PENDING LITIGATION

INSURANCE LAW

Policy Coverage

SHELL, NOT INSURERS, LIABLE FOR $2 BILLION FOR ARSENAL CLEANUP, CALIFORNIA JURY FINDS

Insurance companies that sold policies to Shell Oil Co. will not have to indemnify Shell for the estimated $2 billion or more it will cost the company to clean up environmental contamination at the Rocky Mountain Arsenal site in Colorado if a jury verdict in the insurers' favor becomes final (*Shell Oil Co. v. Accident & Casualty Co. of Winterthur*, Calif SuperCt, San Mateo Cty, No. 278-953, 12/19/88).

After a four-month trial, a California jury determined Dec. 19, 1988, that 250 insurers for Shell had no duty to indemnify the company for cleanup costs at the site, according to Robert Zeavin, a Los Angeles attorney who was a lead counsel for the insurers in the case. Shell intends to appeal the determinations, including a prior ruling on insurance law made by the trial court judge William Lanham, according to William Boyd, a San Francisco attorney who helped represent Shell in the case (3 TXLR 333).

In another development, The Travelers Insurance Co., Shell's lead liability insurer, filed suit against Shell and the Colorado law firm of Holme, Roberts & Owen, alleging fraud and misrepresentation in connection with the coverage suit (*Travelers Insurance Co. v. Shell Oil Co.*, Calif SuperCt, San Mateo Cty, No. 335-259, 11/?/88).

Verdict A 'Complete Victory'

Calling the California verdict a "complete victory" for the insurers, Zeavin explained that the jury responded to 30 general verdicts posed as questions about each year for which Shell claimed insurance coverage—1952 to 1982. Zeavin said he believes the jury's response was, in essence, a finding that Shell expected that environmental damage would result from its operations at the Rocky Mountain facility.

Underlying the insurance litigation was the issue of who will pay for the cleanup of the site. The site was used by Shell as a pesticide production facility and had been used earlier by the U.S. Army for chemical weapons production.

It has been estimated that it could cost as much as $2.5 billion to clean up contamination of soil and groundwater at the site.

The U.S. government sued Shell in 1983 over responsibility for contamination of the 27-square-mile site. In February 1988, a consent decree was filed in court that would apportion liability for up to $1 billion in cleanup costs between Shell and the Army (*U.S. v. Shell Oil Co.*, DC Colo, No. 83-C-2379; 2 TXLR 1250).

The agreement has been the subject of a number of challenges by Colorado and various environmental groups, who have claimed that Shell should be held responsible for a larger portion of cleanup costs than provided for under the agreement, according to Zeavin. The federal judge reviewing the case has yet to approve the settlement, he added.

One of the interesting aspects of the insurance case is that the trial was held in a state court in California, even though the dispute was over a site in Colorado.

Shell filed suit in the California court for several reasons, including the fact that the court in San Mateo County has a reputation for moving cases through trial rapidly, according to Boyd. In addition, the McColl U.S. Air Force Base waste site, a smaller site also at issue in the insurance litigation, is in Fullerton, Calif., Boyd told BNA.

Zeavin observed that California insurance law at the time the suit was filed, in 1983, might also have been viewed as favorable to Shell. Zeavin said, for example, that if the insurers raised a defense that Shell did not give them timely notice of claims, they would have to establish that the delay was prejudicial to them. This increases the burden on the insurance companies and is not a requirement under a number of other state laws, Zeavin said.

As it turned out, California law also was beneficial to the insurers, Zeavin said. Under state law, the insurers were allowed to introduce outside documents to establish the meaning of terms in the insurance contracts, which may not have been allowed in other states, Zeavin said.

Insurer Sues For Alleged Fraud

In a suit filed in San Mateo County Superior Court in California, Travelers alleged that the Colorado law firm of Holme, Roberts & Owen, Shell's counsel for 15 years, knew Shell was aware of environmental damage occurring at the Rocky Mountain Arsenal and that there was no liability insurance available for the cleanup, according to Travelers attorney David M. Cain. Given this knowledge, aspects of both the coverage suit and the interim agreement negotiated with Travelers for defense of the government's superfund liability suit were improper, Travelers said.

Travelers' suit, filed against Shell, the law firm, and ten unidentified (Doe) defendants, was removed Dec. 15, 1988, to the U.S. District Court for the Northern District of California by the defendants.

