
February 11, 2009

Administrator Lisa Jackson
U.S. Environmental Protection Agency Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Mail Code: 1101A
Washington, D.C. 20460

Dear Administrator Jackson:

The Sierra Club's Lone Star Chapter is requesting your urgent assistance regarding a decision made before your becoming administrator on the proposed long-distance transfer of polychlorinated biphenyl (PCB) dredged waste from the General Electric Hudson River PCBs Superfund Site. The Hudson River PCB waste will be shipped soon to a West Texas hazardous waste dump, but EPA has allowed no public participation beyond the New York State PCBs Superfund site. Previous EPA officials decided not to allow public input by citizens and public officials in the twelve states the PCBs will travel through to Texas.

***The National Environmental Policy Act: Rail Transport and Temporary Disposal of PCBs in Texas***

A legal issue is whether EPA has inappropriately waived the need for an Environmental Impact Statement (EIS) required by the National Environmental Policy Act (NEPA) on both the transport and disposal of the Hudson River PCB Superfund waste for temporary storage at the Texas hazardous waste dump. The Lone Star Chapter of the Sierra Club requests that an EIS be prepared for public comment on the Texas disposal of Hudson River Superfund PCBs prior to rail shipment. Another NEPA issue is whether EPA has sought scientific input from other federal agencies like US Fish and Wildlife Service and US Geological Survey on the Texas waste site and rail transport plan.

NEPA is "our basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a). NEPA emphasizes the importance of comprehensive environmental analysis to ensure that federal agencies carefully examine the environmental consequences of their actions before they take such actions. The statute also ensures that the public is made aware of the environmental effects of agencies' decisions, and is allowed to participate in the process of preparing environmental reviews. One of NEPA's twin goals is to preserve and maintain "an environment which supports diversity and variety of individual choice."

42 U.S.C. § 4331(a)(4).

To help ensure that federal agencies like EPA make informed decisions, NEPA requires that they prepare a detailed environmental impact statement ("EIS") before undertaking "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

An agency may prepare an environmental assessment ("EA") to decide whether the environmental impact of a proposed action warrants the preparation of an EIS. 40 C.F.R. § 1508.9. An EA must provide sufficient evidence and analysis to determine whether an EIS or a finding of no significant impact ("FONSI") should be prepared. If an agency decides not to prepare an EIS, it must provide a convincing statement why a project's impacts are insignificant. If substantial questions are raised about whether a project may have a significant effect on the environment, an EIS must be prepared. An impact that is both beneficial and adverse may create a significant effect "even if the Federal agency believes that on balance the effect will be beneficial." 40 CFR § 1508.27(b)(1).

An agency must evaluate the "[u]nique characteristics of the geographic area such as proximity to . . ." various land. 40 CFR § 1508.27(b)(3). If, among other factors, the proposed action's effects are likely to be highly controversial, or are highly uncertain or involve unique or unknown risks, or may be cumulatively significant, the NEPA regulations indicate that the action's effects should be considered significant and an EIS should be prepared. 40 CFR § 1508.27(b)(4), (5),(7).

***Enormous Volume of General Electric Hudson River PCB Superfund Site Waste for Disposal***

The enormous volume (thousands of tons) of PCB dredged waste from the General Electric Hudson River PCB Superfund Site in New York will be shipped by rail cars over a 2,000 mile route through twelve states (potentially Pennsylvania, Ohio, Indiana, Illinois, Missouri, Kansas, Kentucky, Arkansas, Oklahoma, West Virginia, Tennessee, and Texas depending on the route) to a facility near Andrews, Texas in Far West Texas a few miles from the Texas-New Mexico border. Affected citizens, elected officials, state regulators, and state and local emergency response personnel in the twelve states potentially affected have not been afforded an opportunity to review and comment on the proposal to ship and dispose of the PCBs from the Hudson River PCB Superfund Site. The Sierra Club's Lone Star Chapter urges complete transparency of the Hudson River PCB waste transport and disposal project.

The EPA's Record of Decision (ROD) & Responsiveness Summary on the Hudson River PCBs Superfund Site estimates the total dredged volume at 2.65 million cubic yards of PCB-contaminated sediment from a 40 mile stretch of the Upper Hudson river, an enormous volume which is summarized at: http://www.epa.gov/hudson/rod.htm#record

In the ROD, EPA emphasizes that it "...selected a plan that addresses the risks to people and the environment associated with PCBs in the sediments of the Upper Hudson River.

