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ENVIRONMENTAL TORT LAWSUITS: HOLDING POLLUTERS ACCOUNTABLE

MASS TORTS AND CLASS ACTIONS

Chrome-Plating Facility. In 1963, Chrome Crankshaft Inc. began operating a chrome-plating facility adjacent to two schools and residential homes in Bell Gardens, California. Twenty-two students and six teachers were diagnosed with cancer over a subsequent eight-year period. A number of teachers also reported miscarriages. The victims filed personal injury lawsuits against Chrome Crankshaft and J&S Chrome Plating Co. In January 1999, Communities for a Better Environment, a California environmental group, also filed suit. In exchange for dismissal of both cases, Chrome Crankshaft settled both lawsuits for an undisclosed amount. The company agreed to discontinue the chrome-plating portion of its operations and to contribute \$25,000 to an environmental awareness organization. Olivio, Antonio, "Families' Lawsuit Targeting Factory's Contamination Is Settled," *Los Angeles Times*, August 7, 2000; "California Environmental Group Sues For Water Contamination At School," *Mealey's Emerging Toxic Torts*, February 19, 1999; "CA Suit Says Chrome Plating Facilities Tainted Schools' Water Supply," *Toxic Chemicals Litigation Reporter*, February 16, 1999.

Contaminated Wells (A Civil Action case). In 1982, residents of Woburn, Massachusetts filed a class action lawsuit against W.R. Grace and Beatrice Foods Co. for contaminating city wells with toxic chemicals in the 1960s and 1970s. The wells were finally closed in 1979 after tests showed they were polluted with high levels of industrial waste. By then, many children in the community were suffering from leukemia. As of 1986, five of the nineteen victims had died. The case against W.R. Grace ultimately settled for \$8 million. The jury found Beatrice not liable for polluting the wells. However, after the settlement with Grace, the EPA filed suit against both Grace and Beatrice, obtaining more than \$70 million for remediation. Gabriel, Frederick P., "His Life After 'A Civil Action'," *National Law Journal*, December 8, 1997; Cook, Alberta, "Did Dumping Cause Cancer?" *National Law Journal*, May 5, 1986; Blodgett, Nancy, "Toxic wells: Mass. Firms sued over water," 71 *A.B.A.J.*, 21 (April 1985).

Crazy Horse Landfill. From 1963 until 1980, Firestone Tire & Rubber Co. ran a tire manufacturing plant near Salinas, California, which generated massive amounts of toxic waste. For seven years Firestone sent large amounts of hazardous solvents and liquid waste to the city's Crazy Horse landfill. In 1984, two families living next to the landfill discovered that benzene, toluene, chloroform, vinyl chloride and other carcinogenic chemicals had contaminated their water wells. During the course of their suit against Firestone, internal company memoranda showed that company plant managers knew as early as 1977 that dumping liquid and semi-liquid wastes was illegal yet the company continued to dump toxic waste at Crazy Horse. While the

judge awarded over \$1.3 million in compensatory damages and \$2.6 million in punitive damages (finding that Firestone's conduct “displayed a conscious disregard for the rights and safety of others”), the California Supreme Court reversed and remanded, in part, for retrial on the issues of damages and liability for emotional distress. *Potter et al. v. Firestone Tire and Rubber Company*, 6 Cal. 4th 965 (1993); 20 Cal. App. 4th 629, 652 (1990).

Electromagnetic Pulse Radiation. From the early- to mid-1980s, hundreds of employees were continually exposed to high doses of electromagnetic pulse (EMP) radiation while working for the Boeing Corporation. In 1985, one employee was diagnosed with a rare leukemia. After filing a workers’ compensation claim, the man uncovered documents showing that Boeing had been using its workers to test the effects of EMP for the Defense Department. In June 1988, he filed a \$7 million class action suit against Boeing and other companies. In August 1990, Boeing settled, paying over \$500,000 to the man and his family (who established a foundation dedicated to funding EMP education and litigation), as well as funding medical exams and monitoring for workers. After the suit, Boeing minimized employee EMP radiation exposure, implemented an employee health-monitoring program and warned employees of possible dangers during medical examinations. “Safeguarding Employee Health,” *Trial Lawyers Doing Public Justice* (August 1991), citing *Strom v. Boeing*, No. 88-2-10752-1 (King County Super. Ct., Wash., settlement August 15, 1990); Conklin, Ellis, “His Last Ounce Of Courage,” *Seattle Post-Intelligencer*, September 6, 1990; Greenwald, Judy, “Boeing settles radiation experiment suit,” *Business Insurance*, August 27, 1990.

