

**TIMES
UNION**

Home News

70610

By **DINA CAPIELLO**, Staff writer
First published: Tuesday, September 26, 2000

Court rejects PCB lawsuit

Albany -- An effort to recover additional costs of dredging from General Electric is tossed out by state judge, citing no permits and the possibility that removal of tainted sediment may never occur

The state attorney general's lawsuit to force the General Electric Co. to pay the extra cost of dredging PCB-contaminated sediment from the upper Hudson River and Champlain Canal has been dismissed in state Supreme Court.

Justice Stephen A. Ferradino called the suit, which was seeking more than \$10 million in damages, "meritless."

"The most telling fact before the court is that no dredging has occurred, and no permits issued," Ferradino wrote in a decision received Monday. "In fact, with the need for obtaining several permits and approvals from a variety of agencies as a precondition for dredging, the process may never occur."

In December, the Environmental Protection Agency in a separate and unrelated action is expected to decide if and how a 35-mile stretch of the Upper Hudson, including portions of the Champlain Canal, should be cleaned up.

Environmentalists heralded Spitzer's suit when it was filed last November, but the Republican administration of Gov. George Pataki claimed that the attorney general was jumping the gun and the suit would not expedite the cleanup of the river.

On Monday, the state Department of Environmental Conservation said that the judge's ruling was consistent with the administration's prediction.

"We are still reviewing the decision, but our initial concern was that the reaction seemed premature and that appears to be what the court has said," said DEC spokeswoman Jennifer Post.

The Environmental Protection Agency has been studying PCB pollution in the river under Superfund



law for years while GE has opposed dredging, contending that PCBs are being buried naturally by sediment.

Spitzer said his lawsuit -- the first ever filed by New York against GE for PCB contamination in the Hudson -- was intended to jump start the river's cleanup, something the first-term Democrat vowed to do in his campaign for office in 1998.

The lawsuit contended that the state has not been able to maintain the canal to the navigational depth of 12 feet because of the cost of removing the toxic PCBs that GE discharged into the river for three decades from its Fort Edward and Hudson Falls plants. GE used PCBs as an insulator in electric transformers until they were banned by the federal government in 1976.

GE argued for dismissal on two grounds -- that the statute of limitations on the contamination had run out and that no dredging had been approved.

In a decision dated Sept. 14, Ferradino, who has chambers in Saratoga County, rejected the statute of limitations argument but sided with GE's second claim.

"As we said back in November of last year, this is the wrong lawsuit filed against the wrong party at the wrong time," said Mark Behan, a spokesman for GE, which is conducting a multimedia advertising and public relations campaign as the EPA decision looms.

The court ruling will have no bearing on whether or not the EPA will order dredging.

"Our reason for being out there is not for navigation. It's because of the threat to human health and the environment," said EPA Region 2 spokeswoman Ann Rychlenski. "They are two very different issues."

Spitzer contends that the price tag for dredging the canal, which extends between Whitehall and Waterford and at times merges with the Hudson River below Fort Edward, would be 10 times more expensive in six areas with PCB "hot spots" than in places where the canal is clean.

Spitzer interpreted the ruling as a setback rather than a defeat.

"I view this decision as an affirmation that the underlying legal theory works," Spitzer said, referring to the claim that the state is suffering

economically because the Champlain Canal cannot be dredged because of PCBs. "This is sound environmental litigation that is part of the overall agenda to clean up the Hudson."

Spitzer said he would press the state Canal Corporation to make a dredging decision since the judge left the door open for the state to make a case against GE with the necessary permits.

Dredging requires approval from the Army Corps of Engineers, the state Department of Environmental Conservation and the EPA.

The state Thruway Authority, which has maintained the state canal system since 1992, said it had no immediate need to dredge the canal, despite portions of it being as shallow as four feet.

"We have no immediate need to dredge from a navigational standpoint. We can raise the level of the canal when we need too," said spokesman Terry O'Brien. "We certainly won't dredge until the EPA comes out with its decision."

 [Send this story to a friend](#)

 [Return to Top](#)

Copyright 2000, Capital Newspapers Division of The Hearst Corporation, Albany, N.Y. The information you receive online from Times Union is protected by the copyright laws of the United States. The copyright laws prohibit any copying, redistributing, retransmitting, or repurposing of any copyright-protected material.