

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff,)	
)	
v.)	
)	
AVX CORPORATION, et al., Defendants.)	CIVIL ACTION NO.
)	83-3882-Y
)	
COMMONWEALTH OF MASSACHUSETTS, Plaintiff,)	
)	
v.)	
)	
AVX CORPORATION, et al., Defendants.)	
)	

CONSENT DECREE WITH DEFENDANTS AEROVOX
INCORPORATED AND BELLEVILLE INDUSTRIES, INC.

This Consent Decree ("Decree") is made and entered into by the United States of America ("United States") and the Commonwealth of Massachusetts ("Commonwealth") (collectively referred to as "Plaintiffs"), Aerovox Incorporated ("Aerovox"), and Belleville Industries, Inc. ("Belleville"). Aerovox and Belleville are referred to collectively herein as the "Settling Defendants".

Introduction

The United States, on behalf of the National Oceanic and Atmospheric Administration ("NOAA"), and the Commonwealth as state trustee ("Commonwealth" or "state trustee") filed complaints in these consolidated actions on December 9 and 10, 1983, respectively, seeking damages for injury to, destruction of, and loss of natural resources resulting from releases of

polychlorinated biphenyls ("PCBs") in New Bedford Harbor, Massachusetts, and adjacent waters under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607 ("CERCLA").

Plaintiffs filed amended complaints (hereinafter "Complaints") in these actions on February 27 and 28, 1984. The United States' Complaint set forth, in addition to the claim for natural resource damages described above, claims on behalf of the United States Environmental Protection Agency ("EPA") for recovery of response costs under Section 107 of CERCLA, and for injunctive relief under Section 106 of CERCLA, 42 U.S.C. § 9606, Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973 ("RCRA"), Section 504 of the Clean Water Act, 33 U.S.C. § 1364 ("CWA"), and Section 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 407 ("1899 Act"). The Commonwealth's Complaint set forth, in addition to its claims for natural resource damages described above, claims for recovery of response costs incurred by the Commonwealth under Section 107 of CERCLA, 42 U.S.C. § 9607, Sections 5(a) and 13 of Chapter 21E, Massachusetts General Laws, and Section 27 of Chapter 21, Massachusetts General Laws, and claims for abatement of a public nuisance and abatement of an abnormally dangerous condition under state common law.

The Complaints assert claims against five current defendants, AVX Corporation, Aerovox, Belleville, Cornell-Dubilier Electronics, Inc., and Federal Pacific Electric Company.

This Decree relates solely to the claims against Aerovox and Belleville and any counterclaims by those defendants against Plaintiffs.

The parties to this Decree agree that settlement of the claims in this case by and against Defendants Aerovox and Belleville is in the public interest and is made in good faith, and that entry of this Decree is the most appropriate means to resolve the matters covered herein.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED:

Jurisdiction

1. The Court has jurisdiction over the subject matter of this action and the parties to this Decree pursuant to 28 U.S.C. §§ 1331 and 1345, Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), Section 7003 of RCRA, 42 U.S.C. § 6973, Section 504 of the CWA, 33 U.S.C. § 1564, and Section 13 of the 1899 Act, 33 U.S.C. § 407, and has pendent jurisdiction over the claims arising under state law. This Court also has personal jurisdiction over the Settling Defendants, which, solely for the purposes of this Consent Decree, waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District.

Settling Defendants

2. Defendant Aerovox is a Delaware corporation with its principal place of business in New Bedford, Massachusetts. Aerovox has owned and operated the Aerovox Facility (as hereinafter defined) since October 27, 1978. For purposes of

this Decree, "Aerovox" includes Aerovox Canada, Ltd., a Canadian corporation which is a wholly-owned subsidiary of Aerovox Incorporated.

3. Defendant Belleville was formed as a Massachusetts corporation on December 8, 1972. Belleville dissolved on December 21, 1978, and was revived for purposes of responding to lawsuits on December 18, 1981. Belleville owned and operated the Aerovox Facility (as hereinafter defined) from January 2, 1973 to October 27, 1978.

Applicability of Decree

4. The provisions of this Decree shall apply to and be binding on the United States and the Commonwealth and their agencies and departments and on Settling Defendants and their successors and assigns. Changes in the ownership or corporate form or status of a Settling Defendant shall have no effect on the Settling Defendant's obligations under this Decree.

Effect of Settlement/Entry of Judgment

5. This Decree was negotiated and executed by the parties hereto in good faith to avoid the continuation of expensive and protracted litigation and is a fair and equitable settlement. The execution of this Decree is not an admission of liability, nor is it an admission or denial of any of the factual allegations set out in the Complaints or an admission of violation of any law, rule, regulation, or policy by any Settling Defendant or its officers, directors, employees, or agents.

