



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SOUTHEAST REGIONAL OFFICE

20 RIVERSIDE DRIVE, LAKEVILLE, MA 02347 508-946-2700

DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

IAN A. BOWLES  
Secretary

LAURIE BURT  
Commissioner

June 10, 2010

Kurt P. Cummings, Vice President  
AVX Corporation  
801 17<sup>th</sup> Avenue  
Box 867  
Myrtle Beach, South Carolina 29578

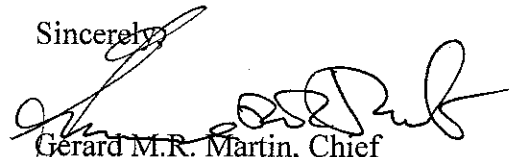
RE: **NEW BEDFORD**  
Release Tracking Number 4-0000601  
Former Aerovox Facility, 740 Belleville Avenue  
**ADMINISTRATIVE CONSENT ORDER  
AND NOTICE OF RESPONSIBILITY  
ACO-SE-09-3P-016**

Dear Mr. Cummings:

Enclosed is a copy of the fully executed Administrative Consent Order and Notice of Responsibility between the Commonwealth of Massachusetts, Department of Environmental Protection (MassDEP) and the Office of the Attorney General, and AVX Corporation. The effective date of the document is June 3, 2010.

Should you have any questions related to this Consent Order or any of the requirements contained in it, please contact Molly Cote at the letterhead address or by calling (508) 946-2792. MassDEP appreciates your cooperation in this matter.

Sincerely,



Gerard M.R. Martin, Chief  
Compliance & Enforcement Section  
Bureau of Waste Site Cleanup

M/MC/lg

W:\BWSC\Document Archive\4-0000601.ACO COVER LETTER 06-10-2010.doc

Enclosure

CERTIFIED MAIL NO. 7008 1830 0001 0409 2605

cc: Mayor Scott W. Lang, City of New Bedford  
([Scott.Lang@newbedford-ma.gov](mailto:Scott.Lang@newbedford-ma.gov))

City of New Bedford, Board of Health  
([Marianne.DeSouza@newbedford-ma.gov](mailto:Marianne.DeSouza@newbedford-ma.gov))

Irene Schall, City Solicitor  
([Irene.Schall@newbedford-ma.gov](mailto:Irene.Schall@newbedford-ma.gov))

Cynthia Catri, USEPA  
([Catri.Cynthia@epamail.epa.gov](mailto:Catri.Cynthia@epamail.epa.gov))

Gary Gill-Austern, Esq.  
Nutter, McLennan & Fish  
([ggill-austern@nutter.com](mailto:ggill-austern@nutter.com))

Marilyn Wade, LSP  
([Marilyn\\_Wade@URSCorp.com](mailto:Marilyn_Wade@URSCorp.com))

Benjamin Ericson, Assistant Attorney General  
[benjamin.ericson@state.ma.us](mailto:benjamin.ericson@state.ma.us)

MassDEP SERO  
ATTN. Millie Garcia Serrano, Deputy Regional Director  
Rebecca Tobin, Regional Counsel  
Deneen Simpson, Regional Enforcement Office  
Rich Gioisa, Regional Enforcement Office  
Lara Goodine, BWSC - Data Entry

cc: MassDEP SERO  
ATTN. Deneen Simpson, Regional Enforcement Office  
Lee MacEachern, Assistant to Acting Regional Director

**COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

\_\_\_\_\_  
In the matter of: )  
 )  
AVX Corporation )  
801 17<sup>th</sup> Avenue )  
Box 867 )  
Myrtle Beach, SC 29578 )  
\_\_\_\_\_ )

File No.: ACO-SE-09-3P-016  
Release Tracking Number: 4-0601

**ADMINISTRATIVE CONSENT ORDER  
AND  
NOTICE OF RESPONSIBILITY**

**I. THE PARTIES**

1. The Massachusetts Department of Environmental Protection ("MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts (the "Commonwealth") established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Southeast Regional Office at 20 Riverside Drive, Lakeville, Massachusetts 02347.
2. The Massachusetts Office of the Attorney General (the "OAG") is a duly constituted agency of the Commonwealth charged with the legal representation of the Commonwealth. The OAG maintains offices at One Ashburton Place, Boston, Massachusetts 02108.
3. AVX Corporation ("Respondent") is a Delaware company whose mailing address for the purposes of this Consent Order is 801 17th Avenue South, Box 867, Myrtle Beach, South Carolina 29578-0687.

**II. STATEMENT OF FACTS AND LAW**

4. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 21E and the Massachusetts Contingency Plan ("MCP") at 310 CMR 40.0000. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
5. Aerovox Corporation owned and operated the Aerovox Facility located at 740 Belleville Ave, New Bedford, Massachusetts (the "Property") at which there has been a release and/or threat of release of oil and/or hazardous material pursuant to M.G.L. c. 21E. The Property is further depicted on the map attached as Exhibit A to this Consent Order. For purposes of this Consent Order, the "Site" is referenced by MassDEP under Release Tracking Number 4-0601 and shall mean any place or area where a release of oil and/or hazardous material at or from the Property

AVX OR MassDEP Ⓞ OAG B/E

which occurred before the Effective Date (as hereinafter defined) has come to be located, except for any such places or areas that are part of the New Bedford Harbor Superfund Site. Places or areas that are part of the New Bedford Harbor Superfund Site include, but are not limited to, any land area, bank or water body located seaward of the sheet pile wall previously installed at the Property or seaward of the mean high water level at the Property and running along the mean high water level in a northward and southward direction from the Property. The New Bedford Harbor Superfund Site is defined as the "New Bedford Harbor Site" in Paragraph 5.I. of the Consent Decree in United States v. AVX Corporation, Civil Action No. 83-3882-Y (D. Mass.), entered February 3, 1992. For the purposes of this Consent Order, the Site includes the sheet pile wall previously installed at the Property.

