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NEW YORK STATE ASSEMBLY
STANDING COMMITTEE ON ENVIRONMENTAL CONSERVATION
PUBLIC HEARING
PCB CONTAMINATION IN THE HUDSON RIVER

Roosevelt Hearing Room (C)
Legislative Office Building, 2nd Floor
Albany, New York

Thursday, July 9, 1998
1:00 p.m.

COMMITTEE MEMBERS:

ASSEMBLYMAN RICHARD L. BRODSKY, CHAIRMAN
ASSEMBLYMAN RONALD CANESTRARI
ASSEMBLYMAN ROBERT K. SWEENEY
ASSEMBLYMAN DANIEL J. FESSENDEN
ASSEMBLYMAN JOHN J. MCENENY

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U.S. ENVIRONMENTAL PROTECTION AGENCY

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ASSEMBLYMAN RICHARD L. BRODSKY,

CHAIRMAN, COMMITTEE ON ENVIRONMENTAL CONSERVATION:

Good afternoon. This hearing of the Committee on Environmental Conservation is convened. I'm Assemblyman Richard Brodsky, Chair of this Committee. On my far left is Assemblyman Ron Canestrari, representing the Capital Region. On my immediate left is Assemblyman Robert Sweeney of Suffolk County. On my immediate right, surprisingly, is Assemblyman Dan Fessenden, the Ranking Member of the Committee, and on his right is Assemblyman Jack McEneny, also a representative of the Capital Region of the state.

This is the first of a series of hearings that will be convened to assess the condition of the Hudson River on its entire length. It needs our responsibilities and policies, the advocacy of resources available to deal with those responsibilities and policies. We expect to inquire of almost anybody who has a serious opinion. It will be an open, systematic process, as have our hearings in other areas.

Our concern for the Hudson River is an historic, traditional and moral decision. It represents our understanding that, in viewing government's activities with respect to the river, we

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1 are examining ourselves, our consciences, our values
2 and our vision for our state in ways that no other
3 single resource can approach. The Hudson was the
4 economic and historic backbone of our state. It is
5 to this day a natural wonder that we are blessed to
6 have.

7 Failure to clean up the Hudson, failure
8 to protect it, failure to reassert its primacy in our
9 values will be a failure of public policy that the
10 people in the state will not support. Our hearings
11 will end up with a program and a set of
12 recommendations that we hope will become the
13 blueprint for the permanent recovery of the river.

14 We expect and we'll seek to work
15 cooperatively with the Administration in doing that,
16 and look forward to an end product that will benefit
17 New Yorkers for generations to come.

18 In the first of these hearings, we are
19 privileged to have with us the administrator of the
20 United States Environmental Protection Agency, Carol
21 Browner. Ms. Browner is a distinguished public
22 servant whose record before and during her tenure as
23 administrator has been a hallmark for those of us who
24 value public service, integrity, decency, civility,
25 and strength of vision and character.

1 Her representation of the
2 Administration's positions have been important to
3 every American and to every New Yorker. We are
4 particularly pleased with the decision she rendered
5 recently with respect to clean air and her continuing
6 work to protect New York from the consequences of
7 acid rain and other airborne pollutants. E.P.A.'s
8 work on the Hudson River involves a number of
9 important particular issues and we hope and expect
10 that the administrator will be able to keep us moving
11 forward in the appropriate direction as a result of
12 today's testimony.

13 Before we swear in the administrator,
14 are there any other statements from any other Members
15 at the beginning?

16 In that case --.

17 CAROL BROWNER, Sworn

18 MR. BRODSKY: Thank you, Administrator;
19 welcome. We're glad to have you; and proceed.

20 MS. CAROL BROWNER, CHIEF ADMINISTRATOR,
21 U.S. ENVIRONMENTAL PROTECTION AGENCY: Thank you,
22 Assemblyman Brodsky and the Members of this
23 Committee, for the opportunity to come here today.

24 I will tell you that, while I began my
25 professional career working in a state legislature,

1 in my home state of Florida, this is the first time
2 in my position as the head of the country's
3 environmental agency that I have appeared before a
4 legislative body. I do this because of the magnitude
5 of the issue before us.

6 I want to thank you, Mr. Chairman, for
7 your long-standing and steadfast leadership on the
8 environment and public-health protection. We
9 appreciate your support of the new, tough clean-air
10 standards, the comments you made to the United States
11 Congress before the committees there in support of
12 those, and we look forward to continuing to work
13 together on that and other important issues. I also
14 want to salute you for your vigilance and hard work
15 on behalf of the Hudson River and, perhaps most
16 importantly, the people of the Hudson River.

17 I come here today to voice my very deep
18 concern about P.C.B. contamination in the Hudson
19 River. I want to set the record straight about
20 P.C.B.s. This chemical is serious threat to public
21 health and the environment. Since we passed the
22 Clean Water Act more than a quarter century ago, this
23 country has made tremendous progress in cleaning up
24 our waters, our rivers, our lakes, our streams. We no
25 longer have rivers that catch on fire. We have

1 literally prevented billions of pounds of toxic
2 pollution from entering our waterways.

3 Today, thousands of rivers and lakes
4 are once again pulsing with life, once again sources
5 of safe drinking water, healthy fish, vibrant
6 economies and, perhaps most importantly, community
7 pride, but the job is not done. We cannot rest.
8 Pollution past and present continues to hold back too
9 many of our country's great waters. It continues to
10 hold back our riverside, our lakeside communities.
11 It continues to hold back the people who live along
12 the Hudson River.

13 From the late 1940s until 1977, 30
14 years, General Electric Corporation discharged more
15 than 1 million pounds of toxic waste known as P.C.B.s
16 into the Hudson River. Over the years, these
17 chemicals have spread, contaminating the river from
18 the Hudson Falls to just shy of the Statue of
19 Liberty, two hundred miles. Two hundred miles of
20 poisoned fish habitat, two hundred miles of
21 contamination that we still live with.

22 Yet, G.E. tells us that this
23 contamination is not a problem. G.E. would have the
24 people of the Hudson River believe, and I quote from
25 G.E., "Living in a P.C.B.-laden area is not

1 dangerous." Well, you know something? The science
2 tells us the exact opposite. In 1996, at the
3 direction of the United States Congress, E.P.A.
4 conducted one of the most comprehensive reviews ever
5 of the P.C.B. scientific studies to determine whether
6 chemicals cause cancer.

7 E.P.A. reviewed more than 20 published
8 peer-reviewed animal and human studies conducted by
9 the top scientists in the field. What did those
10 studies conclude? P.C.B.s are known animal
11 carcinogen and a probable human carcinogen; that the
12 type of P.C.B.s found in Hudson River fish are among
13 the most potent of all P.C.B.s.

14 Fifteen of the nation's top P.C.B.
15 experts reviewed the E.P.A. report. We didn't do
16 this on our own. Fifteen of the top scientists
17 reviewed our report, including a G.E. scientist, who
18 was part of that panel. They all agreed that the
19 E.P.A. scientific review fairly interpreted the body
20 of P.C.B. science.

21 But you know what? You don't have to
22 just look at our study. There's a lot more out
23 there. The International Agency for Research on
24 Cancer has declared P.C.B.s to be a probable
25 carcinogen. The National Toxicology Program

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1 concluded that P.C.B.s are reasonably likely to cause
2 cancer in humans and the National Institute for
3 Occupational Safety and Health has determined that
4 these chemicals are a potential occupational
5 carcinogen. Even General Electric's own studies have
6 shown that every P.C.B. mixture they tested caused
7 cancer.

8 The concern for P.C.B., unfortunately,
9 goes beyond cancer. Studies have shown that these
10 chemicals may have profound effects on the immune
11 system, neurological development and reproduction.
12 P.C.B.s may pose a special health risk for infants,
13 for our children. Already, studies done in animals
14 have found altered motor skills, spontaneous
15 abortions, low-birth weights. In fact, the
16 reproductive effects in these studies continue long
17 after the exposure ended and through multiple
18 generations, a reflection of the very long-lasting
19 nature of these chemicals.

20 Quite frankly, just as troubling about
21 P.C.B.s is what we don't know. There is emerging new
22 research that suggests, pound for pound, nursing
23 infants may ingest 50 times more P.C.B.s than their
24 mothers ingest from fish and other foods that they
25 eat. Preliminary research indicates that P.C.B.s may

1 disrupt the human endocrine system, potentially
2 causing abnormal growth and development in children.
3 And yet more research is providing further evidence
4 of a link between P.C.B.s, malignant melanomas,
5 non-Hodgkin's lymphoma and other cancers.

