



**VILLAGE OF HASTINGS-ON-HUDSON**

Municipal Building  
7 Maple Avenue  
Hastings-on-Hudson, New York 10706

July 7, 2021

Via Overnight Mail and Electronic Mail

Hon. Basil Seggos  
Commissioner  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233

Re: Harbor at Hastings Site (former Anaconda Wire & Cable Plant Site)  
Hastings-on-Hudson – NYSDEC Site #3-60-022

Dear Commissioner Seggos:

I write because the Village of Hastings-on-Hudson (the "Village") is frustrated with BP ARCO's ("BP") continuing declination to address concerns the Village has expressed repeatedly over the last several years, as well as BP's rebuff of Department requests that BP and the Village coordinate on the design of the shoreline. In addition, BP has proposed actions that are inconsistent with the Consent Decree entered among BP, the Riverkeeper and the Village, which actions could materially derail the already long-delayed remediation of the PCB and metal sediments in the Hudson River and upland Site.

There are two principal areas of concern arising from BP's recent submission to the Department of the Basis of Design Report ("BODR") for the Old Marina and Kinnally Cove Dredging and Restoration and the BODR for Compensatory Wetland Construction. The first concern revolves around BP's efforts to reduce costs and saddle the Village with future costs that should be BP's responsibility – costs that should be shouldered by the polluter and not Village taxpayers. BP has not undertaken the modeling that would address this concern. The second principal concern relates to BP's apparent unwillingness to undertake modeling to allow a design of the compensatory wetland and the remainder of the site's shoreline that constitutes a meaningful "living shoreline" rather than an extensively armored area with a straight-line slope lacking topographical or other varying features (as described by Mott MacDonald in the "Hastings-on-Hudson Report" dated March 11, 2021 (attached)).

Many of these issues were most recently raised in my May 26, 2021 letter to the Department (attached).

#### A. The BODR for the Old Marina and Kinnally Cove Dredging and Restoration

The BODR for the Old Marina and Kinnally Cove relates to the dredging of this area – owned and used by the Village and its residents – to eliminate Anaconda-generated PCB-laden sediments. This area is now stable, so that the River bottom elevation has not been affected by deposition of upstream sediments. BP proposes to dredge the area to a pre-specified depth, but not place clean fill to the current River bottom. This approach would obviously reduce the volume of clean backfill that would be needed – and thus BP costs. More importantly, the sediments that would silt in the BP-left depression and bring the dredged area up to the current River-bottom elevation would be laden with GE-generated PCBs.

Indeed, as the Village has previously pointed out to the Department, the design of the Northwest Extension Area (“NEA”) that is necessary to impound the very elevated levels of PCB-contaminated dense non-aqueous phase liquid (“DNAPL”) along the northwest shoreline of the Site could increase the amount of sediments that would enter the Cove. The Village has asked BP to conduct refined hydrodynamic modeling (inclusion of waves and higher resolution grid spacing) to determine whether this would occur; BP has refused to undertake and the Department has declined, to date, to require such modeling.

Thus, not only would the BP proposal add PCB-contaminated sediment to the Cove, but it might accelerate such deposition of PCB-laden sediments. And because the Village owns the land under water, BP’s remediation proposal would require the Village to either pay for additional dredging and disposal of PCB-contaminated sediments or allow the Cove to silt up and become unusable to Village residents. Neither option is tenable.

BP should be required to place backfill to the current River bottom and to undertake the hydrodynamic modeling to determine whether the NEA design would increase deposition rate of PCB-contaminated sediments; if it would, BP should be required to assume responsibility for the cost of dredging and disposal of the additional sediments for an appropriate time frame.

There are additional Village concerns. BP proposes to place about 23,000 cubic yards of sediments containing PCBs in excess of 1 ppm and less than 10 ppm, fixed with Portland cement or its equivalent, as a sublayer on the upland (Operable Unit 1) Site after the excavation of PCBs and/or metals is completed. However, the Consent Decree prohibits the placement of fill that exceeds the Department’s Restricted Residential Soil Cleanup Objective (“RRSCO”); the RRSCO is 1 ppm. The exception to this prohibition is the Department issuance of a Beneficial Use Determination (“BUD”). The Consent Decree requires BP to notify the Village when it seeks a BUD; BP requested the BUD in March of 2020 but never notified the Village. BP has never explained this failure to abide by the Consent Decree.

Further, BP proposes to use a portion of a Village public park to anchor the turbidity curtain, but has provided no detail as to the extent of land needed and the impact on public use. The Village is entitled to that information now – not at the proverbial 11<sup>th</sup> hour before the work is to start and the Village is unfairly blamed for delay.

#### B. The BODR for Compensatory Wetland Construction

The Village has, for years, requested BP to design a shoreline that comprises a meaningful “living shoreline” in addition to the compensatory wetland. The primary issue has been the extent of armoring

needed to protect both the newly-created wetland and the remainder of the site – addressing the location, orientation, and the size, shape and height of the armoring. The second issue has been the inclusion of varying topographic and habitat features to provide ecological benefits, adjust to Sea Level Rise, and to increase public access to the River.

BP had committed to the Village that it would, after repeated Village requests over several years, finally undertake the modeling needed to determine the armoring needed to protect the living shoreline and allow topographic and other features in the area. Despite this commitment, BP submitted the BODR with precisely the same static design of the compensatory wetland as in its prior submission; large-scale armoring and a simple, unaltered slope rather than undulating terrain and other ecologically-beneficial topographic features. Similarly, the proposed design of the remainder of the living shoreline is simply straight-line riprap.

The Department should direct BP to promptly undertake this long-delayed modeling, so that the design can be finalized without further delay.

As I am sure you appreciate, the Village has no desire to delay a remediation of the Site that was first proposed in the Department's 2012 Record of Decision but has yet to begin. The Village also has no desire to delay the remediation of the River. However, BP has not addressed Village concerns, and the Village cannot sit by idly while its interests and those of its residents are disregarded.

We appreciate the Department's consideration and would be pleased to meet with the Department to further articulate the Village's position.

Sincerely,



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The Honorable Nicola Armacost  
Mayor, Hastings-on-Hudson

Cc: Martin Brand, Deputy Commissioner  
Thomas Berkman, Deputy Commissioner and General Counsel  
Andrew Guglielmi, Office of General Counsel  
Jess LaClair, Project Manager  
Susan Edwards, Director Remedial Bureau D  
Richard Webster, Riverkeeper  
Mary Beth Murphy, Village Manager  
Morgen Fleisig, Trustee  
Mark A. Chertok, Sive, Paget & Riesel  
Paul Johnson, BP ARCO  
Michael Daneker, Arnold & Porter Kaye Scholer