

A first in Australian environmental law

By Stephen Simpson

In a unique decision under the Commonwealth Ozone Protection Act 1989, a Melbourne court this year handed out a \$168,000 penalty to a company caught illegally importing CFCs into Australia, following an AFP investigation.

Under the *Ozone Protection Act 1989*, the manufacture and importing or exporting of CFCs and other ozone depleting substances in Australia is controlled through a series of quotas and licences. It is illegal to import CFCs, which are a common agent used in air-conditioning systems, without a licence. When the Commonwealth Environment Protection Agency (CEPA) received information about a number of possibly illegal importations, they referred the matter in March 1993 to the AFP.

In some respects, the AFP's investigation was straight forward. The Australian Customs Service were able to verify that Semal Pty Ltd, which trades as Consolidated Chemical Co., had imported several tonnes of CFCs on eight occasions between February and June 1992. As well the company was cooperative and had admitted

during the investigation to importing the CFCs without a licence.

Semal however, claimed that it believed, as a licensed user of CFCs, it could import and supply CFCs without any restriction. It also claimed that on a number of occasions it had made inquiries with various federal government departments and was never informed of the need for a licence.

These claims were negated when CEPA drew attention to a national advertising campaign it ran in major newspapers when the Act became operational in April 1989. The campaign explained the aims and workings of the Act and sought feedback from the industry. The peak industry body, the Association of Fluorocarbon Consumers and Manufacturers, also had been extensively consulted during the drafting of the Act some two years before.

When the illegal importing case made it to the Melbourne Magistrates Court in June this year, Consolidated Chemicals pleaded guilty to seven charges of illegally importing CFCs and became the first company charged under the Act.

In a unique decision the magistrate placed the company on a good behaviour bond and ordered it to contribute \$168,000 towards ozone research, and also pay the Commonwealth's prosecution costs. The Cooperative Research Centre for Southern Hemisphere Meteorology will receive the contribution.

In a postscript to the investigation, the AFP has been able to provide training and advice to CEPA to assist it in the law enforcement aspects of its environment monitoring and policing role.

Depletion of ozone is cause for concern

The ozone layer high in the earth's atmosphere protects life by filtering the sun's cancer-causing ultraviolet radiation. Ozone gas is a form of oxygen which has three atoms in each molecule and is formed in the atmosphere from nitrogen oxides and organic gases. The ozone layer occupies a region of the atmosphere from 19 to 48 km above the earth's surface.

Chemicals called chlorofluorocarbons, or CFCs, which have been long used as refrigerants and aerosol spray can propellants pose a threat to the ozone layer when released into the atmosphere. CFCs are broken down by sunlight and the chlorine reacts with and destroys ozone molecules. For this reason, the use of CFCs has been banned in many countries.

The ozone 'hole' was discovered in the late 1970s and annually develops in the Antarctic spring and continues for several months before closing up again. Studies using high-altitude balloons and weather satellites, indicate that the overall percentage of ozone in the Antarctic ozone layer is declining. Flights over the northern hemisphere's Arctic regions have found a similar problem developing there.

In 1987, a treaty for the protection of the ozone layer was signed and later ratified by 36 nations. Australia regulates the import and use of CFCs under the *Ozone Protection Act 1989*.