Landfill. Residents of Duval County, Florida suffered cancers and birth defects, as well as reproductive, blood and skin problems, after exposure to hazardous chemicals and industrial sludge emanating from a 17-acre landfill. A lawsuit by 670 victims was filed against WMX Technologies, Inc. and Waste Control, alleging, in part, that their injuries were a direct result of high levels of benzene, vinyl chloride, lead, solvents and other contaminants at the site. The case settled for \$18.5 million. The settlement effectively converted the case into a class action with more residents able to share in the recovery. *Taylor v. WMX Technologies, Inc. et al.*, No. 93-03674 (Duval County Ct., Fla., verdict December 1995); *Florida Jury Verdict Review and Analysis*, Vol. 6, Issue 8 (August 1996.)

Love Canal. Between 1947 and 1953, Hooker Chemicals & Plastics Corp. buried more than 22,000 tons of hazardous chemical wastes in a dump site at Love Canal, New York. Over the next 20 years, 82 chemicals from the site seeped into people’s basements, contaminating underground pipes and polluting the air. Over 1,000 families were relocated by the federal and state governments. By February 1982, more than 600 personal injury lawsuits had been filed against Hooker (which was bought out by Occidental Chemical Co.). In January 1985, 1,336 residents agreed to a \$20 million settlement with Occidental, which set aside \$1 million for a medical trust fund. Thirteen years later, the last of the Love Canal cases brought by 899 victims settled for \$6.75 million. Kwiatkowski, Jane, “Ex-Love Canal Residents To Get Paid,” *Buffalo News*, February 21, 1998; Campbell, Tom, “Love Canal Claimants Accept \$1.51 Million Offer,” *Business First-Buffalo*, August 24, 1987; *United Press International*, January 1, 1985; McFadden, Robert, “Love Canal: A Look Back,” *New York Times*, October 30, 1984; Macbeth, Angus, “Tort Law, Environmental Law Share Common Ground,” *Legal Times*, February 15, 1982; *Snyder et al. v. Hooker Chemicals & Plastics Corp. et al.*, 429 N.Y.S.2d 153 (1980).

PG&E Chromium Exposure (*Erin Brockovich* case). Between 1951 and 1972, Pacific Gas & Electric Company (PG&E) contaminated the groundwater in Hinkley, California, exposing area residents to cancer-causing chromium. In 1993, 650 area victims filed suit against PG&E for poisoning their water supply. The company entered into arbitration and ultimately settled the

case for \$333 million. In addition to paying the victims, PG&E agreed to clean up the environment and stop using chromium. The case prompted other utilities to take similar actions and has resulted in environmental remediation at other contaminated sites. “Proving and Stopping Toxic Water Pollution,” *Trial Lawyers Doing Public Justice 1997*; *Anderson et al. v. Pacific Gas & Electric*, No. BCV-00822 (San Bernardino County Super. Ct., settlement July 2, 1996).

Railway Explosion. Over 8,000 residents of the Gentilly section of New Orleans, Louisiana, sued nine corporations, including CSX Transportation Corp. and Phillips Petroleum Co., for injuries caused by a rail tank fire and explosion in September 1987. The tank car was filled with 29,000 tons of the carcinogenic chemical butadiene, which seeped into the sewer system and eventually ignited. A black vapor covered the poor, predominantly minority neighborhood, forcing the evacuation of 1,000 people. Information uncovered in a class action lawsuit filed by residents showed ten previous leaks from sitting railroad tankers in the three years before the explosion. At the first trial, the jury awarded \$2 million in compensatory damages and over \$3.36 billion in punitive damages. The punitive award was later reduced to \$850 million. As of February 2000, six defendants had agreed to pay a total of \$215 million. “Chemical leak caused neighborhood disruption,” *National Law Journal*, February 28, 2000; “La. Trial Court Reduces Punitive Damages Award,” *Mealey’s Emerging Toxic Torts*, December 8, 1999; “The Big Numbers of 1997; Environmental,” *National Law Journal*, February 23, 1998; *Adams v. CSX*, No. 87-16374 (New Orleans Parish District Ct., La., verdict September 9, 1997).

