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Subject: California Lawsuit & Ban on Leaded Avgas

The battle over leaded avgas in California took a turn against a coalition of associations representing users, distributors and producers of avgas on October 19 when a U.S. District Court judge dismissed a lawsuit filed by the coalition in an attempt to halt legal action against the use of avgas in the state.

The General Aviation Avgas Coalition filed the lawsuit, which sought an injunction against the Center for Environmental Health (CEH). The CEH filed notices of violation (NOVs) on May 9, warning avgas producers and distributors (including FBOs) that they are violating Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986. Under Proposition 65, according to the CEH, those companies are required to provide warnings to people living near airports about the risks posed by chemicals used to make avgas. In California, signs containing such warnings are posted in such profusion that they have become widely ignored, part of the background scenery. In fact, a CEH spokeswoman told AIN that she is not aware of any research that has proved whether Proposition 65 has saved any lives or prevented any diseases.

What Proposition 65 has done is create a mechanism whereby organizations such as the CEH can file lawsuits against companies found to be violating the requirements to warn about use of covered chemicals. The law allows the CEH and other such organizations to keep 25 percent of any civil penalties assessed for violations. "It's not too far from extortion," National Air Transportation Association (NATA) president James Coyne told AIN in an earlier interview. In the avgas case, CEH is also seeking reimbursement for legal expenses. According to NATA, the CEH calculated that "each company named in the NOVs could face a penalty of up to \$1.3 billion."

The May filing of the NOVs was the first step in the CEH's attempt to have avgas producers and distributors comply with the law, and this move served notice that the CEH planned to file a lawsuit in 60 days. The coalition's efforts delayed that deadline by about three months. Following the judge's dismissal of the coalition's injunction request, the CEH filed a lawsuit in state court on October 20, naming 46 companies (and 200 unidentified companies) as violators of Proposition 65. The suit doesn't just ask for those companies to comply by placing warning labels on the doors of their businesses but seeks an outright

ban on avgas sales until the companies comply fully with Proposition 65 by warning local airport residents about the lead in avgas.

FBO chain Signature Flight Support is part of the coalition and has enlisted its customers to help fund the coalition's efforts. Signature announced that it is collecting a quarter cent per gallon "California Proposition 65 Defense Fee...to fund the fight for general aviation. Customers not purchasing fuel will be charged Defense Fee based on minimum uplifts." The coalition has spent more than \$400,000 on the avgas battle and expects expenses to continue, according to Signature.

Limited Data on Emissions Dangers

According to a 2008 Environmental Protection Agency (EPA) report, airport-specific lead emissions totaled 1.4 tons per year at the highest emitter, Van Nuys Airport in southern California. These calculations, however, use 2002 traffic levels, which have dropped considerably during the past decade. The EPA issued an advanced notice of proposed rulemaking (ANPRM) in April 2010, part of an effort "to consider the information presented in the ANPRM and comments received from the public to determine whether, in the Administrator's judgment, aircraft lead emissions from aircraft using leaded aviation gasoline cause or contribute to air pollution which may be reasonably anticipated to endanger public health or welfare."

While the EPA noted that lead is harmful and that the agency is "concerned about continued emissions of lead to air," the ANPRM doesn't get into detail about whether tetraethyl lead used to prevent detonation in piston aircraft engines has been found to cause actual harm to the estimated 16 million people who live within one kilometer of 20,000 airports in the U.S.

"If the EPA judges, in a subsequent action, that lead emissions from these aircraft cause or contribute to air pollution that may be reasonably anticipated to endanger public health or welfare, the EPA would be required, in consultation with the FAA, to establish standards to control the emissions of lead from piston-engine aircraft. The FAA would also be required to establish standards for the composition of piston-engine aircraft fuel to control lead emissions," said the agency.

The Experimental Aircraft Association, one of the coalition members, published detailed comments to the EPA ANPRM, pointing out, "Given the widespread impact of the actions described in the ANPRM, any determination related to lead emissions from piston-engine aircraft must

be supported by sound and complete data. As explained in the following comments, the coalition does not believe that the present body of data is adequate to support any such finding.”

The coalition would prefer that the state hold off on any action that would prevent leaded avgas being distributed and burned in California, at least until a suitable replacement for avgas can be found. But the CEH is trying to force the issue with its legal actions. The coalition was weighing its legal options following the judge's dismissal of the injunction request.

“We are deeply disappointed with the judge's ruling that dismissed the coalition's federal suit on two technicalities,” said Eric Byer, NATA vice president of government and industry affairs. “We are extremely concerned about the impact this ruling has on FBOs and fuel providers throughout the state of California that are now facing additional litigation and escalating costs as a result of the CEH's complaint. And for the first time, there are serious concerns about the future availability of avgas in California. All of these concerns have been brought to bear because of Proposition 65 and a private group's relentless effort to penalize FBOs for doing what the FAA and the airports require them to do—sell leaded avgas to general aviation aircraft.”

The CEH contends that residents near airports where lead emissions are above legal limits must be notified per Proposition 65. In a previous effort, the CEH and manufacturers of automobile wheel balance weights made of lead came to an agreement to eliminate use of lead weights. Anaheim-based Disneyland is currently the subject of a CEH action because it has lead-based stained glass windows and other products like leaded-brass doorknobs, chains and the Sword in the Stone attraction that children might handle and thus be exposed to excessive amounts of lead.