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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

J. F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203

February 24, 1982

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

Dear Mr. Butler:

Section 3007 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6927, provides that the U.S. Environmental Protection Agency (EPA), or a state having a hazardous waste program authorized by EPA, may request, for the purposes of enforcing any provision of RCRA, that "any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall... furnish information relating to such wastes..." to EPA or the requesting state agency. The Massachusetts Department of Environmental Quality Engineering (DEQE) administers an authorized hazardous waste program. EPA and DEQE are jointly investigating the presence and effect of polychlorinated biphenyls (PCBs) in New Bedford Harbor and elsewhere in New Bedford, Massachusetts, and are developing a remedial program to deal with those PCB hazards. It is EPA and DEQE's understanding that in 1973, the Aerovox Corporation of New Bedford merged with AVX Corporation, and that the Aerovox Corporation had, until that year, been one of the principal users of PCBs in the New Bedford area.

The PCBs and PCB-containing wastes which were handled and disposed of at the Aerovox site are hazardous wastes within the meaning of section 1004(5) of RCRA, 42 U.S.C. §6903(5). Section 7003 of RCRA, 42 U.S.C. §6973, provides EPA with the authority to issue administrative orders or to bring suit against persons contributing to disposal of hazardous wastes when such disposal may present an imminent and substantial endangerment to public health or the environment. Section 7003 applies to past as well as present disposal, when the past disposal may present an endangerment to public health or the environment.

EPA also has authority under section 504 of the Clean Water Act, 33 U.S.C. §1364, to bring suit when "a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons...." EPA may seek information needed to implement section 504, pursuant to section 308 of the Clean Water Act, 33 U.S.C. §1318.

Existing evidence shows that the quantities of PCBs disposed of at and around the Aerovox site were substantial and that they are a continuing source of environmental contamination. Summaries of the results of samples taken in 1981 at the Aerovox site, above and below the high tide line, are enclosed with this letter. Concentrations near the shore are as high as 19% PCBs, showing that there is a substantial accumulation of PCBs in this location, particularly below the high tide line. New Bedford Harbor has been closed to fishing because of PCB contamination since 1975, and it appears that PCBs in the banks and sediments of the harbor may be continuing to contaminate the harbor's waste and biota. Although discussions are taking place with the present owners of the Aerovox site, EPA has determined that AVX, as a previous owner, is potentially responsible for the PCBs which were handled or disposed of at the Aerovox facility.

In light of the above facts, we hereby request, pursuant to sections 3007 of RCRA, 42 U.S.C. §6927, and 308 of the Clean Water Act, 33 U.S.C. §1318, that AVX furnish in writing to EPA and DEQE within thirty days of receipt of this letter, any available information pertaining to handling and disposal of PCBs and PCB-containing material in the New Bedford area by Aerovox Corporation or AVX. In particular, we wish to know the nature and quantities of PCBs purchased and handled, and the nature and quantities of PCBs disposed of annually, the methods of disposal, including by leakage, spillage, discharge or other means of release, and the location of such disposal.

Failure to provide information requested under section 3007 of RCRA constitutes a violation of RCRA, and may subject the violator to enforcement action under section 3008 of RCRA, 42 U.S.C. §6928. Failure to provide information requested under section 308 of the Clean Water Act is a violation of the Clean Water Act, and may subject the violator to enforcement action under section 309, 33 U.S.C. §1319. Moreover, any person who knowingly makes a false statement or representation in any record, report or other document filed pursuant to either of these provisions may be subject to civil and criminal penalties.

The information request in this letter is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §3501, et seq.

You may assert a business confidentiality claim covering part or all of the information requested by this letter, in the manner described by 40 C.F.R. §2.203(b), 41 Fed. Reg. 36907 (September 1, 1976). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B, 41 Fed. Reg. 36906-36918 (September 1, 1976). If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to AVX. AVX should read the above-cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim.

Please be advised that EPA and DEQE are seeking to have the parties responsible for the contamination of New Bedford Harbor undertake the abatement of the hazards now presented by that contamination. We would like to meet with AVX to discuss these hazards and the immediate measures needed. Please let us know within thirty (30) days of receipt of this letter whether you would be willing to participate in such a meeting. If so, we would like to make the necessary arrangements as soon as possible.

All written responses to this letter should be addressed to:

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.