

May 24, 2023

Gary Klawinski, Project Coordinator
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Hudson River Field Office
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(Via USPS and electronic mail)

Re: *Hudson River PCBs Superfund Site – Lower Hudson River
Administrative Settlement Agreement and Order on Consent for Testing/Investigation
(Index No. CERCLA-02-2022-2020) and
Sampling and Analysis Plan/Quality Assurance Project Plan*

Dear Project Coordinator Klawinski:

As members of the Hudson Community Advisory Group and Friends of Clean Hudson, we want to thank you for the opportunity to comment on the Administrative Settlement Agreement and Order on Consent for Testing/Investigation, Lower Hudson River (Index No. CERCLA-02-2022-2020) (“ASAOC”) and the Sampling and Analysis Plan/Quality Assurance Project Plan (“Sampling Plan”). We believe the ability of stakeholder groups to understand and participate in Superfund processes/investigations is integral to the success of the Superfund program, and we note the decisions you and your staff at the Environmental Protection Agency (“EPA”) make impact the economic and environmental future of hundreds of communities and millions of people who live along the banks of this long-contaminated river.

We offer the following general comments and technical observations on the proposed “sampling and investigation of water column, sediment, and fish in support of EPA’s decision making and planning next steps to evaluate PCB contamination in the Lower River.”¹ We understand this first year of “investigation” is meant to inform successive efforts to address the geographic scope and risks of General Electric’s (“GE”) PCB contamination in the Lower Hudson. While we feel this intermediate step will cause unnecessary delay, we appreciate the opportunity to submit comments and remain committed to participating in the Superfund processes.

General Recommendations:

- **EPA should issue a clear schedule and commitment to ordering a Remedial Investigation/Feasibility Study of the Lower Hudson.**

¹ ASAOC Appendix B, Statement of Work (“SOW”) p. 3.

The Hudson River PCBs Superfund Site was placed on the National Priorities List (“NPL”) in 1984.² The NPL identifies the hazardous waste sites in most urgent need of cleanup based on the threat they pose to public and environmental health. The Hudson River PCBs Superfund Site extends nearly 200 miles from the Fenimore Bridge in Hudson Falls to the Battery in New York City and is divided into the Upper Hudson (the 40-mile length of the river between Hudson Falls and the Federal Dam at Troy), and the Lower Hudson (the 160-mile length of the river between Federal Dam at Troy and the Battery). Prior assessments, including the 2000 Remedial Investigation and Feasibility Study (“RI/FS”) and the 2002 Record of Decision (“ROD”), conclude that PCB contamination presents an unacceptable risk to human and ecological health in both the Upper and Lower Hudson.³ Despite dredging in the Upper Hudson, “PCBs are still present throughout the Site, and consumption advisories from the New York State Department of Health remain in place throughout.”⁴

After a site is added to the NPL, the next step—which is required by law—is to perform a Remedial Investigation and Feasibility Study (“RI/FS”).⁵ An RI/FS defines the nature and extent of the threat, evaluates proposed remedies, and is required to precede any remedial action.⁶ It has been more than 38 years since the Hudson River was listed on the NPL, yet despite the continued and unacceptable risk, there has still been no RI/FS for the Lower Hudson, which makes up the majority of the Hudson River Superfund Site and includes its most populated areas.

The Sampling Plan and investigation to be carried out by GE is not a substitute for an RI/FS; it will merely delay the beginning of an RI/FS, which must occur before any meaningful response action can take place.⁷ The 160-mile Lower Hudson portion of the Hudson River PCBs Superfund Site has waited nearly 40 years for resolution of the legacy PCB pollution that has poisoned the river’s wildlife, destroyed a vibrant fishing industry, impaired new commercial activity, and compromised the health of those living along its shores. For the reasons stated herein, EPA should move forward with an RI/FS immediately.

- **As part of an RI/FS, or in subsequent investigation plans, EPA must assess impacts on environmental justice communities and provide for robust community information and involvement.**

For far too long, communities in the Lower Hudson have faced persistent environmental injustice through toxic PCB pollution. These communities have experienced disproportionate and adverse human health and environmental burdens. As EPA moves forward with a response action in the Lower Hudson, any investigation or RI/FS must take this into account, assess such impacts, and provide for meaningful public information and participation.

