07 and the right of the Trustee to claim the benefit thereof shall survive any termination of this Agreement and any resignation or removal of the Trustee.

## VII. TRUSTEE'S GENERAL POWERS

The Trustee shall have, with respect to the Trust, the following powers, all of which are fiduciary powers to be exercised in a fiduciary capacity and in the best interests of this Trust and the purposes hereof, namely:

7.01 Registration of Securities. To hold any stocks, bonds, securities, and/or other property in the name of a nominee, in a street name, or by other title-holding device, without indication of trust and generally to exercise the powers of an owner, including without limitation the power to vote in accordance with instructions provided by the Company, with respect to any such property whether so held or held in its own name, as Trustee.

7.02 Retention and Removal of Professional and Employee Services. To employ attorneys, accountants, custodians, engineers, contractors, clerks and agents as may be reasonably necessary to carry out the purposes of this Trust. The reasonable cost of any such employment shall be an administrative cost pursuant to Section 4.03.

7.03 Delegation of Ministerial Powers. To delegate to other persons such ministerial powers and duties as the Trustee may deem to be advisable.

7.04 Deposit of Fund. To deposit funds in interest bearing account deposits maintained by or savings certificates issued by the Trustee in its separate corporate capacity or in any other banking institution affiliated with the Trustee.

7.05 Retention of Uninvested Cash. To hold uninvested cash awaiting investment and such additional cash balances as it shall deem reasonable or necessary, without incurring any liability for the payment of interest thereon.

7.06 Powers of Trustee to Continue Until Final Distribution. To exercise any of such powers after the date on which the principal and income of the Fund under the Trust shall have become distributable and until such time as the entire principal of, and income from, the Trust shall have been actually distributed by the Trustee. It is intended that distribution of the Fund under the Trust will occur as soon as possible after termination of the Trust or the Fund.

7.07 Discretion in Exercise of Powers. To do any and all other acts which the Trustee shall deem proper to effectuate the powers specifically conferred upon it by this Agreement; provided, however, that the Trustee may not do any act or participate in any transaction which would:

- (a) contravene any provision of this Agreement; or

(b) violate the terms and conditions of any instructions provided in a written statement of the Company.

## VIII. INVESTMENTS

8.01 General Investment Powers. The Company may direct the investment of all or part of the Trust. The Trustee shall be released from and relieved of all investment duties, responsibilities and liabilities customarily or statutorily incident to a trustee with respect to the assets in the Fund; not in limitation of the foregoing, the Trustee shall be under no obligation to invest any or all of the assets in the Fund unless the Trustee has received written investment direction from the Company. The Trustee shall have no liability for any investment losses, including any losses on any investment required to be liquidated prior to maturity in order to make a payment required hereunder. The Company shall certify in writing to the Trustee the identity of the person or persons authorized to give instructions or directions to the Trustee on behalf the Company and to provide specimen signatures of such persons. The Trustee may continue to rely upon and comply with all such certifications unless and until otherwise notified in writing by the Company.

8.02 Direction by the Company. The Company shall have authority to manage and to direct the acquisition and disposition of the assets of the Trust, or a portion thereof, as the case may be, and the Trustee shall exercise the powers set forth in Article VIII hereof only when, if, and in the manner directed by the Company in writing, and shall not be under any obligation to invest or otherwise manage any assets in the Fund. The Company shall have the power and authority, exercisable in its sole discretion at any time, and from time to time, to issue and place orders for the purchase or sale of portfolio securities directly with qualified brokers or dealers. The Trustee, upon proper notification from the Company, shall settle the transactions in accordance with the appropriate trading authorizations and in accordance with the terms hereof. The Company shall promptly provide to the Trustee written notification of each transaction and shall confirm in writing (or cause the broker or dealer to confirm in writing) the settlement of each such transaction to the Trustee. Such notification shall be proper authority for the Trustee to pay for portfolio securities purchased against receipt thereof and to deliver portfolio securities sold against payment therefor, as the case may be. All directions to the Trustee by the Company shall be in writing and shall be signed by a person who has been certified by the Company pursuant to Section 8.01 hereof as authorized to give instructions or directions to the Trustee.

If the Company at any time elects to place security transactions directly with a broker or a dealer, the Trustee shall not recognize such transaction unless and until it receives written instructions or confirmation of such fact from the Company. If the Company directs the Trustee to utilize the services of any person with regard to the assets under its management or control, such instructions shall be in writing and shall specifically set forth the actions to be taken by the Trustee as to such services. In the event that the Company places security transactions directly or directs the utilization of a service, the Company shall be solely responsible for the acts of such

persons. The sole duty of the Trustee as to such transactions shall be incident to its duties as custodian.