6 We don't have every single answer. We
7 don't have every single piece of data. We are the
8 first to admit that. But, clearly, the sciences
9 have spoken. P.C.B.s are a serious threat. They are
10 a threat to our health, our environment and our
11 future.

12 Now, what G.E. has attempted to do is
13 suggest that we simply ignore the overwhelming
14 evidence supplied by the animal studies, that we
15 don't look at those studies when we consider the
16 dangers of P.C.B.s. So, we now just ignore some of
17 our own studies.

18 To ignore the animal studies is to
19 ignore the vast amount of medical research in this
20 country that -- that relies on animal studies.
21 Everything from testing drugs, to setting pesticide
22 tolerances, to testing food additives, all of that
23 relies on animal studies. And yet, G.E., in this
24 instance, would suggest we ignore the animal studies.

25 To -- I think, to sort of follow their

1 logic to -- to suggest, as G.E. does, that no action
2 should be taken because some of the P.C.B. studies
3 may be inconclusive, really flies in the face of
4 every major public-health and environmental decision
5 that has been made in this country over the past
6 quarter century.

7 Yet, if you took G.E.'s logic -- if you
8 apply G.E.'s logic on that -- before any action can
9 be taken, every single study, not just the
10 overwhelming majority of the studies, but every
11 single study must be conclusive, we would not have
12 made the decision in the United States to ban lead in
13 gasoline and an entire generation of American
14 children would have suffered needlessly.

15 Clearly, the time for action is now.
16 It is precisely these concerns about human and
17 environmental health that have driven our activity in
18 and along the Hudson. In cooperation with your
19 state, the State of New York, we have required
20 dredging and excavation of the worst contaminated
21 sights on the Hudson, so that the problem didn't
22 grow. We have stabilized and restored the river
23 banks. We've insured safe drinking water and we will
24 continue our vigilance. Should we at any time find
25 more immediate threats to public health, we will use

1 all of the authorities available to us to take
2 action. We will not turn away from our
3 responsibilities. Rest assured that, as we move
4 forward, we will do whatever it takes to address
5 imminent dangers to public health and that we will
6 not hesitate to take strong and immediate action, if
7 called for.

8 Unfortunately, as we are working here
9 and at other sites across the United States to move
10 forward on P.C.B. contamination, there are some in
11 the United States Congress who would literally hold
12 us back. In keeping, in part with G.E.'s desires,
13 some members of the United States House of
14 Representatives are attempting to delay action by
15 requiring yet another study before any decisions can
16 be made.

17 Now, remember, just three years ago,
18 E.P.A. was directed by Congress to do a study and we
19 concluded that study. Quite frankly, I think this is
20 nothing more than politics at its most cynical --
21 literally putting public health risk -- public health
22 at risk to allow the polluters off the hook. This is
23 why the Administration -- this is why I have written
24 to the congressional leadership strongly opposing
25 these attempts to undermine our efforts to protect

1 public health.

2 Unfortunately, we have had to do this
3 on more than one occasion. Time and time again,
4 we've seen polluters trying to shirk their
5 responsibility. Time and time again, the
6 Administration has stood before Congress to oppose
7 the weakening of our toxic-waste-clean-up laws and
8 the requirement that those who cause the problem, the
9 polluters that cause the problem, pay. Not the
10 American people, the polluters pay to clean up the
11 mess that they caused, including natural resource
12 damage.

13 We know that the stakes are high for
14 everyone concerned about P.C.B. clean-up in the
15 Hudson and that is why we have taken extra steps to
16 insure responsible, thorough and effective action.
17 That is why, quite frankly, we have required an
18 additional 16 months before we propose a final
19 clean-up plan. I want to explain this additional
20 time. I think it's important that we all understand.

21 Ten of the additional sixteen months
22 has already been spent. It was spent insuring that
23 data was correct. Unfortunately, there were some
24 errors in the data and it required a rather tedious
25 and time consuming recalibration effort. I think we

1 would all agree that errors must be corrected and
2 that is what we would do. That is what we have done
3 and we are now on track to move forward.

4 The second reason for the additional
5 time is the issue of scientific peer review. I
6 directed our staff to expand - in keeping with work
7 done across the agency - our scientific peer review
8 process; to reach out to the scientific community;
9 and as we move forward, as we make decisions about
10 modeling, about risk assessments, to have that peer
11 review, and to make those documents available to the
12 public. Obviously, a decision of this magnitude
13 warrants full scientific review, and that is what the
14 extra time will now allow us to do.

15 Finally, we wanted to ensure and
16 accommodate full and fair public involvement. At the
17 end of the day, the people who will live with any
18 decisions we make are the people of the Hudson River.
19 They need to be part and parcel of the
20 decision-making process. The additional time will
21 allow us to do just that. It is extra time, but it
22 is time well spent. A decision that is not rooted in
23 sound, accurate, credible science; a decision that
24 sidesteps the citizens who must live with it, at the
25 end of the day will only prolong the process. It

1 would lead to more costly litigation. It would put
2 us back where we began: A polluted river, fish
3 unsafe to eat, fisherman out of work and little hope
4 for a lasting solution.

5 That said, I am here to pledge to the
6 people of the Hudson River, that E.P.A. will reach a
7 proposed remedy cleanup decision by the end of the
8 year 2000. We are absolutely committed to the
9 schedule and we will not waiver from this commitment.

10 Now, the best way for us to move
11 forward would be for everybody to work together:
12 State, G.E. and the citizens. For example, one of
13 the issues we could address in the short term, one of
14 the issues -- one of our greatest concerns, are the
15 many people who still subsist on the Hudson River
16 fish and the others who simply enjoy fishing in these
17 waters. "They hook it and they cook it," as many
18 fishermen have said. Vans, literally, I'm told, line
19 the roadways with signs that say, "fresh local fish
20 for sale." Generous fisherman unwittingly share
21 their catch with neighbors; young women, children,
22 the two populations that are absolutely advised not
23 to eat any fish caught in the Hudson.

24 We are committed to working with our
25 partners in the New York Department of Environmental

1 Conservation to ensure an aggressive fish-advisory
2 campaign; more outreach, better education, postings,
3 whatever it takes to educate and inform the people of
4 the Hudson River. I -- I'll say this to you, I
5 think, in the short term, this is the single most
6 important step we can take to protect public health
7 and to insure that people don't eat contaminated
8 fish.

9 The Hudson River is, I think, really
10 sort of priceless to the people of New York, and it
11 is priceless in many ways to every American, from the
12 art that it has inspired to the landscapes that are
13 etched in our imaginations. And I am here today to
14 pledge my commitment to clean up the toxic pollution
15 that holds this river back. I pledge my commitment
16 to return the Hudson River to the people, once again
17 healthy and whole.

18 It's time to put an end to the
19 legislative roadblocks in Congress. It's time to
20 stop the inaccurate, the incomplete information. Now
21 is the time for all of us to work together. E.P.A.'s
22 latest analysis shows that more than 20 years after
23 P.C.B.s were last produced, the environment cannot
24 heal itself. High levels of P.C.B. contamination are
25 still being found. We need to work together. I call

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1 upon General Electric to work with us, to provide the
2 public with full and accurate information and to help
3 finish the job of cleaning up the Hudson River.

4 Given the magnitude of this issue, I have written to
5 Jack Welch (phonetic spelling), asking that he and I
6 sit down together to discuss these issues.

7 The people who live along the Hudson
8 River deserve no less; the Hudson River deserves no
9 less and the generations yet to come deserve no less.

10 Thank you for the opportunity to be
11 here today.

12 MR. BRODSKY: Thank you, Ms. Browner.

13 I think we have a considerable amount
14 of area we want to cover in our questions. I'm going
15 to start and, obviously, leave plenty of time for my
16 colleagues, as well.

17 Let's turn to this question of science.

18 I have a letter from Mr. Stephen Ramsey
19 to me of yesterday, which I believe you have a copy
20 of. If not --.

21 MS. BROWNER: I think it may be
22 identical to the letter I received yesterday.

23 MR. BRODSKY: In that letter, Mr.
24 Ramsey restates General Electric's position on the
25 health risks of P.C.B.s, and he says that P.C.B.s'

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1 alleged carcinogenicity - that's easy for me to say -
2 is based solely on animal, not human, studies.