6. Upon approval and entry of this Decree by the Court, the Decree shall constitute a final judgment between and among Plaintiffs and defendants Aerovox and Belleville.

Definitions

7. This Decree incorporates the definitions set forth in Section 101 of CERCLA, 42 U.S.C. § 9601. In addition, whenever the following terms are used in this Consent Decree, they shall have the following meanings:

A. "Aerovox Facility" means the manufacturing plant and associated structures and land currently owned and operated by Aerovox at 740 and 742 Belleville Avenue, New Bedford, Massachusetts.

B. "Covered Matters" has the meaning set forth in Paragraph 19 below.

C. "DEP" means the Massachusetts Department of Environmental Protection.

D. "Federal Trustees" means the Secretary of Commerce, acting through NOAA, and the Secretary of the Interior.

E. "Final approval of the Decree" shall mean the earliest date on which all of the following have occurred:

(1) the Decree has been lodged with the Court and noticed in the Federal Register, and the period for submission of public comments has expired; (2) the Court has approved and entered the Decree as a judgment; and (3) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the time for

further appeal has expired without the filing of a further appeal or no further appeal is allowed.

F. "Natural Resources" shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

G. "Natural Resource Damages" means damages, excluding costs of damages assessment, recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all Natural Resources of the New Bedford Harbor Site.

H. "New Bedford Harbor Site" or "Site" means the New Bedford Harbor Superfund Site, located in New Bedford, Massachusetts, including New Bedford Harbor, the Acushnet River Estuary, and any adjacent marine waters and sediments and shoreline areas which are the subject of EPA's current Remedial Investigation and Feasibility Study, including at least Areas 1, 2, and 3 as defined in 105 C.M.R. part 260.005 and as depicted on Exhibit A to the United States' Complaint. The Site does not include any portion of the Aerovox Facility westward (away from the Acushnet River Estuary) of the steel sheet pile wall which Aerovox has installed along the length of the tidal mudflat portion of the Aerovox Facility.

I. "Remedial Action" means those actions that EPA determines should be implemented pursuant to CERCLA to address hazardous substance contamination at the New Bedford Harbor Site, as set forth in the RODs.

J. "Response costs" means costs of response or

remedial action, including costs of operation and maintenance of remedial action components.

K. "RODs" means the first and second operable unit records of decision for the New Bedford Harbor Site issued or to be issued by EPA following the completion of the ongoing Remedial Investigation and Feasibility Study and, in the event the first two records of decision do not address all areas of the Site, any additional operable unit record(s) of decision that EPA considers necessary to provide a comprehensive initial remedial decision (including a no action decision) with respect to PCBs for all areas of the Site. "RODs" does not include any record of decision with respect to later-discovered conditions or information as described in Paragraphs 20 or 21.

L. "State Trustee" means the Secretary of the Executive Office of Environmental Affairs, Commonwealth of Massachusetts.

Payment Terms

8. Summary of Payment Obligations. In accordance with the requirements of Paragraphs 9-17, Settling Defendants shall pay to Plaintiffs the principal amount of \$12,600,000 (of which \$9.45 million is for response costs and \$3.15 million is for natural resource damages) together with interest. As specified in Paragraphs 9 and 10, \$6.1 million of this principal amount shall be placed in escrow for Plaintiffs' benefit within fifteen days after all parties have signed the Decree and shall be disbursed to Plaintiffs within five days after final approval of the

Decree; as specified in Paragraph 11, Aerovox shall pay an additional \$3.5 million to Plaintiffs within five days after final approval of the Decree; and, as specified in Paragraphs 12 and 13, Aerovox shall pay another \$3 million to Plaintiffs in three annual installments. Plaintiffs, including the Federal Trustees and the State Trustee, have determined the manner in which the payments to be made by Settling Defendants under this Decree shall be allocated between the Plaintiffs and among past and future response costs and natural resource damages, and Settling Defendants have agreed to this allocation as presented to them by Plaintiffs. Plaintiffs represent that the allocation of the recovery set forth in the Decree is appropriate, proper, and adequate.

9. Escrowed Funds

A. Within fifteen (15) days after lodging of the Decree with the Court, Settling Defendants shall establish an escrow account (the "Escrow") bearing interest on commercially reasonable terms, in a federally-chartered bank with an office in the Commonwealth of Massachusetts, and each Settling Defendant shall pay into the Escrow the sum specified for it below for the benefit of Plaintiffs.