² ASAOC Paragraph (“Par.”) 12.

³ ASAOC Par. 23; SOW p. 1.

⁴ SOW p. 1.

⁵ See 42 USC § 9616(d). Superfund aims for timely commencement of RI/FS and remedial action once a site is listed on the NPL. *Id.*

⁶ 40 CFR § 300.430(a) (2).

⁷ CERCLA provides that if it is determined it will be done properly and promptly, a responsible party may conduct an RI/FS, while the President (as delegated to EPA) is authorized to conduct investigation. *Cf.* 42 U.S.C. § 104(a) to § 104(b).

EPA has adopted a commitment to strengthening environmental justice considerations in its operations, including through cleanup enforcement actions.⁸ Furthermore, on April 21, 2023, President Biden signed Executive Order 14096 to revitalize our Nation's commitment to environmental justice for all.⁹ Building on prior directives to incorporate environmental justice into their operations, the Executive Order directs agencies to consider measures to address and prevent disproportionate and adverse environmental and health impacts on communities. In light of the Biden Administration's and EPA's commitment to environmental justice, EPA should address the needs and concerns of environmental justice communities in the Lower Hudson by ending the unnecessary delay in PCB remediation and moving forward with an RI/FS. At the very least, the current investigation plan should address environmental justice impacts.

- **As part of an RI/FS, or in subsequent investigation plans, more robust sampling efforts in water, sediment, and fish should be designed to provide sufficient spatial resolution to meaningfully inform the nature and extent of PCB in sediment to advance the understanding of relationships between PCB in fish, water, and sediments of the Lower Hudson.**

The proposed sampling and investigation of the water column, sediment, and fish in the Lower Hudson described in the Sampling Plan is unlikely to yield useful information to resolve the spatial distribution of PCBs and other contaminants in the Lower Hudson. The Lower Hudson is a much larger and more complex ecosystem than the Upper Hudson. A plan should be developed now to allow for this limited initial sampling work to quickly be expanded to provide a meaningful understanding of the distribution of PCB contamination in Lower Hudson fish and of the relationships between water, sediment, and biota. This sampling effort should include the various fish species which are commonly consumed by humans and ecological receptors from various locations in the estuary.

In addition, the proposed supplemental exploratory sediment sampling program will provide extremely limited insight into the spatial variation in sediment PCB concentrations throughout the Hudson estuary. The planned water column monitoring, sampling, and analysis will only demonstrate small incremental improvement in understanding the distribution of PCBs in the river. We note that sampling locations fifty miles apart, in the complex environment of the Hudson River estuary, simply will not provide the spatial resolution necessary to meaningfully advance the understanding of the nature and extent of PCB contamination in the Lower Hudson.

- **As part of an RI/FS, or in subsequent investigation plans, fish sampling plans should be developed with greater spatial resolution and a broader range of**

⁸ See Memorandum from Acting Assistant Administrator for Enforcement and Compliance Assurance Larry Starfield, "Strengthening Environmental Justice Through Cleanup Enforcement Actions", July 1, 2021, available at: <https://www.epa.gov/enforcement/environmental-justice-enforcement-and-compliance-assurance>. In addition, CERCLA RI/FS ASAOC and SOW Model Documents, issued just days after the ASAOC was entered into, include provisions in accordance with this commitment. See 2022 CERCLA RI/FS ASAOC and SOW Model Documents, available at: <https://www.epa.gov/enforcement/2022-cercla-rifs-asaoc-and-sow-model-documents>.

⁹ <https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all>

species sampled. In addition, a comprehensive creel survey should be conducted to determine which species are being consumed from which areas of the Hudson estuary and determine the primary time period of fish collection/consumption from areas of the Lower Hudson.

Two primary data quality objectives (“DQOs”) for the Lower Hudson fish sampling program set forth in the SOW are (1) “to obtain data to better understand potential human and ecological risks associated with fish consumption,” and (2) “to provide sufficient spatial resolution to assess total PCB concentrations in various fish species at locations along the Lower Hudson”. These objectives are extremely vague. What does “assess” mean—observing the magnitude of total PCB concentrations at specific locations in the spring? Is the assessment expected to address human health and ecological concerns? What about identifying potential sources of contamination by evaluating PCB congener composition?

