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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278

DEC 19 1989

Mr. Langdon Marsh
Executive Deputy Commissioner
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233-1015

Re: Hudson River PCB Project Action Plan and Related Projects

Dear Mr. Marsh:

Since our August 1, 1989 meeting, at which you briefed us on your Hudson River PCB Project Action Plan, we have carefully reviewed this significant environmental initiative, as well as your request that we reconsider the no-action alternative contained in EPA's September 25, 1984 Record of Decision for the Hudson River PCB site.

EPA agrees that, based upon developments since 1984, it is now appropriate to undertake a comprehensive reassessment of the no-action alternative for the site. These developments include advances in technology for treatment and destruction of PCB contamination which will make it more feasible to consider permanent remedies, as opposed to encapsulation.

EPA will conduct this reassessment utilizing federal funds or through appropriate enforcement action under EPA guidance and approval.

This broad review, however, does not and should not interfere with the need to implement the interim remedy selected in the September 1984 Record of Decision for the remnant deposit sites and to initiate remedial actions at the Buoy 212 and Special Area 13 landfill. These actions are not dependent upon the comprehensive reassessment. Remediation of these sites must be carried out as quickly as possible to prevent further movement of PCBs into the environment.

Moreover, as we discussed at our meeting on Tuesday, November 21, it is no longer appropriate to pursue the Hudson River PCB Reclamation Demonstration Project under Section 116 of the Clean Water Act and we should make all remaining Section 116 funds

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available for New York State clean water construction projects. Let me discuss each of these points in greater detail.

Your July 26, 1989 letter requested that EPA revisit its 1984 ROD with respect to the Site -- in particular, the selection, on an interim basis, of the no-action alternative as to the river sediments and the authorization only of in-place containment as to the remnant deposits. The ROD stated that the selection of the no-action alternative as to the PCB-contaminated river sediments might be reassessed in the future if the reliability and applicability of in-situ or other treatment methods is demonstrated, or if techniques for dredging of contaminated sediment from an environment such as the Hudson River are further developed. The ROD also stated that the appropriateness of further remedial action as to the remnant deposits following the capping of those deposits would be reexamined if EPA decides at a later date to take additional action with respect to the river sediments.

EPA agrees that it is appropriate to engage in a comprehensive reassessment of the no-action alternative as to the river sediments at this time. The Superfund Amendments and Reauthorization Act of 1986, which was enacted after the ROD was issued, establishes a preference for remedies which permanently and significantly reduce the volume, toxicity or mobility of the hazardous substances involved and which utilize both permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. Moreover, the advances that have been made and the information that has been developed in the last several years with respect to techniques for treating PCB-contaminated materials at several other sites in the country encourage us to believe that alternative remedial actions should again be evaluated.

Reassessment of the no-action decision is also appropriate at this time in light of EPA Headquarters' October 30, 1989 guidance document entitled "Performance of Five-Year Reviews and Their Relationship to the Deletion of Sites From the National Priorities List (NPL)." That guidance document was written in furtherance of a recommendation contained in the EPA Administrator's 1989 report, "A Management Review of the Superfund Program," and indicates that as a matter of policy, EPA will ensure that the five-year reviews referred to in Section 121(c) of CERCLA are conducted not only at sites where the ROD was signed post-SARA, but also those involving pre-SARA RODs.

Finally, the January 9, 1989 directive of the Commissioner of NYSDEC to NYSDEC's Project Sponsor Group ("PSG") and your Hudson River PCB Project Action Plan establish New York State's interest in and commitment to the remediation of the PCB contamination in the upper Hudson. Furthermore, your formal request and personal

statements to us evidence NYSDEC's willingness to work with EPA in this effort.

As to the remnant deposits, it is essential that those sites be capped as soon as possible. You have indicated that you are in agreement with that position. This action will help reduce the risk which would otherwise be posed to public health and the environment by the remnant sites during the period prior to the implementation of a permanent remedy, if any such remedy is ultimately authorized.

As NYSDEC is aware, EPA issued two administrative orders to G.E. in September, 1989 which, among other things, require the company to design and install access roads to enable the capping remedy to be implemented. In addition, we are conducting negotiations with G.E. regarding a judicial consent decree which would require G.E. to construct the caps on the remnant deposits. Capping of the remnant deposits will not preclude the implementation of a more permanent remedy as to those deposits at a later date. EPA has already ordered G.E., among other things, to gather sampling data concerning the remnant deposits and conduct a review of permanent remedial technologies which may be available for use at the remnant deposits.

With regard to the demonstration project authorized by §116 of the Clean Water Act, the PSG's Hudson River PCB Project Action Plan dramatically changed its status. Among other things, the plan contemplates a much more comprehensive PCB cleanup of the upper Hudson River Valley than was called for under the Demonstration Project based on §116. The volume of sediment that would be excavated and the time and cost involved would be significantly greater under the Hudson River PCB Project Action Plan than pursuant to the Demonstration Project. While the more comprehensive project contemplated by the PSG's Hudson River PCB Project Action Plan may indeed be more desirable than the Demonstration Project, and therefore preferred by the State, it is not the type of project which Congress authorized in §116 and would not carry out the purposes specified in §116.

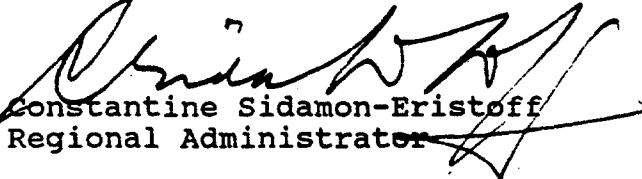
As we agreed in the November 21 meeting, since the Hudson River PCB Reclamation Demonstration Project has been unable to meet the deadline in paragraph 1 of the Second Modified Order on Consent and will, in any event, be superseded by the Hudson River PCB Project Action Plan, the Demonstration Project funded under Section 116 should be closed out. EPA will implement paragraph 10 of the Second Modified Order on Consent and deobligate all unspent obligated funds and take appropriate measures to make these funds available to the State of New York for their originally designated purpose, namely, for the construction of wastewater treatment facilities. However, we will not take this action for 30 days following the date of this letter so that EPA

can notify the other signatories to the Second Modified Order on Consent of our intended course of action.

In the meantime, we ask that you take the necessary immediate steps to cease to the maximum extent possible expenditure and incurrence of obligations and to begin to close out already obligated but unspent project funds.

In conclusion, let me assure you that EPA shares New York's concern about the PCB contamination in the Hudson River Valley region. We are committed to moving ahead with current EPA clean up projects as expeditiously as possible, and we are prepared to work with you to develop an effective comprehensive plan for the remaining contamination. I look forward to discussing these matters further.

Sincerely,



Constantine Sidamon-Eristoff
Regional Administrator

cc: Senator Daniel Patrick Moynihan
Senator Alfonse M. D'Amato
Senator Bill Bradley
Senator Frank R. Lautenberg
Congresswoman Nita Lowey
Congressman David O'B. Martin
Congressman Michael R. McNulty
Congressman Gerald B. H. Solomon
Congressman Matthew F. McHugh
Congressman Benjamin A. Gilman
Congressman Hamilton Fish, Jr.
Congressman Eliot L. Engel
Congressman Bill Green
Congressman Guy V. Molinari
Congressman Ted Weiss
Congressman Stephen J. Solarz
Congressman Robert G. Torricelli
Congresswoman Marge Roukema
Congressman Frank J. Guarini

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