

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING

IN THE MATTER OF:
Aerovox, Inc.
New Bedford, Massachusetts

DOCKET NO.
CONSENT AGREEMENT
AND ORDER

PREAMBLE

The following CONSENT ORDER is being issued pursuant to the authority vested in the Department of Environmental Quality Engineering (DEQE) by G. L. c. 21, §§26-53 (the Clean Waters Act) and c. 21C (the Hazardous Waste Management Act).

DEQE is basing this Order on an inspection conducted by Versar, Inc., an authorized representative of the Environmental Protection Agency (EPA) and DEQE on June 18, 1981 of a factory owned and operated by Aerovox, Inc., in New Bedford, Massachusetts. In the course of its inspection, Versar took samples from the soil in a yard area outside the factory on Aerovox property. Versar subsequently reported the results of its analysis of the soil samples, which indicate the presence of PCBs in the soil of the yard.

Aerovox has agreed to consent to this Order and to implement its terms, with the understanding that by so doing, Aerovox does not waive, for the purposes of any other proceeding brought by DEQE or any other person, any defenses which it might have raised to this Order or which it might raise in any other proceeding. Neither Aerovox' consent to this Order, nor anything in this document shall constitute an admission by Aerovox with respect to any factual or legal matter except for the following:

1. Aerovox admits that it is a Massachusetts corporation organized in October, 1978, which owns property located at 760 Belleville Avenue, New Bedford, Massachusetts, and operates a factory thereon; and
2. For the purposes of this Order only, Aerovox admits that DEQE has jurisdiction to issue the Order under G. L. c. 21, and c. 21C.

Aerovox specifically denies that there is an violation of the Clean Waters Act and the Hazardous Waste Management Act arising from PCBs on Aerovox property. This Consent Order shall be issued without trial or final adjudication on the issue of endangerment or any other issue of fact or law, and Aerovox retains its right to contest allegations concerning endangerments in any other proceeding brought by DEQE or any other person.

It is further agreed between DEQE and Aerovox that implementation of all the measures called for in this Order, including implementation of an approved course of remedial action, shall constitute a full and final disposition of this proceeding and any proceeding which could have been based on the June 18, 1981, inspection. However, as provided in the Order, in the event of final disapproval of the recommended course of remedial action, DEQE retains the right to seek or require further action under relevant provisions of law, and Aerovox retains the right to raise any and all defenses, including the right to deny the jurisdiction admitted for the purposes of this Order, in any proceedings or actions brought by DEQE or any other persons.

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This Order shall apply only to that portion of Aerovox' property lying to the west of the seawall separating the factory grounds from the waters of the Acushnet River estuary (see Appendix A). Aerovox does not concede any obligations, waive any defenses, or make any admissions with respect to the Acushnet River, New Bedford Harbor, or the conduct of the prior owners of the Aerovox property. DEQE retains all rights to seek or require appropriate action in such locations, pursuant to DEQE's authority under any relevant provision of law. DEQE also retains all rights against third parties which may arise out of the facts on which this Order is based.

Aerovox and DEQE shall use their best efforts in good faith to coordinate the actions required to be taken under this Order with the actions to be taken under the Order issued by EPA to Aerovox. Should any conflict arise between EPA and DEQE regarding the approval of actions under this Order and the agreement and Order entered into between EPA and Aerovox, then the EPA determination regarding such approval shall prevail.

DEQE and Aerovox shall make all reasonable efforts to coordinate all actions taken under this Order with other government agencies. Such coordination shall include provisions of notice and duplicate samples, upon request.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED:

I. General Conditions

1. Designation of Coordinators

Within thirty (30) days of issuance of this Order, Aerovox shall designate a coordinator, who shall be responsible for

administration of studies called for by this Order, and shall submit the coordinator's name to DEQE. DEQE shall at the same time designate a coordinator for administration of its responsibilities and receipt of all written matter required by this Order.

2. Prior Approval; Emergency Action

Aerovox shall refrain from taking any action to abate the pollution which is the subject matter of this Order unless such action has been approved by DEQE, provided, however, first, that abatement efforts begun before the issuance of this Order may continue pending review and approval by DEQE, and second, that Aerovox may, if necessary, take reasonable measures to contain PCB materials if sudden or unexpected events have made prior consultation infeasible, under which circumstances Aerovox shall notify and consult with DEQE as soon as reasonably possible.

