



SAVING THE LAND THAT MATTERS MOST



September 3, 2015

Via US First Class Mail and Email

Judith Enck  
Regional Administrator  
US Environmental Protection Agency, Region 2  
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New York, NY 10007  
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**Re: PCBs in the Hudson River**

Dear Ms. Enck:

We write to you today to express our concerns regarding the revelations from EPA at the recent Community Advisory Group (“CAG”) meeting regarding the Hudson River Superfund site: namely, (1) that EPA allowed General Electric to not follow New York’s standard fish file sampling methodology for approximately 10 years, and (2) that EPA has been allowing GE to dismantle its dewatering facility in Fort Edward, New York and to sell off dredging equipment without an approved formal decommissioning plan.

EPA must immediately require that GE cease and desist removing any more equipment and/or infrastructure from the Hudson River, including specifically the dewatering facility. Moreover, EPA simply cannot ignore 10 years of GE’s inaccurate and possibly falsified fish sampling data. EPA must immediately undertake a Five-Year Review to analyze whether the remedy is actually protective of human health and the environment, as previously claimed.

We understand that EPA considers the Hudson River Superfund cleanup to be one of its most successful sites, but your failure to act immediately to correct these serious issues threatens any claimed successes and will continue to tarnish the Hudson River Superfund remedy. The entire Hudson River Superfund remedy rests on accurate monitoring of PCB levels in the fish, and these new revelations call into question EPA’s decisions regarding the remediation of the Hudson River since 2004, including EPA’s conclusions in the 2012 Five-Year Review and the remedy’s claimed protectiveness of human health and the environment.<sup>1</sup> The health and safety

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<sup>1</sup> EPA must also bear in mind that the GE’s flawed data not only affects its own agency, but is also a concern for New York State, since the State’s Department of Health’s fish consumption advisory for PCBs is an integral part of

of the Hudson River and our communities must not be put in jeopardy by the actions of GE and your agency.

EPA must thoroughly investigate the fish sampling data malfeasance by GE and hold the company fully responsible for any violations of laws, regulations, and/or Hudson River Superfund orders, including whether GE knowingly or negligently filed false certifications as part of its self-reporting to EPA. *See, e.g.*, 2009 Data Summary Report (May 17, 2010). We are now left with approximately 10 years of fish PCB-level data that is questionable at best, and at worst, is a blatant falsification.

The difference in fish file methodology is a serious one: it is our understanding that, on average, PCB levels in fish sampled using the DEC standard rib-in method (the method required for the Hudson River Superfund site) are at least 75% higher than samples using the rib-out method, and in about a quarter of the cases is as much as two-fold higher. We already know, based on certain post-remediation data recently analyzed by the National Oceanic and Atmospheric Administration<sup>2</sup> (one of the federal Natural Resource Damages trustees), that the fish contamination remedial action objective (“RAO”) cannot be met in the time expected under the Record of Decision. This new revelation that the data by GE for 10 years significantly underestimates PCB-levels in fish further calls into question the remedy’s ability to meet the RAOs and the remedy’s compliance with Applicable or Relevant and Appropriate Requirements (“ARARs”).

Additionally, GE’s current removal of equipment from the facility is being done with only a cursory review by EPA, and with no input, review, or consultation with any other state or federal agency, let alone the public. This is in stark contrast to the formal process of decommissioning of the plant which requires an extensive technical plan to be filed by GE, consulted upon by federal and state agencies, and ultimately approval by the EPA. EPA’s justification for allowing GE to gut the facility, based on a newly formulated distinction between “decommissioning” and “demobilization” (especially as it relates to the dewatering facility), appears to be unsupported by law, regulation, or guidance.

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the selected remedy for the Hudson River Superfund site. The potential recourse of the State should also motivate your agency to move quickly to take all necessary action against GE.

<sup>2</sup> “Re-Visiting Model Projections of Lower Hudson River Fish PCBs Using Model Emulation And Recent Data,” a presentation by Jay Field, NOAA Office of Response and Restoration; John Kern, Kern Statistical Services, Inc.; and, Lisa Rosman, NOAA Office of Response and Restoration; presented at the Hudson River Foundation, New York, New York, on May 19, 2015. Powerpoint presentation available at:

<http://www.fws.gov/contaminants/restorationplans/hudsonriver/docs/Lower%20Hudson%20River%20Fish%20HRF%20Field%2005192015.pdf> (last visited Aug. 27, 2015).

This distinction is even more striking when compared to your own statement this spring that dismantling GE's operations would be "inefficient and a waste of resources" so long as PCB-contaminated sediments remain in the river and Champlain Canal's navigation channel.<sup>3</sup> It is no secret that our groups (who are members of the Hudson River CAG), along with over 80 municipalities, 141 members of the New York State Assembly, 25 members of the New York State Senate, GE institutional shareholders, boat and yacht club organizations, and hundreds of individual members of the public have called upon GE to continue its dredging operations and to use its current facilities and infrastructure to complete this additional work. We will not stand idly by and let EPA unilaterally and without justification work against this public call.

Therefore, as long as serious questions remain regarding the fish sampling data, which in turn call into question EPA's approval of the remedial action to date and EPA's 2012 Five-Year Review, it is unconscionable for EPA to allow GE to gut the dewatering facility and sell off its infrastructure at this time and in this manner. EPA must immediately undertake a Five-Year Review to analyze whether the remedy is actually protective of human health and the environment and complies with the ARARs. EPA must also investigate GE's failure to use the New York standard fish filet methods and the company's possibly false certifications of the fish data, and take all available actions against GE to the extent your investigation reveals GE acted improperly in this regard.

We expect EPA to take prompt action to rectify these matters and protect the Hudson River, including but not limited to taking those actions we have specified herein. Your failure to act immediately to correct these serious issues endangers any successes your agency may have claimed for this remedy to date. Our organizations are prepared to take any and all necessary actions against EPA to ensure that the health and safety of the Hudson River and our communities is not further jeopardized.

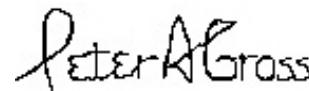
Sincerely,



Ned Sullivan, President  
Scenic Hudson



Paul Gallay, President  
Riverkeeper



Peter Gross, Executive Director  
Hudson River Sloop Clearwater

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<sup>3</sup> Brian Nearing, "Enck: EPA would consider request to slow GE departure from PCB Hudson dredging project" (*Albany Times Union*, May 7, 2015), available at <http://www.timesunion.com/news/article/Enck-EPA-would-consider-request-to-slow-GE-6250199.php> (last visited Aug. 28, 2015).

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Cc: Gina McCarthy, Administrator, US EPA  
Mark Gerstman, Acting Commissioner, NYSDEC  
Kevin Farrar, NYSDEC  
Howard Zucker, Commissioner, NYSDOH  
Bridget Boyd, NYSDOH  
Robert Haddad, Assessment and Restoration Division Chief, NOAA  
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