6. The following facts have led MassDEP to issue this Consent Order:
- (a) The Property abuts Hadley Street and a factory operated by Acushnet Company (Titleist) to the south, a factory operated by Acushnet Rubber Company, d/b/a Precix, Inc. to the north, the Acushnet River to the east, and a residential area along Belleville Avenue to the west.
  - (b) The Property contains a vacant, approximately 450,000 square foot, former manufacturing building along with a parking lot located on approximately 10.3 acres of industrially-zoned land. The building consists of a western section containing two floors, and an eastern section containing three floors. The exterior walls are brick; the roof is constructed of wood. The first floor, which is the building foundation floor, is constructed of concrete; the second floor consists of both concrete and wood; and the third floor is constructed of wood. Ancillary structures include a brick sewer pump station and a brick boiler house located along the south side of the main manufacturing building, and a brick structure housing electrical switching equipment located at the southwest corner of the main building.
  - (c) The Property began to be used for electrical component manufacturing in approximately 1938. Beginning in approximately the 1940s, dielectric fluid containing polychlorinated biphenyls ("PCBs") was used in capacitor manufacturing. Various solvents were also used in manufacturing operations. Use of PCBs in the manufacturing process ceased on or about October 1978.
  - (d) Respondent's predecessor Aerovox Corporation owned and operated an electronic component manufacturing business at the Site from 1938 to January 2, 1973. On June 4, 1973, Aerovox Corporation merged into AVX Ceramics Corporation, which changed its name to AVX Corporation. Operations and disposal practices during this period which involved the use of PCBs and solvents constituted a release and a disposal of hazardous substances that contributed to the contamination of soils, building materials and equipment, surface water runoff and groundwater at the Site.
  - (e) On or about January 2, 1973, the Property and the Aerovox name, among other assets, were purchased from Aerovox Corporation by a company named Belleville Industries, Inc., which later changed its name to Aerovox Industries, Inc. Aerovox Industries, Inc. operated the Property from January 1973 to October 1978.
  - (f) In October 1978, Aerovox, Inc. ("Aerovox") became the owner and operator of the Property.
  - (g) On June 18, 1981, Versar, Inc., an authorized representative of the United States Environmental Protection Agency ("USEPA") and the Massachusetts Department of Environmental Quality Engineering ("DEQE"), MassDEP's predecessor, inspected the

Property. In the course of the inspection, Versar took samples from the soil in a yard area outside the factory on the Property. Versar subsequently reported the results of its analysis of the soil samples, which indicated the presence of PCBs in the soil of the yard.

- (h) In May 1982, USEPA and Aerovox entered into an administrative order pursuant to Section 106 of CERCLA (the "1982 Order"), which applied to that portion of Aerovox's property lying to the west of the seawall separating the factory grounds from the waters of the Acushnet River. The 1982 Order required Aerovox to: (1) conduct an investigation of certain areas of the Property; (2) assess the relative costs of alternative remedial actions; (3) recommend a course of action to USEPA; and (4) implement such course of action, subject to USEPA approval.
- (i) The investigation conducted by Aerovox pursuant to the 1982 Order revealed that PCBs were present in soil and in shallow groundwater at the Property. Aerovox recommended the installation of a cap over certain contaminated soils and a steel sheet pile cutoff wall to serve as a vertical barrier to groundwater.
- (j) In June 1982, DEQE and Aerovox executed a Consent Agreement which imposed virtually the same requirements on Aerovox as those in the 1982 Order.
- (k) Under the 1982 Order with USEPA and the Consent Agreement with DEQE, Aerovox installed a hydraulic asphalt concrete cap over a portion of the Property soils, and a steel sheet pile cutoff wall to serve as a vertical barrier between PCB-contaminated soils and groundwater, and tidal flow into and out of the Acushnet River.
- (l) In 1984, USEPA and Aerovox entered into a Supplemental CERCLA Consent Order pursuant to Section 106 of CERCLA (the "1984 Supplemental Order"), as part of which Aerovox agreed to commence and carry out a long-term monitoring and maintenance program, including compliance with the reporting requirements outlined in the program, and to take maintenance measures as necessary to maintain on-site containment and prevent the release of PCBs.
- (m) On May 29, 1997, USEPA inspected the Property for compliance with the Toxic Substances Control Act, as amended, 15 U.S.C. §§ 2601, *et seq.* ("TSCA"). During the inspection, heavy oil staining was observed in several areas, including the impregnation tank room and a nearby capacitor degreasing room.
- (n) On June 25 and June 26, 1997, USEPA inspectors took samples from one of the manufacturing areas, known as the impregnation tank room, consisting of shavings from the wood floor. USEPA took 20 samples: twelve randomly selected and eight selected after a visual inspection of the tank room. Tests of the samples revealed very high PCB levels in the wood shavings, well above the TSCA regulatory threshold of 50 parts per million or greater that constitutes the disposal of PCBs from a spill and other uncontrolled discharges of PCBs.
- (o) In July 1998, USEPA issued an Approval Memorandum for the performance of an Engineering Evaluation/Cost Analysis ("EE/CA") at the Property. In August 1998, a consultant hired by Aerovox completed the EE/CA, which recommended demolition of the building, with a combination of proposals for on- and off-site disposal of building material and equipment, followed by capping.

