

fk



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
20 RIVERSIDE DRIVE, LAKEVILLE, MA 02347 508-946-2700

ARGEO PAUL CELLUCCI
Governor

BOB DURAND
Secretary

JANE SWEET
Lieutenant Governor

LAUREN A. LISS
Commissioner

COPY

February 3, 2000

Mr. Colburn T. Cherney
Ropes & Gray
One Franklin Square
1301 K Street, N.W.
Suite 800 East
Washington, D.C. 20005-3333

RE: NEW BEDFORD-BWSC
740 Belleville Avenue
New Bedford, Massachusetts
RTN 4-14033

ACO-SE-99-3P-004

Dear Mr. Cherney:

Enclosed is the fully executed Administrative Consent Order between the Department and Aerovox Incorporated which was signed and in effect on February 3, 2000.

Should you have any questions, you may contact the undersigned at (508) 946-2870.

Thank you for your cooperation in resolving this matter.

Very truly yours,

Jonathan E. Hobill
Regional Engineer for Waste Site Cleanup

JEH/re

Enclosure

CERTIFIED MAIL NO. Z 350 387 848
RETURN RECEIPT REQUESTED

cc: DEP-BOSTON
ATTN: Enforcement Office

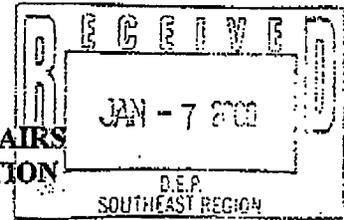
cc: DEP-SERO
ATTN: Mildred Garcia-Surette, Deputy Regional Director, BWSC
Kevin Kiernan, General Counsel
Theresa Barao, Public Affairs
Regional Enforcement Office (2 copies)

DEP-SERO
ATTN: Data Entry

The Honorable Frederick Kalisz, Mayor
City of New Bedford
City Hall, 133 William St.
New Bedford, MA 02740

Health Dept.
City Hall, 133 William St.
New Bedford, MA 02740

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION



IN THE MATTER OF:)
)
Aerovox Incorporated)
740 Belleville Avenue)
New Bedford, Massachusetts)
)
FEIN: 760255329)
)

RE: NEW BEDFORD--BWSC
740 Belleville Avenue
New Bedford, Massachusetts
RTN 4-14033
ADMINISTRATIVE CONSENT ORDER
ACO-SE-99-3P-004

I. THE PARTIES

1. The Massachusetts Department of Environmental Protection (the "Department") is a duly constituted agency of the Commonwealth of Massachusetts. Its principal office is located at One Winter Street, Boston, Massachusetts 02108, and it maintains a regional office at 20 Riverside Drive, Lakeville, Massachusetts. The Department's Bureau of Waste Site Cleanup implements and enforces the Massachusetts Oil and Hazardous Material Release Prevention and Response Act ("M.G.L. c. 21E") and regulations promulgated thereunder at 310 CMR 40.0000 et seq. (the "Massachusetts Contingency Plan" or the "MCP"). The Department has the authority to issue this Consent Order pursuant to M.G.L. c. 21E, Section 9.
2. Aerovox Incorporated (the "Respondent") is a Delaware corporation that owns property, including a manufacturing building and real property located at 740 Belleville Avenue, New Bedford, Massachusetts (the "Site").

II. STATEMENT OF PURPOSE

1. This Administrative Consent Order (the "Consent Order") is voluntarily entered into by and between the Respondent and the Department because both parties have agreed that it is in the public interest, and in their own interests, to proceed promptly with the actions called for herein. The Respondent and the Department have agreed in principle that it would be more productive to use their collective resources to undertake, in a timely manner, the actions provided for below, rather than to expend considerable resources and time in litigating the allegations set forth herein.
2. The Respondent enters into this Consent Order without making any admissions of fact or law, or waiving any defenses which it might have raised or will raise hereafter in any proceeding other than one to enforce the terms of this Consent Order. Nothing in this Consent Order shall constitute or be construed as: (1) an admission of liability by the Respondent; (2) an admission by the Respondent that it violated any law, rule, regulation or policy; or (3) a waiver or release

of any claims or defenses Respondent might raise in any proceeding, other than a proceeding to enforce this Consent Order. In any proceeding to enforce this Consent Order, the Respondent may not challenge the authority or the jurisdiction of the Department to enter into and enforce this Consent Order, or the legal enforceability of this Consent Order.