3 Are there other areas of public health
4 decision-making in which E.P.A. relies on animal
5 studies?

6 MS. BROWNER: There are numerous areas
7 across the federal government where the bulk of the
8 science in forming the decision are animal studies.
9 Everything from pesticide issues to the Food and Drug
10 Administration. It is a commonly accepted practice
11 in the scientific community to look at animal studies
12 in making determinations.

13 MR. BRODSKY: Would the alternative for
14 P.C.B. studies be some sort of human testing?

15 MS. BROWNER: I don't think anyone in
16 the scientific community would suggest that we find
17 volunteers to ingest P.C.B.s. There are some studies
18 that have been done. Obviously, they are difficult
19 to control, though, because you can't get people to
20 agree to be studied in the same way that you can
21 manage other testing.

22 MR. BRODSKY: I'm not going to try to
23 put words in G.E.'s mouth. G.E. has been invited to
24 appear. They have informed me they will appear.
25 We'll have to discuss it with them, but I'm a little

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1 concerned that the subtext of "no animal studies" is
2 human studies and, I think, if they are going to make
3 that case, I'm going to ask them in some detail what
4 precise kinds of human studies they think would work.
5 It's a strange position for a large corporation to be
6 in, urging that somebody be hired or found to take
7 the place of a guinea pig.

8 MS. BROWNER: That is certainly not
9 something we would in any way suggest. Or if -- you
10 know, one of the concerns about the letter that you
11 make reference to, in addition to ignoring the large
12 body of animal studies that have been conducted, it
13 also puts forward and characterizes some studies
14 that, I think, is somewhat misleading.

15 For example, Mr. Ramsey cites a study
16 conducted by the National Institute for Occupational
17 Safety and Health; for NIOSH and he -- he appears to
18 suggest that NIOSH doesn't think P.C.B.s are a
19 problem. NIOSH's public position continues to be
20 that P.C.B.s are probable occupational carcinogens.
21 Nothing in that has changed. He goes on to cite
22 another study. It's not a peer-review study. It
23 hasn't been subjected to the rigorous analysis of a
24 peer-review process. He has a third study in here
25 which, as I understand the study, it ignores the

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1 animal studies that have been done. It solely looked
2 at one class of studies, not the large body of
3 studies, which is what E.P.A. looked at, and which --
4 what E.P.A. based its findings on in terms of the
5 effects of P.C.B.s on human health.

6 MR. BRODSKY: With respect to noncancer
7 risks, my understanding is that the greatest health
8 danger of women in the child-bearing years and
9 children is not cancer, but neurological damage. The
10 position General Electric seems to be taking is that
11 there is no credible evidence with respect to the
12 noncancer health effects.

13 Is E.P.A. prepared to offer an opinion
14 as to the noncancer health dangers of the P.C.B.s?

15 MS. BROWNER: We are concerned and we
16 have stated repeatedly we're -- we are concerned
17 about the noncancer health effects of P.C.B.s. In --
18 in Mr. Ramsey's letter, he appears to look at a
19 E.P.A. review of one type of noncancer effect, which
20 is disruption in the endocrine system. This is a
21 relatively new area of study. We are the first to
22 agree; it is something that has been emerging over
23 the last couple of years. The fact that, in that
24 area, we are still engaged in the study in no way
25 should be used to -- to suggest that all of the

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1 noncancer effects haven't been studied. That is just
2 simply not the case.

3 MR. BRODSKY: Turning, then, to G.E.'s
4 corporate campaign with respect to this question of
5 public health. It originally emerged in a public
6 statement by Chairman Welch and has subsequently been
7 picked up on a variety of outlets. I was told, for
8 example, in my home county of Westchester that on
9 July 4th, in Peekskill, a public relations firm
10 representing General Electric, hired by General
11 Electric, was passing out videotapes and pamphlets on
12 a Peekskill waterfront, the Governor's hometown, and
13 indicating to people that P.C.B.s weren't dangerous.

14 Let me ask you to step back from the
15 science and the smaller issues and ask you to comment
16 on this question of a corporate campaign to shape
17 public opinion using the wealth and power of a large
18 corporation.

19 MS. BROWNER: You know, I -- given what
20 we know about P.C.B.s, given a large body of
21 evidence, the large number of studies, to tell people
22 that P.C.B.s are not dangerous is simply wrong. They
23 are dangerous and people should know that, so they
24 can make decisions about how best to protect their
25 health. We don't think -- I don't think anyone who

1 studies this believes that a pregnant woman, a woman
2 of child-bearing years or children should be eating
3 P.C.B.-contaminated fish. They need to know that.
4 Telling people P.C.B.s aren't dangerous may very well
5 put their health at risk. It is wrong.

6 MR. BRODSKY: I'm going to enter into
7 the record of hearing the correspondence between
8 myself and my Counsel, Mr. John Parker, and Mr.
9 Stephen Ramsey, in which I have repeatedly asked G.E.
10 to give us the contours of what their corporate
11 campaign is. I had the opportunity, because I was
12 invited by a local Hudson River fisherman, to attend
13 a G.E. information meeting in Marlboro, New York, in
14 which much of the stuff we're talking about today was
15 laid forth. I stood up and offered a counterbalance.

16 I don't know that this falls within the
17 purview of the Administrator of E.P.A., but I'll tell
18 you that I'm deeply concerned that American democracy
19 cannot withstand the onslaught of these fake
20 grassroots campaigns, where corporations can buy a
21 public consensus, because they go out and are
22 unanswered. There is no direct-mail alternative to
23 G.E.'s campaign, as there might be in a political
24 campaign of the kind that I think we're all aware of.

25 Can E.P.A. help in some way to balance

1 the public awareness in this area? I know you
2 suggested sign posting --

3 MS. BROWNER: Uh-huh.

4 MR. BRODKSKY: -- and I think there's
5 some virtue to that, but, frankly, we've had some
6 disagreements within the state government about the
7 level of resources available for environmental public
8 health issues. Without asking you to intervene in
9 that, I'm prepared to introduce a bill to require
10 posting. In fact, we will draft and introduce such a
11 bill.

12 Could E.P.A. help us out financially,
13 do you think? I'm sort of a little embarrassed to
14 come hat-in-the-hand here, because I think we have
15 the money, but since there is a dispute about that,
16 is E.P.A. prepared to make any resources available to
17 help us counteract the G.E. campaign about the safety
18 of P.C.B.s by simply getting to the people who might
19 fish on the river our own Department of Health's
20 warning about nonconsumption of those fish?

21 MS. BROWNER: Given our grave concern
22 about misleading information, misinformation and
23 accurate information and our belief that the single
24 greatest thing we can do in the short term to protect
25 public health, which is part of our responsibility,

1 the single greatest thing we could do is better
2 educate people about fish consumption, give them real
3 usable information. We would be more than happy to
4 be a financial partner in such an effort.

5 I mean, we don't have an existing
6 program out of which we would do something like that,
7 but I'll tell you something: This is so important,
8 we will make -- we can commit to make up to a
9 \$100,000 available for such an effort, a public
10 education outreach program to make sure that the
11 people most at risk, the people most at risk, have
12 the information they need to protect their health and
13 the health of their children.

14 MR. BRODSKY: We appreciate that. Are
15 there elements other than sign posting that you would
16 recommend?

17 MS. BROWNER: I think -- I think you
18 need to reach out in -- in a -- in a number of ways.
19 Obviously, one of the -- the -- the programs that has
20 worked well, are the programs that combine the
21 notices with licenses. As I understand it, there are
22 portions of the Hudson where licenses are not
23 required, so you don't have that vehicle. P.S.A.s,
24 public service announcements, I think, could be
25 extremely helpful, reaching out to, perhaps,

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1 community leaders who can access people, health care
2 providers.

3 I think what we need to do is all sit
4 down and sort of think broadly about, "How do we
5 reach the people most at risk?" Signs are an
6 important part of it. I don't think they're the only
7 tool available to us.

8 MR. BRODSKY: I'll reach out directly
9 to the Governor. I'm sure you will. And I believe
10 you have --

11 MS. BROWNER: Yes. I -- I spoke to the
12 Governor this morning.

13 MR. BRODSKY: -- to make him aware of
14 this and I will convey to him my own sense of urgency
15 that this is something we can do quickly to
16 counteract this corporate campaign.