The actions in the Upper Hudson will lower the risks to people, fish, and wildlife in the Lower Hudson." But EPA makes no mention of transport and disposal hazards to several million citizens living in harms way far beyond the New York PCB Superfund site. All hazards beyond New York State need to be comprehensively addressed in an EIS and public participation allowed for those in other states.

The proposed rail transport of such large volumes of PCBs along the 2,000 mile route presents serious public health and environmental hazards in the event of a catastrophic train accident along the train route. Every year major train accidents and derailments occur, involving dangerous releases and toxic spills of hazardous materials that have injured and killed citizens living and working near the accident sites. Cleanup of a rail accident involving PCBs could be lengthy, difficult and costly, and more so if people were exposed. The public has a clear right-to-know about the hazards of shipping thousands of tons of Hudson River PCB waste through their communities along the roughly 2,000 mile train route.

***EPA's Fully Approved Alternative Treatment Technologies for PCB Waste Streams***

The EPA needs to carefully consider technologically feasible alternative disposal options that are currently fully approved by EPA. These approved alternative technologies are readily available in the US. Alternative treatment technologies, such as chemical dechlorination, have an obvious potential to be safer in the short-term and long-term than disposal of PCBs. Moreover, rail transport of PCB waste streams poses its own set of hazards, and disposal in a facility in West Texas poses more hazards where we can not risk potential contamination of groundwater formations. EPA needs to review its policies for PCB disposal to push for more alternative treatment methods. Indeed, EPA has approved several alternative PCB treatment technologies since the first approval in 1994 as shown at: http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/stordisp.htm.

***The Health and Environmental Impacts of PCB Exposures***

Scientists and governments worldwide have been documenting the ecological impacts and human health effects of PCB exposures since the 1960s. As you know, PCBs are one of the most catastrophic synthetic chemicals ever unintentionally released into the biosphere and remain in ecosystems and people worldwide. Despite the fact that the manufacturing of new PCBs was banned thirty years ago by Congress, PCB contamination remains a serious public health and environmental problem in large areas of the US.

PCBs are a dangerous class of synthetic industrial chemicals that bioaccumulate in the body causing adverse health effects at relatively low levels of exposure. PCBs are linked to an extraordinary number of diseases including various cancers, immune suppression, reproductive damage, diabetes, autism, birth defects, and fetal death. Since discoveries by scientists in the 1990s about the adverse hormonal biological implications of toxic substances like PCBs at ultra-low concentrations in mammalian tissues, EPA has classified PCB as PBT's — highly Persistent, Bioaccumulative and Toxic substances.

In 1996, EPA established the science advisory panel known as the Endocrine Disruptor Screening and Testing Advisory Committee to help it address concerns about untested chemicals interfering with hormonal regulation in mammalian endocrine systems. To date, EPA has failed to do the screening of more than 85,000 synthetic chemicals. The concern is that PCBs can interfere with specific hormone receptor sites and block or disrupt the ability of hormones to do their critical regulatory job. PCBs are known to be endocrine disruptors, and we are still learning how dangerous ultra-low concentrations of PCBs are to biological systems, particularly *in utero* exposures to the unborn human fetus. Mothers can expose newborns to PCBs through their breast milk feeding if mothers consume PCB contaminated fish.

PCB exposures at low doses produce transgenerational health effects from mother to fetus (and beyond to the grandchildren and great grandchildren) with the greatest vulnerability *in utero* in the human fetus and its ultrasensitive developmental process over nine months where low concentrations are known to impair fetal growth of vulnerable glandular systems and organs.

Prenatal exposures to very low amounts of PCBs can result in lower IQs, according to a study of 212 Michigan fifth graders who have been studied since birth by scientists at Wayne State University in Detroit. Mothers of the children had consumed contaminated fish from Lake Michigan. See peer-reviewed study by Dr. Joseph L. Jacobson and Dr. Sandra W. Jacobson at Wayne State University in Detroit, "Intellectual Impairment in Children Exposed to Polychlorinated Biphenyls in Utero," *New England Journal of Medicine* Vol. 335 No. 11, Sep. 12, 1996, 783-789.