8.03 Trustee's Investment Management Services. Nothing in this Agreement shall restrict the Trustee, in its individual corporate capacity, from acting as an agent for, providing banking, investment advisory, investment management and other services to, and generally engaging in any kind of business with others (including without limiting the generality of the foregoing, issuers of securities, money market instruments or other property purchased) or on behalf of the Trust or the Fund to the same extent as if it were not the Trustee hereunder. Nothing in this Agreement shall in any way be deemed to restrict the right of the Trustee, in its individual capacity, to perform services for any other person or entity, and the performance of such services for others will not be deemed to violate or give rise to any duty or obligation of the Trustee to the Company or the Trust not specifically undertaken by the Trustee hereunder. Nothing in this Agreement shall limit or restrict the Trustee, in its individual capacity, or any of its officers, affiliates or employees, from buying, selling or trading in any securities for its or their own accounts. The Trustee, in its individual capacity, its officers, employees or affiliates and its other clients may at any time have, acquire, increase, decrease or dispose of positions in investments which are at the same time being acquired or disposed of for the account of the Trust or the Fund. The Trustee shall have no obligation to acquire for the Trust or the Fund a position in any property which it acquires in its individual capacity, or which its officers, employees or affiliates may acquire for its or their own accounts or for the account of a client.

## IX. MISCELLANEOUS

9.01 Headings and Interpretation. The section headings set forth in this Agreement are inserted for reference only and shall not affect in any way the meaning or interpretation of this Agreement. Any word contained in the text of this Agreement shall be read as the singular or plural and as the masculine, feminine, or neuter as may be applicable or permissible in the particular context. Unless otherwise specifically stated, the word "person" shall mean and include an individual, partnership, association, trust, company or corporation.

9.02 Severability. If any provision of this Agreement or its application to any person or entity or in any circumstances shall be invalid and unenforceable, the application of such provision to persons and in circumstances other than those as to which it is invalid or unenforceable and the other provisions of this Agreement, shall not be affected by such invalidity or unenforceability.

### 9.03 Delivery of Notices Under Agreement.

(a) *Notice Addresses.* Any notice, direction, instruction or other communication required by this Agreement to be given to the Company or the Trustee shall be deemed properly given (i) upon confirmation of facsimile, (ii) when sent by overnight delivery, (iii) when

delivered by personal service or (iv) when mailed by registered or certified mail return receipt requested and postage prepaid, as set forth below:

If to the Company, to it at:

Aerovox Incorporated  
740 Belleville Avenue  
New Bedford, Massachusetts 02745  
Attn: Martin A. Zelbow  
Fax: (508) 910-3179

If to the Trustee, to it at:

State Street Bank and Trust Company  
2 Avenue de Lafayette  
Boston, Massachusetts 02111-1724  
Attn: Alison Della Bella  
Re: Aerovox/EPA Trust  
Fax: (617) 662-1466

If to the EPA, to it at:

U.S. Environmental Protection Agency  
Region 1  
One Congress Street  
Suite 1100 (SES)  
Boston, Massachusetts 02114-2023  
Attn: Eve Stolov Vaudo  
Fax: (617) 918-1809

(b) *Wiring Instructions.* Any funds to be paid to the Trustee hereunder shall be sent by wire transfer pursuant to the following instructions (or by such method of payment and pursuant to such instruction as may have been given in advance and in writing to the Trustee, in accordance with Section 9.03(a) above:

Bank: State Street Bank and Trust Company  
ABA #: 0110 0002 8  
A/C #: 9903-990-1  
Ref: Aerovox/EPA Trust

The Company, the Trustee or the EPA may change the above address, wire transfer instructions or contact information by delivering notice thereof in writing to the other parties.

**9.04 Amendments, Modifications and Waivers.** The Trustee and the Company understand and agree that modifications, amendments or supplements may be required to this Agreement and to the exhibits and schedules hereto from time to time to effectuate the purposes of the Trust and to comply with Applicable Law, any Order, any changes in tax laws, regulations or rulings (whether published or private) of the Internal Revenue Service and any similar state taxing authority, and any other changes in the laws applicable to the Company or the Aerovox Facility. This Agreement and the exhibits and schedules hereto may be altered or amended to the extent necessary or advisable to effectuate such purposes or to comply with such Applicable Law, Order or changes. Any amendment, modification or supplement to this Agreement or any exhibit (excluding the Order) or schedule hereto pursuant to this paragraph must be in writing and signed by the Company and the Trustee.