17 MS. BROWNER: Uh-huh.

18 MR. BRODSKY: I also think we all need
19 to sit back and think about the larger questions of
20 American democracy that are raised in an era of
21 electronic media, when a large corporation can, in
22 effect, buy a public consensus with or without merit
23 behind their position.

24 I know I got millions of letters from
25 AT&T and the Baby Bells that looked like they were

1 real people, and I know that there were significant
2 amounts of money placed on both sides by the
3 corporations whose suffragists was involved, and I
4 think we all need to be very careful with that.

5 Let me turn, now, to the changes in
6 federal law that you referenced. It's my
7 understanding that there has been a rider or an
8 amendment added to a conference committee report on
9 the House side that would bar the dredging in the
10 Housatonic and in the Hudson. Can you clarify what
11 your understanding is?

12 MS. BROWNER: Let -- let me elaborate.
13 There was an amendment offered on the highway funding
14 bill several weeks ago that would have legally
15 prohibited E.P.A. from directing dredging activities
16 at a number of sites. The Administration actively
17 opposed that amendment and we were successful in
18 seeing it removed from the highway funding bill.

19 Since that time, the E.P.A. funding
20 bill, the appropriations bill, has picked up some
21 report language very similar to the highway funding
22 language that essentially says that Congress' --
23 Congress would prefer we not do these things, that we
24 not engage in ordering dredging until another
25 scientific study has been completed. It is not a

1 rider, it is not bill language, but it is report
2 language and that has its own consequences and we
3 think that the best thing for Congress to do would be
4 to remove that language. We don't need any kind of
5 shadow, if you will, sitting over this process. We
6 need to be about making a set of decisions based on
7 the facts, based on the science and that's what we
8 can do. With this kind of language, it makes things
9 a little murky.

10 MR. BRODSKY: In Mr. Ramsey's letter to
11 me, he sets forth, for the first time I've seen in
12 coherent form, exactly what G.E.'s lobbying position
13 is, not just with respect to the dredging issue and
14 the riders, but for the weakening of their financial
15 responsibility under federal Superfund legislation,
16 CERCLA, and the laws that govern their liability
17 under a natural resource damage action.

18 Are you familiar with G.E.'s activities
19 to change federal law and would you comment on this?

20 MS. BROWNER: Well, I have spent the
21 better part of my tenure at E.P.A. attempting to get
22 Congress to rewrite the Superfund law, the nation's
23 toxic waste clean-up law. In fact, several years
24 ago, we were able to draft legislation and present it
25 to Congress that, upon introduction, had the support

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1 of everybody from the Sierra Club to the Chemical
2 Manufacturer's Association. Never before has a piece
3 of environmental legislation had that breadth of
4 support.

5 It didn't pass a new Congress. Since
6 that time, we have not been able to see a bill move
7 forth, largely because the Administration and
8 Congress have some fundamental differences and those
9 differences are largely around the issue of who pays
10 to clean up the toxic waste. There are those in
11 Congress, no doubt, driven by some of the largest
12 responsible parties who don't think the responsible
13 parties should pay their fair share. It's a
14 fundamental disagreement. We don't think the
15 American tax payers should pay. We think the
16 responsible parties should pay.

17 MR. BRODSKY: With respect to that
18 issue, G.E.'s position is that they don't want to pay
19 for cleanup that other parties, in their judgment,
20 may be liable for through an increase in their
21 Superfund taxes. Take a minute. Go ahead.

22 MS. BROWNER: First of all, the
23 Administration is absolutely clear about the
24 Superfund fee. For 15 years, there has been a
25 Superfund fee. Money is collected from certain

1 parties and it goes into a trust fund to cover cost
2 at sites where you cannot find a party. It's been
3 very clear for 15 years.

4 That fee has not been collected for the
5 last two-and-a-half years because of the inaction of
6 Congress. I dare say that has been to the benefit of
7 some very large companies. At the same time, they
8 are dragging their feet in term -- dragging their
9 feet in terms of entering into agreements with us as
10 to how best to clean up particular sites.

11 It is true that G.E. is a responsible
12 party at 76 sites, more than any other large company
13 in the United States. At the Hudson, G.E. has
14 already signed a consent order, more than a decade
15 ago now, recognizing their responsibility. That is a
16 resolved issue on the Hudson River. We don't --
17 we -- they don't get to renegotiate that.

18 MR. BRODSKY: I'm moving towards the
19 question of liability changes, because with respect
20 to the Natural Resource Damage Act; the consequences
21 in litigation, which you are a trustee, Interior is a
22 trustee and we're a trustee --

23 MS. BROWNER: Right.

24 MR. BRODSKY: -- their liability
25 changes would affect --

1 MS. BROWNER: Yes.

2 MR. BRODSKY: -- their financial
3 responsibility.

4 MS. BROWNER: The position that they
5 have taken in the Congress on natural resource
6 damages would affect their liability, not only at
7 this site, but, I believe, at other sites. I -- I
8 just need to clarify one thing: E.P.A. is not a
9 trustee. The Department of Interior, the people
10 they -- the people who keep our natural resources are
11 the trustees. E.P.A. is responsible for your clean
12 air, your clean water, your health. It's a -- an odd
13 distinction in the law, but we are not a trustee.

14 MR. BRODSKY: Oh, it's the Oceanic --.

15 MS. BROWNER: NOAA is a trustee --

16 MR. BRODSKY: NOAA is a trustee.

17 MS. BROWNER: -- Forestry is a
18 trustee; lots of people are trustees.

19 MR. BRODSKY: Boy, if you're this
20 precise with me --

21 MS. BROWNER: We're not.

22 MR. BRODSKY: -- what are you like with
23 everybody else? That's fair.

24 But my question to you is, it's my
25 understanding G.E. is trying to substantially rewrite

1 federal law to reduce their liability to repair the
2 damage they did to the river. Is that your
3 understanding?

4 MS. BROWNER: Essentially, yes. That
5 is our understanding of the situation.

6 MR. BRODSKY: Okay.

7 MS. BROWNER: Now, what -- what --
8 essentially what you have going on is feet-dragging
9 while there is an effort to get Congress to change
10 the liability scheme, whether it be for natural
11 resource damages, or otherwise, and you just keep
12 dragging your feet in the hopes that Congress will
13 rewrite the law.

14 In the meantime, a whole host of people
15 who have been responsible for paying a reasonable fee
16 aren't paying the fee into the trust fund to clean up
17 the sites. Sort of a -- a win-win, if you will, for
18 a certain group of people.

19 MR. BRODSKY: I understand that. My
20 understanding is, those sites have to be either
21 cleaned up or not cleaned up.

22 MS. BROWNER: Uh-huh.

23 MR. BRODSKY: If they're not cleaned
24 up, they remain, endangering people. If they are
25 cleaned up, we have two choices: polluter pays in

1 the large sense --

2 MS. BROWNER: Correct.

3 MR. BRODSKY: -- or taxpayer pays.

4 MS. BROWNER: We believe the polluter
5 pays.

6 MR. BRODSKY: And how would you
7 characterize the view of G.E.? The natural
8 consequence of G.E.'s lobbying position with respect
9 to that issue? Who would end up paying, if G.E. gets
10 its way?

11 MS. BROWNER: Well, in the case of
12 natural resource damage, G.E. would -- my
13 understanding of their position is, they would simply
14 like to reduce it. No one else would pick it up. It
15 would simply be reduced. The liability would be
16 changed legally.

17 MR. BRODSKY: And with respect to
18 Superfund, generally, not just the 76 P.R.B. sites?

19 MS. BROWNER: With respect to Superfund
20 cleanup generally? The position appears to be --
21 although people never say this quite directly -- but
22 what -- the effect of what they're doing, and what a
23 number of people are doing, is that the American
24 taxpayer would have to pay. I mean, the -- it has to
25 come from somewhere.

1 Congress made a very wise, a very
2 sensible decision 15 years ago when they said the
3 responsible parties should pay. We had administered
4 the program over the last five years to insure that
5 they pay their fair share. We agree that they should
6 pay their fair share. In the case of the Hudson
7 River -- the upper Hudson River, there's only one
8 party; it's G.E. That's it.

