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survive summary judgement. Appellants failed to prove the Ortho product, with or without the contaminant, was unreasonably dangerous, and failed to establish whether the defective condition proximately caused the harm. Ultimately, the Eighth Circuit Court of Appeals held that Supremacy Clause of the United States Constitution mandated a summary judgment against the Arnolds' state law claims of negligence, inadequate labeling, products liability, and failure to warn because the state law was contrary to federal law and, thus, was preempted by FIFRA.

ANDREW SCHOLZ



ENVIRONMENTAL NEWS

Missouri Attorney General and Premium Standard Farms: A Consent Decree to Clean Up

In early August, Jackson County Circuit Court Judge Edith Messina approved a consent decree between Premium Standard Farms, Inc., and the Missouri Attorney General's Office. The consent decree requires Premium Standard Farms to spend \$25 million in waste treatment technology (half within the next three years and the rest within five years) to deal with odor and pollution problems at its corporate hog farms in northern Missouri and pay a \$1 million dollar fine. The company has around 105,000 sows in five Missouri counties (Mercer, Putnam, Sullivan Daviess and Gentry counties) which produce an average of 2 million pigs a year.

Attorney General Jay Nixon and Premium Standard Farms Vice President of Communications Charlie Arnot said the decree will achieve a variety of outcomes. "In addition to leveling a significant penalty, we are attempting to fix the problem and to provide relief for the hundreds of Missourians whose lives have been disrupted by the stench of these giant factory farms," Nixon said. "If we can [solve the problem] through the consent decree, then I think it will be judged a tremendous success by anybody," Arnot said. The decree, however, does not prevent the Environmental Protection Agency ("EPA") from an action also recently filed against the company, nor does it prevent the Attorney General from taking steps against Premium Standard Farms if future violations occur.

The present agreement is the result of a history of environmental violations by Premium Standard farms dating back before 1995. In 1996, the company entered into a consent decree for the violations requiring remediation with the Department of Natural Resources. Attorney General Jay Nixon initiated his own action in the Jackson County Circuit Court after Premium Standard Farms was found to have committed further environmental violations which has resulted in the current consent decree. Part of the \$ 1 million in settlement fees was given to schools in Putnam, Mercer, Sullivan, Jackson and Daviess counties in August. As for the \$25 million dollar technology change agreement, Arnot said that Premium Standard Farms in early November completed step one in the process when they submitted a work plan to the Attorney General and a panel of three experts in livestock waste management from across the nation. He said that the Attorney General's office gave the company a lot of leeway in developing their own plan based on their needs.

If approved, the plan will provide for technology changes in two of the company's farms. First, it will implement a series of proven technology changes at one farm including the use of permeable lagoon covers, aeration basins, nutrient reduction basins and air dams. Second, the plan will, at another farm, begin several experimental technology changes on a pilot basis. These include installing a solids concentration system to collect solids and installing filtration systems on the water. Once approved by the three-person panel, Arnot said Premium Standard Farms plans to implement the changes as soon as possible.

TANYA WHITE

Regulating Refineries under RCRA

Under the Resource Conservation and Recovery Act ("RCRA"), petroleum refineries are primarily subject to regulations under three parts of the act – subtitle C deals with hazardous waste management, subtitle D deals with solid waste management and subtitle I deals with underground storage tank management. Under Subsection C, there three areas of primary importance to refineries: waste determinations, new waste listings and RCRA air emissions requirements. Waste Determinations Refineries, under this requirement, must control their output of volatile organic compounds ("VOCs") regarding equipment containing or coming in contact with hazardous waste, process vents, and storage equipment for hazardous wastes. Additionally, refinery owners and operators have to properly classify, manage and identify all wastes they generate. Typically wastes generated by refineries include metals, wastewater treatment sludge, residues from cleaning tank operations, numerous solid wastes, and spent acids, caustics and solid catalysts. Most problems with waste determinations involve situations where refineries improperly manage or illegally treat or store hazardous waste because they have not made the proper evaluations. Failures to manage or store properly can lead to polluting lakes, rivers, groundwater and soil.

In early August 1998, the EPA added four waste streams generated by the petroleum refineries to its list of hazardous wastes. These included: crude oil storage tank sediment, clarified slurry oil tank sediment, spent hydrotreating catalyst and spent hydrorefining catalyst. These wastes were listed because they are shown to pose unacceptable risks to human health because they contain benzene, arsenic and polynuclear aromatic hydrocarbons. Title 40 of the Code of Federal Regulations, Section 268.40 contains standards for treatment of these new hazardous wastes which are generated in various ways and Section 261.32 contains descriptions of the types of wastes.