- (p) In October 1998, USEPA published a Cleanup Proposal. The recommended proposal included demolition of the building, off-site disposal of all TSCA demolition waste material, leaving the first floor concrete slab in place, covering the building footprint with clean fill, and capping the entire Property. No public comments were received.
- (q) Under an Administrative Order on Consent pursuant to Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, which became effective on December 2, 1999 (the "1999 AOC"), Aerovox agreed to pay for and conduct the cleanup of the Site. Among other things, the 1999 AOC required that Aerovox: (1) deposit funds, in specified installments, into a trust fund called the Aerovox Facility Fund (the "Fund"); (2) begin demolition of the manufacturing facility and the installation of a cap at the Property when the Fund reached the lesser of \$4.8 million, or 60% of the total estimated cost; and (3) relocate to another manufacturing facility (by 16 months from the effective date of the order, or April 2, 2001). Completion of demolition of the manufacturing facility and cap installation were required within 9 months of accumulating the required funds but no later than November 1, 2011.
- (r) An Administrative Consent Order between MassDEP and Aerovox in connection with the Property became effective on February 3, 2000 (the "2000 ACO").
- (s) Aerovox relocated to a new manufacturing location by April 2, 2001, leaving behind, among other things, a substantial amount of contaminated equipment and machinery, PCB-contaminated rinse water, PCB-contaminated personal protective gear, solvents, acids and compressed gas cylinders.
- (t) Aerovox filed a voluntary petition for Chapter 11 bankruptcy on June 6, 2001 in the United States Bankruptcy Court for the District of Massachusetts, *In re New Bedford Capacitor, Inc. (f/k/a Aerovox, Inc.)* (Case No. 01-14680-JNF). As a result, Aerovox never completed the response actions required by the 1999 AOC or the 2000 ACO.
- (u) On or about November 15, 2001, USEPA filed a proof of claim in the Aerovox bankruptcy, asserting in part that Aerovox, as the owner and operator of the Property, was required to clean up and perform operation and maintenance measures with respect to the PCBs and other hazardous substances disposed of in and around the Property, pursuant to the administrative orders under CERCLA and RCRA.
- (v) On or about November 26, 2002, USEPA filed an *Application of the United States for Reimbursement of Administrative Expenses* in part for recovery of response costs USEPA expected to incur in cleaning up and performing operation and maintenance measures with respect to PCBs and other hazardous substances disposed of in and around the Property.
- (w) On or about November 15, 2001, the Commonwealth filed a proof of claim in the bankruptcy proceeding asserting that Aerovox was required to perform various ongoing activities pursuant to the 2000 ACO, as well as state and federal law. On or about November 27, 2002, the Commonwealth filed a *Request for Administrative Expenses of the Commonwealth of Massachusetts*, which reiterated Aerovox's environmental obligations under the 2000 ACO and applicable state and federal law.
- (x) On or about November 27, 2002, the City of New Bedford (the "City") filed a proof of claim for an administrative priority claim in the amount of \$323,300. The City represented that this estimated amount reflected a projection of five years of maintenance of the Property.

- (y) On or about August 11, 2003, Aerovox, USEPA, the Commonwealth and the City entered into a settlement agreement (the "Bankruptcy Settlement") with respect to the costs for the cleanup of the Property. The Bankruptcy Settlement was approved by the Court on September 30, 2003. USEPA settled all its claims against Aerovox with respect to the Property in exchange for, among other things: (1) payment of the \$750,000 placed in the Fund by Aerovox prior to its bankruptcy, plus interest and any appreciation; (2) allowance of USEPA's administrative priority claim in the amount of \$200,000; and (3) allowance of a pre-petition, non-priority, general unsecured claim in the amount of \$8,235,000 (reduced by the amount by which the Fund exceeded \$830,000).
- (z) Pursuant to the Bankruptcy Settlement, USEPA received \$2,723,385.32 to be used solely to conduct or finance response actions at the Property.
- (aa) Under the Bankruptcy Settlement, the City was designated as first responder for problems at the Property during the time that Aerovox retained legal and record title to the Property. The City received \$250,000 on its administrative claim for the purpose of maintaining the fire suppression system and performing other property maintenance and security measures at the Property.
- (bb) Under the Bankruptcy Settlement, upon sale of the Property, the City is to share the sale proceeds with USEPA and the Commonwealth pro rata in proportion to the amount of their expenses in excess of the amount each recovered pursuant to the terms of the Bankruptcy Settlement.
- (cc) In March 2004, USEPA issued an action memorandum to initiate a time-critical removal action ("TCRA") at the Property. The purpose of the TCRA was to remove drums and containers abandoned at the Property, and general repair of the cap installed by Aerovox pursuant to the 1982 Order.
- (dd) USEPA implemented the TCRA to remove waste drums and containers and to remove vegetation from and seal cracks in the existing cap.
- (ee) A January 2005 Site Information and Preplan, prepared by the City's Fire Department, describes the fire hazards posed by the manufacturing building, includes a fire plan as to how the Fire Department should respond to a fire at the building, and describes the existing fire suppression equipment in the building.
- (ff) As a result of the Bankruptcy Settlement, after a certain holding period, the Property became the property of 740 Belleville Avenue, LLC, which was organized as a Massachusetts limited liability company for the purpose of facilitating the transfer of the Property to a brownfields developer and whose members are the City and the New Bedford Redevelopment Authority.
- (gg) In April 2006, USEPA issued a supplement to the 1998 EE/CA (the "SEE/CA"). On June 7 and 11, 2006, USEPA published notice of a public meeting and the beginning of a 30-day public comment period on the SEE/CA. The majority of comments received reflected dissatisfaction with leaving PCB-contaminated materials on-site.
- (hh) On June 2, 2006, Respondent received a letter from USEPA dated May 31, 2006. USEPA demanded payment of its past costs as well as all future Property-related costs.
- (ii) On September 7, 2006, USEPA awarded, and on September 29, 2006, the City affirmed a *Cooperative Agreement* in connection with the Property pursuant to which the City was to

