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# New York Supreme Court

## Appellate Division—Second Department

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In the Matter of the Application of  
SIERRA CLUB and HUDSON RIVER FISHERMEN'S ASSOCIATION,  
NEW JERSEY CHAPTER INC.,

**Docket No.:**  
**2020-02580**

*Petitioners-Appellants,*

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

— against —

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION, BASIL SEGGOS, Commissioner  
and HELIX RAVENSWOOD LLC,

*Respondents-Respondents.*

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### APPENDIX

#### Volume 2 of 2 (Pages A-601 to A-1139)

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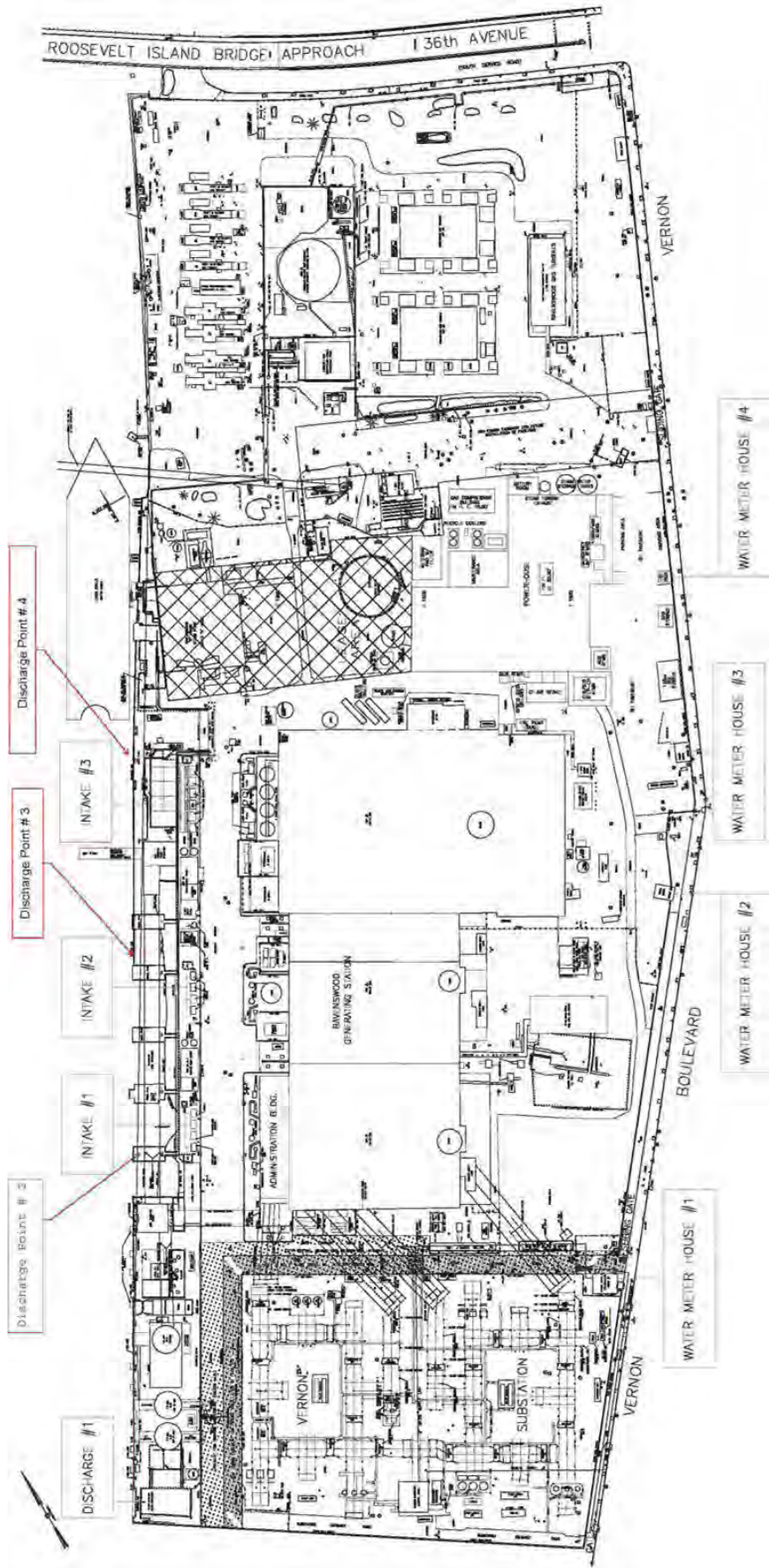
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MAP OF RAVENSWOOD



|  |  |  |
|--|--|--|
| <p>Imported</p> <p>Water Meter House # 1-NYC DEP Water Supply</p> <p>Water Meter House # 2-NYC DEP Water Supply</p> <p>Water Meter House # 3-NYC DEP Water Supply</p> <p>Water Meter House #4-NYC DEP Water Supply</p> | <p>Discharge/Return Points</p> <p>Discharge Point #1-SPDES Outfall 001</p> <p>Discharge Point #2-SPDES Outfall 008</p> <p>Discharge Point #3-SPDES Outfall 009</p> <p>Discharge Point #4-SPDES Outfall 010</p> | <p>Withdrawal from East River</p> <p>Intake # 1- Unit 10 Circulating Water Pumps Intake</p> <p>Intake # 2- Unit 20 Circulating Water Pumps Intake</p> <p>Intake # 3-Unit 30 Circulating Water Pumps Intake</p> |
|--|--|--|



# RAVENSWOOD ANNUAL WATER WITHDRAWAL REPORTING FORM FOR REPORTING YEAR 2015, DATED MARCH 29, 2016 [A-602 - A-609]

Dec. '15

**New York State Department of Environmental Conservation**  
Division of Water, Bureau of Water Resources Management  
625 Broadway, Albany, NY 12233-3508

## Water Withdrawal Reporting Form

Due by March 31<sup>st</sup> each year

Prior to filling out this form, please read the instructions on the last page  
*This form not for Agricultural Facilities*

### Section 1 of 6 - Basic Information

|  |  |                             |                        |
|--|--|-----------------------------|------------------------|
| Facility Name<br>Ravenswood Generating Station | Facility Street Address<br>38-54 Vernon Blvd |                             | Reporting Year<br>2015 |
| City<br>Long Island City                       | Zip<br>11101                                 | Town<br>Queens (T)          | County<br>Queens       |
| Contact Name<br>Tanja Grzeskowitz              | Email<br>tanja_grzeskowitz@transcanada.ca    | Telephone<br>(718) 706-2863 |                        |

| Source Name | Source Type | P | Well Depth | Max Rate | Units |
|-------------|-------------|---|------------|----------|-------|
| NYC DEP     |             |   |            |          |       |
| East River  | S           |   |            | 1,527.84 | MGD   |
|             |             |   |            |          |       |
|             |             |   |            |          |       |
|             |             |   |            |          |       |
|             |             |   |            |          |       |
|             |             |   |            |          |       |
|             |             |   |            |          |       |
|             |             |   |            |          |       |
|             |             |   |            |          |       |

|                        |       |                        |       |   |       |
|------------------------|-------|------------------------|-------|---|-------|
| 597                    | MGD   | 1,523.5                | MGD   | 1,527.84  | MGD   |
| Average Day Withdrawal | Units | Maximum Day Withdrawal | Units | Maximum System Capacity or<br>NYSDEC Permitted Withdrawal | Units |

|                                   |                                   |                   |
|-----------------------------------|-----------------------------------|-------------------|
| Submitted by<br>Tanja Grzeskowitz | Title<br>Environmental Specialist | Date<br>3/29/2016 |
|-----------------------------------|-----------------------------------|-------------------|

**Water Withdrawal Category**  
(Check One)  
Agricultural - Must use form at <http://www.dec.ny.gov/lands/86904.html>

☐ Bottled / Bulk Water  
☐ Commercial  
☐ Environmental  
☐ Industrial  
☐ Institutional  
☐ Mine Dewatering  
☐ Oil / Gas Production  
☒ Power Production:  
☒ Fossil Fuel  
☐ Nuclear  
☐ Other Pwr  
☐ Public Water Supply  
 Recreational:  
☐ Golf Course  
☐ Snow Making  
☐ Other Rec  
☐ Other Category

## Water Withdrawal Reporting Form

### Section 2 of 6 - Water Use

Calculation Method

M

If multiple methods are used, choose the one that measures the greatest percentage of water in your system.

E = Estimated    M = Metered readings    W = Flow through a weir

P = Flow through a pipe or pump run times    C = Pump curve calculation

| Units: Must be in gallons per month | January       | February      | March         | April         | May            | June           |
|-------------------------------------|---------------|---------------|---------------|---------------|----------------|----------------|
| Withdrawn                           | 3,662,798,854 | 4,996,424,372 | 9,275,711,117 | 8,718,002,379 | 16,939,337,180 | 23,396,462,197 |
| Transferred / Imported / Purchased  | 9,057,490     | 10,139,941    | 10,638,568    | 8,603,755     | 13,596,937     | 17,902,005     |
| Consumed                            | 7,176,393     | 7,176,393     | 7,598,336     | 6,544,375     | 11,332,007     | 14,069,265     |
| Returned                            | 3,665,335,956 | 4,999,387,920 | 9,278,751,349 | 8,720,061,759 | 16,941,602,110 | 23,400,294,937 |
| Diversions In / Out, if any         |               |               |               |               |                |                |

For Transferred water or Diversions Out, use a negative (-) sign

| Units: Must be in gallons per month | July           | August         | September      | October        | November       | December      |
|-------------------------------------|----------------|----------------|----------------|----------------|----------------|---------------|
| Withdrawn                           | 25,859,680,014 | 34,572,774,974 | 30,853,688,687 | 30,078,416,789 | 21,220,441,986 | 8,420,291,670 |
| Transferred / Imported / Purchased  | 15,425,376     | 21,135,318     | 19,833,225     | 19,177,124     | 21,534,524     | 11,153,910    |
| Consumed                            | 11,840,116     | 16,344,539     | 16,861,575     | 16,191,072     | 17,575,874     | 9,214,790     |
| Returned                            | 25,863,265,265 | 34,577,565,753 | 30,856,660,337 | 30,081,402,841 | 21,224,400,636 | 8,422,230,790 |
| Diversions In / Out, if any         |                |                |                |                |                |               |

Describe location of returned water conditions, The circulating water pumps are operated at reduced speeds during periods of reduced load, cool weather



## Water Withdrawal Reporting Form

### Section 3 of 6 - General Map and Interbasin Diversions

#### General Map Required

Please submit a map showing the location of all withdrawals and any points of return flow. Precise locations will remain confidential.

**A map is not necessary if one was submitted in a previous year and no changes have occurred.**

A paper copy of a USGS map or other high quality map or an electronically generated map can be faxed, mailed, or emailed. Please ensure that the map scale is sufficient to be able to see specific locations. Designate all water withdrawal locations on the map. Add markers to locate any related dams, weirs, or diversion structures. Label the name of each point.

Submit your map to DEC in one of the following ways:

- Print and mail or fax to 518 402-8290. Include cover letter identifying facility owner.
- Print, scan and email to [awqrsdec@dec.ny.gov](mailto:awqrsdec@dec.ny.gov)
- Copy electronically and email to [awqrsdec@dec.ny.gov](mailto:awqrsdec@dec.ny.gov)

#### Interbasin Diversions

Fill out this section only if water is being transferred between major drainage basins. To determine basin ID, go to the [DEC Major Drainage Basins map \(http://www.dec.ny.gov/lands/56800.htm\)](http://www.dec.ny.gov/lands/56800.htm). Then enter the basin ID by using the drop down menus under Originating and Receiving Major Drainage Basin headings below. Describe the locations of originating and receiving sites in the site description boxes (e.g. Town water intake on Route 12 at northern end of Pleasant Lake to Stony Reservoir near Bear Road).

Originating Major Drainage Basin

Basin Name

Basin Name

Receiving Major Drainage Basin

Originating Site Description

Receiving Site Description



**Water Withdrawal Reporting Form**  
**Section 4 of 6 - Water Conservation and Efficiencies**

Instructions: Check one of the boxes below for EITHER Section A or Section B, as appropriate for your facility type.  
A list of questions pertinent to that facility type will appear. Please answer all questions.

☐ Section 4A: Public Water Supply Facilities

☒ Section 4B: Non-Public Water Supply Facilities

If the incorrect box is selected, just scroll back up a page and change selection

NOTE: All permitted water withdrawal systems must have a [Water Conservation Program](#).

**Water Withdrawal Reporting Form**  
**Section 4B: Non-Public Water Supply Facilities**

(see permitting schedule based on NYCRR Part 601.7)

Please answer all the questions in this section

1. Are all sources of supply including major interconnections equipped with master meters? ☐ Yes ☒ No
2. How many times were master meters read in the past year?
3. How many times were master meters calibrated in the past year?
4. Are there secondary meters located within the facility or system? ☒ Yes ☐ No

5. Identify other water conservation and efficiency measures currently used in your system (e.g. Best Management Practices such as recycling process and cooling waters, use of drip irrigation and moisture probes, utilizing storm water runoff and reclaimed wastewater or conducting facility water audits):

The station circulating water pumps have variable speed drives and vacuum priming systems to allow for variable speed operation. The circulating water pumps are operated at reduced speeds during periods of reduced load, cool weather conditions,

## Water Withdrawal Reporting Form

### Section 5 of 6 - Outside Sales to Other Water Systems or Facilities

#### Instructions:

Permittees must record any sales to outside water systems or facilities. If this applies to your facility, please check the box titled, "Section 5 - Outside Sales" and fill in the information requested.

If your facility does not sell water to systems or facilities other than your own, skip the section by clicking the box for "No Outside Sales".

☐ Section 5 - Outside Sales

☐ No Outside Sales

If the incorrect box is selected, just scroll back up a page and change selection

## Water Withdrawal Reporting Form

### Section 6 of 6 - Forward Form To NYSDEC

Unless required fields have not been filled in, the form can now be sent to NYSDEC. To send the form electronically, simply click the green box titled, "Click here to submit by email after filling out all sections of this form". Alternatively, the form can be printed and then mailed or faxed to NYSDEC at the address found on the first page.

When the form is sent by clicking the "submit by email" button, an automatic confirmation is returned. If this does not arrive within 10 minutes, please contact [awqrsdec@dec.ny.gov](mailto:awqrsdec@dec.ny.gov)

Click here to submit by email  
after filling out all sections  
of this form

Print Form

Print Blank Form For  
Handwritten Submission

Clear Entire  
Form



## Water Withdrawal Reporting Form

### Instructions & Definitions

|  |   |
|--|---|
| Agricultural Purpose                         | The practice of farming for crops, plants, vines and trees, and the keeping, grazing or feeding of livestock, for sale of livestock or livestock products. Agricultural facilities must use the form titled "Registration and Water Withdrawal Reporting Form for Agricultural Facilities". |
| Public Water Supply                          | Supply water to the public. Examples include: municipality, hotel, apartment, restaurant, church, campground, etc.  |
| Source Name                                  | Name of well or surface water body (e.g., Well No. 1, Alcove Reservoir, etc.). List all sources including unused or back-up wells.  |
| Source Type                                  | S = Stream or River. L = Pond or Lake. R = Reservoir. BW = Bedrock Well. UW = Unconsolidated Well (e.g., sand and gravel). SP = Spring. P = Purchased.  |
| Well Depth                                   | Total depth in feet below ground surface. Leave blank for surface sources.  |
| Max Rate                                     | Maximum potential withdrawal rate of the water source. Will be equal to or greater than Permitted Rate.   |
| Units (Max Rate)                             | Gallons per minute (gpm), gallons per day (gpd), or million gallons per day (mgd). Use drop down menu.  |
| Average Day Withdrawal                       | Total amount withdrawn during reporting year divided by total days withdrawn.   |
| Maximum Day Withdrawal                       | Largest single day withdrawal rate of the source during the reporting year.   |
| Maximum Sys Capacity or Permitted Withdrawal | If permit information is unknown, contact NYSDEC at <a href="mailto:awqrsdec@dec.ny.gov">awqrsdec@dec.ny.gov</a> or 518-402-8182. Maximum system capacity is the sum of all sources simultaneously pumping at full rate.  |
| Calculation Method                           | If multiple methods are used, choose the one that measures the greatest percentage of water in your system. E = estimated. M = metered readings. W = flow through a weir or flume. P = flow through a pump or pump run time. C = Pump curve calculation.                                    |
| Withdrawn                                    | Amount of water removed from all sources. This includes groundwater and/or surface water.   |
| Transferred/Imported                         | Amount of water brought in from or sent to another facility, includes bulk sales. For transferred water use a negative (-) sign.  |
| Consumed                                     | Amount of water not returned (e.g. water incorporated into a product or lost through evaporation). Public water suppliers must use metered sales to customers. Irrigation is considered "consumed water".   |
| Returned                                     | Amount of water discharged to a water treatment system or discharged back to the environment. Irrigation is not returned water.   |
| Diversions In/Out                            | Amount of water, if any, diverted from/to another major drainage basin. For Diversions Out, use a negative (-) sign.  |
| Location of Returned Water                   | State the general area where returned water is discharged. Example: "Hudson River near Poughkeepsie", "Groundwater near Auburn".  |
| Major Drainage Basins                        | Report only "Major Basin" transfers. Use the internet link available on the form and enter Basin ID into the box indicated (use drop down menu). Describe the location of originating withdrawal and receiving discharge. Be as specific as possible.                                       |
| Water Audit                                  | A water audit is a thorough examination of the accuracy of water records and system control equipment to determine water system efficiency and to identify, quantify, and verify water and revenue losses. Water audits are beneficial in identifying the amount of unaccounted-for water.  |

**New York State Department of Environmental Conservation**  
Division of Water, Bureau of Water Resources Management  
625 Broadway, Albany, NY 12233-3508

# Water Withdrawal Reporting Form

Due by March 31<sup>st</sup> each year

Prior to filling out this form, please read the instructions on the last page  
*This form not for Agricultural Facilities*

## Section 1 of 6 - Basic Information

|   |                     |  |                         |                               |  |
|---|---------------------|--|-------------------------|-------------------------------|--|
| Facility Name<br><b>Ravenswood Generating Station</b> |                     | Facility Street Address<br><b>38-54 Vernon Blvd</b>    |                         | Reporting Year<br><b>2017</b> |  |
| City<br><b>Long Island City</b>                       | Zip<br><b>11101</b> | Town<br><b>New York</b>                                | County<br><b>Queens</b> |                               |  |
| Contact Name<br><b>Tanja Grzeskowitz</b>              |                     | Email<br><b>tanja.grzeskowitz@ethosenergygroup.com</b> |                         |                               |  |
| Telephone<br><b>(718) 7062705</b>                     |                     |  |                         |                               |  |

| Source Name | Source Type | Well Depth | Max Rate | Units | MGD |
|-------------|-------------|------------|----------|-------|-----|
| East River  | S           |            | 1,527.84 | Units | MGD |
| NYC DEP     | P           |            |          | Units |     |
|             |             |            |          | Units |     |
|             |             |            |          | Units |     |
|             |             |            |          | Units |     |
|             |             |            |          | Units |     |
|             |             |            |          | Units |     |
|             |             |            |          | Units |     |
|             |             |            |          | Units |     |
|             |             |            |          | Units |     |

|                        |       |                        |       |  |       |
|------------------------|-------|------------------------|-------|--|-------|
| 371                    | MGD   | 1,358                  | MGD   | 1,527.84   | MGD   |
| Average Day Withdrawal | Units | Maximum Day Withdrawal | Units | Maximum System Capacity or NYSDEC Permitted Withdrawal | Units |

|  |                                    |                        |
|--|------------------------------------|------------------------|
| Submitted by<br><b>Tanja Grzeskowitz</b> | Title<br><b>Compliance Manager</b> | Date<br><b>3/16/18</b> |
|--|------------------------------------|------------------------|



## Water Withdrawal Reporting Form

### Section 2 of 6 - Water Use

Calculation Method

P

If multiple methods are used, choose the one that measures the greatest percentage of water in your system.

E = Estimated    M = Metered readings    W = Flow through a weir

P = Flow through a pipe or pump run times    C = Pump curve calculation

| Units: Must be in gallons per month | January       | February      | March         | April         | May           | June           |
|-------------------------------------|---------------|---------------|---------------|---------------|---------------|----------------|
| Withdrawn                           | 5,286,617,840 | 2,042,485,469 | 7,577,078,997 | 8,065,032,598 | 9,547,782,265 | 10,720,892,315 |
| Transferred / Imported / Purchased  | 10,464,383    | 10,405,640    | 16,574,320    | 6,676,978     | 10,572,475    | 11,826,555     |
| Consumed                            | 8,323,337     | 7,554,064     | 14,881,379    | 4,673,248     | 8,024,213     | 8,819,625      |
| Returned                            | 5,288,758,886 | 2,045,337,045 | 7,578,771,938 | 8,067,036,328 | 9,550,330,527 | 10,723,899,245 |
| Diversions In / Out, if any         |               |               |               |               |               |                |

For Transferred water or Diversions Out, use a negative (-) sign

| Units: Must be in gallons per month | July           | August         | September      | October       | November      | December       |
|-------------------------------------|----------------|----------------|----------------|---------------|---------------|----------------|
| Withdrawn                           | 28,427,252,082 | 27,965,451,090 | 15,067,467,558 | 1,135,037,600 | 8,940,872,621 | 10,500,434,666 |
| Transferred / Imported / Purchased  | 16,609,209     | 16,288,423     | 17,673,243     | 14,258,022    | 9,108,154     | 12,084,888     |
| Consumed                            | 12,629,429     | 14,114,393     | 14,395,503     | 12,492,820    | 7,596,244     | 10,389,343     |
| Returned                            | 28,431,231,862 | 27,967,625,120 | 15,070,745,298 | 1,136,802,802 | 8,942,384,531 | 10,502,130,211 |
| Diversions In / Out, if any         |                |                |                |               |               |                |

Describe location of returned water discharges 1 through 4 respectively on the attached map.

## Water Withdrawal Reporting Form

### Section 3 of 6 - General Map and Interbasin Diversions

#### General Map Required

Please submit a map showing the location of all withdrawals and any points of return flow. Precise locations will remain confidential.

**A map is not necessary if one was submitted in a previous year and no changes have occurred.**

A paper copy of a USGS map or other high quality map or an electronically generated map can be faxed, mailed, or emailed. Please ensure that the map scale is sufficient to be able to see specific locations. Designate all water withdrawal locations on the map. Add markers to locate any related dams, weirs, or diversion structures. Label the name of each point.

Submit your map to DEC in one of the following ways:

- Print and mail or fax to 518 402-8290. Include cover letter identifying facility owner.
- Print, scan and email to [awqrsdec@dec.ny.gov](mailto:awqrsdec@dec.ny.gov)
- Copy electronically and email to [awqrsdec@dec.ny.gov](mailto:awqrsdec@dec.ny.gov)

#### Interbasin Diversions

Fill out this section only if water is being transferred between major drainage basins. To determine basin ID, go to the [DEC Major Drainage Basins map \(http://www.dec.ny.gov/lands/56800.htm\)](http://www.dec.ny.gov/lands/56800.htm). Then enter the basin ID by using the drop down menus under Originating and Receiving Major Drainage Basin headings below. Describe the locations of originating and receiving sites in the site description boxes (e.g. Town water intake on Route 12 at northern end of Pleasant Lake to Stony Reservoir near Bear Road).

Originating Major Drainage Basin

Basin Name

Originating Site Description

Receiving Major Drainage Basin

Basin Name

Receiving Site Description



**Water Withdrawal Reporting Form**  
**Section 4 of 6 - Water Conservation and Efficiencies**

Instructions: Check one of the boxes below for EITHER Section A or Section B, as appropriate for your facility type.  
A list of questions pertinent to that facility type will appear. Please answer all questions.

☐ Section 4A: Public Water Supply Facilities

☒ Section 4B: Non-Public Water Supply Facilities

If the incorrect box is selected, just scroll back up a page and change selection

NOTE: All permitted water withdrawal systems must have a [Water Conservation Program](#).

## Water Withdrawal Reporting Form

### Section 4B: Non-Public Water Supply Facilities

(see permitting schedule based on NYCRR Part 601.7)

Please answer **all** the questions in this section

1. Are all sources of supply including major interconnections equipped with master meters? ☐ Yes ☒ No
2. How many times were master meters read in the past year?
3. How many times were master meters calibrated in the past year?
4. Are there secondary meters located within the facility or system? ☒ Yes ☐ No

5. Identify other water conservation and efficiency measures currently used in your system (e.g. Best Management Practices such as recycling process and cooling waters, use of drip irrigation and moisture probes, utilizing storm water runoff and reclaimed wastewater or conducting facility water audits):

The station circulating water pumps have variable speed drives and vacuum priming systems to allow for variable speed operation. The circulating water pumps are operated at reduced speeds during periods of reduced load, cool weather conditions or when full flow operation is required. The reduced operation of the pumps saves millions of gallons from being withdrawn from the East River daily.

**Water Withdrawal Reporting Form**  
**Section 5 of 6 - Outside Sales to Other Water Systems or Facilities**

A-615

Instructions:

Permittees must record any sales to outside water systems or facilities. If this applies to your facility, please check the box titled, "Section 5 - Outside Sales" and fill in the information requested.

If your facility does not sell water to systems or facilities other than your own, skip the section by clicking the box for "No Outside Sales".

☐ Section 5 - Outside Sales

☒ No Outside Sales

If the incorrect box is selected, just scroll back up a page and change selection

## Water Withdrawal Reporting Form

### Section 6 of 6 - Forward Form To NYSDEC

Unless required fields have not been filled in, the form can now be sent to NYSDEC. To send the form electronically, simply click the green box titled, "Click here to submit by email after filling out all sections of this form". Alternatively, the form can be printed and then mailed or faxed to NYSDEC at the address found on the first page.

When the form is sent by clicking the "submit by email" button, an automatic confirmation is returned. If this does not arrive within 10 minutes, please contact [awqrsdec@dec.ny.gov](mailto:awqrsdec@dec.ny.gov)

Click here to submit by email  
after filling out all sections  
of this form

Print Form

Print Blank Form For  
Handwritten Submission

Clear Entire  
Form

A-616



## Water Withdrawal Reporting Form

### Instructions & Definitions

|  |   |
|--|---|
| Agricultural Purpose                         | The practice of farming for crops, plants, vines and trees, and the keeping, grazing or feeding of livestock, for sale of livestock or livestock products. Agricultural facilities must use the form titled "Registration and Water Withdrawal Reporting Form for Agricultural Facilities". |
| Public Water Supply                          | Supply water to the public. Examples include: municipality, hotel, apartment, restaurant, church, campground, etc.  |
| Source Name                                  | Name of well or surface water body (e.g., Well No. 1, Alcove Reservoir, etc.). List all sources including unused or back-up wells.  |
| Source Type                                  | S = Stream or River. L = Pond or Lake. R = Reservoir. BW = Bedrock Well. UW = Unconsolidated Well (e.g., sand and gravel). SP = Spring. P = Purchased.  |
| Well Depth                                   | Total depth in feet below ground surface. Leave blank for surface sources.  |
| Max Rate                                     | Maximum potential withdrawal rate of the water source. Will be equal to or greater than Permitted Rate.   |
| Units (Max Rate)                             | Gallons per minute (gpm), gallons per day (gpd), or million gallons per day (mgd). Use drop down menu.  |
| Average Day Withdrawal                       | Total amount withdrawn during reporting year divided by total days withdrawn.   |
| Maximum Day Withdrawal                       | Largest single day withdrawal rate of the source during the reporting year.   |
| Maximum Sys Capacity or Permitted Withdrawal | If permit information is unknown, contact NYSDEC at <a href="mailto:awqrsdec@dec.ny.gov">awqrsdec@dec.ny.gov</a> or 518-402-8182. Maximum system capacity is the sum of all sources simultaneously pumping at full rate.  |
| Calculation Method                           | If multiple methods are used, choose the one that measures the greatest percentage of water in your system. E = estimated. M = metered readings. W = flow through a weir or flume. P = flow through a pump or pump run time. C = Pump curve calculation.                                    |
| Withdrawn                                    | Amount of water removed from all sources. This includes groundwater and/or surface water.   |
| Transferred/Imported                         | Amount of water brought in from or sent to another facility, includes bulk sales. For transferred water use a negative (-) sign.  |
| Consumed                                     | Amount of water not returned (e.g. water incorporated into a product or lost through evaporation). Public water suppliers must use metered sales to customers. Irrigation is considered "consumed water".   |
| Returned                                     | Amount of water discharged to a water treatment system or discharged back to the environment. Irrigation is not returned water.   |
| Diversions In/Out                            | Amount of water, if any, diverted from/to another major drainage basin. For Diversions Out, use a negative (-) sign.  |
| Location of Returned Water                   | State the general area where returned water is discharged. Example: "Hudson River near Poughkeepsie", "Groundwater near Auburn".  |
| Major Drainage Basins                        | Report only "Major Basin" transfers. Use the internet link available on the form and enter Basin ID into the box indicated (use drop down menu). Describe the location of originating withdrawal and receiving discharge. Be as specific as possible.                                       |
| Water Audit                                  | A water audit is a thorough examination of the accuracy of water records and system control equipment to determine water system efficiency and to identify, quantify, and verify water and revenue losses. Water audits are beneficial in identifying the amount of unaccounted-for water.  |

## PROJECT JUSTIFICATION WORKSHEET FOR RAVENSWOOD, UNDATED

*Ravenswood*

## Project Justification Review Checklist Supplement

The Project Justification requirements can be found in both 601.10 (k) and ECL 15-1503.2 a-h

601.10 (k)(1) Why project was selected from the evaluated alternatives [15-1503.2(a)] P

601.10 (k)(2) Why increased Water conservation or efficiency measures cannot negate the need for the proposed project [15-1503.2(d)] P They have upgraded the pumps to handle conservation

601.10 (k)(3) Why the proposed water withdrawal quantity is reasonable for the proposed use [15-1503.2(e)] P

601.10 (k)(4) Why the proposed water conservation measures are environmentally sound and economically feasible [15-1503.2(g)] P

601.10 (k)(5) Whether the supply is adequate [15-1503.2(b)] P

601.10 (k)(6) Whether the proposed project is just and equitable to other municipalities and their inhabitants in regards to present and future needs for sources of potable water [15-1503.2(c)] AP

601.10 (k)(7) Whether the proposed withdrawal will result in no significant individual or cumulative adverse environmental impacts [15-1503.2(f)] P (BTA)

601.10 (k)(8) Whether the proposed withdrawal will be consistent with all applicable laws [15-1503.2(h)] P

# RAVENSWOOD ANNUAL WATER WITHDRAWAL REPORTING FORM FOR REPORTING YEAR 2010, DATED MAY 13, 2011 [A-619 - A-620]

BRWM Dec 2010

New York State Department of Environmental Conservation  
Division of Water, Bureau of Water Resources Management, 625 Broadway, Albany, NY 12233-3508

## Water Withdrawal Reporting Form

2010 Water Withdrawal Information due by February 1st, 2011

Annual \$50 fee (if applicable) submitted: Yes ☒ or N/A ☐  
Prior to filling out this form please read the instructions on page 4

Page 1 of 4

|  |                |   |                   |  |     |
|--|----------------|---|-------------------|--|-----|
| Facility Name: Ravenswood G.S.   |                | Facility Street Address: 38-54 Vernon Blvd.   |                   | Reporting year: 2010                                       |     |
| City: Long Island City   |                | Zip: 11101  |                   | County: Queens   |     |
| Contact Name: Gregory Pryor  |                | Email: gregory_pryor@transcanada.ca   |                   | Contact Telephone: (718) 706-2863                          |     |
| Source Name: East River  | Source Type: S | Well Depth:   | Max Rate: 965,000 | Units  | GPM |
| Source Name: NYC DEP   | Source Type: P | Well Depth:   | Max Rate:         | Units  |     |
| Source Name:   | Source Type:   | Well Depth:   | Max Rate:         | Units  |     |
| Source Name:   | Source Type:   | Well Depth:   | Max Rate:         | Units  |     |
| Source Name:   | Source Type:   | Well Depth:   | Max Rate:         | Units  |     |
| Source Name:   | Source Type:   | Well Depth:   | Max Rate:         | Units  |     |
| Source Name:   | Source Type:   | Well Depth:   | Max Rate:         | Units  |     |
| Source Name:   | Source Type:   | Well Depth:   | Max Rate:         | Units  |     |
| Source Name:   | Source Type:   | Well Depth:   | Max Rate:         | Units  |     |
| Source Name:   | Source Type:   | Well Depth:   | Max Rate:         | Units  |     |
| Source Name:   | Source Type:   | Well Depth:   | Max Rate:         | Units  |     |
| Source Name:   | Source Type:   | Well Depth:   | Max Rate:         | Units  |     |
| For additional source listings, check this box <input type="checkbox"/> and go to page 3 |                | If an "interbasin diversion" occurs, check this box <input type="checkbox"/> and go to page 3 |                   |  |     |
| 2010 Av Day Withdrawal: 409,483  | GPM            | 2010 Max Day Withdrawal: 965,000  | GPM               | Max Potential Withdrawal Rate, or DEC permit rate: 965,000 | GPM |
| Submitted by: Gregory Pryor  |                | Title: Environmental Specialist   |                   | Date: 05/13/2011   |     |

Water Withdrawal Category  
(check all that apply)

- ☐ Agricultural  
☐ Bottled / Bulk Water  
☒ Commercial  
☐ Environmental  
☐ Industrial  
☐ Institutional  
☐ Mine Dewatering  
☐ Oil / Gas Production  
☐ Power Production:  
☒ Fossil Fuel  
☐ Nuclear  
☐ Other Pwr:  
☐ Public Water Supply  
☐ Recreation:  
☐ Golf Course  
☐ Snow Making  
☐ Other Rec:  
☐ Other:

If you do not wish to submit this form via email, you may fill it out, then print and mail it to the address shown at the top of the page. Don't forget to fill out pages 2 and 3. Please include the \$50 fee if applicable.

Submit by Email

Print Form

Reset Form



New York State Department of Environmental Conservation  
Division of Water, Bureau of Water Resources Management, 625 Broadway, Albany, NY 12233-3508

## Water Withdrawal Reporting Form (continued)

Use this page to report actual usage for the past year

Page 2 of 4

| Calculation Method:<br><small>See instructions/definitions on p.4</small> |                | P              | For Public Water Supplies Only -- Population Served: <input type="text"/> |                |                |                |  |  | Percent Water Unaccounted For: <input type="text"/> % |  |
|---|----------------|----------------|---|----------------|----------------|----------------|--|--|---|--|
| UNITS: Must be gallons per month  | January        | February       | March   | April          | May            | June           |  |  |   |  |
| Withdrawn   | 2,003,040,000  | 7,948,080,000  | 16,361,280,000  | 14,445,360,000 | 25,475,040,000 | 35,594,640,000 |  |  |   |  |
| Transferred / Imported  | 0              | 0              | 0   | 0              | 0              | 0              |  |  |   |  |
| Consumed  | 0              | 0              | 0   | 0              | 0              | 0              |  |  |   |  |
| Returned  | 2,004,517,801  | 7,949,759,020  | 16,363,401,454  | 14,447,812,410 | 25,477,896,681 | 35,594,640,000 |  |  |   |  |
| Diversions In/Out if any  | 0              | 0              | 0   | 0              | 0              | 0              |  |  |   |  |
| Water returned to East River through outfall 001 of SPDES permit.         |                |                |   |                |                |                |  |  |   |  |
| UNITS: Must be gallons per month  | July           | August         | September   | October        | November       | December       |  |  |   |  |
| Withdrawn   | 40,993,640,000 | 40,993,200,000 | 24,852,960,000  | 10,361,520,000 | 924,480,000    | 5,238,720,000  |  |  |   |  |
| Transferred / Imported  | 0              | 0              | 0   | 0              | 0              | 0              |  |  |   |  |
| Consumed  | 0              | 0              | 0   | 0              | 0              | 0              |  |  |   |  |
| Returned  | 40,995,799,970 | 40,153,003,610 | 24,855,573,939  | 10,363,257,767 | 925,856,160    | 5,240,498,284  |  |  |   |  |
| Diversions In/Out if any  | 0              | 0              | 0   | 0              | 0              | 0              |  |  |   |  |
|   |                |                |   |                |                |                |  |  |   |  |

Go to Page 1 to submit form by email



# RAVENSWOOD ANNUAL WATER WITHDRAWAL REPORTING FORM FOR REPORTING YEAR 2014, DATED MARCH 23, 2015 [A-621 - A-628]

Dec. '15

**New York State Department of Environmental Conservation**  
Division of Water, Bureau of Water Resources Management  
625 Broadway, Albany, NY 12233-3508

## Water Withdrawal Reporting Form

Due by March 31<sup>st</sup> each year

Prior to filling out this form, please read the instructions on the last page  
*This form not for Agricultural Facilities*

Section 1 of 6 - Basic Information

|   |                                     |   |               |                     |
|---|-------------------------------------|---|---------------|---------------------|
| Facility Name Ravenswood Generating Station |                                     | Facility Street Address 38-54 Vernon Blvd |               | Reporting Year 2014 |
| City Long Island City                       | Zip 11101                           | Town Queens (T)                           | County Queens |                     |
| Contact Name Meaghan Burke                  | Email meaghan_burke@transcanada.com | Telephone (718) 706-2863                  |               |                     |

|  |  |  |  |                                     |
|--|--|--|--|-------------------------------------|
| <b>Water Withdrawal Category</b><br>(Check One)<br>Agricultural - Must use form at <a href="http://www.dec.ny.gov/lands/86904.html">http://www.dec.ny.gov/lands/86904.html</a> |  |  |  |                                     |
| <input type="radio"/> Bottled / Bulk Water   | <input type="radio"/> Commercial           | <input type="radio"/> Environmental                | <input type="radio"/> Industrial             | <input type="radio"/> Institutional |
| <input type="radio"/> Mine Dewatering  | <input type="radio"/> Oil / Gas Production | <input checked="" type="radio"/> Power Production: | <input checked="" type="radio"/> Fossil Fuel | <input type="radio"/> Nuclear       |
| <input type="radio"/> Other Pwr  | <input type="radio"/> Public Water Supply  | Recreational:                                      |  |                                     |
| <input type="radio"/> Golf Course  | <input type="radio"/> Snow Making          | <input type="radio"/> Other Rec                    |  |                                     |
| <input type="radio"/> Other Category   |  |  |  |                                     |

|                        |             |              |                   |         |
|------------------------|-------------|--------------|-------------------|---------|
| Source Name East River | Source Type | Well Depth 0 | Max Rate 1,527.84 | Units 0 |
| Source Name NYC DEP    | Source Type | Well Depth 6 | Max Rate          | Units 0 |
| Source Name            | Source Type | Well Depth   | Max Rate          | Units   |
| Source Name            | Source Type | Well Depth   | Max Rate          | Units   |
| Source Name            | Source Type | Well Depth   | Max Rate          | Units   |
| Source Name            | Source Type | Well Depth   | Max Rate          | Units   |
| Source Name            | Source Type | Well Depth   | Max Rate          | Units   |
| Source Name            | Source Type | Well Depth   | Max Rate          | Units   |

|                        |       |                        |       |  |       |
|------------------------|-------|------------------------|-------|--|-------|
| 675.5                  | MGD   | 1,522.7                | MGD   | 1,527.84   | MGD   |
| Average Day Withdrawal | Units | Maximum Day Withdrawal | Units | Maximum System Capacity or NYSDEC Permitted Withdrawal | Units |

|                            |                                |                 |
|----------------------------|--------------------------------|-----------------|
| Submitted by Meaghan Burke | Title Environmental Specialist | Date 03/23/2015 |
|----------------------------|--------------------------------|-----------------|

# Water Withdrawal Reporting Form

## Section 2 of 6 - Water Use

 Calculation Method **2**

If multiple methods are used, choose the one that measures the greatest percentage of water in your system.  
 E = Estimated    M = Metered readings    W = Flow through a weir  
 P = Flow through a pipe or pump run times    C = Pump curve calculation

| Units: Must be in gallons per month | January        | February       | March          | April         | May           | June           |
|-------------------------------------|----------------|----------------|----------------|---------------|---------------|----------------|
| Withdrawn                           | 28,084,029,000 | 25,603,214,000 | 14,997,000,000 | 8,971,000,000 | 9,094,000,000 | 28,679,000,000 |
| Transferred / Imported / Purchased  | 11,950,201     | 14,840,312     | 13,043,947     | 11,918,297    | 13,499,414    | 15,445,773     |
| Consumed                            | 8,560,930      | 11,598,345     | 10,878,751     | 10,025,007    | 11,122,706    | 13,151,059     |
| Returned                            | 28,087,418,271 | 25,606,455,967 | 14,999,165,196 |               | 9,096,376,708 | 28,681,294,714 |
| Diversions In / Out, if any         |                |                |                |               |               |                |

For Transferred water or Diversions Out, use a negative (-) sign

| Units: Must be in gallons per month | July           | August         | September      | October        | November      | December      |
|-------------------------------------|----------------|----------------|----------------|----------------|---------------|---------------|
| Withdrawn                           | 33,888,000,000 | 33,308,000,000 | 29,976,000,000 | 18,456,000,000 | 8,754,000,000 | 6,761,000,000 |
| Transferred / Imported / Purchased  | 18,104,724     | 17,387,696     | 20,144,232     | 13,748,646     | 10,244,518    | 9,624,587     |
| Consumed                            | 14,133,428     | 13,065,165     | 15,710,932     | 10,075,863     | 7,713,324     | 8,240,606     |
| Returned                            | 33,891,971,296 | 33,312,322,531 | 29,980,433,300 | 18,459,672,783 |               | 6,762,383,981 |
| Diversions In / Out, if any         |                |                |                |                |               |               |

Describe location of returned water

Water is returned to the East River via SPDES outfalls 001, 008, 009, 010. These points are annotated as discharges 1-4 respectively on the attached map.

## Water Withdrawal Reporting Form

### Section 3 of 6 - General Map and Interbasin Diversions

#### General Map Required

Please submit a map showing the location of all withdrawals and any points of return flow. Precise locations will remain confidential.

**A map is not necessary if one was submitted in a previous year and no changes have occurred.**

A paper copy of a USGS map or other high quality map or an electronically generated map can be faxed, mailed, or emailed. Please ensure that the map scale is sufficient to be able to see specific locations. Designate all water withdrawal locations on the map. Add markers to locate any related dams, weirs, or diversion structures. Label the name of each point.

Submit your map to DEC in one of the following ways:

- Print and mail or fax to 518 402-8290. Include cover letter identifying facility owner.
- Print, scan and email to [awqrsdec@dec.ny.gov](mailto:awqrsdec@dec.ny.gov)
- Copy electronically and email to [awqrsdec@dec.ny.gov](mailto:awqrsdec@dec.ny.gov)

#### Interbasin Diversions

Fill out this section only if water is being transferred between major drainage basins. To determine basin ID, go to the [DEC Major Drainage Basins map \(http://www.dec.ny.gov/lands/56800.html\)](http://www.dec.ny.gov/lands/56800.html). Then enter the basin ID by using the drop down menus under Originating and Receiving Major Drainage Basin headings below. Describe the locations of originating and receiving sites in the site description boxes (e.g. Town water intake on Route 12 at northern end of Pleasant Lake to Stony Reservoir near Bear Road).

##### Originating Major Drainage Basin

Basin Name

Originating Site Description

##### Receiving Major Drainage Basin

Basin Name

Receiving Site Description

**Water Withdrawal Reporting Form**  
**Section 4 of 6 - Water Conservation and Efficiencies**

Instructions: Check one of the boxes below for EITHER Section A or Section B, as appropriate for your facility type.  
A list of questions pertinent to that facility type will appear. Please answer all questions.

☐ Section 4A: Public Water Supply Facilities

☒ Section 4B: Non-Public Water Supply Facilities

If the incorrect box is selected, just scroll back up a page and change selection

NOTE: All permitted water withdrawal systems must have a Water Conservation Program.

**Water Withdrawal Reporting Form**  
**Section 4B: Non-Public Water Supply Facilities**

(see permitting schedule based on NYCRR Part 601.7)

Please answer all the questions in this section

1. Are all sources of supply including major interconnections equipped with master meters? ☐ Yes ☒ No
2. How many times were master meters read in the past year?
3. How many times were master meters calibrated in the past year?
4. Are there secondary meters located within the facility or system? ☒ Yes ☐ No

5. Identify other water conservation and efficiency measures currently used in your system (e.g. Best Management Practices such as recycling process and cooling waters, use of drip irrigation and moisture probes, utilizing storm water runoff and reclaimed wastewater or conducting facility water audits):

The station circulating water pumps have variable speed drives and vacuum priming systems to allow for variable speed operation. The circulating water pumps are operated at reduced speeds during periods of reduced load, cool weather conditions,

**Water Withdrawal Reporting Form**  
**Section 5 of 6 - Outside Sales to Other Water Systems or Facilities**

A-626

Instructions:

Permittees must record any sales to outside water systems or facilities. If this applies to your facility, please check the box titled, "Section 5 - Outside Sales" and fill in the information requested.

If your facility does not sell water to systems or facilities other than your own, skip the section by clicking the box for "No Outside Sales".

☐ Section 5 - Outside Sales

☐ No Outside Sales

If the incorrect box is selected, just scroll back up a page and change selection

## Water Withdrawal Reporting Form

### Section 6 of 6 - Forward Form To NYSDEC

Unless required fields have not been filled in, the form can now be sent to NYSDEC. To send the form electronically, simply click the green box titled, "Click here to submit by email after filling out all sections of this form". Alternatively, the form can be printed and then mailed or faxed to NYSDEC at the address found on the first page.

When the form is sent by clicking the "submit by email" button, an automatic confirmation is returned. If this does not arrive within 10 minutes, please contact [awgrsdec@dec.ny.gov](mailto:awgrsdec@dec.ny.gov)

Click here to submit by email  
after filling out all sections  
of this form

Print Form

Print Blank Form For  
Handwritten Submission

Clear Entire  
Form

A-627

## Water Withdrawal Reporting Form

### Instructions & Definitions

|  |   |
|--|---|
| Agricultural Purpose                         | The practice of farming for crops, plants, vines and trees, and the keeping, grazing or feeding of livestock, for sale of livestock or livestock products. Agricultural facilities must use the form titled "Registration and Water Withdrawal Reporting Form for Agricultural Facilities". |
| Public Water Supply                          | Supply water to the public. Examples include: municipality, hotel, apartment, restaurant, church, campground, etc.  |
| Source Name                                  | Name of well or surface water body (e.g., Well No. 1, Alcove Reservoir, etc.). List all sources including unused or back-up wells.  |
| Source Type                                  | S = Stream or River. L = Pond or Lake. R = Reservoir. BW = Bedrock Well. UW = Unconsolidated Well (e.g., sand and gravel). SP = Spring. P = Purchased.  |
| Well Depth                                   | Total depth in feet below ground surface. Leave blank for surface sources.  |
| Max Rate                                     | Maximum potential withdrawal rate of the water source. Will be equal to or greater than Permitted Rate.   |
| Units (Max Rate)                             | Gallons per minute (gpm), gallons per day (gpd), or million gallons per day (mgd). Use drop down menu.  |
| Average Day Withdrawal                       | Total amount withdrawn during reporting year divided by total days withdrawn.   |
| Maximum Day Withdrawal                       | Largest single day withdrawal rate of the source during the reporting year.   |
| Maximum Sys Capacity or Permitted Withdrawal | If permit information is unknown, contact NYSDEC at <a href="mailto:awqrsdec@dec.ny.gov">awqrsdec@dec.ny.gov</a> or 518-402-8182. Maximum system capacity is the sum of all sources simultaneously pumping at full rate.  |
| Calculation Method                           | If multiple methods are used, choose the one that measures the greatest percentage of water in your system. E = estimated. M = metered readings. W = flow through a weir or flume. P = flow through a pump or pump run time. C = Pump curve calculation.                                    |
| Withdrawn                                    | Amount of water removed from all sources. This includes groundwater and/or surface water.   |
| Transferred/Imported                         | Amount of water brought in from or sent to another facility, includes bulk sales. For transferred water use a negative (-) sign.  |
| Consumed                                     | Amount of water not returned (e.g. water incorporated into a product or lost through evaporation). Public water suppliers must use metered sales to customers. Irrigation is considered "consumed water".   |
| Returned                                     | Amount of water discharged to a water treatment system or discharged back to the environment. Irrigation is not returned water.   |
| Diversions In/Out                            | Amount of water, if any, diverted from/to another major drainage basin. For Diversions Out, use a negative (-) sign.  |
| Location of Returned Water                   | State the general area where returned water is discharged. Example: "Hudson River near Poughkeepsie", "Groundwater near Auburn".  |
| Major Drainage Basins                        | Report only "Major Basin" transfers. Use the internet link available on the form and enter Basin ID into the box indicated (use drop down menu). Describe the location of originating withdrawal and receiving discharge. Be as specific as possible.                                       |
| Water Audit                                  | A water audit is a thorough examination of the accuracy of water records and system control equipment to determine water system efficiency and to identify, quantify, and verify water and revenue losses. Water audits are beneficial in identifying the amount of unaccounted-for water.  |



## SPDES FACT SHEET NARRATIVE, DATED OCTOBER 2006 [A-629 - A-630]

**SPDES FACT SHEET NARRATIVE**  
for Keyspan Generation, LLC - Ravenswood Power Station  
October 2006

The State Pollutant Discharge Elimination System (SPDES) Permit for the Ravenswood Power Station has been modified in accordance with New York State's Environmental Benefit Permit Strategy (EBPS). The following permit has been modified:

| Facility                 | SPDES Permit Number | DEC Number   |
|--------------------------|---------------------|--------------|
| Ravenswood Power Station | NY 000 5193         | 2-6304-00024 |

In response to the Department's May 31, 2005 Request for Information under the EBPS system, Keyspan Generation, LLC provided sampling data and a SPDES Permit application packet for the Ravenswood Power Station on August 31, 2005 and additional information in subsequent correspondence dated November 4, 2005. Based upon the review of this information, a revised SPDES permit has been drafted. This draft permit has been modified from the existing SPDES Permit in the following ways:

**Draft Permit Pages**

- Biological monitoring conditions have been added for achieving compliance with the cooling water intake structures requirements contained in 6NYCRR Part 704.5 and Section 316(b) of the Clean Water Act. The attached Biological Fact Sheet prepared by the Bureau of Habitat, Steam Electric Unit describes these conditions in more detail.
- Updated permit pages and conditions reflect current Department guidance, format and nomenclature.
- Permit pages and conditions have been renumbered and reordered.
- A condition has been added for the permittee to perform a thermal criteria study designed to evaluate compliance with the thermal criteria contained in 6 NYCRR Part 704.
- A section containing Special Conditions - Industry Best Management Practices has been added which requires the permittee to develop, implement and maintain a Best Management Practices (BMP) Plan to prevent/minimize the release of pollutants through site run-off, spillage, leaks, waste disposal and stormwater discharges from the facility.

