UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

EXHIBIT 3

DECLARATION OF JAMES E. WOOLFORD
IN SUPPORT OF MOTION TO ENTER SUPPLEMENTAL CONSENT DECREE

I, James E. Woolford, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am employed by the United States Environmental Protection Agency ("EPA"), 1200 Pennsylvania Avenue, NW, Washington DC 20460, as the Director of the Office of Superfund Remediation and Technology Innovation in the Office of Solid Waste and Emergency Response. I have been employed by EPA since 1986. I have worked in the Superfund Program, in various capacities, since 1986 and have knowledge of the process by which EPA provides funds to remediate hazardous waste sites, and I have knowledge of the New Bedford Harbor Superfund Site ("Site") in New Bedford, MA.

2. This declaration is based on my personal knowledge of the Superfund Program, and review of the records related to the Site to the best of my information and belief, and the knowledge and experience I have gained while employed by EPA, in particular managing the process by which Superfund sites are listed and funded.

3. The Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as Superfund and enacted by Congress on December 11, 1980, as amended ("CERCLA"), provides the federal government with the authority to respond directly to releases or threatened releases of hazardous substances, pollutants, or contaminants that may endanger public health or the environment. CERCLA also established a trust fund, commonly known as the Superfund, to pay for actions needed to respond to these releases or threatened releases. In recent years, the trust fund, in large part, is comprised of general revenue appropriated by Congress.

4. CERCLA requires the listing of "national priorities among the known releases or threatened releases…," commonly known as the National Priorities List ("NPL"). 42 U.S.C. § 9605, promulgated at 40 C.F.R. Part 300, App. B. CERCLA permits EPA to use trust fund resources to, among other things, fund remedial action at sites that are listed on the NPL.

5. The Hazard Ranking System ("HRS") is the principal mechanism EPA uses to place sites on the NPL. It is a screening system that uses information from the preliminary assessment and the site inspection to assess the relative potential of a release or threatened release to pose a threat to human health or the environment. HRS scores are not used to determine funding priority, as the information collected to develop HRS scores is not sufficient to determine either the extent of contamination or the appropriate response for a particular release or threatened release. The placement of a site on the NPL is intended, primarily, to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the human health and

environmental risks associated with a release or threatened release.

6. CERCLA provides EPA with the authority to use the trust fund resources to take response action at any site that meets the criteria of CERCLA § 104. However, EPA employs an "enforcement first" policy whereby the Agency seeks to have potentially responsible parties ("PRPs") undertake or pay for as much of the cleanup work as possible. This practice allows EPA to use the limited appropriated trust fund resources when there is no known viable responsible party or in other situations in which responsible parties are unable or unwilling to perform response actions. EPA may recover costs from any viable responsible party before, during, and after cleanup. Costs recovered or settlement funds are, generally, retained by EPA in special sub-accounts of the trust fund to fund future response work for that particular site. These sub-accounts are commonly known as "Special Accounts."

7. EPA's annual Superfund appropriation is, generally, insufficient to fully fund every action necessary to address releases on the NPL. For example, the Superfund Remedial Program budget for Fiscal Year 2013 is about $504 million, of which EPA anticipates using approximately $195 million on remedial action and post-construction activities. As a result, the Superfund Program must make policy decisions regarding the use of these funds. One such decision, reflected in the President's Budget, places a priority on completing ongoing site work over starting new work. Another EPA policy places a strong emphasis on using available non-appropriated resources, like Special Accounts, prior to using appropriated resources at a site.

8. To allocate appropriated resources, EPA, generally, follows an established policy that uses a process whereby potential risks to human health and the environment are evaluated to guide funding decisions (other factors, including the readiness of the site for remediation, are also considered). A panel of regional and headquarters managers and experts, the National

Risk-Based Priority Panel, convenes at least once a year to review projects ready for construction with appropriated resources. The panel makes recommendations to EPA senior managers on the relative risk considerations posed by those NPL sites. Risk considerations include the toxicity of the release and the likelihood of exposure. Actual funding decisions are made by the Assistant Administrator for the Office of Solid Waste and Emergency Response, based on recommendations from my office, the Office Superfund Remediation and Technology Innovation.

9. The New Bedford Site was placed on the NPL in 1983. The 18,000-acre Site extends from the shallow northern reaches of the Acushnet River estuary, south through the commercial harbor of the City of New Bedford, Massachusetts, and into Buzzards Bay. The Harbor contains sediment highly contaminated with polychlorinated biphenyls ("PCBs") and heavy metals. From the 1940s until EPA banned the production of PCBs in the 1970s, two electrical capacitor manufacturing facilities released, deposited, disposed of, or placed hazardous substances, particularly PCBs, in the Harbor.

10. In addressing the long-term remedial action at the Site, EPA divided the Site into three operable units ("OUs"), as defined in 40 C.F.R. § 300.5. OU1 covers the Upper and Lower Harbors, and also includes an interim action for two locations in the Outer Harbor. OU2 addressed the hot spot sediment, defined as sediment containing PCBs at levels above 4,000 parts per million ("ppm"), generally located in a five-acre area in the Upper Harbor near the Aerovox Facility, the primary source of PCB contamination to the Harbor. OU3 encompasses the Outer Harbor area.