Refinery and Smelter. Beginning in the mid-1920s, residents of Globeville, Colorado were subjected to cadmium and arsenic exposure from the nearby Asarco Inc. refinery and smelter, placing citizens at a higher risk for cancer and other life-threatening illnesses. Asarco and the State of Colorado had previously reached a settlement that left dangerous levels of cadmium at the plant site and provided for minimal cleanup. In 1991, nearly 600 homeowners filed a class action lawsuit, claiming that the agreement’s terms were inadequate. The jury awarded over \$28 million in compensatory damages. Three months later, Asarco agreed to settle the case for \$24 million plus an additional \$11 million to clean up the contaminated soil. “Some Big Judgments Were Settled After Trial,” *National Law Journal*, January 17, 1994; “Cleaning Up Contaminated Neighborhoods,” *Trial Lawyers Doing Public Justice 1993*, citing *Escamilla v. Asarco Inc.*, No. 91-CV-5716 (Denver County Dist. Ct., Colo., verdict March 12, 1993).

“Skunkworks” Facility. From the 1940s through the 1990s, workers involved in building top-secret military aircraft at Lockheed’s “Skunkworks” facility were exposed to toxic chemicals during the manufacturing process. Employees began to suffer illnesses ranging from cancer and brain damage to rashes and mild congestion, with one-third severely injured or killed. Under the fraud exemption in California’s workers’ compensation laws, 650 victims were able to sue Lockheed and various chemical manufacturers, eventually reaching a \$33 million settlement with Lockheed in 1992. That same year, failure to warn and wrongful death cases were starting to be tried in groups of 15 to 40 plaintiffs, ultimately resulting in five jury verdicts totaling over \$800 million. The Court of Appeals upheld three of the five judgments, sending two back for retrial because of judicial error. Horvitz, Ellis and Stephanie Rae Williams, “Unpublished State Toxic Tort Ruling Offers Valuable Guidance,” *Legal Background*, October 6, 2000; “The Big Numbers of 1998,” *National Law Journal*, February 22, 1999; “Winning Justice for Poisoned Workers,” *Trial Lawyers Doing Public Justice 1996*

Stringfellow Acid Pits. Residents of Glen Avon, California suffered chronic headaches, chest pain, respiratory failure and fatigue from dangerous contaminants released from the 17-acre

Stringfellow Acid Pits, a hazardous waste dump one mile away. Between 1956 and 1972, nearly 200 companies had loaded the dump's 20 unlined, open, evaporative ponds with 34 million gallons of toxic materials, which eventually leached into the groundwater. The site was finally capped in 1986. A class action lawsuit was brought by 3,800 residents, ranging in age from 12 to 79, against thirteen different parties, including 11 corporations. After various settlements and jury trials, the victims were awarded a total of \$109.6 million. *Newman et al. v. Stringfellow et al.*, No. 165994MF (Riverside County Super. Ct., Cal., settlement November 22, 1994); Polakovic, Gary, "Uncertainty is toxic element in pollution lawsuits," *Press-Enterprise*, February 24, 1993.

Waste Treatment Facility. Beginning in 1994, residents of Grand Bois, Louisiana suffered headaches, dizziness, nausea and diarrhea after breathing toxic fumes from oilfield sludge owned by Exxon Corp. and disposed of at a Campbell Wells Corp. waste treatment site adjacent to the community. The sludge contained toluene, benzene, xylene, barium, hydrogen sulfide, arsenic and other hazardous materials. Lawsuits were filed by 301 individuals. Campbell Wells settled. According to press reports, Campbell Wells and its new owner, U.S. Liquids, agreed to pay \$7 million, expand the waste treatment facility's buffer zone and erect screens. In the suit against Exxon by the first 11 victims, a jury awarded \$130,000. *Frilout v. Campbell Wells*, No. 75,524 (17th Judicial Dist. Ct., Lafourche Parish, La., verdict August 9, 1998); Dunne, Mike, "Grand Bois defendant settles with plaintiffs; Exxon now stands alone against allegations," *The Advocate*, August 8, 1998.

Uranium Hexafluoride Radiation. Thousands of workers at the Paducah, Kentucky uranium enrichment site were unknowingly exposed to highly toxic radioactive materials while working at the facility between 1952 and 1998. Their families were also unwittingly exposed when workers brought home contaminated clothing. After three employees filed a whistleblower's lawsuit in June 1999, over 10,000 current and former employees and their families filed a federal class action suit against the plant operators. Following an eight-month investigation, the U.S. Department of Energy concluded in February 2000 that workers had been exposed to toxic chemicals and set aside \$ 109.2 million for medical monitoring, environmental cleanup and a conversion program for uranium hexafluoride. Zuckerbrod, Nancy, "DOE Admits Toxic Leaks At Nuke Site," *Dayton Daily News*, February 11, 2000; Nighswonger, Todd, "Paducah Workers Seek The Truth," *Occupational Hazards*, December 1, 1999; "Former KY Uranium Plant Workers Lodge \$10B Radioactivity Exposure Suit," *Toxic Chemicals Litigation Reporter*, October 4, 1999.