**Draft Permit Limits, Levels and Monitoring**

- Increased monitoring frequency for Total Chlorine Residual from 3 times weekly to hourly to be consistent with other permits.
- Removal of outfall 01B because it has been diverted through an oil/water separator and discharged through outfall 01A.

- New outfalls 01E, 01F, 01G and 01H were added to address the separate discharges from the carbon filter backwash, pre-filter backwash, boiler blowdown and demineralizer regeneration which were previously included under outfall 01A.
- Removal of outfall 003 because it combines with and is discharged through outfall 002.
- Addition of outfall 007 to address the intermittent pumping of accumulated stormwater from the former settling ponds to outfall 001.
- A requirement for pH monitoring was added to outfall 01A.
- The monitoring frequency for aroclors 1254 & 1260 at outfall 004 has been reduced from 2/month to quarterly because historic monitoring has not indicated any concentrations above analytical method detection levels.
- Monitoring of benzene, ethylbenzene, toluene and xylene at outfalls 004 & 006 was revised to a 50 ug/l limit instead of an action level to be consistent with other permits.
- Monitoring of total suspended solids at outfalls 004 & 006 was added to address solids in these stormwater discharges.
- The unit 1, 2 & 3 intake screen wash return discharges have been relocated from outfall 001 to new outfalls 008, 009 & 010.
- Monitoring for ammonia was added at outfall 01D.
- The limit for total residual chlorine at outfall 001 has been reduced from 0.2 mg/l to 0.13 mg/l based upon the water quality evaluation. An interim compliance limit of 0.2 mg/l will be allowed until October 31, 2007 while the permittee evaluates the operational changes necessary to comply with the 0.13 mg/l final limit.
- Monitoring requirements and limits for hydrostatic tank testing waters have been revised to reflect current practice. Action limits have been replaced with discharge limits for total chlorine residual, benzene, ethylbenzene, toluene and xylene.
- Additional Requirement 11 was added to require a short term monitoring program for mercury in stormwater from outfall 007.

**RAVENSWOOD VERIFICATION MONITORING PLAN STATUS REPORT FOR  
SPDES PERMIT ("VMP REPORT") FOR JULY 2013 TO JUNE 2014, DATED OCTOBER  
2014 [A-631 - A-643]**



Ravenswood Generating Station  
38-54 Vernon Blvd.  
Long Island City, NY 11101

October 31, 2014

Chuck Nieder  
Steam Electric Unit Leader  
NYSDEC  
625 Broadway  
Albany, New York 12233-4756

Re: Verification Monitoring Plan Status Report Year Two  
TransCanada Ravenswood Power Station  
SPDES No. 0005193

Dear Mr. Nieder,

Attached please find the Verification Monitoring Plan (VMP) Status Report for the Ravenswood Power Station in accordance with SPDES permit No. 0005193. As per the SPDES permit requirements, a VMP Status Report is to be submitted by November 1, 2014.

If you have any questions regarding the survey, please contact me by phone at 718-706-2863 or by email at [meaghan\\_burke@transcanada.com](mailto:meaghan_burke@transcanada.com).

Respectfully,

A handwritten signature in cursive script that reads "Meaghan Burke".

Meaghan Burke  
Environmental Specialist

Attachment

cc: NYSDEC Region II – Regional Water Engineer  
SPDES Compliance Information Section  
William P. Dey

**Comparisons of the Actual and Baseline Entrainment and  
Impingement Loss at Ravenswood  
Based on Actual Flow from Jul 2013 - Jun 2014**

Prepared for  
TransCanada  
Ravenswood Generating Station  
38-54 Vernon Blvd  
Long Island City, NY 11101  
United States of America

Prepared by  
ASA Analysis & Communication, Inc.  
5 Fairlawn Drive, Suite 205  
Washingtonville, NY 10992

October 2014

## 1. INTRODUCTION

New York State Department of Environmental Conservation's SPDES Permit Number NY0005193 for the Ravenswood Generating Station includes two Best Technology Available Performance Standards:

- a. The technologies and operational procedures described in Condition B.2, Best Technology Available, must achieve a reduction of 65% in entrainment from the full flow calculation baseline. Compliance with this performance standard shall be determined through studies conducted under the Verification Monitoring Plan required in Condition B.5.
- b. The technologies and operational procedures described in Condition B.2, Best Technology Available, must achieve a reduction in impingement mortality of 90% for all fish species, and 90% for winter flounder alone from the full flow calculation baseline. Compliance with this performance standard shall be determined through studies conducted under the Verification Monitoring Plan required in Condition B.5.

Compliance with these performance standards will be determined based on a five-year running average.

The purpose of this document is to provide estimates of entrainment and impingement mortality reduction for the one-year period extending from July 1, 2013 through June 30, 2014.

## 2. METHODS

Losses from entrainment and impingement for the baseline and for the current operation of Ravenswood were calculated as described below:

### 2.1. Hourly Entrainment and Impingement Densities

Hourly entrainment and impingement densities were based on site-specific sampling conducted at Ravenswood in 1992, 1994 and 2005 and entrainment only sampling conducted in 2000. Hourly entrainment and impingement densities for each species and life stage were estimated from these data by applying the average density measured for each 6-hour sample to each hour of the 6-hour sampling interval. The hourly densities, determined for each sampling event, were then applied over each 24-hour period to the midpoint between sampling events (which were generally conducted weekly for impingement and weekly or biweekly for entrainment). Hourly entrainment and impingement densities on non-sampled days were interpolated from adjacent sampling dates. Finally, the mean hourly densities for each species and life stage across all entrainment and all impingement sampling years were used as the basis for this loss calculation.

### 2.2. Entrainment Loss Calculations

Entrainment densities calculated as described above. Design and actual Station operation and other relevant information were used to estimate the total number of each life stage of each RIS and of other fish taxa combined as a group lost to entrainment at Ravenswood. Hourly loss estimates for the period July 1, 2013 through June 30, 2014 were calculated for each life stage for the baseline case and the actual cooling water flow case as follows:

$$NE_{sli} = AED_{sli} \times CW_i \times RF_{sli}$$

where:

- NE<sub>sli</sub> = estimated number of each species (s) and life stage (l) lost to entrainment during hour (i);
- AED<sub>sli</sub> = adjusted density of species (s) and life stage (l) entrained during hour (i);
- CW<sub>i</sub> = total design or actual cooling water flow at Ravenswood during hour (i); and,
- RF<sub>sli</sub> = recirculation factor for RIS or other taxa (s) and life stage (l) entrained during hour (i).

Estimates for each hour were then summed across each hour and species to estimate total entrainment losses for the entire year. Sources of input information for these calculations are discussed below.

#### 2.2.1. Adjusted Entrainment Densities

Extrusion of organisms through the mesh of a sampling net can occur when some dimension of the individuals sampled are sufficiently small; they can pass through the mesh and not be collected. When this occurs, estimated sampling densities will be less than that actually occurring. Hence, adjustments must be made to the measured entrainment densities when estimating overall entrainment loss.

Clearly, extrusion is a function of the size of the organisms with larger organisms being retained while some of the smaller organisms pass through the mesh. At Ravenswood, some of the earlier entrainment sampling was conducted using nets with an opening of approximately 0.5 mm. Thus, virtually all organisms less than 0.5 mm long will pass through this mesh whereas most larger organisms with all dimensions larger than this should be retained.

The eggs of some of the entrained species have diameters from about 0.7 to 1.7 mm. Owing to their general spherical shape, the retention of this life stage by the entrainment sampling gear should be quite high and no adjustment for net extrusion is deemed necessary. High retention is supported by a field entrainment study at the Hudson Generating Station on the Hackensack River (PSEG 1998), which measured 97 percent retention of bay anchovy eggs, also using a pump and 0.5-mm net.

On the other hand, newly hatched larvae of two species, bay anchovy and winter flounder, have cross-sectional dimensions that could allow passage through the sampling mesh. For this assessment, we will assume that larvae of all other species were fully retained by the net. Net extrusion rates for bay anchovy and winter flounder larvae were based on a length-extrusion relationship from studies conducted at the Salem Generating Station located on the Delaware Estuary (PSEG 1999). The length-extrusion relationship from these studies indicates that the fraction of larvae retained by the entrainment sampling gear is about 0.11, 0.27, and 0.92 for larvae measuring less than 3.1 mm, 3.1 - 6.0 mm, and 6.1 – 9.0 mm, respectively. Owing to their small size at hatch, a collection efficiency of 11 percent was conservatively applied to bay anchovy and winter flounder yolk-sac larvae collected in entrainment monitoring at Ravenswood.



For post yolk-sac larvae of these two species, an entrainment collection efficiency specific to each month of their entrainment was calculated by weighing the length-specific retention proportions given above by the seasonal length frequency distribution of bay anchovy and winter flounder observed in entrainment monitoring at the Sewaren and Linden Generating Stations on the Arthur Kill (PSE&G 1989). The post yolk-sac larval collection efficiencies derived from this calculation are as follows:

| Species         | Entrainment Collection Efficiency (%) |     |     |     |     |     |     |     |
|-----------------|---------------------------------------|-----|-----|-----|-----|-----|-----|-----|
|                 | Mar                                   | Apr | May | Jun | Jul | Aug | Sep | Oct |
| Bay anchovy     | 34                                    | 49  | 66  | 67  | 99  | 100 | 100 | 100 |
| Winter flounder | 25                                    | 34  | 63  | 92  | 100 | 100 | 100 | 100 |

These estimates of post yolk-sac larval collection efficiency were used to estimate entrainment losses for bay anchovy and winter flounder at Ravenswood. To estimate adjusted (actual) densities, measured densities will be divided by the collection efficiencies listed above and expressed as a fraction.

#### 2.2.2. Cooling Water Flow

Baseline cooling water flow is assumed to be equal to the design pumping capacity of all three once-through units at Ravenswood or a combined rate of 965,000 gallons per minute (gpm). Baseline service water flow was assumed to be 96,000 gallons per minute (six pumps at 16,000 gpm each). Actual cooling and service water flow for the period July 1, 2013 through June 30, 2014 was set to the actual hourly cooling water flow at each unit as measured at each unit.

#### 2.2.3. Recirculation

Flood tides in the lower East River transport a portion of the CWS discharge from Ravenswood upstream to the intake, causing recirculation of some of the discharged water back into the CWS intake. Some of the organisms previously entrained through the CWS at the Station would move along with the recirculated water and thus be "re-entrained". Consequently, loss estimates based on entrainment densities determined from monitoring at Ravenswood could overestimate losses by double-counting re-entrained organisms that were already killed by entrainment. To correct for the effect of re-entrainment, entrainment densities were adjusted by a recirculation factor that reflects the fraction of the total number collected that were entrained for the first time in each collection.

For this assessment, a constant of 0.13 was used for recirculation at Ravenswood based on prior assessment of the thermal plume distribution.

### 2.3. Impingement Loss Calculations

The total number of each age group of each species lost to impingement at Ravenswood was estimated for the baseline and actual flow case. Hourly loss estimates were calculated for each RIS and age as follows:

$$NI_{sah} = \frac{ID_{sah} \times CW_h}{CE_{sah}} \times IM_{sah}$$

where:

- $NI_{sah}$  = estimated number of each species taxa (s) and age class (a) lost to impingement during hour (h);  
 $ID_{sah}$  = density of each species (s) and age class (a) impinged during hour (h);  
 $CW_h$  = cooling water flow at the Station during hour (h);  
 $CE_{sah}$  = collection efficiency of species (s) and age class (a) impinged during hour (h); and,  
 $IM_{sah}$  = mortality of species (s) and age class (a) impinged during hour (h).

Estimates for each hour were then summed to estimate total impingement losses for each RIS or other fish taxa as a group and age class for an entire year.

Sources of input information for these calculations are discussed below.

#### 2.3.1. Cooling Water Flow

As discussed for entrainment above, baseline cooling water flow is assumed to be equal to the design cooling and service water pumping capacity of all three once-through units at Ravenswood. Actual cooling and service water flow for the period July 1, 2013 through June 30, 2014 was set to the actual hourly cooling water flow at each unit as measured at each unit.

#### 2.3.2. Impingement Collection Efficiency

Impingement density estimates were adjusted to account for collection efficiency during the impingement monitoring studies. Impingement collection efficiency was previously estimated from studies conducted at Ravenswood during the impingement monitoring. The average collection efficiencies determined from these studies for each quarter of the year, as shown below, will be used in the impingement loss calculations for all fish species:

| Impingement Collection | Jan-Mar | Apr-Jun | Jul-Sep | Oct-Dec |
|------------------------|---------|---------|---------|---------|
| Efficiency (%)         | 71      | 81      | 72      | 65      |

No collection efficiency was applied for blue crab.

#### 2.3.3. Impingement Mortality

Baseline losses of each species were calculated assuming 100 percent impingement mortality. Losses under actual operations at Ravenswood were originally calculated using impingement mortality estimates for each RIS and other fish taxa as reported for the Arthur Kill Station (Con Edison 1996). These impingement mortality estimates were subsequently updated to incorporate site-specific impingement survival rates for black sea bass, oyster toadfish, winter flounder, Atlantic silverside, blueback herring, bay anchovy, and butterfish from ASA (2007). For this assessment, impingement mortality rates were assumed to be the same as those used in the most recent calculations of impingement loss at Ravenswood.

### 3. RESULTS

Estimates of the annual flow, entrainment and annual impingement for all fish species, fish and blue crabs and for winter flounder are provided in Table 1. Also included on this table are the estimated percent reductions for these values under actual operations compared to the calculation baseline. These calculations were calculated two ways, using only cooling water flows and using both cooling and service water flows. Patterns in the daily and cumulative estimates for each parameter are provided in Figures 1 through Figure 10.

### 4. REFERENCES

ASA Analysis & Communication, Inc. (ASA). 2007. Ravenswood Generating Station Impingement Survival Monitoring Studies, June 2006 - February 2007.

Consolidated Edison Company of New York, Inc. (Con Edison). 1996. Ravenswood Generating Station Diagnostic Study Report.

Public Service Electric & Gas Company (PSE&G). 1998. Hudson Generating Station Supplemental 316(b) Report. Newark, NJ.

PSE&G. 1999. Permit Renewal Application NJPDES Permit No. NJ0005622, Public Service Electric and Gas Company Salem Generating Station, March 4, 1999. PSE&G, Newark, New Jersey.

Table 1 Estimates of the annual water flow, entrainment and impingement under baseline and actual conditions at Ravenswood, Jul 2013 - Jun 2014.

| Metric                                   | Cooling Water Alone | Cooling and Service Water |
|--|---------------------|---------------------------|
| <b>Flow (MG)</b>                         |                     |                           |
| Design                                   | 507,164             | 557,618                   |
| Actual                                   | 120,081             | 146,829                   |
| % Reduction                              | 76.3                | 73.7                      |
| <b>Entrainment (millions)</b>            |                     |                           |
| Design                                   | 0                   | 0                         |
| Actual                                   | 0                   | 0                         |
| % Reduction                              | 75.9                | 72.6                      |
| <b>Impingement (Fish Only)</b>           |                     |                           |
| Design                                   | 93,055              | 102,854                   |
| Actual                                   | 6,294               | 8,228                     |
| % Reduction                              | 93.2                | 92.0                      |
| <b>Impingement (Fish and Blue Crabs)</b> |                     |                           |
| Design                                   | 185,654             | 205,015                   |
| Actual                                   | 6,477               | 8,455                     |
| % Reduction                              | 96.5                | 95.9                      |
| <b>Impingement (Fish and Blue Crabs)</b> |                     |                           |
| Design                                   | 185,654             | 205,015                   |
| Actual                                   | 6,477               | 8,455                     |
| % Reduction                              | 96.5                | 95.9                      |
| <b>Impingement (Winter Flounder)</b>     |                     |                           |
| Design                                   | 16,252              | 17,651                    |
| Actual                                   | 231                 | 308                       |
| % Reduction                              | 98.6                | 98.3                      |

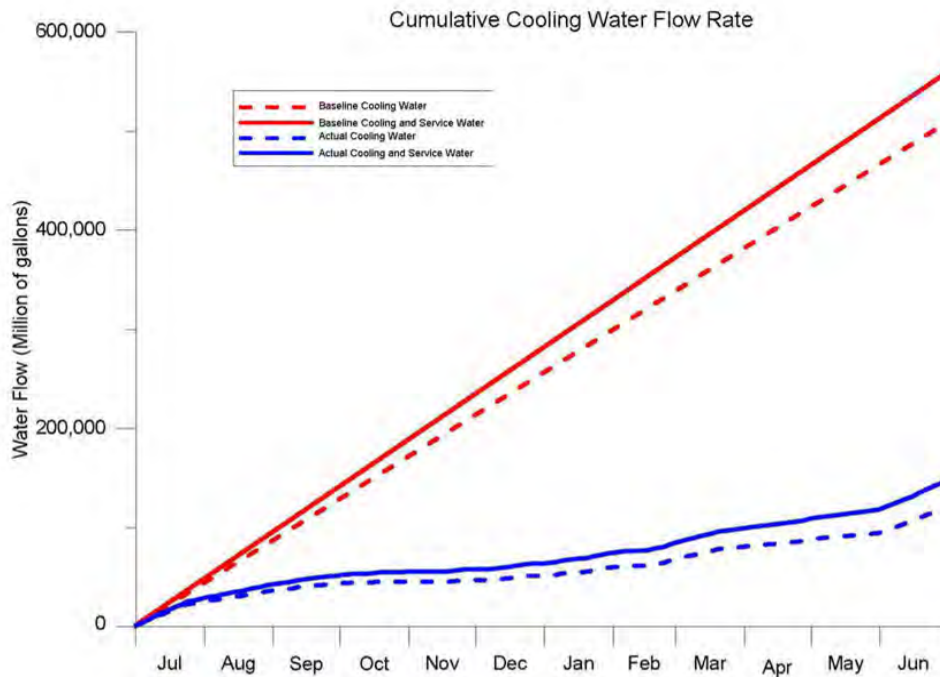


Figure 1 Cumulative water flows at Ravenswood under baseline and actual operating conditions, Jul 2013 - Jun 2014.

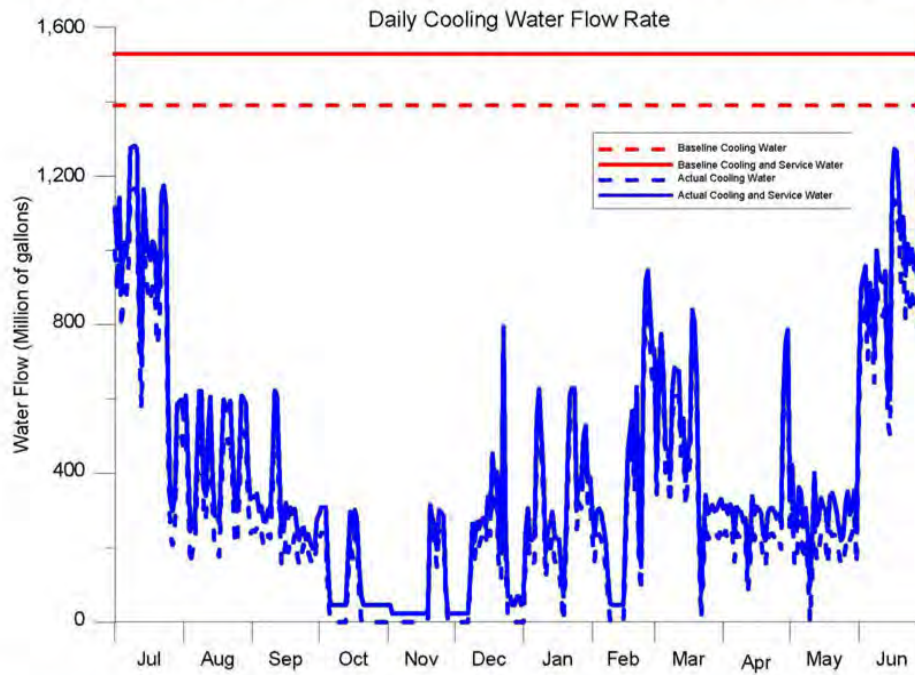


Figure 2 Daily water flows at Ravenswood under baseline and actual operating conditions, Jul 2013 - Jun 2014.

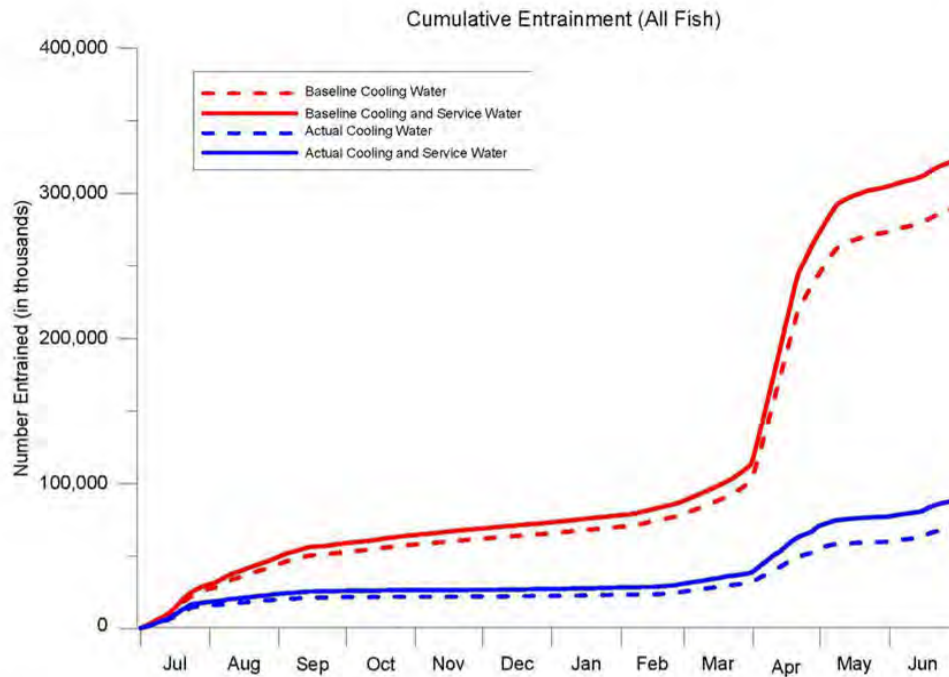


Figure 3 Cumulative entrainment of all fish species at Ravenswood under baseline and actual operating conditions, Jul 2013 - Jun 2014.

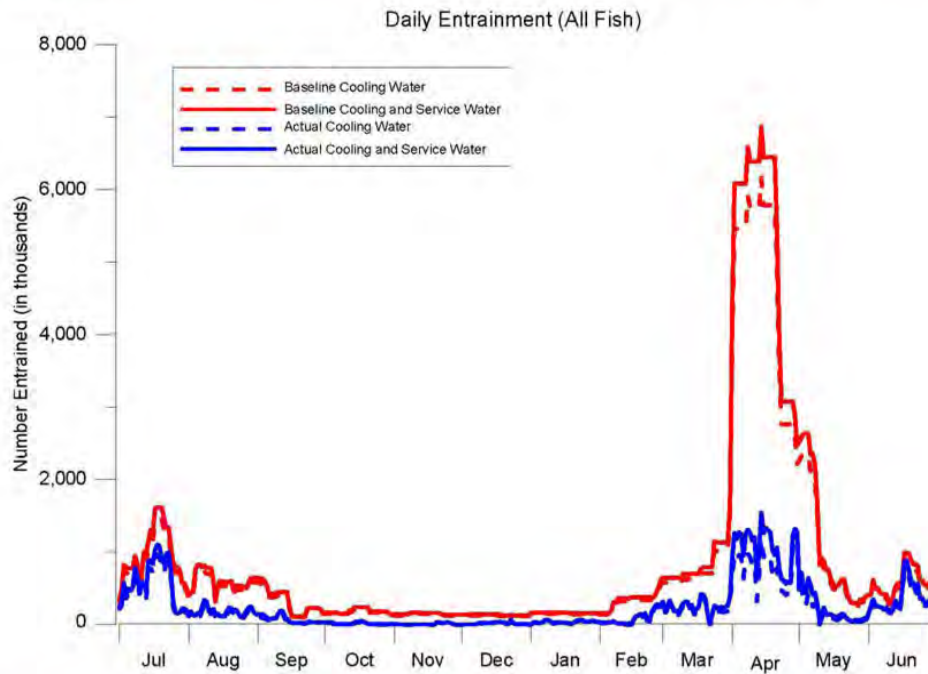


Figure 4 Daily entrainment of all fish species at Ravenswood under baseline and actual operating conditions, Jul 2013 - Jun 2014.



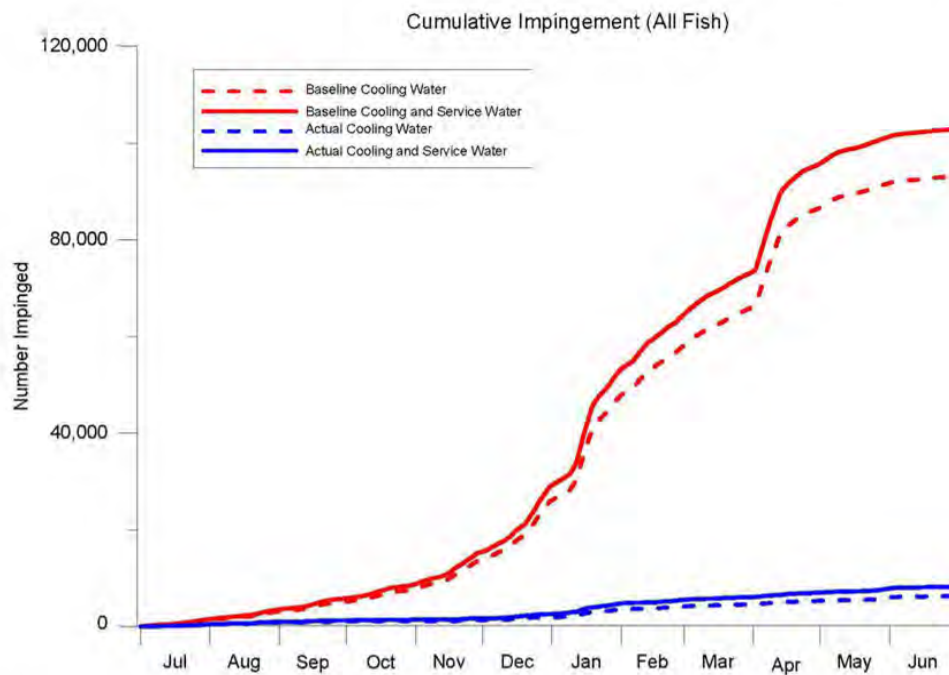


Figure 5 Cumulative impingement of fish at Ravenswood under baseline and actual operating conditions, Jul 2013 - Jun 2014.

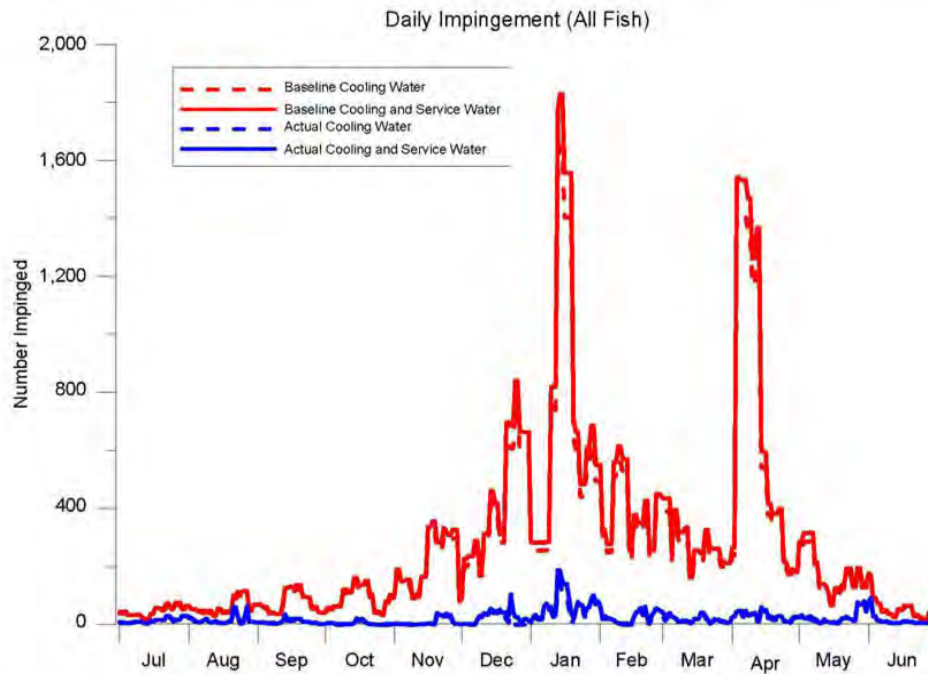


Figure 6 Daily impingement of fish at Ravenswood under baseline and actual operating conditions, Jul 2013 - Jun 2014.

ASA Analysis &amp; Communication, Inc.

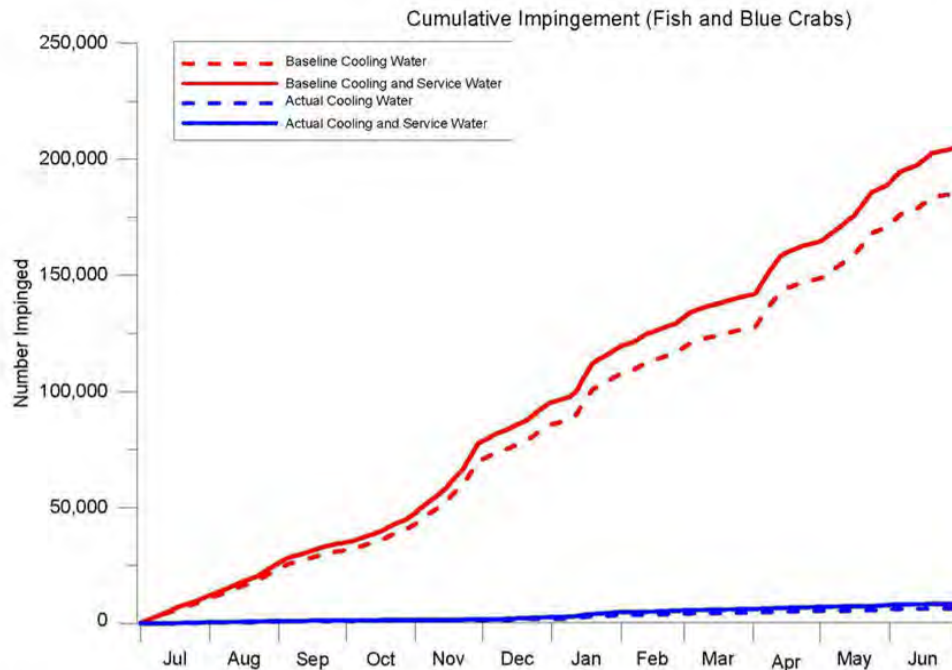


Figure 7 Cumulative impingement of fish and blue crabs at Ravenswood under baseline and actual operating conditions, Jul 2013 - Jun 2014.

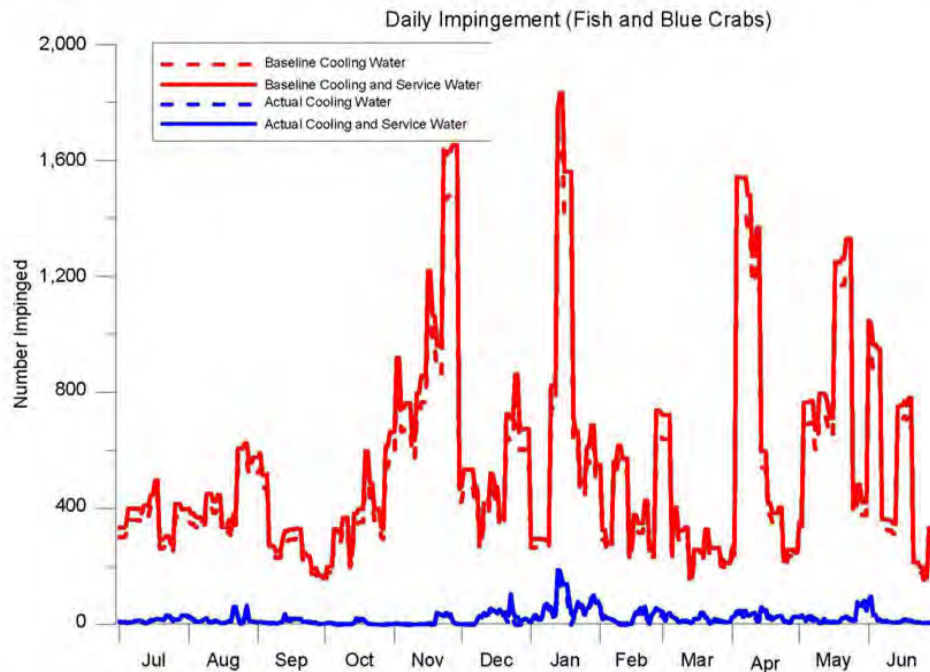


Figure 8 Daily impingement of fish and blue crabs at Ravenswood under baseline and actual operating conditions, Jul 2013 - Jun 2014.



Figure 9 Cumulative impingement of winter flounder at Ravenswood under baseline and actual operating conditions, Jul 2013 - Jun 2014.

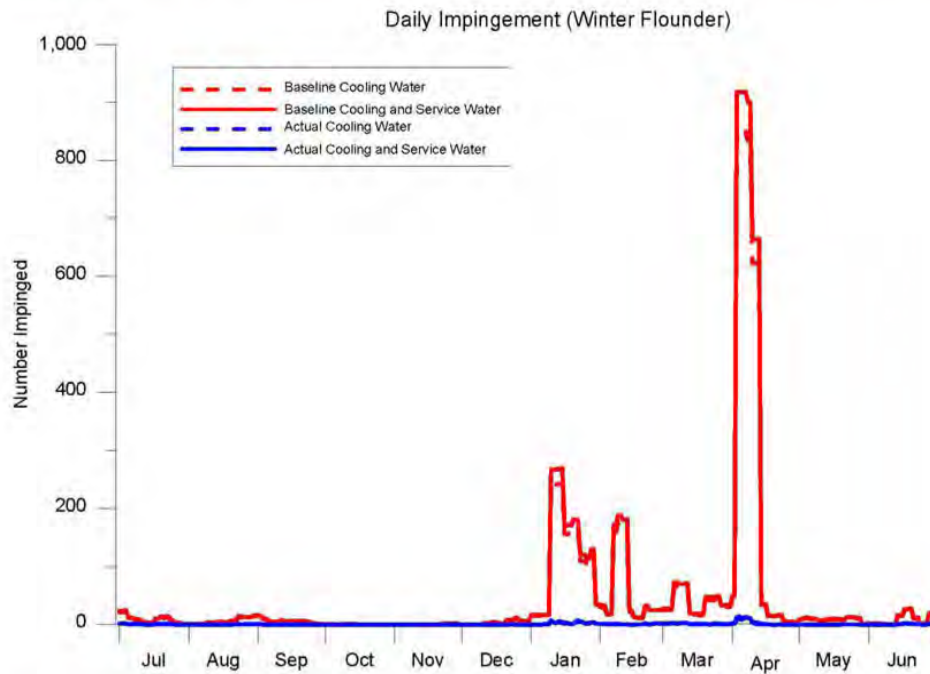


Figure 10 Daily impingement of winter flounder at Ravenswood under baseline and actual operating conditions, Jul 2013 - Jun 2014.

**RAVENSWOOD VMP REPORT FOR JULY 2012 TO JUNE 2013, UNDATED [A-644 - A-655]**

**TransCanada Ravenswood  
Verification Monitoring Plan-Year One  
Summary Report**

**Background: Technology Installation and Operation**

In order to achieve impingement and entrainment reductions to aquatic life supplemental technology was installed on the Circulating Water Pumps (CWP) at the Ravenswood Generating Station. Each CWP was retrofitted with variable frequency drives (VFD) to allow for the motors to operate at variable speeds. A VFD is a device that rectifies 60 cycle AC current to direct current. Then using insulated gate bipolar transistors (IGBT's), converts the DC supply to a square wave alternating supply at an adjustable frequency. Working in conjunction with the VFDs, Vacuum Priming Systems (VPS) have also been installed to assist with maintaining water level in the condensers. Together, these technologies are used to reduce the water withdrawn from the East River and consequently reduce impingement and entrainment of aquatic organisms to meet the performance standards outlined in SPDES permit NY 0005193.

**Update: Circulating Water Pump Operation**

During the first year of operating the VFD's and during unit performance testing, it was noted that the maximum reduction in pump speed for both units 10 and 20 would be required to be limited to 50%. Operational testing concluded that portions of the condenser tubes were without cooling water flow at pump speeds less than 50% and at low tide. Condenser tubes exposed to low pressure steam without cooling water flow will lead to premature failure and the increased possibility of a salt water intrusion. When a salt water intrusion event is identified, the unit must be immediately taken off-line to protect exposure of contaminants to the boiler tubes. Therefore, the operating scheme for the VFD's was amended and implemented as listed below in order to protect the equipment.

Unit 10 and 20 Circulating Water Pump VFD Operation Guide

- One pump at 50% speed for 12 hours prior to unit start-up.
  - i. Just prior to unit coming online and until unit is firm; two pumps at 100% pump speed will be utilized to ensure unit reliability.
- One pump at 50% speed for 24 hours after shutdown.
- Two pumps at 50% pump speed when <144 MW.
- Two pumps at 100% pump speed when >144 MW.
  - i. As influent river water allows pump maximum will be limited to 90%

30 Circulating Water Pump VFD Operation Guide

- One pump at 40% speed for 12 hours prior to unit start-up. (Unit 30)
  - i. Just prior to unit coming online and until unit is firm; two pumps at 100% pump speed will be utilized to ensure unit reliability.
- One pump at 40% speed for 24 hours after shutdown. (Unit 30)
- Two pumps at 40% pump speed when <400 MW for unit 30.
- Two pumps at 100% pump speed when > 400MW on unit 30.
  - i. As influent river water allows pump maximum will be limited to 90%

**Verification Monitoring Plan Summary**

The verification monitoring plan will be conducted over a 5 year period (July 1, 2012-June 30, 2017) in order to verify compliance with all performance standards outlined in the SPDES permit. This summary report includes the first year of the VMP from July 1<sup>st</sup>, 2012 through June 30<sup>th</sup>, 2013. The reductions of impingement mortality and entrainment were evaluated using existing in-plant monitoring data and actual cooling water intake flows. The above implemented circulating water pump operation guide, planned outages, and reduced run times achieve the reductions required. After one full year of VFD implementation actual data was analyzed by ASA Analysis & Communication (ASA). ASA used previously conducted impingement and entrainment studies to calculate impinged fish, entrained organisms and reductions from baseline in accordance with NYSDEC guidance and the approved Ravenswood Generating Station Entrainment and Impingement Loss Estimation Methods (attachment 1).

| Ravenswood- VMP Year 1<br><br>Factor  | Totals      |                |                    | Percent Reduction |                    |
|---------------------------------------|-------------|----------------|--------------------|-------------------|--------------------|
|                                       | Design      | Mean Projected | Actual 2012 - 2013 | Mean Projected    | Actual 2012 - 2013 |
| Total Cooling Water Flow (MM gals)    | 557,622     | 182,343        | 209,467            | 67.3              | 62.4               |
| Entrainment                           | 322,426,215 | 93,033,968     | 89,648,800         | 71.1              | 72.2               |
| Impingement Mortality Fish only       | 102,855     | 10,138         | 12,104             | 90.1              | 88.2               |
| Impingement Mortality Winter Flounder | 17,651      | 367            | 304                | 97.9              | 98.3               |
| Impingement Fish and Blue Crabs       | 205,016     | 10,469         | 12,509             | 94.9              | 93.9               |

Table 1: Summary of Reductions based on actual cooling water use.

Performed by ASA Analysis and Communication

**Mean Projected**

The “mean projected” figures referenced in the VMP are based on data submitted in the Supplemental Technology Operating Review/Plan (STOR/P) approved by the New York State Department of Conservation (NYSDEC) May 3, 2011. This information was used to determine if the installed technology (VFD’s) would meet the SPDES permit performance standards. Five years of circulating water pump flow data and gross megawatt values for the years 2005-2009 were modeled in the STOR/P. The circulating water pump operation guide was applied to the flow data in order to simulate VFD flow reductions and calculate impingement mortality and entrainment reductions from baseline. The modeled data supported the stations ability to achieve the required performance standards and the VMP was submitted later that year.

**Mean Projected Vs. Actual**

|                                       | Average Station Load | Average Daily Intake | Capacity Factor |
|---------------------------------------|----------------------|----------------------|-----------------|
| Year One Verification Monitoring Plan | 350 MW               | 572 MGD              | 18.86%          |
| 2005-2009 Model                       | 340 MW               | 442 MGD              | 18.49%          |

The above table shows the modeled data from 2005-2009 is representative of the actual data from the first year of the VMP. The average station load, daily circulating water pump intake and capacity factor are comparatively close and track with expected forecast.

**Impingement Mortality and Entrainment**

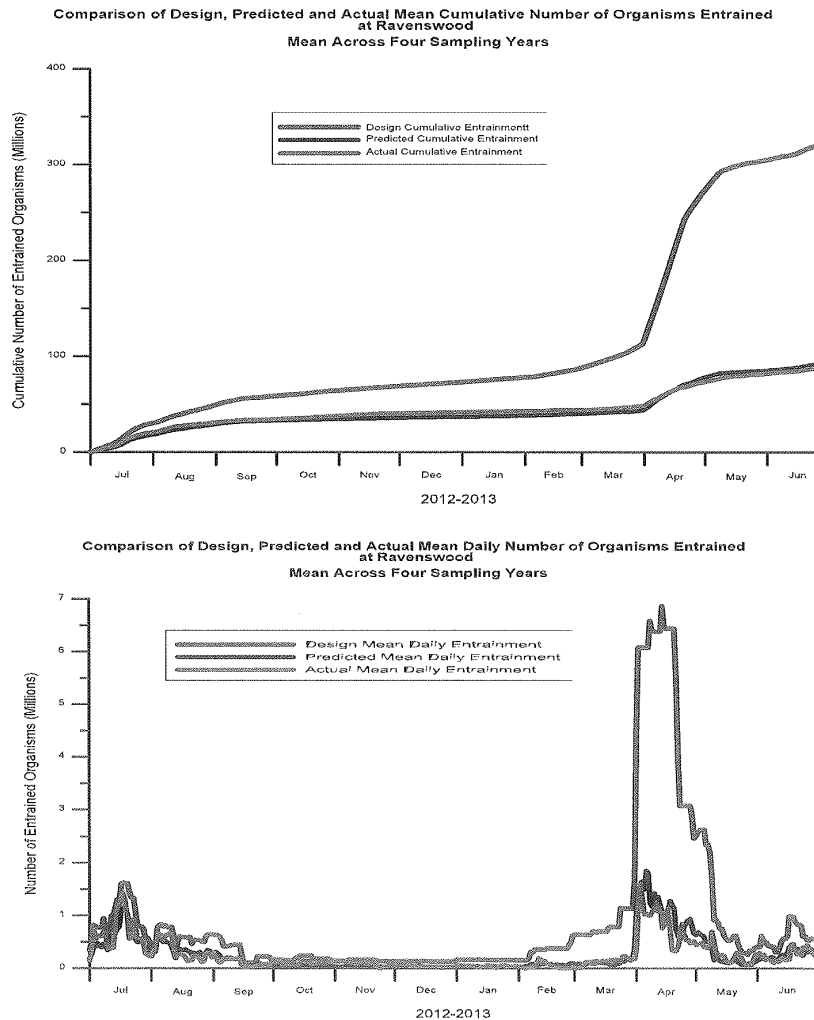
Impingement mortality and entrainment were calculated using hourly densities based on the site-specific sampling conducted at Ravenswood in 1992, 1994, 2000 and 2005. Hourly impingement and entrainment data for each species and life stage was used and



daily and cumulative impingement mortality and entrainment numbers were calculated to determine the reductions from baseline.

### Entrainment

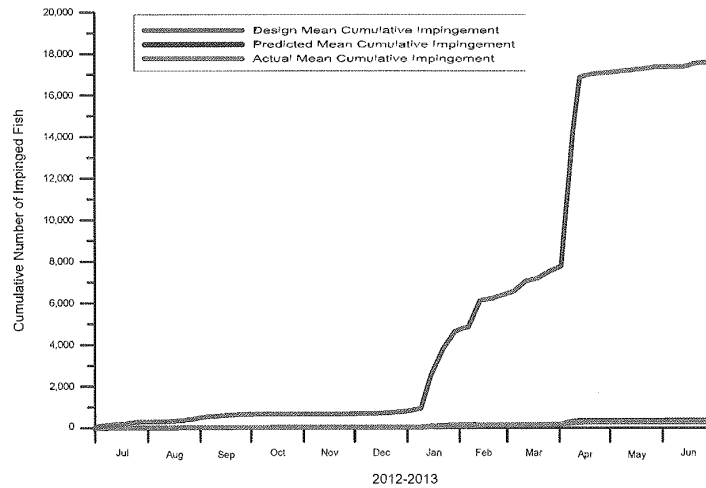
The performance standards require that the technology and operational procedures achieve a 65% reduction in entrainment from the calculated baseline. Year one of the VMP plan calculated a 72.2% reduction from baseline. The combination of scheduled outages, variable speed operation of the circulating water pumps, and upgrades to the fish return system have helped Ravenswood achieve the necessary reductions, limit environmental impact, and comply with permit conditions. The below graphs depict the design, predicted and actual cumulative and daily numbers of entrained organisms.



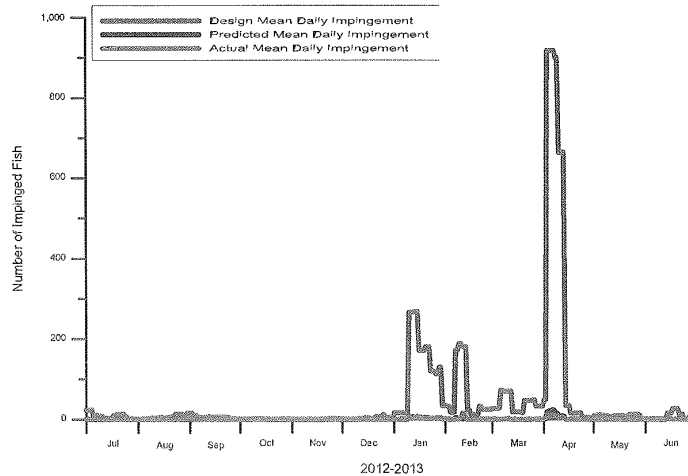
### Impingement Mortality (Winter Flounder)

The performance standards require that the technology and operational procedures achieve a 90% reduction in impingement mortality of winter flounder alone from the calculated baseline. Year one of the VMP plan calculated a 98.3% reduction from baseline. The combination of scheduled outages, variable speed operation of the circulating water pumps, and upgrades to the fish return system have helped Ravenswood achieve the necessary reductions, limit environmental impact, and comply with permit conditions. The below graphs depict the design, predicted and actual cumulative and daily impingement mortality numbers for winter flounder.

Comparison of Design, Predicted and Actual Mean Cumulative Number of Winter Flounder Impinged at Ravenswood  
Mean Across Three Sampling Years

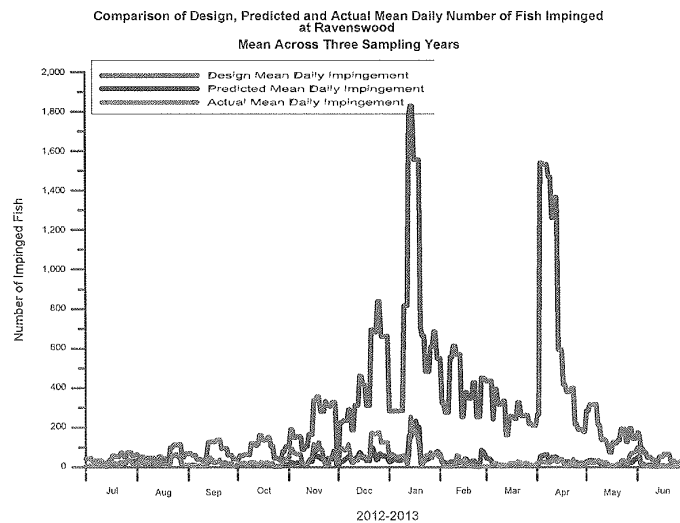
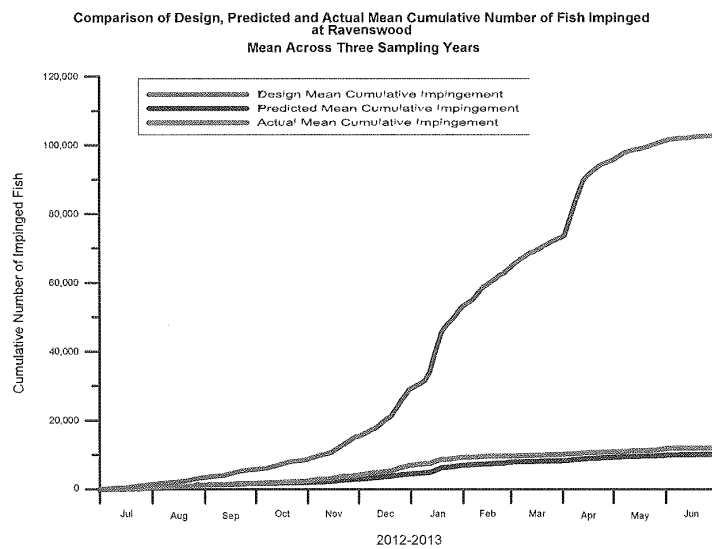


Comparison of Design, Predicted and Actual Mean Daily Number of Winter Flounder Impinged at Ravenswood  
Mean Across Three Sampling Years



**Impingement Mortality (all fish species combined)**

The performance standards require that the technology and operational procedures achieve a 90% reduction in impingement mortality for all fish species combined from the calculated baseline. Year one of the VMP plan calculated an 88.2% reduction from baseline. The combination of scheduled outages, variable speed operation of the circulating water pumps, and upgrades to the fish return system have helped Ravenswood reduce its impingement mortality and limit environmental impact. The below graphs depict the design, predicted and actual cumulative and daily impingement mortality numbers for winter flounder.



Summary

Year one of the VMP was considered to be a successful year for Ravenswood in terms of compliance with the biological monitoring requirements of the SPDES permit. The performance standards were met for entrainment and impingement mortality (winter flounder) above the required reductions beyond marginal amounts. Although impingement mortality for all fish species combined was short of meeting the performance standards in year one, modifications to equipment and pump operations will enhance the reductions to within the performance standards required.

The improvements made to the vacuum priming system have made the variable speed pump operation of the circulating water pumps more reliable. In the initial months of the VMP, vacuum leakage issues required increased pump speeds in order to maintain condenser level. Piping replacement and condenser door modifications were made to the affected condensers in order to stop the air leakage to achieve optimal condenser performance. The modifications made were immediately recognized in condenser performance and pump operation was returned to the VFD operation guidance for optimal reduction.

