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Is presumption of guilt needed in pollution cases?

Environment

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ALBANY, N.Y. – New York State provides us with a glaring example of why greater regulatory control must be instituted posthaste over the use of toxic substances.

The Environmental Conservation Department has warned the public to avoid eating fish caught in the Hudson River. Most of the edible species have been found to be contaminated from discharges into the water of polychlorinated biphenyls (PCBs), chemical compounds used mainly in the manufacture of electrical equipment.

Laboratory tests and field studies here and abroad have linked liver cancer, birth defects and neurological disorders to buildups of PCB concentrations in human body tissue.

Japan has banned PCBs, which reach human beings by advancing up the food chain. In this country the Food and Drug Administration has set a maximum PCB limit of five parts per million (ppm) residue in fish and shellfish.

Small-mouth bass, taken in experimental catches recently near the General Electric plants, the only documented industrial PCB dischargers on the river, averaged 41.5 and 53.5 ppm. White suckers recorded 28.2 and 48.9 ppm and walleyed pike 32.4 ppm.

Earlier data prompted State Environmental Commissioner Ogden Reid to advise the general public not to eat striped bass and large-mouth bass from the Hudson and salmon from Lake Ontario to the north of here.

To grasp the magnitude of PCB's impact on the Hudson, one must realize that an estimated 22 million pounds of striped bass alone have been consumed annually from the river in recent years.

Even more devastating, the PCBs pose a threat to the drinking water of several communities that draw their supplies from the Hudson. If PCBs find their way into the drinking water, there is no known purification process at present that can remove them.

Given the seriousness of the situation, how come General Electric is permitted to delay immediate corrective action and has the flexibility to decide at least for the next four months how many, if any, reductions it will make in its current PBC discharges?

While General Electric is contesting federal and state cleanup directives in court, why does the company's modest abatement schedule prevail over New York's much tougher version that culminates in zero discharge by September 1976?

During each day of legal wrangling, General Electric is allowed to make a discernibly bad problem worse by continuing its sizable discharges of PCBs (for which it has a federal permit) into the Hudson. The chemical is so persistent and has become to prevalent in the river that scientists estimate restoration of the waterway to a PCB-free state would encompass several decades, even if the dumping ceased immediately.

It all boils down once again to the misplaced burden of proof. Despite a demonstrably dangerous situation, the alleged polluter is considered innocent until proven guilty. The potential victims – in this case the general public – find that the law gives the manufacturers' financial standing rather than their own lives the benefit of the doubt.

Bills are still languishing in Congress to require that the burden of proof automatically shift to the accused polluter in cases where the threat of a major public health hazard exists.

Legislation is also pending which would mandate government pretesting of newly created chemical compounds and place a ban on any substances which posed a grave public health problem. Had this law been on the books, PCBs might not be around today.

Certainly, without the above reforms, the average citizen remains vulnerable to numerous abuses from which relief comes only after it is too late.

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