(Shell Oil Co. v. Accident & Casualty Co. of Winterthur, Calif SuperCt, San Mateo Cty, No. 278-953, 12/19/88; Travelers Insurance Co. v. Shell Oil Co., Calif SuperCt, San Mateo Cty, No. 335,259, 11/1/88).

STATE AND LOCAL LAWS

Louisiana

STATE ENVIRONMENTAL HEARING ORDERED ON 'RECYCLER' STATUS OF INCINERATOR FACILITY

NEW ORLEANS—(By a BNA Special Correspondent)—The Louisiana Department of Environmental Quality was ordered by a state court to conduct hearings "within 60 days" on whether Marine Shale Processors Inc. of Amelia, La., is subject to a new Lousiana law subjecting waste recyclers to the state's hazardous waste law (*Marine Shale Processors Inc. v. Louisiana Department of Environmental Quality*, La DistCt, 19th Dist, No. 335512, 11/18/88).

Judge Robert Downing of the Louisiana District Court for the 19th District issued the order Nov. 18, 1988, following a hearing requested by MSP attorneys. Marine Shale had sued the DEQ to block a scheduled hearing on whether the firm is exempt from the state's hazardous waste law.

At the same time, Marine Shale's facility in Amelia has been the subject of a number of enforcement proceedings by the state, the Environmental Protection Agency and the Justice Department, and two private citizen groups. In spite of the number of enforcement actions involving Marine Shale, no suits have been filed against the company, nor has the company been required to take remedial measures in the wake of administrative and judicial action.

At the heart of all the activity is whether MSP's facility qualifies as a recycling operation. The facility burns hazardous wastes accepted from other companies. Marine Shale claims the ash generated is a saleable "aggregate" and that the operation qualifies as a "recycler" for an exemption from the requirements of the Resource Conservation and Recovery Act.

If instead the company were characterized as a waste incinerator, the company would be subject to RCRA requirements, which could put the facility out of business. Marine Shale officials have claimed that they produce a rock-like aggregate that can be used as fill in construction projects. Critics have claimed that most of MSP's revenues are derived from fees charged for hazardous waste disposal.

Since the controversy surrounding Marine Shale's activities has surfaced, the company has launched an aggressive billboard and electronic media advertising campaign claiming the company turns hazardous wastes into harmless aggregate. Marine Shale president John Kent is featured on the television commercials; viewers with questions are invited to call the company on a toll-free line.

Hearing Ordered, But State Appeals

The Louisiana DEQ wants to hold the hearing Marine Shale is resisting, but is fighting the state trial court's authority to order it, according to a DEQ spokesman. The state agency is planning to appeal the order, claiming that a state appeals court was the proper court to resolve the dispute, according to Elizabeth Megginson, assistant secretary for legal affairs.

Even though it appears that DEQ got the hearing it wanted, the state is concerned about the precedent that has been set with the trial court asserting authority to resolve the hearing dispute, Megginson said. The trial court also stayed any hearings by DEQ that would gather information on the recycling operations of MSP.

DEQ and Marine Shale have been embroiled in a dispute over the facility for some time. Part of the battle revolves around a hazardous waste law recently enacted by the Louisiana Legislature, MSP attorney Emile Rolfs said.

Act 874, which went into effect July 18, 1988, provides that commercial recycling facilities that accept hazardous waste for a fee and incinerate such wastes in the recycling process are subject to the Louisiana Hazardous Waste Control Law.

Act 874 instructs DEQ to develop environmental regulations for recyclers that are as stringent as those for waste disposal firms, but the agency has not promulgated the regulations, Rolfs told BNA. Marine Shale also has argued that since DEQ was not alleging any violations of the act, it had no authority to order a hearing, according to Rolfs.

"Absent promulgation by the [DEQ] secretary of rules or regulations prescribing standards for commercial recycling and resources recovery facilities, as mandated by Act 874, the DEQ has neither a regulatory basis upon which to inquire into Marine Shale's recycling process nor a legal basis upon which to challenge the previously determined classification of MSP," the company said.

In addition, Marine Shale claimed that Act 874 grandfathered the operation of existing commercial recycling and resource recovery plants, such as MSP, according to Rolfs.

(Marine Shale Processors Inc. v. Louisiana Department of Environmental Quality, La DistCt, 19th Dist, No. 335512, 11/18/88).