Another effect on reduction to impingement and entrainment was Hurricane Sandy. Throughout Hurricane Sandy and during the weeks to follow, Ravenswood had been responding to unusual load demands in order to maintain reliability to the electrical grid. The increased run time at high loads did not allow for reductions in circulator speed. This led to an increase in impingement mortality during a heavy fish density period. The cumulative impingement mortality graph shows impingement mortality trending along the predicted curve up until November where it began to deviate. The uncharacteristic load demand and run time deviated Ravenswood from its predicted course and ultimately prohibited Ravenswood from achieving the required reductions.

Ravenswood has the utmost confidence that the ensuing years of the VMP will reach the required reductions necessary to achieve the biological monitoring performance standards.

# ATTACHMENT 1



## RAVENSWOOD GENERATING STATION ENTRAINMENT AND IMPINGEMENT LOSS ESTIMATION METHODS

Losses from entrainment and impingement for the baseline and for the current operation of Ravenswood will be estimated for each of the seven Representative Important Species (RIS) evaluated in the Ravenswood Final Action Report (FAR) and in all subsequent calculations of entrainment and impingement loss (bay anchovy, blueback herring, blue crab, fourbeard rockling, grubby, silver hake, and winter flounder) and for the other fish taxa entrained or impinged combined as a group. Methods for these loss calculations are consistent with those used in the FAR and subsequent reports and are described below.

### 1. HOURLY ENTRAINMENT AND IMPINGEMENT DENSITIES

Hourly entrainment and impingement densities will be based on site-specific sampling conducted at Ravenswood in 1992, 1994 and 2005 and entrainment only sampling conducted in 2000. Added to this database will be the results of any entrainment and impingement sampling conducted at this facility during the course of this permit period. Hourly entrainment and impingement densities for each species and life stage will be estimated from these data by applying the average density measured for each 6-hour sample to each hour of the 6-hour sampling interval. The hourly densities thus determined for each sampling event will then be applied over each 24-hour period to the midpoint between sampling events (which were generally conducted weekly for impingement and weekly or biweekly for entrainment). Hourly entrainment and impingement densities on non-sampled days will be interpolated from adjacent sampling dates. Finally, the mean hourly densities for each RIS and life stage across all entrainment and all impingement sampling years will be used as the basis for this loss calculation.

### 2. ENTRAINMENT LOSS CALCULATIONS

Entrainment densities calculated as described above, design and actual Station operation and other relevant information will be used to estimate the total number of each life stage of each RIS and of other fish taxa combined as a group lost to entrainment at Ravenswood. Hourly<sup>1</sup> loss estimates for each year will be calculated for each life stage for the baseline case and the actual cooling water flow case as follows:

$$NE_{sli} = AED_{sli} \times CW_i \times RF_{sli}$$

where:

- $NE_{sli}$  = estimated number of each RIS and other taxa (s) and life stage (l) lost to entrainment during hour (i)
- $AED_{sli}$  = adjusted density of each RIS and other taxa (s) and life stage (l) entrained during hour (i)
- $CW_i$  = total design or actual cooling water flow at Ravenswood during hour (i)
- $RF_{sli}$  = recirculation factor for RIS or other taxa (s) and life stage (l) entrained during hour (i).

<sup>1</sup> Unit cooling water system flows and  $\Delta T$  were provided for each hour of each day of the year.

Estimates for each hour will then be summed to estimate total entrainment losses for each RIS or other fish taxa as a group and life stage for an entire year. Sources of input information for these calculations are discussed below.

## 2.1 ADJUSTED ENTRAINMENT DENSITIES

Extrusion of organisms through the mesh of a sampling net can occur when some dimension of the individuals sampled are sufficiently small. When this occurs, estimated sampling densities will be less than that actually occurring. Hence, adjustments must be made to the measured entrainment densities when estimating overall entrainment loss. For this assessment, this adjustment will be made using the same methods as used in the Ravenswood FAP and all subsequent calculations of entrainment loss.

Clearly, extrusion is a function of the size of the organisms with larger organisms being retained while many of the smaller organisms pass through the mesh. At Ravenswood, some of the earlier entrainment sampling was conducted using nets with an opening of approximately 0.5 mm. Thus, virtually all organisms less than 0.5 mm long will pass through this mesh whereas most larger organisms with all dimensions larger than this should be retained.

The eggs of the selected RIS have diameters typically ranging from about 0.7 to 1.7 mm. Owing to their general spherical shape, the retention of this life stage by the entrainment sampling gear should be quite high and no adjustment for net extrusion is deemed necessary. High retention is supported by a field entrainment study at the Hudson Generating Station on the Hackensack River (PSEG 1998), which measured 97 percent retention of bay anchovy eggs, also using a pump and 0.5-mm net.

The newly hatched larvae of two of the RIS, bay anchovy and winter flounder, have cross-sectional dimensions that could allow passage through the sampling mesh. For this assessment, we will assume that larvae of all other species were fully retained by the net. Net extrusion rates for bay anchovy and winter flounder larvae will be based on a length-extrusion relationship for developed in studies conducted at the Salem Generating Station located on the Delaware Estuary (PSEG 1999). The length-extrusion relationship from these studies indicates that the fraction of larvae retained by the entrainment sampling gear is about 0.11, 0.27, and 0.92 for larvae measuring less than 3.1 mm, 3.1 - 6.0 mm, and 6.1 - 9.0 mm, respectively. Owing to their small size at hatch, a collection efficiency of 11 percent will be conservatively applied to bay anchovy and winter flounder yolk-sac larvae collected in entrainment monitoring at Ravenswood.

For post yolk-sac larvae of these two species, an entrainment collection efficiency specific to each month of their entrainment was calculated by weighting the length-specific retention proportions given above by the seasonal length frequency distribution of bay anchovy and winter flounder observed in entrainment monitoring at the Sewaren and Linden Generating Stations on the Arthur Kill (PSE&G 1989). The post yolk-sac larval collection efficiencies derived from this calculation are as follows:

|                 | Entrainment Collection Efficiency (%) |     |     |     |     |     |     |     |
|-----------------|---------------------------------------|-----|-----|-----|-----|-----|-----|-----|
|                 | Mar                                   | Apr | May | Jun | Jul | Aug | Sep | Oct |
| Bay anchovy     | 34                                    | 49  | 66  | 67  | 99  | 100 | 100 | 100 |
| Winter flounder | 25                                    | 34  | 63  | 92  | 100 | 100 | 100 | 100 |

These estimates of post yolk-sac larval collection efficiency will be used to estimate entrainment losses for bay anchovy and winter flounder at Ravenswood. To estimate adjusted (actual)

densities, measured densities will be divided by the collection efficiencies listed above expressed as a fraction.

## 2.2 COOLING WATER FLOW

Baseline cooling water flow will assumed to be equal to the design pumping capacity of all three once-through units at Ravenswood or a combined rate of 964,000 gallons per minute. Actual cooling water flow for each of the calculation years will be set to the actual hourly cooling water flow at each unit as measured at each unit.

## 2.3 RECIRCULATION FACTOR

Flood tides in the lower East River transport a portion of the CWS discharge from Ravenswood upstream to the intake, causing recirculation of some of the discharged water back into the CWS intake. Some of the organisms previously entrained through the CWS at the Station would move along with the recirculated water and thus be "re-entrained". Consequently, loss estimates based on entrainment densities determined from monitoring at Ravenswood could overestimate losses by double-counting re-entrained organisms that were already killed by entrainment, or underestimate losses by not accounting for mortality suffered during re-entrainment. To correct for the effect of re-entrainment, entrainment densities will be adjusted by a recirculation factor that reflects the fraction of the total number collected that were alive at the time of entrainment.

For this assessment, a constant of 0.13 for will be used for recirculation at Ravenswood based on prior assessment of the thermal plume distribution. This same recirculation factor was used in the FAP and all subsequent calculations of entrainment loss at Ravenswood.

## 3. IMPINGEMENT LOSS CALCULATIONS

The total number of each age group of each of the RIS and of other fish taxa combined as a group lost to impingement at Ravenswood will be estimated for the baseline and actual flow case. Hourly loss estimates will be calculated for each RIS and age as follows:

$$NI_{sah} = \frac{ID_{sah} \times CW_h}{CE_{sah}} \times IM_{sah}$$

where:

- $NI_{sah}$  = estimated number of each RIS and other fish taxa (s) and age class (a) lost to impingement during hour (h)
- $ID_{sah}$  = density of each RIS or other fish taxa (s) and age class (a) impinged during hour (h)
- $CW_h$  = cooling water flow at the Station during hour (h)
- $CE_{sah}$  = collection efficiency of RIS or other fish taxa (s) and age class (a) impinged during hour (h)
- $IM_{sah}$  = mortality of RIS or other fish taxa (s) and age class (a) impinged during hour (h).

Estimates for each hour will then then summed to estimate total impingement losses for each RIS or other fish taxa as a group and age class for an entire year. Sources of input information for these calculations are discussed below.

### 3.1 COOLING WATER FLOW

As discussed for entrainment above, baseline cooling water flow will assumed to be equal to the design pumping capacity of all three once-through units at Ravenswood or a combined rate of 964,000 gallons per minute. Actual cooling water flow for each of the calculation years, will be set to the actual hourly cooling water flow at each unit as measured at each unit.

### 3.2 IMPINGEMENT COLLECTION EFFICIENCY

Impingement density estimates will be adjusted to account for collection efficiency during the impingement monitoring studies. Impingement collection efficiency was previously estimated from studies conducted at Ravenswood during the impingement monitoring. The average collection efficiencies determined from these studies for each quarter of the year, as shown below, will be used in the impingement loss calculations for all species except blue crab:

|                                       | Jan-Mar | Apr-Jun | Jul-Sep | Oct-Dec |
|---------------------------------------|---------|---------|---------|---------|
| Impingement Collection Efficiency (%) | 71      | 81      | 72      | 65      |

No collection efficiency will be applied for blue crab.

### 3.3 IMPINGEMENT MORTALITY

Baseline losses of the RIS and other fish taxa will be calculated assuming 100 percent impingement mortality. Losses under actual operations at Ravenswood were originally calculated using impingement mortality estimates for each RIS and other fish taxa as reported for the Arthur Kill Station (Con Edison 1996). These impingement mortality estimates were subsequently updated to incorporate site-specific impingement survival rates for black seabass, oyster toadfish, winter flounder, Atlantic silverside, blueback herring, bay anchovy, and butterfish from ASA (2007). For this assessment, impingement mortality rates will assumed to be the same as those used in the most recent calculations of impingement loss at Ravenswood.

## 4. REFERENCES

- ASA Analysis & Communication, Inc. (ASA). 2007. Ravenswood Generating Station Impingement Survival Monitoring Studies, June 2006 - February 2007.
- Consolidated Edison Company of New York, Inc. (Con Edison). 1996. Ravenswood Generating Station Diagnostic Study Report.
- Public Service Electric & Gas Company (PSEG). 1998. Hudson Generating Station Supplemental 316(b) Report. Newark, NJ.
- PSE&G. 1999. Permit Renewal Application NJPDES Permit No. NJ0005622, Public Service Electric and Gas Company Salem Generating Station, March 4, 1999. PSE&G, Newark, New Jersey.

**RAVENSWOOD VMP REPORT FOR JULY 2014 TO JUNE 2015, DATED DECEMBER  
2015 [A- 656 - A-671]**

**Comparisons of the Actual and Baseline Entrainment and  
Impingement Loss at Ravenswood  
Based on Actual Flow from Jul 2014 - Jun 2015**

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December 2015



## 1. INTRODUCTION

New York State Department of Environmental Conservation's SPDES Permit Number NY0005193 for the Ravenswood Generating Station includes two Best Technology Available Performance Standards:

- a. The technologies and operational procedures described in Condition B.2, Best Technology Available, must achieve a reduction of 65% in entrainment from the full flow calculation baseline. Compliance with this performance standard shall be determined through studies conducted under the Verification Monitoring Plan required in Condition B.5.
- b. The technologies and operational procedures described in Condition B.2, Best Technology Available, must achieve a reduction in impingement mortality of 90% for all fish species, and 90% for winter flounder alone from the full flow calculation baseline. Compliance with this performance standard shall be determined through studies conducted under the Verification Monitoring Plan required in Condition B.5.

Compliance with these performance standards are to be determined based on a five-year running average.

The purpose of this document is to provide estimates of entrainment and impingement mortality reduction for the one-year period extending from July 1, 2014 through June 30, 2015.

## 2. METHODS

Losses from entrainment and impingement for the baseline and for the current operation of Ravenswood were calculated as described below

### 2.1. Hourly Entrainment and Impingement Densities

Hourly entrainment and impingement densities were based on site-specific sampling conducted at Ravenswood in 1992, 1994 and 2005 and entrainment only sampling conducted in 2000. Hourly entrainment and impingement densities for each species and life stage were estimated from these data by applying the average density measured for each 6-hour sample to each hour of the 6-hour sampling interval. The hourly densities thus determined for each sampling event were then applied over each 24-hour period to the midpoint between sampling events (which were generally conducted weekly for impingement and weekly or biweekly for entrainment). Hourly entrainment and impingement densities on non-sampled days were interpolated from adjacent sampling dates. Finally, the mean hourly densities for each species and life stage across all entrainment and all impingement sampling years were used as the basis for this loss calculation.

### 2.2. Entrainment Loss Calculations

Entrainment densities calculated as described above, design and actual Station operation and other relevant information were used to estimate the total number of each life stage of each RIS and of other fish taxa combined as a group lost to entrainment at Ravenswood. Hourly loss estimates for the period July 1, 2014 through June 30, 2015 were calculated for each life stage for the baseline case and the actual cooling water flow case as follows:

$$NE_{sli} = AED_{sli} \times CW_i \times RF_{sli}$$

where:

- NE<sub>sli</sub> = estimated number of each species (s) and life stage (l) lost to entrainment during hour (i);
- AED<sub>sli</sub> = adjusted density of species (s) and life stage (l) entrained during hour (i);
- CW<sub>i</sub> = total design or actual cooling water flow at Ravenswood during hour (i); and,
- RF<sub>sli</sub> = recirculation factor for RIS or other taxa (s) and life stage (l) entrained during hour (i).

Estimates for each hour were then summed across each hour and species to estimate total entrainment losses for the entire year. Sources of input information for these calculations are discussed below.

#### 2.2.1. Adjusted Entrainment Densities

Extrusion of organisms through the mesh of a sampling net can occur when some dimension of the individuals sampled are sufficiently small that they can pass through the mesh and not be collected. When this occurs, estimated sampling densities will be less than that actually occurring. Hence, adjustments must be made to the measured entrainment densities when estimating overall entrainment loss.

Clearly, extrusion is a function of the size of the organisms with larger organisms being retained while many some of the smaller organisms pass through the mesh. At Ravenswood, some of the earlier entrainment sampling was conducted using nets with an opening of approximately 0.5 mm. Thus, virtually all organisms less than 0.5 mm long will pass through this mesh whereas most larger organisms with all dimensions larger than this should be retained. The eggs of some of the entrained species have diameters from about 0.7 to 1.7 mm. Owing to their general spherical shape, the retention of this life stage by the entrainment sampling gear should be quite high and no adjustment for net extrusion is deemed necessary. High retention is supported by an field entrainment study at the Hudson Generating Station on the Hackensack River (PSEG 1998), which measured 97 percent retention of bay anchovy eggs, also using a pump and 0.5-mm net.

On the other hand, newly hatched larvae of two species, bay anchovy and winter flounder, have cross-sectional dimensions that could allow passage through the sampling mesh. For this assessment, we will assumed that larvae of all other species were fully retained by the net. Net extrusion rates for bay anchovy and winter flounder larvae were based on a length-extrusion relationship for developed in studies conducted at the Salem Generating Station located on the Delaware Estuary (PSEG 1999). The length-extrusion relationship from these studies indicates that the fraction of larvae retained by the entrainment sampling gear is about 0.11, 0.27, and 0.92 for larvae measuring less than 3.1 mm, 3.1 – 6.0 mm, and 6.1 – 9.0 mm, respectively. Owing to their small size at hatch, a collection efficiency of 11 percent were conservatively applied to bay anchovy and winter flounder yolk-sac larvae collected in entrainment monitoring at Ravenswood.

For post yolk-sac larvae of these two species, an entrainment collection efficiency specific to each month of their entrainment was calculated by weighting the length-specific retention proportions given above by the seasonal length frequency distribution of bay anchovy and winter flounder observed in entrainment monitoring at the Sewaren and Linden Generating Stations on the Arthur Kill (PSE&G 1989). The post yolk-sac larval collection efficiencies derived from this calculation are as follows:

| Species         | Entrainment Collection Efficiency (%) |     |     |     |     |     |     |     |
|-----------------|---------------------------------------|-----|-----|-----|-----|-----|-----|-----|
|                 | Mar                                   | Apr | May | Jun | Jul | Aug | Sep | Oct |
| Bay anchovy     | 34                                    | 49  | 66  | 67  | 99  | 100 | 100 | 100 |
| Winter flounder | 25                                    | 34  | 63  | 92  | 100 | 100 | 100 | 100 |

These estimates of post yolk-sac larval collection efficiency were used to estimate entrainment losses for bay anchovy and winter flounder at Ravenswood. To estimate adjusted (actual) densities, measured densities will be divided by the collection efficiencies listed above expressed as a fraction.

#### 2.2.2. Cooling Water Flow

Baseline cooling water flow will assumed to be equal to the design pumping capacity of all three once-through units at Ravenswood or a combined rate of 965,000 gallons per minute. Baseline service water flow was assumed to be 96,000 gallons per minute ( six pumps at 16,000 gpm each). Actual cooling and service water flow for the period July 1, 2014 through June 30, 2015 was set to the actual hourly cooling water flow at each unit as measured at each unit.

#### 2.2.3. Recirculation

Flood tides in the lower East River transport a portion of the CWS discharge from Ravenswood upstream to the intake, causing recirculation of some of the discharged water back into the CWS intake. Some of the organisms previously entrained through the CWS at the Station would move along with the recirculated water and thus be "re-entrained". Consequently, loss estimates based on entrainment densities determined from monitoring at Ravenswood could overestimate losses by double-counting re-entrained organisms that were already killed by entrainment. To correct for the effect of re-entrainment, entrainment densities were adjusted by a recirculation factor that reflects the fraction of the total number collected that were entrained for the first time in each collection..

For this assessment, a constant of 0.13 for was used for recirculation at Ravenswood based on prior assessment of the thermal plume distribution.

### 2.3. Impingement Loss Calculations

The total number of each age group of each species lost to impingement at Ravenswood were estimated for the baseline and actual flow case. Hourly loss estimates were calculated for each RIS and age as follows:

$$NI_{sah} = \frac{ID_{sah} \times CW_h}{CE_{sah}} \times IM_{sah}$$

where:

- $NI_{sah}$  = estimated number of each species taxa (s) and age class (a) lost to impingement during hour (h);  
 $ID_{sah}$  = density of each species (s) and age class (a) impinged during hour (h);  
 $CW_h$  = cooling water flow at the Station during hour (h);  
 $CE_{sah}$  = collection efficiency of species (s) and age class (a) impinged during hour (h); and,  
 $IM_{sah}$  = mortality of species (s) and age class (a) impinged during hour (h).

Estimates for each hour were then summed to estimate total impingement losses for each RIS or other fish taxa as a group and age class for an entire year.

Sources of input information for these calculations are discussed below.

#### 2.3.1. Cooling Water Flow

As discussed for entrainment above, baseline cooling water flow will assumed to be equal to the design cooling and service water pumping capacity of all three once-through units at Ravenswood. Actual cooling and service water flow for the period July 1, 2014 through June 30, 2015 was set to the actual hourly cooling water flow at each unit as measured at each unit.

#### 2.3.2. Impingement Collection Efficiency

Impingement density estimates were adjusted to account for collection efficiency during the impingement monitoring studies. Impingement collection efficiency was previously estimated from studies conducted at Ravenswood during the impingement monitoring. The average collection efficiencies determined from these studies for each quarter of the year, as shown below, will be used in the impingement loss calculations for all fish species:

| Impingement Collection Efficiency (%) | Jan-Mar | Apr-Jun | Jul-Sep | Oct-Dec |
|---------------------------------------|---------|---------|---------|---------|
|                                       | 71      | 81      | 72      | 65      |

No collection efficiency was applied for blue crab.

#### 2.3.3. Impingement Mortality

Baseline losses of each species were calculated assuming 100 percent impingement mortality. Losses under actual operations at Ravenswood were originally calculated using impingement mortality estimates for each RIS and other fish taxa as reported for the Arthur Kill Station (Con Edison 1996). These impingement mortality estimates were subsequently updated to incorporate site-specific impingement survival rates for black seabass, oyster toadfish, winter flounder, Atlantic silverside, blueback herring, bay anchovy, and butterfish from ASA (2007). For this assessment, impingement mortality rates were assumed to be the same as those used in the most recent calculations of impingement loss at Ravenswood.

### 3. RESULTS

Estimates of the annual flow, entrainment and annual impingement for all fish species, fish and blue crabs and for winter flounder are provided in Table 1. Also included on this table are the estimated percent reductions these values under actual operations compared to the calculation baseline. These calculations were calculated two ways, using only cooling water flows and using both cooling and service water flows. Patterns in the daily and cumulative estimates for each parameter are provided in Figures 1 through Figure 10.

### 4. REFERENCES

ASA Analysis & Communication, Inc. (ASA). 2007. Ravenswood Generating Station Impingement Survival Monitoring Studies, June 2006 - February 2007.

Consolidated Edison Company of New York, Inc. (Con Edison). 1996. Ravenswood Generating Station Diagnostic Study Report.

Public Service Electric & Gas Company (PSEG). 1998. Hudson Generating Station Supplemental 316(b) Report. Newark, NJ.

PSE&G. 1999. Permit Renewal Application NJPDES Permit No. NJ0005622, Public Service Electric and Gas Company Salem Generating Station, March 4, 1999. PSE&G, Newark, New Jersey.

Table 1 Estimates of the annual water flow, entrainment and impingement under baseline and actual conditions at Ravenswood, Jul 2014 - Jun 2015.

| <b>Metric</b>                            | <b>Cooling Water Alone</b> | <b>Cooling and Service Water</b> |
|--|----------------------------|----------------------------------|
| <b>Flow (MG)</b>                         |                            |                                  |
| Design                                   | 507,164                    | 557,618                          |
| Actual                                   | 169,445                    | 146,829                          |
| % Reduction                              | 66.6                       | 73.7                             |
| <b>Entrainment (millions)</b>            |                            |                                  |
| Design                                   | 289,339                    | 322,424                          |
| Actual                                   | 84,529                     | 102,469                          |
| % Reduction                              | 70.8                       | 68.2                             |
| <b>Impingement (Fish Only)</b>           |                            |                                  |
| Design                                   | 93,055                     | 102,854                          |
| Actual                                   | 6,857                      | 8,656                            |
| % Reduction                              | 92.6                       | 91.6                             |
| <b>Impingement (Fish and Blue Crabs)</b> |                            |                                  |
| Design                                   | 185,654                    | 205,015                          |
| Actual                                   | 7,187                      | 9,043                            |
| % Reduction                              | 96.1                       | 95.6                             |
| <b>Impingement (Winter Flounder)</b>     |                            |                                  |
| Design                                   | 16,252                     | 17,651                           |
| Actual                                   | 169                        | 231                              |
| % Reduction                              | 99.0                       | 98.7                             |



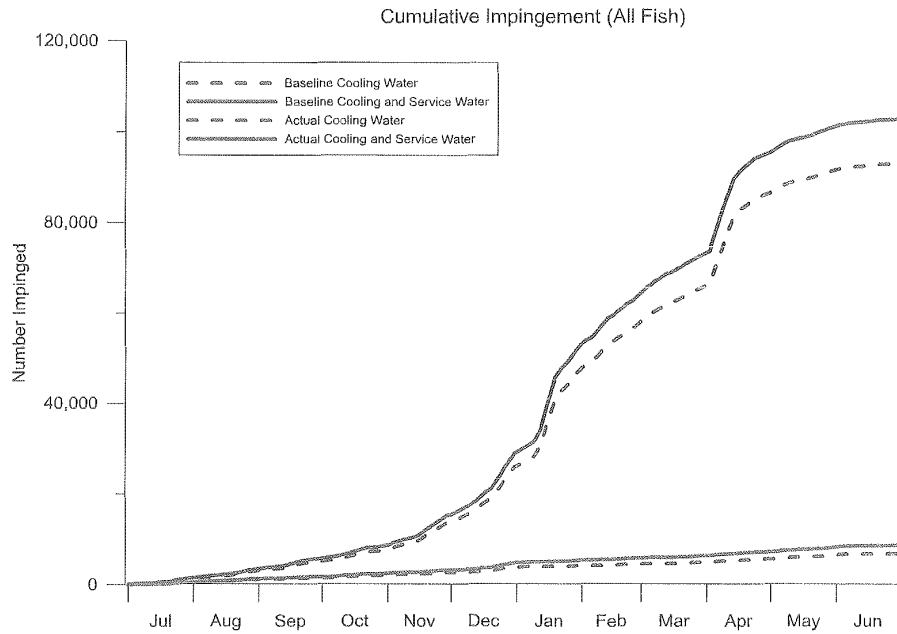


Figure 5 Cumulative impingement of fish at Ravenswood under baseline and actual operating conditions, Jul 2014 - Jun 2015.

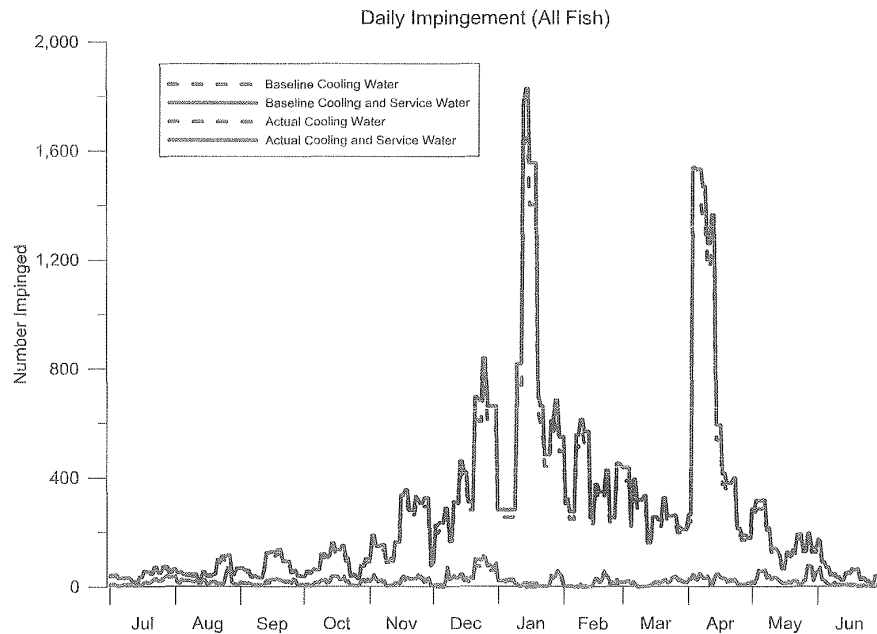


Figure 6 Daily impingement of fish at Ravenswood under baseline and actual operating conditions, Jul 2014 - Jun 2015.

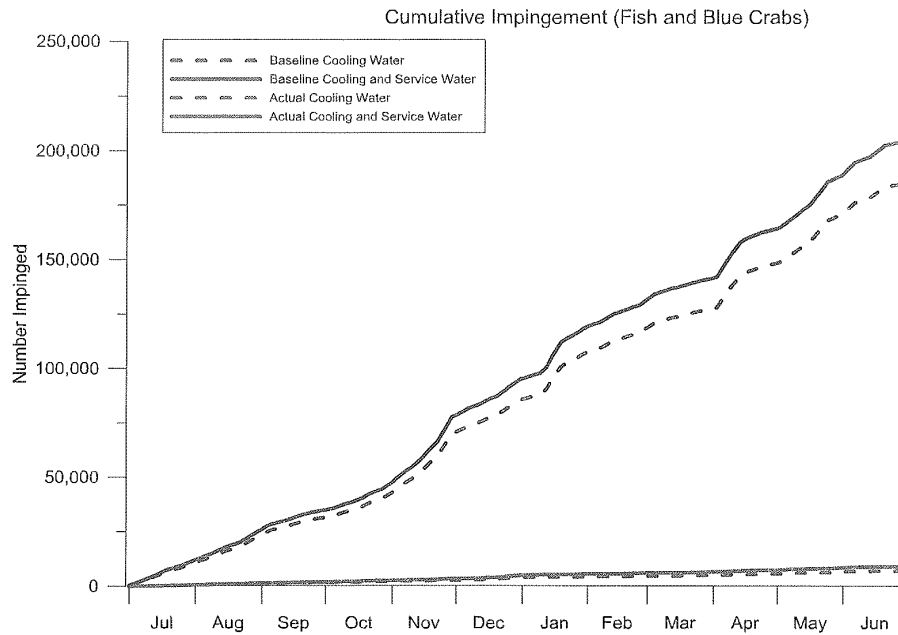


Figure 7 Cumulative impingement of fish and blue crabs at Ravenswood under baseline and actual operating conditions, Jul 2014 - Jun 2015.

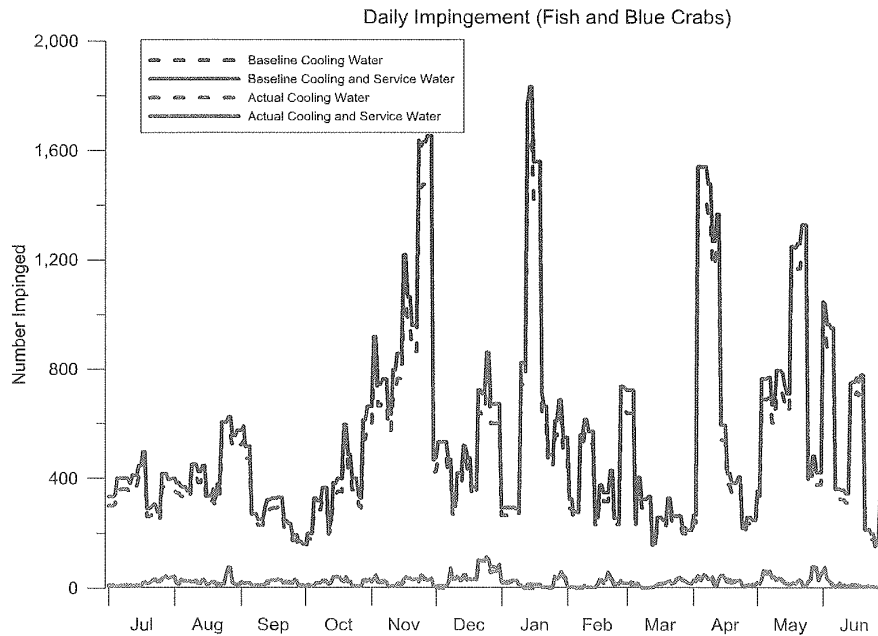


Figure 8 Daily impingement of fish and blue crabs at Ravenswood under baseline and actual operating conditions, Jul 2014 - Jun 2015.

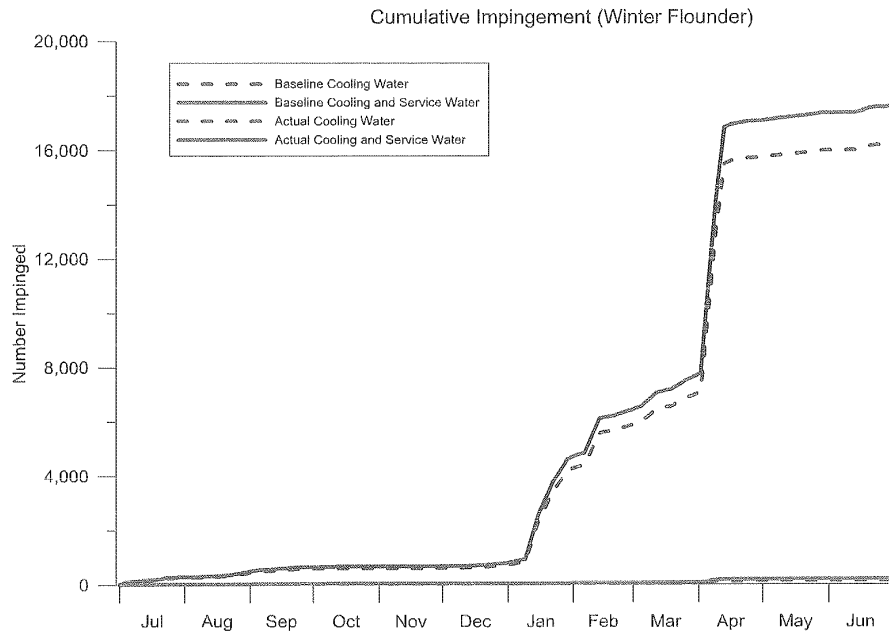


Figure 9 Cumulative impingement of winter flounder at Ravenswood under baseline and actual operating conditions, Jul 2014 - Jun 2015.

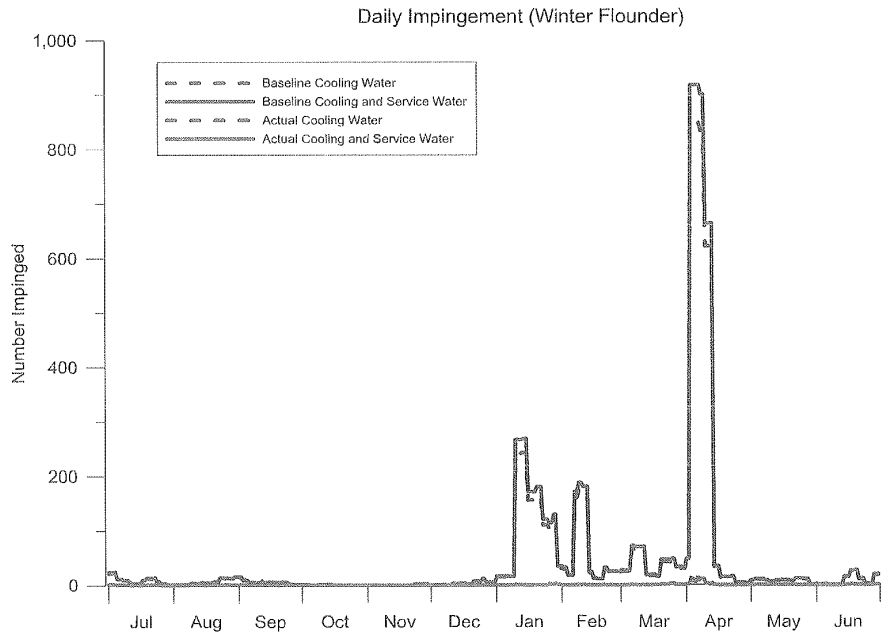
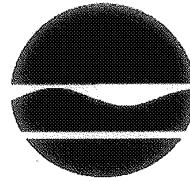


Figure 10 Daily impingement of winter flounder at Ravenswood under baseline and actual operating conditions, Jul 2014 - Jun 2015.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
Division of Fish, Wildlife & Marine Resources  
Bureau of Habitat  
625 Broadway, 5<sup>th</sup> Floor, Albany, New York 12233-4756  
Phone: (518) 402-8924 • Fax: (518) 402-8925  
Website: [www.dec.ny.gov](http://www.dec.ny.gov)



Joseph Martens  
Commissioner

December 9, 2011

Mr. Gregory Prior  
Environmental Specialist  
Ravenswood Generating Station  
38-54 Vernon Blvd.  
Long Island City, NY 11101

Re: Revised Verification Monitoring Plan  
Ravenswood Generating Station  
SPDES No. NY 000-5193

Dear Mr. Prior:

Our telephone discussion and your December 7, 2011 email addressed the questions on the revised Verification Monitoring Plan (VMP), raised in my November 22, 2011 letter. I understand that the adjusted collection efficiencies, discussed in Attachment 3, are to be used for previous data collected with a 505 micron mesh net only. Under the VMP, entrainment samples will be collected with a 335 micron mesh net and no adjustment factors for net extrusion will be used. Therefore, the revised plan is approved.

Please contact me at 518-402-8857 if you have questions. I look forward to our continued work on this important project.

Sincerely,

Michael J. Calaban  
Conservation Biologist

CC: C. Nieder

A-667

# *East River Impingement and Entrainment*

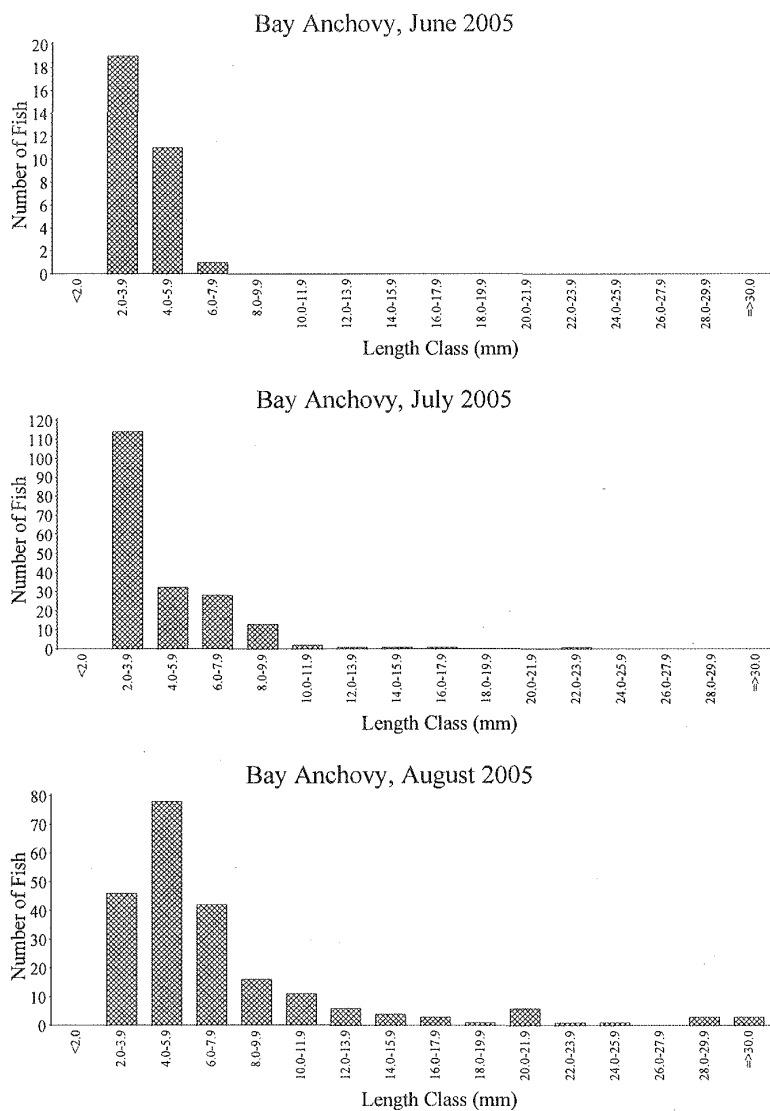


Figure 51. Monthly length-frequencies for bay anchovy larvae collected in entrainment samples at East River Generating Station, March 2005-February 2006.



A-669



Ravenswood Generating Station  
38-54 Vernon Blvd.  
Long Island City, NY 11101

December 27, 2016

Chuck Nieder  
Steam Electric Unit Leader  
NYSDEC  
625 Broadway  
Albany, New York 12233-4756

Re: Verification Monitoring Plan Status Report  
TransCanada Ravenswood Power Station  
SPDES No. 0005193

Dear Mr. Nieder,

Attached please find the Verification Monitoring Plan (VMP) Status Report for the Ravenswood Power Station in accordance with SPDES permit No. 0005193. The report is a comparison of baseline and actual impingement and entrainment losses with intake pump flow data measured from June 2015 to July 2016.

If you have any questions regarding the report, please contact me by phone at 718-706-2033 or by email at [james\\_scullin@transcanada.com](mailto:james_scullin@transcanada.com).

Best regards,

A handwritten signature in dark ink, appearing to read "James Scullin".

James Scullin  
Safety Coordinator

Attachment

cc: NYSDEC Region II – Regional Water Engineer  
SPDES Compliance Information Section

A-671

**RAVENSWOOD VMP REPORT FOR JULY 2015 TO JUNE 2016, DATED DECEMBER  
2016 [A- 672 - A- 688]**

**Comparisons of the Actual and Baseline Entrainment and  
Impingement Loss at Ravenswood  
Based on Actual Flow from Jul 2015 - Jun 2016**

Prepared for  
TransCanada  
Ravenswood Generating Station  
38-54 Vernon Blvd  
Long Island City NY 11101  
United States of America

Prepared by  
ASA Analysis & Communication, Inc.  
5 Fairlawn Drive, Suite 205  
Washingtonville, NY 10992

December 2016

## 1. INTRODUCTION

New York State Department of Environmental Conservation's SPDES Permit Number NY0005193 for the Ravenswood Generating Station includes two Best Technology Available Performance Standards:

- a. The technologies and operational procedures described in Condition B.2, Best Technology Available, must achieve a reduction of 65% in entrainment from the full flow calculation baseline. Compliance with this performance standard shall be determined through studies conducted under the Verification Monitoring Plan required in Condition B.5.
- b. The technologies and operational procedures described in Condition B.2, Best Technology Available, must achieve a reduction in impingement mortality of 90% for all fish species, and 90% for winter flounder alone from the full flow calculation baseline. Compliance with this performance standard shall be determined through studies conducted under the Verification Monitoring Plan required in Condition B.5.

Compliance with these performance standards are to be determined based on a five-year running average.

The purpose of this document is to provide estimates of entrainment and impingement mortality reduction for the one-year period extending from July 1, 2015 through June 30, 2016.

## 2. METHODS

Losses from entrainment and impingement for the baseline and for the current operation of Ravenswood were calculated as described below

### 2.1. Hourly Entrainment and Impingement Densities

Hourly entrainment and impingement densities were based on site-specific sampling conducted at Ravenswood in 1992, 1994 and 2005 and entrainment only sampling conducted in 2000. Hourly entrainment and impingement densities for each species and life stage were estimated from these data by applying the average density measured for each 6-hour sample to each hour of the 6-hour sampling interval. The hourly densities thus determined for each sampling event were then applied over each 24-hour period to the midpoint between sampling events (which were generally conducted weekly for impingement and weekly or biweekly for entrainment). Hourly entrainment and impingement densities on non-sampled days were interpolated from adjacent sampling dates. Finally, the mean hourly densities for each species and life stage across all entrainment and all impingement sampling years were used as the basis for this loss calculation.

### 2.2. Entrainment Loss Calculations

Entrainment densities calculated as described above, design and actual Station operation and other relevant information were used to estimate the total number of each life stage of each RIS and of other fish taxa combined as a group lost to entrainment at Ravenswood. Hourly loss estimates for the period July 1, 2015 through June 30, 2016 were calculated for each life stage for the baseline case and the actual cooling water flow case as follows:

$$NE_{sli} = AED_{sli} \times CW_i \times RF_{sli}$$

where:

- NE<sub>sli</sub> = estimated number of each species (s) and life stage (l) lost to entrainment during hour (i);
- AED<sub>sli</sub> = adjusted density of species (s) and life stage (l) entrained during hour (i);
- CW<sub>i</sub> = total design or actual cooling water flow at Ravenswood during hour (i); and,
- RF<sub>sli</sub> = recirculation factor for RIS or other taxa (s) and life stage (l) entrained during hour (i).

Estimates for each hour were then summed across each hour and species to estimate total entrainment losses for the entire year. Sources of input information for these calculations are discussed below.

#### 2.2.1. Adjusted Entrainment Densities

Extrusion of organisms through the mesh of a sampling net can occur when some dimension of the individuals sampled are sufficiently small that they can pass through the mesh and not be collected. When this occurs, estimated sampling densities will be less than that actually occurring. Hence, adjustments must be made to the measured entrainment densities when estimating overall entrainment loss.

Clearly, extrusion is a function of the size of the organisms with larger organisms being retained while many some of the smaller organisms pass through the mesh. At Ravenswood, some of the earlier entrainment sampling was conducted using nets with an opening of approximately 0.5 mm. Thus, virtually all organisms less than 0.5 mm long will pass through this mesh whereas most larger organisms with all dimensions larger than this should be retained. The eggs of some of the entrained species have diameters from about 0.7 to 1.7 mm. Owing to their general spherical shape, the retention of this life stage by the entrainment sampling gear should be quite high and no adjustment for net extrusion is deemed necessary. High retention is supported by an field entrainment study at the Hudson Generating Station on the Hackensack River (PSEG 1998), which measured 97 percent retention of bay anchovy eggs, also using a pump and 0.5-mm net.

On the other hand, newly hatched larvae of two species, bay anchovy and winter flounder, have cross-sectional dimensions that could allow passage through the sampling mesh. For this assessment, we will assumed that larvae of all other species were fully retained by the net. Net extrusion rates for bay anchovy and winter flounder larvae were based on a length-extrusion relationship for developed in studies conducted at the Salem Generating Station located on the Delaware Estuary (PSEG 1999). The length-extrusion relationship from these studies indicates that the fraction of larvae retained by the entrainment sampling gear is about 0.11, 0.27, and 0.92 for larvae measuring less than 3.1 mm, 3.1 – 6.0 mm, and 6.1 – 9.0 mm, respectively. Owing to their small size at hatch, a collection efficiency of 11 percent were conservatively applied to bay anchovy and winter flounder yolk-sac larvae collected in entrainment monitoring at Ravenswood.



For post yolk-sac larvae of these two species, an entrainment collection efficiency specific to each month of their entrainment was calculated by weighting the length-specific retention proportions given above by the seasonal length frequency distribution of bay anchovy and winter flounder observed in entrainment monitoring at the Sewaren and Linden Generating Stations on the Arthur Kill (PSE&G 1989). The post yolk-sac larval collection efficiencies derived from this calculation are as follows:

| Species         | Entrainment Collection Efficiency (%) |     |     |     |     |     |     |     |
|-----------------|---------------------------------------|-----|-----|-----|-----|-----|-----|-----|
|                 | Mar                                   | Apr | May | Jun | Jul | Aug | Sep | Oct |
| Bay anchovy     | 34                                    | 49  | 66  | 67  | 99  | 100 | 100 | 100 |
| Winter flounder | 25                                    | 34  | 63  | 92  | 100 | 100 | 100 | 100 |

These estimates of post yolk-sac larval collection efficiency were used to estimate entrainment losses for bay anchovy and winter flounder at Ravenswood. To estimate adjusted (actual) densities, measured densities will be divided by the collection efficiencies listed above expressed as a fraction.

#### 2.2.2. Cooling Water Flow

Baseline cooling water flow will assumed to be equal to the design pumping capacity of all three once-through units at Ravenswood or a combined rate of 965,000 gallons per minute. Baseline service water flow was assumed to be 96,000 gallons per minute ( six pumps at 16,000 gpm each). Actual cooling and service water flow for the period July 1, 2015 through June 30, 2016 was set to the actual hourly cooling water flow at each unit as measured at each unit.

#### 2.2.3. Recirculation

Flood tides in the lower East River transport a portion of the CWS discharge from Ravenswood upstream to the intake, causing recirculation of some of the discharged water back into the CWS intake. Some of the organisms previously entrained through the CWS at the Station would move along with the recirculated water and thus be "re-entrained". Consequently, loss estimates based on entrainment densities determined from monitoring at Ravenswood could overestimate losses by double-counting re-entrained organisms that were already killed by entrainment. To correct for the effect of re-entrainment, entrainment densities were adjusted by a recirculation factor that reflects the fraction of the total number collected that were entrained for the first time in each collection..

For this assessment, a constant of 0.13 for was used for recirculation at Ravenswood based on prior assessment of the thermal plume distribution.

### 2.3. Impingement Loss Calculations

The total number of each age group of each species lost to impingement at Ravenswood were estimated for the baseline and actual flow case. Hourly loss estimates were calculated for each RIS and age as follows:

$$NI_{sah} = \frac{ID_{sah} \times CW_h}{CE_{sah}} \times IM_{sah}$$

where:

- $NI_{sah}$  = estimated number of each species taxa (s) and age class (a) lost to impingement during hour (h);  
 $ID_{sah}$  = density of each species (s) and age class (a) impinged during hour (h);  
 $CW_h$  = cooling water flow at the Station during hour (h);  
 $CE_{sah}$  = collection efficiency of species (s) and age class (a) impinged during hour (h); and,  
 $IM_{sah}$  = mortality of species (s) and age class (a) impinged during hour (h).

Estimates for each hour were then summed to estimate total impingement losses for each RIS or other fish taxa as a group and age class for an entire year.

Sources of input information for these calculations are discussed below.

#### 2.3.1. Cooling Water Flow

As discussed for entrainment above, baseline cooling water flow will assumed to be equal to the design cooling and service water pumping capacity of all three once-through units at Ravenswood. Actual cooling and service water flow for the period July 1, 2015 through June 30, 2016 was set to the actual hourly cooling water flow at each unit as measured at each unit.

#### 2.3.2. Impingement Collection Efficiency

Impingement density estimates were adjusted to account for collection efficiency during the impingement monitoring studies. Impingement collection efficiency was previously estimated from studies conducted at Ravenswood during the impingement monitoring. The average collection efficiencies determined from these studies for each quarter of the year, as shown below, will be used in the impingement loss calculations for all fish species:

| Impingement Collection Efficiency (%) | Jan-Mar | Apr-Jun | Jul-Sep | Oct-Dec |
|---------------------------------------|---------|---------|---------|---------|
|                                       | 71      | 81      | 72      | 65      |

No collection efficiency was applied for blue crab.

#### 2.3.3. Impingement Mortality

Baseline losses of each species were calculated assuming 100 percent impingement mortality. Losses under actual operations at Ravenswood were originally calculated using impingement mortality estimates for each RIS and other fish taxa as reported for the Arthur Kill Station (Con Edison 1996). These impingement mortality estimates were subsequently updated to incorporate site-specific impingement survival rates for black seabass, oyster toadfish, winter flounder, Atlantic silverside, blueback herring, bay anchovy, and butterfish from ASA (2007). For this assessment, impingement mortality rates were assumed to be the same as those used in the most recent calculations of impingement loss at Ravenswood.

### **3. RESULTS**

Estimates of the annual flow, entrainment and annual impingement for all fish species, fish and blue crabs and for winter flounder are provided in Table 1. Also included on this table are the estimated percent reductions these values under actual operations compared to the calculation baseline. These calculations were calculated two ways, using only cooling water flows and using both cooling and service water flows. Patterns in the daily and cumulative estimates for each parameter are provided in Figures 1 through Figure 10.

### **4. REFERENCES**

ASA Analysis & Communication, Inc. (ASA). 2007. Ravenswood Generating Station Impingement Survival Monitoring Studies, June 2006 - February 2007.

