

Congress of the United States
Washington, DC 20515

December 19, 2018

Andrew Wheeler, Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, DC 20460

Dear Acting Administrator Wheeler:

As your office completes its analysis of the current phase of the Hudson River PCB dredging project, we urge you to find that the project is not protective of human health and the environment, and that a Certificate of Completion for the General Electric Company's work at the site is not warranted at this time. Furthermore, we ask that the EPA work closely with New York State and other stakeholders to achieve the goals of the project's remedial program.

Communities have endured the long-term effects of contamination for generations and as a result experienced the loss of many water-dependent economic and community activities. It had been expected that completing dredging operations would allow communities along the river to jump-start long delayed economic development opportunities as well as eventually resume unfettered commercial shipping and the Hudson's once-profitable fishing industry.

Recent data from sediment and fish samples taken by the New York State Department of Environmental Conservation (DEC) clearly demonstrate that PCB levels in Hudson River fish are above the benchmarks your own agency established for the cleanup. Furthermore, the DEC data builds a convincing argument that contaminated sediments in the upper Hudson are re-contaminating areas of the river that were previously dredged. The loss of economic potential for commercial revitalization has hurt local governments for nearly 50 years, and the Hudson River remaining a Superfund Site will mean these industries will not recover for many more decades.

Continuing to live with this legacy of pollution and its impact on achieving waterfront community and economic development is not an acceptable path forward. Leaving such a large amount of polluted sediment behind will delay the river's full recovery by decades, limit future restoration opportunities, restrict deep-draft shipping in the river and Champlain Canal, and prevent communities from making long-term economic redevelopment plans.

We are deeply concerned that your agency may soon issue General Electric a Certificate of Completion for the dredging project. Issuance of a Certificate of Completion could release General Electric from liability for its contamination of the Upper Hudson, and make it unlikely we will ever get a complete cleanup of the river.

We urge you to exercise your discretion to compel General Electric to conduct additional cleanup now, prior to issuing the Certificate. EPA is currently in possession of “previously unknown information,” including DEC’s 2017 sediment sampling data, annual fish sampling data, NOAA’s fish recovery modeling projections and fish consumption surveys that indicate the remedy is “not protective of human health and the environment.” Therefore, pursuant to the Consent Decree between EPA and General Electric, you may compel the company to perform additional cleanup.

There is no benefit to issuing a Certificate of Completion at this time. Issuing the Certificate comes with great risk, since General Electric could escape liability for any future cleanup on the Upper Hudson. On the other hand, if EPA does not issue a Certificate until it can find the cleanup fully protective of human health and the environment, nothing is lost. General Electric is very unlikely to take any action to try to force EPA to issue the certificate. In fact, the company has been awaiting the Certificate of Completion for OU1 of the Hudson River remedy (the Remnant Deposit sites) since construction of that remedy was completed in 1992. General Electric annually requests that EPA issue it a Certificate of Completion for this remedy, but EPA has continued to deny its request for 26 years.

It would be unconscionable for EPA to surrender its ability to order additional cleanup action in the face of mounting information indicating that the goals of the cleanup have not been reached and more cleanup is needed. The communities and businesses in our districts situated along the Hudson River that have endured decades of toxic pollution and suffered from the loss of water-based industries deserve better.

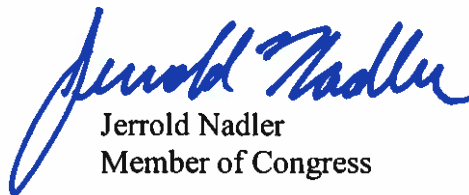
For all of these reasons, it is critical that your agency not issue a Certificate of Completion for the Hudson River Superfund Cleanup, and state unequivocally in its Second Five Year Review that the Superfund cleanup “is not protective of human health and the environment.” Persistent PCB contamination in the Hudson River is a threat to public health and a significant obstacle to the economic development goals that we are working so hard to achieve. This situation must be addressed, and your decision must clearly indicate a path forward for the EPA and DEC to collaborate and address these needs.

We recognize and appreciate that the decision you are preparing to make will leave a lasting impact on hundreds of municipalities and millions of people along its banks. It is of the utmost importance that your decisions recognize the recent data and analysis of New York State, and create a path forward for the communities and citizens that live and work along the river to achieve their goals.

Sincerely,



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Member of Congress



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