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DEP helping PPG out of citizen mercury suit

By Ken Ward Jr.

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CHARLESTON, W.Va. -- West Virginia regulators are working on a deal with PPG Industries to help the company avoid a citizen group lawsuit over repeated water pollution violations of mercury limits at its Marshall County chlorine plant, officials said.

Late last week, Department of Environmental Protection lawyers sued PPG in circuit court. DEP lawyers asked for an injunction to stop the violations, and for an order requiring PPG to pay the state's legal costs.

But DEP Secretary Randy Huffman says the state suit was filed at PPG's request. The company wanted to avoid defending itself against a suit by two environmental groups, Huffman said. So PPG provided a "plan of action" that DEP and the company believe will eventually be turned into a lawsuit settlement.

DEP's lawsuit is the latest in a long series of actions by state officials to help PPG, including four instances in the last 20 years in which DEP backed off tougher water quality limits for the Marshall County plant. Over the last five years, citizen groups have tried to step in, and use the courts to reduce PPG's mercury emissions. DEP's lawsuit, and plans to settle it, came just before the expiration of a legal deadline that would have allowed the West Virginia Rivers Coalition and the group Oceana to file a citizen enforcement suit against PPG.

"I'm certain that we haven't moved as fast as we could have," Huffman said Tuesday evening. "But ordering compliance is something different from actually achieving it."

In mid-March, lawyers for the two citizen groups filed their formal "notice of intent to sue" PPG for its water pollution violations. A list attached to the notice of intent to sue listed 10 mercury violations at the plant since the DEP renewed the facility's permit in August 2007. There were another five violations in July 2007, according to that list. Under the law, citizens must file a notice and wait 60 days before they can bring such a suit. The 60 days ran out on Monday, and DEP filed its suit on Friday -- the last working day before the notice period ran out.

Jim Hecker, a Public Justice attorney representing the citizen groups, noted that DEP has also filed suits to head off citizen legal actions against coal company pollution violations. In at least one of those cases, Hecker noted, a federal judge found that DEP filed suit and then did not diligently prosecute its case.

Built in 1957, the PPG facility is along the Ohio River at Natrium, just north of New Martinsville. The plant is West Virginia's largest source of mercury discharges to water and among the largest sources of mercury air pollution, according to state and federal data.

Part of the PPG plant makes chlorine by pumping saltwater through vats, or cells, of pure mercury. Most of the industry -- representing about 95 percent of U.S.-produced chlorine -- now uses mercury-free production processes.

Mercury is extremely toxic. Depending on the dose, human health effects from exposure can include subtle loss of sensory or cognitive ability, tremors, inability to walk and death. Of particular concern is the fact that mercury becomes more concentrated as it passes from a mother to her fetus. Children with mercury exposure are at risk of having to struggle to keep up in school or needing remedial classes or special education.

In 2007, environmental groups won a court case that alleged DEP had wrongly given PPG repeated time extensions to comply with water pollution limits at the site. But two months later, DEP officials issued a new version of the permit that gave PPG another extension, this time until 2013, to meet a tougher mercury limit. The citizen groups notice of intent to sue listed violations of the weaker limit approved by DEP in the 2007 permit.

Huffman said the company submitted a plan that outlines steps PPG proposes to take to stop its mercury violations.

"They had been wanting us to sue them, to block the third-party lawsuit, but we had no intention of doing that until they submitted a plan," Huffman said. "The pressure of the third-party lawsuit caused them to come up with a plan."

But so far, Huffman said, that plan does not include firm deadlines for ending the violations, or an agreed amount of monetary penalties that PPG must pay.

"We anticipate that what has been given to us in the way of a plan is something that we would work into a consent order or a settlement agreement," Huffman said. "I know that the Rivers Coalition and Oceana may not be very happy about this action, but PPG has moved more quickly in the direction we wanted them to go."

In a prepared statement, PPG spokesman Jeremy Neuhart said the company is reviewing the DEP lawsuit. Neuhart did not mention the previous discussions with DEP or the PPG plan submitted to the agency.

Joe Lovett, another lawyer for the citizen groups said, "I think the fact that the company asked the DEP to sue it says about everything that needs to be said about this case."

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