

**ATLANTIC STATES LEGAL FOUNDATION
GREAT LAKES UNITED
CITIZENS' ENVIRONMENTAL COALITION**

PRESS RELEASE

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**GREAT LAKES ENVIRONMENTALISTS CALL FOR DRASTIC REDUCTIONS IN
TOXIC DISCHARGES FROM KODAK**

Rochester, N.Y. In comments on Kodak's proposed water discharge permit, the Atlantic States Legal Foundation supported by Citizens' Environmental Coalition and Great Lakes United have called upon the New York State Department of Environmental Conservation to institute a freeze on all current discharges of toxic chemicals from Kodak's Rochester Plant (Kodak Park facility) and mandate reductions in toxic discharges from the facility. In addition, the groups have recommended that DEC require the company to eliminate the discharge and use of persistent toxic substances within 5 years.

"The draft permit is in direct contradiction to the goals of the Clean Water Act and the Great Lakes Water Quality Agreement," stated Ed Cooper, Legal Counsel for Atlantic States Legal Foundation. "We should be moving towards reductions in discharges; this permit would authorize the discharge of more chemicals to the Genesee River."

The Kodak facility located in Rochester, New York, is one of the largest polluters in the Great Lakes Basin. The Citizen's Fund and the Industrial States Policy Center, in a report entitled *Poisoning the Great Lakes: Manufacturers Toxic Chemical Releases* (1992), identified Kodak's Rochester Facility (the Kodak Park facility) as the second largest discharger of toxic chemicals into the Great Lakes Basin in 1989. More than 17 million pounds of toxic chemicals were released from the facility into the environment for that year. A very significant quantity, more than 415,000 lbs (207 tons) of toxics, were released to water (the Genesee River). Kodak Park was ranked fourth as an industrial discharger of toxics to water in the Great Lakes states (and by far the largest in New York State). It was also identified as discharging more known or suspected carcinogens than any other industrial facility in the Great Lakes states, and far more known or suspected carcinogens directly to water than any other facility.

The company currently discharges as much as 640,000 pounds of toxic pollutants into the Genesee River each year. The environmental organizations estimate that the total quantity of known, suspected or experimental carcinogens currently discharged may amount to as much as 189,000 pounds per year. They also estimate that as much as 219,000 pounds of known or suspected reproductive toxins and 248,000 pounds of known or suspected teratogens are presently released. The draft permit would allow these amounts to increase dramatically.

"It's appalling that in 1992 companies are allowed to discharge hundreds of pounds of chemicals

each day that are known or suspected of causing cancer and birth defects," said Diane Heminway, Western New York Director for Citizens' Environmental Coalition. "The Department of Environmental Conservation should be banning poisons in our children's drinking water, rather than issuing permits for their discharge."

The permit would authorize the discharge of a number of persistent toxic chemicals including lead, cadmium, arsenic, mercury, chromium, and di-n-butyl phthalate.

"The impacts of persistent toxic substances on the Great Lakes-St. Lawrence River ecosystem have been virtually ignored by DEC in the development of this draft permit," stated Karen Murphy, Field Coordinator for Great Lakes United. "DEC should require Kodak to eliminate the use and discharge of persistent toxic substances altogether."

In summary the groups recommended that the Department of Environmental Conservation amend the permit as follows:

- Set limits for all pollutants authorized to be discharged.
- Impose an initial freeze on current discharges. The limits should then be made more stringent in each successive year to ensure that Kodak's toxic discharges are reduced significantly over a 5 year period.
- Require Kodak to make a serious advance towards achieving the goal of zero discharge of persistent toxic pollutants. By the final year of the permit, the discharge of these pollutants should no longer be authorized.
- Develop timetables and programs for sunseting the use of chlorine and chlorine-containing compounds.
- Require regular and frequent monitoring for all pollutants authorized to be discharged, as well as, for a number of highly toxic substances that are manufactured and used in large quantities at Kodak's facility.

Great Lakes United (GLU) is a non-profit, environmental organization dedicated to the protection and restoration of the Great Lakes-St. Lawrence River ecosystem. Coalition members include environmental, conservation, labor, hunter, angler, business, academic and community and native organizations, and individuals from the eight Great Lakes States, Ontario and Quebec.

