

**Hudson River Sloop Clearwater
Natural Resources Defense Council
Riverkeeper
Scenic Hudson**

September 9, 2015

Via US First Class Mail and Email

The Honorable Andrew M. Cuomo
Governor of the State of New York
New York State Capitol Building
Executive Chambers
Albany, NY 12224

Re: PCBs in the Hudson River

Dear Governor Cuomo:

In light of the recent disturbing revelations bearing upon the extent and gravity of the PCB contamination that General Electric plans to leave in the Hudson River, we call upon you to act immediately to protect the health, safety, and economic vitality of the Hudson River and its communities by ensuring that GE adequately and expeditiously cleans up large areas of the river extensively contaminated with toxic PCBs (polychlorinated biphenyls) that it dumped from the 1940s through the 1970s.

More specifically, we were recently informed that GE has been systematically under-representing PCB concentrations in Hudson River fish—the consumption of which is one of the main ways New Yorkers can become contaminated with PCBs. This news comes on the heels of a recent study by the National Oceanic and Atmospheric Administration (NOAA) demonstrating that the Hudson and Hudson River fish will be much more contaminated after the current EPA cleanup than previously expected.

Given New York's status as a Trustee of the Hudson River Superfund Site, your role is critical to addressing this issue. We look to you to provide strong and conscientious leadership in this matter. The choice, as we see it, is between a cleaner and more usable river for all New Yorkers or the continuation of a toxic threat to the State's environment and public health that will leave the Hudson and the communities along it damaged for generations longer. For the sake of the River and your legacy with respect to it, we call on you to lead the way in countering this threat.

With the company already dismantling its multi-million dollar cleanup infrastructure—and full decommissioning expected in the fall—the time to act is now. GE must not be allowed to put the health and safety of the Hudson River, our communities, and our economy in jeopardy. As such, we specifically call upon you to:

- (1) Direct the New York Department of Environmental Conservation (DEC), as the State's Natural Resource Damage (NRD) Trustee, to formally request that EPA order GE to halt removal of vital dredging systems and/or cleanup infrastructure—including, specifically, the dewatering facility and all of its specialized equipment;
- (2) Undertake a thorough investigation into GE's failure to use the DEC standard fish sampling protocol and GE's apparent filing of false certifications, and take appropriate action in response if GE acted improperly in this regard; and
- (3) Expediently advance the assessment of GE's outstanding NRD liability, which should include necessary dredging of remaining toxic "hotspots" (including within the Champlain Canal), and urge GE to immediately negotiate a cooperative NRD agreement that includes this necessary dredging.

The Threat to New York

As you know, for thirty years, GE dumped millions of pounds of PCBs into the Hudson River from two manufacturing plants located roughly 40 miles north of Albany. These highly toxic chemicals have been associated with a wide variety of health harms—cancer, neurological disorders, skin and eye lesions, and developmental disorders in children to name a few—and are easily absorbed into the human body. New Yorkers can become contaminated with PCBs by drinking contaminated water, touching contaminated sediment, or by eating Hudson River fish. Indeed, because of GE's PCBs, the New York Department of Health (DOH) has set strict advisories on the consumption of Hudson River fish—with children and women under fifty advised to never eat most species.

Because PCBs are extremely chemically stable, not only have their threats to New Yorker's health been longstanding, but so have their unmistakable economic impacts, namely: the disappearance of the once thriving multi-million-dollar-a-year commercial fishing industry; the effective closure of a major state shipping canal; and the degradation of a vast and accessible recreational resource.

Recognizing PCBs in the Hudson River pose a threat to New Yorkers' health and the environment, EPA issued a cleanup plan for the Hudson PCBs Superfund Site in 2002 calling for the dredging and removal of highly contaminated sediments in the upper Hudson River. Unfortunately, the cleanup plan only called for what EPA thought was, at the time, about 65% of the PCBs there, with no provision for PCB removal in the lower Hudson.

Accordingly, as designed, this cleanup was insufficient to protect New Yorkers who use or live next to the Hudson or significantly restore lost economic activity in the Hudson Valley. In fact, in 2011, NOAA and the U.S. Fish and Wildlife Service stated that the current cleanup, as planned, would leave "the equivalent of a series of Super-Fund-caliber sites" in the River. Newly discovered information, however, is even more damning.

Things Are Much Worse than Expected

In May of this year, NOAA released the results of a new study revealing two critical pieces of information: (1) in 2002, the amount of PCBs in the upper Hudson was underestimated by a factor of 2-3 times; and (2) the rate of natural breakdown of PCBs was also grossly overestimated. As a result, significantly more PCBs will remain in the upper Hudson than originally expected, so much so that NOAA concluded that the very clear targets for health and safety set by EPA back in 2002 cannot be met without further PCB removal from the upper Hudson.

Equally as distressing, it has also recently been revealed that, for the past 10 years, GE has used a method of testing Hudson River fish that systematically and significantly underreports their PCB levels. Indeed, it is our understanding that, on average, fish sampled using the standard DEC method show PCB levels at least 75% higher than fish sampled using GE's method, and in about a quarter of the cases, as much as two times higher. GE's sampling of Hudson River fish to measure the levels of PCBs is a required and critical element of the current EPA mandated cleanup. The purpose of such sampling is to measure the baseline concentrations of PCBs in the fish, and then to use the continued sampling results to gauge whether the selected remedy is meeting the cleanup goals that EPA set for public health and safety. Thus, there are likely more PCBs in Hudson River fish than GE has been reporting, calling into question the success of the cleanup.

