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# State Sues G.E. Over Pollution In the Hudson

## Spitzer Focuses Claim On Dredging, Not Health

By RICHARD PÉREZ-PEÑA

ALBANY, Nov. 15 — Attorney General Eliot L. Spitzer sued General Electric today, the first time the state has ever taken the company to court over PCB contamination of the Hudson River, in an action that he says he hopes will open the door to many similar suits.

The suit, filed in State Supreme Court in Albany, does not address the environmental and health effects of G.E.'s three decades of dumping PCB's into the river, issues that are the subject of an ongoing inquiry by the United States Environmental Protection Agency. The agency is expected to decide next year whether to order widespread dredging of the river.

Instead, Mr. Spitzer's complaint takes the novel approach of pursuing monetary damages, blaming PCB's for the state's trouble in maintaining a shipping canal that links the Hudson to Lake Champlain. And he invited local governments and private interests along the nearly 200-mile length of the river to join in his suit or file their own, on similar grounds.

"The legal theory, once we establish this legal theory, will open G.E. up to damages that are vast, that will apply up and down the Hudson River, and that will be monumental in scale," he said. "All the communities up and down the river have been impaired because of the PCB's in the Hudson — the value of property, the ability to get commerce through, jobs that have been lost."

Mr. Spitzer intentionally steered clear of sticky questions about damage to human health and ecosystems, adhering, he said, to grounds where he was confident he could win, and win quickly.

Environmentalists applauded the suit, predicting that it would put added pressure on G.E. to reach a settlement with the environmental agency for large-scale dredging of the river. The company strenuously opposes dredging, which could cost it more than \$1 billion.

A company spokesman, Mark L. Behan, dismissed the suit as "politics, purely and simply politics," adding that General Electric would contest it "with vigor."

Gov. George E. Pataki's administration also took issue with the action, warning that it could interfere with other state actions inst G.E. over pollution in the Hudson, which has been declared a toxic cleanup site under the federal Superfund program.

Environmentalists dismissed that concern, some saying that the governor, a Republican, simply did not like being overshadowed on environmental matters by the new attorney general, a Democrat.

John P. Cahill, Mr. Pataki's commission-

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er of environmental conservation, predicted that his agency and the E.P.A. would be dragged into Mr. Spitzer's suit. That, he said, would draw resources away from both the federal agency's investigation and a claim for economic damages against General Electric under the federal Superfund law that the state and federal governments have been exploring jointly.

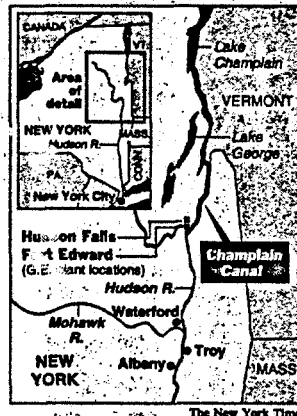
He also argued that the suit could hinder future claims under state law, since all such claims, he said, should be filed at once.

Officials of the environmental agency declined to comment on the suit, or on Mr. Cahill's prediction that it would slow down their work.

But environmentalists were elated that after decades of struggle, the state had finally sued General Electric. "We're delighted to see an aggressive approach being taken, finally," said Cara Lee, environmental director of Scenic Hudson, a conservation group. "This suit will probably bring forward additional information that will, if anything, make for a better E.P.A. decision and better state claims in the future."

The environmental agency is scheduled to make a preliminary decision late next year whether to order dredging of PCB "hot spots" up and down the river, but a final decision is not expected until 2001.

Some environmental groups fear that by then, there could be a Republican administration in Washington.



A canal channel in the Hudson has not been dredged in 15 years.

that would be less likely to take such action, a prospect that they say makes the attorney general's suit all the more important.

The suit continues Mr. Spitzer's string of audacious actions against major corporations in his first year in office. He has threatened to make New York the first state to sue gun makers in an attempt to make them put safety devices on handguns and limit how and where guns are sold. And he has sued power plants in the Midwest and South over air pollution that crosses state lines; it is the first such suit by any state.

Today's suit deals with the 35-mile-long Champlain Canal, from the southern tip of Lake Champlain to the Hudson at Waterford. It intersects the Hudson just downstream from the General Electric plants, at Hudson Falls and Fort Edward, that dumped PCB's into the river from the 1940's to 1970's, when the federal government banned them.

In some stretches, the canal runs alongside the river. In others, it enters the river; that is, what is called the canal is actually just the deepest part of the river. And that provides the basis for the attorney general's very narrowly drawn suit.

The State Constitution requires that the state maintain the canal for commercial traffic, and state law requires that it be at least 12 feet deep. But where the canal lies in the river, it has been allowed to silt up — it is as shallow as 7 feet in places, Mr. Spitzer's aides said — because of PCB's in the sediment.

If the state were to dredge the canal, it would have to abide by strict federal standards for handling and disposing of PCB's, making the work far more expensive. Mr. Spitzer said that is why the state has not dredged the channel in 15 years.

His suit seeks to force the company to pay that additional cost to

dredge the shipping channel in the part of the river that doubles as the canal, a sum that he said would be at least \$10 million and possibly far more. And he noted he was leaving open the possibility of seeking damages for lost economic activity along the canal, which would probably be many times the cost of dredging.

"The dollar figure is not as important as the precedent-setting nature of the action," Mr. Spitzer said. "This case will also establish a case for others faced with increased dredging and disposal costs. This includes municipalities in the region and downstream. It also includes private facilities such as marinas and waterfront businesses and others who can demonstrate economic harm. These damages will be vast."

Mr. Behan, the General Electric spokesman, said that the state had never even requested permission from the federal government to dredge the channel, proving that it was not a pressing need.

Cynthia Munk, a spokeswoman for the State Thruway Authority, which is controlled by the governor and operates the canal, said, "We believe that there is no need to do dredging for navigational purposes prior to E.P.A.'s assessment."

But she conceded that at times, getting a ship through takes special measures like removing some of its load or using dams to raise the water level temporarily.

Commercial traffic on the river has declined, from 13,615 vessels in 1980 to 2,517 last year, though some of that drop is due to the decline of manufacturing upstate.

Legal experts said Mr. Spitzer's suit appears to be a strong one. "There's a long history of the state suing under public nuisance laws when there is interference with a transportation corridor," said Karl S. Coplan, a law professor at Pace University who specializes in environmental law.

Polychlorinated biphenyls, or PCB's, were long used as insulators in electrical equipment. General Electric estimates that its two plants on the Hudson, 50 miles north of here, dumped more than a million pounds of PCB's into the river, but its critics contend it was far more. Mr. Spitzer said the true figure was more than 100 million pounds.

Though the federal environmental agency has declared that PCB's cause cancer in animals, and probably in humans as well, there is debate among scientists as to what, if any, risk there is to humans from low-level exposure.

General Electric contends that its dumping was legal, because no law explicitly prohibited it. But environmentalists argue that the extent of the dumping made it illegal because it violated state clean-water laws, a position supported by Mr. Spitzer.