Crude oil storage tank sediment (K169) includes water, sediment, and entrapped oil removed from the bottom of crude oil storage tanks. Clarified slurry oil tank sediment (K170) includes sediment generated from the filtration of clarified slurry oil and/or the storage of clarified slurry oil. Both K169 and K170 can be combusted in off-site incinerators, managed in on-site incinerators, or processed in refinery process units to make petroleum coke. Spent hydrotreating catalyst (K171) includes wastes created when hydrotreating catalyst is removed from reactors which are used to treat petroleum fractions from the atmospheric and vacuum distillation units. Spent hydrorefining catalyst (K172) includes wastes created when hydrotreating catalyst is removed from reactors used to treat heavier molecular weight petroleum fractions, residual fuel oil and heavy gas oil. Both K171 and K171 and K172 wastes can be either combusted in off-site incinerators, stabilized and the ash placed in a landfill or they can be regenerated and/or reclaimed in off-site metal recovery units. Volatile Organic Compound ("VOC") releases account for 55 percent of oil refinery air pollution, according to the 1994 Toxic Release Inventory ("TRI"). These VOC emissions are largely created by refineries and are believed to contribute to the destruction of ground-level ozone. They are also believed to be toxic. In 40 C.F.R. 264 and 265, RCRA requirements for VOC management and prevention are detailed.

Subsection AA provides the RCRA air emissions standards for process vents which deal with distillation, fractionation, thin-film evaporation, solvent extraction, or air or stream stripping operations that manage hazardous wastes with organic concentrations of at least 10 parts per million by weight. Subpart BB provides air emissions standards for equipment leaks and deals with equipment containing or coming in contact with hazardous wastes with at least 10 percent of their weight in organic concentrations. Subpart CC deals with tanks, containers, surface impoundments, and other units used to manage hazardous waste with VOC average concentrations of more than 500 parts per million at the point of waste origination.

Under RCRA's provisions, the petroleum refinery industry must deal with compliance under a number of different areas and faces many difficulties including improper waste determinations, following new waste stream listings and dealing with RCRA's various air emission requirements.

TANYA WHITE

Complaint Filed Against Roto-Die

On July 7, 1999 a complaint was filed in the federal court of St. Louis, Missouri alleging that Roto-Die company of Eureka, Missouri failed to perform timely performance tests, violated monitoring, operation, and maintenance requirements and failed to submit timely notifications to the EPA about its chromium electroplating process tanks. A similar complaint was filed the same day against a subsidiary of Roto-Die company; Preston Engravers, Inc. located in East Windsor, Connecticut.

The Eureka plant manufactures chrome-plated rotary dies for the printing industry. Some chromium compounds have been shown to cause problems such as reduced lung capacity, allergic reactions, and lung cancer. Exposure to these chromium compounds may happen from breathing air in the work place or ingesting food or water from soil near waste sites. Chromium compounds are treated as hazardous air pollutants and are regulated under the Clean Air Act. The EPA claims in its allegations that Roto-Die violated the Clean Air Act which is designed to regulate pollution from chromium electroplating operations and provides penalties of up to \$27,500 per day for each violation. Roto-Die company may contest the allegations.

SHERRIE BLAKE

EPA Enforcing New Source Review Requirements of Clean Air Act

Missouri power plants were not among the Midwestern power plants targeted in a lawsuit filed in November by the U.S. Justice Department on behalf of the Environmental Protection Agency ("EPA") alleging violations of the Clean Air Act. But the EPA has declared that it will emphasize enforcement of the new source review ("NSR") permits requirements of the CAA by looking at industry-wide efforts to expand plant capacities.

The EPA charged that the seventeen plants owned by seven different utility companies (plus seven others owned by the Tennessee Valley Authority) have operated for years without the best available emissions-control technology, which is designed to reduce nitrogen oxide, particulate matter, and other emissions. Plants that existed when the CAA was enacted were "grandfathered," but any major modifications of those plants required them to comply with the new emissions requirements. The government alleged that the companies spent millions of dollars modifying the plants to extend their lives and to avoid the cost of building new plants, without complying with CAA permitting requirements. The companies denied the charges.

The EPA issued an "enforcement alert" in January 1999, warning that it would take noncompliance with the NSR permits seriously. Following 1990 amendments to the CAA, the agency anticipated that approximately 900 NSR permit applications would be filed annually; in fact, the number of filings remained constant at 200 per year. EPA enforcement initiatives have uncovered widespread noncompliance in certain industries, such as the wood products industry, where the EPA found violations at 70-80 percent of the facilities investigated.

