

# TOWN OF FORT EDWARD

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February 17, 1998

Mr. Douglas Tomchuk  
U.S. EPA — Region 2  
290 Broadway — 20th Floor  
New York, NY 10007-1866

## Attn: Siting Survey Comments

Dear Mr. Tomchuk:

Below are the Town of Fort Edward's comments regarding the U.S. Environmental Protection Agency's (EPA) Landfill/Treatment Facility Siting Survey Report, dated December 1997, which was presented by TAMS, Inc. at the January 21, 1998, meeting of the Hudson River Oversight Committee. We respectfully request that these comments be made available to any and all interested parties and made part of the administrative record for the Hudson River Superfund site.

We must begin by reiterating our dissatisfaction and disgust with the manner in which this report was deliberately kept secret from the residents and local officials of Washington, Saratoga and Rensselaer counties. As we all have learned, EPA officials directed their consultants to not prepare a written report of their findings so the study's existence could remain a secret. This act was shocking and reprehensible for a public agency funded with taxpayer dollars and these actions continue to cast a dark, dark shadow on the integrity of EPA's reassessment of the Hudson River.

As a result, the Town Board of Fort Edward will be even more vigilant and skeptical of EPA's process. These comments, therefore, are prepared under the premise that EPA has not been honest nor forthcoming with the residents and local elected officials of Washington, Saratoga and Rensselaer counties and may, in fact, have already decided to dredge Hudson River PCBs and landfill them in our community.

The Town of Fort Edward remains concerned about the Agency's decision to investigate near-river treatment and disposal of dredge spoils at this point in EPA's Reassessment process. The Agency claims the study was commissioned because it is "one alternative remedy for consideration from an engineering standpoint" (1, Introduction, Page 1). However, there are several other remedial alternatives — natural recovery, capping, and institutional controls, to name a few — that may be part of EPA's final record of decision. If we are evaluating treatment and landfilling now, then we must also be investigating the engineering possibilities associated with these other alternatives. Focusing additional work on one remedial alternative leads us to believe that the Agency already has chosen dredging and landfilling for this site.

We must also reiterate our concern that the significant environmental, economic and social consequences that such a PCB dredge-and-dump project would have on all Upper Hudson

River communities have not been considered as part of this, or any other, study evaluating potential sites for a landfill and/or treatment facility. A landfill cannot be sited in a vacuum — it would seriously impact every aspect of our community. These effects must be evaluated now, before a decision to dredge Hudson River PCBs is made.

Now to the Town of Fort Edward's specific comments:

1. In the cover letter, dated January 2, 1998, which accompanied the landfill siting report, Richard Caspe wrote: "This report presents the findings of a screening level effort conducted in order to determine whether there are viable alternatives to agricultural land (e.g., Site 10) for a landfill or treatment facility..." Later in the document, this objective is reiterated: "The objectives of this survey are... to compare the candidate sites warranting further consideration to NYSDEC's preferred site (Site 10) on the basis of New York State's siting considerations/criteria (1, Introduction, Page 2).

These statements clearly indicate that EPA considers Site 10 the preferential site by which all others should be measured. However, it is unclear why EPA characterizes it as such. The report cites no prior document, data or study that establishes Site 10 as a viable, preferred site. To the best of our knowledge, an evaluation of this sort has never been conducted by either EPA or TAMS. The report relies on this assumption — although it provides no evidence for this assumption — as its prime building block.

In addition, TAMS eliminates seven upland and lowland agricultural sites (4.2, Step 2 Evaluation, Page 29) purely because they didn't have "an obvious advantage" over Site 10. Again, with no evidence for doing so, EPA treats Site 10 as the preferential site, even when others may fulfill the Agency's requirements for a treatment and/or landfill facility.

Until EPA provides evidence for treating Site 10 as the preferential site, all of the report's findings must be discounted.

2. At the time that this report first became public, EPA officials cited the need to identify potential landfill and treatment facility sites located *outside* of agricultural land. This intent was repeated in Mr. Caspe's cover letter cited above. We can find no way in which Agency consultants incorporated a site's agricultural character into this report. If a site was zoned as agricultural and designated as such, that designation played no role in TAMS' ranking of that site. In addition, no sites, including Site 10, were eliminated because they were zoned as agricultural (4.1.2, Candidate Site Screening, Page 29.)

Furthermore, if TAMS believed a site was being used as farmland, even though it was zoned for industrial or manufacturing purposes, the present agricultural uses were overlooked in favor of the site's official designated zoning — deliberately ignoring a site's agricultural character (4.1.1, Site Categorization, Page 24.)

Finally, no effort beyond a visual observation made from behind an automobile's windshield was made to discover if a site's present use was agricultural (3.4, Field Reconnaissance, Page 20.)

We understand that agricultural considerations are not part of New York State Department of Environmental Conservation's (DEC) siting criteria as written in Section 361.7 of Title 6 of the Codes, Rules, and Regulations of New York at Part 361. However, EPA stated that the goal of this report was not to evaluate potential landfill and treatment facility sites on the basis of New York's siting criteria. The goal, as stated in Mr. Caspe's cover letter, was to identify sites "outside of agricultural land" for these facilities. We respectfully disagree

with the Agency that such a goal could be attained without considering a site's agricultural character.

