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PRIORITY

FAIR loses lawsuit to halt EPA's dredging

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ALBANY ♦ A federal judge has dismissed a lawsuit brought against the U.S. Environmental Protection Agency by a group of local farmers and landowners, who sought more information from the agency about its plan to remove PCBs from the Hudson River.

The lawsuit, filed in July by the group, Farmers Against Irresponsible Remediation, claimed that the EPA didn't disclose important information regarding its plans including where plants to remove water from contaminated river sediment would be located, where required

backfill would come from, and what routes would be used to transport silt removed from the river.

But U.S. District Court Justice Lawrence Kahn ruled Thursday that the lawsuit could have "indefinitely delayed" the cleanup of the Hudson River of PCBs, a project that could take years.

In his 26-page decision, Kahn wrote that in 1986, Congress enacted a section of federal Superfund law that allows citizens to challenge a remedial action only after it is completed.

Kahn wrote that before 1986, "creative attorneys" often sued the EPA whenever

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Judge considers FAIR lawsuit a delaying tactic

♦ JUDGE

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er the agency decided to clean up a hazardous waste site. The EPA found itself repeatedly in court instead of actually removing toxic waste from those sites, Kahn wrote.

In response, Congress enacted the section of law to prevent such delays, Kahn wrote.

Regarding the specific information that FAIR officials were

seeking, Kahn wrote that EPA officials testified that information won't be available until the design phase of the project is completed.

Dean Sommer, an Albany-based attorney representing FAIR, said he and his clients were "disappointed" in the decision. He said the public has the right to know the "fundamental components" of the EPA's plan.

Sommer said he disagreed with the judge's contention that

by releasing the information, the EPA's plan would be delayed.

"We remain baffled why the EPA has kept the information secret and will only disclose it at a time when the public no longer has a right to public participation," Sommer said.

While the decision could be appealed, Sommer said no decision has been made.

"There's a lot of consideration that you have to go through in order to make the decision to do

that," he said.

Bonnie Bellow, director of communications for the EPA, said the decision was good news for the agency.

"We're obviously pleased that the decision confirmed what we had said all along, that there was no basis for it (the lawsuit)," Bellow said.

Bellow said the EPA is moving ahead with its final record of decision as fast as it can. But last week's terrorist attack has

forced the EPA to delay the decision at least until October. Bellow said the EPA offices were only six blocks from the World Trade Center, and there still is no phone or computer service in those offices. Also, the EPA is involved in some of the environmental testing around the disaster site.

"That said, the Hudson River team is meeting and they're working the best they can," she said.