9 MR. BRODSKY: What can we do with
10 respect to the federal decision-making process? I
11 assume you've made your views clear to the Senate and
12 the House?

13 MS. BROWNER: Yes. Uh-huh.

14 MR. BRODSKY: Would it be helpful if we
15 ask members of the Senate and the House to do nothing
16 that would reduce the tax -- or increase the tax
17 liability of New Yorkers and other Americans and to
18 leave G.E. responsible for its current level of
19 liability?

20 MS. BROWNER: It would not be
21 appropriate for me in any way, shape or form to
22 encourage you to quote "lobby Congress." You,
23 obviously, have your rights, your first amendment
24 rights. There's actually a federal law that
25 prohibits someone from me -- from -- someone like me

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1 from urging anyone to lobby Congress. So, I am not
2 doing that. You have your rights. You're entitled
3 to make your views known.

4 MR. BRODSKY: Well, I wouldn't view
5 what I was doing as lobbying any more than G.E. views
6 what it's doing as lobbying. I would be engaged in a
7 public information campaign.

8 But to that extent, your precision
9 again arises as a --.

10 MS. BROWNER: You have your first
11 amendment rights and I would hope people would
12 continue to exercise those.

13 MR. BRODSKY: Exercise those. Okay.

14 With respect to schedule, as you know,
15 that's been a very controversial and important issue
16 and there's been a disappointment at the delays.

17 MS. BROWNER: Uh-huh.

18 MR. BRODSKY: I'm sure you've been made
19 aware --

20 MS. BROWNER: Yes.

21 MR. BRODSKY: -- of in a number of
22 forums. I take your comments to be that this is it.

23 MS. BROWNER: Yes.

24 MR. BRODSKY: And there is no
25 conceivable reason to take another moment. There is

1 a danger, however, that since the final rod will not
2 be -- the decision will not be made till 2001, that,
3 you know, who knows where you, I, or anyone else will
4 be in 2001? Is there anything that can be done
5 during your tenure to assure that there is the
6 optimum chance --

7 MS. BROWNER: Uh-huh.

8 MR. BRODSKY: -- that the correct
9 decision, whatever that is, will actually be executed
10 by whoever is in power in the year 2001?

11 MS. BROWNER: Yes. And I think a
12 number of things are being done. Perhaps most
13 importantly is our decision that there will be no new
14 data accepted, that we have all of the data we need
15 to make the decision. I think one of the ways in
16 which delay can occur is that people are constantly
17 coming up with new information. We have enough
18 information. Now, it's a question of running the
19 models, of doing the analytical work. But we have
20 made a very clear decision that, based on what we
21 have, we can make a decision; we can propose that, we
22 can take public comment.

23 Secondly, we are making our work
24 available as we go. So, for example, when the risk
25 assessments are completed, we make the summaries,

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1 the -- the documentation, if you will, available, so
2 that the public can see that we're on time. The
3 public can actually understand exactly where we are
4 in -- in -- in the process. And I -- I think it
5 really -- it's sort of an insurance policy, if you
6 will. It's also a valuable tool to allow the public
7 to be more engaged and we think that's important to
8 the final outcome.

9 But, you know, I think it's important
10 for people to understand that the magnitude of this
11 decision is such that you can't simply make it in a
12 day. You can't simply ignore very detailed
13 scientific analyses and modeling and so that,
14 whomever may sit in my chair in the future will have
15 to do it based on the record and the analysis we are
16 doing today.

17 MR. BRODSKY: Let me refocus my
18 question. You have things, though, that can be done
19 in your tenure to assure that after your tenure,
20 whatever it is that the science dictates, will
21 actually be the policy executed. Can you make it
22 tough on your successor to ignore what's going on?

23 MS. BROWNER: Yes. And I think --
24 it -- that it -- I mean, it's the two things I just
25 explained. One is by making information publicly

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1 available. It's out there. The public sees what our
2 thinking is right now as we come through the thought
3 process, the analytical process.

4 Two, the clear statement that there's a
5 date certain after which we're not accepting new
6 data, that we've got all the data. Now, it's time to
7 be about analyzing it.

8 MR. BRODSKY: Is there a legal
9 requirement to issue a rod at a certain point in time
10 after the plan is released; yes?

11 MS. BROWNER: Oh, after we propose the
12 cleanup plan?

13 MR. BRODSKY: You were proposing
14 December of 2000.

15 MS. BROWNER: Right.

16 There's no time frame in the statute?

17 No, there's no time frame in the
18 statute.

19 MR. BRODSKY: So, they could, your
20 successor, and I'm sure this won't happen - could sit
21 on it until Tishah b'Av. How's your Italian? Not
22 that good.

23 MS. BROWNER: Being of Irish decent,
24 not that good.

25 MR. BRODSKY: Okay. Welcome to New

1
2 There is no reason why your successor
3 could not sit on it for two years, theoretically, and
4 that's the nub of the concern.

5 MS. BROWNER: Well, I -- you know,
6 you're right that the Superfund law doesn't require a
7 final decision within so many days, however, by
8 engaging the public, by providing public access, I
9 suspect whoever may find themselves in my job will
10 feel that pressure and that need to make a decision.

11 MR. BRODSKY: Without beating a dead
12 horse, it may be that real creative thinking can even
13 further restrict the ability of the successor to act
14 irresponsibly and I don't know that I can come up --

15 MS. BROWNER: No.

16 MR. BRODSKY: -- with any mechanism for
17 that yet, but I urge you to consider it.

18 MS. BROWNER: But, what I would tell
19 you, is we have worked very hard to do everything we
20 can within the schedule to insure the schedule stays
21 on track, beyond simply making the commitment that
22 we've made. If there are other things that people
23 think we should do within that to help insure the
24 timeliness, let us know, and we're happy to consider
25 them.

1 MR. BRODSKY: We'll examine that.

2 I'm going to defer some small
3 additional questions to my distinguished friend and
4 colleague, Mr. Fessenden.

5 Do you want to grab the mic? That's
6 you, yeah.

7 ASSEMBLYMAN DANIEL J. FESSENDEN,
8 COMMITTEE ON ENVIRONMENTAL CONSERVATION: Do I have
9 to be tall?

10 MR. BRODSKY: Yes. With a stool,
11 you'll manage that by yourself.

12 MR. FESSENDEN: Mr. Chairman, thank
13 you.

14 Administrator, as well, thank you for
15 your generous time with our Committee today.

16 I just want to go back to some of the
17 questions and query that pertain to the public
18 outreach that your agency can, perhaps, assist with
19 and help with whether it be science -- I go back to
20 some of the comments that you made in your prepared
21 statement about your interest involving the public --

22 MS. BROWNER: That's right.

23 MR. FESSENDEN: -- hand-in-hand in this
24 process as we move forward.

25 What is your time frame and schedule

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1 for doing that? And, I guess, I'd balance that off
2 to what G.E. --

3 MS. BROWNER: Uh-huh.

4 MR. FESSENDEN: -- if we want to say
5 that their campaign is in action today, where is the
6 E.P.A.'s campaign to involve the public to,
7 basically, I think, fill a void of knowledge and
8 information that obviously people have, if they're
9 attending meetings, to get out there.

10 MS. BROWNER: As we come through each
11 phase of the schedule - which we're happy to provide
12 to you; it's a very detailed schedule - we make the
13 information available. We solicit public comment; we
14 incorporate that. And there are any number of ways
15 in which we do that, including our web sites,
16 meetings if that's appropriate, but to really reach
17 out and let the public see where our thinking is and
18 to hear what they have to say about that.

19 As I said earlier, I think the single
20 most important thing we can do in the short term is
21 really look at this question of fish consumption
22 advisories and ensure that we have the best possible
23 program to reach out to the people who are most at
24 risk. And -- and I think that is signs, but I think
25 it's other things, too. And that's -- you know,

1 we're more than happy to try and provide some
2 financial support to do that.

3 MR. FESSENDEN: Let me provide you with
4 a frame of reference that I think some people in this
5 state, even in this room, have relative to your
6 agency's involvement with the public. And it goes to
7 some work that your agency has done in terms of
8 citing a potential landfill for dredgings from the
9 river.

10 That was not a very public process by
11 your agency and I guess I just tell you that as a
12 frame of reference to let you be aware that the
13 public in this state, in some regards, might be
14 subsequent to the E.P.A.'s public outreach effort,
15 and I think you just have some mileage to make up.

