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GEORGE E. PATAKI
GOVERNOR

ERIN M. CROTTY
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

DEC 21 2001

Via Facsimile & Overnight Mail

Honorable Jane M. Kenny
Regional Administrator
United States Environmental Protection Agency, Region II
290 Broadway, 26th Floor
New York, New York 10007-1866

Dear Regional Administrator Kenny,

The New York State Departments of Environmental Conservation (DEC) and Health (DOH), collectively referred to as the State, have reviewed the December 20, 2001 "Environmental Protection Agency (EPA) Superfund Record of Decision, Hudson River PCBs Site, Hudson Falls to New York City, New York." EPA has provided this opportunity for the State to review the Record of Decision before it is executed by EPA consistent with federal Superfund regulations.

I want to thank you for incorporating the State's concerns into the selected remedy which demonstrates that EPA shares the State's views on the cleanup of the Upper Hudson River. This decision is a major step towards the revitalization of the Hudson River so that future generations can enjoy the full potential of the Hudson River as an economic, recreational, and natural resource. This decision not only achieves a cleaner, healthier Hudson River but also balances the public health and ecological needs to clean-up the polychlorinated biphenyls (PCB) contamination with the concerns expressed by the many stakeholders, including the local communities. As we move forward to the remedial design, remedial construction and remedial post-construction phases, the State will remain vigilant in its efforts to work with EPA and other interested parties to implement this remedy.

This decision reaffirms what the findings of EPA and State scientific and technical studies have clearly shown: the removal of PCBs in the Upper Hudson is the most appropriate and effective way to mitigate the unacceptable risks those contaminants pose to public health and the environment. The State recognizes that the PCB contaminated sediments in the Upper Hudson River are significant ongoing sources of PCB to the Hudson River. The selected remedy described in the Record of Decision will likely achieve significant reductions in the quantity of PCBs associated with the contamination in the Upper Hudson River. These significant PCB sources to the Hudson River will be abated, which should enable the State to reduce the current fishing restrictions and consumption advisories.

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EPA received thousands of public comments on its December 2000 "Superfund Proposed Plan - Hudson River PCBs Superfund Site." In addition, the State provided comments and recommendations to EPA during development of the Record of Decision via an August 1, 2001 letter from Governor Pataki and my August 13, 2001, August 20, 2001 and October 24, 2001 letters consistent with the State's Support Agency role. The final Record of Decision demonstrates that EPA has given thorough and thoughtful consideration to the concerns of the public and the State in its deliberations. As a result, the Record of Decision includes some significant enhancements (discussed below) compared to the Proposed Plan that should allow the selected remedy to be implemented in a manner that balances public concerns with the need to mitigate the public health and environmental risks resulting from the PCB contamination in the Upper Hudson River.

Community Involvement Program

The Record of Decision calls for the development and implementation of an enhanced community involvement program that will provide opportunities for meaningful public involvement throughout the remedial design, remedial construction, and remedial post-construction phases. This program will include the development of performance standards; the siting and design of sediment processing/transfer facilities; the design and implementation of measures to mitigate any potential adverse impacts of the remedial work on the public, the environment, and local communities; and the evaluation of performance monitoring data during remedy implementation. We are encouraged that the State, local communities, and other stakeholders will be able to participate in this important process. The community involvement program will help EPA to identify and mitigate any potential adverse community impacts resulting from remedy implementation.

Land Based Facilities for Remedy Implementation

Once any necessary land-based facilities are no longer needed, the Record of Decision calls for restoration of the parcels in a manner that takes into account the anticipated future land use of the parcels, such as redevelopment for commercial or recreational use. In addition, the Record of Decision requires that EPA evaluate the use of on-water solids treatment facilities.

Community Health and Safety Plan

The Record of Decision provides for a comprehensive Community Health and Safety Plan (Plan) which will be developed during the remedial design phase with input from the public. This plan will be designed to protect the community during remedial construction. In addition, EPA will increase monitoring of water supply intakes during each project construction phase to identify and address possible impacts on water supplies drawn for drinking water. The locations, frequency and other aspects of monitoring of the water supplies in the Upper and Lower Hudson River will be developed with public and State input during the remedial design phase. This Plan will also ensure that the public is adequately informed of any health and safety issues throughout the remedial process.

Floodplain Issues

The Record of Decision states that EPA will evaluate the residential and ecological impacts of PCBs in the floodplain concurrent with the remedial design phase to determine if further investigation and/or remediation may be appropriate. The State believes that this is an important element in understanding the magnitude of risks to people who reside along the Upper Hudson River and to the floodplain environment.

Performance Standards

The Record of Decision calls for the development, during the remedial design phase, of performance standards for remedy implementation. The community involvement program will provide opportunities for public participation in this process. The State believes it is essential that the performance standards be designed to protect the public and the environment during remedial construction and to attain the remedial goals for this remedy.

Phased Remedy Implementation Approach

The Record of Decision describes a phased approach to remedy implementation that includes development of peer reviewed performance standards during the remedial design phase, development and implementation of an extensive monitoring program of all operations during the initial and succeeding phases of remedy implementation, and a peer reviewed comparison of the monitoring results to the performance standards. The community involvement program discussed above will provide opportunities for public participation in many aspects of this phased approach. Phased remedy implementation as described in the Record of Decision is a reasonable approach that balances public concerns with the need to achieve the remedial goals and mitigate the public health and environmental risks posed by the PCB contamination in the Upper Hudson River.

Mitigation of Potential Impacts on Navigation

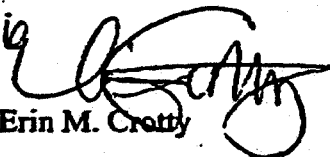
The Record of Decision provides for the development of a navigation performance standard during the remedial design phase, in consultation with the public and the State. EPA will consider the State's regulations which specify Champlain Canal navigational channel dimensions in developing this navigation performance standard, which the State believes will likely be an integral component of the standard. Dredging will be sequenced and directed to ensure minimal impacts to navigation within the Hudson River. EPA will consult with the New York State Canal Corporation during the remedial design and construction phases on issues related to canal usage, navigational dredging, and other remedy related activities within the navigational channel.

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The State of New York finds the selected remedy to be protective of human health and the environment, and the selected remedy will reduce public health and environmental risk. Implementation of the selected remedy will also provide positive changes to the ecology of the Hudson River and will provide long-term benefits to the communities along its banks. The Record of Decision provides for meaningful community involvement during remedy design and implementation. The Record of Decision also provides for the development and implementation of measures to mitigate any adverse impacts to local communities related to the selected remedy.

Accordingly, the State of New York hereby concurs with the Environmental Protection Agency's Superfund Record of Decision, Hudson River PCBs Site, Hudson Falls to New York City, New York dated December 20, 2001.

Very truly yours,


Erin M. Crotty