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EXECUTIVE DEPUTY COMMISSIONER

STATE OF NEW YORK  
DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION  
ALBANY, NEW YORK 12233-1015

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JUL 26 1986

Dear Bill:

Thank you for agreeing to meet on August 1 with the Departments of Law and Environmental Conservation concerning the Hudson River PCB problem. As you are generally aware, a New York Siting Board considering the proposed disposal of PCB contaminated sediments at Site G concluded in January 1989, that there was a need for a comprehensive river cleanup which includes river dredging and, consequently, a temporary disposal site to accommodate PCB-contaminated materials pending their ultimate destruction. The Board, however, rejected Site G because the project as proposed at that site, would not minimize or avoid adverse environmental impacts adequately.

Accordingly, the State has been developing a comprehensive plan for such an interim remedy in the Hudson River and at the surrounding PCB-contaminated disposal sites. The details of the plan, prepared by the DEC Project Sponsor Group, are being sent under separate cover to you. In sum, it involves the potential transport of PCB-materials to Site 10 from the remnant deposits, Thompson Island Pool, Lock 6/5 Pool, the DOT SA13 and Buoy 212 sites, Old Moreau, and as appropriate, other areas of contamination. The materials would be managed at Site 10 until a permanent remedy is determined and implemented.

EPA assistance is essential to accomplishing this plan within an acceptable period, particularly if GE is to agree or is compelled to pay for the implementation of the plan. A number of strategies are available, each of which posits a different level of EPA activity. However, all require revisitation of the CERCLA 1984 Hudson River PCB Site ROD, which concluded that only in-place containment of the PCB-contaminated remnant deposits was appropriate and that other riverbed contamination should not be addressed at present.

Five years have passed since the 1984 ROD was issued. Since then, the law, public policy, technology and science concerning hazardous substance remediation has evolved considerably. Indeed, Congress now expects that any ROD selecting a remedy that allows contaminants to remain on-site,

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as in the Hudson, in concentrations above ARARs must be reviewed at least every five years. CERCLA Section 121(c).<sup>1</sup>

The 1984 ROD assumed relatively prompt implementation of the CWA demonstration program, thereby providing additional data upon which a decision could be made. That expectation, as we all know, was optimistic.

Since 1984, the environmental consequences of the "no-action" remedy have become clearer and more dramatic. US FDA tolerance limits for PCBs in fish sold commercially has been reduced by 60 percent. Commercial fishing for striped bass has been banned not only from the river but along the entire Long Island shore. As anticipated by the 1984 ROD, dredging techniques have become available that minimize the disturbance of uncollected sediments and prevent contamination of the water column. The risks of and remedies for PCB-contamination have been better defined by the scientific community. As EPA has recognized in connection with the Massena sites, removal of PCBs from riverbeds and adjacent areas is environmentally beneficial, if not required.

Public policy has also changed. With the passage of SARA, treatment and permanency are the major criteria to be used in judging a remedy. Leaving contaminants in-place is emphatically not favored. Even assuming that the conclusions of the 1984 ROD were appropriate when made, they no longer are.

Furthermore, the ROD should be revisited if we expect to hold GE responsible for some or all of the costs of the remediation. The State is prepared to seek natural resource damages from GE, particularly now that the measure of damage has been held to be, at a minimum, restoration costs.<sup>2</sup> State of Ohio v. DOI, \_\_\_ F.2d \_\_\_, No. 86-1529 (D.C. Cir. July 14, 1989). Revision of the 1984 ROD would significantly improve our ability to require restoration. We expect that NOAA may well join such an action.

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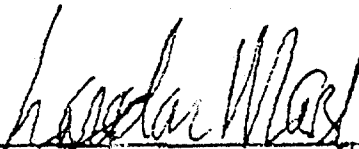
<sup>1</sup>While arguably Section 121(c)'s requirements might not be applicable to the 1984 ROD, see SARA Section 121(b) [RODs signed pre-SARA not subject to Section 121 until reopened], the policy concerns underlying that provision suggest that the ROD's conclusions should be reviewed now.

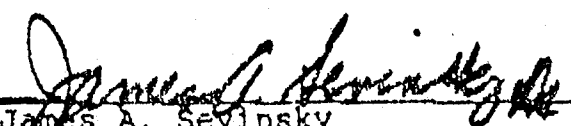
<sup>2</sup>NOAA also has begun a serious review of the damages suffered by its resources because of the GE release.

Alternatively, EPA could revise the ROD and itself issue a Section 106 order requiring development and implementation of a restoration plan by GE. If EPA were prepared to take such action on a prompt basis, a state action against GE might not be necessary.

There are variations on either of these strategies, as well as important legal considerations which we would like to discuss further with you when we meet. We look forward to a fruitful meeting.

Yours truly,

  
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