Wayne State University researchers concluded that the fetal brain damage caused by environmental exposure to PCB's was comparable to the damage found in children exposed to low levels of lead. In other words, they found that "the developing fetal brain is particularly sensitive to these compounds." These studies reveal we must apply the Precautionary Principle with PCBs and avoid transporting PCBs and find safer disposal technologies than RCRA dump sites where eventually the toxic PCB wastes will have to be addressed and neutralized since no RCRA waste disposal drum will last more than a few decades at most. A single geologic event or severe storm event could easily threaten the West Texas RCRA facility and lead to a catastrophic incident that could be difficult to address.

The U.S. Body Burden surveys conducted by the Centers for Disease Control (CDC) in Atlanta since 1995 have been analyzing human tissues such as blood in approximately 1,000 Americans per survey and finding synthetic chemicals including PCBs in detectable concentrations. A total of 75 PCB congeners (209 possible) were detected by CDC and surveys by the Environmental Working Group include di-chlorinated biphenyls (1 PCB), tri-chlorinated biphenyls (3 PCBs), tetra-chlorinated biphenyls (15 PCBs), penta-chlorinated biphenyls (17 PCBs), hexa-chlorinated biphenyls (14 PCBs), hepta-chlorinated biphenyls (14 PCBs), octa-chlorinated biphenyls (7 PCBs), nona-chlorinated biphenyls (3 PCBs), and deca-chlorinated biphenyls (1 PCB).

In ecological terms, PCBs are believed to be a major underlying cause of massive species extinctions. The latest scientific discoveries show that the biological impacts of PCBs on the environment and human health (such as the altering of sex ratios in Inuit Indians) has been vastly underestimated. The EPA needs to address the scientific issue that the biological effects of low levels of PCBs have been vastly underestimated by regulators, since additional environmental releases of PCBs needs to be prevented by your agency and by state regulatory agencies. PCBs accumulate in the environment and move toward the top of the food chain, contaminating fish, birds, and mammals, including humans. PCBs are the only chemical that Congress singled out for phase-out under the Toxic Substances Control Act (TSCA) of 1976.

***Concerns about the Waste Control Specialists Dump Site in West Texas***

The EPA has already approved the final plans this spring for General Electric and its Hudson River PCB Superfund Site contractors to start shipping thousands of tons of PCBs dredged from the Hudson River in New York — the US's largest Superfund Site — to Andrews County in West Texas. The PCBs will be "indefinitely" stored at the Waste Control Specialists commercial hazardous waste dump site — a facility owned by Dallas businessman Harold Simmons. The proposed shipment, by rail, is thought to be so dangerous that General Electric will not announce the route the train shipment will take due to concerns about terrorism and serious accidents.

There is also the potential danger to groundwater formations in West Texas from what would be thousands of drums of Hudson River PCB dredged waste shipped to the Waste Control Specialists' commercial dump in Andrews County. The Sierra Club's Lone Star Chapter, in its comments on a draft state license to Waste Control Specialists for disposal of radioactive waste at its waste facility in Andrews, County, detailed concerns and uncertainties about the potential for groundwater contamination from that disposal operation that are relevant to the intended disposal of PCBs at the site. We will be happy to provide a copy of those comments to you upon request.

In addition, the Waste Control Specialists' commercial waste dump has a known geologic fault line running directly beneath it, which was not properly evaluated during the recent radioactive waste license technical review by the Texas Commission on Environmental Quality prior to final approval.

The Sierra Club's Lone Star Chapter in Texas raised these and other significant technical issues in our comments on that radioactive waste license for WCS. Many of the same areas of concern were inadequately addressed in the WCS hazardous waste permit for its adjacent RCRA landfill.

The Sierra Club's Lone Star Chapter urges the EPA to apply the Precautionary Principle with PCBs and take a second look at the proposed rail transport plan along the 2,000 mile train route and proposed temporary disposal of Hudson River PCBs in West Texas over groundwater resources and vulnerable geologic fault zones. The Sierra Club's Lone Star

Chapter also respectfully requests that EPA seek technical input from other federal agencies including the U.S. Fish and Wildlife Service and the U.S. Geological Survey.

In conclusion the Sierra Club's Lone Star Chapter looks forward to hearing your decision, and we are hopeful that EPA will prepare an EIS under NEPA that will provide full transparency and public participation in the cleanup, rail transport, and disposal process for the Hudson River PCB wastes. Please have your office contact us if you need additional information before reaching a decision on this matter.

Sincerely yours,

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cc: EPA Region 6 Acting Administrator Larry Starfield