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JUDGE ISSUES 1st ADMINISTRATIVE COURT RULING IN U.S. ON PCB COMPLAINT BY EPA; AGENCY INCREASES INSPECTIONS OF PCB-HANDLING PLANTS IN MIDWEST

For the first time in the country, an administrative law judge has issued a ruling on a civil penalty complaint filed by the U.S. Environmental Protection Agency (EPA) against a company for violations of regulations that control the manufacture, sale, use and disposal of PCBs, polychlorinated biphenyls, a highly toxic chemical.

The June 17 ruling by Administrative Law Judge Marvin E. Jones, which was based on hearings held in Chicago on March 11, 12 and 13, assessed Briggs & Stratton Corp. of Milwaukee, Wis., $33,500 in civil penalties. Briggs & Stratton, which manufacturas small engines such as motors for lawn mowers, may appeal the ruling to U.S. EPA Administrator Douglas Costle in Washington, D.C.

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"The complaint we lodged against Briggs & Stratton on Aug. 15, 1979, was the first action taken in the EPA Midwest Region under the administrative provisions of the Toxic Substances Control Act against a business for violations of PCB regulations," said John McGuire, administrator of EPA Region V, which is headquartered in Chicago. "Since then we've filed similar charges against seven other firms and are considering action involving 36 companies. Compliance with PCB regulations must be enforced to protect human health and the environment from this highly toxic and tenacious chemical."

McGuire said there have been several companies throughout the United States named by EPA in PCB complaints, but that settlements were made during conference negotiations before it was necessary to hold an administrative hearing process.

"EPA hopes the judge's ruling that assesses a company for PCB violations will encourage industries to comply with the regulations. PCB compliance is a major priority in the EPA Midwest Region that is now being tackled by significantly increasing the number of our plant inspections."

The complaint against Briggs & Stratton alleged the firm violated several PCB requirements of the Toxic Substances Control Act at three Milwaukee-area facilities, the Burleigh plant on 124th Street in Wauwatosa, Wis., the foundry on 68th Street in West Allis, Wis., and the West plant on 32nd Street in Milwaukee. According to the complaint, Briggs & Stratton improperly stored equipment containing PCBs, failed to place the required cautionary labels on them, did not maintain the required inventory records, and had leakage on a loading dock from several ruptured capacitors.

Judge Jones ruled there were numerous violations at the Wauwatosa and West Allis plants, but dismissed charges against the facility in Milwaukee.

According to McGuire, plant inspections were made throughout the EPA Midwest Region during the spring of 1979. The industries previously were notified by certified letter about the requirements when PCB regulations initially became effective in February 1978. The rules later were broadened and made more stringent in July 1979.

McGuire said inspections of Briggs & Stratton plants showed there was "absolutely no effort" toward compliance.

"Records identified Briggs & Stratton as one of the largest industrial purchasers of PCBs in the nation," McGuire said. "During 1979, the firm's inventory included about 33,000 pounds of PCBs in transformers and capacitors at the Wauwatosa plant and approximately 12,000 pounds of PCBs in equipment at the West Allis plant. But at the time of inspection in April 1979, not one of the transformers and capacitors was labeled with the required warnings that they contained PCBs, and company records did not have PCB listings. On a loading dock PCBs were leaking into an open area from broken capacitors placed there for disposal."

The EPA administrator noted that Briggs & Stratton is not the only company in the Region suspected of PCB violations.

"About 3,000 industries in the six states of the EPA Midwest Region (Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin) are using equipment containing PCBs," he said. "It is estimated that 60 percent of the PCBs used in the United States are in this Region, and that about 70 percent of the businesses are not in full compliance with the regulations. These factors convinced us to more than double the number of plant inspections and to use all litigation steps available to achieve compliance with the regulations."

McGuire said that three firms in the Region charged with PCB violations have agreed to pay civil penalties. They are: Nardi Electric Co., Kenosha, Wis., $5,000; Standard Transformer Co., Warren, Ohio, $5,000; and Transformer Consultants, Cuyahoga Falls, Ohio, $500.

Complaints are pending against Basic Aluminum Casting Co., Cleveland, Ohio; Gerity-Schultz Corp., Toledo, Ohio; Chrysler Corp. transmission plant, Kokomo, Ind.; and Industrial Casting, Inc., Macedoni , Ohio.