- implement the SEE/CA's preferred alternative and to coordinate the cleanup with redevelopment of the Property. Under the Cooperative Agreement, USEPA was to provide \$8,043,902 to the City which the City would use to procure a site cleanup contractor, implement all cleanup activities, and coordinate redevelopment with cleanup.
- (jj) Sampling and analysis performed since the EE/CA, including that performed as recently as 2007, confirms the presence of widespread PCB contamination throughout the building, in soils under the concrete foundation, in soils outside the building, and mixed into the asphalt parking lot.
  - (kk) The building has remained vacant since 2001, and despite implementation of site security measures and the TCRA, the building has deteriorated considerably. Flooding from burst pipes caused water damage to the PCB-contaminated wooden floors causing them to weaken and buckle; the wooden roof, sections of which are highly deteriorated, leaks into the interior of the building; and structural columns have fallen out of plumb and PCB-contaminated stormwater continues to runoff the building.
  - (ll) On October 4, 2006, the City's Collector of Taxes recorded and filed an Instrument of Taking with the Bristol South District Registry of Deeds (the "Registry") in Book 8345, Page 326 and the Bristol South Registry District of the Land Court (the "Registry District") as Document No. 105416, and on October 28, 2008, the Land Court entered a Judgment in Tax Lien Case, foreclosing all rights of redemption to the Property, which decree the City recorded with the Registry in Book 9206, Page 104 and filed with the Registry District as Document No. 105418.
  - (mm) Despite implementation of site security measures, trespassing and vandalism have occurred and continue at the Property, including illegal entry into the building. Damage includes broken windows which allow PCB-contaminated dust to be released outside the building. Broken switches, thermostats and other mercury containing equipment have resulted in mercury spills and releases. Direct contact with mercury and PCB contaminated floors, building material and equipment allows contamination to be tracked outside the building. Asbestos is also present in the building.
  - (nn) In November 2007, Jacobs Engineering Group, an authorized representative of USEPA, began collecting the visible mercury containing manufactured articles ("MCMA") used as controls and switches within the facility, as well as the visible elemental mercury which had spilled on to various interior surfaces. This spilled mercury and MCMA was removed and disposed off-site in December 2007 and February 2008.
  - (oo) On January 27, 2010, USEPA issued an Action Memorandum for a NTCRA to achieve a controlled demolition of the facility, off-site disposal of the waste material, capping and implementation of post-removal site control measures.
  - (pp) USEPA and Respondent have entered into an *Administrative Settlement Agreement and Order on Consent for Non-Time Critical Removal Action* ("AOC"), which shall be effective on the Effective Date (as hereinafter defined), related to conducting a NTCRA at the Property. The NTCRA involves demolition of the building, for which Respondent is to be responsible, and transportation and disposal of TSCA demolition debris for which the City, acting under and using funds provided through a Cooperative Agreement with the USEPA, is to be responsible.



- (qq) Respondent and the City have entered into a *Cooperation and Settlement Agreement* which shall be effective on the Effective Date (as hereinafter defined), attached hereto as Exhibit B, which establishes a framework to coordinate and complete the NTCRA pursuant to CERCLA and to achieve the cleanup of the Property pursuant to M.G.L. c. 21E and the MCP in a manner that will assist and not impede the redevelopment of the property to the extent reasonable and feasible.
  - (rr) Hazardous materials were disposed of and released at or from the Property as a result of historical manufacturing operations during the period from 1938 to 2001. Such materials include, without limitation, PCBs and volatile organic compounds ("VOCs") such as chlorobenzene and trichloroethene. PCBs have been detected in soil, surface water, air, building materials and equipment, parking lot asphalt and groundwater. VOCs have been detected in soils and groundwater. PCBs are very stable compounds that can persist for years when released into the environment.
  - (ss) Based upon data derived from animal experiments and human studies, USEPA has concluded that human exposure to PCBs constitutes a health threat. USEPA has classified PCBs as a B2, probable human carcinogen, under its weight of evidence classification system. Exposure pathways to PCBs at the Property include inhalation, dermal exposure, and ingestion. PCBs spilled indoors may be distributed into other areas of a building in a number of ways, such as through ventilation equipment, ductwork or by tracking. Industrial equipment and other non-structural materials such as clothing also can be contaminated. As a result, trespassers can be subject to dermal exposure during illegal entry into the plant, and may also be subject to oral exposure during smoking or eating. Inhalation of PCBs can also result from the inhalation of dust particles contaminated with PCBs and by PCB volatilization.
  - (tt) PCBs may also be released outside the Property in various ways, by trespassers whose clothes and shoes have become contaminated with PCBs as they enter and exit the Property. PCBs can be released through volatilization and release of PCB-contaminated dust out a window, through openings in the deteriorated roof, or other openings. PCBs may also be released in stormwater runoff.
  - (uu) There is the potential for a release of PCBs and other hazardous materials in the event of a fire at the facility. If PCBs are exposed to fire, breakdown products may include dioxins and furans, potentially exposing nearby populations to inhalation and dermal contact threats.
  - (vv) Additional response actions, beyond those to be conducted in accordance with the AOC are required in order to comply with M.G.L. c. 21E and the MCP and to facilitate future redevelopment of the Property.
7. The "subject matter covered by this Consent Order" is defined as response actions, response action costs, contribution, property damage, and public involvement activities, pursuant to M.G.L. c. 21E, the MCP or CERCLA, or property damage under the common law, in connection with the Site.
8. This document shall also serve as a Notice of Responsibility pursuant to M.G.L. c. 21E, § 5 and 310 CMR 40.0006.

