

Joe Slack - FYI
Betsy Lowe

Referee sought

Monitor needed for battle between Moreau and GE

By Edward Fitzpatrick
Staff Writer

A judge has appointed a referee to monitor the legal brawl pitting the town of Moreau and the state against the General Electric Co. over toxic chemicals dumped in the town in the 1950s through 1970s.

A "judicial hearing officer" — most likely to be a retired judge or practicing lawyer — will oversee the process by which both sides seek information for their legal cases, state Supreme Court Justice Loren N. Brown stated in a decision dated Aug. 24.

The state lawsuit against GE began in 1982. A separate federal

lawsuit is now making its way through the court system.

The state suit became substantially active when Moreau joined the battle in 1987. That action has become bogged down in legal maneuvers recently, Justice Brown stated in his decision.

"As the voluminous paper now before the court reflects, the parties appear to have replaced compromise and discussion with motion practice," Brown stated.

The two sides will split the cost of hiring the referee, the decision states.

See Referee: Next Page

Steph - FYI
File: Moreau

Referee

From Page B1

A referee will only make matters worse, Moreau's environmental attorney, Lewis B. Oliver Jr. of Albany's Oliver & Oliver law firm, said Wednesday.

If either side disagrees with the referee's decision, it can appeal to a judge, he said.

"So this would only add an extra layer to the process," Oliver said of the referee. "My feeling is that if GE knew they were going to be before a judge, they would be more forthcoming with information."

GE requested the referee in a motion dated June 1.

Oliver, who opposed the motion, said he had yet to decide whether to appeal the decision on the referee.

GE's attorney, Susan P. Read of Albany's Bond, Schoeneck & King law firm, said GE requested the referee "to get the litigation moving."

"Either the town is just trying to cause delay or that is just the net result of his actions," Ms. Read said of Oliver.

"We hope that with a referee we

will be able to cut down on the time and the costs."

Oliver claimed victory over another part of the ruling, which forces GE to search further for information about past claims that GE polluted the environment.

He said GE only searched for requested documents at three sites and then claimed further research would be too difficult. He said the documents already provided by GE leave many gaps in information.

In his decision, Brown acknowledged a search in all GE locations "would be onerous." But he stated the demands, "though extensive, are not palpably improper."

Both attorneys said they liked another aspect of Brown's decision, which calls for Moreau Supervisor R. Gardner Congdon to appear for a deposition in Ms. Read's office at 9 a.m. Sept. 5. A deposition is a statement given under oath to be used in court.

Ms. Read said GE requested a deposition from Congdon more than a year ago "but just got nowhere." Congdon is named as a plaintiff in the lawsuit.

Oliver said: "We are very pleased with having Mr. Congdon deposed."

Oliver also claimed victory in

Brown's decision to make GE provide copies of the company's insurance policies that might cover potential liability for the Moreau contamination.

Ms. Read said Oliver has had a standing invitation to review the insurance policies at her office. Oliver said the insurance documents are several thousand pages long and that he saw no reason why he could not have copies.

"This is just another case of GE violating the law," he said. "They refused to give the copies, when I am entitled to the copies."

Ms. Read said GE's insurance company has already stated it will refuse to cover any potential liability stemming from this case.

He said the town's side did meet defeat in another part of Brown's decision, which calls for the town to suggest how GE should have disposed of the toxic chemicals.

"That is absurd," he said. "We are not GE's research and development arm."

Both sides will continue to seek information in the legal discovery process, the two lawyers said. Ms. Read said future motions in the case would not be made "for many months — well into 1990."

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Judge: State can join town in GE suit

Wants thorough cleanup

By Mark C. Mahoney
Staff Writer

MS
9/16/89

MOREAU — A federal district court judge has granted the state's request to join the Town of Moreau in its fight to force General Electric Co. to take greater steps to remedy the contamination of the Moreau aquifer.

In a decision cheered by town and state officials, U.S. District Court Judge Con Cholakis Friday ruled in favor of the state's right to intervene in a lawsuit brought by the Environmental Protection Agency against GE. Moreau also is a party to the suit.

The state sought to intervene in order to get GE to fully clean up the contaminated aquifer.

From 1958 to 1968, General Electric disposed of 452 tons of hazardous waste at its industrial waste site disposal site in Moreau. The contaminants leaked into the soil and contaminated part of the town's water supply.

In a record of decision proposing a settlement for the contamination problem, EPA directed General Electric to provide clean water to residents in the 121 homes presently recognized as being affected by the contamination.

Those homes are located in the area of Terry and Cheryl drives and Myron and Bluebird roads.

The record of decision also directed GE to treat contaminated water in the aquifer through an air stripping system.

According to Lewis B. Oliver, the town's legal representative, Cholakis, in granting the state's request to intervene in the matter, stated that groundwater contamination will remain under EPA and GE's proposed solution.

The judge also stated that the record of decision doesn't adequately address state groundwater regulations, Oliver said.

Both the town and two state agencies agree that the EPA solution is insufficient and doesn't completely address the scope of the contamination.

