

**Statement of Janet MacGillivray
Senior Attorney, Riverkeeper, Inc.**

For more than two years, I have worked towards a cleanup of the PCB contaminated Hudson River. I am a former Superfund Attorney with Region II of USEPA. Currently I am Senior Attorney for Riverkeeper, a nonprofit environmental advocacy organization whose mission is to safeguard the ecological integrity of the Hudson River, its tributaries, and the watershed of New York City as well as the health and welfare of river communities.

In January 2003, I was called to testify at a hearing in the Northern District of Alabama about an unusual "Partial Consent Decree" cleanup agreement that USEPA had brokered with Monsanto. Despite twenty years of knowledge of the Anniston PCB site, EPA announced the agreement just days after a state court jury verdict establishing liability against Monsanto for its decades of pollution.

I was concerned about this deal for two reasons. First I believed it failed to adequately protect the community of Anniston. If any site deserves the full protections and cleanup arsenal of the federal Superfund program, it is Anniston. Second, it reflected in a tangible form the Bush Administration's new policy on Superfund.

Basically, the Administration has moved to undercut the Superfund Program. One way has been its creation of an alternative track with "NPL-Caliber site" designation. On April 8, 2002, I was at a meeting with EPA and other nonprofit organizations to express concern over the direction of the Superfund Program. In addition to our discussion regarding the slow down in environmental cleanups and the failure of the Bush Administration to seek funding for this essential program, I asked Marianne Horinko, Assistant Administrator of the Office of Solid Waste and Emergency Response at EPA Headquarters why the Anniston site was not listed on the National Priorities List (NPL). She told me it wasn't listed because the Potentially-Responsible Party (PRP), Monsanto, didn't want the site listed. This remark from the leading governmental Superfund official deeply troubled me.

The federal court hearing on the Anniston consent decree was scheduled for January 21, 2003, the day after the Martin Luther King, Jr. holiday. On Friday, January 17, 2003, William A. Weinischke, United States Department of Justice Senior Counsel, and lead attorney for the Environmental Protection Agency in the matter, called me at my home office number. I was stunned that he would call me when he knew that I was a witness for the intervenors in the case. He left several messages. I did not return his calls because I thought his behavior was inappropriate. He called me several times and eventually reached me late that day. He asked me not to testify at the hearing. He said that I would be doing a disservice to the community if I testified against entry of this consent decree because without it they would not have a cleanup, or any cleanup that might follow would be much delayed. He also told me that he could not imagine why someone from my organization would want to testify at this hearing. He sent me the DOJ response to my comments specifically criticizing the Consent Decree and explained why in his opinion my concerns had been adequately addressed. He told me that he could not imagine that my employer, Riverkeeper, would approve of my decision

to testify. I was stunned by his call and his comments. He also suggested I contact someone at the Waterkeeper Alliance, the national organization of which Riverkeeper is a member, who he had worked with in the past and who could vouch for his intent to do the right thing and offered me her number. I did not call. Shortly thereafter he called me back to inform me that he had spoken with this individual, provided me a home telephone number and told me to call immediately because said individual was available to speak with me. He also said that after I have had the opportunity to review DOJ's response to my comments, he was confident that I would change my mind and he said he would call on Monday to see if I was still planning on testifying. I was in Anniston when he called me at my home office that Monday. Both as a fellow attorney and as a person trying to help a community fight for what it deserved, I was most unsettled by the unethical and inappropriate steps Mr. Weinischke would take to ask me not to testify at this hearing.

I was so concerned I called my employer and members of the Anniston community regarding my testifying against entry of this consent decree. They encouraged me to testify.

After the hearing I was very troubled to learn that there were inquiries and conference calls from EPA Headquarters to my former employers at EPA Region II about me. From what I can gather there was discussion of my record and experience. Apparently my testimony had not been popular. To be the subject of such calls between Headquarters and my former bosses certainly underscored the significance of my testimony and the Anniston Consent Decree itself. It also left me feeling unsettled and intimidated and feeling that there had been an attempt to discredit me.

As I told the judge at the hearing, Mr. Weinischke "called to discuss my coming to testify here today. . . [Weinischke] told me that I was doing a disservice to the community if I were to come and oppose the entry of this consent decree." When Judge Clemmons asked me if "[Weinischke] was really vouching for himself, rather than giving a veiled threat to you? . . . Well, how did you perceive it?" I responded, "I was rather stunned by the call, and it was actually one of several." The Judge inquired further: "did you feel that you were implicitly asked not to come to testify – or explicitly? I responded: "Well, I – we --- he wanted to tell me why my comments – I had filed comments in response to the March consent decree --- and wanted to demonstrate to me why the comments that I had written with Heather White of the Environmental Working Group had been addressed in their response." After my direct examination, Mr. Weinischke cross-examined me . I didn't respond in a "yes" or "no" manner to the Judge at the time because I was scared, confused, and stunned. The court transcript of my testimony is attached to this statement.

I have had six months to digest this experience. The consent decree still has not been entered. Now that Administrator Whitman is stepping down and the questions of Monsanto's influence are still unanswered, I think the public has a right to know what happened. I do not know why Mr. Weinischke would risk his professional reputation and possibly his career by making an ex parte contact with a witness in this case in order to dissuade a witness from testifying. His conduct was, in my opinion, unethical, unprofessional, and, possibly illegal. And, if what my former colleagues have told is

true, I question whether Mr. Weinischke's behavior is part of a larger effort to do whatever it takes to push this controversial cleanup agreement through.

The fact that Administrator Whitman gave Mr. Weinischke and the entire Anniston team the "Gold Medal" Award in the Spring of 2003 for outstanding service for the Anniston PCB Consent Decree seems to underscore this fact. The Hudson River Team from Region II has demonstrated successes to support receipt of this award. The Anniston team does not yet have a consent decree, and this honor to them appears more a veiled message of continuing support rather than a deserved accolade.

Superfund is an important statute. The Bush Administration has consistently undercut the enforcement provisions of this statute by refusing to list sites on the NPL, but merely calling them "NPL-Caliber" sites. This seemingly harmless designation has resulted in longer, less protective cleanups that benefit the polluters, not polluted communities. American families already have a cleanup program that works. Its critics are primarily those who don't want to pay the true cost of doing business and those politicians who speak on polluter's behalf. The term "Superfund" conjures up an image of a big pot of money, but the reality is the nation's toxic cleanup program is slated to go bankrupt in 2004. The Bush Administration continues to refuse to fund the Superfund cleanup program, thereby making a conscious decision to safeguard the interests of industry's bottom line over the interests of innocent American families who cannot possibly pay the cost of cleaning up someone else's toxic mess.

I've fought GE and battled the need for a clean up of the Hudson River. The people of Anniston have fought long and hard against Monsanto. The people of Anniston and people who live in contaminated communities throughout the United States have a right to know how polluters have captured this Administration.

They also have the right to know the shocking lengths the Administration, including Administrator Whitman, have gone to protect polluters at the expense of the people.

#####