11. EPA has not yet issued a record of decision ("ROD") for OU3. In 2009, EPA initiated a Remedial Investigation and Feasibility Study ('RI/FS') of the Outer Harbor. The RI/FS includes field sampling activities to determine the nature and extent of contamination, a risk

assessment, a review of technologies and range of response actions to address any risk found. However, it should be noted that PCB contamination in the Outer Harbor is generally much lower than in the Upper Harbor and Lower Harbor. Generally, PCB concentrations in the Outer Harbor are below 1 ppm except for a few localized areas.

12. On April 6, 1990, EPA issued a ROD for OU2 (Hot Spot Operable Unit), which was later modified. The OU2 ROD, as modified, called for dredging of sediment contaminated with over 4,000 ppm PCBs in a roughly 5-acre area in the Upper Harbor, followed by dewatering and off-site disposal in an appropriately licensed disposal facility. This work was completed by EPA in May 2000.

13. On September 25, 1998, EPA issued a ROD for OU1 (Upper and Lower Harbor Operable Unit), which was subsequently modified by four Explanations of Significant Differences (collectively referred to as the "OU1 Remedy"). Since EPA's issuance of the OU1 ROD, EPA has been performing the remedial design and remedial action for OU1. The major components of the OU1 Remedy include, but are not limited to:

- Hydraulic dredging of sediment in the Upper Harbor, dewatering, and off-site disposal;
- Dredging of additional sediment from areas of the Upper Harbor and disposal of that sediment into three confined disposal facilities ("CDFs") to be built along the New Bedford shoreline of the Upper Harbor;
- Mechanical dredging of sediment from the Lower Harbor and the southern end of the Upper Harbor and disposal of that sediment in a confined aquatic disposal ("CAD") cell, which will be constructed in the Lower Harbor; and
- Long-term operation and maintenance of components of the harbor remedy, including a capped area of sediment in the Outer Harbor, the CAD cell, and CDFs.

14. The remedial action objectives of the OU1 Remedy are the following:

- To reduce risks to human health by reducing PCB concentrations in seafood, by lowering PCB concentrations in sediment and in the water column;
- To ensure that contact with shoreline sediment does not present excessive risks to human health as a result of dermal contact with or accidental ingestion of PCB-contaminated sediment in areas prone to beach combing or in areas where residences abut the Harbor; and
- To improve the quality of the seriously degraded marine ecosystem by
  - Reducing marine organisms' exposure to PCB-contaminated sediment while minimizing consequent harm to the environment, and
  - Reducing surface water PCB concentrations to comply with chronic national recommended water quality criterion (formerly known as ambient water quality criterion) for PCBs in salt water of 0.03 parts per billion by reducing PCB sediment concentrations.

15. The OU1 Remedy includes separate PCB cleanup levels for different areas of the Harbor:

- For subtidal areas, the cleanup levels, to attain applicable water quality and seafood consumption standards, are the following:
  - 10 ppm PCBs for subtidal and mudflat sediment in the Upper Harbor, which has most of the PCB contamination; and
  - 50 ppm PCBs for subtidal and mudflat sediment in the Lower Harbor; and
- For the shoreline intertidal areas, the cleanup levels, to reduce risk from human contact with contaminated sediment, are the following:

- 1 ppm PCBs for areas bordering residential areas;
- 25 ppm PCBs for shoreline areas bordering recreational areas; and,
- 50 ppm PCBs for other shoreline areas with little or no public access.

16. Through 2012, approximately 250,000 cubic yards ("cy") of the estimated 900,000 cy of contaminated sediment at the Site have been addressed.

17. In 1991, the risks posed by the New Bedford Harbor Superfund Site were deemed sufficient to warrant receiving appropriated funds for cleanup. Since 1991, Superfund has obligated nearly $215 million of appropriated funds for remedial action at the New Bedford Harbor Superfund Site. In Fiscal Year 2013, an additional $15.5 million of appropriated funds is allocated toward remedial action at the Site. The total funding amount includes funding from the American Recovery and Reinvestment Act of 2009 and excludes resources used for other response activities and enforcement, payroll, work funded from state cost share payments or private party settlements, and EPA's indirect costs.

18. EPA is committed to assuring that sites reach completion, including sites where cleanup has been substantially performed or funded by responsible parties. Future funding decisions for the New Bedford Harbor Superfund Site are expected to be made in a manner consistent with the practices described earlier in this declaration, and subject to appropriations, EPA is committed to completing the ongoing cleanup of the New Bedford Harbor Superfund Site.

I declare upon penalty of perjury that the foregoing is true and correct. Executed on this 30th day of May 2013.

James E. Woolford, Director
Office of Superfund Remediation and Technology Innovation
Office of Solid Waste and Emergency Response