According to EPA at a recent Hudson River Superfund Community Advisory Group (CAG) meeting, GE was unequivocally required to utilize DEC's standard fish sampling methodology, yet EPA did not notice that GE was not using the DEC testing method until 2012. Even then, it took EPA two additional years to require GE to employ the correct method. As such, GE has likely been underreporting the amount of PCBs in fish in its data summary reports to EPA for roughly a decade. Even more shocking, GE also gave this faulty fish sampling information to DOH for use in setting its fish consumption advisories.

The State cannot tolerate GE playing fast and loose with the data that informs the protections for the health and safety of New Yorkers. Further, despite DOH's strict advisories on the consumption of Hudson River fish, many New Yorkers are unaware of the advisories, particularly in low-income and minority communities. Accordingly, the State of New York must do everything in its power to ensure that it receives accurate and legitimate data on PCB levels Hudson River fish, and that those levels go down as quickly as possible.

The Cost to New Yorkers and GE's Outstanding Liability

More PCBs in the Hudson than expected means one thing for New Yorkers if GE fails to clean them up—more costs. Either the state will eventually pay to remove the leftover PCBs hotspots at a cost of several hundred million dollars to taxpayers, or the PCBs will simply remain there, continuing to threaten public health and depress the economy of the Hudson Valley. For one thing, given the state's constitutional obligation to maintain the Champlain Canal (which

runs through the cleanup area) the state needs to dredge the Canal—an operation that will be made far more costly by the presence of PCBs. These added costs should ultimately not be borne by the people of New York, but the party responsible for creating them: GE.

But even beyond the scope of the current remedial action, GE has substantial legal obligations pursuant to its potentially massive NRD liability under the Superfund law. As you are aware, these awards are intended to cover the costs to restore a damaged resource after an EPA cleanup as well as compensate the public for the loss of use of the resource while it was contaminated. In the Deepwater Horizon settlement, for example, BP Petroleum recently agreed to pay over \$8 billion to settle its NRD liability. The only NRD site in the U.S. of comparable size is the Hudson River, and given that the duration of damage is a significant factor in NRD calculations, the size and length of time indicates that the total amount of GE's liability may be similarly substantial.

Accordingly, these NRD funds can be used both for further necessary dredging in the event that EPA does not order it, and also for restoration and river access projects for the communities along the full length of the Hudson, benefiting them economically and otherwise. The federal NRD Trustees have made it quite clear, however, that they may not authorize use of funds for such restoration projects in a River that remains as contaminated as the Hudson will after the limited EPA cleanup. As one of the three designated Trustees responsible for calculating the NRD for the Superfund site, DEC, under your leadership, plays a critical role in ensuring that New Yorkers actually see this benefit.

GE Is Looking for a Quick and Secretive Exit

It is clear that GE is failing to be a good corporate citizen—viewing its responsibilities to the Hudson narrowly—and is trying to exit as quickly and quietly as possible. Indeed, as was revealed at the August CAG meeting, GE has already begun dismantling a portion of its multi-million dollar cleanup infrastructure despite multiple reassurances from EPA that public input would play a role in the decommissioning. Instead of the promised public decommissioning plan, however, Hudson Valley residents now know GE has been allowed to strip parts of its facilities with no input, review, or consultation with them or any state or federal agency beyond EPA.

It is no secret that our groups—along with 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 thousands of individual members of the public—have called for maintaining this infrastructure in place, and we cannot stand idly by while it is piecemeal destroyed, and neither should the State of New York.

Further, the state is not without substantial power to act. In May, EPA Region 2 Administrator Judith Enck stated that a request from the NRD Trustees to leave the cleanup infrastructure in place would be a key step to postponing decommissioning GE's facilities. Yet,

the State has not made any such request to EPA, nor has it, to our knowledge, encouraged the other Trustees to do so.

Without decisive action now, it is unclear if we will preserve this infrastructure that represents the quickest and best opportunity to provide New Yorkers with the clean and usable river we deserve.

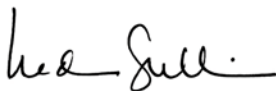
Immediate Action Is Needed and Your Role Is Critical

As the chief representative of the people of New York, we call for you to take prompt action to rectify these matters and protect the Hudson River and its communities. As it stands, the process is broken and until the federal and state agencies fix it, GE must not be allowed to move forward with its plans to leave the River.

We therefore call upon you once again to: (1) direct DEC to formally request that EPA order GE to immediately cease dismantling its state-of-the-art clean up infrastructure; (2) investigate GE's handling of Hudson River fish sampling and take all appropriate action against GE for any discovered malfeasance; and (3) expedite calculation and collection of GE's NRD liability—which must include provision for dredging of remaining PCB toxic hotspots—and strongly encourage the company to promptly settle its outstanding NRD liability.

Our organizations are prepared to take any and all necessary actions to ensure the health and safety of the Hudson River and the people who—like us—use it, cherish it, and live along it. As a lifelong New Yorker yourself, we call upon you to do the same.

Sincerely,



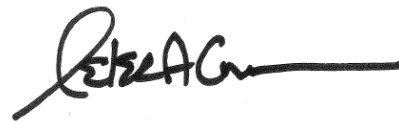
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Gina McCarthy, U.S. EPA
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