

Enforcement

EPA, Coast Guard Tangle Over PCB Spill in Alaska

EPA Region X has issued a civil administrative complaint against the U.S. Coast Guard for PCB violations at the Coast Guard facility at Kodiak, Alaska. The complaint, issued on June 5, is the second PCB complaint against the service at the same site. EPA charges the Coast Guard with failure to begin the cleanup of a PCB spill discovered in 1985.

The Guard's position is that the property was sold in 1984 "as is" to the Kodiak Electrical Association, Inc., and any EPA action should be against the new owner. KEA operates the support center for the Coast Guard. In the latest legal action, EPA said the property sold to the KEA did not include land or buildings, all of which remain the Guard's property.

In January 1989, in a similar PCB case, Rockwell International Corp., the operator of the Rocky Flats nuclear weapons facilities near Denver, admitted EPA's jurisdiction over the U.S. Department of Energy-owned facility. In another contractor-operated federal facility at Cincinnati, EPA collected civil penalties from National Lead Inc. for PCB violations.

EPA is becoming more aggressive in dealing with federal facilities that fail to comply with laws it administers, according to Michael J. Walker, assistant enforcement counsel for EPA's Toxic Litigation Division. "The risks to public health and the environment from spilled PCBs are no different at federal facilities," Walker said. "Federal facilities must comply with the same (PCB) use and disposal requirements that are applicable to the private sector."

If EPA chooses, it can pursue the complaint against the Coast Guard by using the provisions of Executive Order 12088 by escalating the dispute to the U.S. Office of Management and Budget.

EPA Fines Ethox Chemicals \$67,000 for TSCA Violations

EPA has filed a \$67,000 civil complaint against Ethox Chemicals Inc., of Greenville, S.C., for failing to submit a premanufacturing notice (PMN) for a chemical not on the TSCA Inventory and for failing to comply with the Act's notice-of-commencement requirements for three other substances.

The violations were discovered by inspectors from EPA's National Enforcement Investigations Center.

Manufacturers and importers must submit a PMN at least 90 days before manufacturing or importing a chemical not on the TSCA Inventory so that EPA can review the substance. TSCA also requires a manufacturer or importer of a chemical that has cleared the PMN review process to submit a manufacturing commencement notice to EPA. All three chemicals for which Ethox failed to submit a commencement of manufacturing notice have since been reviewed by EPA and now are listed on the TSCA Inventory.

EPA, Dow Reach Accord In \$1 Million PMN Case

EPA and Dow Chemical Co. have reached an agreement in principle to settle the TSCA civil administrative action subject to a complaint filed June 16. The complaint seeks a \$1.013 million penalty. The terms of the agreement, reached on July 6, will not be released until the settlement is finalized.

In the original civil administrative complaint, Dow Chemical was charged with 227 counts of manufacturing a new polycarbonate plastic without having first submitted a premanufacturing notice (PMN) in accordance with section 5 of TSCA.

The chemical implicated in the complaint is also the subject of five other EPA administrative actions under TSCA sections 5 and 13. Four of these actions were filed against Japanese importers for failing to submit PMNs and for failing to correctly certify the chemicals' import status with the U.S. Customs Service. All four of the importers have signed consent agreements, which EPA has forwarded to the Chief Judicial Officer for final approval.

The fifth action, filed against the General Electric Co., was for the failure to submit a timely TSCA section 5 notice of commencement for the substance. The GE case was settled for \$17,000. Jon Silberman represented EPA in all six cases.

PLAINTIFF'S EXHIBIT

DOW-1836

Judge's Ruling Boosts EPA's PCB Enforcement Inspections

EPA's right to inspect PCB facilities received a boost in June, when an EPA administrative law judge rejected a company's attempt to limit Agency inspections.

In May 1989, Energy Systems Co., Inc. (Ensco) filed for an authorization to conduct discovery. In support of this legal action Ensco said EPA inspections of its PCB and hazardous waste incineration facility at El Dorado, Arkansas, were so much more frequent than at any other facility that the visits were unconstitutional under the due process and equal protection clauses of the Constitution.

Under a 1986 contract with EPA, Ensco is permitted to dispose of PCBs at El Dorado. In 1987, EPA insisted the authorization be amended so that the facility could be inspected by the State of Arkansas up to three times a day. The cost of the inspections is borne by Ensco.

In rejecting Ensco's claim, Judge Marvin E. Jones said the discovery request was "actually an attack on the contract entered into with the State of Arkansas" and that "this is not the appropriate forum to test the validity of this or any other contract." Jones also ruled that the disposal permit conditions were binding, and he rejected the company attempt to claim that EPA's inspection requirements, which are greater than at other facilities, were unfair.

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