SUPERFUND LITIGATION

Cost Recovery

EPA SUES NINE PARTIES TO RECOVER $400,000 FOR CLEANUP OF PENNSYLVANIA SUPERFUND SITE

PHILADELPHIA—(By a BNA Staff Correspondent)—The Justice Department has filed suit to recover

THE BUREAU of NATIONAL AFFAIRS, INC.

TOXICS LAW REPORTER

A WEEKLY REVIEW OF TOXIC TORTS, HAZARDOUS WASTE, AND INSURANCE LITIGATION

Volume 3, Number 46 April 19, 1989

HIGHLIGHTS

INSURERS MUST PAY for Diamond Shamrock Chemical Co.'s share of the $180 million dioxin settlement between Agent Orange manufacturers and Vietnam veterans and their families, a New Jersey court rules. Because phenoxy herbicides like Agent Orange are treated as defective products by federal and state regulatory authorities, product liability claims fall within the insurers' coverage, according to the court (p. 1458). . . . The court also rules that Diamond Shamrock—and not its insurers—should pay cleanup costs at its dioxin-contaminated Newark, N.J., chemical plant because the company deliberately and persistently "cheated" on environmental regulations (p. 1466).

THE WOBURN PLAINTIFFS ask a federal court in Massachusetts to enter a default judgment against Beatrice Foods Co. The Woburn, Mass., residents assert in a brief that Beatrice "knowingly and intentionally" withheld information about toxic waste and groundwater contamination at sites it once owned near its Woburn industrial plant. The residents blamed waste disposal practices on land owned by Beatrice for six leukemia deaths and other injuries. In 1986 a jury absolved Beatrice of liability but found W.R. Grace & Co liable. After the Grace verdict was set aside, Grace settled with the plaintiffs (p. 1455).

FEAR-OF-CANCER CLAIMS brought by pesticide workers and their spouses who were exposed to dibromochloropropane, but did not suffer physical injuries, are dismissed by a California court. The court rules that a plaintiff who alleges a fear of cancer, but who is not physically injured must establish as a threshold matter that the substance in question is shown to be a human carcinogen by reliable epidemiological investigations rather than animal studies (p. 1457).

SUPERFUND CLAIMS at the Bunker Hill hazardous waste site in Idaho are not covered by an insured's comprehensive general liability insurance policies, a federal district court rules (p. 1466).

AN ENVIRONMENTAL EARTH COVENANT should be drafted as part of a global effort to meet life-and-death challenges posed by rapid and harmful environmental changes, according to attorney C.J. Poirier in this week's Analysis and Perspective section. The author outlines a series of specific initiatives and urges bar associations, corporate leaders, and business communities throughout the world to play an active role in solving serious environmental problems (p. 1470).

STATE LAW TOBACCO CLAIMS against a cigarette maker based on failure to warn are impliedly pre-empted by federal law, but state law claims alleging strict liability for design defect, misrepresentation, breach of warranty, and negligence are not pre-empted, the Minnesota Supreme Court rules (p. 1459).

POLAROID CORP. SEEKS A DECLARATION of insurance coverage for government environmental claims at four hazardous waste sites known as the Cannons sites. Polaroid's brief says the insurers are part of a "scheme devised by the insurance industry to collectively avoid payment" of pollution claims. The company says it was the victim of a criminal ring whose midnight dumping caused massive environmental contamination (p. 1464).

THE ACCRUAL RULE provides that a personal injury claim begins to accrue when the plaintiff discovers or should have discovered the injury and is aware of the defendant's negligence and the causal link between the two, the U.S. Court of Appeals for the Ninth Circuit rules in an asbestos case, applying Hawaii law. The court also agrees that a summary judgment motion brought by defendant Raymark Industries Inc. on the accrual issue was without merit and upholds a $550 sanction against the company (p. 1461).

A COPPER-7 CASE IS SETTLED one day before closing arguments were to be heard. The judge issues an order prohibiting disclosure of the terms of the settlement (p. 1462).

ance Co. of North America, Lexington Insurance Co., National Union Fire Insurance Co., Royal Indemnity Co., and the Travelers Indemnity Co.

(Polaroid v. The Travelers Indemnity Co., Mass SuperCt, Middlesex Cnty, No. 88-5207, motion filed 3/24/89).

