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GE lawsuit challenges EPA

The U.S. Environmental Protection Agency's authority over the cleanup of the Hudson River and other Superfund sites violates the Constitution, according to a lawsuit filed Tuesday by the General Electric Co. in Washington, D.C.

The suit, filed in U.S. District Court, marks the first-ever court challenge by GE of the federal law that puts the EPA in charge of deciding how to clean up the nation's most toxic and hazardous sites.

GE contends the law is unconstitutional because it gives the EPA "uncontrolled authority to order intrusive (cleanup) projects."

In two weeks, the federal agency is scheduled to release its cleanup plan for the Hudson River, the largest of 80 Superfund sites nationwide in which GE is involved.

"It's punishment first, trial later," said Brackett Denniston, GE's vice president for litigation and legal policy, referring to Superfund law provisions that violate the constitutional guarantee of due process. Under Superfund, there is no hearing before an EPA cleanup order, and GE contends there is not enough time for court review afterward. "The only time you get a hearing is when all the work is done ... and no one has ever succeeded in those," said Denniston.

The company, which is headquartered in Fairfield, Conn., has hired Harvard University Law School professor Laurence Tribe to make its case. Tribe is currently representing Vice President Al Gore in the presidential election recount case to be heard by the U.S. Supreme Court.

Environmentalists said the GE action on Tuesday is a last-ditch effort to postpone the cleanup of the Hudson River.

"These are the actions of a desperate company trying to avoid its responsibility of cleaning toxics from the river," said Jeff Jones, communications director for

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Albany-based Environmental Advocates.

Jones -- and other supporters of dredging the Hudson -- said the state's support of "active remediation" last week increased pressure on the company. GE lost an attempt to delay the Hudson River decision this fall when the U.S. Senate weakened a measure that would have required the EPA to wait until a dredging report was complete before ordering more Superfund cleanups. Since June, GE has waged a multimillion-dollar advertising campaign that paints dredging as destructive to the river's ecology. The company has long contended PCBs, or polychlorinated biphenyls, are being buried naturally by sediment. It cites lower levels of PCBs in fish as proof of the river's improvement.

GE officials denied any link between the suit and the Hudson River cleanup, saying that the move was a response to the increasing number of "burdensome, multiyear cleanup projects" the EPA has ordered. "This is not seeking to delay anything with the Hudson. What we are seeking is a court judgment," said Denniston.

GE points to three Superfund sites in its complaint as examples of "unilateral" orders by the EPA: a Hoboken, N.J., mercury vapor lamp factory once owned by GE; a Milford, N.H., paint manufacturing plant that purchased pyrenol -- a PCB-containing oil added to paints -- from GE; and the Hudson River, where GE discharged up to 1.3 million pounds of the PCBs used as an insulator in electrical capacitors produced at its Fort Edward and Hudson Falls plants.

GE is liable for cleaning up the pollution at all three locations because it was named a "potential responsible party" under the 1980 Superfund law.

But the company -- which has acknowledged its role in polluting the Hudson River -- claims that it is not responsible in all cases. "It is an extreme situation when you are ordered to do something when you have a slight connection to the site," said Denniston.


The federal law -- spawned by the toxic pollution of the Love Canal, a residential community outside of Niagara Falls that was built on top of a canal used as a dumping ground by the Hooker Chemical Co. -- mandates the cleanup of the nation's worst hazardous and toxic waste sites.

The Superfund law has survived previous challenges on constitutional grounds.

"The courts have repeatedly upheld the validity, the legality, and the constitutionality of the Superfund

program," said Marc Violette, spokesman for New York Attorney General Eliot Spitzer. "Both Congress and the EPA carefully considered the Superfund program. There is no part of that program that violates General Electric's constitutional rights."

An EPA spokeswoman said the agency would not comment on GE's suit because it had not reviewed the complaint.

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