



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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JUL -6 2001

Certified Mail  
Return Receipt Requested

Robert J. Kafin, Esq.  
Proskauer Rose LLP  
1585 Broadway  
New York, NY 10036-8299

Re: Hudson River PCBs Superfund Site

Dear Mr. Kafin:

This is in response to your March 21, 2001 correspondence to Administrator Christine Todd Whitman on behalf of your client, Washington County CEASE, Inc. ("CEASE"), which has been referred to me for reply. Your March 21 correspondence is a reply to the U.S. Environmental Protection Agency's ("EPA's") March 15, 2001 reply to your February 15, 2001 correspondence on behalf of CEASE. Your February 15 and March 21 letters both request an EPA Headquarters review of the Agency's proposed remedy for the Hudson River PCBs Superfund Site ("Site").

A review of EPA's preferred remedy by a "headquarters-based task force of EPA officials not previously involved in the" Site was in fact conducted in the fall of 2000. Prior to release of the Proposed Plan in December 2000, EPA's National Remedy Review Board ("NRRB") conducted a review of the Agency's preliminary preferred remedial alternative for the Site and the engineering basis for that alternative. The NRRB is comprised of senior managers or technical experts from each of the ten EPA Regions, as well as senior technical or policy experts from other EPA offices, including EPA Headquarters. The purpose of NRRB review is to perform cross-regional reviews of high-cost proposed cleanup decisions to ensure that they are consistent with current law, regulations and guidance.<sup>1</sup> As part of the NRRB review process for the Site, EPA provided various government entities and other stakeholders, including the federal and state Trustees for Natural Resources, the State of New York, General Electric Company, and members of the community, with an opportunity to submit comments to the NRRB for consideration as part of the NRRB's review of the proposed remedy. Members of CEASE were among the signatories to the Agricultural Liasion Group's comment letter that was submitted to

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<sup>1</sup> The NRRB reviews proposed remedial actions with an estimated cost of more than \$30 million, or an estimated cost of greater than \$10 million if the proposed remedy is 50% greater in cost than the least-costly, protective remedy that complies with applicable or relevant and appropriate requirements.

the NRRB during its deliberations (*see* October 6, 2000 letter to the NRRB from the Agricultural Liaison Group, which is enclosed). At the end of its review of the Region's preliminary preferred remedial alternative and consideration of the comments submitted to the NRRB during its review, the NRRB issued recommendations which were addressed by the Region prior to issuance of the Proposed Plan. The NRRB's recommendations were provided during a November 15-16, 2000 meeting with Region 2, and were documented in a December 5, 2000 NRRB memorandum to the Region. The Region formally responded to the NRRB recommendations in a January 18, 2001 memorandum. Copies of the December 5, 2000 NRRB memorandum and the Region's January 18, 2001 reply memorandum are enclosed for your reference. Copies of EPA's November 15, 2000 National Remedy Review Board Remedy Selection Briefing Package will be placed into the administrative record repositories for the Site.

Your March 21 letter also characterizes the independent peer review conducted for the Site as a review of "disconnected elements of a variety of preliminary reports" and states that there has been no "independent peer review of the integrated Feasibility Study..." In accordance with EPA's Science Policy Council Peer Review Handbook (EPA 100-B-98-001, Jan. 1998 (subsequently revised in December 2000)) ("Peer Review Handbook"), the Agency arranged for independent scientific experts to review major new scientific and technical work products that were incorporated into the Reassessment. Each of the reports reviewed by the peer review panels was, at the time of its review, a final work product and a component of the Reassessment Remedial Investigation. Consistent with EPA's policy of ensuring that remedial decisions are based on credible science, EPA revised some of its technical analyses or conducted additional analyses in response to peer reviewers' comments, and embodied those revisions in a Response to Peer Review Comments. In the case of the Baseline Human Health and Ecological Risk Assessments, EPA also issued revised reports that incorporated peer review comments. After careful consideration in light of EPA's Peer Review Handbook, the Agency decided not to include the Feasibility Study in the Peer Review of EPA's Reassessment reports. Although the Feasibility Study included the application of major scientific and technical work products to the engineering evaluation of remedial alternatives, those work products already were the subject of the independent peer review conducted for the Site, and the application of major scientific and technical work products in the Feasibility Study did not depart significantly from the situations that those work products were originally designed to address.<sup>2</sup>

We also strongly disagree with your statement that our March 15 letter was "dishonest" insofar as it suggested that the Scientific and Technical Committee played a meaningful role in the preparation of the Feasibility Study's conclusions. As we indicated in our March 15 letter, the STC "provided peer input into the various scientific documents EPA prepared as part of the Reassessment." While the STC was not directly involved in the preparation of the Feasibility Study, the STC provided significant input into various Reassessment Remedial Investigation

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<sup>2</sup> Please note that whether to conduct peer review in any particular case is wholly within EPA's discretion. *See* EPA's Science Policy Council Peer Review Handbook (EPA 100-B-00-001, December 2000), available at <http://www.epa.gov/ORD/spc>.

reports upon which much of the Feasibility Study was based.

Your March 21 letter also states, "to imply that [the General Accounting Office ("GAO")] has endorsed the outcome of the Feasibility Study is simply not true." No such statement appears in our March 15 letter, however. In our March 15 letter, we explained that the GAO had conducted four audits of the Reassessment and, in its September 2000 report, it did not recommend any changes to EPA's cleanup decision *process* for the Hudson River PCBs Site.

With respect to your request for a meeting between CEASE and EPA Administrator Whitman, you met with senior EPA officials on May 14, 2001. On Tuesday May 1, Merrilyn Pulver, the Supervisor of the Town of Fort Edward and a member of CEASE, also met with senior EPA officials.

We trust that this letter addresses the concerns raised in your February 15 and March 21 correspondence. If you have any additional questions, please refer them to Douglas Fischer, Esq. of EPA Region 2's Office of Regional Counsel at 212/637-3180.

Sincerely,

A handwritten signature in black ink, appearing to read "Will Muszynski", is written over the typed name.

William J. Muszynski, P.E.  
Acting Regional Administrator

Enclosures