The Lower Hudson is home to a diverse population of low-income and marginalized communities that continue to rely on fish from the Hudson River for food, putting their families at risk from toxic PCBs that “pose the largest potential carcinogenic risk of any environmental contaminant for which measurements exist.”¹⁰ We emphasize that developing a statistical and qualitative understanding of the nature and extent of PCB contamination in biota throughout the estuary with only five planned sampling locations over the 150-mile length of the Hudson estuary and without a more comprehensive survey of what, when, who and where anglers are fishing, is not feasible.

Currently, with the human health risks associated with fish consumption remaining well in excess of EPA’s acceptable risk range, the only protections in place to address these risks are the fish consumption advisories managed by the New York State Department of Health (“NYSDOH”). The reliance on advisories to protect human health depends on the most up-to-date understanding of the types of fish people are eating and who are the new populations of subsistence fishing families along the river. For the Hudson River Superfund Site, the last angler survey was conducted in the 1990s. The current fish consumption advisory program includes a relatively small portion of the many species of fish present in the Hudson estuary which people may be consuming, informed by data from a limited number of fish sampling locations over the 150 miles from Albany/Troy to New York City. A comprehensive program to gather the data needed for NYSDOH to more fully understand which communities of people are consuming which species of fish from which portions of the river is needed. This understanding would allow the fish advisories - the only current institutional controls on human health risk associated with exposure to PCBs by consuming Hudson River fish – to be best targeted to reach the communities which are most in need of NYSDOH advice on fish consumption.

Technical Recommendations on the Lower Hudson River Sampling and Analysis Plan/Quality Assurance Project Plan:

The Sampling Plan Should Provide the Basis for a Remedial Investigation/Feasibility Study for the Lower Hudson

¹⁰ See <https://www.niehs.nih.gov/research/supported/centers/srp/phi/archives/publicpolicy/pcbs/index.cfm>

Sec. 1.1, pg. 1-2

- EPA expected that the Upper Hudson remediation would result in substantial reductions in Lower River fish concentrations. According to the ROD Rationale for the selected remedy, p.103: “the Remediation Goal of 0.05 mg/kg also is expected to be attained in the majority of the Lower Hudson River, due to the lower initial concentration of Site-related PCBs in the Lower Hudson compared to the Upper Hudson.” However, fish in the Lower River are not recovering.¹¹
- In addition, “[o]ver a 10-year period (from 2004-2014), approximately 15 million tons of suspended sediment was discharged into the tidal freshwater section of the Lower Hudson above Poughkeepsie.”¹² “Overall, PCB-contaminated sediments from the Upper Hudson account for approximately 35 percent of the incoming suspended sediment load to the Lower Hudson.”¹³ This continued flow and deposition of PCBs to the Lower Hudson must be evaluated within the parameters of an RI/FS set out by regulations and Superfund processes.
- As demonstrated above, an RI/FS is required. EPA regulations outline the process and goals of an RI/FS.¹⁴ The Sampling Plan does not follow that process or meet the goals set forth therein. Moreover, the Sampling Plan must be significantly revised to even provide a meaningful basis to inform an RI/FS.
- The Sampling Plan must include additional background information to clarify that the 2000 RI/FS did not evaluate options to address PCB contamination in the Lower Hudson. The Sampling Plan, or an addendum thereto, should also include a discussion of how and why EPA and GE determined that additional testing in the Lower Hudson is appropriate and the plan should describe, in detail, the process that will be used to determine additional data needs. This plan fails to include the specific context associated with contaminated sites on the NPL and ignores the ongoing responsibilities and obligations of both the Superfund program and GE as the Potential Responsible Party for the Hudson River Superfund Site. The general terms used to describe the purpose of the work will not be useful in scoping any needed additional sampling. Therefore, the purpose of the work must be sufficiently specified to make it clear that the purpose of the sampling and investigation work is to require GE to collect data as part of an RI/FS and to expand the scope of work to satisfy the requirements of the RI/FS process.

¹¹ SOW p. 2.

¹² Kevin J. Farley, Joel E. Baker, W. Frank Bohlen, W. Rockwell Geyer, Simon Litten, and David K. Ralston, An Independent Evaluation of the PCB Dredging Program on the Upper Hudson and Lower Hudson River, p. 15 (June 2017).

¹³ *Id.*

¹⁴ See 40 CFR 300.430.

