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★ Setting the record straight about legality of G.E.'s PCB discharges

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The public debate over dredging toxic PCB's from the Hudson River should not be clouded by misleading assertions concerning the legality of the General Electric Company's discharges of PCB's.

Reports have suggested that G.E. has always had a governmental permit for its releases of PCB's into the Hudson from its Fort Edward and Hudson Falls facilities. Also, G.E. has claimed that its discharges were lawful. While under federal cleanup law, G.E. is responsible for the cleanup regardless of whether the discharges were legal, it is important to make the record clear on these two points.

G.E.'s own records show that the company began discharging PCB's from its Fort Edward plant in 1947, and from its Hudson Falls plant in 1951. When G.E. submitted a permit application to the federal government in 1973, it reported that it did not have any permits for these discharges. The first permit G.E. obtained was in 1975. Thus, it is not correct that the company had permits between 1947 and 1975.

G.E. discharged the vast majority of the PCB's released into the Hudson before obtaining a permit. This is because the pre-1975 discharges were many times higher than the more recent discharges. G.E.'s 1973 permit application noted that G.E. was directly discharging an average of 30 pounds per day of PCB's. Pursuant to a later settlement with the government, G.E. agreed to reduce its facility discharges to an average of less than one-hundredth of a pound per day by 1977.

Moreover, at no time has G.E. obtained permits for the seepage of PCB's into the River from the bedrock and soil beneath its Hudson Falls plant – the same discharges G.E. claims are significant sources of PCB's to Hudson River fish. These discharges date back many years and continue to this day.

Whether the unpermitted discharges were also unlawful is another question. As to the discharges before the 1975 permit, it must be noted that by the 1960's, many courts (including the United States Supreme Court) interpreted federal law to prohibit these types of unpermitted releases. The fact that neither the federal nor the state government prosecuted G.E. for these PCB discharges does not, of course, mean that the discharges were lawful.

In fact, the N.Y.S. Department of Environmental Conservation charged G.E. in 1975 with illegally releasing PCB's from 1972 through 1975. After a full hearing, the administrative judge ruled that G.E.'s discharges violated state law. In particular, the administrative judge found that *"the record in this case overwhelmingly demonstrates violations of [two sections of the state environmental law] within the applicable statutory period. ... G.E. has discharged PCB's in quantities that have breached applicable standards of water quality."* G.E. then settled the case by agreeing to stop using PCB's at its facilities and to stop its direct manufacturing discharges of PCB's into the Hudson River by 1977, as noted above.

Since 1977, G.E. has had a permit for discharges containing PCB's from its wastewater treatment facility. However, G.E.'s discharges have exceeded the permit limits on numerous occasions. In addition, other PCB releases from the plants since 1977, such as the seepage of PCB's from underneath the G.E. plants into the River, are not allowed by that permit. Thus, although G.E. has had a PCB discharge permit since 1975, it is inaccurate to say that all of its PCB discharges since that date have been lawful.

In sum, the record should be clear that G.E.'s very large discharges prior to 1975 were not authorized by any permit, that the continuing seepage of PCB's into the River is not authorized by any permit, and that certain of G.E.'s discharges both before and after 1975 have been unlawful.

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