9. This Consent Order establishes deadlines for Respondent's completion of the response actions at the Site described in Paragraph 12. Notwithstanding the foregoing or any other provision of this Consent Order, MassDEP expressly acknowledges that Respondent shall perform the response actions described in Paragraph 12 only upon Respondent's receipt of written notice from USEPA that all work under the AOC has been fully performed (the "NTCRA Endpoint").

### III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Consent Order:

10. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for the purposes of the issuance or enforcement of this Consent Order.
11. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.
12. MassDEP hereby determines, and Respondent hereby agrees, that the deadlines set forth in this Paragraph constitute reasonable periods of time for Respondent to take the actions described. Accordingly, Respondent shall perform the following actions:
- (a) Within 90 days of the NTCRA Endpoint, Respondent shall submit to MassDEP a Tier Classification, prepared in accordance with 310 CMR 40.0500, and a Phase II Scope of Work ("SOW"), prepared in accordance with 310 CMR 40.0830, for the Site.
  - (b) Within 545 days of Respondent's receipt of MassDEP's written approval of the Phase II SOW, Respondent shall submit to MassDEP a Phase II Comprehensive Site Assessment ("Phase II CSA") for the Site, prepared in accordance with 310 CMR 40.0830.
  - (c) Within 180 days of Respondent's receipt of MassDEP's written approval of a Phase II CSA which indicates that additional Comprehensive Response Actions are necessary to achieve a Response Action Outcome ("RAO") at the Site, Respondent shall submit to MassDEP a Phase III Remedial Action Plan ("Phase III RAP"), prepared in accordance with 310 CMR 40.0850.
  - (d) Within 365 days of Respondent's receipt of MassDEP's written approval of the Phase III RAP, Respondent shall submit to MassDEP a Phase IV Remedy Implementation Plan ("Phase IV RIP"), prepared in accordance with 310 CMR 40.0870.
  - (e) Within 730 days of Respondent's receipt of MassDEP's written approval of the Phase IV RIP, Respondent shall submit to MassDEP a Phase IV Final Inspection Report and a Phase IV Completion Statement (collectively, "Phase IV Completion"), prepared in accordance with 310 CMR 40.0878 and 40.0879, respectively. Concurrent with submittal of the Phase IV Completion, Respondent shall submit a Remedy Operation Status ("ROS") Submittal, in accordance with 310 CMR 40.0893, or Respondent shall submit a Class A RAO Statement to MassDEP, prepared in accordance with 310 CMR 40.1056.

- (f) If, at any time after Respondent submits the Phase II CSA, in accordance with Paragraph 12(c), and MassDEP issues written approval of the Phase II CSA, Respondent submits a Class A RAO Statement, in accordance with 310 CMR 40.1000, Respondent need not continue with Comprehensive Response Actions at the Site pursuant to 310 CMR 40.0550(3) or 310 CMR 40.0560(3), whichever is applicable.
13. The deadlines established in Section III of this Consent Order and any amendment hereto, are not subject to the seven (7) day grace period allowed by 310 CMR 40.0008(4). The submittals required by this Consent Order are due to MassDEP on or before the deadlines established herein.
14. MassDEP agrees to perform the following actions in a timely fashion:
- (a) MassDEP agrees to review the submissions made pursuant to Paragraphs 12(a) through 12(f), including any revised versions of same made in accordance with Paragraph 14(b).
  - (b) If MassDEP determines that any submission, made pursuant to Paragraphs 12(a) through 12(f), has not been completed in accordance with the MCP or this Consent Order, MassDEP agrees to provide a written notice of deficiency to Respondent.
  - (c) MassDEP agrees to provide to Respondent a written notice of approval, conditional approval, deficiency or denial for each submission and/or revised submission made pursuant to Paragraphs 12(a) through 12(f).
  - (d) If an Activity and Use Limitation ("AUL"), as defined at 310 CMR 40.1070, is necessary to support a Class A RAO or ROS, MassDEP agrees to review and identify any deficiencies in such AUL, prior to its recording or registration in the appropriate Registry of Deeds and/or Land Registration Office.
  - (e) If an engineered barrier, as defined by 310 CMR 40.0996(5), is necessary to support a Class A RAO or ROS, MassDEP agrees to review and identify any deficiencies in any documents that may be necessary to establish a financial assurance mechanism ("FAM"), as described in 310 CMR 40.0996(5)(a)7.
  - (f) After review and approval of documents supporting the conclusion that a Class A RAO or ROS has been achieved for the entire Site, including any documents associated with an AUL and a FAM, MassDEP agrees to provide to Respondent written notice of approval, with copies to USEPA, the OAG and the City.
  - (g) In the event that the City submits documentation that meets the requirements of the MCP to effect the transfer of responsibility for the ongoing operation of Comprehensive Response Actions under ROS, MassDEP shall approve such transfer.
  - (h) Nothing in this Paragraph 14 shall be construed or operate to prevent MassDEP from taking or initiating enforcement for Respondent's failure to perform the actions as set forth herein, subject to the completion of dispute resolution, set forth in Paragraph 22.
15. This Consent Order does not relieve Respondent's obligation to pay Annual Compliance Assurance Fees and Permit Application Fees payable pursuant to 310 CMR 4.00. The first "status date" for such annual compliance assurance fees, as such term is used in 310 CMR 4.03, shall be the deadline for Tier Classification provided in Paragraph 12(a) of this Consent Order.