This Agreement and the exhibits and schedules hereto otherwise may be amended, modified or supplemented for any purpose requested by the Company so long as such amendment, modification or supplement is approved by the EPA. Any amendment, modification or supplement to this Agreement or any exhibit or schedule hereto pursuant to this paragraph must be in writing and signed by the Company, the Trustee and the EPA.

The Trustee shall execute any such amendment, modification or supplement required to be executed by it and shall accept and be governed by any amended, modified or supplemented exhibit or schedule delivered to it by the Company and shall have no duty to inquire or make any independent investigation as to whether any such amendment, modification or supplement is consistent with this Section 9.04.

No course of conduct shall constitute a waiver of any of the terms and conditions of this Agreement unless such waiver is specified in writing, and then only to the extent so specified. A waiver of any of the terms and conditions of this Agreement on one occasion shall not constitute a waiver of the other terms of this Agreement, or of such terms and conditions on any other occasion.

Notwithstanding any provision in this Agreement to the contrary, no amendment or modification of this Agreement which increases the responsibilities of the Trustee or which adversely affects the protections afforded the Trustee hereunder shall be binding or enforceable against the Trustee unless such amendment or modification is in writing and signed by the Trustee. The Trustee, furthermore, shall not be required to execute any amendment or modification presented to it having the effects described in the preceding sentence.

**9.05 Successors and Assigns.** Subject to the provisions of Section 6.01, this Agreement shall be binding upon and inure to the benefit of the Company, the Trustee and their respective successors, assigns, personal representatives, executors and heirs.

**9.06 Third Party Beneficiary.** The parties agree that the EPA shall be a third party beneficiary of this Agreement.

9.07 Governing Law; Jurisdiction; Certain Waivers.

(a) This Agreement, the Trust and all questions pertaining to their validity, construction, and administration shall be interpreted, construed and governed in accordance with the internal substantive laws (except for the choice of law rules) of The Commonwealth of Massachusetts. All actions and proceedings brought by Trustee relating to or arising from, directly or indirectly, this Agreement may be litigated in courts located in The Commonwealth of Massachusetts and the Company hereby submit to the jurisdiction of such courts. The Company and the Trustee hereby waive the right to a trial by jury in any action or proceeding brought hereunder.

(b) To the extent that, in any jurisdiction, the Company has or hereafter may acquire, or is or hereafter may be entitled to claim, for itself or its assets, immunity (sovereign or otherwise) from suit, execution, attachment (before or after judgment) or any other legal process brought by or on behalf of the Trustee and arising with respect to this Trust or the Trustee's functions hereunder, the Company irrevocably agrees not to claim, and hereby waives, such immunity.

9.08 Accounting Year. The Trust shall operate on an accounting year which coincides with the calendar year, January 1 through December 31.

9.09 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

9.10 Demolition Liability. Nothing in this Agreement or in any Supplement is intended to impose any responsibility on the Trustee for overseeing or paying the cost of the Demolition other than for the disbursement of funds in accordance with Article IV hereof.

9.11 Dispute Resolution. It is understood and agreed that should any dispute arise with respect to the delivery, ownership, right of possession, and/or disposition of the Fund, or should any claim be made upon the Trustee or the Fund by a third party, the Trustee upon receipt of notice of such dispute or claim is authorized and shall be entitled (at its sole option and election) to retain in its possession without liability to anyone, all or any of said Fund until such dispute shall have been settled either by the mutual written agreement of the parties involved or by a final order, decree or judgment of a court in the United States of America, the time for perfection of an appeal of such order, decree or judgment having expired. The Trustee may, but shall be under no duty whatsoever to, institute or defend any legal proceeding which relates to the Fund.

9.12 Force Majeure. The Trustee shall not be responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations

superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters.

9.13 Reproduction of Documents. This Agreement and all documents relating thereto, including without limitation, (a) consents, waivers and modifications which may hereafter be executed and (b) certificates and other information previously or hereafter furnished, may be reproduced by any photographic, photostatic, microfilm, optical disk, micro-card, miniature photographic or other similar process. The parties agree that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding, whether or not the original is in existence and whether or not such reproduction was made by a party in the regular course of business, and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence

9.14 Effective Date. This Agreement shall be effective on and as of the Order Effective Date. The Company agrees to provide written notice to the Trustee setting forth the Order Effective Date immediately upon its receipt of notice from the EPA pursuant to Section XXXI of the Order as to such Order Effective Date.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Company and the Trustee have set their hands and seals to this Agreement as of the date first above written.

