



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

JACOB K. JAVITS FEDERAL BUILDING

NEW YORK, NEW YORK 10278

17 JAN 1992

Mr. Darryl L. Decker
Chairman, Government Liaison Group
Washington County Board of Supervisors
Fort Edward, New York 12828

Dear Mr. Decker:

This is in response to your November 26, 1991 letter on behalf of many of the chairpeople of the Liaison Groups for the Hudson River PCBs Site Reassessment. You specifically question the value of participating in the Community Interaction Program (CIP) for the Reassessment given that the New York State Department of Environmental Conservation (DEC) is proceeding with certain preliminary activities relating to the siting of a facility to store materials from a dredge project.

The U.S. Environmental Protection Agency (EPA) is committed to conducting an objective study of potential alternatives to address the PCB contamination in the Hudson River. In order to do this, EPA believes that it is necessary to give all viewpoints an opportunity to be expressed as part of the CIP. This does not introduce a bias toward one specific remedy; rather, it recognizes that most parties interested in the Reassessment have distinct opinions on the outcome of the Reassessment.

The participants in the CIP should realize the value of their direct input to the Reassessment process and that EPA's decision from the Reassessment process will give direction to the ultimate fate of the PCB-contaminated sediments. Therefore, I hope that all CIP members continue to participate in the Reassessment process regardless of DEC's activities.

At the October 16, 1991 meeting of the Steering Committee, EPA promised that the questions raised that evening would be brought to my attention and that EPA would try to respond to those questions in the near future. It was decided at that time that the Hudson River PCB Oversight Committee (HROC) meeting scheduled for October 22, 1991 should not be postponed, even though it was unlikely that the Steering Committee's questions would be resolved by then, because the intended purpose of the HROC meeting was to discuss the Phase 1 Report.

The Steering Committee's questions, a number of which are restated in your November 26th letter, were discussed between high levels at EPA Region II and DEC, and a statement presenting the agencies' answers was made at the Steering Committee meeting held on January 8, 1992. While EPA could not speculate on all possible outcomes of the Reassessment and the corresponding actions that might be taken by DEC, there were two major points that I would like to restate. First, DEC has informed us that its view that dredging is the appropriate remedy for the PCB-contaminated sediments in the Hudson River is not an irrevocable one. DEC has indicated that it will reconsider its previous position on the dredging alternative if another remedy can be sufficiently demonstrated to be more appropriate. Second, DEC will not make a completeness determination regarding the Project Sponsor Group's Site 10 landfill permit application under 6 NYCRR Part 373 until EPA completes the Reassessment, unless there are significant delays to the current schedule for the Reassessment. Among other things, this means that DEC will not seek to move ahead with the construction of an encapsulation facility at Site 10 before EPA completes its study, and will then reconsider its plans as needed in light of EPA's decision.

Your letter also includes a statement that the objectivity of EPA's Reassessment may be undermined by using "...DEC data that may be tainted by DEC's commitment to a dredge project." The use of the DEC data does not compromise the objectivity of EPA's Reassessment. The DEC data was collected and analyzed using valid scientific procedures. EPA has used the DEC data, along with data from other sources, and has conducted an independent review, from which it has drawn its own conclusions. In other words, EPA has not blindly accepted conclusions from DEC reports, but has used the raw data from those reports to perform its own evaluation. In addition, data does not become tainted or unreliable by the mere fact that the party that collected it has a particular viewpoint.

In your letter, you also present a list of demands for EPA to comply with to restore the credibility of the CIP. Some of these items were discussed at the January 8, 1992 Steering Committee meeting. I would like to address the demands that were not discussed at that meeting at this time.

First, regarding your concern over multiple DEC representatives on the CIP committees, EPA does not believe that any change is necessary to the existing structure. DEC has two representatives on the Steering Committee; the technical project

manager and a citizen participation specialist. The citizen participation specialist is appropriate on the Steering Committee, since along with technical issues, this committee discusses the concerns of the public and conveys information on the agencies' policies to the Liaison Group chairs. You should note that each Liaison Group has three members on this committee. The Hudson River PCB Oversight Committee requires the presence of two DEC representatives (both of which are technical managers) to ensure that information and views from both the Division of Hazardous Waste Remediation and the Project Sponsor Group are available to the HROC. Finally, the DEC has had only one scientist representing it on the Scientific and Technical Committee (STC).

Next, you demand that the Scientific and Technical Committee be given "true oversight capability." This suggests a role as an independent peer review group. While this may have some merit, it also has many disadvantages. In order to be on an independent peer review group, participants could not be from organizations which have a bias toward, or which have expressed a preference for, a specific outcome. Therefore, some of the most prominent researchers who have studied the Hudson River PCB problem would not be eligible to participate. EPA considered such a role for the STC when it developed the CIP, but chose to utilize the scientists with the best site-specific information even though many of them had previously expressed opinions regarding the appropriate response to the PCB contamination in the Hudson River.

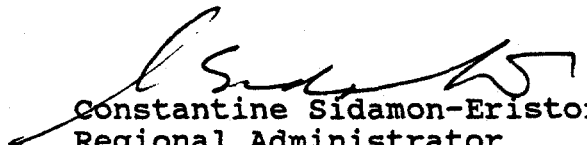
Also, your recommendation regarding the appropriate role of the STC, if adopted, would effectively give the STC a veto power over some decisions made by EPA. EPA cannot agree to such a delegation of its legal authority.

Finally, with respect to your request for outside legal counsel, EPA is not authorized by law to provide parties such as the Liaison Groups with private legal counsel.

Please note that I am planning to attend the next HROC meeting, which will concentrate on the direction of the remaining phases of the Reassessment. This meeting will be held on January 21, 1992, in Poughkeepsie. Hopefully, the answers presented at the January 8th Steering Committee meeting and in this letter resolve the issues you have raised. I trust that you will work with my staff to resolve any remaining concerns you may have.

If you have any questions, please contact Ann Rychlenski, of the Office of External Programs, at (212) 264-7214.

Sincerely,


Constantine Sidamon-Eristoff (
Regional Administrator

cc: Thomas Jorling, Commissioner NYSDEC
Hudson River PCB Oversight Committee Members
Steering Committee Members