

ANTHONY D. CORTESE, Sc. D.
Commissioner

The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

Department of Environmental Quality Engineering

One *Winter Street, Boston* 02108

OFFICE OF GENERAL COUNSEL, 9TH FLOOR, TELEPHONE 292-5568

56745

October 8, 1981

Paul B. Galvani, Esq.
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110

U.S. v. AVX Original
Litigation Document

Dear Mr. Galvani:

The Department of Environmental Quality Engineering has reviewed your proposal of September 25, 1981 and finds it to be unacceptable.

The conditions that exist on Aerovox Incorporated's property in New Bedford are violations of state law. There are sediments containing PCBs in the two troughs which discharge into waters of the Commonwealth. There are also high levels of PCBs in the soils. In the opinion of the Department some of the PCBs in the soil can reasonably be expected to reach the waters of the Commonwealth. These conditions constitute violations of G. L. c. 21, §43, c. 21C, and constitute a nuisance. If there is a landfill on the site, as you state, there is a violation of G. L. c. 111, §150A. In addition, the actions of Aerovox's corporate predecessor, for which Aerovox may be liable, have resulted in the contamination of the Acushnet River and New Bedford Harbor.

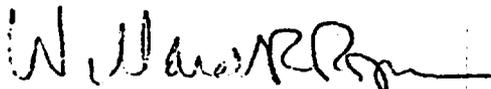
Your letter is unacceptable for three reasons.

- 1) It absolves Aerovox of any further responsibility to clean its site or to participate in the study and cleanup of the river and harbor. The Commonwealth can not waive its obligation to require further actions if they are necessary to protect public health and the environment or remedy past damage for which you may be responsible.
- 2) The proposal is not sufficiently specific. There must be an adequate engineering basis for the actions. For example, what is the exact nature and extent of the PCB contamination? How did the PCB sediments get into the troughs? Will cleaning the troughs and capping the area solve the problem?
- 3) The proposal could not be sufficiently enforceable. Aerovox will not be taking the action on a "voluntary basis" but because it is required by law. In cases such as this the Department insists upon a consent order at a minimum to insure enforceability. This does not require any admissions by Aerovox.

It is unfortunate that you have taken such a hard line. The Department was willing to negotiate a consent order which included no determination or admission of wrongdoing by Aerovox and which dealt exclusively with the conditions on the site. It appears that you are unwilling to resolve this matter in a way that the Department could accept, therefore we will start drafting an order or a referral to the Attorney General for litigation which will deal with the entire problem.

If your client wants to resolve the environmental problems on the site without a legal confrontation we are still willing to negotiate a consent order. If so, please inform me in writing not later than October 19, 1981.

Sincerely,



Willard R. Pope
General Counsel

cc: Paul Anderson
Charles Bering