16 MS. BROWNER: We appreciate that.

17 MR. FESSENDEN: I'm not saying that it
18 can't be done.

19 MS. BROWNER: And any recommendations
20 you have and, as I said, I spoke to the Governor this
21 morning, that the Governor has, about how to
22 facilitate that, we are absolutely open to. You
23 know, we don't run P.R. campaigns. I mean, you know,
24 that's -- that's not what we do.

25 We work on the facts; we work on

1 legitimate, honest dialogue based on the facts. And
2 any way in which you think we can facilitate that, we
3 are more than happy to consider it. I -- we want to
4 do this in a way that the needs and the thoughts of
5 the public are absolutely part and parcel of our
6 decision-making.

7 MR. FESSENDEN: Okay. If I could ask
8 you to consider for a moment the work that your
9 agency is doing on a river in Massachusetts, the
10 Housatonic.

11 MS. BROWNER: Uh-huh.

12 MR. FESSENDEN: Similarities are there
13 between the two rivers.

14 MS. BROWNER: Uh-huh.

15 MR. FESSENDEN: Two different regional
16 offices of your agency administer those. What effort
17 is there to draw off of the benefits of one much --
18 the Hudson a huge magnitude compared to the
19 Housatonic --

20 MS. BROWNER: Right.

21 MR. FESSENDEN: -- but what efforts are
22 being made to learn from one, to apply it to the
23 Hudson, et cetera, in that area?

24 MS. BROWNER: First of all, let -- let
25 me be clear about something. There are similarities:

1 P.C.B.s, G.E. Beyond that, there are a lot of
2 differences and -- and they're not insignificant.
3 First of all, we're in different phases of the
4 process, if you will.

5 But we are using a coordinating group
6 in Washington to look, not just at these two sites,
7 but at other P.C.B.-contaminated sites, so that we
8 don't have to redo the work each time, that we can
9 benefit from the knowledge that we gain at one site.
10 And the kind of solutions that may emerge at one
11 site, we can evaluate them at other sites. So, we do
12 now -- have put in place a coordinating group in
13 Washington, headed up by our acting assistant
14 administrator for Superfund.

15 MR. FESSENDEN: Mr. Chairman, I'd
16 retain an option to come back?

17 MR. BRODSKY: Sure.

18 MR. FESSENDEN: I certainly defer to my
19 colleagues.

20 MR. BRODSKY: Mr. McEneny?

21 ASSEMBLYMAN JOHN J. MCENENY, COMMITTEE
22 ON ENVIRONMENTAL CONSERVATION: Thank you, Mr.
23 Chairman.

24 As an administrator, I was pleased to
25 see that you brought up the issue of people who are

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1 dependent upon the resources of the Hudson for food.

2 I think, very often when this matter comes up, people
3 think of swimming and drinking water and they think
4 of recreational fishing.

5 It's been our observation that, since
6 there's been a general crackdown on welfare and
7 curtailment of food stamps that more people who,
8 perhaps, didn't have to go to the Hudson, are now
9 turning to the Hudson for nourishment. I was very
10 pleased to see that you --

11 MS. BROWNER: Uh-huh.

12 MR. MCENENY: -- had mentioned that and
13 would like to hear more about it. And I wonder if
14 there is any legal redress options for inner-city
15 communities who are disproportionately affected by
16 the pollution of the Hudson River and, in fact, this
17 curtailment of their food. Maybe under Title Six of
18 the Civil Rights Act, or something like that --

19 MS. BROWNER: Uh-huh.

20 MR. MCENENY: -- where they would have
21 some kind of recourse, because an awful lot of
22 people, more so than --

23 MS. BROWNER: Right.

24 MR. MCENENY: -- was true a few years
25 ago, are now turning to the Hudson for food. And the

1 food shouldn't be there because it's not healthy for
2 them, particularly children and women of
3 child-bearing age, et cetera --

4 MS. BROWNER: Uh-huh.

5 MR. MCENENY: -- to partake of it.

6 MS. BROWNER: I think you -- you raise
7 a -- a question that's worthy of -- of some -- some
8 real thought. I don't, off the top of my head, know
9 what sort of legal authorities might exist. I would
10 agree with you that doing everything we can conceive
11 of to warn people of the dangers is extremely
12 important and, you know, I don't think there's going
13 to be, sort of, this silver bullet.

14 I don't think it's going to be simply,
15 you know, putting signs up. It's going to have to be
16 reaching out into the communities, really targeting
17 areas --

18 MR. MCENENY: Yes.

19 MS. BROWNER: -- where we know there
20 are high levels of subsistence fishing going on. And
21 I -- I think that's a fairly -- I -- I don't think
22 there's ever been a program of this nature, but I'm
23 certainly committed to working with you all to
24 develop it.

25 MR. MCENENY: And there are certainly

1 some communities where it's a far more vital issue
2 than it is in others.

3 MS. BROWNER: Exactly. And we need to
4 find out how to really reach those people in an
5 effective manner.

6 MR. MCENENY: Thank you.

7 MR. BRODSKY: Thank you.

8 Couple of quick questions. You
9 focused, in terms of the public information campaign,
10 on the Hudson River. The fish don't, however, stop
11 at the Statue of Liberty. And in New York, for
12 example, we have a thriving recreational and, to some
13 extent, commercial fishery that deals with striped
14 bass. Would it be fair to assume that the public
15 service announcements, posting, whatever we're
16 talking about --

17 MS. BROWNER: Uh-huh.

18 MR. BRODSKY: -- should apply to where
19 the fish are --

20 MS. BROWNER: Yes.

21 MR. BRODSKY: -- not to where the river
22 is?

23 MS. BROWNER: It should follow the
24 fish. Yes. I -- I would imagine -- I mean, I don't
25 know the answer to this, but I would imagine between

1 us, the state, and NOAA and other people, we can
2 figure that out; sort of, where -- where are the
3 boundaries of where you want the target program?

4 MR. BRODSKY: Let me refer to my
5 colleague, Mr. Sweeney, from Suffolk on one
6 additional point.

7 ASSEMBLYMAN ROBERT K. SWEENEY,
8 COMMITTEE ON ENVIRONMENTAL CONSERVATION: Just
9 following up on that, would you also be willing to
10 involve recreational fishing organizations --

11 MS. BROWNER: Yes.

12 MR. SWEENEY: -- for example, in
13 whatever --

14 MS. BROWNER: Certainly.

15 MR. SWEENEY: -- educational outreach
16 and other types of activities or campaigns you
17 undertake from --

18 MS. BROWNER: Yes.

19 MR. SWEENEY: -- Long Island and
20 surrounding areas, as well as the Hudson?

21 MS. BROWNER: I think it would be
22 tremendously helpful. Again, I mean, what we want to
23 do -- you know, we want this to be effective. We
24 want it to -- to really reach the people most at risk
25 and whomever can, sort of, come to this effort. And

1 I -- I do think the state is -- is -- my sense is
2 that, you know, they will be willing to be a -- a --
3 a partner with us and it will require their
4 partnership to make this successful. And it may well
5 require, in addition to some of the groups you talk
6 about, local governments. I mean, the more that come
7 to this and share in making it a success, the more
8 likely the success.

9 MR. BRODSKY: Thank you. You mentioned
10 cooperation from G.E. and you mentioned that you
11 wrote to Mr. Welch. What did he say?

12 MS. BROWNER: He hasn't responded.

13 MR. BRODSKY: How long ago did you
14 write?

15 MS. BROWNER: Oh, it's been a while,
16 two months; two months. I wrote to him and asked him
17 if, perhaps, we could meet on a series of issues that
18 are contentious between us and --

19 MR. BRODSKY: No response.

20 MS. BROWNER: -- I think we've heard
21 back from one of the --

22 MR. BRODSKY: Mr. Ramsey?

23 MS. BROWNER: -- vice presidents, not
24 directly responding to the request for a meeting with
25 Mr. Welch, but speaking to other issues.

1 MR. BRODSKY: Okay.

2 MS. BROWNER: It is not -- I -- I
3 should say this, I mean, in -- in my experience of
4 the last five-and-a-half years, it is not uncommon,
5 when something -- something of this magnitude and
6 with this degree of contention, that we would sit
7 down -- I would sit down with, you know, the CEO, the
8 top people in the company to see if, perhaps, we
9 couldn't come to some agreement.