STATE AND LOCAL LAWS

Pennsylvania

ENVIRONMENTAL GROUP FILES SUIT TO CLOSE STRIP MINING COMPANY IN STATE

PHILADELPHIA—(By a BNA Staff Correspondent)—An environmental group filed a federal court suit alleging that a strip mining company is violating federal and state clean water laws (*Pennsylvania Environmental Defense Foundation v. Antrim Mining Co.*, DC WPa, No. 89-0434, 3/27/89).

John E. Child Jr., attorney for the Pennsylvania Environmental Defense Foundation, sought an order from Judge Malcolm Muir of the U.S. District Court for the Western District of Pennsylvania in Williamsport to shut down Antrim Mining Co.'s coal stripping operation until it meets clean water regulations and cleans up any pollution.

The complaint, filed March 27, alleged the company is allowing iron and manganese to seep into waterways in the Pine Creek watershed near Pennsylvania's Grand Canyon in Tioga County in the north central portion of the state bordering New York. Heavy equipment used by the company has created underground fissures that have resulted in polluted water entering streams, it added.

Dan Spadoni, a spokesman in the Williamsport office of the Pennsylvania Department of Environmental Resources, told BNA April 5 that DER is investigating the allegations.

(Pennsylvania Environmental Defense Foundation v. Antrim Mining Co., DC WPa, No. 89-0434, 3/27/89).

COURT DECISIONS

INSURANCE LAW

Policy Coverage

SUPERFUND CLAIMS AT BUNKER HILL NOT COVERED BY DUTY TO DEFEND OR INDEMNIFY, COURT RULES

Superfund claims arising at the Bunker Hill hazardous waste site in Idaho are not covered by an insured's comprehensive general liability insurance policies, a federal district court in Idaho ruled March 31 (*Aetna Casualty & Surety Co. v. Gulf Resources & Chemical Corp.*, DC Idaho, No. 87-3043, 3/31/89).

Insurers of Gulf Resources & Chemical Corp. are required neither to defend nor indemnify the company against claims or costs arising from its involvement with the Bunker Hill superfund site, the U.S. District Court for the District of Idaho ruled in a declaratory judgment action brought by Gulf's insurers.

In actions consolidated by the court, the plaintiffs Aetna Casualty & Surety Co. and a group including Continental Re-insurance Corp, Fidelity & Casualty Co. of New York and Pacific Insurance Co. sought a declaration that there is no duty of defense or indemnity owed to defendants Bunker Hill Co., Gulf Resources & Chemical Corp., and Pintlar Corp.

The court held:

- A notice letter from the Environmental Protection Agency informing Gulf of its status as a potentially responsible party under the superfund law is not a civil action triggering an insurer's duty to defend;
- Superfund response costs are not covered legal damages; and
- Policy coverage for natural resource damages is barred because that damage did not occur during the policy period.

Aetna Casualty & Surety Co. was represented by R.B. Kading Jr., Warren E. Jones, and Scott D. Hess of the Boise law firm of Eberle, Berlin, Kading, Turnbow & Gillespie.

Gulf Resources & Chemical Corp. and Pintlar Corp., which filed a notice of appeal April 4, were represented by James P. Keane, of the Kellogg, Idaho, firm of Evans, Keane, Koontz, Boyd, Simko & Ripley and by Stephen W. Greiner and Richard Mancino of Willkie, Farr & Gallagher, New York.

The Bunker Hill Co., which was dismissed from the case, was represented by Robert L. Magnuson of Witherspoon, Kelley, Davenport & Toole P.S. in Spokane, Wash.

(Aetna Casualty & Surety Co. v. Gulf Resources & Chemical Corp., DC Idaho, No. 87-3043, 3/31/89).

Policy Coverage

DIAMOND SHAMROCK POLLUTION 'DELIBERATE,' NOT COVERED BY CGL INSURANCE, COURT RULES

Diamond Shamrock Chemical Co.—and not its insurers—should pay all cleanup costs associated with its dioxin-contaminated Newark, N.J., chemical plant because the company deliberately and persistently "cheated" on environmental regulations, a New Jersey Superior Court ruled April 12 (*Diamond Shamrock Chemical Co. v. Aetna Casualty and Surety Co.*, NJ SuperCt, ChancDiv, Morris Cnty, No. C-3939-84, 4/12/89).

Judge Reginald Stanton, of the Superior Court of New Jersey, Chancery Division, also ruled Diamond Shamrock's comprehensive general liability insurers owe no duty to defend personal injury or property damage suits by residents, former plant workers, or individuals living near the plant.