16. Except as otherwise provided herein or required under the MCP, all notices, submittals and other communications required by this Consent Order shall be directed to:

Gerard Martin  
MassDEP Bureau of Waste Site Cleanup  
20 Riverside Drive  
Lakeville, Massachusetts 02347

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

17. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.
18. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by MassDEP.
19. This Consent Order may be modified only by the written agreement of the parties hereto.
20. MassDEP agrees to extend the time for performance of any requirement of this Consent Order if MassDEP determines that such failure to perform is caused by a *Force Majeure* event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a *Force Majeure* event if the following criteria are met:
- (a) an event delays performance of a requirement of this Consent Order beyond the deadline established herein;
  - (b) such event is beyond the control and without the fault of Respondent and Respondent's employees, agents, consultants, and contractors; and
  - (c) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondent or Respondent's employees, agents, consultants, and contractors.

Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a *Force Majeure* event.

If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondent shall immediately, but not later than 5 days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail the: (i) reason for and the anticipated length of the delay or the potential delay; (ii) measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) timetable for taking such measures. If Respondent intends to attribute such delay or potential delay to a *Force Majeure* event, such notice shall also include the rationale for attributing such delay or potential delay to a *Force Majeure* event, and all available documentation supporting a claim of *Force Majeure* for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent's right to request an extension based on the event.

If MassDEP determines that Respondent's failure to perform a requirement of this Consent Order is caused by a *Force Majeure* event, and Respondent otherwise complies with the notice provisions above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the *Force Majeure* event. No extension shall be provided for any period of time that Respondent's failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondent's failure to perform a requirement of this Consent Order during the extension of the time for performance resulting from a *Force Majeure* event.

A delay in the performance of a requirement of this Consent Order caused by a *Force Majeure* event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

21. If Respondent has reason to know that an event has occurred or may occur which could cause delay of performance of the actions described in this Consent Order, Respondent may submit a written request to MassDEP to extend the deadlines for performing the actions described in this Consent Order. MassDEP, in its sole and absolute discretion, may on its own initiative or upon a reasonable documented request from Respondent, extend any deadline established in Section III of this Consent Order. Respondent's request for an extension must be submitted as soon as Respondent learns of the delay, but not later than fourteen (14) days prior to the deadline. The request shall contain the following information:
- (a) the reason for and the anticipated length of the delay or potential delay;
  - (b) if any, the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay;
  - (c) the timetable for taking such measures, if any; and
  - (d) if the delay is due to an inability to obtain property access, Respondent shall certify in writing when requesting the extension that it has followed the requirements of 310 CMR 40.0173 that describe the procedure for obtaining property access.

MassDEP may approve, conditionally approve, or deny, Respondent's request. Should MassDEP approve or conditionally approve the request, an amended administrative consent order will be executed. A decision under this Paragraph 21 is not subject to administrative or judicial review.

22. Respondent may invoke the following dispute resolution procedures to challenge a decision by MassDEP under Paragraphs 14 and 20 of this Consent Order:
- (a) Respondent shall invoke dispute resolution by providing written notice to MassDEP within five (5) days after obtaining knowledge of such a dispute. Respondent's written notice shall include a description of the nature of the dispute. Failure to provide MassDEP with a written notice of dispute within the five (5) day period shall constitute a waiver of Respondent's right to dispute resolution.
  - (b) The parties shall participate in a conference call or meeting to attempt to resolve the dispute within ten (10) days of MassDEP's receipt of Respondent's notice of dispute.
  - (c) If the parties are unable to resolve the dispute as a result of the conference call or meeting, Respondent shall, within ten (10) days of said conference call or meeting, submit a written Statement of Position to MassDEP. Such Statement of Position shall, without limitation, set forth the specific points of dispute, the position of Respondent and the basis for it, any

action(s) Respondent considers necessary to resolve the dispute, any factual data, analysis or opinion supporting Respondent's position, and any supporting documentation upon which Respondent relies. Failure to provide such Statement of Position within the ten (10) day period shall constitute a waiver of Respondent's right to further dispute resolution.