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The additional number of plant inspections will occur during the next several months, said Karl Bremer, coordinator of the toxic substances branch of the EPA Midwest Region.

"There are indications that almost three-fourths of the firms are violating one or more of the PCB rules," Bremer said. "To prevent this practice, we are launching an intensive inspection program and plan to send field investigators to many of the 3,000 facilities in the six states that handle a significant quantity of PCBs."

The facilities to be inspected include utility plants, transformer maintenance and repair plants, railroad and subway systems, transformer and capacitor manufacturers. According to Bremer, some of the sites were selected for inspection because of records of large past purchases of PCBs or a history of spill problems, while others were referred by citizens, state and local governments.

Inspectors will evaluate PCB labeling procedures, review the storage and handling operations and records, review procedures for conducting monitoring required by permit, sample any spilled PCB substances, and take an inventory of PCBs in use, in storage for use and in storage for disposal.

Bremer pointed out that the inspections will not involve financial, sales, pricing, research or personnel data unless the nature and extent of the needed data is described in the notice presented at the time of the inspection to the owners or operators of the business.

PCBs, the most widely recognized toxic chemical, are chlorinated hydrocarbons. They range in consistency from synthetic, heavy oil liquids to waxy solids, and have chemical stability, low flammability, a high boiling point and low electrical conductivity. PCBs, which were developed in 1929, were widely used as fluids in transformers, capacitors, electromagnets and in heat transfers and hydraulic systems. The chemicals also were used in ink solvents, agriculture, adhesives, plasticizers in paints, caulking compounds and dye carriers in carbonless copy paper.

Concern over PCBs and its toxicity and persistence in the environment began in Japan in 1968 when it leaked from equipment into rice oil and caused severe health problems for more than 1,000 people. Research shows that PCB contamination may cause reproductive failure, skin lesions, gastric disorders, tumors, gland and joint problems and lethargy.

Unlike most organic chemicals, PCBs are persistent and do not degrade rapidly in the environment. Instead, they are biocumulative, a process in which PCBs increase in stages or sequences. (For instance, if a plant in the Great Lakes that has a trace level of PCBs is eaten by a small fish, the PCB level increases in the fatty tissue of the fish and becomes greater when a larger fish eats the smaller one and a herring gull or a person consumes the larger fish.) The biocumulative aspect was demonstrated in a study of people who consumed Great Lakes fish that showed PCBs in their fatty tissues and in human milk.

"These ubiquitous chemicals represent a health hazard and must be controlled while in use and disposed of properly," McGuire said. "PCBs are so tenacious that they will be present in the environment beyond our own lifetimes, perhaps for hundreds of years."

EPA addressed the problem of PCBs with stringent regulations. After July 1, 1979, EPA rules prohibited all manufacturing, processing and distribution of PCBs unless a special exemption is granted. There are detailed requirements for PCB record-keeping, labeling, storing and disposing in situations where PCB use is allowed, such as when totally enclosed in transformers and capacitors.

The disposal rules apply to about 60 percent of the estimated 750 million pounds of PCBs that are in use, McGuire said. Small appliances and capacitors, such as household fluorescent lights and televisions, are not included in the EPA regulations because disposal would be impractical. The only approved disposal methods are high temperature incineration, high efficiency boilers and landfills.

Generally, PCB mixtures of less than 50 parts per million (ppm) are not controlled

by these regulations. However, the smaller concentrations of PCBs are controlled by other EPA rules, such as the Clean Water Act provisions concerning PCB discharges into waterways. TSCA regulations also allow the proper use of intact, non-leaking transformers, capacitors, electromagnets and capacitor-containing equipment with PCB concentrations greater than 50 ppm.

EPA permits the use of PCBs in servicing electromagnets and transformers, and in heat tranafer and hydraulic systems until July 1, 1984. However, effective Nov. 1, 1979, PCBs were prohibited in heat transfer systems in plants that manufactured or processed food, drugs and cosmetics.

Stricter regulatory action now is being proposed by EPA, the Food and Drug Administration and the U.S. Department of Agriculture to totally prohibit PCB-containing transformers, capacitors, and any other electrical equipment in food and animal feed related industries.