Adequate and extended sampling efforts in water, fish, and sediment should be designed to provide sufficient spatial resolution to meaningfully inform the nature and extent of PCBs in sediment, and are needed in order to advance the understanding of relationships between PCB in fish, water, and sediments of the Lower Hudson.

Sec. 1.3.1, pp. 2-3

- The proposed scope of work will likely not yield useful information to resolve the spatial distribution of PCBs and other contaminants in Lower Hudson surface water. With the very limited number of sampling locations (five locations over the 150-mile estuary), and the limited frequency of sampling (only monthly) it will not be possible to achieve anything other than a very general understanding of the spatial distribution of contaminants.

Sec. 1.3.3, page 3

- The purpose for the Be-7 sediment sampling work, and how the data will be used to help understand the distribution of PCBs in Lower Hudson sediments, should be specified in Section 1.3.3, Beryllium-7 Bearing Sediment Monitoring. In particular, how the data will be used to "evaluate near-surface sediment recovery" should be specified. As written, the plan does not attempt to explain how comparing the results from sampling and analysis of surface sediments for PCB and Be-7 will be used to "evaluate near-surface sediment recovery." The sampling program as outlined will offer very limited insight into surface sediment PCB contamination rates throughout the Hudson estuary.

Sec. 1.3.4, pg. 3

- The specific purpose for the supplemental sediment sampling should be detailed in Section 1.3.4, Supplemental Sediment Monitoring, in order to guide development of the supplemental sampling and to allow for data gathering to inform a meaningful understanding of the relationship between sediment and fish PCB concentrations at the needed spatial scale.

Sec. 1.3.5, pg. 3

- The spatial extent of locations where high resolution cores provide a datable core chronology is very limited throughout the Hudson River; applying calculated recovery rates from a small amount of relatively rare locations does little to inform the understanding of the recovery of surface sediment PCB concentrations throughout the Hudson estuary.
- Because the high resolution cores can only be collected from continuous deposition, the information from these cores likely will substantially overestimate the rate of deposition and recovery relative to most other locations in the river.
- The high-resolution coring work described in Section 1.3.5, High-Resolution Sediment Coring Program, will wait until the supplemental sediment sampling work "has been

received and evaluated." The supplemental sediment sampling will not be done until after the fish, water column, and Be-7 sampling work is done. Given the typical pace of sampling, analysis, data evaluation and reporting by GE on the Hudson River Superfund Site to date, the high-resolution coring work will likely not be done until 2025 or later. The Sampling Plan must specify that the high-resolution sediment sampling work be done this year (2023), as the siting of the high-resolution core locations is not dependent on the results of fish, sediment, or water sampling rather, the siting of high-resolution coring locations is driven primarily by the need to find the limited number of areas in the estuary which are consistently depositional over the period of interest (i.e. since 1992).

Sec. 1.4, pg.4

- Section 1.4, Scope of this Sampling Plan, again highlights the protracted sequencing and schedule for the work. EPA should set the schedule now for when GE is required to provide the submittals, limit the opportunity for additional delays, and specify what, at a minimum, will be required for the work.

Sec. 1.5, pp. 4-5

- As noted above, it is unlikely that the high-resolution coring work will be conducted in 2024, as the work is described as dependent on the receipt and evaluation of the results of the supplemental sediment sampling work. It is unlikely, given the historical pace of work on this site, that supplemental sediment sampling results from work done during the 2024 field season will be submitted to EPA and evaluated in time for the coring work to be done in 2024. A more rigorous detailed schedule should be set for this work, with the high-resolution coring work done this year (2023) as described above.

Sec. 2.2, pg. 7

- It is unlikely that any meaningful understanding of "spatial and temporal conditions for PCBs and additional water quality parameters throughout the Lower River" will be obtained by the specified water sampling, as there are only five sampling locations over the 150 miles of the Hudson estuary. In order to meet the DQO specified here, a much more robust sampling program will be needed to provide the needed spatial resolution. To understand the spatial and temporal conditions in the Lower Hudson surface water, the sampling plan should include (at the start) a sufficient spatial resolution to develop the data needed to allow for development of a sampling plan which will provide the necessary scale.
- Monthly water column sampling will provide limited information on the temporal conditions. Weekly sampling from the primary locations during the spring through fall would provide more useful information on the temporal conditions.

