

**Hudson River Sloop Clearwater, Inc.  
Natural Resources Defense Council, Inc.  
Riverkeeper, Inc.  
Scenic Hudson, Inc.**

April 10, 2013

**Sent Via U.S. Mail and Email**

Christine Delorier  
U.S. Army Corps of Engineers  
New York District, CENAN-OP-RU  
Upstate Regulatory Field Office  
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**Re: Public Notice No.: NAN-2012-00230  
New York State Canal Corporation, Permit Application for  
Section 10 of the Rivers and Harbors Act of 1899 and Section  
404 of the Clean Water Act**

Dear Ms. Delorier:

Please accept the following comments on behalf of Hudson River Sloop Clearwater, Inc., Natural Resources Defense Council, Inc., Riverkeeper, Inc., and Scenic Hudson, Inc. regarding the proposed revision of the above-referenced permit application by the New York State Canal Corporation (“NYSCC”).

For over 45 years, Clearwater has been at the forefront of the environmental movement as champion of the Hudson River, working to help pass landmark legislation like the Clean Water Act, providing innovative educational programs, environmental advocacy, and musical celebrations, including the renowned Great Hudson River Revival. Founded by music legend and activist Pete Seeger in 1966, the organization has introduced more than half a million people to the Hudson River estuary’s ecosystem aboard the iconic sloop Clearwater. The organization's connection to youth, environmental education, and agenda to create the next generation of environmental leaders are all part of building a green economy and a more inclusive and diverse environmental movement. Utilizing the greatest natural resource in the region, the Hudson River, Clearwater has become the grassroots model for producing positive changes to protect our planet.

The Natural Resources Defense Council (“NRDC”) is an environmental advocacy organization that has worked since 1970 to protect the environment with the support of

its 1.3 million members and online activists. NRDC uses legal, policy, scientific and market-based tools to protect wildlife and wild places and to ensure a healthy environment for all life on earth. For more than 40 years, the group has worked to protect New York's water, including fighting for the cleanup of the Hudson River PCB contamination.

Riverkeeper is a member-supported watchdog organization dedicated to defending the Hudson River and its tributaries and protecting the drinking water supply of nine million New York City and Hudson Valley residents. For more than 44 years, the group has been New York's clean water advocate. Riverkeeper has worked to establish globally recognized standards for waterway and watershed protection, and has been a leader in advocating for the preservation and restoration of critical Hudson River habitat in the Hudson River Estuary.<sup>1</sup>

Scenic Hudson works to protect and restore the Hudson River and its majestic landscape as an irreplaceable national treasure and a vital resource for residents and visitors. A crusader for the valley since 1963, the groups is credited with saving fabled Storm King Mountain from a destructive industrial project and launching the modern grass-roots environmental movement. Today with more than 25,000 ardent supporters, Scenic Hudson is the largest environmental group focused on the Hudson River Valley. Scenic Hudson's team of experts combines land acquisition, support for agriculture, citizen-based advocacy and sophisticated planning tools to create environmentally healthy communities, champion smart economic growth, open up riverfronts to the public and preserve the valley's inspiring beauty and natural resources.

As members of the Community Advisory Group ("CAG") for the Hudson River Superfund site, Riverkeeper, Scenic Hudson, and Clearwater work together to ensure the environmental interests of the Hudson River and the surrounding communities are sufficiently protected during General Electric's ("GE") remediation of the polychlorinated biphenyl ("PCB") contamination that it caused in the River. And NRDC, as a group that has long worked alongside the CAG members to ensure a clean Hudson River, is similarly committed to environmental protection and a thorough PCB cleanup.

In general, we support the NYSCC's recent application for Section 10 of the River and Harbor Act and Section 404 of the Clean Water Act permits to "conduct dredging, with ten years maintenance and upland disposal, of PCB contaminated sediments within a 38 mile portion of the Champlain Canal (Hudson River) to restore and maintain the State

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<sup>1</sup> The most current information on Riverkeeper's work can be found on our website at [www.riverkeeper.org](http://www.riverkeeper.org). Our advocacy work on PCB contamination in the Hudson River and the General Electric remediation in the Upper Hudson River can be found at <http://www.riverkeeper.org/campaigns/stop-polluters/pcbs/> (last visited on April 5, 2013).

navigation channel to its previously approved width and depth,” and support the Army Corp of Engineers’ (“Army Corps”) approval of the requested permits.

Due to the extensive PCB contamination of the navigational channel from the Federal Dam at Troy to Fort Edward, the NYSCC has not dredged the Champlain Canal in over 30 years. Therefore, allowing the NYSCC to dredge the channel will not only allow for the potential for economic benefits to the up-river communities, but will also result in the incidental benefit of making the Hudson River cleaner due to the removal of PCB contamination that lies outside of the scope of GE’s obligation for remediation under Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.* (“CERCLA”, or Superfund), as set forth in the 2002 Record of Decision.

We respectfully request the Army Corps to consider the following issues that affect the environment, water quality of the Hudson River, and the interests of the general public. These comments are in response to the unique situation of this portion of the Hudson River (*i.e.*, excessive PCB contamination due to GE’s historic operations along the Hudson) and the fact that the requested dredging by the NYSCC will take place within the largest Superfund site in the country.

