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U.S. sues OMC over pollution

BY JOE MANNING
Staff Writer

Outboard Marine Corp. was sued Friday by the federal government in an attempt to get OMC to remove tons of PCB pollutants from the Waukegan Harbor.

The suit asks a maximum of $50 million in penalties.

The bottom of the north end of Waukegan Harbor is covered with hydraulic fluid containing PCBs (polychlorinated biphenyls), which have caused cancer in laboratory animals and have turned up in the fat of Lake Michigan fish. The fluids drained into the harbor through a sewer from an OMC die-casting plant.

U.S. Atty. Thomas P. Sullivan filed the suit in U.S. District Court charging OMC with violations of the Federal Water Pollution Control Act of 1972.

The suit charges that OMC allowed the discharge of PCBs into the harbor for 10 years and that the total amount of the pollutant weighs 2 million pounds.

The suit asks the federal district court to order OMC to remove the PCBs in a "an environmentally accepted manner," and calls for OMC to be fined $25,000 a day for each day PCBs were allowed to seep into the water.

The maximum penalty could come to $50 million.

The government's suit follows by two months a suit filed by OMC against the U.S. and Illinois Environmental Protection Agencies seeking a federal court order to force the agencies to tell OMC what to do about the harbor pollution which the firm recently admitted causing.

OMC officials, however, claim they did not know the hydraulic fluid was getting into the harbor and that it contained cancer-causing PCBs.

U.S. Atty. Sullivan said the suit was prepared in cooperation with the Midwest office of the U.S. EPA. The suit maintains Waukegan Harbor has the highest concentration of PCBs in the nation.

OMC chief counsel Hugh Thomas argued, unbelievably, that he didn't believe it was possible the pollution in the sediment could weigh 2 million pounds. He said the company calculated, from a year-long study by an environmental consulting company, that the PCBs could not weigh more than 500,000 pounds.

From the late 1940s to 1971, company records show OMC purchased about three million pounds of a non-flammable hydraulic fluid used in machines which run at very high temperatures.

OMC's Thomas said the U.S. attorney's suit and OMC's lawsuits are the same question.

"OMC has done nothing to deserve a penalty in this matter. We have acted in total good faith and yielded to every request they (environmental agencies) have made. I don't see this as a penalty case. Penalties do nothing to improve the environment unless you are dealing with a willful polluter and we are not a willful polluter."

OMC claims the environmental agencies are unfair to OMC when similarly or less in old the pollution from the harbor. Thomas said the environmental agencies have the responsibility and expertise to know what to do.

But EPA officials argue that EPA is not a consulting engineering firm but an enforcement agency. If OMC doesn't clean up its own mess, says Illinois EPA attorney said, OMC should be fined.

OMC argues that provisions of the Federal Water Pollution Control Act of 1972, also known as the Clean Water Act, require the environmental agencies to remedy water pollution which took place before the 1972 act was passed by Congress. All of OMC's harbor pollution took place before 1972.

Thomas said the provisions of the act are very clear and $300 million has been appropriated by Congress to aid in pollution clean up.

"The environmental agencies are clearly ... enforcement-oriented," Thomas said. "They are not receptive to recognizing their own responsibility for environmental improvements other than through enforcement activities."

Thomas said OMC may seek an injunction to stop the U.S. attorney's suit until the company's own suit is resolved. The OMC attorney said he feels both cases ask the same question: Who is supposed to do what about the PCBs in Waukegan Harbor?

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