Consolidated Edison Company of New York, Inc. (Con Edison). 1996. Ravenswood Generating Station Diagnostic Study Report.

Public Service Electric & Gas Company (PSEG). 1998. Hudson Generating Station Supplemental 316(b) Report. Newark, NJ.

PSE&G. 1999. Permit Renewal Application NJPDES Permit No. NJ0005622, Public Service Electric and Gas Company Salem Generating Station, March 4, 1999. PSE&G, Newark, New Jersey.

Table 1 Estimates of the annual water flow, entrainment and impingement under baseline and actual conditions at Ravenswood, Jul 2015 - Jun 2016.

| <b>Metric</b>                            | <b>Cooling Water Alone</b> | <b>Cooling and Service Water</b> |
|--|----------------------------|----------------------------------|
| <b>Flow (MG)</b>                         |                            |                                  |
| Design                                   | 507,164                    | 557,618                          |
| Actual                                   | 242,983                    | 272,733                          |
| % Reduction                              | 52.1                       | 51.1                             |
| <b>Entrainment (thousands)</b>           |                            |                                  |
| Design                                   | 289,339                    | 322,424                          |
| Actual                                   | 127,007                    | 146,842                          |
| % Reduction                              | 56.1                       | 54.5                             |
| <b>Impingement (Fish Only)</b>           |                            |                                  |
| Design                                   | 93,055                     | 102,854                          |
| Actual                                   | 11,665                     | 13,532                           |
| % Reduction                              | 87.5                       | 86.8                             |
| <b>Impingement (Fish and Blue Crabs)</b> |                            |                                  |
| Design                                   | 185,654                    | 205,015                          |
| Actual                                   | 12,140                     | 14,067                           |
| % Reduction                              | 93.5                       | 93.1                             |
| <b>Impingement (Winter Flounder)</b>     |                            |                                  |
| Design                                   | 16,252                     | 17,651                           |
| Actual                                   | 339                        | 409                              |
| % Reduction                              | 97.9                       | 97.7                             |

ASA Analysis &amp; Communication, Inc.

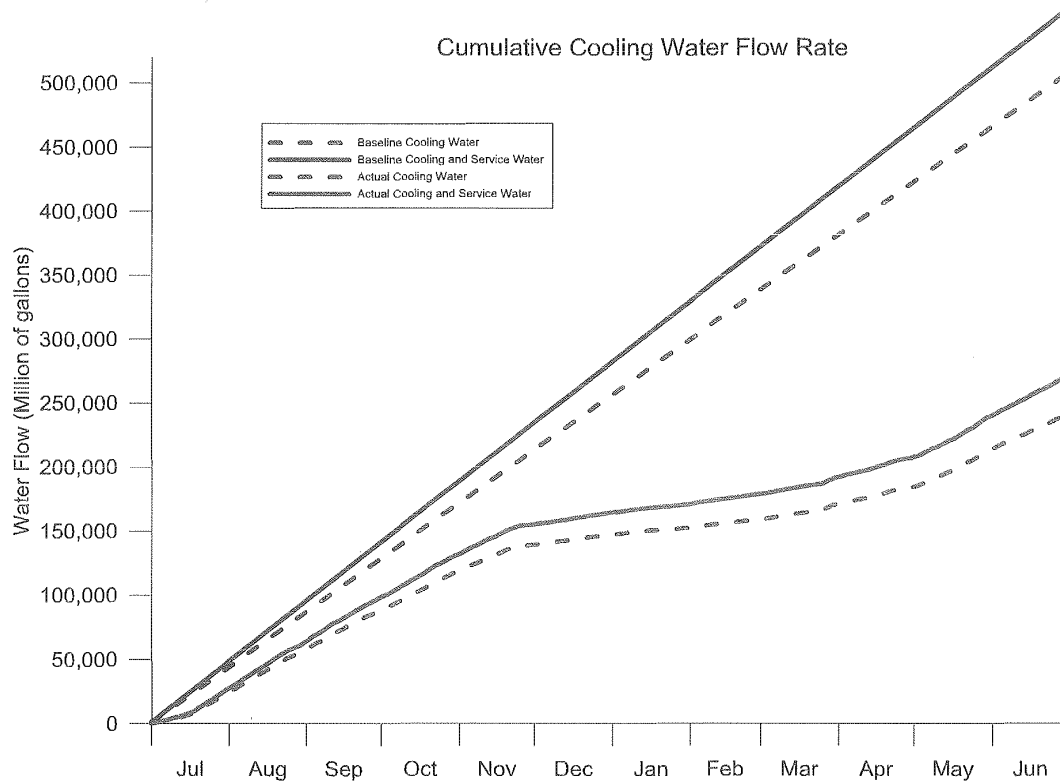


Figure 1 Cumulative water flows at Ravenswood under baseline and actual operating conditions, Jul 2015 - Jun 2016.

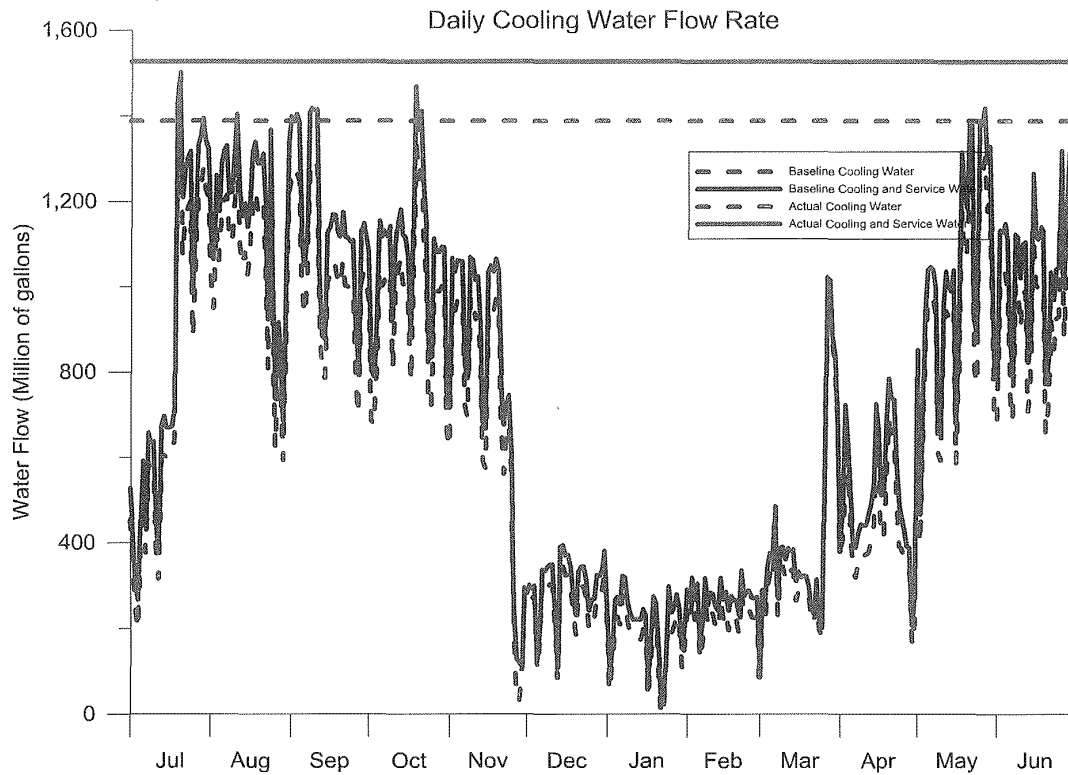


Figure 2 Daily water flows at Ravenswood under baseline and actual operating conditions, Jul 2015 - Jun 2016.



ASA Analysis &amp; Communication, Inc.

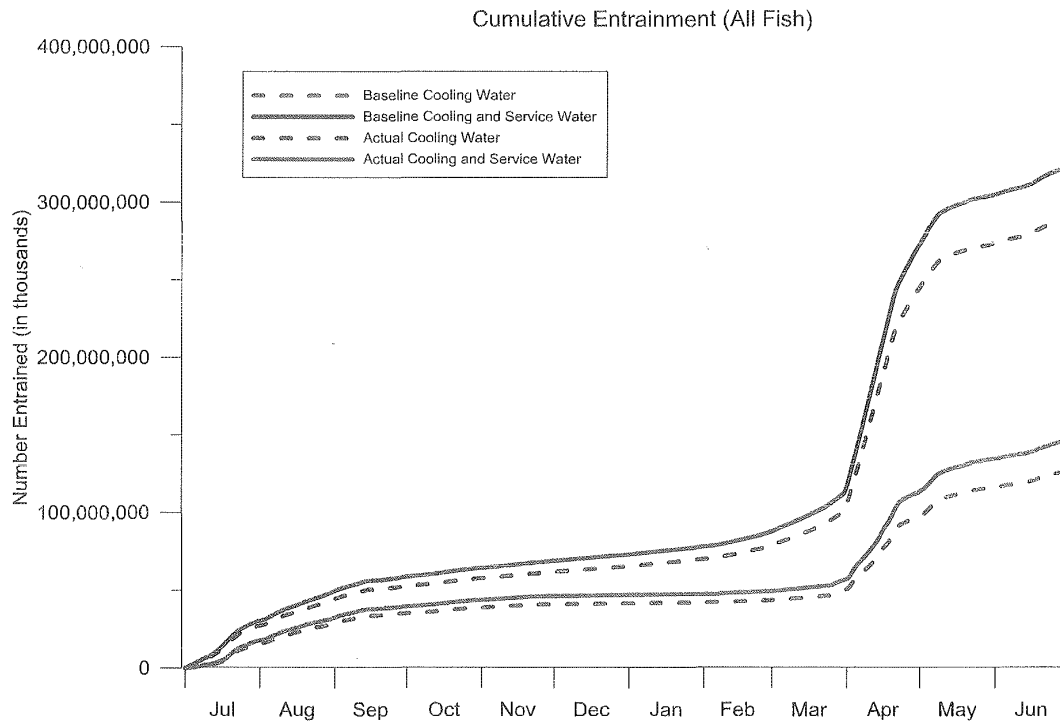


Figure 3 Cumulative entrainment of all fish species at Ravenswood under baseline and actual operating conditions, Jul 2015 - Jun 2016.

ASA Analysis &amp; Communication, Inc.

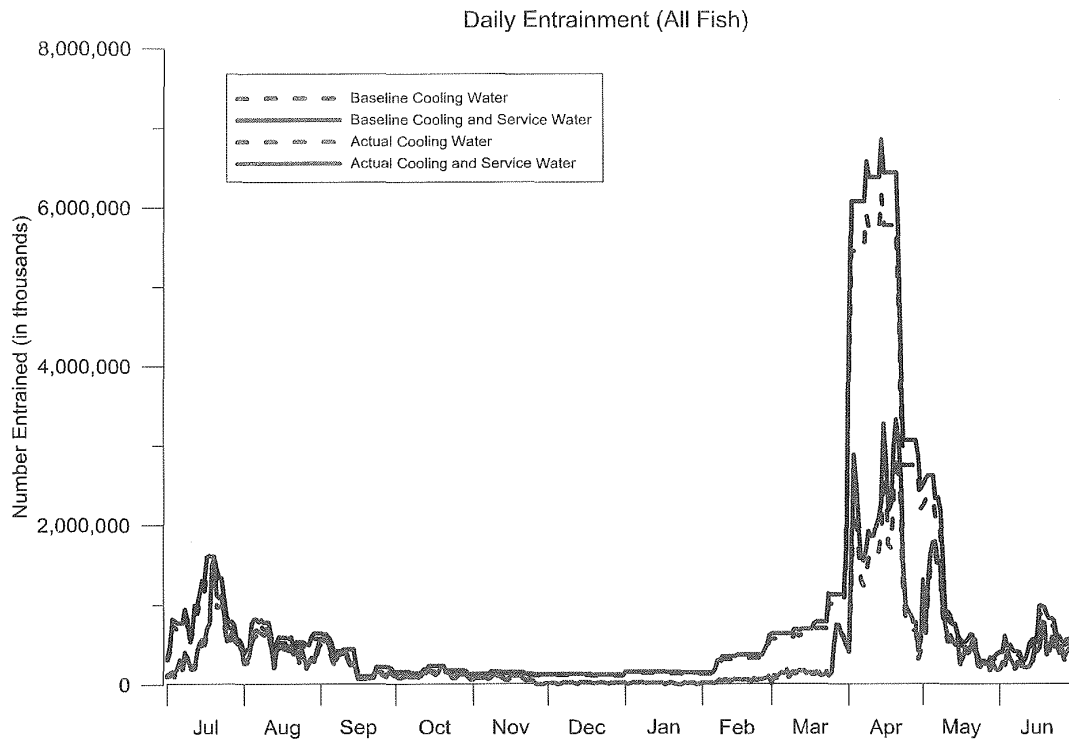


Figure 4 Daily entrainment of all fish species at Ravenswood under baseline and actual operating conditions, Jul 2015 - Jun 2016.

ASA Analysis &amp; Communication, Inc.

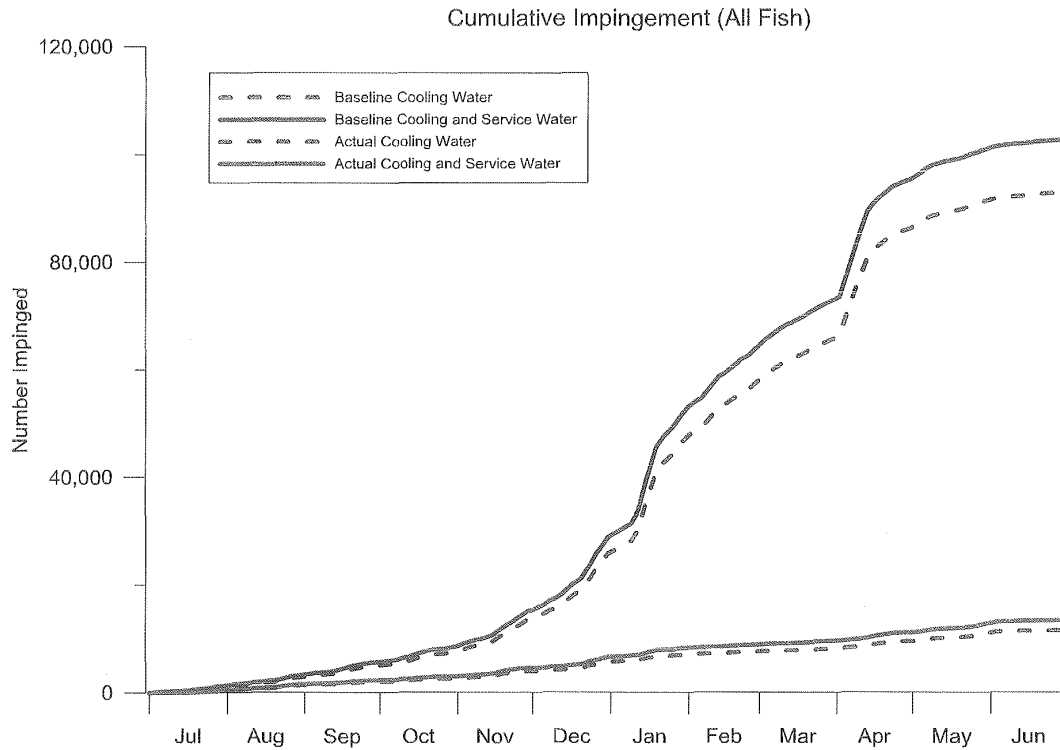


Figure 5 Cumulative impingement of fish at Ravenswood under baseline and actual operating conditions, Jul 2015 - Jun 2016.

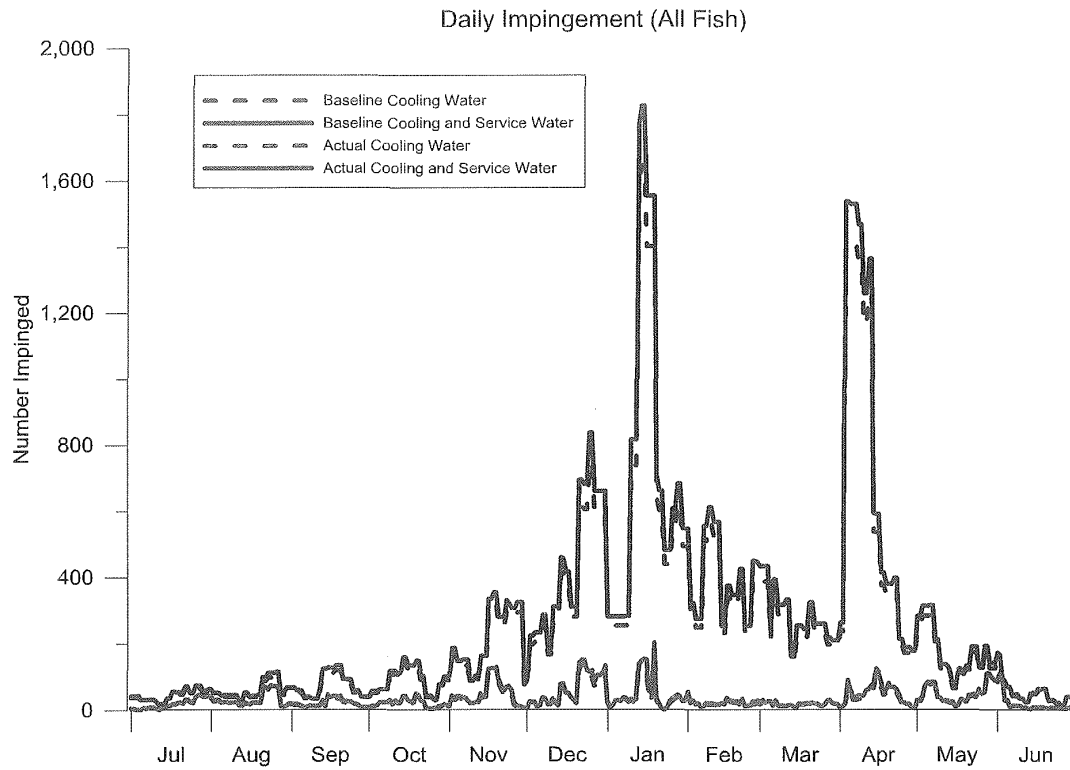


Figure 6 Daily impingement of fish at Ravenswood under baseline and actual operating conditions, Jul 2015 - Jun 2016.

ASA Analysis &amp; Communication, Inc.

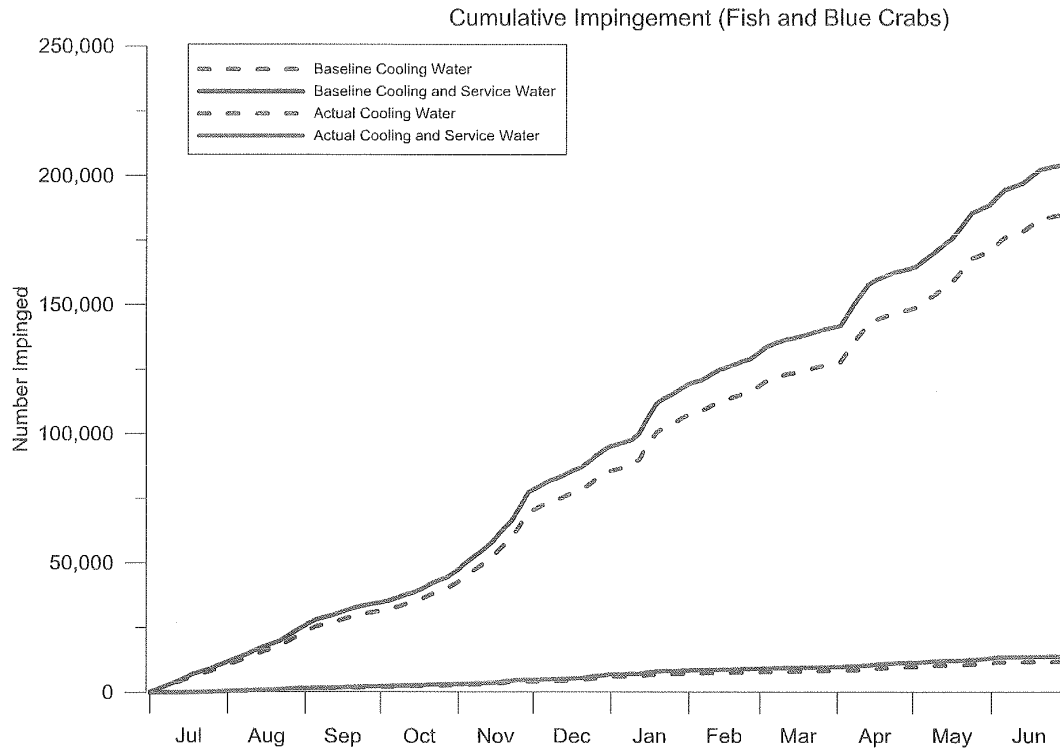


Figure 7 Cumulative impingement of fish and blue crabs at Ravenswood under baseline and actual operating conditions, Jul 2015 - Jun 2016.

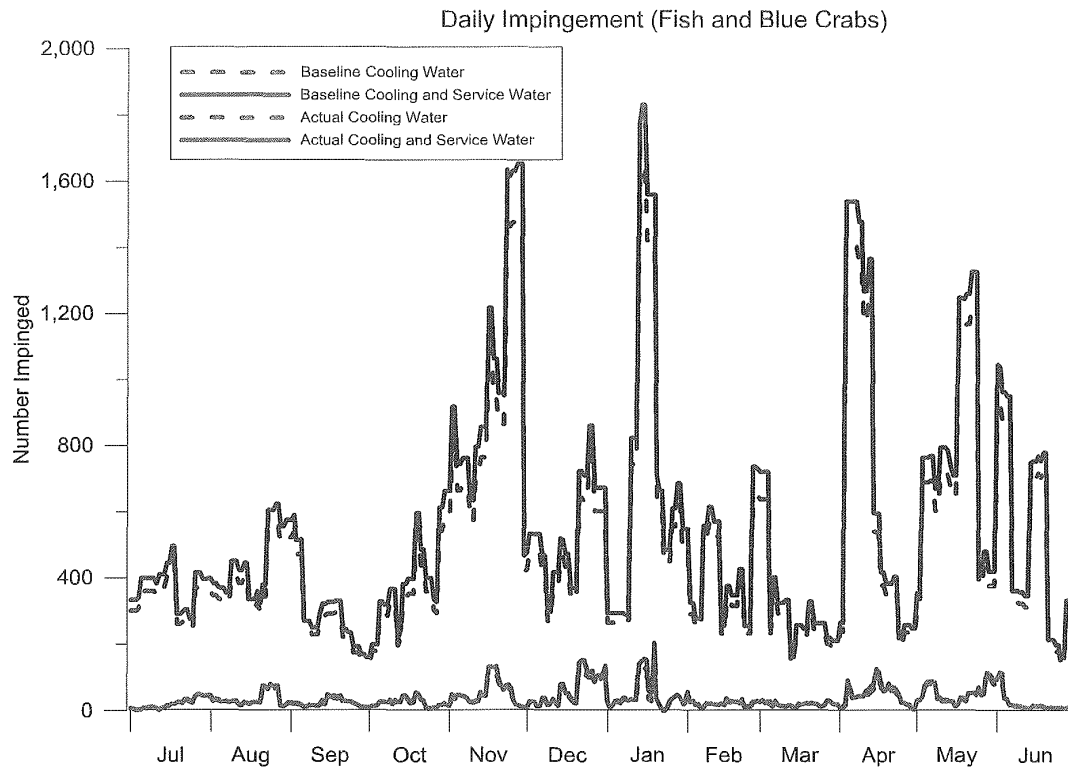


Figure 8 Daily impingement of fish and blue crabs at Ravenswood under baseline and actual operating conditions, Jul 2015 - Jun 2016.

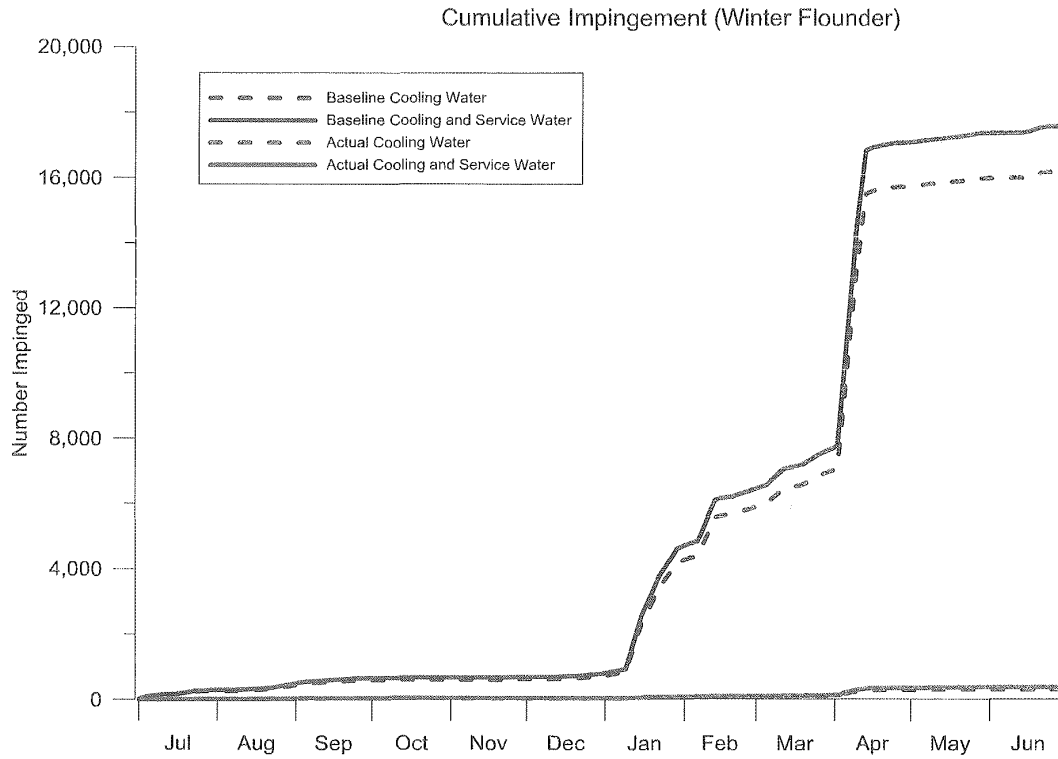


Figure 9 Cumulative impingement of winter flounder at Ravenswood under baseline and actual operating conditions, Jul 2015 - Jun 2016.



ASA Analysis &amp; Communication, Inc.

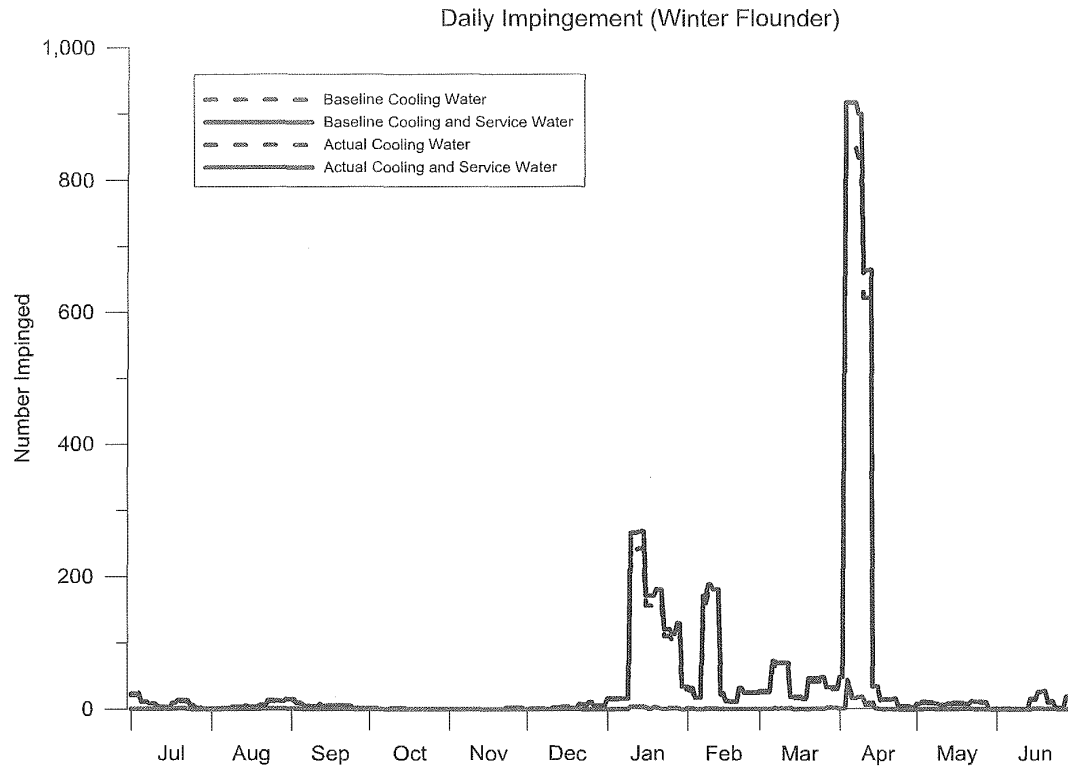


Figure 10 Daily impingement of winter flounder at Ravenswood under baseline and actual operating conditions, Jul 2015 - Jun 2016.

RAVENSWOOD VMP REPORT FOR JULY 2012 TO JUNE 2017, DATED JANUARY 2018  
[A-689 - A-700]



Ravenswood Generating Station  
38-54 Vernon Blvd.  
Long Island City, NY 11101

January 26, 2018

Chuck Nieder  
Steam Electric Unit Leader  
NYSDEC  
625 Broadway  
Albany, New York 12233-4756

Re: Verification Monitoring Plan Report  
Ravenswood Generating Station  
SPDES No. 0005193

Dear Mr. Nieder,

Please find the Verification Monitoring Plan (VMP) Report for the Ravenswood Generating Station, in accordance with SPDES Permit No. 0005193, enclosed for your review.

At your earliest convenience, we would like to schedule a follow up meeting to discuss the results of the study.

Sincerely,

A handwritten signature in black ink, appearing to read "Tanja Grzeskowitz", with a long horizontal flourish extending to the right.

Tanja Grzeskowitz  
Interim Compliance Manager  
[tanja.grzeskowitz@ethosenergygroup.com](mailto:tanja.grzeskowitz@ethosenergygroup.com)  
Tel.: 718-706-2705

Attachment

cc: NYSDEC Region II – Regional Water Engineer  
SPDES Compliance Information Section  
NYSDEC Energy Unit Leader, Colleen Kimble

**Verification Monitoring Plan Report:  
Entrainment and  
Impingement at Ravenswood  
July 2012 – June 2017**

Prepared for  
Ravenswood Generating Station  
38-54 Vernon Blvd  
Long Island City NY 11101  
United States of America

Prepared by  
ASA Analysis & Communication, Inc.  
383 Plattekill Rd.  
Marlboro, NY 12542

January 2018

## 1. INTRODUCTION

Biological Requirement B.4.c of the New York State Department of Environmental Conservation's SPDES Permit Number NY0005193 for the Ravenswood Generating Station requires submission of a Verification Monitoring Plan report, consistent with the Verification Monitoring Plan approved by the Department December 9, 2011, that evaluates the Biological Monitoring condition B.2 performance standards. The two performance standards included in Biological Monitoring Condition B.2 are as follows:

- a. The technologies and operational procedures described in Condition B.1, Best Technology Available, must achieve a reduction of 65% in entrainment from the full flow calculation baseline. Compliance with this performance standard shall be determined through studies conducted under the Verification Monitoring Plan required in Condition B.4.
- b. The technologies and operational procedures described in Condition B.1, Best Technology Available, must achieve a reduction in impingement mortality of 90% for all fish species, and 90% for winter flounder alone from the full flow calculation baseline. Compliance with this performance standard shall be determined through studies conducted under the Verification Monitoring Plan required in Condition B.4.

The purpose of this Verification Monitoring Plan report is to comply with Biological Requirement B.4.c by providing estimates of entrainment and impingement mortality reductions for the five-year period extending from July 1, 2012 through June 30, 2017.

## 2. METHODS

Entrainment and impingement mortality for the baseline and for Ravenswood's actual operation and cooling water flows were calculated as described below.

### 2.1. Hourly Entrainment and Impingement Densities

Estimates of entrainment and impingement losses were calculated using two different density data sets. Historical entrainment and impingement densities were based on site-specific sampling conducted at Ravenswood in 1992, 1994 and 2005 and entrainment only sampling conducted in 2000. Entrainment and impingement is also calculated using the historical densities described above, as well as new entrainment and impingement densities collected during 2013 and 2014. In all years of biological sampling, hourly entrainment and impingement densities for each species and life stage were estimated from these data by applying the average density measured for each 6-hour sample to each hour of the 6-hour sampling interval. The hourly densities thus determined for each sampling event were then applied over each 24-hour period to the midpoint between sampling events (which were generally conducted weekly for impingement and weekly or biweekly for entrainment). Hourly entrainment and impingement densities on non-sampled days were interpolated from adjacent sampling dates. Finally, the mean hourly densities for each species and life stage across all entrainment and all impingement sampling years were used as the basis for this loss calculation.

## 2.2. Entrainment Loss Calculations

Entrainment densities calculated as described above, design and actual cooling water flows and other relevant information were used to estimate the total number of each life stage of each RIS and of other fish taxa combined that were entrained at Ravenswood for each of the years of biological sampling ("Bio Year") and each operational year ("Ops Year"): Jul 2012 – Jun 2013 ("2012"); Jul 2013 – Jun 2014 ("2013"); Jul 2014 – Jun 2015 ("2014"); Jul 2015 – Jun 2016 ("2015"); and Jul 2016 – Jun 2017 ("2017"). Hourly loss estimates for Bio Year and Ops Year were calculated for each life stage for the baseline case and the actual cooling water flow case as follows:

$$NE_{sli} = AED_{sli} \times CW_i \times RF_{sli} \times EM_{sli}$$

where:

- $NE_{sli}$  = estimated number of each species (s) and life stage (l) lost to entrainment during hour (i);
- $AED_{sli}$  = adjusted density of species (s) and life stage (l) entrained during hour (i);
- $CW_i$  = total design or actual cooling water flow at Ravenswood during hour (i); and,
- $RF_{sli}$  = recirculation factor for RIS or other taxa (s) and life stage (l) entrained during hour (i), and;
- $EM_{sli}$  = Entrainment mortality rate for RIS or other taxa (s) and life stage (l) entrained during hour (i).

Estimates for each hour were then summed across each hour and species to estimate total entrainment losses for each Bio Year and Ops Year. Sources of input information for these calculations are discussed below.

### 2.1.1. Adjusted Entrainment Densities

Extrusion of organisms through the mesh of a sampling net can occur when some dimension of the individuals sampled are sufficiently small that they can pass through the mesh and not be collected. When this occurs, estimated sampling densities will be less than that actually occurring. Hence, adjustments must be made to the measured entrainment densities when estimating overall entrainment loss.

Clearly, extrusion is a function of the size of the organisms with larger organisms being retained while many some of the smaller organisms pass through the mesh. At Ravenswood, the historical entrainment sampling (1992, 1993, 2000, and 2005) was conducted using nets with an opening of approximately 0.5 mm. Thus, virtually all organisms less than 0.5 mm long will pass through this mesh whereas most larger organisms with all dimensions larger than this should be retained. The eggs of some of the entrained species have diameters from about 0.7 to 1.7 mm. Owing to their general spherical shape, the retention of this life stage by the entrainment sampling gear should be quite high and no adjustment for net extrusion is deemed necessary. High retention is supported by an field entrainment study at the Hudson Generating Station on

the Hackensack River (PSEG 1998), which measured 97 percent retention of bay anchovy eggs, also using a pump and 0.5-mm net.

On the other hand, newly hatched larvae of two species, bay anchovy and winter flounder, have cross-sectional dimensions that could allow passage through the sampling mesh. For this assessment, it is assumed that larvae of all other species were fully retained by the net. Net extrusion rates for bay anchovy and winter flounder larvae were based on a length-extrusion relationship for developed in studies conducted at the Salem Generating Station located on the Delaware Estuary (PSEG 1999). The length-extrusion relationship from these studies indicates that the fraction of larvae retained by the entrainment sampling gear is about 0.11, 0.27, and 0.92 for larvae measuring less than 3.1 mm, 3.1 - 6.0 mm, and 6.1 – 9.0 mm, respectively. Owing to their small size at hatch, a collection efficiency of 11 percent were conservatively applied to bay anchovy and winter flounder yolk-sac larvae collected in entrainment monitoring at Ravenswood.

For post yolk-sac larvae of these two species, an entrainment collection efficiency specific to each month of their entrainment was calculated by weighting the length-specific retention proportions given above by the seasonal length frequency distribution of bay anchovy and winter flounder observed in entrainment monitoring at the Sewaren and Linden Generating Stations on the Arthur Kill (PSE&G 1989). The post yolk-sac larval collection efficiencies derived from this calculation are as follows:

| Species         | Entrainment Collection Efficiency (%) |     |     |     |     |     |     |     |
|-----------------|---------------------------------------|-----|-----|-----|-----|-----|-----|-----|
|                 | Mar                                   | Apr | May | Jun | Jul | Aug | Sep | Oct |
| Bay anchovy     | 34                                    | 49  | 66  | 67  | 99  | 100 | 100 | 100 |
| Winter flounder | 25                                    | 34  | 63  | 92  | 100 | 100 | 100 | 100 |

These estimates of post yolk-sac larval collection efficiency were used for the historical sampling events prior to 2005 to estimate entrainment losses for bay anchovy and winter flounder at Ravenswood. To estimate adjusted (actual) densities, measured densities were divided by the collection efficiencies listed above expressed as a fraction.

#### 2.2.2. Cooling Water Flow

Baseline cooling water flow was assumed to be equal to the design pumping capacity of all three once-through units at Ravenswood or a combined rate of 965,000 gallons per minute. Actual cooling water flow for the period July 1, 2012 through June 30, 2017 is the actual hourly cooling water flow at each unit as measured at each unit.

#### 2.1.2. Recirculation

Flood tides in the lower East River transport a portion of the CWS discharge from Ravenswood upstream to the intake, causing recirculation of some of the discharged water back into the CWS intake. Some of the organisms previously entrained through the CWS at the Station would move along with the recirculated water and thus be "re-entrained". Consequently, loss estimates based on entrainment densities determined from monitoring at Ravenswood could overestimate losses by double-counting re-entrained organisms that were already killed by entrainment. To correct for the effect of re-entrainment, entrainment densities were adjusted by

a recirculation factor that reflects the fraction of the total number collected that were entrained for the first time in each collection.

For this assessment, a constant of 0.13 for was used for recirculation at Ravenswood based on prior assessment of the thermal plume distribution (LMS 2000).

#### 2.2.4. Entrainment Mortality

A number of entrainment survival studies conducted at a facility located along the East River and on Long Island have demonstrated high survival rates for a number of the species and life stages that are also commonly entrained at Ravenswood. However, given the absence of prior site-specific studies at Ravenswood and to err on the conservative side, all entrainment loss calculations in this report assumed no entrainment survival.

### 2.2. Impingement Loss Calculations

The total number of each age group of each species lost to impingement at Ravenswood were estimated for the baseline and actual flow case. Hourly loss estimates were calculated for each RIS and age as follows:

$$NI_{sah} = \frac{ID_{sah} \times CW_h}{CE_{sah}} \times IM_{sah}$$

where:

- $NI_{sah}$  = estimated number of each species taxa (s) and age class (a) lost to impingement during hour (h);
- $ID_{sah}$  = density of each species (s) and age class (a) impinged during hour (h);
- $CW_h$  = cooling water flow at the Station during hour (h);
- $CE_{sah}$  = collection efficiency of species (s) and age class (a) impinged during hour (h); and,
- $IM_{sah}$  = mortality of species (s) and age class (a) impinged during hour (h).

Estimates for each hour were then summed to estimate total impingement losses for each RIS or other fish taxa as a group and age class for an entire year.

Sources of input information for these calculations are discussed below.

#### 2.2.4. Cooling Water Flow

As discussed for entrainment above, baseline cooling water flow is assumed to be equal to the design cooling water pumping capacity of all three once-through units at Ravenswood. Actual

cooling water flow for the period July 1, 2012 through June 30, 2016 was set to the actual hourly cooling water flow at each unit as measured at each unit.

#### 2.2.4. Impingement Collection Efficiency

Impingement density estimates were adjusted to account for collection efficiency during the impingement monitoring studies. Impingement collection efficiency was previously estimated from studies conducted at Ravenswood during the impingement monitoring. The average collection efficiencies determined from these studies for each quarter of the year, as shown below, were used in the impingement loss calculations for all fish species:

| Impingement Collection Efficiency (%) | Jan-Mar | Apr-Jun | Jul-Sep | Oct-Dec |
|---------------------------------------|---------|---------|---------|---------|
|                                       | 71      | 81      | 72      | 65      |

No collection efficiency was applied for blue crab.

#### 2.2.1. Impingement Mortality

Baseline losses of each species were calculated assuming 100 percent impingement mortality. Losses under actual operations at Ravenswood were originally calculated using impingement mortality estimates for each RIS and other fish taxa as reported for the Arthur Kill Station (Con Edison 1996). These impingement mortality estimates were subsequently updated to incorporate site-specific impingement survival rates for black seabass, oyster toadfish, winter flounder, Atlantic silverside, blueback herring, bay anchovy, and butterfish from ASA (2007). For this assessment, impingement mortality rates were assumed to be the same as those used in the most recent 2007 calculations of impingement loss at Ravenswood.

### 3. RESULTS

The annual cooling water flow calculation baseline entrainment and the estimated percent reductions under actual cooling water flows compared to the calculation baseline are provided in Table 1. The annual cooling water flows, calculation baseline impingement and the estimated percent reductions under actual cooling water flows for all fish species, all fish species and blue crab, and for winter flounder only are provided in Tables 2-4.

### 4. REFERENCES

ASA Analysis & Communication, Inc. (ASA). 2007. Ravenswood Generating Station Impingement Survival Monitoring Studies, June 2006 - February 2007.

Consolidated Edison Company of New York, Inc. (Con Edison). 1996. Ravenswood Generating Station Diagnostic Study Report.

LMS Engineers (2000) KeySpan Energy -Ravenswood Cogeneration Facility - Article X Application. Appendix 7A.



*ASA Analysis & Communication, Inc.*

Public Service Electric & Gas Company (PSEG). 1998. Hudson Generating Station Supplemental 316(b) Report. Newark, NJ.

PSE&G. 1999. Permit Renewal Application NJPDES Permit No. NJ0005622, Public Service Electric and Gas Company Salem Generating Station, March 4, 1999. PSE&G, Newark, New Jersey.

Table 1 Estimates of the annual entrainment loss under baseline and actual conditions at Ravenswood, Jul 2012 - Jun 2017 by biological study year and operational year.

| Bio Year                                 | Ops Year | Baseline Loss | Actual Loss   | Percent Reduction |
|--|----------|---------------|---------------|-------------------|
| 1992                                     | 2012     | 260,319,327   | 38,223,882    | 85.3              |
| 1992                                     | 2013     | 260,319,327   | 50,710,686    | 80.5              |
| 1992                                     | 2014     | 260,319,327   | 53,727,006    | 79.4              |
| 1992                                     | 2015     | 260,319,327   | 98,532,602    | 62.1              |
| 1992                                     | 2016     | 260,319,327   | 44,376,972    | 83.0              |
| 1994                                     | 2012     | 400,891,867   | 90,253,464    | 77.5              |
| 1994                                     | 2013     | 400,891,867   | 95,806,568    | 76.1              |
| 1994                                     | 2014     | 400,891,867   | 125,674,145   | 68.7              |
| 1994                                     | 2015     | 400,891,867   | 185,713,013   | 53.7              |
| 1994                                     | 2016     | 400,891,867   | 109,514,678   | 72.7              |
| 2000                                     | 2012     | 340,729,883   | 94,586,803    | 72.2              |
| 2000                                     | 2013     | 340,729,883   | 76,664,033    | 77.5              |
| 2000                                     | 2014     | 340,729,883   | 96,238,354    | 71.8              |
| 2000                                     | 2015     | 340,729,883   | 141,898,993   | 58.4              |
| 2000                                     | 2016     | 340,729,883   | 88,789,822    | 73.9              |
| 2005                                     | 2012     | 155,413,477   | 56,080,400    | 63.9              |
| 2005                                     | 2013     | 155,413,477   | 55,318,867    | 64.4              |
| 2005                                     | 2014     | 155,413,477   | 62,477,834    | 59.8              |
| 2005                                     | 2015     | 155,413,477   | 81,797,198    | 47.4              |
| 2005                                     | 2016     | 155,413,477   | 52,544,887    | 66.2              |
| 2013                                     | 2012     | 2,522,559,667 | 1,237,897,405 | 50.9              |
| 2013                                     | 2013     | 2,522,559,667 | 1,253,630,023 | 50.3              |
| 2013                                     | 2014     | 2,522,559,667 | 1,351,020,517 | 46.4              |
| 2013                                     | 2015     | 2,522,559,667 | 1,609,672,114 | 36.2              |
| 2013                                     | 2016     | 2,522,559,667 | 989,964,175   | 60.8              |
| 2014                                     | 2012     | 2,421,260,021 | 1,234,236,613 | 49.0              |
| 2014                                     | 2013     | 2,421,260,021 | 1,121,144,844 | 53.7              |
| 2014                                     | 2014     | 2,421,260,021 | 1,328,178,908 | 45.1              |
| 2014                                     | 2015     | 2,421,260,021 | 1,626,787,176 | 32.8              |
| 2014                                     | 2016     | 2,421,260,021 | 889,990,889   | 63.2              |
| Percent Reduction (1992 - 2005 bio data) |          |               |               | 70.6              |
| Percent Reduction (1992 - 2014 bio data) |          |               |               | 53.0              |

ASA Analysis & Communication, Inc.

Table 2 Estimates of the annual impingement loss for all fish species and blue crabs under baseline and actual conditions at Ravenswood, Jul 2012 - Jun 2017 by biological study year and operational year.

| Bio Year                                 | Ops Year | Baseline Loss | Actual Loss | Percent Reduction |
|--|----------|---------------|-------------|-------------------|
| 1992                                     | 2012     | 291,332       | 13,872      | 95.2              |
| 1992                                     | 2013     | 291,332       | 8,286       | 97.2              |
| 1992                                     | 2014     | 291,332       | 8,314       | 97.1              |
| 1992                                     | 2015     | 291,332       | 14,383      | 95.1              |
| 1992                                     | 2016     | 291,332       | 9,371       | 96.8              |
| 1994                                     | 2012     | 137,272       | 7,358       | 94.6              |
| 1994                                     | 2013     | 137,272       | 4,506       | 96.7              |
| 1994                                     | 2014     | 137,272       | 5,864       | 95.7              |
| 1994                                     | 2015     | 137,272       | 11,103      | 91.9              |
| 1994                                     | 2016     | 137,272       | 6,777       | 95.1              |
| 2005                                     | 2013     | 55,954        | 5,415       | 90.3              |
| 2005                                     | 2014     | 55,954        | 4,112       | 92.7              |
| 2005                                     | 2015     | 55,954        | 4,582       | 91.8              |
| 2005                                     | 2016     | 55,954        | 6,197       | 88.9              |
| 2013                                     | 2012     | 55,954        | 3,594       | 93.6              |
| 2013                                     | 2013     | 166,776       | 11,059      | 93.4              |
| 2013                                     | 2014     | 166,776       | 10,832      | 93.5              |
| 2013                                     | 2015     | 166,776       | 8,711       | 94.8              |
| 2013                                     | 2016     | 166,776       | 14,173      | 91.5              |
| 2014                                     | 2012     | 166,776       | 7,237       | 95.7              |
| 2014                                     | 2013     | 125,964       | 15,316      | 87.8              |
| 2014                                     | 2014     | 125,964       | 9,672       | 92.3              |
| 2014                                     | 2015     | 125,964       | 11,615      | 90.8              |
| 2014                                     | 2016     | 125,964       | 19,012      | 84.9              |
| Percent Reduction (1992 - 2005 bio data) |          |               |             | 93.1              |
| Percent Reduction (1992 - 2014 bio data) |          |               |             | 95.3              |

Table 3 Estimates of the annual impingement loss for fish species only under baseline and actual conditions at Ravenswood, Jul 2012 - Jun 2017 by biological study year and operational year.

| Bio Year                                 | Ops Year | Baseline Loss | Actual Loss | Percent Reduction |
|--|----------|---------------|-------------|-------------------|
| 1992                                     | 2012     | 91,968        | 13,125      | 85.7              |
| 1992                                     | 2013     | 91,968        | 7,869       | 91.4              |
| 1992                                     | 2014     | 91,968        | 7,585       | 91.8              |
| 1992                                     | 2015     | 91,968        | 13,364      | 85.5              |
| 1992                                     | 2016     | 91,968        | 8,753       | 90.5              |
| 1994                                     | 2012     | 126,205       | 7,306       | 94.2              |
| 1994                                     | 2013     | 126,205       | 4,483       | 96.4              |
| 1994                                     | 2014     | 126,205       | 5,824       | 95.4              |
| 1994                                     | 2015     | 126,205       | 11,040      | 91.3              |
| 1994                                     | 2016     | 126,205       | 6,733       | 94.7              |
| 2005                                     | 2013     | 24,702        | 5,297       | 78.6              |
| 2005                                     | 2014     | 24,702        | 4,076       | 83.5              |
| 2005                                     | 2015     | 24,702        | 4,489       | 81.8              |
| 2005                                     | 2016     | 24,702        | 6,037       | 75.6              |
| 2013                                     | 2012     | 24,702        | 3,459       | 86.0              |
| 2013                                     | 2013     | 121,224       | 10,859      | 91.0              |
| 2013                                     | 2014     | 121,224       | 10,654      | 91.2              |
| 2013                                     | 2015     | 121,224       | 8,500       | 93.0              |
| 2013                                     | 2016     | 121,224       | 13,916      | 88.5              |
| 2014                                     | 2012     | 121,224       | 7,060       | 94.2              |
| 2014                                     | 2013     | 103,937       | 15,221      | 85.4              |
| 2014                                     | 2014     | 103,937       | 9,618       | 90.7              |
| 2014                                     | 2015     | 103,937       | 11,518      | 88.9              |
| 2014                                     | 2016     | 103,937       | 18,885      | 81.8              |
| Percent Reduction (1992 - 2005 bio data) |          |               |             | 88.6              |
| Percent Reduction (1992 - 2014 bio data) |          |               |             | 91.0              |

Table 4 Estimates of the annual impingement loss for winter flounder only under baseline and actual conditions at Ravenswood, Jul 2012 - Jun 2017 by biological study year and operational year.

| Bio Year                                 | Ops Year | Baseline Loss | Actual Loss | Percent Reduction |
|--|----------|---------------|-------------|-------------------|
| 1992                                     | 2012     | 2,445         | 90          | 96.3              |
| 1992                                     | 2013     | 2,445         | 82          | 96.7              |
| 1992                                     | 2014     | 2,445         | 87          | 96.4              |
| 1992                                     | 2015     | 2,445         | 113         | 95.4              |
| 1992                                     | 2016     | 2,445         | 77          | 96.9              |
| 1994                                     | 2012     | 38,815        | 427         | 98.9              |
| 1994                                     | 2013     | 38,815        | 451         | 98.8              |
| 1994                                     | 2014     | 38,815        | 290         | 99.3              |
| 1994                                     | 2015     | 38,815        | 725         | 98.1              |
| 1994                                     | 2016     | 38,815        | 367         | 99.1              |
| 2005                                     | 2013     | 1,158         | 31          | 97.3              |
| 2005                                     | 2014     | 1,158         | 70          | 93.9              |
| 2005                                     | 2015     | 1,158         | 64          | 94.5              |
| 2005                                     | 2016     | 1,158         | 47          | 95.9              |
| 2013                                     | 2012     | 1,158         | 28          | 97.6              |
| 2013                                     | 2013     | 42,347        | 1,600       | 96.2              |
| 2013                                     | 2014     | 42,347        | 2,549       | 94.0              |
| 2013                                     | 2015     | 42,347        | 1,879       | 95.6              |
| 2013                                     | 2016     | 42,347        | 2,782       | 93.4              |
| 2014                                     | 2012     | 42,347        | 911         | 97.8              |
| 2014                                     | 2013     | 5,139         | 283         | 94.5              |
| 2014                                     | 2014     | 5,139         | 291         | 94.3              |
| 2014                                     | 2015     | 5,139         | 262         | 94.9              |
| 2014                                     | 2016     | 5,139         | 275         | 94.7              |
| Percent Reduction (1992 - 2005 bio data) |          |               |             | 96.2              |
| Percent Reduction (1992 - 2014 bio data) |          |               |             | 98.6              |

RAVENSWOOD MODIFIED WATER WITHDRAWAL PERMIT, DATED SEPTEMBER 29,  
2017 [A-701 - A-705]

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 2  
47-40 21st Street, Long Island City, NY 11101  
P: (718) 482-4997 | F: (718) 482-4975  
www.dec.ny.gov

September 29, 2017

Daniel O'Donnell  
Compliance Manager  
RAVENSWOOD GENERATING STATION  
38-54 VERNON BLVD  
LONG ISLAND CITY, NY 11101

Re: NYSDEC Permit #2-6304-00024/00054, WWA#11,660  
Facility: RAVENSWOOD GENERATING STATION  
38-54 VERNON BLVD  
QUEENS, NY 11101  
**ECL Article 15, Title 15- Part 601 Water Withdrawal Permit**  
**NOTICE OF PERMIT MODIFICATION**

Dear Mr. O'Donnell:

Enclosed is your Part 601 Water Withdrawal Permit. It is effective beginning September 29, 2017 and expires on October 31, 2017.