One of the biggest concerns with dredging PCB-laden river sediment is the potential for resuspension of the contamination and the recontamination of “clean” sediment in other parts of the Hudson River. As well, resuspension and recontamination may cause increases in the PCB levels of Hudson River fish, for which there is already a severe human consumption advisory in place by the New York State Department of Health.<sup>2</sup> While we realize that the dredging to be undertaken by NYSCC is not nearly on the level of that undertaken by GE as part of their remedial activities, because of the potential deleterious effects of dredging PCB-contaminated sediment, we nevertheless respectfully request that the Army Corps include three important conditions for approval of the permits to the NYSCC:

- (1) Adoption of the EPA Quality of Life Performance Standards for Phase 2 (December 2010; as updated and amended)<sup>3</sup> developed for the GE remedial PCB-dredging operation. These standards cover the impacts of PCB-dredging operations on air, odor, noise, light and navigation. These standards were developed in consultation with New York State and with public input and are consistent with federal and state laws, and should be applied to the dredging of PCBs by the NYS Canal Corp. in the Champlain Canal.

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<sup>2</sup> Due to already elevated levels of PCB in the fish, which are eaten by local residents, and which have the potential to cause health and developmental problems in children and adults, among other health problems.

<sup>3</sup> Available at [http://www.epa.gov/ HUDSON/phase2\\_docs/techmemo\\_goflp.pdf](http://www.epa.gov/ HUDSON/phase2_docs/techmemo_goflp.pdf) (last visited April 5, 2013). The original Phase 1 Quality of Life Performance Standards (May 2004) are available at [http://www.epa.gov/ HUDSON/quality\\_of\\_life\\_06\\_04/index.html](http://www.epa.gov/ HUDSON/quality_of_life_06_04/index.html) (last visited April 5, 2013).

- (2) Adoption of the Revised Engineering Performance Standards for Phase 2 (December 2010; as updated and amended)<sup>4</sup> (“EPS”) developed for the GE remedial PCB-dredging operation, including any PCB-monitoring requirements contained therein or in the 2002 ROD. The peer-reviewed EPS establishes performance standards for PCB resuspension during dredging, production rates during dredging and PCB residuals after dredging.
- (3) Adoption of the EPA Substantive Water Quality Requirements (December 2010; as updated and amended)<sup>5</sup> developed for the GE remedial PCB-dredging operation. These requirements were developed in consultation with NYSDEC and NYSDOH and covers (a) in-river releases not subject to the EPS, and (b) discharges of treated water to the Champlain Canal (which was specifically contemplated by the NYS Canal Corp’s application).

Notwithstanding our request for these additional environmental conditions, the requisite permitting and preparation for the dredging of the Champlain Canal is urgently needed. Upriver communities continue to be denied potential economic growth opportunities and tourism development due to the NYSCC’s inability to dredge the channel due to PCB-contamination. While specific concerns should be addressed prior to active dredging operations, navigational dredging must be conducted to allow deep-draft shipping in the Champlain Canal for the first time in decades.

The expected conclusion of the upriver remediation and the possibility of navigational dredging have allowed local communities, municipalities, and business associations to plan for the recovered use of the Hudson River’s historical shipping capabilities and to foster waterfront revitalization proposals. In fact, a three-county group of business groups, mayors and supervisors along the upper Hudson recently received a proposition to build and operate a barge terminal in Washington County. However, economic development projects such as the barge terminal cannot be built unless the channel is dredged to the proper navigational depth. Therefore, the approval by the Army Corps for the NYSCC’s requested permits – particularly with the requested quality of life, engineering performance, and water quality standards – is critical for the economic recovery of the communities along the Hudson River.

Finally, pursuant to the directive of the Army Corps’ Public Notice, we hereby respectfully request that the Army Corps consider holding a public hearing on the above-referenced permit applications. With great respect for the regulatory process, we believe a public hearing may be necessary to allow additional stakeholders and the

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<sup>4</sup> Available at [http://www.epa.gov/hudson/phase2\\_docs/revised\\_eps.pdf](http://www.epa.gov/hudson/phase2_docs/revised_eps.pdf) (last visited April 5, 2013).

<sup>5</sup> The revised EPA-issued Substantive Water Quality Requirements can be found in the Revised Engineering Performance Standards for Phase 2, available at [http://www.epa.gov/hudson/phase2\\_docs/revised\\_eps.pdf](http://www.epa.gov/hudson/phase2_docs/revised_eps.pdf) (last visited April 5, 2013).

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general public sufficient time and an appropriate forum to supply information to the Army Corps which can help the Corps to more thoroughly collect information that is necessary for them to consider this application.

Thank you for your consideration of these comments from Clearwater, NRDC, Riverkeeper, and Scenic Hudson.

Sincerely,



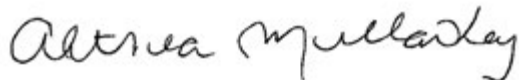
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