<u>Settling Defendant</u>	<u>Amount</u>
Aerovox Incorporated	\$2,100,000
Belleville Industries, Inc.	\$4,000,000

Settling Defendants shall notify Plaintiffs in writing of the creation and funding of the Escrow immediately after both of the

above payments have been made. This notice shall be sent by hand or by overnight mail to: William D. Brighton, Environmental Enforcement Section, U.S. Department of Justice, Room 1541 (EES Dockets), 10th & Pennsylvania Avenue, N.W., Washington, D.C. 20530; and Matthew T. Brock, Assistant Attorney General, One Ashburton Place, 19th Floor, Boston, MA 02108.

B. Subject only to the provisions of subparagraph C of this Paragraph, Settling Defendants' obligations to establish the Escrow and to pay the amounts specified above into the Escrow within the specified time are contractual obligations to Plaintiffs and to each other, effective as of the date that both Settling Defendants, the United States Assistant Attorney General, and the Massachusetts Assistant Attorney General have signed the Decree, and those obligations shall be enforceable as a matter of contract law regardless of when or whether the Decree is entered by the Court. The consideration for these contractual undertakings by Settling Defendants includes the immediate cessation of litigation activities until a determination is made whether this Decree will be entered and the resolution of Plaintiffs' claims against Settling Defendants as set forth in the Decree, if the Decree is approved and entered by the Court.

C. All funds paid into the Escrow by Settling Defendants shall remain in the Escrow and may not be withdrawn by any person, except to make the payments required by Paragraph 10 or unless one of the following events occurs: (1) the United States withdraws its consent to entry of the Decree after the

Decree has been lodged, pursuant to Paragraph 38; or (2) a final judicial determination is made that entry of the Decree is not in the public interest and that the Decree will not be approved and entered. If one of these events occurs, all sums in the Escrow may be returned to Settling Defendants.

10. Disbursements From The Escrow. Within five (5) days after final approval of the Decree, Settling Defendants shall cause the full \$6,100,000 paid into the Escrow under Paragraph 9 and all accrued interest thereon to be disbursed from the Escrow to Plaintiffs as follows:

A. The sum of \$1,505,000, plus the interest accrued on that amount, shall be paid to the EPA Hazardous Substances Superfund in the manner provided in Paragraph 14 in reimbursement of past response costs incurred by the United States with respect to the New Bedford Harbor Site.

B. The sum of \$85,000, plus the interest accrued on that amount, shall be paid to the Commonwealth in the manner provided in Paragraph 15 in reimbursement of past response costs incurred by the Commonwealth with respect to the New Bedford Harbor Site.

C. The sum of \$2,985,000, plus the interest accrued on that amount, shall be paid to the EPA Hazardous Substances Superfund, Attn: New Bedford Harbor Special Account, on account of future response costs to be incurred by the United States and the Commonwealth with respect to the New Bedford Harbor Site, in the manner provided in

Paragraph 16. All amounts paid on account of future response costs under this subparagraph and Subparagraphs 11.C and 12.A shall be used to fund response actions by EPA at the New Bedford Harbor Site after final approval of the Decree; provided that ten percent (10%) of those amounts shall satisfy the Commonwealth's obligation under Section 104(c)(3)(C) of CERCLA to pay ten percent (10%) of the cost of those response actions that are funded by the recovery under this subparagraph and Subparagraphs 11.C and 12.A.

D. The sum of \$1,250,000, plus the interest accrued on that amount, shall be deposited into the Registry of the Court, United States District Court for the District of Massachusetts, to be administered by the Registry of the Court for the Federal and State Trustees, in payment for Natural Resource Damages. This payment shall be made in the manner specified in Subparagraph 17.A below, and the amount so paid and any interest accrued thereon shall be administered and disbursed as provided in Subparagraphs 17.B and 17.C below.

E. The sum of \$275,000, plus the interest accrued on that amount, shall be disbursed to NOAA in reimbursement of its costs of assessing Natural Resource Damages. This payment shall be made by certified or bank check payable to "U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Marine Assessment," and shall be sent to:

General Counsel
National Oceanic and Atmospheric
Administration
Room 5814 Herbert Hoover Building
14th & Constitution Avenue, N.W.
Washington, D.C. 20230

Settling Defendants shall cause copies of this check and of any transmittal letter accompanying the check to be sent to: Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.

11. Additional Up-Front Payment By Aerovox. Within five (5) days after final approval of the Decree, Aerovox shall pay to Plaintiffs an additional \$3,500,000 principal amount, plus interest on that amount at the same rate(s) and from the same date applicable to the funds in the Escrow established pursuant to Paragraph 9 above. This payment shall be made as follows:

A. The sum of \$865,000, plus the interest accrued on that amount, shall be paid to the EPA Hazardous Substances Superfund in the manner provided in Paragraph 14 in reimbursement of past response costs incurred by the United States with respect to the New Bedford Harbor Site.