The permit referenced above is hereby modified to update the facility permit owner name from TC RAVENSWOOD LLC to HELIX RAVENSWOOD LLC.

Please read all permit conditions carefully. All permit documents must be available upon request by the Department staff and must be distributed to and understood by personnel responsible for the proper operation of the facility and compliance with the discharge limits. Any violation of these permit conditions constitutes a violation of the Environmental Conservation Law.

**Please note that the maximum withdrawal rate authorized by this permit is 1,527,840,000 gallons per day.**

If you have any other questions regarding this permit, you may contact the Division of Environmental Permits at the above address. Please refer to the above referenced numbers when you are corresponding with this office or when you are applying to renew or modify this permit.

Sincerely,

Stephen A. Watts III  
Regional Permit Administrator  
Division of Environmental Permits

ecc: NYSDEC RWE, R. Elburn  
NYSDEC DOW, S. Southwell, E. Rossan, A. Rahman  
DOW CO, E. Schmitt  
File



Department of  
Environmental  
Conservation

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
Facility DEC ID 2-6304-00024



**PERMIT**  
**Under the Environmental Conservation Law (ECL)**

**Permittee and Facility Information**

**Permit Issued To:**  
HELIX RAVENSWOOD LLC  
38-54 VERNON BLVD  
LONG ISLAND CITY, NY 11101  
(718) 706-2818

**Facility:**  
RAVENSWOOD GENERATING STATION  
38-54 VERNON BLVD  
QUEENS, NY 11101

**Facility Location:** in QUEENS COUNTY

**Facility Principal Reference Point:** NYTM-E: 588.961 NYTM-N: 4512.613  
Latitude: 40°45'34.8" Longitude: 73°56'45.8"

**Project Location:** 38-54 VERNON BLVD, QUEENS, NY 11101

**Authorized Activity:** This permit authorizes the withdrawal of a supply of water up to 1,527,840,000 gallons per day (GPD) from the East River for once through cooling and other processes related to electrical generation.

**Permit Authorizations**

**Water Withdrawal Non-public - Under Article 15, Title 15**

Permit ID 2-6304-00024/00054

|                  |                                   |                                    |
|------------------|-----------------------------------|------------------------------------|
| New Permit       | Effective Date: <u>11/15/2013</u> | Expiration Date: <u>10/31/2017</u> |
| Modification # 1 | Effective Date: <u>3/7/2014</u>   | Expiration Date: <u>10/31/2017</u> |
| Modification # 2 | Effective Date: <u>9/29/2017</u>  | Expiration Date: <u>10/31/2017</u> |

**NYSDEC Approval**

**By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.**

Permit Administrator: STEPHEN A WATTS, Regional Permit Administrator

Address: NYSDEC Region 2 Headquarters  
47-40 21st St  
Long Island City, NY 11101 -5401

Authorized Signature: \_\_\_\_\_

Date 09/29/2017

**Permit Components**

WATER WITHDRAWAL NON-PUBLIC PERMIT CONDITIONS

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

**WATER WITHDRAWAL NON-PUBLIC PERMIT CONDITIONS**

- 1. Approval of Completed Works from NYS P.E.** Any new works constructed or modified pursuant to this water withdrawal permit shall be constructed under the general supervision of a person licensed to practice engineering in this state (professional engineer). Upon completion of construction and pre-operational testing, such works may not commence final operation until the professional engineer first certifies in writing to the Department that the works have been constructed in accordance with the issued permit.
- 2. Permit Expiration and Renewal** Any permittee who intends to continue to operate a water withdrawal system beyond the period of time covered in the applicable water withdrawal permit must apply for a renewal of the permit at least 30 days prior to its expiration.
- 3. Transfer of Ownership of Water Withdrawal Systems** Unless otherwise specified in this permit, a new water withdrawal permit application is required for the acquisition or condemnation of the approved water withdrawal system.
- 4. Cooling Water Withdrawals Regulated by SPDES** Nothing in this water withdrawal permit shall supercede the need to, where necessary, obtain an appropriate SPDES permit that allows for the operation of a cooling water intake structure and the discharge of the amounts of water approved by this water withdrawal permit. If any modifications to the location, or capacity of the intake structure are required by the permittee's SPDES permit, permittee must also apply for a modification of this water withdrawal permit to reflect such changes.
- 5. Incorporation of the SPDES Water Conservation and Fisheries Protection Measures** Required measures for water conservation and the reduction of impacts to the fisheries resource contained in the Biological Monitoring Requirement Section of the facilities SPDES permit # NY0005193 are hereby incorporated by reference into this permit.
- 6. Annual Water Withdrawal Reports** The permittee must submit a Water Withdrawal Reporting Form to the Department's Division of Water, Albany, NY, by March 31st of each year. The form is available on the Department's website and includes information regarding approved sources of water supply, source capacities, average and maximum day water use data and water conservation and efficiencies employed during the past calendar year.
- 7. Source Meter Calibration** All source meters or measuring devices shall be calibrated for accuracy at least once each year.





**8. Meter All Sources** The permittee must install and maintain meters or other appropriate measuring devices on all sources of supply used in the system. Source master meters or measuring devices are to be read, and records kept of those readings, on at least a weekly basis. The permittee must maintain records of water withdrawn and consumptive use for each calendar year.

**GENERAL CONDITIONS - Apply to ALL Authorized Permits:**

**1. Facility Inspection by The Department** The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

**2. Relationship of this Permit to Other Department Orders and Determinations** Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

**3. Applications For Permit Renewals, Modifications or Transfers** The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator  
NYSDEC Region 2 Headquarters  
47-40 21st St  
Long Island City, NY 11101 -5401

**4. Permit Modifications, Suspensions and Revocations by the Department** The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
Facility DEC ID 2-6304-00024

- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

**5. Permit Transfer** Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

**NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS**

**Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification**

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

**Item B: Permittee's Contractors to Comply with Permit**

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

**Item C: Permittee Responsible for Obtaining Other Required Permits**

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

**Item D: No Right to Trespass or Interfere with Riparian Rights**

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

# DEC POLICY ON BEST TECHNOLOGY AVAILABLE FOR COOLING WATER INTAKE STRUCTURES, DATED JULY 10, 2011 [A-706 - A-713]

|   |                      |
|---|----------------------|
| <b>CP-#52 / Best Technology Available (BTA) for Cooling Water<br/>Intake Structures</b> |                      |
| New York State Department of Environmental Conservation                                 |                      |
| <b>DEC Policy</b>   |                      |
| Issuing Authority: Joe Martens, Commissioner  |                      |
| Date Issued: July 10, 2011  | Latest Date Revised: |

## I. Summary:

This policy outlines the reductions in impingement mortality and entrainment required to minimize the adverse environmental impact caused by industrial facilities having a cooling water intake structure (CWIS) in connection with a point source thermal discharge. Water withdrawals from surface waterbodies through a CWIS cause injury and mortality to fish and shellfish through impingement at the intake and/or entrainment through the cooling system. Through this policy, the Department identifies closed-cycle cooling or the equivalent as the performance goal for the best technology available (BTA) to minimize adverse environmental impacts pursuant to Section 704.5 of 6 NYCRR and Section 316(b) of the federal Clean Water Act in State Pollutant Discharge Elimination System (SPDES) permits issued by the Department in accordance with ECL Article 17, Title 8, and Part 750 of 6 NYCRR.

## II. Applicability:

This policy applies to all existing and proposed industrial facilities designed to withdraw twenty (20) million gallons per day (MGD) or more of water from the waters of New York State, where at least twenty five (25) percent is used for contact or non-contact cooling, and that are subject to the requirements of Section 704.5 of 6 NYCRR. Existing and proposed industrial facilities subject to the requirements of 6 NYCRR § 704.5 that are designed to use less than 20 MGD of contact or non-contact cooling water or those with a higher design capacity that use less than twenty five (25) percent of water for cooling purposes will continue to be subject to the requirements of 6 NYCRR § 704.5 and CWA § 316(b) or another subpart of 40 C.F.R. Part 125, as determined by the Department on a case-by-case, best professional judgment (BPJ) basis.

## III. Policy:

This Policy was prepared in furtherance of the powers and duties of the Commissioner and the Department of Environmental Conservation, pursuant to ECL Articles 1, 3, and 11 *et seq.* to conserve and protect the natural resources of the state and to minimize adverse impacts to the environment. In addition, it seeks to clarify the Department's Best Technology Available (BTA) review process and to provide certainty to Department staff's ongoing implementation of 6 NYCRR Part 704.5 regarding requirements applicable to CWIS.

The following performance goals are identified for selection of BTA to minimize adverse environmental impact from a CWIS:

1. Dry closed-cycle cooling as the performance goal for all new industrial facilities sited in the marine and coastal district (ECL § 13-0103) and along the Hudson River up to the Federal Dam in Troy;
2. Wet closed-cycle cooling as the minimum performance goal for all new industrial facilities located along all waters other than those covered by 1 above;
3. Wet closed-cycle cooling or its equivalent as the performance goal for existing industrial facilities that operate a CWIS in connection with a point source thermal discharge; and
4. Wet closed-cycle cooling as the performance goal for all repowered industrial facilities that operate a CWIS in connection with a point source thermal discharge.

Facilities for which a BTA determination has been issued prior to the effective date of this policy and which are in compliance with an existing compliance schedule of BTA implementation and verification monitoring will not be subject to new requirements as a result of this policy unless/until the results of verification monitoring demonstrate the necessity of more stringent BTA requirements. A full technical review will be conducted when a permit renewal or modification application is submitted following the completion of the verification monitoring program.

Facility owners and/or permittees of existing industrial facilities seeking to meet the equivalent performance goal set by this policy shall propose a suite of technologies and operational measures to the Department for consideration as BTA. Operational measures proposed by the facility owner may include but not be limited to: (1) reductions in cooling water capacity, (2) fish protective outages, and (3) reducing cooling water capacity use.

### ***Definitions:***

**Adverse environmental impact** – the fish and shellfish killed or injured through entrainment and impingement by the operation of cooling water intake structures. The “adverse environmental impact” that must be minimized by the BTA standard of 6 NYCRR §704.5 relates only to aquatic resources.

**Available** – technologies and operational measures that are technically and administratively feasible for a particular facility, consistent with other applicable regulations and public health and safety considerations, with costs not wholly disproportionate to the benefits.

**Best Technology Available (BTA)** – technology based standard established under CWA Section 316(b), 40 C.F.R. Part 125, subpart I; 40 C.F.R. Part 125.90(b); and 40 C.F.R. Part 125, subpart N and 6 NYCRR Part 704.5 as the most effective technology, process or operational method for minimizing adverse environmental impact from a CWIS.

**Calculation baseline** – an estimate of impingement mortality and entrainment that would occur at a facility CWIS assuming that: the cooling water system has been designed as a once-through system; the opening of the cooling water intake structure is located at, and the face of the standard 3/8-inch mesh conventional traveling screen is oriented parallel to, the shoreline near

the surface of the source waterbody and is operated at the full rated capacity 24 hours a day, 365 days a year. This is the baseline of adverse environmental impact to be used in estimating reductions in impingement mortality and entrainment resulting from operating a closed-cycle cooling system.

**Cooling water** - the water used for contact or non-contact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises [6 NYCRR § 700.1(a)(11)].

**Cooling water intake structure (CWIS)** - the total physical structure and any associated constructed waterways used to withdraw cooling water from waters of New York State. The cooling water intake structure extends from the point at which water is withdrawn from the waters of the State up to, and including the intake pumps [6 NYCRR § 700.1(a)(12)].

**Dry closed-cycle cooling** - cooling system that uses air flow, rather than the evaporation of water, to remove heat from the power station in order to reduce or eliminate the consumptive use of surface waters.

**Entrainment** – the incorporation of all life stages of fish with intake water flow entering and passing through a cooling water intake structure and into a cooling water system. The Department assumes that entrainment results in 100 percent mortality of the entrained organisms unless a lesser mortality is demonstrated to Department staff based on site-specific studies.

**Equivalent** – reductions in impingement mortality and entrainment from calculation baseline that are 90 percent or greater of that which would be achieved by a wet closed-cycle cooling system.

**Feasible** – capable of being done; able to be installed and function efficiently within the operating constraints of the facility.

**Impingement mortality** – the death of all life stages of fish as a result of being entrapped on the outer part of a cooling water intake structure or against a screening device during periods of water withdrawal.

**Industrial facilities** – includes all facilities listed in CWA § 306(b)(1)(A) and all other facilities that have a cooling water intake structure in connection with a point source thermal discharge.

**Minimize** - reduce to the smallest amount, extent or degree reasonably possible.

**Once-through cooling water system** - a system designed to withdraw water from a natural or other water source, use it at the facility to support contact and/or noncontact cooling uses, and then discharge it to a waterbody without recirculation.

**Shellfish** – for the purposes of this policy, this includes the horseshoe crab (*Limulus polyphemus*) and members of the Class *Decapoda* [lobster (*Homarus americanus*), crayfish, crabs, and shrimp].

**Wet closed-cycle cooling** – a system designed to withdraw the smallest amount of water to support contact and/or non-contact cooling uses within a facility. A closed-cycle cooling system uses between 93 and 98 percent less water than a once-through cooling system. The water is usually sent to a cooling canal, channel, pond, or tower to allow waste heat to be dissipated to the atmosphere and then is returned to the system. New source water (makeup water) is added to the

system to replenish losses that have occurred due to cooling tower blow-down, drift, and evaporation.

**Wholly disproportionate test** – is neither a traditional cost-benefit analysis nor an economic analysis but simply a comparison of the proportional reduction in impact (benefit) as compared to the proportional reduction in revenue (cost) of installing and operating BTA technology to mitigate adverse environmental impact. This comparison does not monetize the resource and gives presumptive weight to the value of the environmental benefits to be gained.

#### IV. Purpose and Background:

State regulations and federal laws mandate that industrial facilities employ BTA to minimize adverse environmental impact when proposing a new or operating an existing CWIS. The purpose of this policy is to identify the goals of the Department in implementing this standard and to ensure consistent application of those goals to industrial facilities in New York State. In addition, this Policy outlines Department staff's ongoing review process and procedures for decision-making.

Throughout New York, over 16 billion gallons of water are withdrawn from state waters through a CWIS system each day for the purpose of industrial cooling. The adverse environmental impact of these CWIS systems results in over 17 billion fish of all life stages (eggs, larvae, juveniles and adults) being entrained or impinged annually. The fish can suffer from lethally high water temperatures, contact with screens, impellers or heat-exchangers, or from exposure to the chemicals used to maintain heat-exchanger cleanliness. Steam electric power plants account for the majority, though not all, of this environmental impact with some of these power plants using well over a billion gallons of water every day for cooling purposes.

#### *Establishing Closed-Cycle Cooling or the Equivalent as the Performance Goal:*

One of the most efficient and effective ways to minimize or eliminate the number of and mortality to aquatic organisms impinged and entrained during industrial cooling is to minimize or eliminate the use of once-through, non-contact cooling water from the surface waters of New York. The demonstrated technology that achieves the greatest reduction in non-contact cooling water use is closed-cycle cooling. Under the U.S. EPA CWA 316(b) Phase I Rule (40 C.F.R. Part 125, subpart I), wet closed-cycle cooling was identified as the best technology available for new facilities to minimize impingement and entrainment and New York has already required closed-cycle cooling technology to be employed on new facilities and for electric generating facilities being repowered<sup>1</sup>. Given the effectiveness of closed-cycle cooling at reducing adverse environmental impact caused by a CWIS, the biological significance of New York's surface waterbodies and their importance for commercial and recreational uses, particularly in the

<sup>1</sup> See *Matter of Athens Generating Co., LP*, Interim Decision of the Commissioner, June 2, 2000 [2000 WL 33341184 (N.Y.Dept.Env.Conserv.)], *Citizens for the Hudson Valley v. New York State Bd. on Electric Generation Siting and the Environment*, 281 AD2d 89 (3d Dept. 2001). *Matter of Mirant Bowline, LLC*, Decision of the Commissioner, March 19, 2002 [2002 WL 444950 (N.Y.Dept.Env. Conserv.)]. *Matter of Bethlehem Energy Center*, Interim Decision of the Commissioner, Jan. 31, 2002 [Siting Board Decision Feb. 2002].

marine and coastal district, the tidal reach of the Hudson River and the Great Lakes, this policy establishes closed-cycle cooling as the performance goal for all new and repowered industrial facilities in New York. The performance goal for all existing industrial facilities in New York is closed-cycle cooling or the equivalent.

#### *Exemption from the Entrainment Performance Goal*

An existing electric generating facility operated at less than fifteen (15) percent of its electric generating capacity over a current 5-year averaging period will be subject to the impingement mortality reduction performance goals of this policy and may be exempt from meeting the entrainment performance goal of this policy provided that the facility is operated in a manner that minimizes the potential for entrainment. For these facilities, site-specific performance goals for entrainment will be determined by the Department on a case-by-case, BPJ basis.

#### **V. Responsibility:**

The Division of Fish, Wildlife and Marine Resources has the primary responsibility to ensure that BTA determinations are made consistent with this Policy. Additionally, the Divisions of Water and Environmental Permits ensure that the requirements of this policy are reflected in all final SPDES permits issued to industrial facilities that operate or propose to operate a CWIS in connection with a point source thermal discharge. Specific Division responsibilities are as follows:

*Division of Environmental Permits (Permits)* - As the Project Manager, Permits staff coordinate the BTA determination with the development of the SPDES permit modification. Permits staff also ensure compliance with 6 NYCRR Part 621 (Uniform Procedures) and 6 NYCRR Part 617 (State Environmental Quality Review). This includes preparation of all required public notices and coordination with other state and federal agencies, including but not limited to the New York State Department of Public Service and the New York Independent Systems Operator (NYISO). Permits staff are also the primary contact for the public expressing interest in a SPDES modification. In addition, Permits staff oversee the permit process with respect to compliance with Uniform Procedures Act (UPA) and State Environmental Quality Review Act (SEQRA) requirements. With respect to non-BTA land use and other environmental impacts, Permits staff seek other agency or outside expertise as needed.

*Division of Fish, Wildlife and Marine Resources (DFWMR)* - DFWMR staff conduct the biological assessment of the facility CWIS and take the lead role in making the BTA determination with respect to aquatic resource impacts. In addition, DFWMR staff identify natural resource impacts associated with BTA compliance.

*Division of Water (DOW)* - DOW Staff assess the potential for water quality impacts that may result from construction and implementation of BTA technologies and incorporate the final BTA determination into the SPDES permit.

## VI. Procedure:

### *Implementation of this Policy:*

This policy will be implemented when: (i) an applicant seeks a new SPDES permit; (ii) a permittee seeks to renew an existing SPDES permit; or (iii) a SPDES permit is modified either by the Department or by the permittee, for a facility that operates a CWIS in connection with a point source thermal discharge pursuant to 6 NYCRR § 704.5; 40 CFR Part 125, subpart I and subpart N; and 40 CFR Part 125.90(b). In addition, when issuing SPDES permits for industrial facilities using a CWIS, staff are guided by the applicable SPDES regulations, including 6 NYCRR 750-1.11 “Application of Standards, Limitations and Other Requirements.” These regulations require that both federal minimum requirements and State water quality requirements are met, and that other impacts are evaluated and mitigated as required by applicable law and regulations.

DFWMR staff will develop permit conditions for BTA compliance on a site-specific, case by case basis in accordance with this Policy and 6 NYCRR Part 704.5, and Section 316(b) of the federal Clean Water Act (*see Matter of Athens Generating Co., L.P.*, Interim Decision of the Commissioner, June 2, 2000).

Once a site-specific BTA determination is made by DFWMR staff, the Department will undertake a SEQRA review to ensure that any significant impacts associated with the construction and operation of the selected BTA are avoided, minimized, or mitigated.

### *Cost Considerations in Making Site Specific BTA Determinations*

After selecting the best technology available for an industrial facility, the Department will consider the cost of the feasible technologies and will determine whether or not the costs of the technologies are wholly disproportionate to the environmental benefits to be gained from the technology. The Department will not undertake a formal cost-benefit analysis whereby the environmental benefits would be monetized. Such an analysis is neither desirable nor required by law. *See Entergy Corp v Riverkeeper, Inc., et al.*, 556 U.S. \_\_\_, 129 S.Ct. 1498 (2009). For each site-specific BTA determination, the Department will select a feasible technology whose costs are not wholly disproportionate to the environmental benefits to be gained.

### *Nuclear-Fueled Power Plants*

If the owner or operator of a new or existing nuclear-fueled power plant demonstrates to Department staff that compliance with the performance goals of this Policy would result in a conflict with any safety requirement established by the Nuclear Regulatory Commission (NRC), with appropriate documentation or other substantiation from the NRC, the Department will make a site-specific determination of best technology available for minimizing adverse environmental impact that would not result in a conflict with the NRC’s safety requirements.



*Failure to Meet the Entrainment Performance Goal of this Policy*

The performance goal for existing industrial facilities in New York is closed-cycle cooling or the equivalent. Department staff believe that the majority of facilities that install and properly operate and maintain approved closed-cycle-equivalent technologies should be capable of meeting the performance goals established in this policy. This is based on multiple years of experience in assessing BTA for facilities in New York State, on continued review of research and studies associated with performance of BTA technologies, and on participation in the national rulemaking effort associated with CWA Section 316(b). However, for facilities that fail to meet the entrainment performance goal through the use of technologies other than closed-cycle cooling, the Department may initiate a modification to a facility's SPDES permit to require additional mitigative measures to meet the entrainment performance goal, or if appropriate, propose a BTA determination with site-specific entrainment reduction requirements if no other available mitigative alternative remains.

**VII. Related References:**

- California Environmental Resources Control Board. 2010. Water quality control policy on the use of coastal and estuarine waters for power plant cooling. State Water Resources Control Board Resolution No. 2010-0020. May 4, 2010. 6pp.
- California Environmental Resources Control Board. 2008. Scoping Document: Water quality control policy on the use of coastal and estuarine waters for power plant cooling. State Water Resources Board. March 2008. 91pp.
- Clean Water Act, 33 U.S.C. §§ 1251 – 1387
- Clean Water Act §§ 306, 316(b)
- Environmental Protection Agency. 1977. Permits Division, Office of Waste Enforcement, EPA, *Guidance for Evaluating the Adverse Impact of Cooling Water Intake Structures on the Aquatic Environment: Section 316(b)*, PL 92-500 (Draft 1977).
- Entergy Corp. v. Riverkeeper, Inc., et al.*, 556 U.S. \_\_\_, 129 S.Ct. 1498 (2009).
- Entergy Nuclear Indian Point 2, LLC, et al. v. New York State Dept. of Env'tl. Conservation*, 23 AD3d 811 (3d Dept. 2005), *leave to appeal dismissed in part, denied in part* 6 NY3d 802 (2006).
- Hudson Riverkeeper Fund, Inc. v. Orange and Rockland Utilities, Inc.*, 835 F.Supp. 160 (S.D.N.Y. 1993)
- Maulbetsch, John S., and Michael N. DiFilippo. 2008. *Performance, Cost, and Environmental Effects of Saltwater Cooling Towers*. California Energy Commission, PIER Energy-Related Environmental Research Program. CEC-500-2008-043.
- Matter of Dynegy Northeast Generation, Inc., on behalf of Dynegy Danskammer, LLC*, Decision of the Deputy Commissioner, May 24, 2006 [2006 WL 1488863 (N.Y.Dept.Env.Conserv.)]; *Riverkeeper, Inc. v. Johnson*, 52 AD3d 1072 (3d Dept. 2008), appeal denied 11 NY3d 716 (2009).

- Matter of Athens Generating Co., LP*, Interim Decision of the Commissioner, June 2, 2000 [2000 WL 33341184 (N.Y.Dept.Env.Conserv.)], *Citizens for the Hudson Valley v. New York State Bd. on Electric Generation Siting and the Environment*, 281 AD2d 89 (3d Dept. 2001).
- Matter of Mirant Bowline, LLC*, Decision of the Commissioner, March 19, 2002 [2002 WL 444950 (N.Y.Dept.Env. Conserv.)].
- Matter of Bethlehem Energy Center*, Interim Decision of the Commissioner, Jan. 31, 2002 [Siting Board Decision Feb. 2002].
- Matter of Besicorp-Empire Development Co., LLC*, Decision of the Commissioner, Sept. 23, 2004 [Siting Board Decision Sept. 2004].
- Matter of Public Service Co. of New Hampshire, et al.* (Seabrook Station, Units 1 and 2 - National Pollutant Discharge Elimination System), June 10, 1977 [1977 WL 22370 (E.P.A.), 1 E.A.D. 332].
- National Pollutant Discharge Elimination System: Regulations Addressing Cooling Water Intake Structures for New Facilities; Final Rule, 66 Fed.Reg. 65,255 (Dec. 18, 2001) (codified at 40 C.F.R. pts. 9, 122-25 [Phase I Rule].
- National Pollutant Discharge Elimination System: Regulations to Establish Requirements for Cooling Water Intake Structures at Phase II Existing Facilities; Final Rule, 69 Fed.Reg. 41,576 (July 9, 2004) (codified at 40 C.F.R. pts. 9, 122-25) [Phase II Rule].
- NERC (2008). Electric reliability impacts of a mandatory cooling tower rule for existing steam generating units, U.S. Department of Energy/North American Electric Reliability Corporation: 46 pp.
- Riverkeeper I: *Riverkeeper, Inc. et al. v U.S. EPA*, 358 F.3d 174 (2d Cir. 2004) Riverkeeper II: *Riverkeeper, Inc. et al. v U.S. EPA*, 475 F.3d 83 (2d Cir. 2007).
- Stark letter (2005) 24 January 2005 letter to EPA B. Grumbles from Deputy Commissioner L. Stark.
- Tetra Tech, Inc. 2008. California's coastal power plants: alternative cooling system analysis. Final report to the California Ocean Protection Council. February 2008.
- Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Parts 700, 704 and 750.
- 40 C.F.R. Part 125 - Criteria and Standards for the National Pollutant Discharge Elimination System (NPDES) permits.

**PUBLIC COMMENT EMAILS FROM VARIOUS COMMENTERS TO  
DEC RE: 2019 PERMIT (SELECTED PAGES) [A- 714 - A- 770]**

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: John Walker (jwalker12901@yahoo.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Mon 6/3/2019 1:28:38 PM Eastern Daylight Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Dear Kent P. Sanders,

Dear Commissioner Seggos -

I am writing you to request that DEC deny the application made by Helix Ravenswood LLC for a permit to withdraw up to 1,528,000,000 gallons a day from the East River for cooling at the Ravenswood Generating Station in Queens (AP ID 2-6304-00024/00056).

Before issuing a permit to Helix Ravenswood, DEC needs to make the determinations required by the water withdrawal permitting law, including determinations regarding cumulative impacts on water-related natural resources and environmentally sound and economically feasible water conservation measures, which DEC has not made, and use those determinations to set appropriate terms and conditions in a new draft permit. DEC must consider closed-cycle cooling among the water conservation measures evaluated and set appropriate conditions tailored to the operations of the Ravenswood plant.

DEC must also revoke its determination that the huge water intakes into Ravenswood's once-through cooling intake structure will have no significant affect upon the environment and require a preparation of a full environmental impact statement (EIS). Any fair assessment of the impacts of Ravenswood's withdrawals of up to 1,528,000,000 gallons per day from the East River would find that these withdrawals will have a significant adverse impact on the Hudson River estuary, one of the most diverse estuaries in the world. The impacts that the installation of closed-cycle cooling at the plant would have on fish kills in the estuary must be evaluated in an EIS. An EIS must also evaluate the cumulative impacts of the Ravenswood cooling water intake system and the other water withdrawals from the estuary, including withdrawals by the Astoria Generating Station, the East River Generating Station, and the Arthur Kill Generating Station.

In January, the Appellate Division Second Department annulled the water withdrawal permit DEC issued to TransCanada for operation of Ravenswood Generating Station in 2014. *Sierra Club v. Martens*, (158 A.D.3d 169). The Court ruled that the DEC has discretion under the water withdrawal permitting law to include conditions tailored a specific operator in permits issued to existing water users such as Ravenswood. DEC must use the court's directives as an opportunity to revamp its water withdrawal permitting program for existing users and begin to set appropriate terms and conditions in such permits.

Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

John Walker  
77 Bay Rd.  
Plattsburgh, NY 12901  
jwalker12901@yahoo.com  
(518) 563-1789

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dcc.sm.DEPPermitting[DEPPermitting@dcc.ny.gov]  
From: Marianne Lazarus (mlazarus1@aol.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Sat 6/1/2019 8:02:31 AM Eastern Daylight Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Marianne Lazarus  
700 Trotter Lane, #205, #205  
Melbourne, FL 32940  
mlazarus1@aol.com  
(321) 446-7549

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Robert Grace (rfgrace@nycap.rr.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Fri 5/31/2019 4:31:32 PM Eastern Daylight Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Robert Grace  
40 Osborne Road  
Albany, NY 12205  
rfgrace@nycap.rr.com  
(518) 421-9165

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dcc.sm.DEPPermitting[DEPPermitting@dcc.ny.gov]  
From: janet forman (giselle351@gmail.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Sat 5/25/2019 5:51:09 AM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

---

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Dear Kent P. Sanders,

Dear Commissioner Seggos -

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

janet forman  
351 west 24 street apt 12c  
new york, NY 10011  
giselle351@gmail.com  
(212) 255-5192

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: D Johnson (dmjcamera@yahoo.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Wed 5/22/2019 10:36:57 PM Eastern Daylight Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

D Johnson  
211 Watertree Dr  
Diane M, NY 13057  
dmjcamera@yahoo.com  
(315) 622-4910

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: David Kapell (david.kapell@windstream.net) Sent You a Personal Message[automail@knowwho.com]  
Sent: Wed 5/22/2019 4:13:32 PM Eastern Daylight Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

David Kapell  
135 Spyglass Lane  
Fayetteville, NY 13066  
david.kapell@windstream.net  
(315) 727-0440

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.



To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Richard Bond (sunysbedu@hotmail.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Wed 5/22/2019 1:47:41 PM Eastern Daylight Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Richard Bond  
658 Sound Ave Unit C12  
Calverton, NY 11933  
sunysbedu@hotmail.com  
(631) 886-2077

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dcc.sm.DEPPermitting[DEPPermitting@dcc.ny.gov]  
From: Daniel O'Brien (dgobthunder@hotmail.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Wed 5/22/2019 11:21:46 AM Eastern Daylight Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Daniel O'Brien  
36 Mulberry Ln  
Milton, NY 12547  
dgobthunder@hotmail.com  
(914) 4744357

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: David Kapell (david.kapell@windstream.net) Sent You a Personal Message[automail@knowwho.com]  
Sent: Tue 3/19/2019 7:50:52 PM Eastern Daylight Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Sincerely,

David Kapell  
135 Spyglass Lane  
Fayetteville, NY 13066  
david.kapell@windstream.net  
(315) 727-0440

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Elizabeth Call (acupointe@gmail.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Tue 3/19/2019 12:34:59 PM Eastern Daylight Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Sincerely,

Elizabeth Call  
848 County Route 60  
Greenwich, NY 12834  
acupointe@gmail.com  
(518) 692-1167

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Jack David Marcus (jackdavidm@yahoo.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Tue 3/19/2019 11:39:27 AM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Jack David Marcus  
215 West 92nd Street Apt. 15E  
Jack David, NY 10025  
jackdavidm@yahoo.com  
(212) 873-7567

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Joanna Kata (katajoanna@gmail.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Sat 3/9/2019 6:51:46 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Sincerely,

Joanna Kata  
7811 35th Ave Apt 1D  
Jackson Heights, NY 11372  
katajoanna@gmail.com  
(718) 898-9811

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Susan Cox (coxsz@hotmail.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Thur 3/7/2019 10:53:17 AM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Susan Cox  
321 E 71st St  
New York, NY 10021  
coxsz@hotmail.com  
(212) 7345250

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Marc Waters (marcwaters86@yahoo.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Thur 2/28/2019 1:23:17 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Dear Kent P. Sanders,

Dear Commissioner Seggos -

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Marc Waters  
120 Hilltop Dr  
Afton, NY 13730  
marcwaters86@yahoo.com  
(607) 240-9818

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Lillian Miller at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.



To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Mike Gomborone (mikegombo@icloud.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Sat 2/9/2019 10:18:42 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Mike Gomborone  
36 Bogardus Pl  
New York, NY 10040  
mikegombo@icloud.com  
(212) 875-7974

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Dave Simon at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: William G Gonzalez (wgongalezgarcia@yahoo.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Sat 2/9/2019 2:17:02 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

William G Gonzalez  
200 Dashew Drive, Apt A15  
Suffern, NY 10901  
wgongalezgarcia@yahoo.com  
(845) 300-3823

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Dave Simon at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Brendan Havner (bhav329@aol.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Fri 2/8/2019 11:03:24 AM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Brendan Havner  
519 Madison Street Apt#1R  
Hoboken, NJ 07030  
bhav329@aol.com  
(845) 642-1276

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Dave Simon at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Leslie Burby (leslie.burby@cliffordchance.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Fri 2/8/2019 10:54:19 AM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Leslie Burby  
62 Park Terr W, A79  
New York, NY 10034  
leslie.burby@cliffordchance.com  
(646) 796-0783

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Dave Simon at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Marc Westler (marc.westler@gmail.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Thur 2/7/2019 6:54:43 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Marc Westler  
16108 Jewel Ave, 5F  
Flushing, NY 11365  
marc.westler@gmail.com  
(718) 591-1903

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Dave Simon at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: David Kapell (david.kapell@windstream.net) Sent You a Personal Message[automail@knowwho.com]  
Sent: Thur 2/7/2019 5:38:51 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Sincerely,

David Kapell  
4879 SE Longleaf Place  
Hobe Sound, FL 33455  
david.kapell@windstream.net  
(315) 727-0440

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Dave Simon at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

**To:** dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
**From:** Steven Ald (sald@ald-law.com) Sent You a Personal Message[automail@knowwho.com]  
**Sent:** Thur 2/7/2019 5:02:08 PM Eastern Standard Time  
**Subject:** Ravenswood Permit, Application ID: 2-6304-00024/00056

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Sincerely,

Steven Ald  
8036 Dennis  
Angola, NY 14006  
sald@ald-law.com  
(716) 934-3669

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Dave Simon at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Brenda Philipsen (fourphils@yahoo.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Thur 2/7/2019 4:41:55 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Sincerely,

Brenda Philipsen  
2920 W. Main St.  
Little Chute, WI 54911  
fourphils@yahoo.com  
(920) 735-8917

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Dave Simon at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.



To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Maureen Lynch (ohbirdpoop@gmail.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Thur 2/7/2019 4:06:58 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Maureen Lynch  
3482 rt 488, 3482 rt 488  
Clifton Springs, NY 14432  
ohbirdpoop@gmail.com  
(585) 3948201

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Dave Simon at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Jacqui Lipschitz (jacwayne@rochester.rr.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Fri 2/1/2019 6:46:46 AM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

---

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Dear Kent P. Sanders,

Dear Commissioner Seggos -

I am writing you to request that DEC deny the application made by Helix Ravenswood LLC for a permit to withdraw up to 1,528,000,000 gallons a day from the East River for cooling at the Ravenswood Generating Station in Queens (AP ID 2-6304-00024/00056).

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Jacqui Lipschitz  
85 Boniface Dr  
Rochester, NY 14620  
jacwayne@rochester.rr.com  
(585) 354-1510

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Dave Simon at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Patricia Duran (luckykitten@gmail.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Thur 1/31/2019 5:46:10 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

---

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Dear Kent P. Sanders,

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Patricia Duran  
136 W 4th St Apt 1C  
New York, NY 10012  
luckykitten@gmail.com  
(212) 529-2384

This message was sent by KnowWho, as a service provider, on behalf of an individual associated with Sierra Club. Please contact Dave Simon at [core.help@sierraclub.org](mailto:core.help@sierraclub.org) or (415) 977-5500 for more information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Peter[hiker@stny.rr.com]  
Sent: Sun 1/27/2019 7:15:01 PM Eastern Standard Time  
Subject: Re:

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Please EXTEND the public comment period regarding water withdrawal for the Ravenswood project!  
Thank you.

On Oct 9, 2018 4:47 PM, Peter <hiker@stny.rr.com> wrote:

Please extend the public comment period for the Ravenswood case.  
Allowing that much water withdrawal daily is unethical and environmentally dangerous.

**To:** dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
**From:** Peter[hiker@stny.rr.com]  
**Sent:** Sun 1/27/2019 7:13:28 PM Eastern Standard Time  
**Subject:** Re: water withdrawal at Ravenswood

---

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

I implore you to cancel the water withdrawal permit for the Ravenswood project.  
That much water withdrawal can harm the local aquifer and watershed...not ethical environmental policy (IMO).

On Oct 9, 2018 4:47 PM, Peter <hiker@stny.rr.com> wrote:

Please extend the public comment period for the Ravenswood case.  
Allowing that much water withdrawal daily is unethical and environmentally dangerous.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Douglas McAlinden (douglas@mcAlinden.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Wed 1/16/2019 2:12:28 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Dear Kent P. Sanders,

Dear Commissioner Seggos -

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Douglas McAlinden  
400 Riverside Drive, Apt 5A  
New York, NY 10025  
douglas@mcAlinden.com  
(646) 239-8430

This message was sent by KnowWho, as a service provider only, on behalf of the individual noted in the sender information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Diane Doesserich (ddoesserich@yahoo.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Fri 1/11/2019 6:29:37 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

---

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Diane Doesserich  
10 W End Ave Apt 5G  
New York, NY 10023  
ddoesserich@yahoo.com  
(212) 585-4214

This message was sent by KnowWho, as a service provider only, on behalf of the individual noted in the sender information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Christopher Rooney (crooneycmr@aol.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Wed 1/9/2019 10:56:27 AM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

---

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Christopher Rooney  
43 Colonial Ct  
Staten Island, NY 10310  
crooneycmr@aol.com  
(718) 816-9847

This message was sent by KnowWho, as a service provider only, on behalf of the individual noted in the sender information.



To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Heloisa Mattos (helomatt@bol.com.br) Sent You a Personal Message[automail@knowwho.com]  
Sent: Sun 1/6/2019 8:40:25 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Dear Kent P. Sanders,

Dear Commissioner Seggos -

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Heloisa Mattos  
650 5th Avenue  
New York, NY 10019  
helomatt@bol.com.br  
(222) 222-2222

This message was sent by KnowWho, as a service provider only, on behalf of the individual noted in the sender information.

To: Sanders, Kent P (DEC)[kent.sanders@dec.ny.gov]  
From: dec.sm.DEPPermitting[/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3558f737e0474555b669468ba58f1594dec.sm.DEPP]  
Sent: Mon 12/31/2018 7:17:00 AM Eastern Standard Time  
Subject: FW: Ravenswood Permit, Application ID: 2-630400024/00056

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-----Original Message-----

From: Jennifer R (jlilnex@aol.com) Sent You a Personal Message <automail@knowwho.com>  
Sent: Saturday, December 29, 2018 10:58 PM  
To: dec.sm.DEPPermitting <DEPPermitting@dec.ny.gov>  
Subject: Ravenswood Permit, Application ID: 2-630400024/00056

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Jennifer R  
16364 Willets Point Blvd Fl 2  
Whitestone, NY 11357  
jlilnex@aol.com  
(347) 235-0029

This message was sent by KnowWho, as a service provider only, on behalf of the individual noted in the sender information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Neil Bleifeld (procrastus@gmail.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Fri 12/21/2018 2:29:09 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

---

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Dear Commissioner Seggos -

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Neil Bleifeld  
405 W 48th St Apt 5FE  
New York, NY 10036  
procrastus@gmail.com  
(212) 555-1212

This message was sent by KnowWho, as a service provider only, on behalf of the individual noted in the sender information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Teri La Rocca (freestarfirehorse@yahoo.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Wed 12/19/2018 9:18:55 AM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

---

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Dear Kent P. Sanders,

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Teri La Rocca  
41 Schermerhorn St # 123  
Brooklyn, NY 11201  
freestarfirehorse@yahoo.com  
(917) 246-0506

This message was sent by KnowWho, as a service provider only, on behalf of the individual noted in the sender information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Susan Fontanes (susanfontanes@yahoo.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Sun 12/16/2018 9:28:40 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

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Dear Kent P. Sanders,

Dear Commissioner Seggos -

I am writing you to request that DEC deny the application made by Helix Ravenswood LLC for a permit to withdraw up to 1,528,000,000 gallons a day from the East River for cooling at the Ravenswood Generating Station in Queens (AP ID 2-6304-00024/00056).

Before issuing a permit to Helix Ravenswood, DEC needs to make the determinations required by the water withdrawal permitting law, including determinations regarding cumulative impacts on water-related natural resources and environmentally sound and economically feasible water conservation measures, which DEC has not made, and use those determinations to set appropriate terms and conditions in a new draft permit. DEC must consider closed-cycle cooling among the water conservation measures evaluated and set appropriate conditions tailored to the operations of the Ravenswood plant.

DEC must also revoke its determination that the huge water intakes into Ravenswood's once-through cooling intake structure will have no significant affect upon the environment and require a preparation of a full environmental impact statement (EIS). Any fair assessment of the impacts of Ravenswood's withdrawals of up to 1,528,000,000 gallons per day from the East River would find that these withdrawals will have a significant adverse impact on the Hudson River estuary, one of the most diverse estuaries in the world. The impacts that the installation of closed-cycle cooling at the plant would have on fish kills in the estuary must be evaluated in an EIS. An EIS must also evaluate the cumulative impacts of the Ravenswood cooling water intake system and the other water withdrawals from the estuary, including withdrawals by the Astoria Generating Station, the East River Generating Station, and the Arthur Kill Generating Station.

In January, the Appellate Division Second Department annulled the water withdrawal permit DEC issued to TransCanada for operation of Ravenswood Generating Station in 2014. *Sierra Club v. Martens*, (158 A.D.3d 169). The Court ruled that the DEC has discretion under the water withdrawal permitting law to include conditions tailored a specific operator in permits issued to existing water users such as Ravenswood. DEC must use the court's directives as an opportunity to revamp its water withdrawal permitting program for existing users and begin to set appropriate terms and conditions in such permits.

Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Susan Fontanes  
49 Marcus Ave  
New Hyde Park, NY 11040  
susanfontanes@yahoo.com  
(845) 978-5855

This message was sent by KnowWho, as a service provider only, on behalf of the individual noted in the sender information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Lisa Tolan (pointy326@aol.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Wed 12/12/2018 11:26:01 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

---

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Dear Kent P. Sanders,

Dear Commissioner Seggos -

I am writing you to request that DEC deny the application made by Helix Ravenswood LLC for a permit to withdraw up to 1,528,000,000 gallons a day from the East River for cooling at the Ravenswood Generating Station in Queens (AP ID 2-6304-00024/00056).

Before issuing a permit to Helix Ravenswood, DEC needs to make the determinations required by the water withdrawal permitting law, including determinations regarding cumulative impacts on water-related natural resources and environmentally sound and economically feasible water conservation measures, which DEC has not made, and use those determinations to set appropriate terms and conditions in a new draft permit. DEC must consider closed-cycle cooling among the water conservation measures evaluated and set appropriate conditions tailored to the operations of the Ravenswood plant.

DEC must also revoke its determination that the huge water intakes into Ravenswood's once-through cooling intake structure will have no significant affect upon the environment and require a preparation of a full environmental impact statement (EIS). Any fair assessment of the impacts of Ravenswood's withdrawals of up to 1,528,000,000 gallons per day from the East River would find that these withdrawals will have a significant adverse impact on the Hudson River estuary, one of the most diverse estuaries in the world. The impacts that the installation of closed-cycle cooling at the plant would have on fish kills in the estuary must be evaluated in an EIS. An EIS must also evaluate the cumulative impacts of the Ravenswood cooling water intake system and the other water withdrawals from the estuary, including withdrawals by the Astoria Generating Station, the East River Generating Station, and the Arthur Kill Generating Station.

In January, the Appellate Division Second Department annulled the water withdrawal permit DEC issued to TransCanada for operation of Ravenswood Generating Station in 2014. *Sierra Club v. Martens*, (158 A.D.3d 169). The Court ruled that the DEC has discretion under the water withdrawal permitting law to include conditions tailored a specific operator in permits issued to existing water users such as Ravenswood. DEC must use the court's directives as an opportunity to revamp its water withdrawal permitting program for existing users and begin to set appropriate terms and conditions in such permits.

Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Lisa Tolan  
63 5th Ave  
East Rockaway, NY 11518  
pointy326@aol.com  
(516) 823-0456

This message was sent by KnowWho, as a service provider only, on behalf of the individual noted in the sender information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Barbara Chutroo (bchutroo@earthlink.net) Sent You a Personal Message[automail@knowwho.com]  
Sent: Tue 12/11/2018 8:21:26 PM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

---

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Dear Kent P. Sanders,

Dear Commissioner Seggos -

I am writing you to request that DEC deny the application made by Helix Ravenswood LLC for a permit to withdraw up to 1,528,000,000 gallons a day from the East River for cooling at the Ravenswood Generating Station in Queens (AP ID 2-6304-00024/00056).

Before issuing a permit to Helix Ravenswood, DEC needs to make the determinations required by the water withdrawal permitting law, including determinations regarding cumulative impacts on water-related natural resources and environmentally sound and economically feasible water conservation measures, which DEC has not made, and use those determinations to set appropriate terms and conditions in a new draft permit. DEC must consider closed-cycle cooling among the water conservation measures evaluated and set appropriate conditions tailored to the operations of the Ravenswood plant.

DEC must also revoke its determination that the huge water intakes into Ravenswood's once-through cooling intake structure will have no significant affect upon the environment and require a preparation of a full environmental impact statement (EIS). Any fair assessment of the impacts of Ravenswood's withdrawals of up to 1,528,000,000 gallons per day from the East River would find that these withdrawals will have a significant adverse impact on the Hudson River estuary, one of the most diverse estuaries in the world. The impacts that the installation of closed-cycle cooling at the plant would have on fish kills in the estuary must be evaluated in an EIS. An EIS must also evaluate the cumulative impacts of the Ravenswood cooling water intake system and the other water withdrawals from the estuary, including withdrawals by the Astoria Generating Station, the East River Generating Station, and the Arthur Kill Generating Station.

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Barbara Chutroo  
235 W 70th St Apt 4A  
New York, NY 10023  
bchutroo@earthlink.net  
(212) 721-4284

This message was sent by KnowWho, as a service provider only, on behalf of the individual noted in the sender information.

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Kathleen Margulis (kmargulis07@aol.com) Sent You a Personal Message[automail@knowwho.com]  
Sent: Mon 12/10/2018 2:41:52 AM Eastern Standard Time  
Subject: Ravenswood Permit, Application ID: 2-6304-00024/00056

---

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Dear Kent P. Sanders,

Dear Commissioner Seggos -

I am writing you to request that DEC deny the application made by Helix Ravenswood LLC for a permit to withdraw up to 1,528,000,000 gallons a day from the East River for cooling at the Ravenswood Generating Station in Queens (AP ID 2-6304-00024/00056).

Before issuing a permit to Helix Ravenswood, DEC needs to make the determinations required by the water withdrawal permitting law, including determinations regarding cumulative impacts on water-related natural resources and environmentally sound and economically feasible water conservation measures, which DEC has not made, and use those determinations to set appropriate terms and conditions in a new draft permit. DEC must consider closed-cycle cooling among the water conservation measures evaluated and set appropriate conditions tailored to the operations of the Ravenswood plant.

DEC must also revoke its determination that the huge water intakes into Ravenswood's once-through cooling intake structure will have no significant affect upon the environment and require a preparation of a full environmental impact statement (EIS). Any fair assessment of the impacts of Ravenswood's withdrawals of up to 1,528,000,000 gallons per day from the East River would find that these withdrawals will have a significant adverse impact on the Hudson River estuary, one of the most diverse estuaries in the world. The impacts that the installation of closed-cycle cooling at the plant would have on fish kills in the estuary must be evaluated in an EIS. An EIS must also evaluate the cumulative impacts of the Ravenswood cooling water intake system and the other water withdrawals from the estuary, including withdrawals by the Astoria Generating Station, the East River Generating Station, and the Arthur Kill Generating Station.