Sec. 2.3, pg. 7

- The water sampling to be performed should include sampling outside of the center channel. Each sampling location should include separate samples from east and west

of the channel, in the shallower margins of the river, in order to understand the exposure point concentrations in surface water where most of the biological activity occurs in the estuary. It may not be possible to develop any understanding of the relationship between sediment, water, and fish PCB concentrations without sampling outside of the center channel.

Sec. 2.5, pg. 8

- Limiting the sampling to a maximum of 12 rounds may result in insufficient information to allow for development of an understanding of the relationship between water, sediment, and fish. EPA should direct GE to collect the data for the foreseeable future until sufficient data are available to meet the DQOs. The plan should also specify the health and safety criteria to be used to allow GE to omit sampling for safety purposes.

Sec. 2.8, pg. 9

- EPA should direct GE to also gather the flow data from each of the major streams entering the Lower Hudson; the Upper Hudson, and the Mohawk River. These data are needed to differentiate the input from these two sources, which vary significantly in flows and solids loading.

Sec. 2.10, pg. 10

- Use of a congener-specific method (Method 1668C in the Sampling Plan) is appropriate for this water sampling effort and should be continued. A similar effort should be undertaken in the analytical program for the other important media - sediment and fish - in order to meet the DQO for this proposal, to understand the relationship between fish, water, and sediment PCB concentrations. EPA should also set a specific schedule for submission of the data to EPA and New York State, to avoid delays in data interpretation and conceptual site model development.

Sec. 3.1, pg. 11

- It is unlikely that the DQOs for the fish sampling will be met by the specified fish sampling, as there are only five sampling locations over the 150 miles of the Hudson estuary. In order to meet the DQO specified here (including "to collect data across the main ecological segments of the Lower Hudson, spanning the full spatial extent as well as various turbidity and salinity conditions that occur throughout the estuary") a much more robust sampling program will be needed to provide the need spatial resolution to meet the DQOs.
- EPA should direct GE to also gather fish samples, at a minimum, from all of the secondary locations.
- The presence of walleye, a species often targeted and consumed by people, should be determined at each freshwater sampling location, and collected/analyzed to evaluate the exposure point concentrations for Lower Hudson walleye consumers.

- In order to meet these DQOs, the spatial resolution of the fish sampling effort will need to be improved. Use of only five existing sampling locations across the entire estuary will not improve EPA's understanding of the distribution of PCBs in Lower Hudson fish, the human health and ecological risk at issue, or the relationships between fish, sediment and water.

Sec. 3.1, pg. 12

- The analytical program, based primarily on the use of the Aroclor Sum Method, will not allow for the DQOs to be met. In order to understand the relationships between fish, sediment, and water the congener methodology should be used for fish as it is for water.
- Fish PCB data would help evaluate sources of PCBs, but Aroclor data will not provide useful information. Because the primary source of PCBs in the Lower Hudson is from the GE plants, PCBs in the Lower River will be highly weathered. Analyzing only 5% of the samples with method 1668C, spread among species and locations, will provide minimal useful information. Also, total PCB concentrations as reported as Aroclor totals will require adjustment ("homologue equivalents"), which adds considerable uncertainty to the PCB values. The New York State Department of Environmental Conservation ("NYSDEC") has strongly urged EPA to use congener analysis for all fish tissue in the lower river.
- In oral discussions, EPA has stated the Aroclor–Congener relationship broke down at a total PCB of about 0.15 ppm. Among NYSDEC's 379 lower Hudson River samples from 2021, 47 (12%) had a total PCB less than or equal to 0.15 ppm, and 115 (30%) had a total PCB less than or equal to 0.25 ppm. Histograms (the first is truncated at 1 ppm and the second shows all samples) show that the lower concentrations are dominated by white perch and striped bass. We can also expect that the added George Washington Bridge area samples and more marine species will have lower concentrations. Using Aroclor analysis risks too many samples with inaccurate lower concentrations.
- Using PCB Aroclor analysis in fish rather than PCB congener analysis will substantially limit the information on the spatial distribution of PCBs and the relationships between water, sediment, and biota.