- (d) Within fourteen (14) days after receipt of Respondent's Statement of Position, MassDEP shall present a written Statement of Position to Respondent. Such Statement of Position shall, without limitation, set forth the specific points of dispute, the position of MassDEP and the basis for it, any action(s) MassDEP considers necessary to resolve the dispute, any factual data, analysis or opinion supporting MassDEP's position, and any supporting documentation upon which MassDEP relies.
- (e) The Statements of Position will be submitted to the Regional Director for MassDEP's Southeast Office or his/her designee ("Regional Director") on the date MassDEP presents its written Statement of Position to Respondent. The Regional Director shall issue a final written decision on the dispute based upon the Statements of Position and any other relevant information, which may include a meeting with one or both parties. The Regional Director's written decision shall constitute the final decision on the matter, which shall be binding on the parties and not subject to administrative or judicial appeal or review.
23. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.
24. Except as specifically provided in Paragraph 30 of this Consent Order, nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to: (a) enforce this Consent Order in an administrative or judicial proceeding; (b) recover costs incurred by MassDEP in connection with response actions conducted at the Site; and (c) recover damages for injury to and for destruction or loss of natural resources pursuant to M.G.L. c. 21E, § 5 or CERCLA.
- Except as specifically provided in Paragraph 30 of this Consent Order, nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting MassDEP's authority to: (a) perform response actions at the Site; or (b) require Respondent to conduct response actions at the Site or take other actions beyond those required by this Consent Order in order to comply with all applicable laws and regulations including, without limitation, M.G.L. c. 21E and the MCP.
25. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right, claim, demand, or cause of action of the Commonwealth, including but without limitation MassDEP, against Respondent or any other person with respect to the New Bedford Harbor Superfund Site as defined in Paragraph 5 of this Consent Order or any other subject matter not covered by this Consent Order, and the

Commonwealth reserves any and all rights, claims, demands, and causes of action with respect to the New Bedford Harbor Superfund Site. Nor shall this Consent Order constitute, be construed or operate as an admission of any liability or fact, as a waiver of any right or defense, or as an estoppel against Respondent with respect to the New Bedford Harbor Superfund Site, and Respondent reserves any and all rights, defenses, claims, demands, and causes of action relating in any way to the New Bedford Harbor Superfund Site, as set forth in the Consent Decree entered into between the parties in Civil Action No. 83-3882-Y.

- 26. This Consent Order shall be binding upon Respondent and upon Respondent's successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's directors, officers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.
- 27. If Respondent violates any provision of this Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule:

For each day, or portion thereof, of each violation, Respondent shall pay stipulated civil administrative penalties in the following amounts:

<u>Period of Violation</u>	<u>Penalty per day</u>
1 <sup>st</sup> through 7 <sup>th</sup> days	\$ 100.00 per day
8 <sup>th</sup> through 14 <sup>th</sup> days	\$ 250.00 per day
15 <sup>th</sup> day and thereafter	\$ 500.00 per day

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with this Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

- 28. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further,

no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

29. Respondent has arranged for access to the Property by agreement with the City, the owner of the Property. The *Cooperation and Settlement Agreement* grants to Respondent, Respondent's authorized representatives and contractors, MassDEP, and MassDEP's employees, representatives and contractors access at all reasonable times to the Property for purposes of implementing and overseeing the implementation of activities under this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.
30. In consideration of the response actions that will be performed by Respondent under the terms of this Consent Order, and subject to the termination for cause provisions in Paragraph 33 of this Consent Order, and effective on the date provided in Paragraph 35 of this Consent Order, the Commonwealth:
- (a) covenants not to sue or take administrative action against Respondent, pursuant to M.G.L. c. 21E, the MCP, or CERCLA, for response action costs, contribution, property damage, or to compel further response actions or public involvement activities, or for property damage under the common law, for any and all releases of oil and/or hazardous material which occurred at or from the Property before the Effective Date (as hereinafter defined) for which Respondent submitted a Class A RAO Statement or ROS Submittal pursuant to Paragraph 12(e) of this Consent Order, as long as MassDEP provides to Respondent written approval of the Class A RAO Statement or ROS Submittal, pursuant to Paragraph 14(f) of this Consent Order. These covenants extend only to Respondent and do not extend to any other person.
  - (b) agrees, in the event of a sale of the Property for a purchase price which exceeds all unreimbursed expenses of the Commonwealth, the City and USEPA in connection with the Property by at least \$100,000, to make reasonable efforts to modify the Bankruptcy Settlement, and to cooperate with all necessary parties, including without limitation USEPA and the City, to effect such modification, so that after all previously unreimbursed expenses of the Commonwealth, the City and USEPA are reimbursed from the proceeds of the sale of the Property, the remaining proceeds from such sale, if any, shall be paid to Respondent for its unreimbursed expenses in connection with the Property.
31. The covenants not to sue or take administrative action in Paragraph 30 of this Consent Order shall not apply to:
- (a) any release of oil and/or hazardous material not part of the Site;
  - (b) any response actions, response action costs, contribution or property damage in connection with the New Bedford Harbor Superfund Site as defined in Paragraph 5 of this Consent Order, whether or not the source of the release or threat of release resulting in such response actions, response action costs, contribution or property damage is or may be the Site;
  - (c) any release of oil and/or hazardous material that first begins to occur after the Effective Date (as hereinafter defined), and



