

the parties supporting the institution of a changed circumstances review (for example, the closure of one of the domestic PCR producer's plants, projected increases in worldwide demand, and strong demand for Japanese PCR in China) were known at the time of the most recent five-year review, and were explicitly considered in the Commission's analysis.¹¹

Finally, while short supply conditions are a relevant condition of competition, as the Commission has previously noted, "there is no short supply provision in the statute" and "the fact that the domestic industry may not be able to supply all of demand does not mean the industry may not be materially injured or threatened with material injury by reason of subject imports."¹²

In sum, the asserted changed circumstance in this case, the closure of a non-subject producer's plant, does not have a significant bearing on either the condition of the domestic industry or the likely effect of subject imports on that industry if the finding were revoked.

In light of the above analysis, the Commission unanimously determines that institution of a review under section 751(b) of the Act concerning the Commission's affirmative finding in investigation No. AA1921-129, Polychloroprene Rubber from Japan, is not warranted.

By order of the Commission.

Issued: March 31, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree: Civil Penalties and Natural Resource Damages Under the Oil Pollution Act of 1990

Notice is hereby given that on March 22, 2006, a proposed Consent Decree ("Decree") in *United States and The Confederated Tribes of the Warm Springs Reservation of Oregon v. American Energy, Inc.*, Civil Action No.

04-CV-164-AA, was lodged with the United States District Court for the District of Oregon.

In this action brought pursuant to Section 311(b)(7) of the Clean Water Act, 33 U.S.C. 1321(b)(7), and Warm Springs Tribal Code Chapter 433, the United States and the Confederated Tribes of the Warm Springs Reservation of Oregon ("Warm Springs Tribes") sought penalties from American Energy, Inc. ("AEI") for causing the discharge of gasoline into the shorelines and waters of Beaver Creek on the Warm Springs Indian Reservation, Wasco County, Oregon. The United States and the Warm Springs Tribes also are seeking damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing the damages, caused by the discharge under Section 1002(b)(2)(A) of the Oil Pollution Act of 1990, 33 U.S.C. 2702(b)(2)(A). The claims of penalties and natural resource damages arise out of a gasoline spill that occurred on the morning of March 4, 1999, on the Warm Springs Indian Reservation. A tanker truck and trailer owned and/or operated by AEI overturned discharging approximately 5,400 gallons (128.57 barrels) of gasoline that flowed onto the adjoining shorelines and into the waters of Beaver Creek and Beaver Butte Creek. The Federal and tribal natural resource trustees prepared an informal assessment of damage to natural resources and loss of use of natural resources occasioned by the spill for use in settlement discussions with AEI. The proposed Decree provides that AEI shall pay to the United States \$80,000 in settlement of the United States' claim for civil penalties, and pay to the Warm Springs Tribes \$80,000 in settlement of the Warm Springs Tribes' claim for civil penalties. To address natural resource damages, the proposed Decree provides that AEI shall pay \$315,222.50 to the natural resource trustees for their development and implementation of the plan to restore natural resources damaged by the spill and to recover natural resource services lost as a result of the spill, which shall be deposited into the registry of the Court. The proposed Decree requires that the defendants reimburse \$94,242.98 to the National Oceanic and Atmospheric Administration ("NOAA") of the United States Department of Commerce, and reimburse \$15,533.52 to the United States Department of the Interior for damage assessment costs. In exchange for these payments, the United States and the Warm Springs Tribes covenant not to sue the defendants for civil

penalties and natural resource damages arising from the spill.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States and The Confederated Tribes of the Warm Springs Reservation of Oregon v. American Energy, Inc.*, DOJ Ref. 90-5-1-1-06871.

The proposed consent decree may be examined at the office of the United States Attorney, 1000 SW Third Avenue, Suite 600, Portland, OR 97204-2902 at U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. During the comment period, the consent decree may be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. Copies of the consent decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy, please enclose a check in the amount of \$5.50 for *United States and The Confederated Tribes of the Warm Springs Reservation of Oregon v. American Energy, Inc.* (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 42 U.S.C. 9622(d)(2)(B) and 28 CFR 50.7, notice is hereby given that on March 21, 2006, a proposed consent decree in *United States v. Ametek, Inc. and John Evans' Sons, Inc.*, Civil Action No. 06-1200, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States is seeking injunctive relief and recovery of response costs incurred by the United States pursuant to the Comprehensive

¹¹ Id. at 7-8 and 10.

¹² Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Article 1904 NAFTA Remand) at 108, n. 310 (December 2003). See also Metal Calendar Slides from Japan, Inv. No. 731-TA-1094 (Preliminary), USITC Pub. 3792 (August 2005) at 9, n. 45 ("To the extent that Respondents claim that the Commission is legally unable to make an affirmative finding of material injury by reason of subject imports because the domestic industry is incapable of supplying domestic demand, they are incorrect.").