The Atlantic States Legal Foundation (ASLF) is a not-for-profit environmental organization based in Syracuse, New York with members from throughout New York and the United States. ASLF is dedicated to protecting and restoring the natural resources of the United States. To this end, ASLF engages in activities to increase the public's awareness of the impact of human endeavors upon the natural environment.

Citizen's Environmental Coalition (CEC) is a non-profit statewide coalition of over 90 environmental, community, and labor groups working to address and prevent pollution in New York state.

BACKGROUND ON THE DRAFT WATER DISCHARGE PERMIT FOR THE KODAK FACILITY IN ROCHESTER, NEW YORK (Kodak Park Facility)

Kodak is one of the largest polluters in the Great Lakes Basin. In a recent publication, *Poisoning the Great Lakes: Manufacturers Toxic Chemical Releases* (1992), the Citizens Fund and the Industrial States Policy Center identified Kodak Park as the second largest industrial discharger of toxic chemicals into the Great Lakes Basin within the Great Lakes states (Illinois, Indiana, Michigan, Ohio, Minnesota, New York, Pennsylvania, and Wisconsin) in 1989. More than 17 million pounds of toxic chemicals were released from the facility into the environment in that year. A very significant quantity, more than 415,000 lbs (207 tons) of toxics, were released to water (the Genesee River). Kodak Park was ranked fourth as an industrial discharger of toxics to water in the Great Lakes states (and by far the largest in New York State). It was also identified as discharging more known or suspected carcinogens than any other industrial facility in the Great Lakes states, and far more known or suspected carcinogens directly to water than any other facility.

Kodak's own reports indicate that the company currently discharges as much as 640,000 pounds per year (1,750 pounds per day) of hazardous and/or toxic pollutants into the Genesee River (via its King's Landing outfall -- Outfall 001). Notable inorganic pollutants include manganese (60,000 lbs/year), zinc (28,000 lbs/year), silver (8,200 lbs/year), lead (4,200 lbs/year), chromium (3,000 lbs/year), nickel (2,500 lbs/year), and cadmium (1,100 lbs/year). Notable organics include 1,4-diethylene dioxide (1,4-dioxane, 125,000 lbs/year), tetrahydrofuran (possibly as much as 34,000 lbs/year), cyanide (3,300 lbs/year), dichloromethane (methylene chloride, 4,500 lbs/year), N,N-dimethylamine (3,800 lbs/year), 1,2-dichloroethane (2,050 lbs/year), 1,2-dichloropropane (4,550 lbs/year), chloroform (1,450 lbs/year), ethylene glycol (24,000 lbs/year), acetone (39,000 lbs/year), methanol (24,000 lbs/year), isopropanol (possibly as much as 31,500 lbs/year), and 2-methoxy ethanol (16,000 lbs/year).

Many pollutants currently discharged by Kodak into the Genesee River in substantial quantities, and whose increased discharge would be authorized under the draft permit, are known, suspected, or experimental carcinogens. The total quantity of these pollutants discharged may amount to 189,000 pounds (95 tons) per year.

Similarly, many pollutants currently discharged by Kodak into the Genesee River in substantial quantities, and whose increased discharge would be authorized under the draft permit, are experimental reproductive toxins or teratogens. The total quantity of experimental reproductive toxins currently discharged by the company into the river may amount to 219,000 lbs/year; the total quantity of experimental teratogens may amount to 248,000 lbs/year.

The Genesee River is classified by the DEC as a "Class B" fresh water, and is supposed, under that classification, to be suitable for swimming, fishing, and fish propagation and survival. However, a number of anglers have reported that the river contains a "dead zone" where fish are seldom seen, stretching downstream from Kodak's King's Landing effluent outfall. These reports, along with toxicity testing data from Kodak indicating that samples of Outfall 001 effluent may have harmful effects on aquatic test species, provide at least some suggestion that the effluent from Outfall 001 could have serious adverse impacts on the

aquatic life and ecology of the lower Genesee River. The DEC is sufficiently concerned about water quality in this stretch of river that it has included the lower Genesee in the 1991 "Priority Water Problems List" as being, or suspected of being, "use impaired" for fishing and "stressed" for fish propagation and survival.

