

Ottawa's flip-flop on PCBs cost \$85M, with suit pending

\$20M IN DAMAGES SOUGHT

Ohio firm seeking compensation for government policy

BY IAN JACK

OTTAWA • A ban on PCB exports ordered by Sheila Copps when she was environment minister cost Canadians up to \$85-million, an internal government document shows.

The 1995 decision is the subject of a lawsuit that could cost the government millions more. The government reversed the ban 15 months after it was imposed, but by that time, Ohio-based S.D. Myers Inc. claims, it had lost millions in potential sales. It is seeking \$20-million in damages.

Newly revealed documents filed as part of the lawsuit against the federal government, which is scheduled to be heard on St. Valentine's Day, 2000, include a cost analysis by Environment

Canada bureaucrats. They compared the cost of transporting and destroying polychlorinated biphenyls in the sole Canadian facility, located in Swan Hills, Alta., to the Myers plant in Ohio. The bureaucrats concluded the Ohio option would cost \$345-million, while Swan Hills worked out to \$430 million.

Canadian businesses and government bodies, such as school boards and hospitals, that had to remove PCBs never had the choice. "We created a monopoly in Alberta and it was a waste of money," said Barry Appleton, the Toronto-based lawyer who represents Myers.

Government memos revealed earlier in the case show bureaucrats warned Ms. Copps that blocking exports was "likely inconsistent" with the North American Free Trade Agreement, and made it clear she faced opposition from other departments, including Trade and Industry. But Ms. Copps had said publicly she supported a ban, and went ahead.

Myers had hoped to compete in Canada after the U.S. government lifted a ban on imports of PCBs in October, 1995. But five days later Canada slammed the door by banning exports. In February, 1997, Canada lifted the ban, but not until after the U.S. government re-closed its border.

In its statement of defence to the Myers claim, Ottawa argues Myers had not invested in Canada and that other international agreements on the environment override NAFTA.

Mr. Appleton said Myers laid off staff in Canada and wrote off \$1-million in Canadian investments when the ban took effect, showing it had an operation here. He also argues NAFTA does take precedence over the other agreements. "This was a new tax basically put on Canadian business to support the Canadian company," he said in an interview. "This isn't about environmental protection. It's about protectionism. Myers' only crime is that it's American."

The NAFTA lawsuit is one of many underway using the controversial investor-state provision of NAFTA, known as Chapter 11. The government has settled one. In July, 1998, Ottawa agreed to pay Virginia-based Ethyl Corp. \$13-million and reversed a ban on imports of the gas additive MMT.

Canada has been hit with four cases under Chapter 11, the largest for \$507-million, while the U.S. government faces an even bigger claim, for \$725-million (US), from Loewen Group Inc. The suits generally allege that changes in government policy hurt the company and amounted to expropriation of an asset for which it is entitled to compensation.

The largest Chapter 11 suit facing Canada was filed in March by a U.S. forestry company, Pope & Talbot Inc., which claims the Canadian government damaged its Canadian business when it unfairly implemented the 1996 softwood lumber agreement with the United States. Burnaby, B.C.-based Loewen is suing the U.S. government over Mississippi laws that the firm says made it practically impossible to appeal a crushing 1995 civil judgment against it.

Financial Post

Ottawa's high-cost flip-flop on PCBs

A ban on PCB exports ordered by Sheila Copps in 1995 cost taxpayers up to \$85-million, an internal government document shows. The resulting lawsuit could cost millions more. **Page C4**