B. The sum of \$45,000, plus the interest accrued on that amount, shall be paid to the Commonwealth in the manner provided in Paragraph 15 in reimbursement of past response costs incurred by the Commonwealth with respect to the New Bedford Harbor Site.

C. The sum of \$1,715,000, plus the interest accrued on that amount, shall be paid to the EPA Hazardous Substances Superfund, Attn: New Bedford Harbor Special Account, on account of future response costs to be incurred by the United States and the Commonwealth with respect to the New Bedford Harbor Site. This payment shall be made in accordance with Paragraph 16 below.

D. The sum of \$584,000, plus the interest accrued on that amount, shall be deposited into the Registry of the Court, United States District Court for the District of Massachusetts, to be administered by the Registry of the Court for the Federal and State Trustees, in payment for Natural Resource Damages. This payment shall be made in the manner specified in Subparagraph 17.A below, and the amount so paid and any interest accrued thereon shall be administered and disbursed as provided in Subparagraphs 17.B and 17.C below.

E. The sum of \$275,000, plus the interest accrued on that amount, shall be disbursed to NOAA in reimbursement of its costs of assessing Natural Resource Damages. This payment shall be made in the manner specified in Paragraph 10.E above.

F. The sum of \$16,000, plus the interest accrued on that amount, shall be paid to the Commonwealth in reimbursement of its costs of assessing Natural Resource Damages. This payment shall be made by certified or bank

check payable to "Commonwealth of Massachusetts", and shall be sent to:

Chief, Environmental Protection Division
Department of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108

12. Additional Installment Payments By Aerovox. In addition to the payments required by Paragraphs 9-11, Aerovox shall pay \$3,000,000 to Plaintiffs in three installments of \$1,000,000 each. These three installments shall be due by the first, second, and third anniversaries, respectively, of the date of lodging of this Decree, and they shall be paid by those dates except as set forth in Paragraph 13. Each such installment shall be disbursed as follows:

A. The sum of \$750,000 shall be paid to the the EPA Hazardous Substances Superfund, Attn: New Bedford Harbor Special Account, on account of future response costs to be incurred by the United States and the Commonwealth with respect to the New Bedford Harbor Site. Each such payment shall be made in the manner specified in Paragraph 16 below.

B. The sum of \$250,000 shall be deposited into the Registry of the Court, United States District Court for the District of Massachusetts, to be administered by the Registry of the Court for the Federal and State Trustees, in payment for Natural Resource Damages. This payment shall be made in the manner specified in Subparagraph 17.A below, and the amount so paid and any interest accrued thereon shall be

administered and disbursed as provided in Subparagraphs 17.B and 17.C below.

13. Effect of Delayed Approval of Decree. In the event that final approval of this Decree has not occurred by the date any installment required by Paragraph 12 above is due, Aerovox shall pay the installment, plus interest thereon at the same rate(s) applicable to the funds in the Escrow established under Paragraph 9 above from the date the installment was due to the date of payment, to Plaintiffs within five (5) days after final approval of the Decree. Any such installment shall be disbursed as specified in Paragraph 12.

14. Procedures for Payment of Past EPA Response Costs. Each payment for past United States response costs, or for stipulated penalties due to EPA, shall be made by certified or bank check payable to "EPA Hazardous Substances Superfund." Each such check shall reference on its face the New Bedford Harbor Site and CERCLIS No. MAD980731335 and shall be sent to:

EPA Region I
Attn: Superfund Accounting
P.O. Box 360197M
Pittsburgh, PA 15251

Settling Defendants shall cause copies of each such check and of any transmittal letter accompanying the check to be sent to: Chief, Superfund Office, Office of Regional Counsel, EPA Region I, 2203 JFK Federal Building, Boston, MA 02203; Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; and

Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.

15. Procedures for Payment of Past State Response Costs.

Each payment for past Commonwealth response costs, or for stipulated penalties due to the Commonwealth, shall be made by certified or bank check payable to "Commonwealth of Massachusetts", and shall be sent to:

Chief
Environmental Protection Division
Department of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108

Settling Defendants shall cause copies of each such check and of any transmittal letter accompanying the check to be sent to:

Chief, Cost Recovery Section, Bureau of Waste Site Cleanup, Department of Environmental Protection, One Winter Street, Boston, MA 02108.