10 Look, the way -- this can play out in
11 one of two ways. I think it's really important for
12 people to understand this. We can try and get people
13 in a room, the state, some of you, the company, the
14 citizens, the environmentalists, and look at how to
15 solve the problem, or we can fight, fight, fight and
16 then we will issue an order telling them what to do.

17 Now, I suggest that it is in their
18 interest to see if we can't come to an agreement. Do
19 you know that over 70 percent of the sites --
20 Superfund sites in the country where we work, that's
21 what happens? We reach an agreement with the
22 responsible party. We agree on a cleanup plan and
23 they move forward, we supervise, and the job gets
24 done with some very large companies. This has
25 happened.

1 This is not beyond the pale. We can do
2 this, but you can't do it if people aren't committed
3 to finding a solution. And if they're not, then we
4 will proceed through the process as the law has lain
5 it out. We will use all of the authorities available
6 to us and we will issue the order. If they don't,
7 then, proceed to follow the order, we will undertake
8 the cleanup. And under the law, we have the
9 authority to then sue for the dollars that we spend.

10 We also have the authority --
11 authority to pursue trouble damages. But that has
12 not happened since I've been at E.P.A., because
13 companies sit down with us and they work it out. The
14 governors, the state, all of us get together.

15 MR. BRODSKY: What's the point in which
16 you would have to make the determination whether to
17 litigate?

18 MS. BROWNER: Well, I would imagine
19 the -- at any point in the process, I'm sure a
20 creative lawyer can figure out how to file something
21 against us.

22 MR. BRODSKY: No, no.

23 MS. BROWNER: I think we would maintain
24 that the real point of litigation arises when we
25 issue the final wrought.

1 MR. BRODSKY: Okay.

2 MS. BROWNER: But you need to
3 understand something. Even while we litigate that,
4 we can move forward. We could litigate that decision
5 and move forward.

6 MR. BRODSKY: Have you been able to
7 reach any one of these negotiated agreements with
8 G.E. at any of their 76 sites?

9 MS. BROWNER: G.E. is -- at many of the
10 sites that they are involved in, they are not the
11 only party. They are one of several parties and --
12 some number -- I -- I -- we can get you the number.
13 Some number of those sites do have agreements on,
14 though.

15 MR. BRODSKY: Let me limit it to the
16 sites where G.E. is the decision-making or solely
17 responsible party.

18 MS. BROWNER: Some of the biggest
19 sites, for example, the Hudson, the Housatonic, we do
20 not have agreements on. We even have a -- a -- a
21 site that you may be familiar with, Hoboken. I think
22 it was a -- I -- I'm going to use the wrong word --
23 it was a apartment building, co-op, where
24 contamination was found inside. The residents had to
25 be relocated. The cleanup there is done now; is that

1 correct, or it's under way? It's under way and we
2 still don't have an agreement.

3 MR. BRODSKY: My question is about
4 G.E.'s willingness to come and negotiate agreements
5 where they can. Are you aware of any such situation?
6 Am I looking at a corporate policy, or am I looking
7 at a series of independent and strangely
8 unresolvable --?

9 MS. BROWNER: Of the large sites that I
10 am familiar with, we have not been able to reach a
11 resolution. I -- I -- I -- I want to be careful
12 here, because I don't doubt that at some of the sites
13 where they are one of the smaller Sources there have
14 probably been agreements. There are 76 sites where
15 they are actively involved.

16 MR. BRODSKY: Would you care to offer
17 an opinion as to whether this is a corporate policy
18 or --?

19 MS. BROWNER: Well, I -- you know, I --
20 I think it's probably fair to say that, with respect
21 to the large sites, with respect to the sites where
22 they may -- may incur a large liability, that they
23 have -- have tended to move, sort of, on two tracks,
24 slow-walk resolution of a cleanup plan, while you go
25 to Congress and try and get the law changed.

1

MR. BRODSKY: Okay.

2

MS. BROWNER: I think that's a fair

3

statement.

4

MR. BRODSKY: I'm sure you'll hear from

5

Mr. Welch shortly. I have great faith; it's one of

6

my best characteristics. Apparently, G.E. is doing

7

quite a bit about filling the record in the

8

reassessment with comments and questions.

9

MS. BROWNER: Yes.

10

MR. BRODSKY: "Quite flooded" is the

11

term that's used. Can you limit that? Should you

12

limit it? Is there a problem there?

13

MS. BROWNER: No. We -- we'll respond.

14

We'll deal with it. I mean, we get everything,

15

G.E.'s -- we get FOIA, we get -- you name it. We get

16

the requests and, you know, we have a system for

17

managing with them.

18

My much-better-informed colleagues have

19

told me it's not 76 sites; it's 75. So, if you could

20

correct the record. Well, I didn't want to have a

21

fight over that one site.

22

MR. BRODSKY: Mr. Fessenden said,

23

"She's good," and I'm telling you, you don't get that

24

a lot from Mr. Fessenden. At least I've never heard

25

it before. So, here we are.

1 MR. FESSENDEN: And you won't.

2 MR. BRODSKY: And I won't.

3 Let me conclude my round of questions
4 here with a follow-up. You mentioned the analytical
5 work. You got even some more precision there?

6 MS. BROWNER: Yeah. Because -- I mean,
7 I think we all know this history, but it's probably
8 worth just noting it. There was a consent decree on
9 the Hudson River, remember? If you go back into the
10 '80s, there's a bit of history here and they actually
11 did enter into a consent decree for a small part of
12 some of the clean up. So, I mean, you know, let's
13 give everyone their due here. That did happen. You
14 then have the rereview and since that time, I think,
15 a slightly different approach.

16 MR. BRODSKY: Are you a lawyer?

17 MS. BROWNER: Yes. Sort of; I pay my
18 bar dues. I don't represent people in court.

19 MR. BRODSKY: Okay. And finally, I
20 wanted to focus on this question of the "analytical
21 work" is a phrase you use --

22 MS. BROWNER: Uh-huh.

23 MR. BRODSKY: -- that needs to be done,
24 that you're doing --

25 MS. BROWNER: Uh-huh.

1 MR. BRODSKY: -- in the next 18 months
2 with respect to this. I am concerned and, based on
3 this, I rummaged through my files to find our
4 analysis of some of the analytical work the D.E.C. is
5 doing. I'm not going to ask you to get in the middle
6 of this. So --

7 MS. BROWNER: Uh-huh.

8 MR. BRODSKY: -- unless you want to
9 and, you know, who knows?

10 But our study of time and attendance
11 data shows that D.E.C.s analysis of Hudson River
12 P.C.B. sediments fell from 5,900 hours to 3,700 hours
13 over three years. About a 37 percent decline.
14 Activity by D.E.C. at G.E. sites across the state
15 fell, at one point, by about 35 percent and then,
16 overall, by 20 percent.

17 Is there need for additional resources
18 or additional analytical work by any of the parties
19 with which you are partnered, be it NOAA, or
20 interior, or D.E.C., or yourself, in order to
21 expedite the process?

22 MS. BROWNER: In terms of -- can we set
23 aside the natural resource damages for a second
24 and -- and --

25 MR. BRODSKY: Yes.

1 MS. BROWNER: -- you -- you brought in
2 NOAA, so let's set that aside for a second.

3 In terms of what we need to propose
4 a -- a cleanup plan, the experts back here are
5 telling me that, we think we have the data. We were
6 also doing collections. G.E. was required, I think,
7 under the consent decree to do certain --

8 MR. BRODSKY: And still is.

9 MS. BROWNER: -- data collections. So,
10 you have a universe of -- of data that, at this point
11 in time, we are comfortable with. I -- I don't want
12 to answer for the trustees, since I don't represent
13 them in terms of whether or not on the
14 natural-resource damage side they continue to think
15 some additional information data collection may be --

16 MR. BRODSKY: Okay.

17 MS. BROWNER: -- but we'll -- we'll get
18 that answer for you.

19 MR. BRODSKY: I want to highlight my
20 concern that the decision that E.P.A. makes on the
21 rod has traditionally been viewed -- focused right on
22 the dredging, nondredging issue.

