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U.S. v. AVX Original Litigation Document

4/20/82

Marshall D. Butler, President  
 AVX Corporation  
 60 Cuttermill Road  
 Great Neck, NY 11020

Dear Mr. Butler:

The U.S. Environmental Protection Agency, Region I ("EPA"), and the Massachusetts Department of Environmental Quality Engineering ("DEQE") have received and reviewed your letter of March 10, 1982, which was sent in response to EPA's letter of February 24, 1982. Our review leads us to two conclusions.

First, we have no reason to dispute your assertion that AVX possesses no records of Aerovox Corporation's disposal of PCBs in New Bedford Harbor. However, our second conclusion is that we are not persuaded that the sale of the New Bedford facility terminated Aerovox Corporation's liability for the consequences of past PCB disposal at that facility. Furthermore, it is clear that all of Aerovox Corporation's liabilities were assumed by AVX when the two corporations merged. Assumption of liabilities by the corporation surviving a merger is required by Section 80(b) of Chapter 156B of the General Laws of Massachusetts. Moreover, Article IX of the Articles of Merger between Aerovox Corporation and AVX (filed with the Secretary of the Commonwealth on June 4, 1973) provides that "AVX hereby agrees that it may be sued in the Commonwealth of Massachusetts for any prior obligation of Aerovox...." We conclude that we must continue to regard AVX as a party responsible for PCBs disposed in New Bedford Harbor.

We therefore renew our invitation to AVX to meet with us to discuss the problems in New Bedford and the immediate measures needed. Please let us know within fifteen (15) days of receipt of this letter whether you would now be willing to meet.

All written responses to this letter should be addressed to:

CONCURRENCES							
SYMBOL	IAE	IAE	IAE				
SURNAME	IAE Silverman	IAE Kelly					
DATE	4/13/82	4-13-82	4/14/82				

Gerald M. Levy, Acting Chief  
Enforcement Branch, Room 2103  
U.S. Environmental Protection Agency  
John F. Kennedy Federal Building  
Boston, Massachusetts 02203

Thomas McLoughlin, Deputy Commissioner  
Massachusetts Department of  
Environmental Quality Engineering  
1 Winter Street  
Boston, Massachusetts 02110

If you have any questions, please get in touch with Charles  
Bering, an attorney in our Enforcement Branch, at (617) 223-5470.

Sincerely yours,

Leslie Carothers  
Deputy Regional Administrator

Enclosures

cc: Thomas McLoughlin, MA DEQE  
Clifford Tuttle, Aerovox, Inc.