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SPECIAL REPORT

ENVIRONMENTAL POLICY STAFF

July 24, 1980

EPA INVOLVES MONSANTO IN
OUTBOARD MARINE PCB LAWSUIT

TO:

Environmental Policy Staff and
Selected Network
Directors of Environmental Operations
Directors of Public Relations

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Monsanto has become involved in the Environmental Protection Agency's second attempt to indict a materials producer for alleged improper waste disposal by another party, and the following summary is provided for your information.

In March, 1978, a complaint was filed by EPA against Outboard Marine for allegedly improperly disposing of hydraulic fluids in Waukegan Harbor (north of Chicago) and in Lake Michigan. The complaint, in a federal court in Chicago, seeks civil penalties and an order requiring Outboard Marine to clean the harbor.

In November, 1978, Outboard Marine filed a third party complaint against Monsanto, since the hydraulic fluids allegedly contained PCBs manufactured by Monsanto. Both the EPA complaint and the Outboard Marine complaint have been progressing steadily and orderly through the court.

Now, however, EPA has amended its original complaint to include Monsanto. The new complaint seeks no civil penalties, but does seek to require Monsanto to clean the harbor. The new action was based on an 1899 law (since more recent laws do not apply) and on the legal principle that hazardous materials require stricter liability. We intend to file a motion to dismiss the new complaint.

Several weeks ago, EPA filed suit in Louisiana against a number of chemical producers for alleged improper waste disposal by another party. It is generally agreed that if Outboard Marine is required to clean up Waukegan Harbor, it would bankrupt the company. The same situation exists in the Louisiana case. It is reasonable to conclude, therefore, that EPA is seeking a "deep pocket" to finance cleanup costs.

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