

## OFFICE OF THE COMMISSIONER

New York State Department of Environmental Conservation  
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November 14, 2016

Ms. Judith A. Enck  
Regional Administrator  
United States Environmental Protection Agency  
Region II  
290 Broadway  
New York, New York 10007-1866

**Re: Hudson River PCBs site: Operation, Maintenance, and Monitoring Program; Demand for additional sediment sampling**

Dear Regional Administrator Enck:

The New York State Department of Environmental Conservation (Department) has expressed significant concerns to the US Environmental Protection Agency (EPA) regarding contamination left behind by the remedial project implemented by General Electric (GE) in the Hudson River. The Department continues to believe that EPA's work is not done.

Recently, as part of the Department's participation in the five-year review process, staff have identified the need to fully characterize sediments in the Upper Hudson River, both in areas that were dredged and in areas that were not dredged, for the following reasons: (i) in order to understand the effectiveness of the dredging performed; (ii) to understand the ability of the project to meet its remedial action objectives (RAOs) in the timeframes predicted by the Record of Decision (ROD) (i.e. 5 and 16 years, respectively, after dredging); and, (iii) if RAOs are not met in those time frames, identify specific areas of the Upper Hudson River that may require further active remediation in the future so that RAOs are met in timeframes commensurate with those established in the ROD.

Unfortunately, EPA's unwillingness to require GE to perform adequate sediment sampling undermines the five-year review process to determine the protectiveness of the remedy, and it makes it difficult to show that the remedy is meeting the goals set by the ROD. Based on communications between the Department and the EPA project manager, it's the Department's understanding that EPA is proposing only 375 sediment samples in the entire Upper Hudson River for each sampling event, and this amounts to less than ten samples for every mile of river.

As Department staff has been explaining to EPA for many months, much more sampling is necessary in order to answer the questions many stakeholders have raised about what has been left behind by the remedy. The Department recommends that a significantly increased number of samples be collected in order for the agencies to have the statistical power to be able to draw timely and reasoned conclusions from the sampling results.

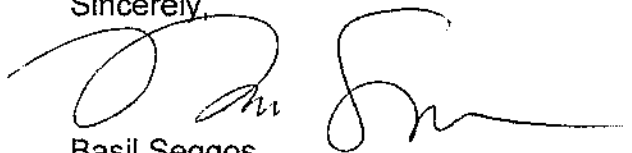
Furthermore, EPA's proposed limited sampling effort over such large reaches of the Upper Hudson River does not allow for analysis of specific local reaches between dams on the river (called "pools," between which fish tend to stay). Local PCB concentrations in the sediment control fish PCB concentrations and corresponding exposures to human consumers of those fish from these areas. Sampling should be performed on a pool-by-pool basis, so that risks and exposures at specific locations are better understood and so that areas requiring additional sediment removal, if necessary, can be identified. EPA's proposed minimal sampling effort does not constitute a "comprehensive, independent, and objective analysis of all available data" that the Department called for in its previous letter dated August 21, 2016. In total, the Department recommends that an additional 1800 samples be collected, in each sampling event, to provide the needed statistical power on a pool-by-pool basis to determine if the remedy is performing as needed to reach the fish PCB targets in time frames commensurate with those established in the ROD.

The EPA is apparently unwilling to modify the scope of sediment sampling under the Operation, Maintenance, and Monitoring (OM&M) Program even though EPA admitted in its first five-year review that portions of the river, especially in River Sections 2 and 3, are much more contaminated than EPA originally predicted. Such failure to act by EPA is yet another example of the agency's inability to adaptively manage this project as recommended in the 2010 peer review report.

Continued inaction by EPA to conduct additional sampling will require the Department to step in. As such, this letter constitutes a demand to the EPA to commit to undertaking additional sediment sampling in the Upper Hudson River previously identified by the Department as soon as possible, but no later than the spring of 2017. We request that EPA respond in ten days indicating whether it will agree to perform such sampling, or require GE to perform such sampling. If the Department does not receive a response from EPA, or if EPA elects not to perform or require such sampling, the Department will undertake the sampling in the spring of 2017, using its authority pursuant to state and federal law, while reserving all of its rights to recover the costs of such sampling from GE. Until such sampling occurs, the Department demands that EPA defer issuance of a certificate of completion of the remedial action.

The Hudson River dredging project is one of the largest remedial projects ever undertaken in the nation, and perhaps the world. Requiring appropriate sampling to understand its effectiveness, and identify specific areas that may require additional work, should be in everyone's interest, including the Department's, EPA's, and GE's.

Sincerely,

A handwritten signature in black ink, appearing to be 'Basil Seggos', written in a cursive style.

Basil Seggos  
Commissioner

and

Designated Trustee for Natural  
Resources for the State of New York

c: Gina McCarthy, EPA Administrator