of compensatory civil actions (33 CFR 326.4(b)(3)), however exculpatory otherwise significant consequences of matters and consent of claim against them and because compliance with corps' regulations is not prerequisite to filing of civil action by corps. 1871

Coastal Waters — Attorneys' Fees

Cal SupCt: Landowners, who successfully sought invalidation of beach access easement required by state coastal commission before issuance of dredge and fill permit, are not entitled to attorneys' fees because court's order vindicated only rights of owners of single parcel of property and did not confer significant benefit on large class of persons. 1856

Maine — Trespass — Liability By Industry

Cal SupCt: Residents adjacent to steel fabricating plant may not seek damages for noise from plant under trespass theory, because emission of sound waves that do not invade residents' interest in exclusive possession of properties is not trespass 1865

NEWS NOTES

EPA SEEKS LARGEST PENALTY FOR IMPROPER PCB DISPOSAL

The Environmental Protection Agency has charged Commonwealth Edison Co. with improperly disposing of polychlorinated biphenyls (PCBs) and is concerned that the company might be performing inadequate cleanup of which the agency is unaware and not advising people who have been contaminated to seek medical attention, according to an EPA Region V official.

EPA asked for penalties of $280,000, the largest ever sought for alleged improper disposal of PCBs, in the administrative action filed against the Commonwealth Edison Co. March 31.

Craig Benedict, assistant regional counsel for EPA's Region V, told BNA April 5 that the large penalty being sought indicates the agency's concern with the "pervasive problem" of capacitors owned by the company rupturing, adding that the agency thinks the capacitors contain "pure PCBs."

John Hogan, the company's director for news information, told BNA April 5 that Commonwealth Edison was "rather surprised" at the government's action, because the company had been cooperating with EPA "all along."

In two of the three counts in the civil administrative complaint, the agency alleged that Commonwealth Edison performed a cursory cleanup and failed to remove all of the contamination, Benedict said.

The first count, for which EPA seeks $150,000, resulted from an incident in Tinley Park, Ill., in 1978. EPA alleged that PCBs were discharged onto members of the Schumacher family, their property, and their cars, and entered their living room through a screened window.

Benedict said EPA Region V became involved only because Anna Schumacher's doctor asked the agency to look into the cause of her severe recurring rash. In late 1982, Benedict said, EPA found pervasive low-level PCB contamination (less than 50 parts per million) inside the Schumacher home.

Even though the PCB levels are less than 50 ppm, this incident falls under the agency's regulations under the Toxic Substances Control Act because the contamination is the diluted remains of a high-level spill, Benedict said.

Count two alleged that a capacitor on top of a utility pole in Lansing, Ill., ruptured twice, once in 1981 and once in 1982. EPA is seeking $125,000 from Commonwealth on the basis that none of the individuals who were contaminated by fluid from the rupturing capacitors were notified that PCBs had spilled.

Benedict said a nearby homeowner developed a recurring rash after the 1981 incident and still has it.

As of February 1983, EPA's analysis of the "outdoor environment" around the pole showed PCB contamination at levels well over 50 ppm, Benedict said.

Region V is seeking $5,000 for an alleged PCB discharge in 1982 in Oak Park, Ill., the complaint's third count.

(Continued on inside back cover)

(Continued from inside front cover)

Benedict said that, despite oil-burned leaves on trees beneath the capacitor and without any analysis, a Commonwealth representative concluded no oil had been spilled. At the request of the homeowners on whose property the pole is located, EPA did some analysis, which showed low levels of PCBs, Benedict said.

As far as EPA knows, no people were contaminated by the Oak Park discharge, Benedict said.

The company had not received a copy of the complaint as of April 4, Hogan said. Under the Toxic Substances Control Act, the company has the right to request an adjudicatory hearing to contest the proposed penalty, but must do so within 20 days after the complaint is served. The company also has the option to request an informal settlement conference with EPA.

ALABAMA FILES LAWSUIT OVER FLOODPLAIN PCB STORAGE

Alabama Attorney General Charles Graddick March 17 filed suit against the Environmental Protection Agency to stop the agency from issuing a federal permit to Chemical Waste Management, Inc. for the construction of two 800,000-gallon hazardous waste storage tanks in a 100-year floodplain at the port of Chickasaw, Ala.

The suit, filed in U.S. District Court for the Middle District of Alabama, seeks a preliminary injunction against EPA, thereby EPA Administrator John Hernandez, and EPA Region IV Administrator Charles Jeter to prevent the agency from issuing a permit to Chemical Waste Management under the Resource Conservation and Recovery Act. The suit asked that Chemical Waste Management be enjoined from storing polychlorinated biphenyls (PCBs) at its Chickasaw facility, or "anywhere else on the 100-year floodplain." The suit asks that the agency be ordered to prepare an environmental impact statement under the National Environmental Policy Act on the decision to issue a permit to store hazardous wastes at the Chickasaw site.

Graddick argued in the suit that storing PCBs or any other toxic substances regulated by the Toxic Substances Control Act on the 100-year floodplain is "absolutely prohibited" by EPA's own regulations (40 CFR 761.65(b)(1)(vi)).

PCBs are not hazardous wastes regulated by RCRA, Graddick said, but toxic chemical substances exclusively regulated at the federal level under the Toxic Substances Control Act.

On Oct. 4, 1982, the complaint alleged, then-EPA Assistant Administrator for Solid Waste and Emergency Response Rita Lavelle, then-EPA Assistant Administrator for Pesticides and Toxic Substances John A. Todhunter, and then-EPA Associate Administrator for Legal and Enforcement Counsel and General Counsel Robert Perry directed Jeter through a letter sent from Washington, D.C., to exercise "enforcement discretion" to allow storage of PCBs at Chemical Waste Management's Chickasaw facility.

"Jeter acted on that memo," according to Alabama Assistant Attorney General Janie Nobles, "and on the 19th of October, 1982, wrote to Chemical Waste Management and outlined the things that they must do, such as the construction of dikes in the area, in order for the EPA regional office to exercise enforcement discretion."

The Oct. 19, 1982, letter from Jeter to John Baker, Manager of Environmental Monitoring and Compliance at Chemical Waste Management's Oak Brook, Ill., headquarters, told the company to submit a letter to EPA demonstrating that the tanks could not "from a practical standpoint" be built above the 100-year floodwater level. The company was told that it "must take adequate precautions to protect the tanks from the 100-year flood in accordance with 40 CFR 264.18(b)."

Jeter told the company that it must "also formally request that EPA use enforcement discretion regarding the placement of PCBs into tanks which are in the floodplain." The letter stated that "CWM should make this request after the tanks are built and *before* the first PCBs are placed in the tank. Should this generic enforcement discretion be granted, no further approvals or notification requirements would need to be submitted to EPA under the TSCA regulations."

Graddick asserted that Chemical Waste Management completed a RCRA application on Dec. 12, 1982, for a permit to store PCBs on land owned by Mobile, Ala. Prior to the filing of the completed RCRA permit application by the company, Graddick charged, the agency had made a decision to issue the permit. The agency then published a draft permit on which it solicited public comment and proposed a public hearing on March 17, 1983, at Chickasaw, Graddick said.

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