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DEP fined \$50,000 for local violations

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The head of the massive water system serving nine million Westchester County and New York City residents admitted in federal court yesterday his agency contaminated the water with mercury and PCBs.

Joel Miele, commissioner of the city's Department of Environmental Protection, pleaded guilty to two criminal violations of the U.S. Clean Water Act. The federal, felony charges were filed by the U.S. Attorney's Southern District office in New York.

Miele pleaded guilty on behalf of his agency before U.S. District Court Judge Barrington D. Parker Jr. in White Plains after Parker demanded Miele appear in court. Miele earlier had sent a legal representative to enter the plea.

The DEP was fined \$50,000 for the violations, part of a plea bargain arrangement that capped a long investigation and avoided a potential jury trial on more than 50 suspected cases of contamination and subsequent cover-up by the agency.

In addition, the agency was placed on probation for up to five years, and was ordered to pay up to \$300,000 annually to support an independent monitor and his staff. The monitor, Patrick Nucciarone, an environmental lawyer from New Jersey, will have complete access to all DEP records and personnel.

PCBs, or polychlorinated biphenyls, are considered probable carcinogens and have also been associated with a host of neurological problems. Their use has been banned for more than 20 years. Mercury poses serious health risks to human nervous systems, even in very low doses. As little as a teaspoon of mercury will contaminate a 1,750-acre reservoir.

Miele's plea involved mercury leaks from equipment moving the water through the West Branch Reservoir in Carmel, and PCB contamination in the equipment shafts at the Kensico Reservoir in Mount Pleasant. The mercury contamination, which spread throughout the water system, was a felony. The PCB contamination was a criminal misdemeanor.

The department also was ordered to contact all present and former employees who may have come into contact with the PCBs and alert them to possible health risks they may face.

In both cases, the agency knew of continuing problems with contamination, but did not immediately stop it, properly clean it up, or properly report it, according to the charges filed in court.

Miele admitted during the court proceedings that his agency knew since 1988 that PCBs were leaking from the equipment in Westchester County near the Kensico Reservoir.

During that period, he testified, "DEP employees came into contact and touched surfaces contaminated with PCBs."

The agency decided in 1989 to remove the contaminated equipment, he continued, but did not do so until this past spring.

The charges grew out of a three-year probe by the Federal Bureau of Investigation and the U.S. Environmental Protection Agency, based on allegations made the environmental group Riverkeeper.

"We had evidence of mercury spills, spills that were not reported properly, and mercury not being cleaned up," said Riverkeeper's Mark Yaggi.

In Carmel, he continued, the agency listed a mercury spill in 1995 at less than a pound at their facility in Carmel. At that level, he said, it did not have to be reported to the U.S. Environmental Protection Agency and properly cleaned up.

"Three years later," Yaggi said, "we found out there were actually six pounds of free-standing mercury still there."

In that case, the state Department of Environmental Conservation asked the city agency for an explanation. In a written response, DEP Deputy Director Thomas Hook wrote that the area in which the spill occurred "is dark and it is difficult to see."

A formal statement of problems at the DEP presented in court by the U.S. Attorney's Office, noted "compliance with environmental laws has not been a priority among those at DEP entrusted with running the water supply system.

"Instead, that system historically has been run by engineers whose priority has been operational. There has for many years been a deeply ingrained belief among at least some DEP managers that their sole task is to deliver water to New York City, and that with respect to chemicals that may enter that water 'dilution is the solution to pollution.' "

The federal document continued that many DEP officials still believe that because the system delivers more than 1.4 billion gallons of water daily to the region's residents, "DEP's discharge of pollutants into that water will have no measurable effect, so stopping such pollution is not a priority."

Miele stated in court that he believed "the water is safe," but he would not discuss

the case otherwise.

The U. S. Attorney's Office would not discuss their decisions on the plea agreement.

Robert F. Kennedy Jr., chief prosecutor for Riverkeeper, said Miele ought to resign or be fired by Mayor Rudolph Giuliani.

"He is a very bad administrator," Kennedy said. "There were over 50 violations, 50 illegal spills that the department covered up. In every one of those cases, the law was broken."

The DEP, Kennedy continued, "is the primary law enforcement agency for the watershed. What happens when that agency becomes the largest criminal violator of the law they are charged with enforcing?"

"Someone ought to be held accountable."