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Please deny the Helix Ravenswood application, prepare a new draft permit with appropriate terms and conditions, revoke the negative declaration, require a draft EIS and revamp DEC's water withdrawal permitting program for existing users.

Sincerely,

Kathleen Margulis  
31 Wedgewood Ln  
Brookhaven, NY 11719  
kmargulis07@aol.com  
(631) 286-7522

This message was sent by KnowWho, as a service provider only, on behalf of the individual noted in the sender information.



**Public Comment Emails contained in pages 727 - 3262 of the Administrative Record are not included in this printed volume of the Record on Appeal.**

To: Watts, Stephen (DEC)[[stephen.watts@dec.ny.gov](mailto:stephen.watts@dec.ny.gov)]; Sanders, Kent P (DEC)[[kent.sanders@dec.ny.gov](mailto:kent.sanders@dec.ny.gov)]  
 From: Nichols, Caitlyn P (DEC)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8DE1683767C64EEF8B36307D5BE4BD9C-NICHOLS, CA]  
 Sent: Thur 10/4/2018 1:06:08 PM Eastern Daylight Time  
 Subject: RE: Public comment on Ravenswood water withdrawal permit  
 Attachment: FW: Grant 90 day extension to comment on the new Ravenswood water withdrawal permit

Looks like they are sending to [DEPPermitting@dec.ny.gov](mailto:DEPPermitting@dec.ny.gov) but, another attached.

From: Watts, Stephen (DEC)  
 Sent: Thursday, October 04, 2018 12:00 PM  
 To: Sanders, Kent P (DEC) <[kent.sanders@dec.ny.gov](mailto:kent.sanders@dec.ny.gov)>  
 Cc: Nichols, Caitlyn P (DEC) <[Caitlyn.Nichols@dec.ny.gov](mailto:Caitlyn.Nichols@dec.ny.gov)>  
 Subject: FW: Public comment on Ravenswood water withdrawal permit  
 Kent –  
 Sending this directly to you as well..

From: Nichols, Caitlyn P (DEC)  
 Sent: Thursday, October 04, 2018 10:43 AM  
 To: Watts, Stephen (DEC) <[stephen.watts@dec.ny.gov](mailto:stephen.watts@dec.ny.gov)>; dec.sm.DEPPermitting <[DEPPermitting@dec.ny.gov](mailto:DEPPermitting@dec.ny.gov)>  
 Subject: FW: Public comment on Ravenswood water withdrawal permit  
 FYI

From: dec.sm.DEP.R2  
 Sent: Thursday, October 04, 2018 10:38 AM  
 To: Nichols, Caitlyn P (DEC) <[Caitlyn.Nichols@dec.ny.gov](mailto:Caitlyn.Nichols@dec.ny.gov)>  
 Subject: FW: Public comment on Ravenswood water withdrawal permit  
 From: Dwain Wilder [<mailto:dwilder@rochester.rr.com>]  
 Sent: Thursday, October 04, 2018 10:31 AM  
 To: dec.sm.DEP.R2 <[DEP.R2@dec.ny.gov](mailto:DEP.R2@dec.ny.gov)>  
 Subject: Re: Public comment on Ravenswood water withdrawal permit

**ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.**

Dear Ms Nichols,

Please extend the Public Comment period for the Ravenswood water withdrawal permit 90 days, until January 18.

The public needs more time to comment on a permit to take up to 1,500,000,000 gallons a day from the East River and a determination that such withdrawals will have no significant environmental impact. We just saw the notice yesterday afternoon and don't even have the draft permit, the negative declaration or the coastal zone review yet.

If you have not planned a public hearing please do so on this important matter.

Thank you for your attention to this matter.

Sincerely,  
 Dwain Wilder  
 Editor, *The Banner*  
[editor@thebanner.news](mailto:editor@thebanner.news) <https://www.thebanner.news>

To: Nichols, Caitlyn P (DEC)[Caitlyn.Nichols@dec.ny.gov]  
 From: dec.sm.DEP.R2[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5B9BD74DADB348BD83E3DC61F84C0ED9-DEC.SM.DEP.]  
 Sent: Thur 10/4/2018 12:52:48 PM Eastern Daylight Time  
 Subject: FW: Grant 90 day extension to comment on the new Ravenswood water withdrawal permit

From: Maura Stephens [mailto:maurastephens1@gmail.com]  
 Sent: Thursday, October 04, 2018 11:57 AM  
 To: dec.sm.DEPPermitting <DEPPermitting@dec.ny.gov>; dec.sm.DEP.R2 <DEP.R2@dec.ny.gov>  
 Subject: DEC: Grant 90 day extension to comment on the new Ravenswood water withdrawal permit

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

In reference to

Applicant: Helix Ravenswood LLC; 38-54 Vernon Blvd, Long Island City, NY 11101;

Facility: Ravenswood Generating Station

Application ID: 2-6304-00024/00056

Permit(s) Applied for: Article 15 Title 15 Water Withdrawal Non-public

DEC:

We need more time to comment on a permit to take up to 1.5 TRILLION GALLONS OF WATER A DAY from the East River and a determination that such withdrawals will have no significant environmental impact, which on the face of it seems quite impossible.

We just saw the notice yesterday afternoon and don't even have the draft permit, the negative declaration or the coastal zone review yet. This makes a mockery of public input into an industrial activity that could very likely affect many millions of lives.

Please issue a 90-day minimum extension to the public comment period, and please provide immediately a copy of the draft permit and the negative declaration by Helix Ravenswood LLC.

On January 10, 2018, the Appellate Division Second Department invalidated the original Ravenswood water withdrawal permit. It has taken DEC those nine months to announce a new draft permit in this week's Environmental Notice Bulletin. The original Ravenswood permit, the first issued under the new water withdrawal permitting law enacted by the New York legislature in 2011, was negated on the ground that DEC incorrectly classified it as a Type II action under SEQRA. DEC now classifies it as a Type I action but without explanation has apparently determined that the withdrawal will have no significant environmental impact and therefore will not require a full SEQRA review.

That is simply unsound practice for any environmental protection agency. DEC should conduct a full environmental review and evaluate the impacts of closed-cycle cooling, which process could reduce water usage by 99 percent.

Maura Stephens

PO Box 403, Spencer NY 14883

Founding member of the Coalition to Protect New York and other grassroots organizations

To: Sanders, Kent P (DEC)[[kent.sanders@dec.ny.gov](mailto:kent.sanders@dec.ny.gov)]  
From: Czarnecki, Carla (DEC)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6C05EB395B7945FFB4C4551AD16103D2-CZARNECKI.]  
Sent: Thur 10/4/2018 12:18:20 PM Eastern Daylight Time  
Subject: DEC: Grant 90 day extension to comment on the new Ravenswood water withdrawal permit  
Attachment: DEC: Grant 90 day extension to comment on the new Ravenswood water withdrawal permit

---

Hi Kent,  
Please see attached.  
Thank you,  
Carla

**Carla Czarnecki**

Secretary to Daniel Whitehead, Director of Division of Environmental Permits  
New York State Department of Environmental Conservation  
625 Broadway, Albany, NY 12233-1750  
P: (518) 402-9180 | F: (518) 402-9168 | [carla.czarnecki@dec.ny.gov](mailto:carla.czarnecki@dec.ny.gov)

[www.dec.ny.gov](http://www.dec.ny.gov) |  | 

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]; dec.sm.DEP.R2[DEP.R2@dec.ny.gov]  
From: Maura Stephens[maurastephens1@gmail.com]  
Sent: Thur 10/4/2018 11:56:30 AM Eastern Daylight Time  
Subject: DEC: Grant 90 day extension to comment on the new Ravenswood water withdrawal permit

---

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unsolicited emails.*

In reference to  
Applicant: Helix Ravenswood LLC; 38-54 Vernon Blvd, Long Island City, NY 11101;  
Facility: Ravenswood Generating Station  
Application ID: 2-6304-00024/00056  
Permit(s) Applied for: Article 15 Title 15 Water Withdrawal Non-public

DEC:

We need more time to comment on a permit to take up to 1.5 TRILLION GALLONS OF WATER A DAY from the East River and a determination that such withdrawals will have no significant environmental impact, which on the face of it seems quite impossible.

We just saw the notice yesterday afternoon and don't even have the draft permit, the negative declaration or the coastal zone review yet. This makes a mockery of public input into an industrial activity that could very likely affect many millions of lives.

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That is simply unsound practice for any environmental protection agency. DEC should conduct a full environmental review and evaluate the impacts of closed-cycle cooling, which process could reduce water usage by 99 percent.

**Maura Stephens**  
PO Box 403, Spencer NY 14883  
Founding member of the Coalition to Protect New York and other grassroots organizations





To: Sanders, Kent P (DEC)[kent.sanders@dec.ny.gov]  
From: Czarnecki, Carla (DEC)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6C05EB395B7945FFB4C4551AD16103D2-CZARNECKI,]  
Sent: Thur 10/4/2018 12:17:26 PM Eastern Daylight Time  
Subject: Ravenswood water withdrawal permit  
Attachment: Ravenswood water withdrawal permit

---

Hi Kent,  
Please see attached.  
Thank you,  
Carla

**Carla Czarnecki**

Secretary to Daniel Whitehead, Director of Division of Environmental Permits  
New York State Department of Environmental Conservation  
625 Broadway, Albany, NY 12233-1750  
P: (518) 402-9180 | F: (518) 402-9168 | [carla.czarnecki@dec.ny.gov](mailto:carla.czarnecki@dec.ny.gov)

[www.dec.ny.gov](http://www.dec.ny.gov) |  | 

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: jkastner@weeblax-uzzl.com[jkastner@weeblax-uzzl.com]  
Sent: Thur 10/4/2018 11:39:22 AM Eastern Standard Time  
Subject: Ravenswood water withdrawal permit

---

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Sent from my iPad. I am requesting that the DEC grant a 90 day extension on comments and challenges to Ravenswood LLC pending water withdrawal permit to allow sufficient time to study the potential environmental impact of removing 1.5 billion gallons of water per day from the east river. Withdrawal of such a massive amount of water needs to be considered carefully before any permit is issued, thank you , John Kastner , Rochester NY

To: Sanders, Kent P (DEC)[[kent.sanders@dec.ny.gov](mailto:kent.sanders@dec.ny.gov)]  
From: Czarnecki, Carla (DEC)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6C05EB395B7945FFB4C4551AD16103D2-CZARNECKI.]  
Sent: Thur 10/4/2018 12:08:50 PM Eastern Daylight Time  
Subject: Ravenswood Water Withdrawal Application 2-6304-00024/00056  
Attachment: Ravenswood Water Withdrawal Application 2-6304-00024/00056

---

Hi Kent,  
Please see attached.  
Thank you,  
Carla

**Carla Czarnecki**

Secretary to Daniel Whitehead, Director of Division of Environmental Permits  
New York State Department of Environmental Conservation  
625 Broadway, Albany, NY 12233-1750  
P: (518) 402-9180 | F: (518) 402-9168 | [carla.czarnecki@dec.ny.gov](mailto:carla.czarnecki@dec.ny.gov)  
[www.dec.ny.gov](http://www.dec.ny.gov) |  | 



To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Dwain Wilder[dwilder@rochester.rr.com]  
Sent: Thur 10/4/2018 11:02:59 AM Eastern Daylight Time  
Subject: Ravenswood Water Withdrawal Application 2-630400024/00056

---

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Dear Mr. Sanders,

Please send a link or attach a pdf file of the permit application regarding Ravenswood Water Withdrawal Application 2-630400024/00056, as cited in DEC ENB

[https://www.dec.ny.gov/enb/20181003\\_reg2.html#263040002400056](https://www.dec.ny.gov/enb/20181003_reg2.html#263040002400056)

Thank you for your attention to this matter, and for any help you can give to help further inform New York citizens regarding this massive water withdrawal proposal. It seems, on its face, unlikely that withdrawing 1.5 billion gallons of water/day from the East River and returning it at a higher temperature would not have any significant environmental impact on riparian and estuarial life.

Sincerely,  
Dwain Wilder  
Editor, *The Banner*  
[editor@thebanner.news](mailto:editor@thebanner.news) <https://www.thebanner.news>

To: Sanders, Kent P (DEC)[[kent.sanders@dec.ny.gov](mailto:kent.sanders@dec.ny.gov)]  
From: Czarnecki, Carla (DEC)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6C05EB395B7945FFB4C4551AD16103D2-CZARNECKI,]  
Sent: Thur 10/4/2018 12:07:57 PM Eastern Daylight Time  
Subject: FW: Public comment on Ravenswood water withdrawal permit  
Attachment: FW: Public comment on Ravenswood water withdrawal permit

---

Hi Kent,  
Please see attached. Duplicate copy.  
Thank you,  
Carla

**Carla Czarnecki**

Secretary to Daniel Whitehead, Director of Division of Environmental Permits  
New York State Department of Environmental Conservation  
625 Broadway, Albany, NY 12233-1750  
P: (518) 402-9180 | F: (518) 402-9168 | [carla.czarnecki@dec.ny.gov](mailto:carla.czarnecki@dec.ny.gov)  
[www.dec.ny.gov](http://www.dec.ny.gov) |  | 

To: Watts, Stephen (DEC)[stephen.watts@dec.ny.gov]; dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Nichols, Caitlyn P (DEC)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8DE1683767C64EEF8B36307D5BE4BD9C-NICHOLS, CA]  
Sent: Thur 10/4/2018 10:43:28 AM Eastern Standard Time  
Subject: FW: Public comment on Ravenswood water withdrawal permit

---

FYI

From: dec.sm.DEP.R2  
Sent: Thursday, October 04, 2018 10:38 AM  
To: Nichols, Caitlyn P (DEC) <Caitlyn.Nichols@dec.ny.gov>  
Subject: FW: Public comment on Ravenswood water withdrawal permit  
From: Dwain Wilder [mailto:dwilder@rochester.rr.com]  
Sent: Thursday, October 04, 2018 10:31 AM  
To: dec.sm.DEP.R2 <DEP.R2@dec.ny.gov>  
Subject: Re: Public comment on Ravenswood water withdrawal permit

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Dear Ms Nichols,

Please extend the Public Comment period for the Ravenswood water withdrawal permit 90 days, until January 18.

The public needs more time to comment on a permit to take up to 1,500,000,000 gallons a day from the East River and a determination that such withdrawals will have no significant environmental impact. We just saw the notice yesterday afternoon and don't even have the draft permit, the negative declaration or the coastal zone review yet.

If you have not planned a public hearing please do so on this important matter.

Thank you for your attention to this matter.

Sincerely,  
Dwain Wilder  
Editor, *The Banner*  
[editor@thebanner.news](mailto:editor@thebanner.news) <https://www.thebanner.news>

To: Sanders, Kent P (DEC)[[kent.sanders@dec.ny.gov](mailto:kent.sanders@dec.ny.gov)]  
From: Czarnecki, Carla (DEC)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6C05EB395B7945FFB4C4551AD16103D2-CZARNECKI.]  
Sent: Thur 10/4/2018 12:06:48 PM Eastern Daylight Time  
Subject: Public comment on Ravenswood water withdrawal permit  
Attachment: Public comment on Ravenswood water withdrawal permit

---

Hi Kent,  
Please see attached.  
Thank you,  
Carla

**Carla Czarnecki**

Secretary to Daniel Whitehead, Director of Division of Environmental Permits  
New York State Department of Environmental Conservation  
625 Broadway, Albany, NY 12233-1750  
P: (518) 402-9180 | F: (518) 402-9168 | [carla.czarnecki@dec.ny.gov](mailto:carla.czarnecki@dec.ny.gov)  
[www.dec.ny.gov](http://www.dec.ny.gov) |  | 

To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Dwain Wilder[dwilder@rochester.rr.com]  
Sent: Thur 10/4/2018 10:23:21 AM Eastern Standard Time  
Subject: Public comment on Ravenswood water withdrawal permit

---

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Dear Sirs & Ms,

Please extend the Public Comment period for the Ravenswood water withdrawal permit until January 31. The public needs more time to comment on a permit to take up to 1,500,000,000 gallons a day from the East River and a determination that such withdrawals will have no significant environmental impact. We just saw the notice yesterday afternoon and don't even have the draft permit, the negative declaration or the coastal zone review yet.

If you have not planned a public hearing please do so on this important matter.

Thank you for your attention to this matter.

Sincerely,  
Dwain Wilder  
Editor, *The Banner*  
[editor@thebanner.news](mailto:editor@thebanner.news) <https://www.thebanner.news>

To: Sanders, Kent P (DEC)[[kent.sanders@dec.ny.gov](mailto:kent.sanders@dec.ny.gov)]  
Cc: Czubernat, Lindy Sue (DEC)[[lindysue.czubernat@dec.ny.gov](mailto:lindysue.czubernat@dec.ny.gov)]  
From: Czarnecki, Carla (DEC)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6C05EB395B7945FFB4C4551AD16103D2-CZARNECKI.]  
Sent: Thur 10/4/2018 12:04:54 PM Eastern Standard Time  
Subject: Time Extension Request  
Attachment: Time extension request

---

Hi Kent,  
Please see attached.  
Carla

**Carla Czarnecki**

Secretary to Daniel Whitehead, Director of Division of Environmental Permits  
New York State Department of Environmental Conservation  
625 Broadway, Albany, NY 12233-1750  
P: (518) 402-9180 | F: (518) 402-9168 | [carla.czarnecki@dec.ny.gov](mailto:carla.czarnecki@dec.ny.gov)  
[www.dec.ny.gov](http://www.dec.ny.gov) |  | 

To: dee.sm.DEPPermitting[DEPPermitting@dee.ny.gov]  
From: Karen Biesanz[karenb@stny.fr.com]  
Sent: Thur 10/4/2018 10:23:12 AM Eastern Standard Time  
Subject: Time extension request

---

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

**Dear Mr. Sanders:**

**I would like to request a 90 day extension on the comment period regarding the new Ravenswood water withdrawal permit and negative declaration until January 18, 2019.**

I need more time to comment on a permit to take up to 1,500,000,000 gallons a day from the East River and a determination that such withdrawals will have no significant environmental impact. I just saw the notice and don't even have the draft permit, the negative declaration or the coastal zone review yet.

Thank you for your understanding.

Karen Biesanz

215 Watauga Ave

Corning, NY, 14830

(607) 936-3915



To: Sanders, Kent P (DEC)[[kent.sanders@dec.ny.gov](mailto:kent.sanders@dec.ny.gov)]  
Cc: Czubernat, Lindy Sue (DEC)[[lindysue.czubernat@dec.ny.gov](mailto:lindysue.czubernat@dec.ny.gov)]  
From: Czarnecki, Carla (DEC)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6C05EB395B7945FFB4C4551AD16103D2-CZARNECKI.]  
Sent: Thur 10/4/2018 12:03:54 PM Eastern Standard Time  
Subject: Request for Ravenswood Draft Permit and Negative Declaration  
Attachment: Request for Ravenswood Draft Permit and Negative Declaration

---

Hi Kent,

Please see attached. I copied Lindy Sue as Rachel referenced ENB.

Carla

**Carla Czarnecki**

Secretary to Daniel Whitehead, Director of Division of Environmental Permits  
New York State Department of Environmental Conservation  
625 Broadway, Albany, NY 12233-1750

P: (518) 402-9180 | F: (518) 402-9168 | [carla.czarnecki@dec.ny.gov](mailto:carla.czarnecki@dec.ny.gov)

[www.dec.ny.gov](http://www.dec.ny.gov) |  | 



To: dec.sm.DEPPermitting[DEPPermitting@dec.ny.gov]  
From: Rachel Treichler[treichlerlaw@frontiernet.net]  
Sent: Thur 10/4/2018 9:52:56 AM Eastern Daylight Time  
Subject: Request for Ravenswood Draft Permit and Negative Declaration

---

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Dear Mr. Sanders,

Pursuant to notice in yesterday's ENB of the new draft permit and negative declaration for the Ravenswood water withdrawal permit, please email me a copy of the draft permit and the negative declaration.

Many thanks!

Rachel Treichler

Law Office of Rachel Treichler  
7988 Van Amburg Road  
Hammondsport, NY 14840  
607-569-2114  
<http://treichlerlawoffice.com>

[https://www.dec.ny.gov/enb/20181003\\_reg2.html#263040002400056](https://www.dec.ny.gov/enb/20181003_reg2.html#263040002400056)

**Queens County**

**Applicant:**

Helix Ravenswood LLC  
3 8-54 Vernon Blvd  
Long Island City, NY 11101

**Facility:**

Ravenswood Generating Station  
3 8-54 Vernon Blvd  
Queens, NY 11101

**Application ID:**

2-6304-00024/00056

**Permit(s) Applied for:**

Article 15 Title 15 Water Withdrawal Non-public

**Project is Located:**

Queens, Queens County

**Project Description:**

The applicant has applied for an initial water withdrawal permit to the above-referenced applicant authorizing the continued withdrawal of water up to approximately 1.5 billion gallons per day from the East River, for use as cooling water for electrical power production. No physical disturbance to the site or construction activities are proposed. No changes in operations at the facility are proposed.

**Availability of Application Documents:**

Filed application documents, and Department draft permits where applicable, are available for inspection during normal business hours at the address of the contact person. To ensure timely service at the time of inspection, it is recommended that an appointment be made with the contact person.

**State Environmental Quality Review (SEQR) Determination:**

Project is a Type I action and will not have a significant effect on the environment. A coordinated review with other agencies was performed and a Negative Declaration is on file.

SEQR Lead Agency: NYS Department of Environmental Conservation

**State Historic Preservation Act (SHPA) Determination:**

The proposed activity is not subject to review in accordance with SHPA. The application type is exempt and/or the project involves the continuation of an existing operational activity.

**Coastal Management:**

This project is located in a Coastal Management area and is subject to the Waterfront Revitalization and Coastal Resources Act.

**DEC Commissioner Policy 29, Environmental Justice and Permitting (CP29)**

It has been determined that the proposed action is not subject to CP-29.

**Opportunity for Public Comment:**

Comments on this project must be submitted in writing to the Contact Person no later than *Oct 18, 2018*.

**Contact:**

Kent P Sanders  
NYSDEC Headquarters  
625 Broadway  
Albany, NY 12233  
(518) 402-9167  
[DEPPermitting@dec.ny.gov](mailto:DEPPermitting@dec.ny.gov)

To: Sanders, Kent P (DEC)[kent.sanders@dec.ny.gov]  
Cc: Nichols, Caitlyn P (DEC)[caitlyn.nichols@dec.ny.gov]  
From: Watts, Stephen (DEC)/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=643A114B510B4105BA2A9E56610BF9DA-WATTS, STEP]  
Sent: Thur 10/4/2018 11:59:52 AM Eastern Daylight Time  
Subject: FW: Public comment on Ravenswood water withdrawal permit

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Kent -

Sending this directly to you as well..

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From: Nichols, Caitlyn P (DEC)  
Sent: Thursday, October 04, 2018 10:43 AM  
To: Watts, Stephen (DEC) <stephen.watts@dec.ny.gov>; dec.sm.DEPPermitting <DEPPermitting@dec.ny.gov>  
Subject: FW: Public comment on Ravenswood water withdrawal permit  
FYI

---

From: dec.sm.DEP.R2  
Sent: Thursday, October 04, 2018 10:38 AM  
To: Nichols, Caitlyn P (DEC) <Caitlyn.Nichols@dec.ny.gov>  
Subject: FW: Public comment on Ravenswood water withdrawal permit  
From: Dwain Wilder [mailto:dwilder@rochester.rr.com]  
Sent: Thursday, October 04, 2018 10:31 AM  
To: dec.sm.DEP.R2 <DEP.R2@dec.ny.gov>  
Subject: Re: Public comment on Ravenswood water withdrawal permit

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown sources unless you are expecting them.*

Dear Ms Nichols,

Please extend the Public Comment period for the Ravenswood water withdrawal permit 90 days, until January 18.

The public needs more time to comment on a permit to take up to 1,500,000,000 gallons a day from the East River and a determination that such withdrawals will have no significant environmental impact. We just saw the notice yesterday afternoon and don't even have the draft permit, the negative declaration or the coastal zone review yet.

If you have not planned a public hearing please do so on this important matter.

Thank you for your attention to this matter.

Sincerely,  
Dwain Wilder  
Editor, *The Banner*  
[editor@thebanner.news](mailto:editor@thebanner.news) <https://www.thebanner.news>

VERIFIED ANSWER OF RESPONDENT DEC, DATED AUGUST 12, 2019 [A-771 - A-784]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
In the Matter of the Petition of the

SIERRA CLUB and HUDSON RIVER FISHERMEN'S  
ASSOCIATION, NEW JERSEY CHAPTER, INC.,

Petitioners,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules,

- against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION, BASIL SEGGOS, COMMISSIONER, and  
HELIx RAVENSWOOD, LLC,

Respondents.

-----X

Respondents New York State Department of Environmental Conservation and Basil Seggos, Commissioner of the DEC (collectively "DEC" or "State Respondents"), by their attorney, the New York Office of the Attorney General, for their Verified Answer to the Verified Petition, dated April 18, 2019 (the "Petition") and submitted by Sierra Club and Hudson River Fishermen's Association, New Jersey Chapter, Inc. ("HRFA") (collectively "Petitioners"), aver as set forth below:

**I. INTRODUCTION<sup>1</sup>**

1. Paragraph 1 of the Petition is a statement of the nature of this proceeding and requires no response. To the extent an answer is required, the allegations are denied.
2. DEC denies the allegations in Paragraph 2 of the Petition.

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<sup>1</sup> State Respondents retain, to some extent, Petitioners' headings for the reader's convenience. State Respondents deny the contents of the headings to the extent they are factual or legal conclusions.

3. Paragraph 3 of the Petition is a statement of the relief sought by Petitioners and requires no response. To the extent that an answer is required, the allegations are denied.

## **II. PARTIES**

4. DEC denies the allegations in Paragraph 4 of the Petition that the conservation, aesthetic, and recreational interests of members of Sierra Club are injured by environmental damage caused to the East River, the New York Harbor Estuary, the Hudson River, Long Island Sound and the New York Bight by the Ravenswood Generating Station's water usage for its cooling water intake structures. DEC denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4 and on that basis denies the allegations.

5. DEC denies the allegations in Paragraph 5 of the Petition that the conservation, aesthetic, and recreational interests of members of HRFA are injured by environmental damage caused to the East River, the New York Harbor Estuary, the Hudson River, Long Island Sound and the New York Bight by the Ravenswood Generating Station's water usage for its cooling water intake structures. DEC denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5, and on that basis denies the allegations.

6. DEC admits the allegations in Paragraph 6 of the Petition.

7. Responding to the allegations in Paragraph 7, DEC admits that Respondent Helix Ravenswood, LLC ("HRLLC") operates a facility in Long Island City, New York. The remaining allegations are conclusions of law to which no response is required, but to the extent that a response is required, deny knowledge or information sufficient to form a belief as to the truth of those allegations.

### **III. STATUTORY AND REGULATORY FRAMEWORK**

8. As to the allegations set forth in Paragraph 8 of the Petition, DEC respectfully refers the Court to the Water Resources Protection Act of 2011 (“WRPA”) as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

9. The allegations in Paragraph 9 of the Petition are a characterization of the WRPA and other legal requirements regarding water withdrawal permits. DEC respectfully refers the Court to the WRPA and related legal requirements regarding water withdrawal permits as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

10. DEC denies knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 10 of the Petition. The remaining allegations in Paragraph 10 are a characterization of the WRPA the Great Lakes-St. Lawrence River Basin Water Resources Compact (the “Compact”). DEC respectfully refers the Court to the WRPA and the Compact as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

11. Paragraph 11 of the Petition is a characterization of the contents of the WRPA and Compact. DEC respectfully refers the Court to the WRPA and Compact as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

12. Paragraph 12 of the Petition is a characterization and partial quote from a press release from the Governor regarding the enactment of the WRPA. DEC respectfully refers the

Court to the press release as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith. Further, to the extent the allegations in paragraph 12 are a characterization of the WRPA, DEC respectfully refers the Court to the WRPA as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

13. Responding to the allegations in Paragraph 13, DEC admits that it adopted regulations to implement the WRPA, which are codified at 6 NYCRR Part 601, and that the regulations became effective April 1, 2013. Insofar as the allegations purport to characterize DEC's regulations promulgated under the WRPA, DEC respectfully refers the Court to the regulations as the best evidence and most complete statement of their contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

14. The first two sentences of Paragraph 14 of the Petition are a characterization of DEC's regulations promulgated under the WRPA. DEC respectfully refers the Court to the regulations as the best evidence and most complete statement of their contents and denies the allegations to the extent they are incomplete or inconsistent therewith. DEC denies the third sentence of Paragraph 14.

#### **IV. THE RAVENSWOOD PERMITS**

##### **A. 2013 Ravenswood Water Withdrawal Permit**

15. The allegations set forth in Paragraph 15 are Petitioners' characterizations regarding the contents of a 2013 DEC Environmental Notice Bulletin ("ENB") posting regarding the Ravenswood facility. DEC respectfully refers the Court to the 2013 ENB posting as the best

evidence and most complete evidence of its own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

16. The allegations in Paragraph 16 are more of Petitioners' characterizations regarding the contents of the 2013 ENB posting referenced in Paragraph 15. DEC respectfully refers the Court to the 2013 ENB as the best evidence and most complete evidence of its own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

17. Responding to the allegations in Paragraph 17, DEC admits that Petitioner Sierra Club submitted comments in response to the 2013 ENB posting but denies the remaining allegations.

18. Responding to the allegations in Paragraph 18, DEC admits that in November, 2013, it issued a water withdrawal permit to TransCanada for the Ravenswood facility in Long Island City.

19. The allegations in Paragraph 19 are legal conclusions for which no response is required. To the extent that the allegations require responses, they are denied.

20. Responding to the allegations in Paragraph 20, DEC admits that Petitioners filed an Article 78 proceeding in Queens County Supreme Court in December 2013. DEC denies that the case was refiled on February 18, 2019 but states affirmatively that the case was refiled on or about February 18, 2014.

21. The allegations set forth in Paragraph 21 are Petitioners' characterizations regarding the contents of the 2013 Ravenswood water withdrawal permit and a 2014 modification to the permit. DEC respectfully refers the Court to the 2013 Ravenswood water withdrawal permit and 2014 modification to that permit as the best evidence and most complete



evidence of their own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

22. Responding to the allegations in Paragraph 22, DEC admits that the Queens County Supreme Court ruled in its favor in the trial court proceedings.

### **B. 2018 Appeals Court Decision**

23. Responding to the allegations in Paragraph 23, DEC admits that the appellate court issued a decision reported at *Sierra Club v. Martens*, 158 A.D.3d 169 (2d Dep't 2018), and that the appellate court annulled the Ravenswood permit. The remaining allegations are the Petitioners' characterizations of the appellate court opinion. DEC respectfully refers the Court to the referenced appellate decision as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

24. The allegations in Paragraph 24 are more of Petitioners' characterizations of the appellate court opinion referenced in Paragraph 23. DEC respectfully refers the Court to the referenced appellate decision as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

### **C. 2019 Ravenswood Water Withdrawal Permit**

25. Responding to the allegations in Paragraph 25, DEC admits that on or about August 2, 2017, Respondent HRLLC submitted an application for transfer of the water withdrawal permit that DEC had previously issued to TransCanada.

26. The allegations in Paragraph 26 are Petitioners' characterizations regarding the contents of an April 2018 letter from DEC to HRLLC. DEC respectfully refers the Court to the

April 2018 letter as the best evidence and most complete evidence of its own contents and denies the allegations to the extent they are incomplete or inconsistent therewith. On information and belief, the letter referred to by Petitioners in Paragraph 26 is dated April 13, 2018.

27. The allegations in Paragraph 27 are more of Petitioners' characterizations regarding the contents of the April 2018 letter from DEC to HRLLC referenced in Paragraph 26. DEC respectfully refers the Court to the April 2018 letter as the best evidence and most complete evidence of its own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

28. The allegations in Paragraph 28 are more of Petitioners' characterizations regarding the contents of the April 2018 letter from DEC to HRLLC referenced in Paragraphs 26 and 27. DEC respectfully refers the Court to the April 2018 letter as the best evidence and most complete evidence of its own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

29. Responding to the allegations in Paragraph 29, DEC admits that on or about September 25, 2018, DEC issued a Negative Declaration, but denies that DEC accepted HRLLC's transfer application as sufficient on the date stated. DEC states affirmatively that it issued a water withdrawal permit dated September 29, 2017 for the transfer after having determined that the transfer application was sufficient. The remaining allegations are Petitioners' characterizations regarding the contents of the September 25, 2018 Negative Declaration. DEC respectfully refers the Court to the September 25, 2018 Negative Declaration as the best evidence and most complete evidence of its own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

30. Responding to the allegations in Paragraph 30, DEC admits that on or about October 3, 2018, DEC published a notice in the ENB regarding the proposed Ravenswood water withdrawal permit. The remaining allegations are Petitioners' characterizations regarding the contents of the publication in the ENB. DEC respectfully refers the Court to the notice that DEC published in the ENB as the best evidence and most complete evidence of its own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

31. Responding to the allegations in Paragraph 31, DEC denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the allegations.

32. Responding to the allegations in Paragraph 32, DEC admits that Petitioner Sierra Club and others submitted comments to DEC the ENB notice referenced in Paragraph 30, but denies all other allegations in Paragraph 32.

33. Responding to the allegations in Paragraph 33, DEC admits that it issued a water withdrawal permit to HRLLC on or about February 20, 2019.

34. The allegations in Paragraph 34 of the Petition are Petitioners' characterizations and contentions regarding the contents of the 2019 water withdrawal permit that DEC issued to HRLLC in February 2019. DEC respectfully refers the Court to the full permit as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

35. The allegations in Paragraph 35 of the Petition are Petitioners' characterizations and contentions regarding the contents of both the 2019 and 2013 water withdrawal permits for the Ravenswood facility. DEC respectfully refers the Court to the full 2019 and 2013 water

withdrawal permits as the best evidence and most complete statement of their own contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

36. The allegations in Paragraph 36 of the Petition are Petitioners' characterizations and contentions regarding the contents of both the 2019 and 2013 water withdrawal permits for the Ravenswood facility, as well as the Ravenswood SPDES permit. DEC respectfully refers the Court to the full 2019 and 2013 water withdrawal permits and the full SPDES permit as the best evidence and most complete statement of their own contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

#### **V. FIRST CAUSE OF ACTION**

37. In response to Paragraph 37 of the Petition, DEC repeats and realleges Paragraphs 1 through 36 of this Verified Answer as though fully set forth herein.

38. DEC denies the allegations in Paragraph 38 of the Petition.

39. DEC denies the allegations in Paragraph 39 of the Petition.

40. DEC denies the allegations in Paragraph 40 of the Petition.

41. DEC denies the allegations in Paragraph 41 of the Petition.

42. DEC denies the allegations contained in the first and third sentences in Paragraph 42 of the Petition. The allegations in the second sentence of Paragraph 42 are Petitioners' characterization of the requirements of ECL-1503(2)(f) and (g). DEC respectfully refers the Court to those regulations as the best evidence and most complete statement of their contents, and denies the allegations to the extent that they are incomplete or inconsistent therewith.

43. DEC denies the allegations in Paragraph 43 of the Petition.

44. DEC denies the allegations in Paragraph 44 of the Petition.

45. DEC denies the allegations in Paragraph 45 of the Petition.

46. The allegations contained in Paragraph 46 of the Petition state a legal conclusion for which no response is required.

47. The allegations contained in Paragraph 47 of the Petition state a legal conclusion for which no response is required.

48. DEC denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 of the Petition and on that basis denies the allegations.

49. DEC denies the allegations in Paragraph 49 of the Petition.

## **VI. SECOND CAUSE OF ACTION**

50. In response to Paragraph 50 of the Petition, DEC repeats and realleges the responses in paragraphs 1 through 49 of this Verified Answer as though fully set forth herein.

51. DEC denies the allegations in Paragraph 51 of the Petition.

52. The allegations in Paragraph 52 are Petitioners' characterization of the requirements of 6 NYCRR 617.4(b)(6)(ii) and the 2019 Ravenswood Permit. DEC respectfully refers the Court to the regulation and permit as the best evidence and most complete statement of their own contents, and denies the allegations to the extent that they are incomplete or inconsistent therewith.

53. Responding to the allegations in paragraph 53, DEC admits the withdrawal capacity authorized for the Ravenswood plant is the largest capacity amount DEC has permitted to date in a water withdrawal permit but also states affirmatively that that the withdrawal

authorized by the 2019 Ravenswood Permit is for once through cooling and other processes related to electrical generation which result in almost all of the water that is withdrawn being returned to its source.

54. The allegations in the first sentence in Paragraph 54 state legal conclusions for which no response is required. The allegations in the second sentence in Paragraph 54 are Petitioners' characterizations regarding the contents of 6 NYCRR 617.7(c). DEC respectfully refers the Court to 6 NYCRR 617.7(c) as the best evidence and most complete statement of its contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

55. DEC denies the allegations in Paragraph 55 of the Petition.

56. The allegations in Paragraph 56 are Petitioners' characterizations regarding the contents of the 2018 Negative Declaration. DEC respectfully refers the Court to the 2018 Negative Declaration as the best evidence and most complete statement of its contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

57. DEC denies the allegations in the first sentence of Paragraph 57. The remaining allegations state legal conclusions for which no response is required. To the extent that a response is required, DEC denies the allegations.

58. The allegations in Paragraph 58 are Petitioners' characterizations regarding the contents of the 2018 Negative Declaration and a 2006 Negative Declaration for the facility SPDES permit. DEC respectfully refers the Court to the 2018 and 2006 Negative Declarations as the best evidence and most complete statement of their own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

59. The allegations in Paragraph 59 of the Petition are Petitioners' characterization of the contents of 2018 Negative Declaration. DEC respectfully refers the Court to the 2018 Negative Declaration as the best evidence and most complete statement of its contents, and denies the allegations to the extent that they are incomplete or inconsistent therewith.

60. DEC denies the allegations in Paragraph 60 of the Petition.

61. DEC denies the allegations in Paragraph 61 of the Petition.

62. DEC denies the allegations in Paragraph 62 of the Petition.

63. DEC denies the allegations in Paragraph 63 of the Petition.

#### **VII. RELIEF REQUESTED**

The remainder of the Petition presents Petitioners' statement of relief requested to which no response is required. To the extent a response is required, DEC denies that Petitioners are entitled to any relief.

#### **RESPONDENT DEC'S STATEMENT OF MATERIAL FACTS**

64. DEC's statement of material facts is contained in the affidavit of Erik Schmitt sworn to August 12, 2019 and Affirmation of Lawrence H. Weintraub, sworn to August 9, 2019, and submitted herewith.

#### **AFFIRMATIVE DEFENSES**

65. DEC's determinations challenged in this proceeding are reasonable and rational and are fully consistent with law, as is more fully set forth in the agency's memorandum of law submitted herewith.

66. DEC refers to the Memorandum of Law attached in support of this Verified Answer and incorporates in this Verified Answer any other affirmative defenses listed therein.

67. DEC will rely on any and all additional defenses that become available or appear during this action and specifically reserves the right to amend this Answer for the purpose of asserting additional defenses.

68. WHEREFORE, DEC respectfully requests judgment against Petitioners as follows:

(a) dismissing and denying the claims in the Verified Petition against State Respondents in their entirety;

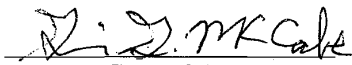
(b) and for such other and further relief as this Court deems appropriate.

Dated: New York, New York

August 12, 2019

Respectfully Submitted,

LETITIA JAMES  
Attorney General of the State of New York  
*Attorney for Respondents Basil Seggos and DEC*

By:   
GAVIN G. McCABE  
Assistant Attorney General  
NYS Office of the Attorney General  
Environmental Protection Bureau  
28 Liberty Street, 19<sup>th</sup> Floor  
New York, New York 10005  
(212) 416-8469  
[Gavin.McCabe@ag.ny.gov](mailto:Gavin.McCabe@ag.ny.gov)

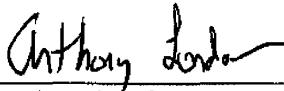


State of New York State     )  
    :  
 County of Albany            )

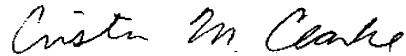
ANTHONY LONDON, being duly sworn, deposes and says:

I am a Senior Attorney in the Office of General Counsel of the New York State Department of Environmental Conservation. I have reviewed the annexed Verified Answer and know its contents. The Verified Answer is true to my knowledge, information, and belief. The sources of my knowledge, information and belief are my personal knowledge, DEC's files, my discussions with DEC technical and legal staff, and relevant portions of the New York Environmental Conservation Law, the State Environmental Quality Review Act, and applicable regulations.

Dated: August 12, 2019

  
 \_\_\_\_\_  
 Anthony London

Sworn to before me on this 12<sup>th</sup> day of August, 2019.

Notary: 

CRISTIN M. CLARKE, ESQ.  
 NOTARY PUBLIC - STATE OF NEW YORK  
 NO. 02CL6056390  
 QUALIFIED IN SARATOGA COUNTY  
 COMMISSION EXPIRES MARCH 19, 2023

**AFFIRMATION OF LAWRENCE WEINTRAUB ESQ. IN SUPPORT OF  
RESPONDENT DEC'S VERIFIED ANSWER, DATED AUGUST 9, 2019 [A-785 - A-791]**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
In the Matter of the Application of

SIERRA CLUB, and HUDSON RIVER  
FISHERMEN'S ASSOCIATION, NEW JERSEY  
CHAPTER, INC.,

Index No. 2402/2019

Petitioners,

Affirmation of Lawrence H.  
Weintraub

For Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules,

-against-

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, BASIL  
SEGGOS, COMMISSIONER OF THE NEW  
YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, and  
HELIX-RAVENSWOOD LLC,

Respondents.  
-----X

Lawrence H. Weintraub, an attorney duly admitted to practice law in the Courts of  
Record of the State of New York, affirms the following under penalty of perjury:

1. I am an Assistant Counsel in the Office of General Counsel of the New York State  
Department of Environmental Conservation ("DEC"). I have held this position since September  
2007. Among my responsibilities, I serve as the DEC program attorney for the Division of  
Environmental Permits ("DEP"), which administers DEC's environmental permitting system  
under the Uniform Procedures Act and the State Environmental Quality Review Act  
("SEQRA"). The Uniform Procedures Act is codified in Environmental Conservation Law  
("ECL") Article 70 and implemented by Part 621 of Title 6 of the Official Compilation of Codes,

Rules and Regulations of the State of New York (6 N.Y.C.R.R. Part 621). SEQRA is codified in ECL Article 8. Article 8 of the ECL is implemented by 6 NYCRR Part 617. Water withdrawal permits are governed by UPA.

2. As part of my UPA and SEQRA related duties, I am responsible for advising DEP on insuring that all UPA permits, including ones issued under the water withdrawal program implemented by DEC, meet the procedural and substantive requirements of UPA and SEQRA.

3. I make this affirmation on the basis of personal knowledge and a review of documents regarding DEC's issuance of an initial water withdrawal permit to Helix-Ravenswood, LLC ("Ravenswood") that is the subject of the above captioned proceeding.

4. This affirmation is made in support of the DEC's memorandum of law in opposition to the Petition and in support of DEC's verified answer.

#### ***Background on SEQRA Review Process***

5. Under SEQRA, a state or local agency that is funding, approving or directly undertaking an "action" as defined in 6 N.Y.C.R.R. § 617.2(b), must determine whether the action may have a potentially, significant adverse impact on the environment. See ECL § 8-0109(4); 6 N.Y.C.R.R. § 617.3. In carrying out this obligation, the agency must identify relevant areas of environmental concern, take a "hard look" at them, and make a reasoned elaboration for the basis of its determination. These analytical steps are known as the "H.O.M.E.S" or "hard look test" from the Fourth Department case of *H.O.M.E.S. v. New York State Urban Dev. Corp.*, 69 AD2d 222 (4th Dept 1979) and later codified into the SEQRA regulations at 6 NYCRR § 617.7. If the agency finds that the action will not result in any potentially significant adverse impacts to the environment, it will issue a "negative declaration" to that effect. See 6

N.Y.C.R.R. §§ 617.2(y) and 617.7(a)(2). If the agency finds that the action may result in at least one potentially significant adverse environmental impact, it must issue a “positive declaration” and prepare or require the preparation of an environmental impact statement (“EIS”) before the action is funded, approved, or undertaken. See ECL § 8-0109 (2); 6 N.Y.C.R.R. §§ 617.2 (ac), 617.7(a)(1), and 617.9.

6. In assessing the significance of the impacts of an action, the lead agency does not consider impacts in the abstract, but rather against a baseline of the existing conditions. Therefore, a key issue for the agency is to accurately identify the preexisting conditions where the action is proposed to occur so that the agency’s assessment of impacts from the proposed action reflects the environmental setting and current conditions. 6 NYCRR § 617.7(c). The SEQRA regulations at 6 NYCRR §617.7 (c) contain a list of “significance indicators”. The lead agency is required to measure the impact of an action against the indicators. The phrasing of the indicators are focused on the changes that a project may have on the current environment.

#### ***SEQRA Review of Ravenswood Water Withdrawal Initial Permit***

7. Following up on the decision of the court in *Sierra Club v Martens* (158 A.D.3d 169 (2d Dep’t 2018)), DEC began a new process to issue an initial water withdrawal permit to the Ravenswood facility in Long Island City. Administrative Record (“AR”) at 336-337. In accordance with the court’s ruling, DEC accepted that issuance of an initial water withdrawal permit is not a ministerial or “Type II action under 6 NYCRR §617.5 (c) (25) [formerly, before January 1, 2019, 6 NYCRR §617.5 (c) (19)]” (actions that do not require further review under SEQRA) and therefore undertook SEQRA review. (AR 336.) The first step in this process was to determine if the action should be classified as Type I, Type II, or Unlisted. DEC determined

that the action of issuing an initial water withdrawal permit to Ravenswood is a Type I action, based on the criteria in 6 NYCRR § 617.4(b)(6)(ii). (AR 336.)

8. Because the action was classified as Type I, DEC's regulations required completion of a full Environmental Assessment Form, the purpose of which is to aid DEC "in determining the environmental significance" of an action. (6 NYCRR 617.6(a)(2), (3); 6 NYCRR 617.2(m)). The EAF includes three parts; Part 1 is completed by the permit applicant/project proponent (generally referred to by DEC as the "project sponsor"), while Parts 2 and 3 are completed by the agency. Here, Ravenswood completed and submitted Part 1 of the EAF to DEC on May 4, 2018. (AR 342-364.) DEC reviewed the information provided by Ravenswood in Part I, as well as other information provided by Ravenswood in support of its application for an Initial water withdrawal permit and other information available to DEC related to DEC's permitting of Ravenswood under the State Pollution Discharge Elimination System ("SPDES").

9. Upon completing review of Ravenswood's Part 1 of the EAF and other materials, DEC completed Part 2 of the EAF. I am aware that the original version of the Administrative Record provided to Petitioners in this matter inadvertently included a blank version of DEC's Part 2. However, DEC did in fact complete Part II of the EAF and a true and correct copy of the original Part 2 as completed by DEC has been provided to Petitioners and will be placed in the updated version of the Administration Record. (AR 382-391 and AR 518- 527.) The individual who completed the Part 2 Form for DEC, Kent Sanders, has retired from work at DEC but I worked closely with Mr. Sanders on the Ravenswood matter and have personal knowledge that he completed the required analysis in Part II of the EAF. The upper right-hand corner of Part 2 contains a field and that field contains a date of 7/6/2018. (AR 382.)

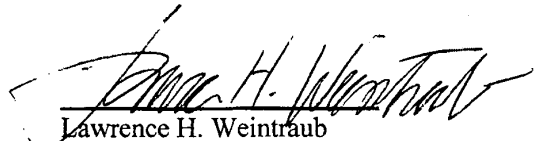
10. Based on DEC's review of Parts 1 and 2 of the EAF and other relevant materials, including Ravenswood's Annual Water Withdrawal Reports and its yearly Verification Monitoring Plan Status Reports, (AR 575-675), DEC completed Part 3 on September 25, 2018, concluding that there would be no significant adverse impacts from issuance of an initial permit to Ravenswood, authorizing continued withdrawal of up to 1,527,840,000 gallons per day. (AR 392.) DEC's determination of no significant adverse impacts was based on its analysis under the "hard look" standard. This completed Part 3 of the EAF constituted DEC's Negative Declaration. (AR 392.) DEC therefore did not prepare or cause an EIS to be prepared. (6 N.Y.C.R.R. § 617.7(a)(2).

11. Important to DEC's determination of significance under 6 NYCRR 617.7(c) is the amount of change that that an action will impose from preexisting conditions, e.g., subsection (c)(1)(i) refers to a substantial adverse change in existing surface water quantity. The preexisting conditions are commonly referred to as the baseline. Here, Ravenswood was previously lawfully withdrawing up to 1.5 billion gallons of water per day from the East River and the proposed Initial permit authorized withdrawal of up to no more than that same amount. (AR 395.) Considering the lack of change from preexisting conditions that would result from continuing operations at an unchanged maximum withdrawal capacity, DEC was unable to identify any significant adverse environmental impact for the action of issuing the Initial permit to Ravenswood since Ravenswood was not increasing the amount of water it was authorized to withdraw under the statute, i.e., its baseline. (AR 528.)

12. In my work at DEC I was also involved in a very similar SEQRA review process for issuance of an Initial water withdrawal permit and SPDES permit to an existing electricity generating facility in Yates County, New York. That facility, Greenidge Generation, LLC, has

been operating since the 1930s and employs the same once-through cooling technology as is employed at the Ravenswood facility. DEC's issuance of a negative declaration for that permitting action was challenged in in Article 78 proceeding in the Supreme Court of Yates County and DEC's issuance of a negative declaration was upheld by the court. (*Sierra Club, et al., v DEC, et al.*, State of New York Supreme Court, County of Yates, Index No. 2017-0232 (November 8, 2018.)) A true and correct copy of the court's slip opinion in the *Greenidge* matter is attached as Exhibit 1 to this Affirmation. Petitioners in that case also challenged DEC's analysis of baseline and argued that baseline should be based on no operation of the facility, since the facility had temporarily ceased operations during a bankruptcy and change of ownership. The Court found DEC's analysis rational in assessing impacts based on Greenidge as an operating plant. (Ex. 1, Slip Op. at 3, 16.)

13. Following the September 25, 2018 issuance of the Negative Declaration, on October 3, 2018, DEC provided public notice of the proposed permit in the Environmental Notice Bulletin and solicited public comment (AR 394-396.) The comment period ran for 45 days, until November 17, 2018, (AR 471) and yielded over 2000 public comments, including comments from Petitioners. (AR 689-3280.) In connection with the issuance of the final 2019 Ravenswood Initial Water Withdrawal permit on February 20, 2019 (AR 541-553), DEC also issued a Response to Public Comments (AR 532-539), and an Amended Negative Declaration (see 6 NYCRR §617.7 [e]) on February 14, 2019, to assess and address some of the SEQRA-related comments that were received during the public comment period. (AR 528, 540.)



