

City sues businesses for harbor cleanup

Waukegan says ships churned up trouble, cites 1980 federal act

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Harbor users take heat

WAUKEGAN -- The lingering polychlorinated biphenyls (PCBs) in Waukegan Harbor stem from the years when Outboard Marine Corp. would use hydraulic fluid containing the toxic substance as a lubricant during construction of boat motors.

In this week's federal lawsuit filed against remaining harbor industries, the city of Waukegan states that "substantial quantities" of PCBs were dumped with the fluid into the harbor, and some of it remained after OMC conducted a dredging operation in early 1992 that removed an estimated one million pounds of contaminated sediment.

The city alleges that the dredging was limited to within 20 feet of seawalls and left "high concentrations of PCBs." According to the lawsuit, the city "is informed and believes" that, as part of normal operations by harbor industries, "large deep-draft cargo vessels have caused prop wash (that has) routinely disturbed (and) redistributed PCB-contaminated sediments throughout the harbor."

"To date, none of the defendants has reimbursed the city for any of the aforementioned costs," the lawsuit adds. "Each of the defendants is jointly and severally liable to the city (for) all response costs incurred by the city in connection with the facility."

OMC was not named as a defendant in the lawsuit, having filed for Chapter 11 bankruptcy protection in 2000.

WAUKEGAN -- Taking a new tack in its bid to both clean up Waukegan Harbor and remove its industrial uses, the city filed a federal lawsuit this week seeking to have Sea Horse Drive businesses bear the costs for any future removal of polychlorinated biphenyls (PCBs) from the harbor.

The suit, filed Thursday in U.S. District Court in Chicago, claims that prop wash from deep-draft boats that serve shoreline industries has churned up PCBs remaining from a 1992 cleanup by the now-defunct Outboard Marine Corp.

"Spreading PCBs around the harbor makes the remaining harbor industries liable under (federal) Superfund law for the entire cost of the cleanup," city officials said Friday in a statement, estimating that complete removal of contaminated sediment would cost \$36 million, including \$12.6 million from the city.

The legal action comes after the U.S. Environmental Protection Agency nixed a deal last month to initiate a cleanup with some \$24 million from the Great Lakes Legacy Act. EPA officials balked at the city's insistence that the dredging be contingent on the harbor being decertified for industrial use.

Director of Governmental Services Ray Vukovich said Friday that the city decided to refocus its efforts on the harbor's ongoing status as a Superfund site.

"Ultimately, you have two arms of the EPA involved here, and once the Legacy Act was not an option, they passed it on to the other arm, which is the Superfund," said Vukovich, adding that in either case, local officials believe "it's not the city's responsibility" to clean up the harbor.

The lawsuit cites the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as its basis, saying that the federal act makes owners and users of a contaminated facility responsible for "response costs."

"The city seeks to recover costs it has incurred in connection with the Outboard Marine Corp. Inc. Superfund site," reads the lawsuit,

asking for a judgment "declaring that the defendants are liable for any further response costs that the city may incur as a result of releases or threatened releases of hazardous substances at the site."



Waukegan is invoking the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as its basis for the lawsuit, saying that the act makes owners and users of a contaminated facility responsible for "response costs." (Michael Schmidt/News-Sun File)

Do you think Waukegan should have filed the harbor lawsuit?

Yes		7%	836 votes
No		92%	10377 votes

Total Votes: 11213

Harbor businesses named as defendants include Bombardier Motor Corp. of America; Lafarge North America Inc. and Lafarge Building Materials Inc.; Larsen Marine Services Inc.; National Gypsum Co., and St. Mary's Cement Inc.

Also named as defendants are the Elgin, Joliet and Eastern Railway Co., which delivers materials to the harbor, and the Waukegan Port District, which owns the facility.

The city released its official announcement on the lawsuit around 4:30 p.m. Friday. Attempts to reach officials at businesses named as defendants after hours on Friday were not successful.

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