AEROVOX INCORPORATED

[Seal]

By: \_\_\_\_\_  
Martin A. Zelbow  
Chief Financial Officer

Attest: \_\_\_\_\_  
Name:  
Title:

STATE STREET BANK AND TRUST  
COMPANY, as Trustee

[Seal]

By: \_\_\_\_\_  
Alison Della Bella  
Assistant Vice President

Attest: \_\_\_\_\_  
Name:  
Title:





**ADMINISTRATIVE ORDER ON CONSENT**

Please see attached.

REQUISITION NO. \_\_\_\_\_

This is a Requisition pursuant to the Demolition and Relocation Trust Agreement (the "Trust Agreement") dated as of September 27, 1999 between Aerovox Incorporated, a Delaware corporation (the "Company"), and State Street Bank and Trust Company, a Massachusetts banking corporation (the "Trustee"), as trustee. Capitalized terms used herein and not otherwise defined shall have the same meanings set forth in the Trust Agreement.

The undersigned Authorized Representative of the Company, being duly authorized and empowered to execute and deliver this Requisition, hereby certifies that payment in the amount and to the payee listed below is for obligations duly incurred by the Company for the Demolition of the Aerovox Facility under Applicable Law and hereby directs the Trustee of the Aerovox Incorporated Demolition and Relocation Trust, pursuant to Article IV of the Trust Agreement to pay to \_\_\_\_\_ (the "Payee"), the amount set forth below, and certifies that the payments requested are proper expenditures of the Trust.

Accordingly, request is hereby made that the Trustee provide for the withdrawal of \$\_\_\_\_\_ from the Aerovox Facility Fund in order to permit payment of such sum to be made to the Payee. The Trustee is further requested to disburse such sum, once withdrawn, directly to such Payee in the following manner:

[CHECK/WIRE TRANSFER/ \_\_\_\_\_] on or before \_\_\_\_\_, 19\_\_.

[ADDRESS FOR MAILING OF CHECK: \_\_\_\_\_

Attn: \_\_\_\_\_]

[WIRE TRANSFER INSTRUCTIONS: \_\_\_\_\_]

WITNESS MY HAND THIS \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

AEROVOX INCORPORATED

By: \_\_\_\_\_

Name:  
Authorized Representative

**PERMITTED INVESTMENTS**

1. U.S. Treasury bills, notes and bonds
2. Obligations of U.S., federal, state and local governments; provided that any such local government obligations shall be "AAA" rated or higher rated or insured
3. Time and demand deposits of U.S. banks (including the Trustee) or credit unions
4. Money market funds (including those affiliated with the Trustee)
5. Single "A" rated or higher rated debt obligations of U.S. corporations

EPA REQUISITION NO. \_\_\_\_

This is an EPA Requisition pursuant to the Demolition and Relocation Trust Agreement (the "Trust Agreement") dated as of September 27, 1999 between Aerovox Incorporated, a Delaware corporation (the "Company"), and State Street Bank and Trust Company, a Massachusetts banking corporation (the "Trustee"), as trustee. Capitalized terms used herein and not otherwise defined shall have the same meanings set forth in the Trust Agreement.

The undersigned authorized representative of the EPA, being duly authorized and empowered to execute and deliver this EPA Requisition, hereby certifies as follows:

1. The Company has failed to satisfy its obligations pursuant to Section 43 and/or Section 44 of the Order.
2. Payment in the amount and to the payee listed below is for obligations duly incurred by the Company or the EPA for the Demolition of the Aerovox Facility or any other appropriate response action under Applicable Law; and
3. The payments requested are proper expenditures of the Trust.

The EPA hereby directs the Trustee of the Aerovox Incorporated Demolition and Relocation Trust, pursuant to Article IV of the Trust Agreement, to withdraw from the Aerovox Facility Fund and to pay to \_\_\_\_\_ (the "Payee") the amount of \$ \_\_\_\_\_. The Trustee is further requested to disburse such sum, once withdrawn, directly to such Payee in the following manner:

[CHECK/WIRE TRANSFER/ \_\_\_\_\_] on or before \_\_\_\_\_, 19\_\_.

[ADDRESS FOR MAILING OF CHECK: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_]

[WIRE TRANSFER INSTRUCTIONS: \_\_\_\_\_]  
 WITNESS MY HAND THIS \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

ENVIRONMENTAL PROTECTION AGENCY

By: \_\_\_\_\_  
 Name:  
 Authorized Representative