Lawrence H. Weintraub

Dated: August 9, 2019  
Albany, NY



EXHIBIT 1 — SLIP OPINION IN SIERRA CLUB, ET AL. V. DEC, ET AL.,  
STATE OF NEW YORK SUPREME COURT, COUNTY OF YATES, INDEX NO. 2017-0232  
(NOVEMBER 8, 2018) [A-792 - A-812]

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF YATES

In the Matter of the Application of

SIERRA CLUB, COMMITTEE TO PRESERVE  
THE FINGER LAKES by and in the name of  
PETER GAMBA, its President; COALITION TO  
PROTECT NEW YORK by and in the name of  
KATHRYN BARTHOLOMEW, its Treasurer; and  
SENECA LAKE GUARDIAN, A  
WATERKEEPER AFFILIATE by and in the name  
of YVONNE TAYLOR, its Vice President,

Petitioners,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules

DECISION  
Index No. 2017-0232

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, BASIL  
SECCOS, COMMISSIONER, GREENIDGE  
GENERATION, LLC, and LOCKWOOD HILLS, LLC,  
Respondents.

Petitioners brought this application by way of a Notice of Petition and Verified Petition challenging the issuance of two permits to Respondent Greenidge Generation (“GGLLC”) on September 11, 2017. The challenges for each permit focus on both the alleged violations of the Environmental Conservation Law and respondent New York State Department of Environmental Conservation’s (“DEC”) State Environmental Quality Review Act (“SEQRA”) determinations. Both GGLLC and the DEC have answered the Petition<sup>1</sup>.

<sup>1</sup> The issue of standing has been resolved by the parties and will not be addressed.

As a preliminary matter, this Court previously issued a Decision regarding the challenge to the SEQRA review in conjunction with the claim that the issuance of air permits to GGLLC was in error (the Greenidge I action). Following the determination that the air permits were, in all respects properly issued, the present Petitioners filed this action challenging the issuance of the Water Withdrawal Permit and the SPDES permit.

Following oral argument of the case on May 22, 2018, Respondent GGLLC submitted a number of documents related to Petitioners' motion practice at the Appellate Division, Fourth Department in Petitioners' appeal from this Court's order in the Greenidge I action. Petitioners objected to the submission on the ground that they were improper and untimely.

#### **FINDINGS OF FACT**

The Greenidge Station ("the Facility") is an electric generating facility located in the Town of Torrey, Yates County, New York. It currently consists of one 107 megawatt generating unit, known as Unit 4, which historically operated as a coal-fired power plant. The Facility was initially constructed in the 1930s. The plant was built to use once-through condenser cooling, taking water withdrawn from Seneca Lake to cool the turbines and then discharge the water into the Keuka Outlet, upstream from Seneca Lake. Unit 4 was installed in 1953. In 1999, the facility and the Lockwood Ash Disposal Site ("LADS"), located across NYS Route 14 from the Facility, were acquired by AES AEE2, LLC.

On January 29, 2010, the DEC renewed the SPDES permit for the Facility effective February 1, 2010. The permit required various reports in compliance with 6 NYCRR 704.5. Following an Impingement and Entrainment Characterization Study, the DEC issued a modification to the SPDES permit.

In September 2010, AES AEE2, LLC, notified the New York State Public Service Commission that the Greenidge Unit 4 would be placed in protective lay-up status in March 2011. In May 2011, a lay-up plan for LADS was submitted to the DEC.

In December 2011, AES AEE2, LLC and its parent company, AES Eastern, filed for Chapter 11 bankruptcy. Petitioners allege that in September 2012, AES AEE2, LLC indicated in bankruptcy papers that the Facility would be permanently retired and transferred to a salvage company to dismantle. Thereafter, AES AEE2, LLC sought permission to sell the Facility to GMMM Holdings I, LLC. In October 2012 the sale was approved by the bankruptcy court. On January 15, 2013, the SPDES permit for the Facility, then held by AES Eastern, was transferred to GMMM Greenidge LLC, a subsidiary of GMMM Holdings. In March of 2013, AES AEE2, LLC deeded certain property to GMMM Greenidge and additional adjoining property to GMMM Lockwood LLC, also a subsidiary of GMMM Holdings. In May 2013, GMMM Greenidge applied to the DEC for a water withdrawal permit for the Facility.

In February and March of 2014, GMMM Greenidge was sold to Atlas Holdings and renamed Greenidge Generation, LLC (GGLLC). At the same time, GMMM Lockwood, LLC was sold and renamed Lockwood Hills, LLC.

On May 16, 2014, GGLLC submitted an air permit application for the Facility. Thereafter, in August 2014, GGLLC applied to renew the SPDES permit for the Facility. One year later, in August 2015, the DEC published notices that GGLLC had applied for air permits, water withdrawal permits and a renewal of the permit. The notice for the renewal of the SPDES permit indicated that the DEC was proposing a department-initiated modification to the SPDES

permit. The notice further indicated that the DEC, as lead agency, had determined that the entire project was a Type I action and would not have a significant impact on the environment.

In September 2015, petitioner Committee to Preserve the Finger Lakes filed comments with the DEC opposing all three permits. Specifically, Petitioners objected to the permits contending that had the applications been treated as applications for new permits, additional permit conditions would have been imposed. Petitioners further opposed the issuance of the petitions on the basis that the DEC failed to take a hard look at the environmental impacts of resuming operation at the Facility.

On June 29, 2016, the DEC issued an Amended Negative Declaration covering the SPDES permit. On September 11, 2017, the DEC issued the water withdrawal permit and SPDES permit to GGLLC. The water withdrawal permit authorizes the withdrawal of 139,248,000 gallons of water per day from Seneca Lake. The SPDES permit authorizes the discharge of 134,000,000 gallons of water per day into the Keuka Outlet. The permit requires the installation of wedge-wire screens and variable speed drives.

### **CONCLUSIONS OF LAW**

Petitioners commenced this proceeding challenging certain actions of the Respondent DEC. The “review of an agency determination that was not made after a quasi-judicial hearing is limited to consideration of whether the determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion” (*Matter of Harpur v Cassano*, 129 AD3d 964, 965, *lv denied* 26 NY3d 916; *see also Town of Marilla v Travis*, 151 AD3d 1588, 1589).

### **PETITIONERS' FIRST CAUSE OF ACTION**

As a first cause of action, Petitioners contend that the Water Withdrawal Permit dated September 11, 2017 was issued in error. Specifically, Petitioners contend that the DEC should have considered the Water Withdrawal Permit application as an application for a new withdrawal rather than treating GGLLC as an existing user. Petitioners also contend that the DEC failed to consider the environmental impacts of the permit and failed to set appropriate conditions in issuing the permit.

As noted above, the Facility operated as a coal burning electric generating station since the 1930s. Although the Facility was placed in protective lay-up in March of 2011, on January 16, 2012, the Facility's water withdrawals were reported to the DEC pursuant to ECL 15-1501(9) which provides,

The department shall issue an initial permit, subject to appropriate terms and conditions as required under this article, to any person not exempt from the permitting requirements of this section, for the maximum water withdrawal capacity reported to the department pursuant to the requirements of title sixteen or title thirty-three of this article on or before February fifteenth, two thousand twelve.

Therefore, the DEC issued the initial permit to GGLLC as an existing user.

The DEC's interpretation of ECL 15-1501(9) as mandating the issuance of an initial permit to any person who reported the maximum water withdrawal capacity before February 15, 2012 was not irrational or unreasonable. "Where the interpretation of a statute or its application involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom the courts regularly defer to the governmental agency charged with the responsibility for administration of the statute. If its interpretation is not irrational or unreasonable, it will be upheld" (*Kurcsics v Merchants Mut. Ins.*

Co., 49 NY2d 451, 459). Here, the requirement of ECL 1501(9) was for reporting of water withdrawal capacity. Had the legislature intended to consider only facilities that were operating as of February 15, 2012, the reporting requirement would have been for actual gallons withdrawn, and not for capacity.

Petitioners further contend that even had the DEC properly determined that GGLLC was an existing water user, the DEC erred in failing to impose adequate conditions on the Water Withdrawal Permit. The DEC does not dispute that it was entitled to place appropriate terms and conditions on the permit but does dispute that it was required to satisfy the requirements of ECL 15-1503. ECL 15-1503 requires the DEC to consider several factors when deciding whether to grant a permit, deny a permit or grant a permit with conditions. Those factors include whether “the proposed water withdrawal will be implemented in a manner to ensure it will result in no significant individual or cumulative adverse impacts on the quantity or quality of the water source and water dependent natural resources,” and whether “the proposed water withdrawal will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures” (ECL 15-1503 [2] [f], [g]).

In *Sierra Club v Martens* (158 AD3d 169 [2d Dept 2018]), the Second Department cited the consideration and application of the factors set forth in ECL 15-1503(2) as a reason why the issuance of an initial water withdrawal permit is a Type II action under SEQRA. The Court noted that the DEC is required to consider the factors set forth in ECL 15-1503.

This Court finds that the DEC was required to consider the factors set forth in ECL 15-1503. However, it is clear from the record that the DEC did consider the factors set forth in ECL 15-1503 when it placed permit conditions “including environmentally sound and economically

feasible water conservation measures to promote the efficient use of supplies” (6 NYCRR 601.7). The conditions placed on the Water Withdrawal Permit, including the installation of meters, water auditing, and reporting of audits and leaks as well as the “Incorporation of the Cooling Water SPDES Water Conservation and Fisheries Protection Measures,” satisfied the requirements of both ECL 15-1503 and 6 NYCRR 601.7.

Petitioners’ contention that the DEC’s failure to consider wet closed-cycle cooling as a viable alternative in the issuance of the water withdrawal permit violates the Water Supply Law is without merit. As discussed below, the closed-cycle cooling system is only an absolute requirement for new facilities. Furthermore, and again, as discussed below, the alternative conditions placed on the SPDES permit present equivalent results to closed-cycle cooling. Petitioners’ attempt to compare the permits and conditions of an unrelated project to the permits issued in relation to the Facility are unpersuasive. The DEC considers the Best Technology Available on a “site specific, case by case basis” (Commissioner’s Policy on Best Technology Available [sp-52], Record, 729).

The issuance of the Water Withdrawal Permit was not arbitrary and capricious, or an abuse of discretion and the Petitioners’ first cause of action is dismissed.

#### **PETITIONERS’ SECOND CAUSE OF ACTION**

Petitioners contend that the DEC failed to comply with SEQRA when it determined that the Water Withdrawal Permit constituted a Type II action. The DEC contends that even though the issuance of the Water Withdrawal permit was considered a Type II action, the entire project was reviewed as a Type I action and a negative declaration was properly issued.

As a preliminary matter, “[a] four-month statute of limitations is applicable to allegations of SEQRA violations” (*Matter of Eadie v Town Bd. of Town of N. Greenbush*, 22 AD3d 1025, 1027, *affd.* 7 NY3d 306). The question is whether the fourth-month statute of limitations commenced when the negative declaration was issued as respondent Greenidge contends or whether it commenced when the DEC issued the Water Withdrawal Permit and SPDES Permit as Petitioners contend.

In *Eadie v Town Bd. of Town of N. Greenbush* (7 NY3d 306, 317), relied upon by the Petitioners, the Court of Appeals cited two factors in determining when the statute of limitations begins to run. The Court noted that in cases involving the enactment of legislation, the four-month period commences with the date of enactment of the legislation, and not the issuance of the SEQRA findings. The Court also found that where “the completion of the SEQRA process was the last action taken by the agency whose determination petitioners challenged,” the running of the four months begins upon the issuance of the SEQRA findings. The *Eadie* case does not directly answer the question presented here, that is, when does the statute of limitations begin to run where there is no legislation to be enacted and where the SEQRA determination is not the “last action taken by the agency.” This Court is persuaded by the fact that the DEC was required to issue several permits following the negative declaration before the petitioners suffered harm and therefore, the statute of limitation did not begin to run until the DEC issued the permits (*see, Town of Marilla v Travis*, 49 Misc3d 1203(A), *affd.*, 151 AD3d 1588) and Petitioners’ SEQRA claims are not time barred.

Furthermore, Respondent GGLLC contends that Petitioners’ SEQRA claims are barred by the doctrine of *res judicata*. In the previous Greenidge Decision, this Court stated,



“Petitioners’ request to annul Respondent DEC’s SEQRA finding and June 28, 2016 negative declaration is also denied. A review of the findings contained in this decision finds that Respondent DEC followed the law and its decision was not arbitrary, capricious or an abuse of discretion.”

Petitioners contend that the doctrine of *res judicata* cannot be applied because there is an additional party in the present proceeding and because the claims in the previous proceeding involved permits that are different from the permits being challenged in the present action. Petitioners’ claims in the second and fourth causes of action challenge not the issuance of the permits but the way the SEQRA review was conducted and the conclusions reached from the SEQRA review. The fact that the issuance of the permits was the manifestation of the “harm” suffered by the Petitioners does not change the fact that the SEQRA review challenged in *Greenidge I* is the same as that challenged in the present action. Therefore, with respect to the Petitioners involved in that case, the challenge to the SEQRA review is barred by the doctrine of *res judicata*. Due to the fact that the present action involves a Petitioner that was not a party to the prior action, this Court will discuss the merits of Petitioners’ claims as if there was no *res judicata* preclusion.

Under SEQRA, actions are classified a Type I, Type II or Unlisted (*see* 6 NYCRR 617.2[ai], [aj], [ak]). Type I actions are those actions that “may have a significant adverse impact on the environment and require the preparation of an EIS” (6 NYCRR 617.4[a][1]). Type II actions are activities that “have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law, article 8” (6 NYCRR 617.5[a]). Unlisted actions are “all actions not

identified as a Type I or Type II action in this Part” (6 NYCRR 617.2[ak]). All Type I and unlisted actions initially require the preparation of an Environmental Assessment Form (EAF), whose purpose is to aid an agency “in determining the environmental significance or non-significance of actions” (6 NYCRR 617.6[a][2], [3]; 6 NYCRR 617.2[m]). If an action is determined to be Type II, no further action is required (6 NYCRR 617.6[a][1][i]).

After reviewing the EAF, if the lead agency determines the significance of a Type I or Unlisted action. If “the action may include the potential for at least one significant adverse environmental impact,” an Environmental Impact Statement (EIS) is required (6 NYCRR 617.7[a][1]). If the lead agency determines “that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant” no EIS is required (a negative declaration) (6 NYCRR 617.7[a][2]).

Importantly for the determination of this case, Type II actions include “official acts of a ministerial nature involving no exercise of discretion” (6 NYCRR 617.5[c][19]). This was the DEC’s basis for determining that the issuance of the Water Withdrawal Permit was a Type II action. This Court is persuaded by the holding in *Sierra Club v Martens* (158 AD3d 169, *supra*, at 177) that the issuance of the initial Water Withdrawal Permit was not a ministerial act. The *Martens* court stated,

Here, while ECL 15-1501 (9) states that the DEC “shall issue” an initial permit to an existing operator for its self-reported maximum water withdrawal capacity, the statute provides that such initial permit is “subject to appropriate terms and conditions as required under this article.” Notably, the WRPA specifically provides the DEC with the power “to grant or deny a permit or to grant a permit *with conditions*” (ECL 15-1503 [2] [emphasis added]). The statutory factors that the DEC is required to consider when reviewing an application and imposing conditions on the permittee do not lend themselves to mechanical application. For instance,

whether “the proposed water withdrawal will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures” (ECL 15-1503 [2] [g]) will almost certainly vary from operator to operator, or from water source to water source. The DEC’s own regulations state that an “initial permit” must include “environmentally sound and economically feasible water conservation measures to promote the efficient use of supplies” (6 NYCRR 601.7 [e]). Whether a condition is “appropriate” for a given operator is a matter that falls within the DEC’s expertise and involves the exercise of judgment, and, therefore, implicates matters of discretion (*see New York Civ. Liberties Union v State of New York*, 4 NY3d at 184; *Tango v Tulevech*, 61 NY2d at 41; *see also Tarter v State of New York*, 68 NY2d at 518-519).

As Petitioners contend, the issuance of the Water Withdrawal Permit constitutes a Type I action (6 NYCRR 617.4[b][6][ii]).

Although the DEC may have incorrectly considered the issuance of the Water Withdrawal Permit as a Type II action, it is clear from the record that the DEC properly conducted a consolidated SEQRA review and considered the entire project a Type I action. The SEQR full EAF lists the title of the action as “Greenidge Station Reactivation” and specifically discusses “an initial permit for the withdrawal of water pursuant to 6 NYCRR Part 601” (Record, 1054-1055). Furthermore, the EAF specifically notes, “Although the Department has classified the issuance of an initial permit under 6 NYCRR Part 601 as a Type II action under SEQR (6 NYCRR 617.5[c][19]) and, therefore not subject to SEQR, substantively, in this instance – because the initial water withdrawal permit is proposed to be issued along with permits that are subject to SEQR – the impact or impact of any change in withdrawal has been considered alongside the impacts of the air and SPDES permits” (Record, 1055).

Here, after preparing a full EAF, the DEC, as the lead agency, issued a negative declaration. The Record establishes that the DEC “identified the relevant areas of environmental

concern, took a ‘hard look’ at them, and made a ‘reasoned elaboration’ of the basis for its determination” (*Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 417). The DEC “complied with the requirements of SEQRA in issuing the negative declaration and, ...the ‘designation as a type I action does not, per se, necessitate the filing of an environmental impact statement ..., nor was one required here’” (*Wooster v Queen City Landing, LLC*, 150 AD3d 1689, 1692, *rearg denied*, 151 AD3d 1970, *quoting Matter of Mombaccus Excavating, Inc. v Town of Rochester, N.Y.*, 89 AD3d 1209, *lv. denied* 18 NY3d 808; *see also, Fichera v New York State Dept. of Envtl. Conservation*, 159 AD3d 1493, 1497).

Petitioners’ second cause of action for a violation of SEQRA in the issuance of the Water Withdrawal Permit is dismissed.

### PETITIONERS’ THIRD CAUSE OF ACTION

Petitioners contend that the DEC violated the Water Pollution Control Law in issuing a State Pollution Discharge Elimination System (SPDES) permit without conducting a full technical review and without imposing adequate terms and conditions<sup>2</sup>. Respondent DEC states that a full technical review of the application was conducted before the SPDES permit was renewed and that appropriate and adequate conditions were imposed.

“[T]hermal discharge—which deleteriously impacts fish populations—falls within the definition of water pollution regulated by the Clean Water Act (*see* 33 USC § 1326[b]; § 1362[6]). New York, mirroring federal regulations, requires power plants that employ water intake and thermal discharge systems [ ] to obtain a permit from respondent Department of

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<sup>2</sup> To the extent that petitioners challenge the 2013 transfer of the Greenidge SPDES permit, the challenge to that action is barred by the four-month statute of limitations.

Environmental Conservation (hereinafter DEC) under the State Pollutant Discharge Elimination System (*see* ECL 17-0701, 17-0801—17-0831)” (*Riverkeeper, Inc. v Crotty*, 28 AD3d 957, 957).

Petitioners contend that the DEC was required to treat the SPDES renewal application as a new application because the Facility “has not operated” during the term of the prior permit pursuant to 6 NYCRR 621.11(b)(3). Respondent DEC contends that a renewed SPDES permit must be treated as a new permit application pursuant to 6 NYCRR 621.11(i). “In 1994 the Legislature amended the procedure for the renewal and review of SPDES permits \* \* \* by providing that all SPDES permits may be ‘administratively renewed,’ but that the DEC would conduct a ‘full technical review’ of SPDES permits according to a ‘priority ranking system’ (ECL 17-0817 [2], [4])” (*Nat. Resources Defense Council, Inc. v New York State Dept. of Envtl. Conservation*, 54 AD3d 866, 866). Full technical review is defined as “the complete evaluation of all elements of the permit associated with the ranking system's priority ranking factors, together with substantive issues identified in comments submitted during the public comment period, and the verification of the accuracy and appropriateness of all other information contained in the permit” (ECL 17-0817[4]).

From a review of the record, and contrary to Petitioners’ allegations, it is clear that the permit application underwent a full technical review resulting in a renewal of the permit with additional conditions imposed. The documents reviewed as part of the full technical review are included in the record at pages 464-709. The full technical review is further evidenced by the conditions attached to the SPDES permit.

The Petitioners also contend that the DEC erred in failing to require the installation of closed-cycle cooling. The DEC's regulations require the use of the "best technology available" in the construction of cooling water intake structures (6 NYCRR 704.5). The DEC Policy sheet on Best Technology Available issued on July 10, 2011 states that it applies to "all existing and proposed industrial facilities designed to withdraw twenty (20) million gallons per day." The documents make clear that wet closed-cycle cooling is not the sole means of obtaining the performance goal. "The performance goal for existing industrial facilities in New York is closed-cycle cooling or the equivalent. Department staff believe that the majority of facilities that install and properly operate and maintain approved closed-cycle-equivalent technologies should be capable of meeting the performance goals established in this policy" (Record, 730). The policy sheet also states that staff will impose permit conditions on "a site specific, case by case basis." The document makes clear that wet closed-cycle cooling is the performance goal for all new facilities and wet closed cycle cooling *or its equivalent* is the goal for all existing industrial facilities. Equivalent is defined as "reductions in impingement mortality and entrainment from calculation baseline that are 90 percent or greater of that which would be achieved by a wet closed-cycle cooling system" (Record, 726).

Despite Petitioners' arguments to the contrary, wet closed-cycle cooling was not the only option for the SPDES permit for the Facility. The DEC was authorized to consider other options for the Facility as it was in existence at the time the SPDES permit was issued. The DEC imposed cylindrical wedge screens and variable speed pumps as the equivalent of closed-cycle cooling. Petitioners have failed to submit any statements to contradict the DEC's opinion that the conditions imposed will reduce impingement mortality by 95% and entrainment mortality by

85%. In fact, Petitioners' argument is not that the wedge screens and variable speed pumps are inequivalent to wet closed-cycle cooling but rather that the DEC lacked the ability to impose anything but wet closed-cycle cooling. As discussed above that argument fails as a reading of the 2011 policy statement indicates.

The DEC's issuance of the SPDES permit, with the imposed requirements, was not arbitrary and capricious nor was it an abuse of discretion and Petitioners' third cause of action is dismissed.

#### **PETITIONERS' FOURTH CAUSE OF ACTION**

Petitioners contend that the DEC erred in finding that there were no significant adverse impacts with the renewal of the SPDES permit. Petitioners also contend that the DEC erred in issuing a negative declaration because it constitutes a "conditioned negative declaration" which is impermissible for Type I actions. Petitioner further contends that the DEC improperly segmented the SEQRA review of the Facility from the review of the LADS and applied an incorrect baseline.

"Judicial review of SEQRA findings 'is limited to whether the determination was made in accordance with lawful procedure and whether, substantively, the determination "was affected by an error of law or was arbitrary and capricious or an abuse of discretion"' (*Akpan v Koch*, 75 NY2d 561, 570, *quoting* CPLR 7803[3]). This review is deferential for 'it is not the role of the courts to weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally and substantively' (*Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 416)" (*Friends of P.S. 163, Inc. v Jewish Home*

*Lifecare*, 30 NY3d 416, 430, *rearg denied sub nom. Friends of P.S. 163, Inc. v Jewish Home Lifecare, Manhattan*, 31 NY3d 929).

A review of the EAF prepared by the DEC reveals that the DEC fully considered all of the potential environmental impacts of the renewed SPDES permit, including those to surface waters (Record, 1043). Furthermore, as the 2017 SPDES permit contained more stringent conditions than had existed previously, it would have been arbitrary and capricious should the DEC have determined that there was a significant adverse environmental impact. The DEC was reviewing an application for a renewed SPDES application on an existing facility. To have compared the environmental impacts of the renewed SPDES permit to a fictional nonexistent facility would have been an abuse of discretion.

Petitioners contend that the negative declaration fails to evaluate the thermal impacts on the area of the lake surrounding the Keuka Outlet.

[T]here is nothing inherently improper in “allow[ing] for ambient [temperature] above the criteria in small areas near outfalls” (EPA, Water Quality Standards Handbook: Second Edition at 5–1 [Aug. 1994], available at <https://www.epa.gov/sites/production/files/2016-06/documents/wqs-handbook-1994.pdf> [accessed July 13, 2017]). New York has adopted such a “mixing zone” policy (*see* 6 NYCRR 704.1[b]; 704.3; *see also* 40 CFR 131.13), and such a zone will pass muster so long as it is defined in scope, does “not interfere with spawning areas, nursery areas and fish migration routes” (6 NYCRR 704.3[c]) and avoids lethality “in contravention of water quality standards to aquatic biota which may enter” it (6 NYCRR 704.3[b]). Lethality, for purposes of mixing zones, focuses upon the impacts of a mixing zone upon an entire population, not whether the water temperature in the zone will prove deadly to an individual organism (*see* 6 NYCRR 704.1[a]; EPA, Water Quality Standards Handbook: Second Edition at 5–6 [Aug. 1994], available at <https://www.epa.gov/sites/production/files/2016-06/documents/wqs-handbook-1994.pdf> [accessed July 13, 2017]).



*(Riverkeeper, Inc. v New York State Dept. of Envtl. Conservation, 152 AD3d 1016, 1019).*

This Court has reviewed the Discharge Monitoring Report Summaries for Greenridge Station (Record, 710-723) for the year prior to the lay-up. The report indicates that the maximum temperature of the water being discharged from the Facility in the summer was 102° and the maximum temperature of the water being discharged from the Facility in the winter was 85°. Both the current and prior SPDES Permit require a maximum discharge temperature of 108° in the summer and 86° in the winter, with a differential of 26° in the summer and 31° in the winter. Furthermore, the current SPDES Permit requires GGLLC to submit an updated schedule to the Thermal Discharge Study Plan that was submitted on January 27, 2011 within three months of the reactivation date. The existing Thermal Discharge Study Plan (Record 690-707) fully detailed the manner in which the study and monitoring of the thermal discharge is to be conducted. The foregoing constitutes a rational basis from which the respondent DEC could conclude that issuance of SPDES Permit would result in no significant adverse environmental impact.

Petitioners contend that the DEC utilized the wrong baseline in determining that the recommencement of operations at the Greenridge Facility would not result in any significant adverse environmental impacts. Specifically, the Petitioners contend that the baseline should have been “no operations” rather than pre-layup operations. Petitioners are unable to cite any authority for their position that the Facility’s lay-up status required using a baseline as if there was no existing facility. The determination to use a pre-layup baseline was not arbitrary or capricious.

Petitioners are correct that a conditioned negative declaration cannot be issued for a Type I Action (*Ferrari v Town of Penfield Planning Bd.*, 181 AD2d 149, 151). Although the SPDES permit contains sections titled “Additional Requirements” and “Biological Monitoring Requirements” (Record, 1427-1429), this does not make the negative declaration a conditioned negative declaration. The amended negative declaration was for a project that involved a SPDES permit with requirements. Notably, Part 3 of the EAF states. “The project will ultimately involve a modification of the cooling water intake structure (CIWS) at the facility. The modification will include the installation of ‘Best Technology Available’ (BTA) measures *in accordance with Commissioner’s Policy CP-52* to reduce fish entrainment and impingement” (Record, 1054). Therefore, the inclusion of the BTA requirements in the SPDES Permit only clarified that GGLLC was required to do to be in compliance with the Commissioner’s Policy CP-52 and other regulations. They should not be considered conditions any more than other requirements that the permittee comply with the law are requirements.

A conditioned negative declaration is defined as “a negative declaration issued by a lead agency for an Unlisted action, involving an applicant, in which the action as initially proposed may result in one or more significant adverse environmental impacts; however, mitigation measures identified and required by the lead agency, pursuant to the procedures in section 617.7(d) of this Part, will modify the proposed action so that no significant adverse environmental impacts will result” (6 NYCRR 617.2[h]). The Court of Appeals has discussed the issuance of conditioned negative declaration in *Merson v McNally* (90 NY2d 742). The Court stated that determining whether a conditioned negative declaration has been impermissibly issued involves a two-part analysis. “(1) whether the project, as initially proposed, might result in

the identification of one or more ‘significant adverse environmental effects’; and (2) whether the proposed mitigating measures incorporated into part 3 of the EAF were ‘identified and required by the lead agency’ as a condition precedent to the issuance of the negative declaration” (*Merson v McNally* at 752-53). This analysis “allows for consideration of the legitimate maturation of a development project in accordance with the goals of environmental regulation” (*Merson v McNally*, 90 NY2d 742, 750).

Inasmuch as Petitioners contend that it is the conditions placed on the SPDES permit that created the conditioned negative declaration, this Court will consider whether the environmental impacts of a SPDES permit without the conditions may have resulted in a significant adverse environmental impact. This Court concludes that it would have. To determine otherwise would be to ignore the importance of minimizing or eliminating entrainment and impingement. Therefore, because the first prong of the test established by the Court of Appeals has been satisfied, the Court will go on to consider the second prong, whether the mitigating measures were required by the lead agency as a condition precedent to issuing the negative declaration. The Court determines that they were not.

Here, the “mitigating measures” were not truly conditions as they were a statement of the policy and regulations required to be imposed upon the issuance of a permit. The “revisions” were a natural part of the permitting process, to specify the conditions the permittee must meet to follow the law. The provisions were submitted and publicly evaluated prior to the issuance of the negative declaration (*Merson v McNally*, 90 NY2d at 755).

“Where mitigating measures are part of the ‘give and take’ of the application process, rather than a condition of approval, a negative declaration may be valid (see, *Matter of Merson v McNally*, *supra*, at 753)” (*Hoffman v Town Bd. of Town of Queensbury*, 255 AD2d 752, 754).

Petitioners further contend that the DEC improperly segmented its review of the environmental impacts of the operations of the Greenidge Station from its review of the operations of Lockwood Ash Disposal Site, Petitioners contend that the impact of depositing the waste from the Greenidge Station should have been included in the EAF. The DEC contends that the consideration of the Facility as separate from the landfill was appropriate.

Segmentation is defined as “the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance” (6 NYCRR 617.2[ag]). Although the SPDES permit associated with the Landfill was not formally part of the negative declaration issued as part of the re-activation of the Facility, the DEC did consider the environmental impact of the waste from the Facility. The DEC specifically stated, in a section titled “Solid Waste Management” that there would be no impacts related to solid waste management. “By eliminating the use of coal as a fuel source, the generation of solid waste from the facility will be significantly reduced compared to prior operations” (Record, 1057). This Court finds that the DEC did not improperly segment the review of the environmental impacts of operating the Facility from the environmental impacts of operating the landfill.

Petitioners’ fourth cause of action for a violation of SEQRA in the issuance of the Water Withdrawal Permit is dismissed.

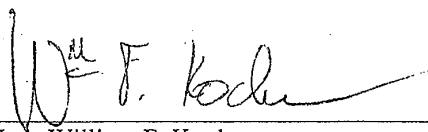
**RESPONDENT GGLLC'S ADDITIONAL SUBMISSIONS**

Finally, following the argument of this case, Respondent GGLLC submitted to this Court a number of documents that had been submitted to the Appellate Division, Fourth Department by the Petitioners. As a preliminary matter, this Cases makes no determination on whether the papers submitted to this Court by Respondent GGLLC are properly before the Appellate Division.

This Court does disagree with Respondent GGLLC that the recent motion practice at the Appellate Division renders the present Greenridge action moot. This Court finds that this Greenridge action is not moot and is properly before this Court.

The Petition is dismissed in its entirety. This constitutes the Decision of the Court. Respondent DEC to submit an order, on notice to the Petitioners and Respondent GGLLC on or before December 3, 2018.

Dated: 11/8/18 <sup>WFK</sup>  
Penn Yan, New York.

  
\_\_\_\_\_  
Hon. William F. Kocher  
Acting Supreme Court Justice

**AFFIDAVIT OF ERIK T. SCHMITT IN SUPPORT OF RESPONDENT DEC'S VERIFIED  
ANSWER,  
DATED AUGUST 12, 2019 [A-813 - A-825]**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----x  
In the Matter of the Application of

SIERRA CLUB, and HUDSON RIVER  
FISHERMEN'S ASSOCIATION, NEW JERSEY  
CHAPTER, INC.,

Index No. 2402/2019

Petitioners,

Affidavit of Erik T. Schmitt

For Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules,

-against-

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, BASIL  
SEGGOS, COMMISSIONER OF THE NEW  
YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, and  
HELIX-RAVENSWOOD LLC,

Respondents.  
-----x

**AFFIDAVIT OF ERIK T. SCHMITT IN SUPPORT OF  
RESPONDENT'S VERIFIED ANSWER AND IN  
OPPOSITION TO THE VERIFIED PETITION**

State of New York     )  
                                  ) ss.:  
County of Albany     )

Erik T. Schmitt, being duly sworn, deposes and says:

1.     I am currently employed as a Professional Engineer by the New York State  
Department of Environmental Conservation ("DEC") at DEC's Central Office in Albany, New  
York. I make this affidavit in support the Verified Answer of DEC and its Commissioner, Basil  
Seggos, and in opposition to the Verified Petition.

2.     I am a graduate of Pennsylvania State University where I received a Bachelor

degree with a major in Civil Engineering on December 18, 1999. I have been continuously licensed as a professional engineer in good standing with the State of Pennsylvania from June 2005 to September 2011 and the State of New York since January 2008.

3. I was employed as an engineer for various consulting firms in Pennsylvania and New York prior to commencing employment with DEC on March 10, 2008.

4. I currently serve in the title of Professional Engineer 1 for DEC's Division of Water in the Bureau of Water Resource Management. I have held this title since March 10, 2008.

5. It is part of my current job duties as a Professional Engineer 1 for DEC's Bureau of Water Resource Management to regulate water withdrawal systems throughout New York State, including water withdrawals by the Ravenswood Generating Station ("facility").

6. My job duties include the review of applications for water withdrawal permits and determining whether these applications satisfy the requirements of ECL Article 15, Title 15 ("Water Resources Protection Act") and DEC's implementing regulations at 6 NYCRR Part 601 ("Part 601 regulations").

7. I am familiar with the facts and circumstances associated with the applications that have been filed with DEC for a water withdrawal permit for the facility. This affidavit is based on my personal knowledge, my review of DEC records and files, and my discussions with DEC staff.

**THE RAVENSWOOD GENERATING STATION**  
**INITIAL WATER WITHDRAWAL PERMIT**

8. The Ravenswood Generating Station is a power plant located at 38-54 Vernon Boulevard in Long Island City, Queens, New York. Administrative Record ("AR") at 543. It is situated along the east bank of the upper East River, directly across from Roosevelt Island. AR 7,

208. The facility is comprised of three conventional steam electric generating units, a combined cycle unit, and simple cycle gas turbine units. AR 7, 97. The facility has been in operation since 1963 and is currently owned by Helix Ravenswood, LLC. AR 255, 257.

9. Since Ravenswood's water withdrawal system has the capacity to withdraw over 100,000 gallons of water per day, it was required to file Annual Water Withdrawal Reports with DEC pursuant to ECL Article 15, Title 33. Ravenswood filed these reports with DEC by the February 1st deadline in 2010, 2011, and 2012. Each report includes the facility's maximum water withdrawal capacity for the previous year. AR 24-28, 144-55, 554-55, 556-60, 561-65, 566-73, 575-82, 583-90, 593-94, 595-602.

10. On or about May 31, 2013, the prior operator of the facility, TC Ravenswood, LLC, submitted an application to DEC for an initial water withdrawal permit to withdraw up to 1,534,752,000 gallons per day ("GPD") of water from the East River for once through cooling and other processes related to electrical generation. AR 5-39.

11. Following a notice and public comment period, DEC issued an initial water withdrawal permit for the facility on November 15, 2013. AR 55-60. The initial water withdrawal permit allowed the facility to withdraw a maximum capacity of 1,390,000,000 GPD, not 1,534,752,000 GPD as requested by Ravenswood because 1,390,000,000 GPD was the amount listed in Ravenswood's Annual Water Withdrawal Report to DEC as of February 15, 2012. AR 55-60; *see* ECL § 15-1501(9).

12. On or about December 18, 2013, DEC received a letter from Ravenswood, stating that its Annual Water Withdrawal Reports submitted for the years 2009-2011 inadvertently omitted certain withdrawals from its maximum reported capacity. AR 141-42. The letter explained that this maximum capacity is necessary to maintain the reliability of the electrical grid



and to provide critical electric generation during natural disasters and other emergencies. AR 142. Ravenswood also submitted revised Annual Water Withdrawal Reports for 2009-2011, and a Professional Engineer certification dated December 17, 2013 regarding the maximum water withdrawal capacity of the facility. AR 143-155. Taking the facility's low pressure saltwater cooling system withdrawals into account raises the facility's maximum water withdrawal capacity to 1,527,840,000 GPD. AR 141-43.

13. On the basis of the submittals by Ravenswood, on or about March 7, 2014, DEC issued a corrected initial water withdrawal permit to Ravenswood to withdraw 1,527,840,000 GPD of water from the East River for once through cooling and other processes related to electrical generation. AR 158-162.

14. On or about August 2, 2017, Helix Ravenswood, LLC submitted an application to DEC to transfer the initial water withdrawal permit and other permits from TC Ravenswood, LLC to Helix Ravenswood, LLC on the basis of a change in the controlling membership with respect to the facility. AR 250-327. Updated application materials were submitted to support the permit transfers. AR 252-327.

15. On September 29, 2017, DEC issued an initial water withdrawal permit to Helix Ravenswood, LLC to withdraw 1,527,840,000 GPD of water from the East River for once through cooling and other processes related to electrical generation. AR 331-335.

16. On January 10, 2018, the Appellate Division, Second Judicial Department in *Sierra Club v Martens*, 158 AD3d 169 (2018) annulled the initial water withdrawal permit that DEC issued for the facility. The court ruled that DEC had improperly treated issuance of an initial water withdrawal permit to Ravenswood as a ministerial act not subject to review under the State Environmental Quality Review Act ("SEQRA") (*see* ECL Article 8 and 6 NYCRR Part

617). The court remitted the matter to DEC for further proceedings on Ravenswood's water withdrawal permit application in accordance with SEQRA.

17. By letter dated April 13, 2018, DEC asked Ravenswood to submit a completed and signed Part 1 of a Full Environmental Assessment Form ("FEAF") and a letter signed by the owner or the owner's representative indicating what, if any, changes to the water withdrawal system had been made since August 2, 2017. AR 336-37.

18. By correspondence with DEC on or about May 4, 2018, Ravenswood submitted Part 1 of a FEAF and advised DEC that there had not been any changes or modifications to the Ravenswood water withdrawal system since August 2, 2017. AR 338-357. The Weintraub Affirmation provides further elaboration on DEC's compliance with SEQRA.

19. In the context of determining whether DEC could issue a water withdrawal permit to Ravenswood following the decision by the Appellate Division, Second Judicial Department in *Sierra Club v Martens*, *supra*, DEC examined eight statutory provisions in ECL § 15-1503(2)(a)-(h). Because many of these provisions use the word "proposed," the analysis called for is more relevant for a new facility than for an existing user such as Ravenswood which is legally entitled under ECL § 15-1501(9) to continue withdrawing water up to its pre-permit capacity. Nevertheless, DEC conducted its review of the Ravenswood initial permit application under ECL § 15-1503(2)(a)-(h), and made those determinations as to Ravenswood to the best of its ability.

20. ECL § 15-1503(2)(a) states that DEC shall determine whether "the proposed water withdrawal takes proper consideration of other sources of supply that are or may become available." The water withdrawal permit application materials explain that the facility is located at 38-54 Vernon Boulevard, in Long Island City, Queens, New York and that the facility had

been withdrawing saltwater from the East River for its once through cooling system. AR 10-15, 261-66. The East River is a strait to the Atlantic Ocean with a vast supply of water in comparison to other possible sources of water supply such as headwaters of tributaries or groundwater aquifers. AR 14-15, 265-266. Section (k) of the portion of the 2013 and 2017 water withdrawal permit application materials relating to requirements under 6 NYCRR § 601.10 states that "the siting of the electric generating facility along the East River is ideal due to plentiful surface water supply for once thru cooling." AR 7, 258. Siting of the facility at the East River also allows for almost immediate distribution of power to New York City. Section 3 of the Engineer's Report in the 2013 and 2017 water withdrawal permit application materials states that the facility will always need cooling water, but that the facility has retrofitted its Circulating Water Pumps ("CWP's") with Variable Frequency Drives ("VFD's") to reduce its demand for water. AR 12-13, AR 263-64. For these reasons, DEC made the determination that the East River is a proper source of water withdrawal, taking into proper consideration other sources of water supply that are or may become available.

21. ECL § 15-1503(2)(b) states that DEC shall determine whether "the quantity of supply will be adequate for the proposed use." The facility has been making similar withdrawals since it commenced operation in 1963 without any water quantity issues. Importantly, as stated above, the East River is a strait to the Atlantic Ocean that provides a much greater supply of water than other possible sources of water supply. Section 11 of the Engineer's Report in the 2013 and 2017 water withdrawal permit application materials explains the details of the source water. AR 14-15, 265-66. Ravenswood's cooling system withdraws approximately one percent (1%) of the mean tidal flow in the East River and, as the application materials state, returns all of the water that it withdraws to the East River so that there is no net water loss to the source. AR 7,

258. Accordingly, DEC made the determination that the quantity of water supply will be adequate for the use that Ravenswood sought in its water withdrawal permit application.

22. ECL § 15-1503(2)(c) states that DEC shall determine whether "the project is just and equitable to all affected municipalities and their inhabitants with regard to their present and future needs for sources of potable water supply." The Ravenswood water withdrawal does not impact the ability of other existing or proposed water withdrawers to supply potable water to their inhabitants. Ravenswood withdraws saltwater from the East River. AR 10-15, 261-266. No municipalities in the area withdraw water from the East River for potable water purposes. In addition, because Ravenswood returns all of the water that it withdraws back to the East River (AR 7, 258), there are no quantity issues caused that would hinder the ability of a municipality to withdraw water from the East River. Thus, DEC made the determination that the project is just and equitable to all affected municipalities and their inhabitants with regard to their present and future needs for sources of potable water supply.

23. ECL § 15-1503(2)(d) states that DEC must determine whether "the need for all or part of the proposed water withdrawal cannot be reasonably avoided through the efficient use and conservation of existing water supplies." Ravenswood was not seeking to increase its water withdrawal through its water withdrawal permit application. AR 338-341. During times of peak demand it is necessary for Ravenswood to operate its water withdrawal system at full capacity in order to meet the power needs of New York City. AR 141-42. Required measures for water conservation and the reduction of impacts to the fisheries resource contained in the Biological Monitoring Requirement section of the 2012 SPDES Permit (AR 129-131) have been incorporated by reference into the 2019 initial water withdrawal permit for the facility. AR 544. Two of those Biological Monitoring Requirements reduce the quantity of water used by the

facility: 1) the installation of variable speed pumps and ancillary equipment and 2) the scheduling of a planned outage process to shut down the facility's CWP's. Section 3 of the Engineer's Report in the 2013 and 2017 water withdrawal permit application materials states that Ravenswood has installed VFDs on its CWP's to reduce the quantity of water withdrawn from the East River. AR 12-13, 263-64. In addition, the 2019 Ravenswood water withdrawal permit (AR 543-46) contains several conditions to ensure the efficient use and conservation of water. These measures include: 1) installing and maintaining meters or other appropriate measuring devices, 2) calibration of meters and measuring devices at least once per year, 3) maintaining records, 4) conducting an annual system-wide water audit to determine unaccounted-for water, and 5) submitting Annual Water Withdrawal Reports to DEC. AR 544-45. For all of these reasons, DEC determined that the need for all or part of Ravenswood's water withdrawal cannot be reasonably avoided through the efficient use and conservation of existing water supplies.

24. ECL § 15-1503(2)(e) states that DEC shall determine whether "the proposed water withdrawal is limited to quantities that are considered reasonable for the purposes for which the water use is proposed." The Annual Water Withdrawal Reports of Ravenswood demonstrate that the withdrawals are limited to the needs of the facility for cooling purposes. AR 24-28, 144-55, 554-55, 556-60, 561-65, 566-73, 575-82, 583-90, 593-94, 595-602. The quantity of water withdrawn is also reasonable because all of the water that is withdrawn is returned to its source. AR 7, 258. Ravenswood has installed VFDs on its CWP's. Section 3 of the Engineer's Report in the 2013 and 2017 water withdrawal permit application materials states that the facility's CWP's "have been retrofitted with VFDs to allow for reduced surface water withdrawal at reduced generation loading and reduced cooling water temperatures." AR 12, 263. The associated chart from Section 3 of the Engineer's Report documents the considerable water

conservation that has been achieved. AR 13, 264. (*See also* Part VI of the Water Conservation Program Form from these application materials). AR 17-22, 268-273. These factors, together with the other requirements described in paragraph 23 of this affidavit, limit Ravenswood's withdrawal to reasonable quantities for its purposes. Accordingly, DEC was able to make the determination required by ECL § 15-1503(2)(e).

25. ECL § 15-1503(2)(f) states that DEC shall determine whether "the proposed water withdrawal will be implemented in a manner to ensure it will result in no significant individual or cumulative adverse impacts on the quantity or quality of the water source and water dependent natural resources." Ravenswood was not proposing to increase its water withdrawal volume, had installed VFDs to reduce the volume of water withdrawn, was implementing scheduled outages to reduce water use, and was subject to other conditions in its 2019 water withdrawal permit described in paragraph 23 of this affidavit to ensure the efficient use and conservation of water. As stated previously, Ravenswood's cooling system is designed to return all of the saline water that it withdraws to its source. The 2013 and 2017 water withdrawal permit application materials also explain that the facility holds a valid SPDES permit that contains Best Technology Available ("BTA") conditions for the facility's intakes (AR 6, 12, 129-30, 257, 263). From my conversations with staff from DEC's Division of Environmental Permits and Division of Fish and Wildlife, I knew that Ravenswood conducted intensive studies as part of its BTA analysis to minimize impacts of the withdrawal to water dependent natural resources. The required measures for water conservation and the reduction to impacts to the fisheries resource contained in the Biological Monitoring Requirement section of the facility's 2012 SPDES permit were incorporated into the 2019 Ravenswood initial water withdrawal permit. AR 544. When the existing SPDES permit for the facility was written by DEC staff, it ensured that

there would be no significant adverse impacts to the water source or water dependent natural resources associated with the intake of water. DEC relied upon all of these facts, including the fact that no operational changes were being proposed for the facility, in making its determination that the Ravenswood's water withdrawal under its 2019 initial water withdrawal permit will be implemented in a manner to ensure that it will result in no significant individual or cumulative adverse impacts on the quantity or quality of the water source and water dependent natural resources.

26. ECL § 15-1503(2)(g) states that DEC shall determine whether "the proposed water withdrawal will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures." As previously stated, Ravenswood was not proposing to increase the volume of its withdrawal. AR 338-341. There is no consumptive use (AR 7, 258) and actual use data shows that Ravenswood's average use is far below its maximum water withdrawal capacity (AR 24-28, 144-55, 554-55, 556-60, 561-65, 566-73, 575-82, 583-90, 593-94, 595-602). Section 3 of the Engineer's Report in the 2013 and 2017 water withdrawal permit application materials shows that technology and other measures were in place to reduce the quantity of water needed to operate the facility. AR 12-13, 263-64. The 2019 initial water withdrawal permit incorporates required water conservation measures from the 2012 SPDES permit, including installing variable speed pumps and ancillary equipment, and scheduled power outages. AR 129-31. In addition, the 2019 initial water withdrawal permit contains the conditions described in paragraph 23 of this affidavit. Moreover, Part V of Ravenswood's Water Conservation Program Form states that leaks are repaired in a timely manner, that the site is continuously manned with personnel, and that water usage data is analyzed monthly. AR 20, 271. These actions meet best practices for this type of facility. Thus, DEC was able to determine

that the water withdrawal by Ravenswood will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures.

27. ECL § 15-1503(2)(h) states that DEC shall determine whether "the proposed water withdrawal will be implemented in a manner that is consistent with applicable municipal, state and federal laws as well as regional interstate and international agreements." The 2013 and 2017 application materials state that "the current water withdrawal system utilized at Ravenswood complies with various federal, state, and local laws." AR 7, 258. Furthermore, in the signature portion of the application, the applicant affirms that the information provided on the application form and all attachments submitted therewith is true to the best of the applicant's knowledge and belief. AR 31, 287. The permit appropriately incorporates terms from Ravenswood's SPDES permit and as such is consistent with the federal Clean Water Act and the ECL. The water source is not located in the Great Lakes-St. Lawrence River Basin. AR 8, 259. DEC determined that the water withdrawal associated with the 2019 Ravenswood initial water withdrawal permit will be implemented in a manner that is consistent with applicable municipal, state and federal laws as well as regional interstate and international agreements.

28. Following the decision by the Appellate Division, Second Judicial Department in *Sierra Club v Martens*, *supra*, but before making the determinations under ECL § 15-1503(2)(a)-(h) referenced above, I completed a Project Justification Checklist Supplement ("Project Justification Checklist") (AR 591). On this form, "P" means "present," "A" means "absent," and "N/A" means "not applicable." This form is not mandated to be completed by law, but was used as an internal aid to evaluate the content of the water withdrawal permit application materials, as described below.

29. The Project Justification Checklist is used as an internal checklist to help



determine if the application materials include a project justification under 6 NYCRR § 601.10(k) and that the application materials enable DEC to make determinations under ECL § 15-1503(2)(a)-(h). The Project Justification Checklist was not intended to document DEC's decision making analysis with respect to issuance of an initial water withdrawal permit to Ravenswood. By filling in each item with the letter "P," I indicated my assessment that the application materials contained a project justification and that the application materials enabled DEC to make the determinations under ECL § 15-1503(2)(a)-(h). AR 591.

30. In the context of DEC's decision to grant an initial water withdrawal permit to Helix Ravenswood, LLC on February 20, 2019, DEC determined that Helix Ravenswood, LLC satisfied ECL §15-1503(2)(a)-(h) in its entirety and that Helix Ravenswood, LLC satisfied the other applicable requirements of the Water Resources Protection Act and DEC's Part 601 implementing regulations.

31. DEC's decision to incorporate required measures for water conservation and the reduction to impacts to the fisheries resource contained in the Biological Monitoring Requirement section of the facility's 2012 SPDES permit into the Ravenswood 2019 Initial Water Withdrawal Permit did not substitute for DEC making all of the determinations under ECL § 15-1503(2)(a)-(h). As this affidavit indicates, incorporation of requirements from the Ravenswood 2012 SPDES permit into the Ravenswood 2019 Initial Water Withdrawal Permit was only one of several factors impacting DEC's determination to issue the Ravenswood 2019 Initial Water Withdrawal Permit.

32. On February 20, 2019, DEC issued an initial water withdrawal permit to Helix Ravenswood, LLC to withdraw 1,527,840,000 GPD of water from the East River for once through cooling and other processes related to electrical generation. AR 541-46.