The Genesee River drains into Lake Ontario within the Rochester Embayment, only about four miles from King's Landing. Lake Ontario is classified by the DEC as a "Class A" fresh water, and is supposed, under that classification, to be suitable as a water supply for drinking, as well as for swimming, fishing, and fish propagation and survival. The Rochester Embayment is identified by the DEC as being "use impaired", and as having a high priority for remediation. Further, it is a designated Area of Concern under the 1987 Amendments to the Great Lakes Water Quality Agreement. As such, it has been identified as being a principal target for clean up and restoration, and is the subject of a Remedial Action Plan (RAP). Many of the pollutants discharged by Kodak are on Monroe County's list of 80 toxics identified by the Rochester Embayment RAP Technical Group as most likely to be associated with the "use impairments" in the bay. In aggregate, Kodak discharges some 208,000 lbs/year of these pollutants.

The current permit, issued in 1984, was supposed to be in effect for 5 years. At the end of the five year period, the Department of Environmental Conservation and Kodak began negotiating the terms of the new permit. It has taken the Department and Kodak three years to develop a new permit, while Kodak continues to operate under the conditions of the 1984 permit. The 1984 permit has become, in essence, an eight year permit.

The 1984 water discharge permit authorizes Kodak to discharge some 23 hazardous and/or toxic substances into the Genesee River. **Even so, only about 40 percent of the total mass of hazardous and/or toxic pollutants discharged by Kodak (via Outfall 001) is authorized under the 1984 permit.** Unauthorized discharges amount to as much as 75,000 lbs/year of inorganics and 312,000 lbs/year of organics. In other words, almost 60 percent of Kodak's current discharge of hazardous and/or toxic inorganics and more than 90 percent of its discharge of hazardous and/or toxic organics is unauthorized under the 1984 permit.

It is in this context that Kodak has applied for renewal of its water discharge permit (called the State Pollution Discharge Elimination System permit). It might be expected that in the circumstances the DEC would impose stringent limits on Kodak's discharge of toxic pollutants, in order to insure that the company's toxic discharges are significantly reduced or, at the very least, not increased above current levels. On the contrary, the DEC is proposing to issue a permit that would:

- (A) authorize Kodak to increase its discharges of the 23 hazardous and/or toxic pollutants that are currently covered by the 1984 permit to levels substantially in excess of their estimated current aggregate discharge level of about 253,000 lbs (127 tons) per year;
- (B) specifically authorize Kodak to discharge - in many cases without either clearly defined limits or monitoring requirements - at least 46, and possibly as many as 53, additional hazardous and/or toxic pollutants whose discharge is not authorized under the 1984 permit, and authorize the company to increase its discharges of these pollutants to levels substantially in excess of their estimated current (unauthorized) discharge levels that amount to an aggregate of about 387,000 lbs (193 tons) per year;
- (C) in an attempt at an end-run around the specific goals and intent of the Clean Water

Act, authorize Kodak to discharge, under a special permit condition, an unlimited number of unidentified pollutants, some of which could be hazardous and/or toxic, without effective limit or monitoring;

- (D) fail to require Kodak to monitor its discharges of a wide spectrum of hazardous and/or toxic substances whose discharges would not be authorized under the terms of the permit, but whose use by Kodak poses a danger that releases may occur in significant quantities; and
- (E) fail to require Kodak to adequately monitor the toxicity of its discharges, to address the issues of the possible carcinogenicity, mutagenicity, reproductive toxicity, and teratogenicity of these discharges, or to examine the effects of the discharges on the aquatic life and ecology of the Genesee River and Lake Ontario.

In summary, the draft permit makes no serious attempt at requiring Kodak to evaluate, monitor or reduce the acute or long-term toxicity of its discharges into the Genesee River. It fails to address the issue of the potential carcinogenicity, reproductive toxicity and teratogenicity of Kodak's hazardous and/or toxic waste discharges, or to address the question of the more general adverse impacts of these discharges on the aquatic life and ecology of the lower Genesee River, Lake Ontario, and the Great Lakes-St. Lawrence River ecosystem.

