News

Toxic Substances

Federal Court Affirms HHS Classification Of Dioxin as 'Known' Human Carcinogen

The Department of Health and Human Services acted reasonably in upgrading dioxin from a "reasonably anticipated" to a "known" human carcinogen in the National Toxicology Program list, a federal appeals court ruled Nov. 23 (Tozzi v. HHS, D.C. Cir., No. 00-5364, 11/23/01).

The U.S. Court of Appeals for the District of Columbia Circuit affirmed a lower-court decision that found HHS's reclassification of dioxin in May 2000 was not arbitrary or capricious (Tozzi v. HHS, 51 ERC 1893 (D.D.C. 2000); 200 DEN A-3, 10/16/00).

The decision is expected to have major implications for the Environmental Protection Agency's ongoing reassessment of the risks of dioxin. The agency hopes to complete its final reassessment early in 2002 (196 DEN A-11, 10/12/01).

Further, although the petitioners in the case failed in their effort to block the redesignation of dioxin, the ruling was hailed as a precedent-setting decision for entities seeking standing to legally challenge government statements on health issues.

The Public Health Service Act requires HHS to compile a list of suspected and known human carcinogens in consumer products. The list is prepared biennially by the NTP, an HHS agency, and is titled the Report on Carcinogens.

State and federal agencies, among other organizations, use the report in many ways, including to determine whether exposure to a substance should be reduced or prevented altogether.

The NTP's Ninth Report on Carcinogens issued May 15, 2000, upgraded dioxin from a "reasonably anticipated human carcinogen" to a "known human carcinogen" (95 DEN AA-1, 5/16/00).

Dioxin is a chemical produced as a byproduct of paper and pulp bleaching and emitted during incineration of chlorine-containing materials such as polyvinyl chloride plastic.

Plaintiffs Jim J. Tozzi, an individual restaurant, a trade association of restaurants, and Brevet Inc., a manufacturer of medical products that release dioxins when incinerated, filed suit May 14, 1999, in the U.S. District Court for the District of Columbia challenging the findings of the Ninth Report. Tozzi is a consultant and a former White House Office of Management and Budget official.

They claimed, that according to its own regulations, HHS must rely upon epidemiological studies in evaluating whether a chemical is a "known" carcinogen.

1982 Regulations. The original 1982 HHS regulations governing classification of both "reasonably anticipated" and "known" carcinogens required that epide-
no impact from the court’s decision, he said. At this point, it is hard to tell what the full impacts will be, he said.

The plaintiff-appellants were represented by Charles J. Fromm, of Multinational Legal Services, in Washington, D.C. HHS was represented by the U.S. Attorney’s office in Washington.

BY JOHN H. STAM AND LINDA ROEDER