Sec. 3.4.2, pg. 14

- The list of target species should include those species which are often consumed by people. An updated survey of human fish consumers may be needed in order to refine the list of targeted species, while a review of the fish species consumed by piscivorous wildlife may also need to be taken into account in identifying target species.

- Striped bass are listed but collection information (target numbers, timing of sampling) is omitted. Since striped bass show pronounced differences in PCB accumulation between males and females in the spring, with males generally having higher concentrations, targets should include equal numbers of both males and females [Males have higher PCB concentrations than females in the spring by a factor of 2.4-4 at both Albany and Catskill sampling locations]. Also, striped bass in the fall tend to have higher PCBs than in the spring, particularly in females [both males and females have higher PCB concentrations in the fall by a factor of 2+ for males and 3 for females]. If the objective of collecting striped bass is to provide information relevant to human health, samples should be collected in both spring and fall. These considerations should be applied to other adult species (eg. bass). For example, males have higher PCB concentrations by a factor of 2+ for both largemouth and smallmouth bass.
- Pumpkinseed are listed but not specified as “yearling,” to be consistent with the Upper Hudson sampling.
- GE should expand the fish sampling program as suggested by NYSDEC to include blue crabs throughout the species range in the estuary. The plan calls for blue crabs to be collected only at Tappan Zee and the George Washington Bridge. Since blue crabs are available further upstream, blue crab samples should be collected at additional upstream locations at least as far as Kingston. It would also be useful to have survey data from the public as to where people are catching blue crabs for consumption.

Sec. 3.5, pg. 15

- EPA should specify that a second round of fish sampling will be performed later in the year from primary locations to understand seasonal changes in the fish PCB concentrations that may affect risk related to fish consumption. Exposure point concentrations may vary significantly from spring to fall due to changing conditions, as described in Section 3.5, Sampling Schedule.

Sec. 3.6.3, pg. 17

- Fish samples should be prepared in a manner fully consistent with New York State guidance for sample preparation. This is to avoid the data interpretation issues which arose during the Upper Hudson BMP, when variable sample preparation techniques which removed portions of the standard fillet greatly diminished the usability of the fish data from samples prepared by non-standard methods.

Sec. 4.1, pg. 20

- The tributary sampling should include the two largest streams supplying sediment to the Lower Hudson; the Upper Hudson and the Mohawk River. EPA should also direct GE to gather sufficient data to allow for the DQOs to be met.

Sec. 4.2, pg. 20

- In order to meet these DQOs, the spatial resolution of the Be-7 sampling effort needs to be increased. One sample every three to five miles, with a targeted detection rate of

50%, will likely not allow for a detailed understanding of near surface recovery rates, and to understand the spatial variation in surface sediment PCB concentrations in recently deposited sediments.

Sec. 7.2, pg. 30

- EPA should direct GE to modify the plan to include mandating the collection of all data needed to address all anomalies and data gaps identified.

Sec. 8, pg. 31

- EPA must ensure that the data are validated and reported promptly, to allow for the identification of data gaps and any failure to meet DQOs. Reports should also be submitted at the end of each calendar year which includes all data, preliminary interpretation of the data, and which identifies any data gaps or failure to meet DQOs.

Conclusion:

Thank you for the opportunity to provide comments and technical recommendations for the Lower Hudson River Sampling Plan. Based on already identified unacceptable risks and environmental justice impacts, EPA should commence an RI/FS for the Lower Hudson portion of the Hudson River PCBs Superfund Site immediately. At the very least, the Sampling Plan must be revised to establish an adequate basis of data for an RI/FS and provide for meaningful public information and input. We ask this letter be included as part of the administrative record for the Hudson River Superfund Site.

Moving forward, we strongly urge EPA to coordinate more closely with state and federal trustees when preparing any investigation plans for the Lower Hudson. It is especially important for EPA to collaborate with the state agencies within whose jurisdiction the Lower Hudson portion of the Hudson River PCBs Superfund Site lies, including NYS Department of Environmental Conservation Regions 2 and 3, and the New Jersey Department of Environmental Protection. In addition, we look forward to receiving the data and reports that result from this investigation, which may be provided to the undersigned.

We hope EPA will consider and adopt the steps outlined above to help make the Hudson River cleaner and safer for *this* generation as well as those that follow. Facing another 70 years of living with a PCB-polluted riverine system without a clear course to recovery is simply unacceptable.

Sincerely,

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