16. Procedures for Payments for Future Response Costs.

Each payment for future response costs shall be made by certified or bank check payable to "EPA Hazardous Substances Superfund, Attn: New Bedford Harbor Special Account", and shall be sent to:

EPA Region I
Attn: Superfund Accounting
P.O. Box 360197M
Pittsburgh, PA 15251

Settling Defendants shall cause copies of each such check and of any transmittal letter accompanying the check to be sent to:

Chief, Superfund Office, Office of Regional Counsel, EPA Region I, 2203 JFK Federal Building, Boston, MA 02203; Chief, Environmental Enforcement Section, Department of Justice, P.O.

Box 7611, Ben Franklin Station, Washington, D.C. 20044; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.

17. Natural Resource Damages Payments and Use of Funds

A. Each payment for Natural Resource Damages shall be made by certified or bank check payable to the "Clerk, United States District Court." Each such check shall include on its face a statement that it is a payment for natural resource damages in Civil Action No. 83-3882-Y (D. Mass.), and shall be sent to:

Office of the Clerk
United States District Court for the
District of Massachusetts
Room 707
J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

Settling Defendants shall cause copies of each check for Natural Resource Damages and of any transmittal letter accompanying the check to be sent to: Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; Regional Attorney, NOAA Office of General Counsel, One Blackburn Drive - Suite 205, Gloucester, MA 01930; Regional Solicitor, U.S. Department of the Interior, Northeast Region, One Gateway Center - Suite 612, Newton Corner, MA 02158; and Chief, Environmental Protection Division, Department of the Attorney General, One Ashburton Place, Boston, MA 02108.

B. The Registry of Court shall administer all amounts paid for Natural Resource Damages under this Decree in an

interest-bearing account ("Registry Account") as provided in the Order Directing the Deposit of Natural Resource Damages Into the Registry of the Court ("Deposit Order") issued by this Court pursuant to Rule 67 of the Federal Rules of Civil Procedure, 28 U.S.C. § 2041, and Local Rule 67.2(c) of the Local Rules for the U.S. District Court for the District of Massachusetts. The Deposit Order shall be attached to this Decree.

C. All funds and all interest accrued thereon in the Registry Account shall be held in the name of the "Clerk, United States District Court," for the benefit of the Federal and State Trustees. Upon joint application(s) by the United States and the Commonwealth, monies in the Registry Account shall be disbursed to the Federal and State Trustees by further order of this Court for use by the Trustees to plan, implement, and oversee actions to restore, replace, or acquire the equivalent of natural resources that have been injured, destroyed, or lost as a result of the release of hazardous substances at the New Bedford Harbor Site, in accordance with Section 107(f)(1) of CERCLA. All disbursements from the Registry Account shall be made by order of the Court in accordance with the provisions of 28 U.S.C. § 2042 and Local Rule 67.3 of the Local Rules for the U.S. District Court for the District of Massachusetts.

D. In the event that it is later determined that the provisions of subparagraphs A-C of this Paragraph 17 are unlawful, the amounts in the Registry Account or payable under this Decree for Natural Resource Damages shall be distributed to

the Federal and State Trustees as determined by further agreement of the United States and the Commonwealth or, if no such agreement is reached within a reasonable time, by an allocation of those amounts by this Court. In making any such allocation, the Court shall consider any Memorandum of Agreement or Memorandum of Understanding between the United States and the Commonwealth concerning the use of amounts recovered for natural resource damages at the New Bedford Harbor Site. All amounts recovered for Natural Resource Damages at the Site and all interest accrued thereon shall be used in accordance with Section 107(f)(1) of CERCLA.

Covenants Not To Sue By Plaintiffs

18. Except as specifically provided in Paragraphs 20-22, the United States and the Commonwealth covenant not to sue or to take any other civil or administrative action against Settling Defendants for Covered Matters, as defined in Paragraph 19. With respect to liability for Covered Matters other than future liability, these covenants not to sue shall take effect upon entry of the Decree by the Court, subject to the parties' rights to void the Decree pursuant to Paragraph 33 if the Court declines to approve the Decree as presented. With respect to any future liability of Settling Defendants, these covenants not to sue shall take effect upon certification of completion of the Remedial Action.

19. Except as specifically provided in Paragraph 23, Covered Matters means any civil or administrative liability to

the United States and/or the Commonwealth for (1) damages for injury to, destruction of, or loss of Natural Resources of the New Bedford Harbor Site, including costs of damages assessment, under Section 107 of CERCLA, M.G.L. c. 21E, M.G.L. c. 21, § 27, and state common law; (2) reimbursement of response costs incurred or to be incurred by the United States or the Commonwealth with respect to the New Bedford Harbor Site under Section 107 of CERCLA, M.G.L. c. 21E, M.G.L. c. 21, §§ 27, 40, and state common law; and (3) injunctive relief with respect to the New Bedford Harbor Site under Section 106 of CERCLA, Section 7003 of RCRA, Section 504 of CWA, the 1899 Act, and state common law.