3. This Consent Order is intended to complement a Consent Order entered into between the Department and Respondent effective June 3, 1982 ("the 1982 Consent Order").

III. PARTIES BOUND

1. The Respondent agrees to the issuance of this Consent Order. This Consent Order shall apply to and be binding upon the Respondent, its agents, successors, and assigns. The Respondent shall provide a copy of the Consent Order to any subsequent owner, successor and assign before rights are transferred.

IV. DEFINITIONS

1. Unless otherwise indicated, the terms used herein shall have the meaning given to them by the "Massachusetts Oil and Hazardous Material Release Prevention and Response Act", M.G.L. c. 21E and/or the Massachusetts Contingency Plan (the "MCP"), 310 CMR 40.0000 et seq.
2. "Consent Order" means this Consent Order.
3. "EPA Administrative Order On Consent" means the Administrative Order on Consent entered into on September 15, 1999, between the United States Environmental Protection Agency ("EPA") and Respondent 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 Amendment of 1984 ("HSWA"), 42 U.S.C. Section 6973.
4. "Historical Contamination" means oil and/or hazardous materials as defined by M.G.L. c. 21E and the MCP, which were known by the Department to be released at or from the Site prior to the effective date of this Consent Order.
5. "1982 Waste Unit" shall mean the soil and the groundwater beneath the area capped pursuant to the 1982 Consent Order.
6. "1999 Waste Unit" shall mean the demolition material subject to this Consent Order, the soil and the groundwater beneath the area capped pursuant to this Order.
7. "PCBs" shall mean polychlorinated biphenyls, as defined under the MCP and TSCA, 40 C.F.R. section 761.3.
8. "Plant" shall mean Respondent's manufacturing building located at 740 Belleville Avenue in

New Bedford, Massachusetts.

9. "Site" shall mean (1) the real property and the buildings located at 740 Belleville Avenue in New Bedford, Massachusetts, and the release of oil and/or hazardous materials ("OHM") therefrom, (2) those portions of the 740 Belleville Road, New Bedford, Massachusetts property where OHM have been released, deposited, stored, disposed of or placed, or otherwise have come to be located, and (3) any other place or area where OHM have been released, deposited, stored, disposed of or placed, or otherwise have come to be located relative to operations at the 740 Belleville Avenue, New Bedford, Massachusetts property. The Site does not include the 1982 Waste Unit except for any areas where the cap may be disturbed pursuant to this order.

V. CONCLUSIONS OF LAW AND STATEMENT OF FACTS

1. On June 18, 1981, Versar, Inc., an authorized representative of the EPA and the Department, inspected the Site. In the course of its inspection, Versar took samples from the soil in a yard outside the Plant. Versar subsequently reported the results of its analysis of the soil samples, which indicated the presence of PCBs in the soil.
2. On May 17, 1982, Respondent consented to an Order by EPA to address the potential existence of an imminent and substantial endangerment at Respondent's property lying to the west of the Seawall separating the Plant and the Acushnet River Estuary pursuant to Section 106 of the Comprehensive Environmental Response and Liability Act (CERCLA), 42 U.S.C. Section 9606.
3. On June 3, 1982, Respondent entered into the 1982 Consent Order with the Department.
4. 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. Sections 2601 et seq. During the inspection, EPA representatives observed heavy oil staining in several areas, including the impregnation room and a nearby capacitor degreasing room. As part of the inspection, Respondent made its analytical data available for EPA's review. From the review, EPA learned that there were concentrations of PCBs in several waste streams, including a floor wash outside the impregnation tank room, at concentrations of 170 parts per million ("ppm").
5. 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.
6. 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 for 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.