The draft permit appears to be directed more towards legitimizing Kodak's current hazardous and/or toxic pollutant discharge practices, and towards giving Kodak scope to discharge increased quantities of hazardous and/or toxic pollutants, than towards reducing or preventing increases in the pollution of the Genesee River by Kodak or restoring water quality in the river. The Atlantic States Legal Foundation, Great Lakes United and Citizens' Environmental Coalition believe that issuance of this permit violates the spirit and intent of New York State law, the Clean Water Act, and the Great Lakes Water Quality Agreement. And further, that continued, unabated releases by Kodak will cause irreparable harm to the Great Lakes-St. Lawrence River ecosystem.

KEY RECOMMENDATIONS BY ATLANTIC STATES LEGAL FOUNDATION, GREAT LAKES UNITED AND CITIZENS' ENVIRONMENTAL COALITION INCLUDE:

- (1) The permit should require Kodak to make a serious advance towards achieving the goal of zero discharge of persistent toxic pollutants, including arsenic, cadmium, chromium, lead, manganese, mercury, nickel, zinc, dibutyl phthalate, and all other pollutants falling under the International Joint Commission's recommended revised definition of "Persistent Toxic Substances". By the final year the discharge of these pollutants should no longer be authorized.
- (2) The permit must require Kodak to make a serious advance towards meeting the Clean Water Act's goals of reducing and eliminating the discharge of pollutants into the waters of the United States. This could be achieved primarily by setting appropriate limits on the discharge of each pollutant. The limits should be made more stringent in each successive year of the permit term, to ensure that Kodak's discharges of hazardous and toxic pollutants are reduced significantly over the five-year period.
- (3) The permit should require Kodak to develop, in the first year of the permit term, timetables for sunsetting the use of chlorine and chlorine-containing compounds as

industrial feedstocks, and to examine all means of reducing or eliminating other uses of these pollutants, as recommended by the International Joint Commission in their Sixth Biennial Report on Great Lakes Water Quality.

- (4) The permit should require drastic reduction, over the five-year permit term, of the discharge of several additional, particularly troubling, toxic pollutants including ammonia, 1,4-diethylene dioxide, manganese, tetrahydrofuran, zinc, ethylene glycol, N,N-dimethylaniline, di-n-butyl phthalate, cyanide, nickel, methyl ethyl ketone, and cadmium.
- (5) The permit should require regular and frequent monitoring for all pollutants authorized to be discharged under this permit, and for a number of highly toxic substances that are used and manufactured in large quantities at Kodak's facility.
- (6) The permit should not allow the discharge of any substances whose releases are or may be subject to reporting under SARA Secs. 302, 304 or 313 to be covered by "Ultimate Oxygen Demand" ("UOD") indicator limits.
- (7) The permit must not contain the special condition included in the draft permit that would authorize Kodak to discharge any "substances not included in the Superfund Amendments and Reauthorization Act, Title III, Section 302 list of Extremely Hazardous Substances and not required to be reported on the New York State SPDES permit application (including the Industrial Chemical Survey and the Superfund Amendments and Reauthorization Act, Title III, Section 313, Toxic Release Inventory), provided the special conditions section of this permit does not otherwise forbid such a discharge."
- (8) The permit should require Kodak to conduct, over the full five-year term of the permit, regular and frequent tests of both acute and chronic toxicity of the King's Landing wastewater treatment plant effluent. Testing should include evaluation of the carcinogenicity, mutagenicity, reproductive toxicity, and teratogenicity of the effluent. Kodak should also be required to conduct studies aimed at evaluating the effects of its discharges on the aquatic life and ecology of the Genesee River.
- (9) Because of the complexity of the permit, and of the difficulties and length of time involved in establishing appropriate effluent discharge limitations and other terms and conditions, the permit should require Kodak to submit an application for renewal no later than 3 years prior to the permit's expiration date. Provision should be made for public participation in review of the application, and of the draft permit development process, from the date of receipt of the renewal application by the DEC.