- (d) any release of oil and/or hazardous material which Respondent contributed to or caused to become worse after the Effective Date (as hereinafter defined).
32. In consideration of the Commonwealth's covenants not to sue or take administrative action in Paragraph 30, Respondent covenants not to sue and not to assert any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the following matters as they relate to the Site or this Consent Order:
- (a) any direct or indirect claims for reimbursement, recovery, injunctive relief, contribution or equitable share of response costs or for property damage pursuant to CERCLA or M.G.L. c. 21E;
- (b) any claims for "takings" under the Fifth Amendment to the United States Constitution, under the Massachusetts Constitution, or under M.G.L. c. 79 based on the argument that, with respect to the Property, the requirements of CERCLA, M.G.L. c. 21E, the MCP, or this Consent Order constitute a taking;
- (c) any claims for monetary damages arising out of response actions;
- (d) any claims or causes of action for interference with contracts, business relations or economic advantage based upon the conduct of MassDEP pursuant to CERCLA or M.G.L. c. 21E prior to the Effective Date (as hereinafter defined); or
- (e) any claims for costs, attorneys' fees, other fees or expenses incurred.
33. In the event that the OAG or MassDEP determines that Respondent has (a) submitted materially false or misleading information in connection with the negotiation of this Consent Order or in the documents supporting the conclusion that a Class A RAO or ROS has been achieved for the entire Site or any part thereof, or (b) failed to provide funding to the City for the maintenance of ROS pursuant to Paragraph V.H.2. and, if applicable, Section VII. of the *Cooperation and Settlement Agreement*, the OAG may terminate the covenant not to sue in Paragraph 30 of this Consent Order, and MassDEP may terminate the covenant not to take administrative action contained in Paragraph 30 of this Consent Order. A statement made by Respondent in connection with the negotiation of this Consent Order, whether orally or in writing, will not be considered false or misleading for purposes of this Paragraph if the statement was asserted in good faith at the time it was made. Before terminating such covenants in Paragraph 30, MassDEP and/or the OAG will provide Respondent with written notice of the proposed basis for, and a 60-day opportunity to comment on the proposed termination. The notice from MassDEP and/or the OAG shall, if appropriate, provide a reasonable period of time for Respondent to cure. The decision whether to provide an opportunity to cure is in the sole discretion of MassDEP and/or the OAG and shall be exercised reasonably. MassDEP's or the OAG's decision to terminate the covenants in Paragraph 30 shall constitute the final decision on the matter, which shall be binding on the parties and not subject to administrative or judicial appeal or review. Termination of the covenants in Paragraph 30 pursuant to this Paragraph shall not affect any defense that Respondent might otherwise have pursuant to M.G.L. c. 21E.
34. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

AVX VA MassDEP PA OAG R/E

In the Matter of: AVX Corporation

ACO-SE-09-3P-016

Page 16

35. This Consent Order shall become effective on the date that it is executed by MassDEP and the OAG (the "Effective Date"). Notwithstanding the foregoing, the covenants not to sue and agreements in Paragraphs 30 and 32 of this Consent Order will be effective if and when MassDEP, pursuant to Paragraph 14(f) of this Consent Order, provides written approval of the documents supporting the conclusion that a Class A RAO or ROS has been achieved for the Site. If MassDEP does not provide such approval pursuant to Paragraph 14(f) of this Consent Order, the covenants not to sue and other agreements in Paragraphs 30 and 32 of this Consent Order will not come into effect.

[ SIGNATURES ON FOLLOWING PAGE ]

AVX     W     MassDEP     D     OAG     BJE

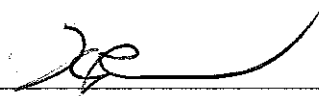
In the Matter of: AVX Corporation

ACO-SE-09-3P-016

Page 17

**Consented To:  
AVX CORPORATION**

By: \_\_\_\_\_

  
Kurt P. Cummings  
Vice President, Chief Financial Officer, Treasurer & Secretary  
801 17th Avenue South  
Box 867  
Myrtle Beach, South Carolina 29578-0687

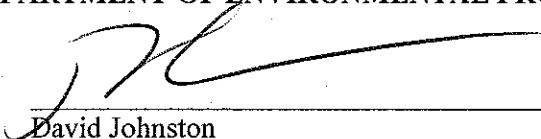
Federal Employer Identification Number: 33-0379007

Date: \_\_\_\_\_

3/23/10

**Issued By:  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By: \_\_\_\_\_

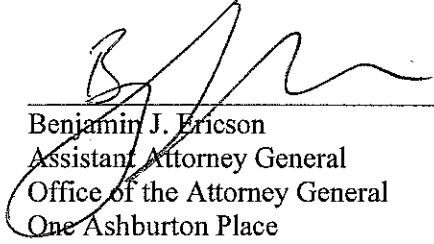
  
David Johnston  
Acting Regional Director  
Department of Environmental Protection  
20 Riverside Drive  
Lakeville, Massachusetts 02347

Date: \_\_\_\_\_

6-3-10

**For purposes of Paragraphs 30-35 only:  
OFFICE OF ATTORNEY GENERAL**

By: \_\_\_\_\_

  
Benjamin J. Ericson  
Assistant Attorney General  
Office of the Attorney General  
One Ashburton Place  
Boston, Massachusetts 02108

Date: \_\_\_\_\_

6/3/10

AVX



MassDEP



OAG



In the Matter of: AVX Corporation

ACO-SE-09-3P-016

Page 18

Exhibit A

Property Map



In the Matter of: AVX Corporation

ACO-SE-09-3P-016

Page 19

**Exhibit B**

**Cooperation and Settlement Agreement**

AVX OK MassDEP P OAG BJE