



State of New Jersey

Department of Environmental Protection
PO Box 402
Trenton, NJ 08625-0402

Bradley M. Campbell
Commissioner
Tel. # (609) 292-2885
Fax # (609) 292-7695

Richard J. Codey
Acting Governor

October 21, 2005

Kelly Johnson
Assistant Attorney General
Environmental and Natural Resources Division
P. O. Box 7611
U.S. Department of Justice
Washington, DC 20044-7611

Re: U.S. v. Union Corp. et al.,
Civil Action No. 80-1589 (E.D. Pa.)
Comments of New Jersey Department of Environmental Protection on
Proposed Utility Group Consent Decree

Dear Ms. Johnson:

I am writing to express my disagreement and disappointment with the above-referenced Consent Decree. I am deeply concerned about the proposal in the Consent Decree to undermine the removal of PCB contamination from the Metal Bank site located along the Delaware River in northeast Philadelphia.

The United States Environmental Protection Agency issued a record of decision for the Metal Bank site in 1997. The ROD required, *inter alia*, excavation of PCB contaminated sediments in the Delaware River in the immediate vicinity of the site. The proposed Consent Decree provides for the aqueous capping of sediments in certain areas rather than excavation. This approach provides less protection for the Delaware River from PCB contamination than the excavation that the federal government had originally decided to require.

The USEPA has classified PCBs as a probable human carcinogen. PCBs have also been shown to have an adverse impact on human reproductive and immune systems, and may act as an endocrine disrupter. PCBs' chemical stability allows them to persist in the environment for years. PCBs accumulate in the tissue of fish and other wildlife, entering the organism through absorption or ingestion. As a result, PCBs may be present in fish and marine mammals at levels many times higher than in the surrounding water and at levels unsuitable for human consumption.

PCB contamination is a vital issue in the Delaware River estuary. PCB contamination is preventing the estuary from serving as fishable waters in which the fish are safe for human consumption. This is one of the estuary's primary designated uses. Unfortunately, portions of the estuary have been under fish consumption advisories since

the 1980s, due to elevated concentrations of PCBs in fish tissue. Today, the states' advisories cover the entire estuary and bay.

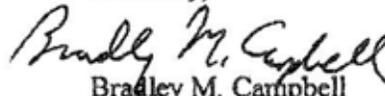
New Jersey has worked closely with the USEPA, the Delaware River Basin Commission (DRBC), Pennsylvania and Delaware to address PCB contamination in the estuary. In response to a court-mandated deadline, in December 2003 USEPA Regions II and III established Total Maximum Daily Loads for PCBs in the Delaware River between Trenton, New Jersey and the Delaware Bay.

Existing loadings in the river are roughly two to three orders of magnitude higher than the TMDLs. Reducing point source discharges alone will not be sufficient to achieve water quality standards for PCBs. In order to achieve the standard, and consequently protect human health, significant reduction must also occur from nonpoint sources such as the Metal Bank site. Allowing the PCB contaminated sediments to remain in the river, even if covered by an aqueous cap, is contrary to the implementation strategy developed by DRBC and endorsed by the USEPA. This change in remedy disregards the TMDL requirements of section 303(d) of the Clean Water Act and compromises the attainment of water quality objectives for PCBs.

If the decree is not modified to provide for full implementation of the PCB TMDL, the remedy will needlessly delay attainment of water quality objectives in the Delaware River. Further, without appropriate monitoring required pursuant to the Clean Water Act, it will be impossible to ensure that discharges from the site do not continue to violate water quality standards.

The DRBC, of which New Jersey is a member, has provided comments on the proposed Consent Decree under separate cover. I concur with the comments provided by counsel for the DRBC and reiterate the concerns raised. I also request that a public hearing be held on the proposed Consent Decree.

Sincerely,



Bradley M. Campbell
Commissioner