7. 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 Category standard established by the Department pursuant to the MCP.
8. Respondent completed an Engineering Evaluation/Cost Analysis ("EE/CA") pursuant to the National Contingency Plan ("NCP"), 40 C.F.R. Section 300.415. The EE/CA was prepared because EPA and Respondent expected at the time to conduct the response action as a non-time critical removal action under CERCLA.
9. 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.
10. 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.
11. EPA and Respondent determined that the most appropriate approach to ensuring the performance of work to address the PCB and VOC contamination is through the issuance of an Order under Section 7003 of RCRA.
12. On September 15, 1999, EPA and Respondent entered into the EPA Administrative Order on Consent.
13. Pursuant to 310 CMR 40.0110, HSWA corrective actions undertaken pursuant to RCRA are considered adequately regulated.

VI. DISPOSITION AND ORDER

1. Based upon the foregoing statements of facts, and pursuant to its authority under M.G.L. c. 21E, the Department hereby issues this Consent Order, and the Respondent hereby agrees to abide by the terms of this Consent Order and agrees to perform the actions called for herein.
2. Respondent enters into this Consent Order without making any admissions of fact or law, or waiving any defenses that it might have or raise in any proceeding other than one to enforce the terms of this Consent Order. Nothing in this Consent Order shall constitute or be construed as: (1) an admission of liability by Respondent; (2) an admission by the Respondent that it violated any law, rule, regulation or policy; or (3) a waiver of any defenses Respondent might raise in any proceeding, other than a proceeding to enforce this Consent Order. In a proceeding to

11/30/99

enforce this Consent Order, the Respondent may not challenge the authority or the jurisdiction of the Department to enter into and enforce this Consent Order, or the legal enforceability of this Consent Order.

3. Nothing in this Consent Order shall prevent the Department from requiring that the Respondent take additional actions or pay additional fees beyond those required in this Consent Order in order to comply with all statutes and regulations enforced by the Department including, without limitation, M.G.L. c. 21E and the MCP.
4. The Respondent shall continue to conduct the post-closure monitoring program originally required by the 1982 Consent Order at the Site consisting of twice-yearly monitoring of groundwater levels and the underlying aquifer, as well as periodic inspection of the surface cap to determine whether repairs are needed. This post closure monitoring shall continue until July of 2012.
5. A copy of the following documents shall be submitted to the Department for review and comment to the Regional Engineer, BWSC, Department of Environmental Protection, Southeast Region, 20 Riverside Drive, Lakeville, Massachusetts 02347.
6. Twice-yearly post closure monitoring reports shall be submitted and postmarked no later than two weeks after the Respondent has conducted the field inspection and water level readings.
7. The Demolition and Cap Work Plan, as defined by the EPA Administrative Order on Consent, shall be submitted and postmarked no later than December 31, 2009.
8. The Maintenance Work Plan, as defined by the EPA Administrative Order on Consent, shall be submitted and postmarked no later than December 31, 2009.
9. The Respondent shall notify the Department, within the applicable time frame, after obtaining knowledge of any 2 or 72 hour notification condition, pursuant to 310 CMR 40.0311, 40.0312, 40.0313 and 40.0314, or applicable provisions at the time of obtaining knowledge which arise from Historical Contamination at the Site. After notification, the Respondent shall conduct an Immediate Response Action (IRA) pursuant to 310 CMR 40.0410 and file an IRA completion statement. A Response Action Outcome shall not be required for notifications arising from Historical Contamination.
10. The Respondent shall notify the Department of any 2 or 72 hour, or 120 day notification conditions, within the appropriate timeframes, after obtaining knowledge of releases occurring after the effective date of this Consent Order where the respondent is a person required to notify the Department pursuant to 310 CMR 40.0331. Respondent shall comply with the applicable requirements of M.G.L. c. 21E and 310 CMR 40.0000 for these new releases.
11. Response actions conducted at the Site pursuant to and in compliance with the EPA Administrative Order on Consent and 310 CMR 40.0110 are deemed to be Adequately Regulated pursuant to 310 CMR 40.0110.