DAVID M. KURTZ

Mandatory Compliance Required with the Clean Air Act's "General Duty" Clause

The Clean Air Act 1990 Amendments section 112(r)(1) contains a "general duty" clause to prevent accidental releases of hazardous chemicals. This provision is codified as 42 U.S.C. § 7412 (r)(1). It reads that the main duties of identifying hazards, maintaining safe storage conditions, and planning for emergencies primarily fall to the owners and operators of the plants which produce the hazardous substances. The EPA's first enforcement of this general duty provision concluded on June 26, 1999. In this matter, the EPA reached a voluntary settlement with Terra Industries, Inc. (Terra) of Sergeant Bluff, Iowa. Terra is a fertilizer and methanol manufacturer for North America and England. An explosion occurred at Terra's ammonium nitrate plant in Port Neal, Iowa, in 1994. The explosion killed four workers and injured eighteen other. It also released 4,200 tons of anhydrous ammonia and 100 tons of nitric acid. EPA discovered violations of the Clean Air Act among other environmental statutes in the subsequent investigation. Ammonium nitrate is a synthetic inorganic compound which is produced in large volumes. Crystalline ammonium nitrate is a major form of nitrogen fertilizer. Lesser amounts are used to make explosives and the anaesthetic nitrous oxide. It is also used as an anesthetic.

Ammonium nitrate is toxic to plants and animals in large quantities.

In the settlement agreement, Terra agreed to pay a civil fine of \$500,000 and spend \$100,000 on various supplemental environmental projects designed to benefit the local community. Such projects included emergency sirens and ammonia monitors. Terra also agreed to pay an additional \$150,000 to offset past response costs on the part of the community. The EPA made it clear in this matter that it will not tolerate any accidents resulting from CAA violations. It also showed the strength of the general duty clause of the CAA. Statewide industry must now take special care to insure that all hazardous chemicals are safely stored and handled. Plants must also insure that emergency procedures are in place and can be implemented. This could result in higher processing costs in the short-term future but in the long term will insure a safer workplace and environment.

KEVIN JOHNSON

Alert! Widely Used Pesticides Under Scrutiny by EPA

The popular and commonly used pesticide chlorpyrifos is now under review by the Environmental Protection Agency ("EPA"). An EPA preliminary risk assessment determined that the pervasive use of this pesticide could pose health risks to people with a particular risk to children. This issue is now open for expert and public comment by the EPA. Environmental groups are urging for the chemical's removal from the market. The maker of chlorpyrifos, a subsidiary of Dow Chemical Co., urges that the risks associated with chlorpyrifos are exaggerated.

Chlorpyrifos belongs to the chemical family known as organophosphates, and was originally developed for use in wartime as a nerve gas. Today it is used against a wide variety of insects, including cockroaches, fleas, flies, and various agricultural pests. Chlorpyrifos is used in agriculture, on lawns, and inside homes, schools, day-care centers, hospitals, and other buildings. The common brand names for chlorpyrifos are Dursban® and Lorsban®, both manufactured by Dow Elanco, and can be found in several Raid® and Ortho® Home Defense products. Studies in the past focus upon the air contamination levels of the pesticide. Recently the focus is shifting to residue contamination. Chlorpyrifos can cling to toys and other absorbent surfaces such as upholstery, draperies, and pillows. Research also indicates that chlorpyrifos is detectable years after application, and because it is not easily detectable, may pose a health hazard long after application. In addition the potential for leaching into ground water through agricultural or forest application is confirmed by the EPA. There is also the potentiality for ingestion by humans and animals by consumption of treated vegetation, water or animals that have ingested or been exposed to chlorpyrifos residues.

The potential for hazardous exposures may occur as a result of household applications, according to scientists in a published study in *Environmental Health Perspectives*. The authors of the study concluded that applications of chlorpyrifos could result in significant doses of the pesticide to children who play in recently treated rooms. For children that have a high level of "hand to mouth" activity, the authors conclude that the exposure exceeds total non-dietary doses by four-fold. In addition, the authors demonstrated that dermal and oral exposure to the pesticide, via toys and other surfaces, may present a greater risk to children than inhalation of chlorpyrifos.

DDT, the precursor to chlorpyrifos, is notoriously toxic and has been banned or severely restricted by the EPA. Recent heightened concerns developed after several studies suggesting that it may also interfere with human brain and nervous system development, even at levels too low to generate any obvious signs of toxicity were released. While pesticides always garner front page headlines when the accusation is health and safety of the human population, and especially children, the EPA is taking seriously the recent assertions and taking the steps to provide a preliminary risk assessment on the safety of chlorpyrifos.

JANET WHEELER