Stanton said, "When someone acts the way Diamond [Shamrock] did for 18 years, it is no accident that the environment was contaminated, that the property was damaged, that neighbors may have been injured."

Diamond Shamrock Sought Indemnity

Diamond Shamrock sued Aetna Casualty and Surety Co. and 125 other insurance carriers seeking indemnity for all cleanup costs, personal injury, and property damage claims related to the plant (3 TXLR 180). Diamond Shamrock used the plant from 1951 until 1969 to manufacture the herbicide Agent Orange. Dioxin is a byproduct of that manufacturing process.

The chemical company, now a part of Occidental Petroleum Corp., also asked the court to order the defendants to indemnify Diamond Shamrock for $23.4 million it paid in a class action suit filed by Vietnam veterans and their families (2 TXLR 469). Class members alleged the veterans were injured by exposure to Agent Orange used for defoliation during the war.

Stanton ruled in favor of Diamond Shamrock on the class action claim, ordering the insurers to pay the company's contribution to the $180 million settlement. (See related story in this issue).

Company Concealed Violations, Court Says

While cleanup costs at the plant site have been estimated at $20 million, Diamond Shamrock could face substantially higher bills because hundreds of people have filed claims for personal injury and property damage allegedly caused by contamination at the plant, according to Stanton. In addition, it is possible the company will be held responsible for costs related to contamination of the Passaic River. The plant discharged effluent directly into the river from 1931 until 1956, continuing to do so even after the practice was made illegal, the court said.

"Diamond was conscious that its discharges into the river were illegal," Stanton said. "It deliberately concealed them, and over a period of many years employed an alarm system to warn employees to stop the discharges when Passaic Valley inspectors were on the premises."

Discharges into the river included 2,4,5-T acid and dioxin, caustic soda, DDT, sulfuric acid, TCP, muriatic acid, and monochlorobenzene, the court said.

Stanton ruled that Diamond Shamrock's "knowing, polluting conduct" barred coverage under insurance policies provided by the defendants.

> The conclusion is inescapable that the consistent policy of Diamond's management (both at the local plant level and at corporate headquarters) was to discharge dangerous chemicals into the Passaic River in known violation of the public law. . ..
>
> Diamond's conduct in operating the Newark plant was unacceptably wrong and irresponsible. Diamond always put its narrowly perceived economic interests first. It deliberately and persistently cheated on the limited environmental regulations that were in place.

Pollution 'No Accident, Not Sudden'

Examining Diamond Shamrock's primary insurance coverage from 1951 to mid-1985, all provided by Aetna, the court found none of the company's policies provided coverage for the cleanup costs at issue.

The court divided Aetna's policies into three classes:

- Those in effect from 1951 to 1960, which provided coverage on an "accident basis";
- Those in effect from 1971 to 1985, which provided coverage on an "occurrence" basis and which also contained a pollution exclusion; and,
- Those in effect from 1960 to 1970, which provided coverage on an "occurrence" basis and which did not contain any pollution exclusion.

"There was never any accident within the meaning of any of these policies," Stanton said in denying coverage under the first class of policies. "It seems clear to me that any personal injury or property damage for which Diamond seeks coverage in this action was caused by the gradual and continuous dispersal of chemical contaminants into the environment at its Newark plant."

The court also held that coverage was barred because Diamond's "knowing, polluting conduct" clearly did not fall within the "sudden and accidental" exceptions to the policies' pollution exclusion provisions.

"The clear language of the pollution exclusion bars coverage where, as in this case, the damage happens gradually over a period of time," the court said. Refusing to follow a New Jersey appellate division decision in *Broadwell Realty Services v. The Fidelity & Casualty Co. of New York*, 218 NJ SuperCt 515, 2 TXLR 429 (1987), Stanton said "sudden" refers to an event that is "unexpected," and "happens swiftly."

The judge described as "flawed" the appellate division's reasoning in *Broadwell*, in which insurance coverage was found for the gradual discharge of gasoline from an underground tank on the ground that the resulting pollution was "sudden" in the sense that is was unintended or unexpected. To ignore the temporal component in the plain meaning of the term sudden is an "intellectually unacceptable distortion," Stanton said.

Also, the judge said, Diamond Shamrock's case is distinguishable from *Broadwell* because unlike the insureds in *Broadwell*, Diamond Shamrock was a "highly knowledgeable" purchaser of insurance. Diamond Shamrock's own insurance manager believed the pollution exclusion barred recovery for claims arising out of gradual pollution and recommended the purchase of additional insurance, the court said.