State Attorney General Robert Abrams urged greater action by General Electric to rectify the contamination problem.

"We will press our case for a complete cleanup of the aquifer," Abrams said in a news release Friday. "This important ruling (from Cholakis) establishes every state's right to enforce its environmental standards in Superfund cleanups."

"We were, and still are, dissatisfied with the EPA's record of decision for the remediation of the site which we believe would allow the underlying aquifer to remain contaminated," said Thomas Jorling, commissioner of the state Department of Environmental Conservation in a written statement.

"It's very good news," Oliver said of the ruling.

Oliver said that with the state now

See Judge: Next Page

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Judge

From Page B1

a party to the litigation, the two governments can pool their legal resources and force GE to undertake the cleanup and provide water to the undeveloped area the town claims also is affected by the contamination.

He said he expects the judge's ruling to be a precedent for the rest of the case, and said it makes it likely that the record of decision will either be thrown out or amended.

M. Peter Lanahan, GE's government relations manager, questioned the state's involvement so late in the litigation.

"We were prepared to carry out the ROD (record of decision) and we still are," he said. "Why, at the 12th hour, are we faced with yet another project delay?"

General Electric's position, he said, is that it's done everything it's been required to do by the federal government to alleviate the problems. He said regardless of the solution imposed, the company could never walk away from the situation.

With the way things are going, Oliver said it's possible GE might

eventually be required to pay for not only water to residents from the Village of South Glens Falls, but also from the Town of Queensbury, which operates a large water treatment plant on the Hudson River.

As expected Friday, DEC issued a permit to allow GE to provide water from the Village of South Glens Falls to the affected 121 homes.

Lanahan said the hookups could be complete and water flowing to the homes "before the snow flies." "It can be measured in weeks," he said.

Before the water lines can be hooked up, however, a special condition of the permit prohibits the parties from circumventing any required consent of local authorities.

Water approved for 120 homes near GE site

By Edward Fitzpatrick
Staff Writer

P/S-7/15

SOUTH GLENS FALLS — The state will hand the village a permit this morning to pipe water to 120 homes around the Moreau site contaminated by General Electric Co. toxic chemicals, Mayor Robert Phinney said Thursday.

The news comes 11 years after Robert J. Buttles Sr. and about 125 other townspeople met in St. Timothy's Church basement,

amid anger and fear, to learn that PCBs and other chemicals from GE plants in Fort Edward and Hudson Falls had been buried at a dump site in their neighborhood.

On Thursday night, Buttles, who lives at the corner of Myron Road and Terry Drive and is president of Citizens of Moreau Against Contamination (COMAC), said he was happy to hear the news.

"It's been a long, hard struggle," Buttles said.

The village applied for the permit to supply the 120 homes early this year. Then in

July, the town of Moreau, which contains South Glens Falls, applied for the same permit, saying it would supply the homes from town Water District No. 2.

That collision course began in 1987, when the federal Environmental Protection Agency signed a Record of Decision stating GE must pay for piping water from the village to the 120 homes.

The town argued that GE should provide water to hundreds more homes in the area. Town officials asked the village to turn down GE so they could press to get GE to

pay to pipe in water from the town in the short term and from neighboring Queensbury in the long term.

The village at first refused GE but eventually signed a contract with the company. Village officials have said they wanted to get the homes water quickly and let the agencies and lawyers battle over the long-term solution.

GE had begun installing pipes in the area, but until now had no water source to hook them to. Meanwhile, the contaminated homes have had water filters installed and

residents used bottled water.

On Thursday night, Mayor Phinney said: "I'm tickled to death that those people will finally get pure water."

He said the village will leave it to the town, the EPA and the state to settle the long-term solution.

"We just care about the residents of the impacted area," Phinney said.

The town also has claimed that the

See Water: Back Page

Water

From Page A1

village lacks sufficient water to provide for the 120 homes and for future development. On Thursday, Phinney brushed aside those suggestions, saying the village has more than enough for all those purposes.

Moreau Supervisor R. Gardner Congdon said he has no objection to the village providing the water if it has sufficient capacity.

"But it is my understanding that they do not," he said.

Congdon said the decision will prove a hardship for those not included.

"There are another 300 homes without water that need water right now," he said. "And as time goes on, that need will become greater, and I think that is tragic."

Congdon said the town would have

water from Queensbury now if the village had not offered to provide the water.

Meanwhile, Buttles said that after years of scratching at strange rashes and drinking water brought in bottles from relatives' homes, he will only be really happy when water flowed through the pipes that have sat in the road outside his house for a year.

"I just hope no faction or group tries to prevent this from happening," he said. "That would not be fair to us."

Thursday's news comes on the eve of a hearing in federal court to decide if the state will be allowed to intervene in a federal lawsuit to force GE to undertake work beyond providing water for the 120 homes.

The state Attorney General's Office filed to intervene in the suit on June 8. U.S. District Judge Con. G. Colakis will consider the request today in Albany.