STATE FINDS G.E. A PCB POLLUTER

Says Discharge in Hudson Violates Two Statutes—May Assess Penalties

By RICHARD SEVERO

The General Electric Company was found yesterday to have violated two state laws by its discharges of toxic PCB's into the Hudson River.

The company was told that it would have to take steps to limit "drastically" the discharges, consider substituting chemicals that are less dangerous and explore how it can rectify damage already done to the river.

The finding was made in a 77-page report by Prof. Abraham Sofaer of the Columbia Law School, who conducted a hearing on the charges, called by the State Department of Environmental Conservation.

Professor Sofaer's ruling has force of law. It can be appealed to the Appellate Division.

Professor Sofaer said the hearing would be reconvened soon to determine the extent of any penalties to be assessed and to answer six major questions:

¶Would it be lawful and environmentally sound to accept General Electric's offer to reduce the discharges of PCB's—polychlorinated biphenyls—to three and a half ounces a day from two capacitor plants at Fort Edward and Hudson Falls, north of Albany? The company has indicated that it could achieve this by June of 1977. The state Conservation Commissioner, Ogden R. Reid, has asked for zero discharge by next Sept. 30, a deadline the company says it cannot meet.

¶How much should the company be ordered to do "to rectify the effects of its prior discharges, including whether any practicable and environmentally safe method exists or can be devised to remove PCB's from the river bottom, and the expected duration and extent of . . . contamination if no remedial steps are taken?" A hearing to determine if the company should, in effect, help pay for such reparations would be unprecedented in state history.

¶To what extent should the company be required "to remove PCB-contaminated earth and equipment from around its plants" and what is "the manner in which this operation should be conducted?"

¶A determination of what substitutes exist for PCB's, "including their adequacy and environmental acceptability." Japan has already banned the use of PCB's and is using substitutes, and the Monsanto Industrial Chemicals Company, the sole producer of PCB's in the United States, said two weeks ago that it was planning to phase out its manufacture of the chemical.

The chemical has been in widespread industrial use for 25 years, but only recently have scientists determined its pervasiveness and durability in the environment and labeled it as a carcinogen —a cause of cancer—and the cause of other illnesses in animals and humans.

¶Is General Electric now "utilizing proper care. . . . to avoid PCB contamination," and) what controls does G.E. have in effect, if any, to insure that PCB-impregnated equipment is not being permitted to become a hazard to the environment after use?

¶Is there a legal necessity for the company to post a $2 million performance bond, as asked by the Department of Environmental Conservation? Such a bond would presumably be forfeited if the company did not meet environmental standards set forth.

"The record in this case overwhelmingly demonstrates violations," said Professor Sofaer in his opinion. "G.E. has discharged PCB's in quantities that have breached applicable standards of water quality."

Professor Sofaer added that the contamination problem was a result "of both corporate abuse and regulatory failure: corporate abuse in that G.E. caused the PCB's to be discharged without exercising sufficient precaution and concern; regulatory failure in that G.E. informed the responsible Federal and state agencies of its activities, and they too exercised insufficient caution and concern until this action was instituted by New York's present Commissioner of Environmental Conservation."

There was no immediate comment from General Electric, which said it was awaiting a copy of Professor Sofaer's findings.

Stressing the gravity of the contamination level in the Hudson, Professor Sofaer said that a single meal of an eel caught in Schuylerville, which contained 59.25 parts per million of PCB's in its edible parts, "would contaminate an adult with over 50 percent of the Food and Drug Administration's estimated lifetime limit, and a child with 200 percent of its allowable lifetime limit."

Mr. Reid was criticized last month by the State Commerce Commissioner, John S. Dyson, who said that if New York adopted the strict environmental standards that Mr. Reid wanted, industry would move out to states that had more lenient standards.

Shortly thereafter, Governor Carey indicated that he, too, wanted Mr. Reid to ease his stand on General Electric.

A spokesman for the Governor said yesterday that there would be no immediate comment on Professor Sofaer's ruling until the Governor had had sufficient time to study it.

Initially, some state officials were fearful that New York's proposed strict stand on PCB's greatly exceed Federal standards. However, the Federal Environmental Protection Administrator, Russel Train, wants General Electric to eliminate all PCB discharges from the Hudson River by July 1, 1977. Thus, the only difference in proposed state and Federal standards is that the Federal Government would give G. E. 10 more months to achieve "zero discharge," and G. E. has indicated that it cannot meet this deadline, either.

Mr. Reid said the department agreed with Mr. Sofaer's view that the hearings should proceed "with an appreciation for what G.E. is prepared to accomplish without compulsion," but he emphasized that the Department of Environmental Conservation would accept no arrangement with the company that was not "consistent with the public interest, having the full force and effect of law."

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