

36661 2

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
50 Wolf Road  
Albany, New York 12233-1550**

**In the Matter**

**- of -**

**the Application of the New York State  
Department of Environmental Conservation,  
Division of Water (the "Project Sponsor  
Group") to dredge PCBs from the Hudson  
River and to construct and operate a  
Hazardous Waste Management Facility in  
the Town of Fort Edward, Washington County,  
New York**

**DEC Project No. UPA 50-86-0024**

**DECISION**

**January 9, 1989**

HRP 001 0043 F

## DECISION

This Decision is in relation to a Hazardous Waste Management Facility permit pursuant to ECL Article 27, 6 NYCRR Part 373, a State Pollutant Discharge Elimination System permit pursuant to ECL Article 17, 6 NYCRR Parts 700 through 750, and for a certification pursuant to section 401 of the Clean Water Act, all of which are required for the captioned project.

The project under review is one component of an overall effort by the State of New York to significantly reduce the quantity of polychlorinated biphenyls ("PCBs") in the Hudson River ecosystem. The section of the river proposed to be dredged by this project is part of 40 miles of a PCB-contaminated waterway. This section of the Hudson River is on the National Priorities List and has the distinction of being notorious because of the level and scope of its PCB contamination.

PCBs are a known carcinogen in animals and have been proven to cause a variety of biologic responses including birth defects, reproductive failures, liver damage, tumors and a wasting syndrome and even death. PCBs bioaccumulate and biomagnify within the food chain. In the Hudson River, chlorinated dibenzofurans associated with PCBs are known to exist in the upper river sediments. Because dibenzofurans are a potent agent adversely affecting biota, cause for concern is necessarily heightened. PCBs and its chemical byproducts are also suspected carcinogens in humans.

Accordingly, responsible public health management requires that government take steps to reduce the levels of ambient PCBs which may become available to human exposure through various pathways. The record of this hearing demonstrates that the consumption of fish from the Hudson River is such an exposure route. These and similar concerns have already led the Food and Drug Administration to establish a tolerance level of PCBs in fish flesh. In 1984, that tolerance level was revisited and reduced from 5 parts per million ("ppm") down to 2 ppm. The DEC has complemented this approach by issuing a ban on commercial and recreational fishing in the Hudson River. As a further precaution, the Department of Health has issued a statewide health advisory against eating fish from the Hudson River.

These regulatory measures, though necessary for public health reasons, are maintained at considerable loss to the State's economy and limitation on the use of a major recreational resource. Hence, in order to reap the benefits of the use of the Hudson River consistent with the protection of human health, it is necessary to reduce the levels of PCBs in fish flesh to acceptable levels. To do so, it is necessary to remove and reduce the source of PCBs that is bioavailable to the fish.

This restoration is a long term goal undertaken by this Department. The proposed project is but one avenue to achieve

that end. Although the scale of this project is reduced from the predecessor proposed at Site 10, it nonetheless must be viewed as part of a comprehensive effort by this Department to reduce PCB pollution in the Hudson River further to our goal of enhancing the river's use as a major recreational and economic resource for the State.

→ In addition to the proposed project, the Department is pursuing actions to remove the exposed PCB-contaminated remnant deposits and other areas of PCB concentrations in the upper Hudson not proposed for removal by this project. The Department is also in the process of modifying existing SPDES permits to reduce effluent limitations of PCB discharges and is taking containment steps at the numerous highly contaminated land disposal sites in adjacent areas. These actions collectively are targeted to effect a measurable reduction of ambient PCBs in and adjacent to the river ecosystem.

With the above matters in context, I have considered the record of this proceeding, including the Recommended Decision of Administrative Law Judge ("ALJ") Daniel E. Louis and other documents constituting the environmental impact statement ("EIS") for the proposed action. Although I find this project which is designed to remove a portion of the PCB-laden sediments of the Hudson River to be a necessary component of the State's strategy to reduce the availability of PCBs to the food-chain, I find that the project as proposed at Site G is not the one which would mitigate adverse environmental impacts to the maximum extent practical taking into account social, economic and other considerations and accordingly cannot be approved (ECL 88-0109).

The State Environmental Quality Review Act ("SEQRA") requires an examination of reasonable alternatives to the proposed action. Although in the case of private applicants consideration of alternative site locations for a project are generally not practical when such sites are not within the applicant's control, the situation differs where the applicant is a government entity with the ability to exercise eminent domain authority (Horn v. IBM, 110 A.D.2d 87 (2d Dept., 1985)). Such is the case in this application.

In the course of this proceeding, the substantive law regarding the siting of hazardous waste management facilities changed (see Chapter 618 of the Laws of 1987), the consequence of which was to make Site 10, the site proposed for the placement of the dredged PCBs for the predecessor of this project, legally available due to the deletion of the siting criteria which required consistency with local zoning. Accordingly, Site 10 became a viable alternative location for the proposed project.

The record demonstrates that the use of Site 10 would in a number of respects mitigate the environmental impacts of the proposed project that could not otherwise be mitigated at Site G. Site 10 is significantly closer and more accessible to the

dredging than Site G, thus reducing handling problems and the potential for mishaps in the operational phase of the project. Further, the fact that there are many fewer residences in the vicinity surrounding Site 10 would tend to lessen the intrusion of any project impacts on the surrounding community.

Even with the additional mitigation that Site 10 would provide, the delay that would be occasioned by changing the site location and the concomitant risks associated with postponing the removal of PCBs from the Hudson might ordinarily be a valid countervailing consideration sufficient to overcome the additional benefits that would accrue from the use of Site 10. However, in this instance, I foresee additional reasons to postpone the project. In particular, the record of this proceeding makes it obvious that there are additional sources of PCBs in the upper Hudson that are available to the river ecosystem and which are contributing substantially to the total PCB burden on the river. The solution for removing PCBs from these sources should be considered together with the solution for the contaminated materials that were to be addressed by the proposed project. The implementation of a project that will provide for the containment or treatment, including destruction, of a greater amount of PCBs justifies the delay in proceeding with a removal action at this time.

Accordingly, the Project Sponsor Group ("PSG") is directed to proceed with the development of a revised project using Site 10. The revised project shall provide for the additional capacity needed to manage through containment or chemical, biological or thermal treatment both the contaminated sediments that would have been addressed by the proposed project and other sources of PCB mass in the upper Hudson, in particular other contaminated sediments and the remnant deposits. In determining the technology to be used at Site 10 to manage these materials, the PSG shall give due consideration to the permanent solution directive contained in the Superfund Amendments and Reauthorization Act (see 42 U.S.C. §9621(b)) and shall evaluate claims that in situ biodegradation of PCBs is occurring, or can be enhanced to occur, and will achieve comparable environmental protection at a rate sufficient to constitute a viable alternative to accomplish the restoration of the Hudson River in a comparable time period.

IN WITNESS WHEREOF, the Department of Environmental Conservation has caused this Decision to be signed and issued and has filed the same with all maps, plans, reports, and other papers relating thereto in its office in the County of Albany, New York this 9th day of January, 1989

DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
THOMAS C. JORLING, COMMISSIONER