PRODUCTS LIABILITY AND INDIVIDUAL INJURIES

Benlate. A baby was born without eyes or optic nerves in 1990 after his mother had been sprayed with the fungicide Benlate while taking frequent walks past a farm when she was pregnant. The child's parents filed a products liability suit against E.I. DuPont, Benlate's manufacturer, among others, alleging that the company was negligent in manufacturing an unreasonably dangerous product that caused the boy's birth defects. The jury awarded \$4 million. The case is now before the Florida Supreme Court. *Castillo v. E.I. DuPont De Nemours & Co., Inc. et al.*, 770 So. 2d 156 (2000); "Holding Chemical Companies Responsible," *Trial Lawyers Doing Public Justice 1997*; *Castillo v. E.I. DuPont De Nemours & Co., Inc. et al.*, No. 93-14199-CA23 (Dade County Cir. Ct., Fla., verdict June 7, 1996).

Copper Pipes. A four-year-old boy in Connecticut died from liver failure caused by excessive amounts of copper leaching from pipes into his drinking water. The child's parents filed a

products liability and wrongful death suit against the water company, arguing that the water company had been aware of the problem yet failed to fix it until after the boy became ill. Records located in the Department of Health (DPH) archives showed that DPH had ordered the company to evaluate its drinking water nearly three years before the boy's death. The case settled for \$800,000 before trial. Legislation was later introduced in the Connecticut state legislature to reduce the time in which water companies corrected water quality problems from two years to 150 days. "Counsel Advocates on Water Quality Before Court, Legislature for Parents Whose Child Died of Liver Failure," 43 *ATLA Law Reporter* 113 (April 2000); *Avery v. S.D.C. Water Company et al.*, CV97-0544217S (New London Judicial Dist. Ct., Conn., settlement September 17, 1999).

Herbicide and Insecticide Exposure. In 1984, IT Corporation, an environmental remediation company, contracted with the Ciba-Geigy Corporation to handle waste sludge located on the Ciba-Geigy plant site in St. Gabriel, Louisiana. IT Corp. sent one of its employees to act as foreman. While there, the 27-year-old worked in and around waste sludge ponds, unaware that they were contaminated with the insecticide chlordimeform and the herbicide atrazine. As a result of continued exposure, he suffered headaches and nausea, as well as intestinal, urinary tract and bladder problems. Internal documents produced at trial showed that Ciba-Geigy knew of the dangerous health effects associated with exposure to the chemicals in the ponds. Evidence also revealed that in 1976, Ciba-Geigy's parent company had conducted human experiments in Egypt with chlordimeform, spraying individuals as young as ten-years-old with a crop duster and then measuring the levels of the chemical in their urine. The jury awarded \$428,200. "Louisiana Man Awarded \$428,200 For Atrazine, Chlordimeform Exposure," *Mealey's Emerging Toxic Torts*, October 9, 1998; *Lemaire v. Ciba-Geigy Corporation*, No. 31,854 (18th Judicial Dist. Ct. for Iberville Parish, La., verdict August 7, 1998).

PCBs. In 1974, a Pennsylvania homeowner installed an F.E. Myers, Co. water well pump that, unknown to her, used an oil lubricant containing PCBs. As a result, when the woman showered and brushed her teeth, she was exposed to oily water containing the chemical. She brought a products liability lawsuit which uncovered documents showing that the company knew from prior trade association memoranda that PCBs had been found in the oil and had previously leaked into pumped water, and that the trade association had recommended such information be kept from the public, customers and employees. The jury awarded \$766,000 in damages, \$750,000 of which were punitive damages. *Friedman et al. v. F.E. Myers Co. et al.*, 710 F. Supp. 118, 125 (1989); *Friedman et al. v. F.E. Myers, Co. et al.*, No. 88-3033 (E.D. Pa., verdict February 2, 1989).

Toluene. A child died on June 13, 1992 after playing in and around a Durex Industries dumpster that contained toluene, a toxic cleansing agent the company used to clean printing rollers and manufacturing equipment. Evidence showed that the plant operator had disregarded a citation issued four years earlier for improper storage and disposal of toxic chemicals, especially toluene. Durex had continued to illegally dispose of toluene, waste products containing toluene and other chemicals in a dumpster located across the street from a residential mobile home park which included families with young children. The jury awarded \$500 million, \$300 million of which were punitive damages. *Perez v. William Recht Co., Inc. et al.*, No. 92-8983 (Hillsborough County Ct., Fla., verdict September 28, 1995).