We believe such a consideration is imperative. Agriculture is the main industry in Washington County and, as stated by Governor George Pataki in his state-of-the-state address, in New York State as well. A PCB landfill and/or treatment facility located in the middle of this farmland would seriously impact our ability to market and sell our products and could affect the quality of our goods. Washington County's economy is already suffering. A landfill sited in our borders will leave us for dead.

3. The report's authors possessed an apparent bias when evaluating sites for their compatibility with New York State's siting criteria. For example, the fact that Sites SC-3A and SC-3F were located adjacent to the Washington County Fairgrounds and, as such, would impact recreational resources, was appropriately considered (4.2.3, Sites SC-3A and SC-3F, Page 33). However, the fact that Site 10 is located within feet of the Hudson River — Washington County's largest recreational resource and tourist destination — was omitted. There is no known reason why one site's recreational character was considered while another's was not.

4. According to DEC's siting criteria, the most heavily weighted (and thus, most important) factor to be considered in applications for new industrial hazardous waste facilities is a site's potential for surface water and groundwater contamination (2.2, Siting Criteria, Page 6). New York State gave this consideration a relative importance of 18 percent (2.2, Siting Criteria, Page 5).

To ensure contamination of this sort does not occur at federally-permitted facilities, Toxic Substances Control Act (TSCA) regulations as contained in 40 CFR Part 761.75 require a separation of 50 feet from PCB-contaminated dredge spoils to groundwater. The report's authors note this in their study (2.2, Siting Criteria, Page 8). Yet, this requirement — of which Site 10 would undoubtedly fail — is waived, for no apparent reason other than that New York State does not require it ("Near-river lowland areas, where the federal requirement for depth to groundwater would likely not be met, were not excluded from consideration by NYSDEC, nor by TAMS in this study; 2.2, Siting Criteria, Page 8). Because a federal Agency conducted this report, this requirement should have been imposed. Finally, it is unclear what TAMS used, if any, as a requirement for depth to groundwater at the locations it identified as potential landfill and treatment facility sites.

5. One of the objectives of the landfill siting study was "to screen the potentially useable sites for engineering feasibility, for general compatibility with regulatory siting criteria, and in consideration of likely public concerns" (1. Introduction, Page 2). While it is clear throughout the report that TAMS evaluated these sites in relation to New York State's siting criteria, it is unclear how TAMS considered "likely public concerns" associated with each site, including those of Site 10.

TAMS correctly noted that the Washington County Board of Supervisors adopted a resolution opposing a Hudson River PCB dredge-and-landfill project based on the significant long-term damage such a project would have on the Town of Fort Edward (2.2, Siting Criteria, Page 9). In fact, more than 50 village, town, city and county boards have passed similar measures stating their opposition. Yet, this fact was given no apparent weight or credence. This is a significant deficiency in this study. TAMS was correct to include an evaluation of "public concerns" as an objective. The study is faulty, however, for not including this criteria in the actual evaluation of each site.

6. TAMS cites information from Malcolm Pirnie (1978 and 1985) and EPA (1981) to evaluate Site 10's characteristics. Such out-dated information should not be used. For example, Malcolm Pirnie cited Site 10's "natural screening from nearby roads and houses" (2.3, Characteristics of Site 10, Page 10) as a positive characteristic. This is no longer true. Site 10 abuts Route 4, Fort Edward's most heavily trafficked roadway. In addition, new subdivisions are being constructed within one mile of the site. According to our evaluation, there is no natural screening at the site.

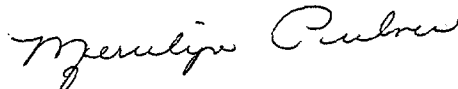
7. EPA is still evaluating the condition of Hudson River PCBs and evaluating their fate within the river. Because this investigation is not yet complete, it is impossible for the Agency to know specifically what a Hudson River dredging project would entail. The Agency has made no evaluation of how much material is to be dredged, how it will be removed, at what rate of speed a removal project would occur, what materials dredged spoils would consist of, etc. These characteristics would significantly alter the engineering requirements of both a treatment and landfill facility. In this report, TAMS relies on DEC's proposed removal project from the 1980s (2.3, Characteristics of Site 10, Page 11). EPA has presented no evidence that a dredge-and-landfilling project, if recommended in their Record of Decision, would mirror DEC's plan from 15 years ago. As such, the criteria that this report uses as its base is faulty.

Based on the failures listed above, the Town of Fort Edward strongly urges EPA to characterize this document as woefully deficient and remove it from further consideration in any and all future evaluations of potential landfill and treatment facility sites.

At this time, EPA should be in receipt of a letter signed by Councilwoman Merrilyn Pulver requesting siting criteria information, and the source of that information, for "Site 10." To date, we have not heard a response to this request. As such, we reserve the right to submit additional comments upon receipt of this information.

Sincerely,

The Town of Fort Edward's  
Landfill Committee



Merrilyn Pulver  
Chair and Councilwoman