20. Pre-certification reservations. Notwithstanding any other provision of this Decree, the United States, and the Commonwealth if acting jointly with the United States, reserve the right to institute proceedings in this action or in a new action seeking to compel Settling Defendants (1) to perform response actions at the New Bedford Harbor Site, or (2) to reimburse the United States (and the Commonwealth if acting jointly with the United States) for response costs, prior to certification of completion of the Remedial Action, if:

A. conditions at the New Bedford Harbor Site, previously unknown to the United States and the Commonwealth, are discovered after the issuance of the RODs, or

B. information is received, in whole or in part, after the issuance of the RODs, and these previously unknown conditions or this information, together with any other relevant information, indicate that the Remedial Action is not protective of human health and the environment.

21. Post-certification reservations. Notwithstanding any other provision of this Decree, the United States, and the Commonwealth if acting jointly with the United States, reserve the right to institute proceedings in this action or in a new action seeking to compel Settling Defendants (1) to perform response actions at the New Bedford Harbor Site, or (2) to reimburse the United States (and the Commonwealth if acting jointly with the United States) for response costs, after certification of completion of the Remedial Action, if:

A. conditions at the New Bedford Harbor Site, previously unknown to the United States and the Commonwealth, are discovered after the certification of completion, or

B. information is received, in whole or in part, after the certification of completion, and these previously unknown conditions or this information, together with any other relevant information, indicate that the Remedial Action is not protective of human health and the environment.

22. Reservations concerning natural resource injury.

Notwithstanding any other provision of this Decree, the United States and the Commonwealth, on behalf of their respective natural resource trustees, reserve the right to institute proceedings against Settling Defendants in this action or in a new action seeking recovery of Natural Resource Damages, based on (1) conditions with respect to the Site, unknown to Plaintiffs at the date of lodging of this Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of natural resources, or (2) information received after the date of lodging of the Decree which indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude substantially greater than was known, to Plaintiffs at the date of lodging of this Decree.

23. Notwithstanding any other provision of this Decree, Plaintiffs' covenants not to sue shall not apply to the following claims:

- A. claims based on a failure by Settling Defendants to satisfy the requirements of the Decree;
- B. claims for criminal liability; and
- C. claims arising from the past, present, or future disposal, release or threat of release of hazardous substances or oil or hazardous materials outside of the New Bedford Harbor Site, including claims by the Commonwealth with respect to DEP site number 4-0127

(Substation Interceptors) and DEP site number 4-0601 (Aerovox Oil Bunker), but excluding claims for response costs incurred, or for injury to, destruction of, or loss of natural resources, in the New Bedford Harbor Site from any releases of PCBs resulting from conditions existing as of the date of lodging of the Consent Decree at DEP site numbers 4-0127 and 4-0601.

24. While consenting to the language of Paragraphs 20-22, Settling Defendants reserve the right to argue in any subsequent proceeding as to the proper interpretation of those Paragraphs in light of Section 122(f)(6) of CERCLA.

Covenants by Settling Defendants

25. Settling Defendants hereby release and covenant not to sue, or to bring any administrative action against, the United States or the Commonwealth for any claims relating to or arising from the New Bedford Harbor Site or this Consent Decree, including the counterclaims asserted in Settling Defendants' Answers to the Complaints, and including any direct or indirect claim pursuant to Section 112 of CERCLA, 42 U.S.C. § 9612, or pursuant to any other statute, regulation, common law, or legal theory, against the Hazardous Substances Superfund, for reimbursement relating to the New Bedford Harbor Site; provided that, in the event that Plaintiffs institute proceedings against Settling Defendants pursuant to Paragraphs 20-22, Settling Defendants reserve the right to reassert the counterclaims against the U.S. Army Corps of Engineers set forth in their

answers to the Complaints solely as, and to the extent of, a set-off against the claims asserted by Plaintiffs. Nothing in this Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611.

26. Settling Defendants waive any rights they may have to seek judicial or administrative review of the RODs issued by EPA and/or the Commonwealth for the New Bedford Harbor Site and of any actions taken to implement the RODs. Settling Defendants further waive any direct or indirect claim relating to the New Bedford Harbor Site pursuant to M.G.L. c. 30, §§ 61-62H and 301 C.M.R. § 11.00 et seq.