3. Independent Consultants

All proposals, studies, and reports required by this Order to be submitted by Aerovox shall be prepared by an independent consultant or consultants, retained by Aerovox for the purpose of this Order.

4. Advance Notice and Split Samples

Aerovox shall provide notice to DEQE of any excavating, drilling, or sampling to be conducted pursuant to this Order at least five (5) working days in advance of the date of such excavating, drilling, or sampling, and Aerovox shall provide to DEQE

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upon prior request and to the extent feasible, a split of any sample taken pursuant to this Order. Aerovox and DEQE and their respective consultants shall cooperate with each other, and each will provide to the other on request any relevant information (except for information exempt from disclosure) in its possession regarding the actions called for by this Order.

II. Sampling and Analysis

Upon issuance of this Order, Aerovox shall implement the approved sampling and analysis program attached to this Order as Appendix A. Aerovox shall complete the sampling and analysis program within ninety (90) days of receipt of the Order, according to the schedule included. At any time in the course of implementation, Aerovox or its consultants may confer with DEQE concerning the program. At the conclusion of program, Aerovox shall submit the results in writing to DEQE.

III. Evaluation of Alternative Responses

1. Within ninety (90) days after submission of the results of the sampling and analysis program, Aerovox shall submit to DEQE an evaluation of alternative responses which shall be based on the results of the sampling and analysis program. The evaluation shall assess the relative costs and benefits of alternative courses of remedial action, including, but not limited to, paving of the contaminated area, excavation and removal of contaminated material, and no action.

The evaluation shall include:

- i. an engineering analysis of each remedial course of action evaluated;
- ii. estimated costs and schedules for completion for each remedial course of action evaluated;
- iii. post-cleanup monitoring and maintenance measures for each course of action evaluated;
- iv. measures for provision of recorded notice to subsequent owners and operators of Aerovox' property and facilities of any measures taken for long term containment of PCBs on the property, and any related maintenance or monitoring required to assure continued implementation of such measures.

2. Recommendation

The evaluation shall include a recommendation from among the alternative courses of action evaluated.

3. Opportunity to Confer; Delays in Completion

At any time prior to approval of the evaluation, Aerovox and its consultants may confer with DEQE respecting the evaluation. Aerovox shall inform DEQE concerning any delays in completion of the study and inform DEQE of the causes of such delays.

IV. Approval and Implementation of Recommended Course of Action

If DEQE approves the course of action recommended in the evaluation, it shall so notify Aerovox in writing. Aerovox shall thereupon implement the recommended course of action within the approved schedule.

1. Opportunity to Confer; Modification

At any time in the course of implementation Aerovox or its consultants may confer with DEQE concerning the program.

Aerovox may request DEQE approval of a modification, based on new information or changed circumstances of the measures and procedures previously approved. Such a request shall be implemented upon its approval; DEQE shall provide approval or disapproval of requested modifications in writing for substantive modifications.

2. Progress Reports

While carrying out the approved course of action, Aerovox shall notify DEQE of any failure to meet any date in the approved schedule, and of any other significant delays. In the event that the approved course of action takes longer than six months to complete, Aerovox shall report on its progress at the end of six months, and quarterly thereafter.

The report shall include a statement of the causes of such delays, the date by which the delayed elements of the study will be completed, and the effect on Aerovox' ability to meet the remaining schedule for completion.

3. Procedure in the Event of Disapproval

In the event that DEQE does not approve the recommended course of action, or part thereof, as submitted by Aerovox, the disapproval shall be in writing, shall state reasons for the disapproval, and may include requests for amendments or revisions.

Within thirty (30) days after receipt of any notice of disapproval, Aerovox shall submit a revised recommendation

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Date: *May 27, 1982*

issued by:

Paul T. Oridern
Regional Environmental Engineer
For the Commissioner

Thomas C. McWhorter
Director of Water Pollution
Control

Date: *June 9, 1982*
Assented to:

[Signature]
President
Aerovox, Inc.