12. All documents submitted to the Department pursuant to this Consent Order shall prominently bear the RTN 4-14033.

VII. STIPULATED PENALTIES

1. If the Respondent violates any requirements or time deadline established pursuant to this Consent Order, the Respondent agrees to pay to the Department the following amount as stipulated penalties:
2. For violation of any time deadline or requirement set forth in this Consent Order, the amount of \$ 100.00 per day for each day such violation occurs.
3. The penalties set forth in this SECTION shall accrue from the day the violation commenced and shall continue to accrue until the violation ceases. Any stipulated penalties accruing pursuant to this SECTION shall be due and payable within thirty (30) days of receipt of a written assessment by the Department.
4. Payment of such penalty shall be made by certified check, cashier's check or money order payable to the Department of Environmental Protection, Commonwealth Master Lockbox, P.O. Box 3584, Boston, MA 02241-3584. The Department's file number (ACOP-SE-99-3P-004) stated in the claim letter shall be printed on the face of the check along with Respondent's FEIN (Federal Employer Identification Number). A copy of such check shall be submitted to the Department personnel designated herein to receive submittals within five (5) days of payment.
5. Assessment of stipulated penalties in this SECTION shall not preclude the Department from pursuing other remedies which may be available because of the Respondent's failure to comply with the requirements of this Consent Order.

VIII. WAIVER OF HEARING

1. The Respondent understands and hereby waives all rights to an administrative hearing before the Department on, and judicial review by the courts of, the issuance or terms of this Consent Order and assessment of an administrative penalty. The Respondent also hereby waives notice of its right to administrative process or judicial review. This waiver does not extend to any other Order issued by the Department or any other claim, action, suit, cause of action or demand which the Department, the Respondent, or any other person has initiated or hereafter may initiate with respect to the subject matter covered by this Consent Order.

IX. EFFECTIVE DATE

1. This Consent Order shall become effective and shall be deemed to be consented to as of the date 11/30/99

of the Department's signature set forth below.

X. RESERVATION OF RIGHTS

1. The Department does not waive any of its rights by failing to object to any action or non-action of the Respondent. A waiver by the Department of any provision of the Consent Order is not a waiver of any of the other provisions. A waiver of any provision of the Consent Order is not a waiver of the same provision at any time in the future. The consent or approval by the Department to any action by the Respondents is not consent or approval by the Department to the same or similar actions in the future.
2. If the Respondent at any time fails to satisfactorily conduct activities required under this Consent Order, as determined by the Department, the Department may, in its discretion and in addition to any other remedies which are available, undertake such activities and seek to recover costs, interest and damages pursuant to applicable law.
3. Nothing in this Consent Order shall preclude the Department from enforcing the provisions of this Consent Order in any administrative or judicial proceeding.
4. The Department has determined that the actions to be performed by Respondent under the terms of this Consent Order adequately address existing soil and groundwater conditions, and the presence of PCBs, in the 1999 and 1982 Waste Units. However, notwithstanding any other provision of this Consent Order the Department reserves, and this Consent Order is without prejudice to, the right to institute any administrative, legal or equitable proceedings, pursuant to M.G.L. c. 21E or the MCP, or any other applicable law to compel the Respondents to: (1) perform additional response actions at the Site; or (2) reimburse the Department for additional response costs at the Site in the event that:
 - (a) conditions previously unknown or undetected by the Department, including but not limited to, groundwater contamination, are discovered at the Site, or
 - (b) Information previously unknown to the Department is received by the Department, regarding the environmental conditions at the Site,

and the Department determines, based upon such previously unknown conditions or new information, together with any other relevant information, that the implementation of the requirements of this Consent Order no longer maintain a Condition of No Significant Risk, as that term is defined by the MCP.

XI. MODIFICATION

1. This Consent Order may be modified only upon the written agreement of both the Department and the Respondent.

11/30/99

XII. SEVERABILITY

1. If any term or provision of this Consent Order or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Consent Order, or the application thereof, shall be valid and enforceable to the fullest extent permitted by law.
2. Each undersigned representative hereby certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the party on whose behalf such representative is signing.

SO ORDERED:

DEPARTMENT OF ENVIRONMENTAL PROTECTION:

By:

Paul A. Taurasi
 Paul A. Taurasi, P.E, Regional Director

Date:

2/3/00

AEROVOX INCORPORATED

By:

Robert D. Elliott
 Robert D. Elliott

Date: 1/3/00

12/30/99