EnCon Wants GE to Pay Hudson River Fishermen

By CLIFF LEE
Staff Writer

ALBANY — A state Department of Environmental Conservation (EnCon) attorney said Monday the department would seek penalties from General Electric to pay fishermen for lost income while the Hudson River is closed to commercial fishing due to PCB contamination.

Last Wednesday, EnCon Commissioner Ogden Reid issued an order restricting commercial fishing along a large portion of the Hudson from Fort Edward to New York City due to discoveries of extensive PCB (polychlorinated biphenyls) contamination of fish in the river and because of the possible danger from human consumption of the contaminated fish.

EnCon Attorney Philip Gitlen said Monday that the department considers GE the major source of PCB contamination in the Hudson and would seek to make the company directly responsible for the income Hudson River fishermen will lose as a result of the fishing ban along the river.

Attorneys for EnCon, GE and the National Resources Defense Council met briefly Monday morning in Albany with Hearing Officer Abraham Sofaer, a Columbia University School Law professor to discuss the nature of the upcoming remedial hearings to determine a solution to PCB discharges by the company and a possible means of restoring the Hudson to meet water quality standards.

Sofaer issued an interim opinion on Feb. 9 concerning the allegedly illegal discharge of PCBs into the Hudson by GE, in which he ruled that the company had violated state Conservation Law through such discharges.

Sofaer ruled that PCBs are toxic substances, which "pose grave risks to public health, have severely damaged fish resources of the Hudson and that the waters, sediments, organisms and fish of the river are highly contaminated with PCBs."

He also said the company shares responsibility for the damaged state of the Hudson and that it acted "negligently" in allowing the PCB discharges.

It will be the purpose of the remedial hearings to determine whether the PCB discharge levels GE has and can obtain are lawful, the extent to which the company should be required to remove PCB-contaminated earth and equipment from around its plants in Hudson Falls and Fort Edward, the extent to which GE should be ordered to rectify the effects of its prior discharges, the existence of substitutes for PCBs, whether GE is presently utilizing proper care in its manufacturing and sales processes to avoid further PCB contamination and whether the system of supervision proposed by EnCon would be lawful and adequate, particularly the legality and necessity of a bond, as requested.

Gitlen said Monday the department seeks to prove, through the remedial hearings, that even if GE ceased its PCB discharges immediately, the Hudson River would continue to be below water quality standards for years to come. He said there continues to exist a number of indirect PCB discharges into the river.

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including river sediment contaminated with the toxic chemical.

Gitlen said GE should be ordered to initiate a program of restoring the health of the Hudson, which should include the removal or treatment of river sediment to nullify its contamination.

The EnCon attorney also said the department is hoping to prove that the burden is on GE to come up with the means of restoring the river to an acceptable state.

"It has been proven that GE has done what we say they have done and we want them to undo it," he said, "but the method of achieving this should be of their own chosing."

Gitlen also indicated that EnCon would continue to push for a zero PCB discharge, despite GE's contention that such a level is currently unobtainable.

The company has proposed the construction of a $4 million effluent treatment plant at the Fort Edward and Hudson Falls plants, which would be designed to reduce the daily PCB discharges from the two plants to less than 100 grams. The company indicated Monday it is continuing its plans for construction of the effluent treatment plant, regardless of EnCon's demands.

N Earle Evans, attorney for GE in the PCB hearings, said the major issue to be decided by the remedial hearings is what constitutes a lawful level of PCB discharge. He also questioned what authority, if any, Commissioner Reid has to force the company to institute a program of rehabilitation or restoration of the Hudson River to meet water quality standards.

Sarah Chasis, attorney for the National Resources Defense Council, told Sofaer the council will hope to prove, through the hearings, that a zero PCB discharge level is the only lawful and acceptable level to be imposed on GE.

She added that the council hopes to prove that restoration of the Hudson River to an acceptable standard of quality is necessary to maintain the multi-million dollar resources of the river and that the state has the authority to order GE to initiate a river rehabilitation program.

"Clean-up of the river is absolutely essential," she said.

Sofaer gave EnCon until March 22 to file a petition setting forth the authority of the department to demand certain restoration programs from GE. He said the remedial hearings would resume on that date to allow attorneys for GE to file motions.

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