The specter of tougher PCB rules

Next week, the Environmental Protection Agency will carry to the Court of Appeals for the District of Columbia a plan for a six-month study of polychlorinated biphenyls. And the hopes of a large portion of the chemical industry are riding on that plan. At issue are the exemptions from the general ban on PCBs that EPA allowed industry.

Jacqueline Warren, an attorney with the Environmental Defense Fund, started it all. She felt personally outraged that the EPA regulations exempt from control 99% of the PCBs still in use. That outrage was channeled into a suit, and the federal appeals court in Washington generally agreed with her, striking down on Oct. 30 the PCB regulations and criticizing EPA. The three-judge panel excoriated the agency for falling "far short of the mark" set by Congress in passing the Toxic Substances Control Act, and for designing rules that "in certain respects are contrary to the law."

"The ruling could have a devastating effect on the economy," says Ronald

Segments of the industry are not aware they may be affected by the court ruling

Lang, of the Synthetic Organic Chemical Manufacturers Assn. Lang maintains that there are thousands of chemical processes that produce trace amounts of PCBs that now may fall under EPA regulation. Similarly, John P. Murphy, senior regulatory affairs administrator for Stauffer Chemical, believes the effect of the ruling could be "overwhelming" for industry. "There are segments of the chemical industry that are not aware that they may be impacted by the court decision," he says, because they are still thinking of PCBs as a dielectric transformer fluid. And, he says, some companies may not even be aware they have PCBs in their products.

Rubbed the exemptions. The Congressional ban on PCBs—because of their toxicity to animals and humans, and their longevity in the environment and in body tissues—gives EPA the option of exempting "totally enclosed" PCBs. The agency's definition of totally enclosed PCBs includes those in capacitors, transformers and electromagnets. But EPA rules also exclude from the ban the manufacture and distribution of chemical mixtures with concentrations of less than 50 parts per million of PCBs.

According to EDF's Warren, EPA's action excludes from regulation 745 million lb. of the 750 million lb. of PCBs still in use. She argues that EPA's action "just doesn't make sense."

The court opposes EPA's "blanket exception" for transformers, capacitors and electromagnets. "Put simply", it said, "closed systems develop leaks." And although the court notes that it does not intend to force EPA to regulate every molecule of PCBs, it says there is considerable evidence that PCBs are toxic to wildlife in concentrations well below the agency's 50 ppm cutoff, and the chemicals tend to accumulate in organisms as they move up the food chain. The court also criticizes EPA for its "ad hoc" consideration of the economic impact and disposal requirements, which led the agency to conclude that a 50 ppm cutoff "provides adequate protection for human health and the environment."

And the court says bluntly, "We cannot find that Congress intended to exclude incidentally manufactured PCBs from [regulation]." Should the agency find its PCBs regulations creating an excessive burden on industry, the court adds, EPA "has other, more appropriate means" to deal with the situation. The authorization and exemption provisions under TSCA, according to the court, "allow the agency to tailor the compliance requirements" as necessary.

Mapping a plan. Steven D. Jellinek, head of EPA's office of pesticides and toxic substances, objects to the court's ruling. "It would be a totally impractical goal," he says, to require the disposal of even two thirds of the PCBs covered by the ruling. And EPA has been meeting with representatives from EDF, the Chemical Manufacturers Assn. and the Edison Electric Institute to map a plan for compliance.

The agency is expected to ask the court next Wednesday for six months to allow completion of a study begun by EEI on the number and types of electrical capacitors, transformers and electromagnets still in operation, and their propensity to leak PCBs. EPA will also ask for six months to study how and where PCBs are generated, where they go and how they are disposed of. The agency has requested CMA assistance in compiling such information. Once we have the information, says Ruth Bell, an assistant general counsel in EPA's toxics office, "we will have a better notion of where to establish a new PCB cutoff or how to defend the old one."

William Gunter, an environmental engineer in EPA's pesticides and toxic substances office, believes that "a very large segment" of the industry could be affected. PCBs, he says, can be formed any time a material containing hydrocarbons is chlorinated in the presence of heat, or when a chlorinated solvent is recycled as a part of a chemical process.

"If we are forced to analyze everything with chlorine and an active sub-



EDF's Warren: Outraged by PCB regulation.

stance," says John Craddock, Monsanto's manager of product and environmental safety, "that could cost us significantly." Kenneth Burgess, Dow Chemicals' director of chemicals and plastics regulation, agrees that "the potential analytical problems are horrendous."

Should the court disallow the study period, chemical and utility companies, among others, could face citizens' suits citing violations of the law. EDF's Warren, who says she is pleased so far with her crusade, is not giving an inch. The threat of lawsuits, she declares, "makes the companies amenable to working out an agreement" with EDF and EPA to control the use and manufacture of PCBs. □

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