Access and Property Use Restrictions

27. The United States and the Commonwealth, their agencies and departments, and their authorized representatives, including contractors and consultants, shall have access to the Aerovox Facility, except for the buildings located on the Aerovox Facility as of the lodging of the Decree, upon reasonable notice to Aerovox for any purpose for which access is authorized under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), or Section 8 of M.G.L. c. 21E, related to the New Bedford Harbor Site. This right of access is in addition to and not in lieu of, any right of entry or access which exists under federal or state law.

28. Aerovox agrees to abide by any property use restrictions selected by EPA or the Commonwealth in connection with implementation or operation and maintenance of the Remedial Action on the portion of the Aerovox Facility that is included in

the New Bedford Harbor Site. Upon determination of those property use restrictions, Aerovox shall file and record the applicable restrictions with the Registry of Deeds or other office where real estate title and transfer records are recorded and maintained for the Aerovox Facility.

Interest and Penalties for Late Payments

29. If any payment required by Paragraph 9 of this Decree is not made by the date specified in that Paragraph, the Settling Defendant(s) that failed to make timely payment shall be liable to Plaintiffs for interest on the overdue amount(s), from the time payment was due until full payment is made, at the higher of (a) the rate established by the Department of the Treasury under 31 U.S.C. § 3717 and 4 C.F.R. § 102.13, or (b) the commercially reasonable interest rate that applies to the Escrow or that would have applied to the Escrow if it had been timely established and funded.

30. If any payment required by Paragraphs 10-12 of this Decree is not made by the date specified in that Paragraph, Settling Defendants shall pay to EPA, for any payment overdue under Subparagraphs 10.A, 10.C, 11.A, 11.C, or 12.A; to the United States, for any payment overdue under Subparagraph 10.E or 11.E; 50 percent to the United States and 50 percent to the Commonwealth, for any payment overdue under Subparagraphs 10.D, 11.D, or 12.B; and to the Commonwealth, for any payment overdue under Subparagraphs 10.B, 11.B, or 11.F, stipulated penalties in

the following amounts for each day of each and every violation of said requirements:

<u>Days of Delay</u>	<u>Penalty Per Violation Per Day</u>
1-14	\$ 500/day
14-60	\$1,500/day
Beyond 60 Days	\$3,000/day

31. Stipulated penalties due to the United States under this Decree shall be paid by certified or bank check made payable to "Treasurer of the United States" and shall be sent to:

Chief, Civil Division
United States Attorneys' Office
1107 J.W. McCormack Post Office/Courthouse
Boston, MA 02109

Stipulated penalties due to EPA or the Commonwealth under this Decree shall be paid in the manner described in Paragraphs 14 and 15 above.

32. Interest under Paragraph 29 and stipulated penalties under Paragraph 30 shall be in addition to any other remedies or sanctions that may be available to Plaintiffs on account of a Settling Defendant's failure to comply with the terms of the Decree.

Voidability

33. If for any reason the Court should decline to approve this Decree in the form presented, this Decree and the settlement embodied herein shall be voidable at the sole discretion of any party and the terms hereof may not be used as evidence in any litigation; provided, however, that this paragraph shall not apply if the sole ground for non-approval of the Decree is the

Court's disapproval of the allocation of Settling Defendants' payments under the Decree between Plaintiffs and/or among past and future response costs and/or natural resource damages.

Contribution Protection

34. Settling Defendants shall have the benefits of Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), Section 4 of Mass. Gen. Laws c. 231B, and any other applicable law limiting their liability to persons not a party to this Consent Decree or affording them rights of contribution or other rights to recover costs or damages relating to the New Bedford Harbor Site from such persons.

Retention of Response Authority

35. Except for the covenants not to bring certain actions against Settling Defendants set forth in Paragraphs 18-22, the Decree shall not be construed to limit the authority of the United States or the Commonwealth to take any and all response actions relating to the New Bedford Harbor Site authorized by federal or state law.

Compliance with Other Laws

36. The Decree shall not be construed in any way to relieve Settling Defendants or any other person or entity from the obligation to comply with any federal, state or local law.

Retention of Jurisdiction

37. The Court shall retain jurisdiction of this matter for the purpose of entering such further orders, direction, or relief

as may be appropriate for the construction, implementation, or enforcement of this Decree.

Public Comment

38. The Decree shall be subject to a 30-day public comment period in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right, in consultation with the Commonwealth, to withdraw its consent to the Decree if comments received disclose facts or considerations which show that the Decree is inappropriate, improper or inadequate; provided that comments which, in the judgment of the United States, show that the allocation of Settling Defendants' payments under the Decree between Plaintiffs and/or among past and future response costs and/or natural resource damages is inappropriate or improper shall constitute grounds for modification of the Decree to reallocate those payments but shall not, by themselves, constitute a ground upon which the United States may withdraw its consent to the Decree. Settling Defendants consent to the entry of the Decree without further notice.