23 MS. BROWNER: Right.

24 MR. BRODSKY: And it's true; it's
25 related there. But it is also a predicate --

1 MS. BROWNER: Yes.

2 MR. BRODSKY: -- to the bringing in of
3 the Natural Resource Damage Act. And in the context
4 of what matters to the people of the state --

5 MS. BROWNER: Uh-huh.

6 MR. BRODSKY: -- although both are
7 tremendously significant, the ability to compel
8 G.E. --

9 MS. BROWNER: Yes.

10 MR. BRODSKY: -- to make whole the
11 people that were damaged by P.C.B.s in the Hudson,
12 including, for example, the recreational --

13 MS. BROWNER: Uh-huh.

14 MR. BRODSKY: -- fishing community on
15 Long Island. I'm not just talking about the people
16 that go out twice a week. I'm talking about the bait
17 shops; I'm talking about the party boats, parts of.
18 Our economy that have been damaged by this.

19 MS. BROWNER: Right.

20 MR. BRODSKY: G.E. has, theoretically,
21 at least, and, in my judgment, actually, a fiscal
22 responsibility here. Assuming they don't get the
23 Congress to overturn the loss, assuming they need to
24 go forward, we need to be doing analytical work about
25 damage assessment and those kinds of things.

1 My question is, do any of the parties I
2 mentioned with respect to that, to your knowledge,
3 need to increase their work? And, if you'd like to
4 get back to us, that's fine.

5 MS. BROWNER: Yeah. I think, on the
6 trustees, we -- we should check with them. I -- I
7 mean, I'm more than happy to tell you and -- and --
8 and speak on the behalf of -- of the trustees in
9 terms of the Administration's policy on N.R.D.

10 MR. BRODSKY: Okay.

11 MS. BROWNER: You know, one of the
12 reasons we never move forward with Congress on a bill
13 is, we have some pretty fundamental differences with
14 the congressional leadership over natural resource
15 damage. We think that is an important part of the
16 law and the intent of that, the gist of that, needs
17 to be preserved.

18 The -- the only issue that I don't want
19 to respond to is the question of --

20 MR. BRODSKY: I have to say this.

21 Okay.

22 MS. BROWNER: -- "Does no one need more
23 data?" And we'll just ask them and get you the
24 answer.

25 MR. BRODSKY: May I ask you to hold for

1 one second?

2 I would -- am also going to put in the
3 record out data, D.E.C. data, showing that the total
4 number of hours through '94 through '97 worked on
5 N.R.D. assessment by D.E.C. is about 400 hours.
6 That's over three years. And the Assembly added a
7 million dollars for increased N.R.D. activity in the
8 budget; the Governor refused to accept it and the
9 Senate refused to accept it. So, I remain deeply
10 concerned that the state needs to pick up its share
11 of this continued activity.

12 MS. BROWNER: Well, the state is a
13 trustee and I -- and --

14 MR. BRODSKY: It is.

15 MS. BROWNER: -- and they obviously
16 recognize that and they have been a -- a part of the
17 trustee N.R.D. operation.

18 MR. BRODSKY: With that, let me make a
19 couple housekeeping announcements and then move to
20 close.

21 One, I've been handed a package of
22 information from G.E. on their view of the science
23 and we will, as a courtesy to General Electric, make
24 that a part of the record.

25 MS. BROWNER: Uh-huh.

1 MR. BRODSKY: A copy has been provided
2 to you for your perusal.

3 For the members of the Fourth Estate
4 who are here, the Administrator has agreed to press
5 availability starting in about 15 minutes in Room 623
6 of the Legislative Office Building. Some of them
7 don't like to walk. In response to David's groan,
8 apparently, we are -- is somebody else groaning?

9 MS. BROWNER: There's a lot of them
10 groaning.

11 FROM THE PANEL: There were several
12 groans, yes.

13 MR. BRODSKY: In response to the
14 groaning from the press --

15 MS. BROWNER: I'll take your pause.

16 MR. BRODSKY: -- I will tell you, this
17 is a new height for articulate communication between
18 the two estates.

19 MS. BROWNER: They're not happy.

20 MR. BRODSKY: Apparently, the
21 Administrator has agreed to stay here as long as the
22 stories are favorable. No one said no; we're okay.

23 I am now going to move to recess
24 today's hearing, but in doing so, I want to take a
25 moment to outline my appreciation to the

1 Administrator for what, is to some extent, an
2 historic moment, her first appearance before a state
3 legislative body.

4 I've been a great believer that much of
5 the Washington rhetoric about states as laboratories
6 and how we're developing power unto the states
7 doesn't necessarily ever show up when decisions are
8 made. I can say, after having had continued contact
9 with the Administrator's office, that I don't have
10 that complaint with respect to E.P.A.

11 MS. BROWNER: Thank you.

12 MR. BRODSKY: I'm also personally
13 pleased by the fire you brought to this. It ain't
14 just another bureaucratic fight.

15 MS. BROWNER: Huh-uh.

16 MR. BRODSKY: It's about something that
17 impinges on the values --

18 MS. BROWNER: Uh-huh.

19 MR. BRODSKY: -- and what public
20 service means, at least to me. I didn't get into
21 this business without a strong sense of what mattered
22 to me about what I wanted to see the world look like.

23 The clear sincerity and depth of
24 feeling you brought to this should be a message, not
25 just to many in the environmental community but -- I

1 think we're here to listen and learn -- but to any
2 American who wants to understand what this
3 Administration's commitment is and your personal
4 commitment is.

5 I'm not surprised. I didn't know you,
6 but I am genuinely appreciative of your willingness
7 to put yourself on the line like this. It won't be
8 easy. It's a big, muscular corporation. They've won
9 most things they get involved in; chairman of that
10 corporation sat down with the Governor of this state
11 and threatened to move jobs out of the state if we
12 cleaned up the Hudson River.

13 We are in a fight, but we are in a
14 fight that, I think, can be won, hopefully, with the
15 cooperation and acquiescence of the General Electric
16 Corporation. But, in any event, won.

17 I would ask that we continue to work as
18 partners in this and if there's information that you
19 believe is important to the legislature and the state
20 that it be brought to our attention. And if I
21 believe there's matters that need to be brought to
22 your attention, as you can tell, I'm not shy and will
23 bring it to your attention.

24 This hearing has been exactly the start
25 I wanted for the mission that this Committee has

1 taken upon itself: To deal with the Hudson River,
2 its crisis, and the opportunity for change and
3 progress. We are on the first day of the rest of our
4 lives in this struggle. We look forward to a good
5 result.

6 On behalf of each of my colleagues, the
7 Speaker, the Members of the House, thank you --

8 MS. BROWNER: Thank you.

9 MR. BRODSKY: -- very much for your
10 attendance.

11 MS. BROWNER: If I might just in -- in
12 closing, first of all, thank you for the opportunity
13 to be here and to really set -- hopefully set the
14 record straight about the very real health effects of
15 P.C.B.s and about how we will proceed to make the
16 right decision for the people of the Hudson River.

17 You know, I am the head of the
18 country's environmental agency and, as such, I am
19 responsible to all of the American people. I am
20 responsible to protect the air they breathe, the
21 water they drink, the land on which they live, the
22 communities in which they raise their children.

23 That is what this Administration has
24 sought to do for the last five and a half years and
25 it is what we will continue to do. This will not be

1 an easy decision, but at the end of the day, we will
2 make the decision that protects our communities and
3 our children. Thank you.

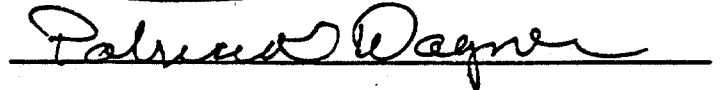
4 MR. BRODSKY: Thank you. This hearing
5 is recessed to the call of the Chair for purposes of
6 hearing additional testimony.

7 (The hearing adjourned at 2:32 p.m.)
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STATE OF NEW YORK)

I, PATRICIA WAGNER, Notary Public in the state of New York, do hereby certify that the foregoing was taken before me, in the cause, at the time and place, and in the presence of counsel, as stated in the caption hereto, at Page 1 hereof; that before giving testimony witnesses were duly sworn to testify the truth, the whole truth and nothing but the truth; that the foregoing typewritten transcription, consisting of pages number 1 to 65, inclusive, is a true record of the testimony of said witnesses and of all proceedings had at the session at which said testimony was taken.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 11TH day of July, 1998.



Patricia Wagner, Notary Public,
State of New York

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