Pollution Was Expected, Intended

The court also denied indemnification under policies providing coverage on an "occurrence" basis. These policies defined "occurrence" as an "accident, or continuous or repeated exposure to conditions which result during the policy period in injury to persons or tangible property that is neither expected nor intended from the standpoint of the insured."

Stanton found Diamond Shamrock's polluting conduct was clearly intentional, referencing reports that factory tained and work on the project is continuing, Tarr told BNA March 20. Officials of several city unions had suggested vacating the building when the asbestos problem arose but with the correction of the problem, "occupancy is able to continue," Tarr added.

Under New Jersey regulations, contractors must notify the Bureau of Code Services when a building is undergoing asbestos remediation. A separate notification is required if a contractor encounters any particular problems, such as the release of high levels of asbestos fibers in an occupied building, Tarr said. "This was not done."

The citation listed concentrations of asbestos fibers as high as .037 fibers per cubic centimeter of air outside of containment barriers on 12 days last fall, more than triple the state prescribed limit of .010.

The problem was discovered by members of the bureau's field staff on a routine inspection, he added. The bureau inspectors assisted in locating the source of the release of asbestos fibers and the contractor took action "to have the building made safe," he said.

Arizona

FOUNDRY, STATE REACH CLEANUP AGREEMENT TO REMEDY LEAD CONTAMINATION NEAR TUCSON

PHOENIX, Ariz.--The Arizona Department of Environmental Quality and Knight Foundry and Manufacturing Inc March 8 reached agreement on a cleanup plan for soils contaminated with lead, Al Brown, manager of DEQ's Waste Compliance Unit told BNA March 29.

The foundry site is located in south Tucson and since the early 1950s has produced large metal castings for the mining industry, Brown said.

"As a result, the processes resulted in generation of contaminated casting sands and various lead dusts from the grinding of large metal parts and the bag house for the furnace," he said.

Brown said the firm was a large quantity generator when the contamination was first discovered during an inspection in 1986. "We found a lot of evidence of lead contamination of soils in the storage yard around the facility and asked the company to do a site assessment plan," he said.

He said the estimated extent of the contamination is between 300 and 400 cubic yards.

Samples Reveal Contamination

Through the site assessment plan, samples taken off-site revealed lead contamination in public right-of-ways surrounding the foundry.

"None was found in private, fenced areas where kids were playing," Brown said, "but it certainly was found around railroad tracks and dirt sidewalks in one city block in the neighborhood."

He said state requirements do not allow lead in soils in concentrations above 700 parts per million; one area onsite contained concentrations of 38,000 ppm.

"The worst stuff was dug out within several months after we brought the problem to their attention," Brown said, "they completed the interim soil removal in March 1988."

Brown said the agreement concentrates on cleanup and does not include other compliance-related issues such as contingency plans and container management. He said the company must have the cleanup completed within 90 days of the date the agreement was signed.

Agreement Delayed Cleanup, Attorney Says

Jim Vieregg, attorney for Knight, told BNA March 29 there was no need for a compliance agreement, and negotiating it had delayed startup of cleanup efforts by five months.

"I had proposed we resolve the matter through an exchange of letters, which said the foundry had done everything DEQ asked for," Vieregg said. "You wind up quibbling over every word. But if Knight does not live up to its obligations, DEQ can take enforcement action."

Vieregg said the total cost of the cleanup will not be known until the project is finished, although the company has spent a considerable amount of money on attorneys, consultants, and environmental engineering.

"There are also internal management expenses, because you have to take people away from normal duties to work on resolving environmental problems."

Vieregg said the company has its own incentives for cleaning up as quickly as possible. He said the management of the company is concerned about the community, cannot remain preoccupied with environmental problems, and has to save on compliance costs.

Brown said Knight has been cooperative in complying and putting together a remedial action plan. He said when the property was first inspected, the management did not realize the contaminated soils had to be treated as hazardous waste.

Vieregg said the foundry is owned by Chilean interests, and the former management was not experienced with environmental regulation. Subsequent managers have been "extremely aggressive" in their cleanup efforts, he said.

Brown said Knight's remedial process is to remove the soil and mix it with chemical reagents to bind the leachable lead in a silicate matrix that is no longer toxic and can be disposed of in the county landfill.