THE FOREGOING Consent Decree among plaintiffs the United States of America and the Commonwealth of Massachusetts and defendants Aerovox Incorporated and Belleville Industries, Inc., in United States v. AVX Corporation, Civ. No. 83-3882-Y (D. Mass.), is hereby APPROVED AND ENTERED THIS ____ DAY OF _____, 1990.

WILLIAM G. YOUNG
United States District Judge
District of Massachusetts

[Consent Decree with Aerovox Incorporated and Belleville Industries, Inc. in United States v. AVX Corporation, Civ. No. 83-3882-Y (D. Mass.)]

FOR THE UNITED STATES OF AMERICA

Date: _____

Richard B. Stewart
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

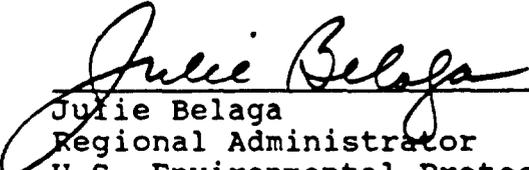
Ellen M. Mahan
William D. Brighton
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

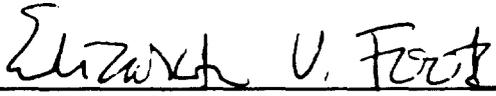
Wayne A. Budd
United States Attorney
District of Massachusetts

Suzanne Durrell
Assistant U.S. Attorney
1107 J.W. McCormack Post Office/
Courthouse
Boston, Massachusetts 02109

[Consent Decree with Aerovox Incorporated and Belleville Industries, Inc. in United States v. AVX Corporation, Civ. No. 83-3882-Y (D. Mass.)]

James M. Strock
Assistant Administrator for Enforcement
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460


Julie Belaga
Regional Administrator
U.S. Environmental Protection Agency,
Region I
JFK Federal Building
Boston, Massachusetts 02203


Elizabeth V. Foote
Mark Lowe
Office of Regional Counsel
U.S. Environmental Protection Agency,
Region I
JFK Federal Building
Boston, Massachusetts 02203

[Consent Decree with Aerovox Incorporated and Belleville Industries, Inc. in United States v. AVX Corporation, Civ. No. 83-3882-Y (D. Mass.)]

FOR THE FEDERAL NATURAL RESOURCE TRUSTEES

John A. Knauss
Under Secretary for Oceans
Administrator, National Oceanic and
Atmospheric Administration
Department of Commerce
Washington, D.C. 20230

Thomas A. Campbell
General Counsel
National Oceanic and Atmospheric
Administration

Anton P. Giedt
Office of General Counsel
National Oceanic and Atmospheric
Administration

[Consent Decree with Aerovox Incorporated and Belleville Industries, Inc. in United States v. AVX Corporation, Civ. No. 83-3882-Y (D. Mass.)]

FOR THE COMMONWEALTH OF MASSACHUSETTS

Matthew T. Brock
Michael Mascis
Assistant Attorneys General
Environmental Protection Division
One Ashburton Place
Boston, Massachusetts 02108

Daniel S. Greenbaum, Commissioner
Department of Environmental Protection
Commonwealth of Massachusetts
One Winter Street
Boston, Massachusetts 02108

FOR THE COMMONWEALTH OF MASSACHUSETTS
NATURAL RESOURCE TRUSTEE

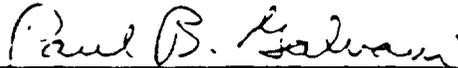
John DeVillars, Secretary
Executive Office of Environmental
Affairs
Commonwealth of Massachusetts
100 Cambridge Street, 20th Floor
Boston, Massachusetts 02202

[Consent Decree with Aerovox Incorporated and Belleville Industries, Inc. in United States v. AVX Corporation, Civ. No. 83-3882-Y (D. Mass.)]

FOR AEROVOX INCORPORATED



Clifford H. Tuttle
President
Aerovox Incorporated
740 Belleville Avenue
New Bedford, Massachusetts 02740



Paul B. Galvani
Roscoe Trimmier, Jr.
Ropes & Gray
One International Place
Boston, Massachusetts 02110

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[Consent Decree with Aerovox Incorporated and Belleville Industries, Inc. in United States v. AVX Corporation, Civ. No. 83-3882-Y (D. Mass.)]

FOR BELLEVILLE INDUSTRIES, INC.



David A. McLaughlin
McLaughlin & Folan, P.C.
448 County Street
New Bedford, Massachusetts 02740