**CONCLUSION**


33. For the reasons stated herein, to the best of my knowledge and belief, the initial water withdrawal permit that DEC issued on February 20, 2019 to Helix Ravenswood, LLC complies with applicable law, and is in no way arbitrary or capricious, or in contravention of law.

I swear under penalty of perjury that the foregoing is true and accurate to the best of my knowledge.



Erik T. Schmitt

Subscribed and sworn to before me  
this 12<sup>th</sup> day of August, 2019



Notary Public

CRISTIN M. CLARKE, ESQ.  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 02CL6056390  
QUALIFIED IN SARATOGA COUNTY  
COMMISSION EXPIRES MARCH 19, 2023

VERIFIED ANSWER OF RESPONDENT HELIX RAVENSWOOD LLC ("HRLLC"),  
DATED AUGUST 12, 2019 [A- 826 - A- 837]

SUPREME COURT OF THE STATE OF NEW YORK COUNTY  
OF QUEENS

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In the Matter of the Application of

**SIERRA CLUB and HUDSON RIVER FISHERMEN'S  
ASSOCIATION, NEW JERSEY CHAPTER INC.,**

**VERIFIED ANSWER**

Petitioners,

INDEX NO. 2402/19

*-against-*

**NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, BASIL SEGGOS,  
COMMISSIONER, and HELIX RAVENSWOOD LLC,**

Respondents.

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Respondent Helix Ravenswood LLC ("Helix") by their attorneys, Barclay Damon LLP,  
for their Answer with Objections in Point of Law, respond as follows:

**INTRODUCTION**

1. States that no response is required for the allegations contained in Paragraph 1 and refers the Court to the Verified Petition as best evidence of the claims brought in this action by Petitioners.
2. Denies the allegations contained in Paragraph 2.
3. States that no response is required for the allegations contained in Paragraph 3, refers the Court to the Verified Petition as best evidence of the relief sought in this action and denies that such relief is warranted.

**PARTIES**

4. Denies the allegation that the Ravenswood Generation Station's ("Ravenswood") water usage for its cooling intake structures causes injury to the

conservation, aesthetic and recreational interests of Petitioner Sierra Club's members and denies knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 4.

5. Denies the allegation that the Ravenswood Generation Station's ("Ravenswood") water usage for its cooling intake structures causes injury to the conservation, aesthetic and recreational interests of Petitioner Hudson River Fishermen Association's ("HRFA") members and denies knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 4.

6. Admits the allegations contained in Paragraph 6.

7. Admits the allegations contained in Paragraph 7.

#### **STATUTORY AND REGULATORY FRAMEWORK**

8. Admits the allegations contained in Paragraph 8.

9. States that no response is required for the allegations contained in Paragraph 9 and refers all legal questions regarding the Water Resources Protection Act of 2011 to the Court.

10. States that no response is required for the allegations contained in Paragraph 10 and refers all legal questions regarding the Water Resources Protection Act of 2011 to the Court.

11. States that no response is required for the allegations contained in Paragraph 11 and refers all legal questions regarding the Water Resources Protection Act of 2011 to the Court.

12. States that no response is required for the allegations contained in Paragraph 12 and refers all legal questions regarding the Water Resources Protection Act of 2011 to the Court.

13. Admits the allegations contained in Paragraph 13.

14. Admits the allegations contained in Paragraph 14 and affirmatively states that existing users, like Ravenswood, were entitled to a permit.

## **THE RAVENSWOOD PERMITS**

### **A. 2013 Ravenswood Water Withdrawal Permit**

15. Admits the allegations contained in Paragraph 15.
16. With respect to the allegations contained in Paragraph 16, refers the Court to the Environmental Notice Bulletin as best evidence of its terms.
17. With respect to the allegations contained in Paragraph 17, refers the Court to the referenced comments as best evidence of its terms.
18. Admits the allegations contained in Paragraph 18.
19. Denies the allegations contained in Paragraph 19.
20. Admits the allegations contained in Paragraph 20, except notes that the case was refiled February 18, 2014, not February 18, 2019 as stated in Paragraph 20.
21. Admits the allegations contained in Paragraph 21 and affirmatively states that the 2013 Ravenswood permit was modified by the Department on March 7, 2014 to accurately reflect the correct capacity of the Ravenswood facility's water withdrawal system.
22. Admits the allegations contained in Paragraph 22 and affirmatively states that the referenced decisions also favored Ravenswood.

### **B. 2018 Appeals Court Decision Invalidating Ravenswood Permit**

23. With respect to the allegations contained in Paragraph 23, refers the Court to the Second Department's decision as best evidence of its terms
24. With respect to the allegations contained in Paragraph 24, refers the Court to the Second Department's decision as best evidence of its terms.

### **C. 2019 Ravenswood Water Withdrawal Permit**

25. Denies the allegations contained in Paragraph 25 and affirmatively states that the Appellate Division, Second Department did not invalidate the permit but rather remanded the

matter back to the New York State Department of Environmental Conservation (the “Department”) for further proceedings under the State Environmental Quality Review Act (“SEQRA”).

26. With respect to the allegations contained in Paragraph 26, refers the Court to the Department’s April 28, 2018 letter as best evidence of its terms.

27. With respect to the allegations contained in Paragraph 27, refers the Court to the Department’s April 28, 2018 letter as best evidence of its terms, and affirmatively states that Ravenswood submitted a full “Project Justification” with its initial permit application even though it was not required to do so as an existing facility.

28. Refers the Court to the Administrative Return as best evidence of the nature and extent of Ravenswood’s application materials.

29. Admits that the Department accepted the transfer application as complete and issued a negative declaration on September 25, 2018, affirmatively states that a revised Negative Declaration was issued on February 14, 2019 and refers the Court to the February 14, 2019 Negative Declaration as best evidence of its contents.

30. Refers the Court to the Environmental Notice Bulletin, dated October 3, 2018 (Administrative Return 394-398), as best evidence of what the Department announced on October 3, 2018.

31. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 31.

32. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 32 and affirmatively states that the Court did not invalidate the prior initial water withdrawal permit issued for Ravenswood but merely annulled it and remitted it back to the Department for further proceedings in accordance with SEQRA.

33. Admits the allegations contained in Paragraph 33.

34. With respect to the allegations contained in Paragraph 34, refers the Court to Ravenswood's water withdrawal permit as best evidence of its terms.

35. With respect to the allegations contained in Paragraph 35, refers the Court to Ravenswood's water withdrawal permit as best evidence of its terms and affirmatively states that the Court did not invalidate the prior initial water withdrawal permit issued for Ravenswood but merely annulled it and remitted it back to the Department for further proceedings in accordance with SEQRA.

36. With respect to the allegations contained in Paragraph 36, refers the Court to Ravenswood's water withdrawal and SPDES permits as best evidence of their terms.

#### **FIRST CAUSE OF ACTION**

37. Repeats and realleges its respective responses to Paragraphs 1 through 36 of the Verified Petition as if set forth in full in response to Paragraph 37 of the Verified Petition.

38. Denies the allegations contained in Paragraph 38.

39. Denies the allegations contained in Paragraph 39.

40. Denies the allegations contained in Paragraph 40.

41. Denies the allegations contained in Paragraph 41.

42. Denies the allegations contained in Paragraph 42.

43. Denies the allegations contained in Paragraph 43.

44. Denies the allegations contained in Paragraph 44.

45. Denies the allegations contained in Paragraph 45 and affirmatively states that the Court did not invalidate the prior initial water withdrawal permit issued for Ravenswood, the Department did not concede that it had not made appropriate determinations as required by New York's Water Resources Protection Act ("Act") and appropriate terms and conditions were set

by the Department for Ravenswood's water withdrawal permit.

46. States that no response is required for the allegations contained in Paragraph 46 and refers all legal questions to the Court. To the extent a response is required, denies the allegations contained in Paragraph 46.

47. States that no response is required for the allegations contained in Paragraph 47 and refers all legal questions to the Court.

48. With respect to the allegations contained in Paragraph 48, refers the Court to the cited statute and legislative history as best evidence of the legislative purpose and denies knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 48.

49. Denies the allegations contained in Paragraph 49.

#### **SECOND CAUSE OF ACTION**

50. Repeats and realleges its respective responses to Paragraphs 1 through 49 of the Verified Petition as if set forth in full in response to Paragraph 50 of the Verified Petition.

51. Denies the allegations contained in Paragraph 51.

52. With respect to the allegations contained in Paragraph 52, refers the Court to the cited regulation as best evidence of its terms.

53. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 53.

54. Denies the allegations contained in Paragraph 54.

55. Denies the allegations contained in Paragraph 55.

56. With respect to the allegations contained in Paragraph 56, affirmatively states that the 2018 Negative Declaration was amended and refers the Court to the Department's February 14, 2019 Negative Declaration as best evidence of its terms.



57. With respect to the allegations contained in Paragraph 57, refers the Court to the cited statutes and their legislative history as best evidence of their terms and legislative purpose and affirmatively states that the legislative history made it clear that existing operators such as Ravenswood would be *entitled* to a permit.

58. With respect to the allegations contained in Paragraph 58, affirmatively states that the 2018 Negative Declaration was amended and refers the Court to the Department's February 14, 2019 Negative Declaration as best evidence of its terms.

59. With respect to the allegations contained in Paragraph 59, affirmatively states that the 2018 Negative Declaration was amended and refers the Court to the Department's Negative Declaration as best evidence of its terms.

60. With respect to the allegations contained in Paragraph 60, affirmatively states that the 2018 Negative Declaration was amended and refers the Court to the Department's Negative Declaration as best evidence of its terms.

61. With respect to the allegations contained in Paragraph 61, affirmatively states that the 2018 Negative Declaration was amended and refers the Court to the Department's Negative Declaration as best evidence of its terms.

62. Denies the allegations contained in Paragraph 62.

63. Denies the allegations contained in Paragraph 63 and affirmatively states that the 2018 Negative Declaration was amended.

#### **RELIEF REQUESTED**

64. States that no response is required for Petitioners' prayer for relief in the Verified Petition. To the extent a response is required, Helix denies that Petitioners are entitled to the relief requested.

65. Helix denies every allegation in the Verified Petition not otherwise addressed

herein.

**FIRST AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

66. Petitioners lack standing to bring their claims. Not one Petitioner has provided any evidence that one of its members has standing.

**SECOND AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

67. Petitioners failed to administratively exhaust their claims, including but not limited to their failure to challenge Ravenswood's SPDES permit, or its BTA determination, at the time the Department issued the SPDES permit.

**THIRD AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

68. The Department's interpretation of the relevant provisions of the Environmental Conservation Law as they relate to SEQRA and the initial water withdrawal permits issued for Ravenswood, is lawful and entitled to judicial deference as the Department is the administrative agency charged with administration and implementation of the Environmental Conservation Law and also vested with the appropriate technical expertise.

**FOURTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

69. The record of proceedings before the Department, submitted as the Administrative Return and incorporated by reference herein, establishes that the Department's findings and determinations were supported by substantial evidence in the record, were not affected by any error of law, were not arbitrary and capricious, and do not constitute an abuse of discretion.

**FIFTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

70. The review conducted by the Department as summarized within its February 14, 2019 Negative Declaration demonstrates that the Department conducted a careful, thorough, and complete review of the relevant areas of environmental concern, took the required “hard look” at all relevant areas, and provided a written, reasoned elaboration for its determination.

**SIXTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

71. Because the Department’s thorough and well-reasoned SEQRA findings supported issuance of the February 14, 2019 Negative Declaration, Petitioners’ claims should be rejected.

**SEVENTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

72. Due to Ravenswood’s long-standing non-consumptive water withdrawals from the East River, the Department appropriately exercised its discretion and established the baseline for purposes of SEQRA.

**EIGHTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

73. The Act was not intended to supplant the Department’s review of facilities like Ravenswood that are required to employ the Best Technology Available in accordance with Section 704.5 of 6 NYCRR and Section 316(b) of the federal Clean Water Act. Furthermore, the Act was not meant to provide a proverbial “second bite at the apple” regarding the volume of water needed by these facilities or the technology by which they withdraw water. To the contrary, the Legislature expressly intended these facilities to be *entitled* to an initial water withdrawal permit and to continue withdrawing water at the *maximum* capacity previously

reported to the Department.

**NINTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

74. Neither Section 704.5 of 6 NYCRR or Section 316(b) of the federal Clean Water Act require the installation of closed-cycle cooling on an existing cooling water intake structure. As such, the Department's July 10, 2011 Commissioner's Policy – 52 Best Technology Available ("BTA") For Cooling Water Intake Structures ("CP-52"), identifies closed-cycle cooling or the "equivalent" as the performance goal for BTA to minimize adverse environmental impacts pursuant to Section 704.5 of 6 NYCRR and Section 316(b) of the federal Clean Water Act in a State Pollutant Discharge Elimination System ("SPDES") permit for an existing cooling water intake structure. CP-52 defines "equivalent" as the reductions, obtainable by a suite of technologies that are not closed-cycle cooling, in impingement mortality and entrainment that are 90 percent or greater of that which would be achieved by a wet closed-cycle cooling system.

**TENTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

75. Petitioners' claims are barred by the statute of limitations to the extent that their second cause of action seeks to challenge the Department's 2018 Negative Declaration which was issued on September 25, 2018, more than four (4) months prior to Petitioners' commencement of this action in April 2019.

**ELEVENTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

76. Petitioners' claims are moot to the extent that their second cause of action seeks to challenge the Department's September 25, 2018 Negative Declaration. The operative determination of significance, which supported the Department's issuance of the initial water

withdrawal permit to Ravenswood was issued by the Department on February 14, 2019.

**TWELFTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

77. The Verified Petition was improperly verified by their counsel, particularly with respect to Paragraphs 4 through 5 concerning Petitioners' alleged interests and injury.

78. Helix reserves the right to assert additional affirmative defenses in the event discovery indicates such defenses may be appropriate.

**WHEREFORE**, Respondent respectfully requests that the relief requested in the Petition be denied, that the Petition and this action be dismissed, and that Respondent be awarded costs and disbursements or, in the event the Court grants the Petition, that the Court remand the matter for a rehearing at which the technical matters complained of by the Petitioner may be remedied, together with such other relief as may be right and just.

DATED: August 12, 2019

**BARCLAY DAMON LLP**

By:   
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**ATTORNEY AFFIRMATION/VERIFICATION**

The undersigned, an attorney admitted to practice in the courts of the State of New York, hereby affirms under the penalties of perjury that deponent is a partner with the firm of Barclay Damon LLP, attorneys for Respondent Helix Ravenswood, LLC, that deponent has read the foregoing Verified Answer and Objections in Point of Law and knows the contents thereof, that the same is true upon information and belief, and that deponent believes it to be true. Deponent further states that the reason that this affirmation is made by deponent and not by Respondent is because Respondent does not have an office in the County of Albany where the undersigned has an office.

The grounds of deponent's belief as to all matters stated herein include deponent's representation of Respondent in the permitting of the original initial water withdrawal permit and the prior litigation referenced in the Verified Petition, communications with officers, employees, and agents of Respondent, business records of Respondent and relevant administrative documents and permits.

**DATED:** August 12, 2019

  
YVONNE E. HENNESSEY

**AFFIRMATION OF YVONNE E. HENNESSEY, ESQ. IN SUPPORT OF RESPONDENT  
HRLLC'S VERIFIED ANSWER, DATED AUGUST 12, 2019 [A-838 - A-843]**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

In the Matter of the Application of

**SIERRA CLUB and HUDSON RIVER  
FISHERMEN'S ASSOCIATION, NEW JERSEY  
CHAPTER INC.,**

Petitioners,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules

-against-

**NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, BASIL  
SEGGOS, COMMISSIONER, and HELIX  
RAVENSWOOD LLC,**

Respondents.

## AFFIRMATION OF YVONNE E. HENNESSEY

Index No. 2402/19

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ALBANY )

**Yvonne E. Hennessey, Esq.** affirms, under the penalties of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules (“CPLR”):

1. I am an attorney at law duly licensed to practice in the courts of the State of New York and a member of the firm of Barclay Damon LLP, attorneys for Helix Ravenswood LLC (“Helix Ravenswood”), the successor-in-interest to TransCanada Ravenswood, LLC (“TC Ravenswood”) for the Ravenswood Generating Station (“Ravenswood Facility”). I am fully familiar with the circumstances and proceedings in this action.

2. I make this Affirmation in support of Helix Ravenswood's Answer and Objections in Point of Law and request that the Court deny the Petition in its entirety.

3. This Affirmation is based upon my review of the Petition and relevant documents, including the enactment of the Water Resources Protection Act of 2011 (“WRPA”) and the New

York State Department of Environmental Conservation's ("NYSDEC") promulgation of implementing regulations.

#### **Legislative History and Rulemaking**

4. On or about February 15, 2011, Assembly Bill 5318-A was introduced to amend the New York State Environmental Conservation Law, in relation to regulating the use of the State's water resources, and to repeal Titles 16 and 33 of Article 15 of such law relating to Great Lakes water conservation and management and water withdrawal reporting. A true and accurate copy of the Bill Jacket is attached hereto as **Exhibit A**.

5. The summary of provisions in the Memorandum in Support of Legislation for Bill A5318A states that "Section 1 of the bill would amend Environmental Conservation Law (ECL) § 15-1501 to . . . provide that existing water withdrawals would be *entitled* to an initial permit *based on their maximum water withdrawal capacity* reported to DEC on or before February 15, 2012 pursuant to existing law . . . ." *See* Exhibit A, p. 7 (emphasis added).

6. On or about August 2, 2011, the NYSDEC sent a memorandum in support of Assembly Bill A5318-A to Mylan L. Denerstein, Esq., Counsel to the Governor. *See* Exhibit A at 14-16.

7. The NYSDEC memorandum confirmed that existing water withdrawals would be "entitled" to an initial permit. *See* Exhibit A, p. 16.

8. The Legislature passed Assembly Bill 5318-A and it was signed into law by Governor Andrew Cuomo on August 15, 2011. L. 2011, ch 401.

9. On August 15, 2011, the WRPA became effective in New York requiring that all water withdrawal systems with the capacity to withdraw 100,000 gallons per day or more of water obtain a permit from the NYSDEC and file water withdrawal reports annually. Previously,



the law applied only to public water supply withdrawals and not TC Ravenswood's cooling water system.

10. The WRPA was codified at Environmental Conservation Law ("ECL") §15-1501 *et seq.*

11. On or about November 23, 2011, the NYSDEC caused to be published in the New York State Register a Notice of Proposed Rulemaking of the "Water Withdrawal Permit, Reporting and Registration Program." *See* 33 N.Y. Reg. 8, dated November 23, 2011. A true and accurate copy of the NYSDEC's November 23, 2011 Notice is attached hereto as **Exhibit B**.

12. On or about November 28, 2012, the NYSDEC caused to be published in the New York State Register a Notice of Adoption of the "Water Withdrawal Permit, Reporting and Registration Program." 34 N.Y. Reg. 4, dated November 28, 2012. A true and accurate copy of the NYSDEC's November 28, 2012 Notice is attached hereto as **Exhibit C**.

13. The new regulation repealed Parts 601 and 675, added a new Part 601, and amended Section 621.4 of Title 6 of the New York Compilation of Codes, Rules & Regulations ("NYCRR"). *See* Exhibit C, p. 4.

14. The effective date for the new regulations implementing the Act was April 1, 2013. *See* Exhibit C, p. 4.

#### **Petitioners' First Article 78 Proceeding**

15. Petitioners commenced their first Article 78 challenge of NYSDEC's issuance of the Ravenswood Facility's 2013 Initial Permit on February 18, 2014 in Supreme Court, Queens County.

16. NYSDEC opposed the petition by serving and filing a verified answer and memorandum of law, with accompanying affidavits and exhibits, dated April 24, 2014.

17. The prior owner and operator of the Ravenswood Facility, TC Ravenswood, also opposed the petition by serving and filing a notice of motion to dismiss and memorandum of law, dated April 24, 2014, with accompanying affidavits and exhibits.

18. In decisions, dated October 1 and 2, 2014, the Supreme Court denied the petition and dismissed the proceeding. *See Sierra Club v. Martens et al*, Index No. 02949/2014 (N.Y. Sup. Ct., Queens Cty). True and accurate copies of the decisions are attached as **Exhibits D and E**, respectively.

19. In its October 1, 2014 Decision, the Supreme Court held that “[t]he issuance of an initial permit is a ministerial act not subject to review under either SEQRA or the Waterfront Act.” *See Exhibit D*, p. 10. The Supreme Court agreed with NYSDEC that because the Ravenswood Facility was entitled to an initial permit under the WRPA, the issuance of the initial permit was a ministerial act for which NYSDEC had no discretion under the WRPA, and therefore was a Type II action not subject to SEQRA review. *See Exhibit D*, pp. 8-9.

20. Thereafter, the Supreme Court issued a Judgment, as proposed by Petitioners in which it adjudged that the “verified petition is denied and further the proceeding is dismissed on the merits according to the decision dated October 1, 2014 and the decision dated October 2, 2014.” A true and accurate copy of the November 25, 2014 Judgment is attached hereto as **Exhibit F**.

21. Petitioners filed and served a Notice of Appeal on January 7, 2015 before the New York Supreme Court Appellate Division—Second Department. Petitioners thereafter perfected their appeal on July 27, 2015 with the filing of the Record on Appeal and Petitioners Brief.

22. NYSDEC and TC Ravenswood LLC opposed with the filing of Respondents’ Briefs on December 2, 2015 and November 24, 2015, respectively.

23. Following oral argument on February 6, 2017, the Second Department entered its Opinion and Order on January 10, 2018. *See Sierra Club v. Martens et al*, Dkt. No. 2015-02317 (2d Dep’t). A true and accurate copy of the Second Department’s January 10, 2018 Opinion and Order is attached hereto as **Exhibit G**.

24. Contrary to Petitioners’ position, the Second Department’s Opinion and Order reversing the Supreme Court was limited in scope—it never reached the validity of the actual 2013 Initial Permit or its conditions.

25. Indeed, the Second Department’s Opinion and Order succinctly summarized the narrow basis of its decision in the first sentence of the opinion: “We hold that the issuance of an ‘initial permit’ for making water withdrawals . . . is not a ministerial act that is excluded from [SEQRA].” *See* Exhibit G, p. 2. The remainder of the petition, including the validity of the underlying permit, was “denied as academic.” *See* Exhibit G, p. 9.

26. The Court reasoned that the application of Section 1501(9) of the WRPA, the applicable section for the issuance of initial permits, was not ministerial because it authorized NYSDEC to grant or deny an initial permit with conditions. *See* Exhibit G, p. 8.

27. The Court, however, added that “[w]hether a condition is ‘appropriate’ for a given operator *is a matter that falls within the [NYS]DEC’s expertise* and involves the exercise of judgment, and, therefore, implicates matters of discretion.” *See* Exhibit G, p. 8 (emphasis added).

28. Based on this reasoning, the Court remitted the matter back to NYSDEC to apply SEQRA without opining on the 2013 Initial Permit or its conditions, which the Court held were squarely within NYSDEC’s discretion.

29. A true and accurate copy of the decision in *Wind Power Ethics Group v. Planning Bd. of Town of Cape Vincent*, No. 2010-2882 (Sup. Ct., Jefferson Cnty., Jan. 26, 2011) cited in Point I of the accompanying Memorandum of Law is attached here as **Exhibit H**.

30. A true and accurate copy of the decision in *Sierra Club et al. v. New York State Department of Environmental Conservation et al.*, No. 2017-0232 (Sup. Ct., Yates Cnty., Nov. 8, 2018) cited in Point IV of the accompanying Memorandum of Law is attached here as **Exhibit I**.

Dated: August 12, 2019  
Albany, New York

  
YVONNE E. HENNESSEY, ESQ.

A-844

EXHIBIT A — BILL JACKET FOR ASSEMBLY BILL 5218-A, 2011 [A-844 - A-908]

BR

CHAPTER

401

LAWS OF 20

11

SENATE BILL

ASSEMBLY BILL

5318-A

STATE OF NEW YORK

5318--A

2011-2012 Regular Sessions

IN ASSEMBLY

February 15, 2011

Introduced by M. of A. SWEENEY, PEOPLES-STOKES, ZEBROWSKI, GUNTHER, TITONE, REILLY, SPANO, JACOBS, PAULIN, SCHIMEL, ENGLEBRIGHT, HOYT -- Multi-Sponsored by -- M. of A. BRENNAN, GABRYSZAK, MARKEY, McENENY, M. MILLER, PHEFFER, ROBINSON -- (at request of the Department of Environmental Conservation) -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to regulating the use of the state's water resources; and to repeal titles 16 and 33 of article 15 of such law relating to Great Lakes water conservation and management and water withdrawal reporting

S3798 Grisanti

DATE RECEIVED BY GOVERNOR:

ACTION MUST BE TAKEN BY:

DATE GOVERNOR'S ACTION TAKEN:

000001

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SENATE VOTE 62 Y 0 N

HOME RULE MESSAGE \_\_\_\_ Y \_\_\_\_ N

DATE 6/16/11

ASSEMBLY VOTE 136 Y 0 N

DATE 5/2/11

000002

RETRIEVE

Page 1 of 18

**A5318-A** Sweeney (MS) Same as S 3798 GRISANTI

|                 |         |               |          |        |
|-----------------|---------|---------------|----------|--------|
| <u>06/16/11</u> | A5318-A | Senate Vote   | Aye: 62  | Nay: 0 |
| <u>05/02/11</u> | A5318-A | Assembly Vote | Yes: 136 | No : 0 |

[Go to Top of Page](#)**Floor Votes:**

06/16/11 A5318-A Senate Vote Aye: 62 Nay: 0

|                        |                        |                             |                      |
|------------------------|------------------------|-----------------------------|----------------------|
| <b>Aye</b> Adams       | <b>Aye</b> Addabbo     | <b>Aye</b> Alesi            | <b>Aye</b> Avella    |
| <b>Aye</b> Ball        | <b>Aye</b> Bonacic     | <b>Aye</b> Breslin          | <b>Aye</b> Carlucci  |
| <b>Aye</b> DeFrancisco | <b>Aye</b> Diaz        | <b>Aye</b> Dilan            | <b>Aye</b> Duane     |
| <b>Aye</b> Espaillat   | <b>Aye</b> Farley      | <b>Aye</b> Flanagan         | <b>Aye</b> Fuschillo |
| <b>Aye</b> Gallivan    | <b>Aye</b> Gianaris    | <b>Aye</b> Golden           | <b>Aye</b> Griffo    |
| <b>Aye</b> Grisanti    | <b>Aye</b> Hannon      | <b>Aye</b> Hassell-Thompson | <b>Aye</b> Huntley   |
| <b>Aye</b> Johnson     | <b>Aye</b> Kennedy     | <b>Aye</b> Klein            | <b>Aye</b> Krueger   |
| <b>Aye</b> Kruger      | <b>Aye</b> Lanza       | <b>Aye</b> Larkin           | <b>Aye</b> LaValle   |
| <b>Aye</b> Libous      | <b>Aye</b> Little      | <b>Aye</b> Marcellino       | <b>Aye</b> Martins   |
| <b>Aye</b> Mazarz      | <b>Aye</b> McDonald    | <b>Aye</b> Montgomery       | <b>Aye</b> Nozzolio  |
| <b>Aye</b> O'Mara      | <b>Aye</b> Oppenheimer | <b>Aye</b> Parker           | <b>Aye</b> Peralta   |
| <b>Aye</b> Perkins     | <b>Aye</b> Ranzenhofer | <b>Aye</b> Ritchie          | <b>Aye</b> Rivera    |
| <b>Aye</b> Robach      | <b>Aye</b> Saland      | <b>Aye</b> Sampson          | <b>Aye</b> Savino    |
| <b>Aye</b> Serrano     | <b>Aye</b> Seward      | <b>Aye</b> Skelos           | <b>Aye</b> Smith     |
| <b>Aye</b> Squadron    | <b>Aye</b> Stavisky    | <b>Aye</b> Stewart-Cousins  | <b>Aye</b> Valesky   |
| <b>Aye</b> Young       | <b>Aye</b> Zeldin      |                             |                      |

[Go to Top of Page](#)**Floor Votes:**

05/02/11 A5318-A Assembly Vote Yes: 136 No : 0

|                       |                        |                       |                         |
|-----------------------|------------------------|-----------------------|-------------------------|
| <b>Yes</b> Abbate     | <b>Yes</b> Abinanti    | <b>Yes</b> Amedore    | <b>ER</b> Arroyo        |
| <b>Yes</b> Aubry      | <b>Yes</b> Barclay     | <b>Yes</b> Barron     | <b>Yes</b> Benedetto    |
| <b>Yes</b> Bing       | <b>Yes</b> Blankenbush | <b>Yes</b> Boyland    | <b>Yes</b> Boyle        |
| <b>Yes</b> Braunstein | <b>Yes</b> Brennan     | <b>Yes</b> Bronson    | <b>Yes</b> Brook-Krasny |
| <b>Yes</b> Burling    | <b>Yes</b> Butler      | <b>Yes</b> Cahill     | <b>Yes</b> Calhoun      |
| <b>Yes</b> Camara     | <b>Yes</b> Canestrari  | <b>Yes</b> Castelli   | <b>Yes</b> Castro       |
| <b>Yes</b> Ceretto    | <b>Yes</b> Clark       | <b>Yes</b> Colton     | <b>Yes</b> Conte        |
| <b>Yes</b> Cook       | <b>Yes</b> Corwin      | <b>ER</b> Crespo      | <b>Yes</b> Crouch       |
| <b>Yes</b> Curran     | <b>Yes</b> Cusick      | <b>Yes</b> Cymbrowitz | <b>Yes</b> DenDekker    |
| <b>Yes</b> Destito    | <b>Yes</b> Dinowitz    | <b>Yes</b> Duprey     | <b>Yes</b> Englebright  |
| <b>Yes</b> Farrell    | <b>Yes</b> Finch       | <b>ER</b> Fitzpatrick | <b>Yes</b> Friend       |
| <b>Yes</b> Gabryszak  | <b>Yes</b> Galef       | <b>Yes</b> Gantt      | <b>Yes</b> Gibson       |

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|               |                 |                 |                    |
|---------------|-----------------|-----------------|--------------------|
| Yes Giglio    | Yes Glick       | Yes Goodell     | Yes Gottfried      |
| Yes Graf      | Yes Gunther A   | Yes Hanna       | Yes Hawley         |
| Yes Hayes     | ER Heastie      | Yes Hevesi      | Yes Hikind         |
| Yes Hooper    | Yes Hoyt        | Yes Jacobs      | Yes Jaffee         |
| Yes Jeffries  | Yes Johns       | Yes Jordan      | Yes Katz           |
| Yes Kavanagh  | Yes Kellner     | ER Kirwan       | Yes Kolb           |
| Yes Lancman   | Yes Latimer     | Yes Lavine      | Yes Lentol         |
| Yes Lifton    | Yes Linares     | Yes Lopez P     | Yes Lopez V        |
| Yes Losquadro | Yes Lupardo     | Yes Magee       | Yes Magnarelli     |
| ER Maisel     | Yes Malliotakis | ER Markey       | Yes McDonough      |
| Yes McEneny   | Yes McKeivitt   | Yes McLaughlin  | ER Meng            |
| Yes Miller D  | Yes Miller J    | Yes Miller M    | Yes Millman        |
| Yes Molinaro  | Yes Montesano   | Yes Morelle     | Yes Moya           |
| Yes Murray    | ER Nolan        | Yes Oaks        | Yes O'Donnell      |
| Yes Ortiz     | Yes Palmesano   | Yes Paulin      | Yes Peoples-Stokes |
| Yes Perry     | Yes Pheffer     | Yes Pretlow     | Yes Ra             |
| Yes Rabbitt   | Yes Raia        | Yes Ramos       | Yes Reilich        |
| Yes Reilly    | Yes Rivera J    | ER Rivera N     | Yes Rivera P       |
| Yes Roberts   | Yes Robinson    | Yes Rodriguez   | Yes Rosenthal      |
| Yes Russell   | Yes Saladino    | ER Sayward      | Yes Scarborough    |
| Yes Schimel   | Yes Schimminger | Yes Schroeder   | Yes Simotas        |
| Yes Smardz    | Yes Spano       | Yes Stevenson   | Yes Sweeney        |
| Yes Tedisco   | Yes Tenney      | Yes Thiele      | Yes Titone         |
| Yes Titus     | Yes Tobacco     | Yes Weinstein   | Yes Weisenberg     |
| ER Weprin     | Yes Wright      | Yes Zebrowski K | Yes Mr. Speaker    |

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A5318



ROBERT K. SWEENEY  
Assemblyman 11<sup>TH</sup> District

THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

CHAIRMAN  
Environmental Conservation

COMMITTEES  
Education  
Rules  
Veterans' Affairs

June 21, 2011

Governor Andrew Cuomo  
Executive Chamber  
Albany, NY 12224

A.5318A: An act to amend the  
Environmental Conservation Law, in  
relation to regulating the use of the state's  
water resources; and to repeal titles 16 and  
33 of article 15 of such law relating to Great  
Lakes water conservation and management  
and water withdrawal reporting

Dear Governor Cuomo,

I write you now regarding the above captioned bill, which authorizes the Department of Environmental Conservation (DEC) to implement a water withdrawal permitting program to regulate the use of the State's water resources. This is a Departmental Bill.

Under current law, which hasn't been updated in nearly 50 years, the DEC only has the authority to regulate withdrawals for public drinking water suppliers. As a result, use of water for commercial and industrial purposes remains largely unregulated.

New York State has plentiful water resources. The preservation and protection of these resources is vital to New York's residents and businesses, which rely on them for drinking water, and to support agriculture, manufacturing, other industries and recreation in the State.

Demand for New York's freshwater is increasing: population growth, maintaining fisheries and wildlife habitats, and the increasing use of water for commercial, industrial and other purposes have all put pressure on water resources. In addition, potential impacts from climate change, and proposals to export vast amounts of water from New York to other states and abroad could pose new threats to the State's water supply.

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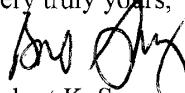
These issues have served to highlight the need to better regulate the State's water and modify the DEC's currently very limited ability to regulate water withdrawals for most purposes.

Enclosed are the following documents your office requested:

- copies of the bill and sponsor's memorandum in support of this bill
- copies of memoranda from outside organizations

I respectfully urge that you sign this bill into law.

Very truly yours,



Robert K. Sweeney  
Member of Assembly

RKS/amd

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**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(f)**

**BILL NUMBER:** A5318A

**SPONSOR:** Sweeney (MS)

**TITLE OF BILL:** An act to amend the environmental conservation law, in relation to regulating the use of the state's water resources; and to repeal titles 16 and 33 of article 15 of such law relating to Great Lakes water conservation and management and water withdrawal reporting

**Purpose:** The purpose of this bill is to authorize the Department of Environmental Conservation (DEC) to implement a water withdrawal permitting program to regulate the use of the State's water resources.

**Summary of provisions:** Section 1 of the bill would amend Environmental Conservation Law (ECL) § 15-1501 to simplify the existing water supply permit program and to expand the program to require permits for the most significant water uses. Specifically, ECL § 15-1501 would be amended to: (1) require that, once DEC adopts regulations, all persons that operate or propose to operate a water withdrawal system with a capacity equal to or greater than the "threshold volume" of 100,000 gallons per day (gpd) obtain a permit from DEC, except that a water withdrawal for agricultural purposes would require a permit if it exceeded an average of 100,000 gpd over any 30-day period; (2) provide that all valid public water supply permits or approvals issued by DEC or its predecessors remain in full force and effect for purposes of satisfying the new permit requirement; (3) provide that existing water withdrawals would be entitled to an initial permit based on their maximum water withdrawal capacity reported to DEC on or before February 15, 2012 pursuant to existing law; (4) clarify that a supplier of public water may not install or construct a public water supply system until it has received approval from the New York State Department of Health (DOH) as may be required by the State Sanitary Code; (5) require DEC to adopt regulations to implement a permitting program for water withdrawals equaling or exceeding the threshold volume; (6) authorize DEC to consolidate existing multiple public water supply permits covering a single existing water withdrawal system for administrative efficiency; and (7) exempt certain water withdrawals from permitting requirements, including withdrawals for agricultural purposes that have been registered or reported to DEC on or before February 15 2012.

Section 2 of the bill would amend ECL § 15-1502 to add definitions for the following terms: "agricultural purpose," "compact basin commission," "environmentally sound and economically feasible water conservation measures," "interbasin diversion," "person," "potable water," "public water supply system," "threshold volume," "water withdrawal system" and "withdrawal."

Section 3 of the bill would amend ECL § 15-1503 to: (1) make conforming amendments necessitated by other amendments to Title 15 made by the bill; (2) clarify the information that must be provided with a permit application; (3) require that, in making its permit decisions, DEC shall determine whether a proposed withdrawal takes into consideration other sources of supply that are or may become available, will be adequate for

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the proposed use, is just and equitable to all affected municipalities and their inhabitants, cannot be reasonably avoided through efficient use and conservation of existing water supplies, is limited to quantities that are considered reasonable for the 'purposes for which the water use is proposed, will be implemented in a manner that ensures it will result in no significant individual or cumulative adverse impacts, incorporates environmentally sound and economically feasible water conservation - measures, and is consistent with applicable municipal, state and federal laws and regional and international agreements; and (4) provide that a new permit for a water withdrawal system and any renewal thereof will be valid for a period not to exceed ten years.

Section 4 of the bill would add a new ECL § 15-1504 to make the provisions in existing Titles 16 and 33 of ECL Article 15, which would be repealed by sections 8 and 9 of the bill, applicable to water withdrawals for agricultural purposes that are registered or reported to DEC under such titles on or before February 15, 2012. While such existing, agricultural withdrawals would not require a water withdrawal permit, they must continue to be registered and reported under the new ECL § 15-1504 in the same manner as required under Titles 16 and 33.

Section 5 of the bill would amend ECL § 15-1505 to: (1) provide that no person may make a new or increased interbasin diversion of water which results in a diversion in excess of one million gpd until the person has registered the diversion with DEC; (2) provide that no later than February 15, 2013, all existing diversions in excess of one million gpd must be registered with DEC; and (3) provide that no person shall make a new or increased interbasin diversion which results in a significant adverse impact on the water quantity of the source New York major drainage basin. This section would exempt from the registration requirement an interbasin diversion which is part of a water withdrawal permitted by DEC or its predecessors.

Section 6 of the bill would amend ECL § 15-1521 to provide that the Public Service Commission has jurisdiction to set the rates for the supply of water by one public water supply system to another and make technical and conforming amendments necessitated by other amendments to Title 15 made by the bill.

Section 7 of the bill would amend ECL § 15-1529 to provide that, in lieu of DEC inspection and approval, the construction of any water withdrawal system must be supervised by a licensed professional engineer that will certify to DEC that the system has been fully completed in accordance with the approved engineering report, plans and specifications, and the permit.

Section 8 of this bill would repeal Title 16 of ECL Article 15 (Title 16), related to Great Lakes water conservation and management, because the provisions of Title 16 will be incorporated into the permitting requirements of Title 15 as amended by this bill.

Section 9 of the bill would repeal Title 33 of ECL Article 15 (Title 33), which was added by Chapter 59 of the Laws of 2009 to enable the State to gain information about large water withdrawals, because the information collected pursuant to Title 33 will be incorporated into the permitting requirements of Title 15 as amended by this bill.

Section 10 of the bill would amend ECL § 71-1127 to increase the maximum civil penalty for violations of ECL Article 15 from \$500 to \$2,500 per violation and from \$100 to \$500 for each day during which the violation

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RETRIEVE

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continues.

Section 11 of the bill would provide for an effective date of February 15, 2012, except that section 4 of the bill would take effect immediately, and sections 7 and 8 of the bill, which would repeal Title 16 and Title 33, would take effect on December 31, 2013.

Existing law: ECL Article 15 sets forth New York's water resources program. Title 15 sets forth then provisions related to regulating water supply. ECL § 15-1501 requires public water suppliers to obtain a permit from DEC. ECL § 15-1502 provides the definitions applicable to Title 15. ECL § 15-1503 sets forth the criteria applicable to DEC's decision to grant or deny a permit. ECL § 15-1505 requires a permit for supplying water to other states. ECL § 15-1521 authorizes DEC to require that an applicant for a water supply permit make provisions for and supply water to other areas of the state if the areas should be supplied by the water source sought by the applicant. ECL § 15-1529 requires DEC approval of completed construction before a project may be operated. ECL § 71-1127 establishes the maximum civil penalty for any person who violates the provisions of ECL Article 15 or any rule, regulation, order or permit issued thereunder.

Legislative history: A similar bill, 2010 Governor's Program Bill 451, passed the Senate (S.8280-A) and was introduced in the Assembly (A.11436-13).

Statement in support: New York State is fortunate to have plentiful water resources. The preservation and protection of these resources is vital to New York's residents and businesses, who rely on these resources for drinking water supplies, and to support agriculture, manufacturing and other industries and recreation in the State. Aquatic and terrestrial flora and fauna are also dependent on these critical resources to maintain healthy populations. Good policy and sound natural resource management practices are critical to assuring long-term supplies of water to meet these needs now and into the future.

Pursuant to ECL Article 15, DEC has been entrusted with the responsibility to conserve and control New York State's water resources for the benefit of all the inhabitants of the State. However, the water supply provisions of Title 15 derive primarily from statutes written in the first half of last century, and therefore are outdated. Under the provisions of Title 15, DEC's regulatory authority is largely limited to public water supplies to ensure adequate quantities of potable water. As a result, consumptive uses of water for agricultural, commercial, and industrial purposes remain largely unregulated by the State.

Moreover, since the provisions of Article 15 were enacted, population growth, pressures to keep water instream for fisheries and the environment, and increased use of water for commercial, industrial and other purposes have resulted in substantially increased demands on the State's water resources. In addition, potential impacts from climate change, and proposals to export vast amounts of water from New York to other states and abroad could pose new threats to the State's water supply. These issues have served to highlight the limitations on the State's water resources program and DEC's limited ability to regulate water withdrawals for many purposes. In contrast, neighboring states of Connecticut, New Jersey, Rhode Island, and Massachusetts all have programs that regulate industrial, commercial and agricultural water withdrawals.

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Another important recent development is enactment of the Great Lakes-St. Lawrence River Basin Water Resources Compact (Compact) which includes a number of provisions to preserve and protect the water resources of the Great Lakes-St. Lawrence River Basin (Great Lakes Basin). The Great Lakes Basin is home to 20 percent of New York's population and covers approximately 50 percent of New York State by area. A key provision of the Compact requires New York to regulate all water withdrawals occurring in the New York portion of the Great Lakes Basin.

This bill, by authorizing DEC to implement a permitting program for all water withdrawal systems with a capacity equal to or greater than 100,000 gpd, would allow New York to meet its Compact obligation to implement a regulatory program for water withdrawals in the Great Lakes Basin. Moreover, application of the program statewide assures consistent requirements throughout New York and creates an even regulatory playing field while at the same time protecting the State's finite water resources. Further, this bill would result in a strengthening of the water conservation elements of the current permitting program and encourage water reuse, consistent with the Compact and sound resource management.

Finally, by focusing DEC's jurisdiction on significant withdrawals, DEC would no longer be required to issue permits for smaller public water supplies. This change would allow DEC to focus its attention on large withdrawals that have the potential to have significant impact on the quantity and quality of the State's water resources, while relieving smaller communities of the regulatory burden of obtaining a permit from DEC. Although small public water supplies would be exempt from DEC's permitting process, DOH would continue to regulate them to ensure their adequacy and the protection of public health.

Budget Implications: This bill would not have any significant fiscal impact on the State because DEC would implement the new requirements with existing resources.

Effective date: This bill would take effect February 15, 2012; provided, however, that section 4 would take effect immediately; sections 8 and 9 would take effect December 31, 2013; and that any proceeding commenced prior to February 15, 2012 pursuant to ECL § 151521 shall remain under the jurisdiction of DEC.

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RETRIEVE

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## DIVISION OF THE BUDGET BILL MEMORANDUM

Session Year 2011

SENATE:  
No.ASSEMBLY:  
No. 5318

Primary Sponsor: Sweeney

Law: Environmental Conservation

Sections: 15 and 71

Division of the Budget recommendation on the above bill

APPROVE: XNO OBJECTION:   

Departmental

1. Subject and Purpose:

To better oversee the use of the State's valuable water resources, this bill authorizes the Department of Environmental Conservation (DEC) to implement a water withdrawal permitting program.

The bill amends Environmental Conservation Law to:

- Simplify the existing water supply permit program and expand the program to require permits for the most significant water uses;
- Add definitions for terms such as "agricultural purpose," "compact basin commission," "interbasin diversion," "threshold volume," and "water withdrawal system;"
- Clarify the information that must be provided with a permit application and provide that a new permit for water withdrawal system and a permit renewal will be valid for no more than ten years;
- Provide that no person make a new or increased interbasin diversion of water which results in a diversion in excess of one million gallons per day (gpd) until registered with DEC;
- Repeal certain provisions of previous laws that enable the State to gain information about large water withdrawals and incorporate into the permitting requirements amended by this bill; and
- Increases the maximum civil penalty for violations of ECL Article 15 from \$500 to \$2,500 per violation and from \$100 to \$500 for each day during which the violation continues.

Under current law DEC has the responsibility to conserve and control the State's water resources. Since the current law was enacted many new issues have evolved -- such as climate change, horizontal well drilling and proposals to export vast amounts of water from New York to other states and abroad. Any of these pose new threats to the State's water supply. Neighboring states of Connecticut, New Jersey, Rhode Island and Massachusetts all have programs that regulate industrial, commercial and agricultural water withdrawals. At the same time, some regulatory burdens are reduced by limiting jurisdiction to withdrawals which exceed 100,000 gpd, since DEC would no longer be required to issue permits for smaller public water supplies. This change allows DEC to focus its attention on large withdrawals that



have the potential to have significant impact on the quantity and quality of the State's water resources, while relieving smaller communities of the regulatory burden of obtaining a permit from DEC.

This bill would take full effect February 15, 2012.

2. Budget Implications:

This bill would not have any significant fiscal impact on the State because DEC would implement the new requirements with existing resources. This bill is a major priority for DEC and the Governor's Office and was included as a departmental bill. Additionally, DEC has done significant outreach with all known interested stakeholders and resolved objections to the bill that were raised.

3. Recommendation:

This bill would not have a fiscal impact as DEC is expected to implement within current resources. This bill is considered a priority for DEC as well as the Executive Chamber and was included as a departmental bill. Accordingly, the Division of the Budget recommends approval of this legislation.

**New York State Department of Environmental Conservation**

Office of Legislative Affairs, 14<sup>th</sup> Floor  
 625 Broadway, Albany, New York 12233-1050  
**Phone:** (518) 402-2797 • **FAX:** (518) 402-9016  
**Website:** [www.dec.ny.gov](http://www.dec.ny.gov)



Joseph Martens  
Commissioner

August 3, 2011

**MEMORANDUM**

**TO:** Mylan L. Denerstein, Esq.  
Counsel to the Governor

**RE:** A5318-A/S.3798—Assemblymember Sweeney/Senator Grisanti  
Recommendation: Approval

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The Department of Environmental Conservation (DEC) submits the following comments on A.5318-A, which has passed both houses of the Legislature and will be delivered to the Governor for his consideration.

This bill, which is DEC departmental bill #01-11, would amend several provisions of Article 15 of the Environmental Conservation Law (ECL) to authorize DEC to implement a comprehensive permitting system for significant water withdrawals across the state, to enhance DEC's ability to manage the State's water resources to promote economic growth and address droughts. The bill would take effect February 15, 2012; however, permits for withdrawals other than for public water supplies (that are already subject to permitting) would not be required until DEC adopts implementing regulations. In addition, the provisions applicable to withdrawals for agricultural purposes take effect immediately.

**Description of the bill:**

More specifically, this bill would amend ECL §15-1501 to simplify the existing water supply permit program and to expand the program to require permits for the most significant water withdrawals. ECL §15-1501 as amended would require that, once DEC promulgates regulations, all persons that operate or propose to operate a water withdrawal system with a capacity equal to or greater than the "threshold volume" of 100,000 gallons per day (gpd) obtain a permit from DEC, with certain exceptions. The bill would amend ECL §15-1502 to add new definitions applicable to the new permitting program and ECL §15-0503 to set forth the criteria DEC shall use in making its permit decisions.

This bill would also add a new ECL §15-1504 to make the existing registration and reporting provisions in Titles 16 and 33 of ECL Article 15, which would be repealed by this bill, applicable to water withdrawals for agricultural purposes that are registered or reported to DEC under these titles on or before February 15, 2012. While these existing agricultural withdrawals would not require a water withdrawal permit, they must continue to register and report under the

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new ECL §15-1504. The threshold for reporting withdrawals for agricultural purposes would be consistent with the threshold for registrations of withdrawals in the Great Lakes Basin under existing Title 16: a withdrawal of water of a volume in excess of an average of 100,000 gallons per day in any consecutive 30-day period.

The bill makes amendments to several other provisions of ECL Article 15 to: prohibit a new or increased interbasin diversion of water which results in a diversion in excess of one million gpd until the person has registered the diversion with DEC; transfer to the Public Service Commission jurisdiction to set the water rates in the limited cases where DEC specifically requires that one public water supplier provide water service to another and they cannot agree upon a rate; and provide that, in lieu of DEC inspection and approval, the construction of any water withdrawal system must be supervised by a licensed professional engineer that will certify to DEC that the system has been fully completed in accordance with the approved engineering report, plans and specifications, and the permit. The bill also would repeal, effective December 31, 2013, Titles 16 and 33 of ECL Article 15, related to Great Lakes water conservation and management, and reporting of water withdrawals, respectively, because the information collected pursuant to these titles will be incorporated into the new permitting requirements of Title 15.

Finally, this bill would amend ECL §71-1127 to increase the maximum civil penalty for violations of ECL Article 15 from \$500 to \$2,500 per violation and from \$100 to \$500 for each day during which the violation continues.

**Discussion:**

New York State is fortunate to have plentiful water resources. The preservation and protection of these resources is vital to New York's residents, farmers, and businesses who rely on these resources for drinking water supplies, and to support agriculture, manufacturing and other industries and recreation in the State. Aquatic and terrestrial flora and fauna are also dependent on these critical resources to maintain healthy populations. Good policy and sound natural resource management practices are critical to assuring long-term supplies of water to meet these needs.

Pursuant to ECL Article 15, DEC has been entrusted with the responsibility to conserve and manage New York State's water resources for the benefit of all the inhabitants of the State. The water supply provisions of Title 15 of ECL Article 15, however, derive primarily from statutes written in the first half of last century, and therefore are outdated. Under the provisions of Title 15, DEC generally only has authority to regulate public water supplies to ensure adequate quantities of potable water. As a result, consumptive uses of water for agricultural, commercial, and industrial purposes remain largely unregulated across the State.

This bill would allow DEC to comply with a significant commitment under the Great Lakes-St. Lawrence River Basin Water Resources Compact (Compact): regulation of all significant water withdrawals occurring in the New York portion of the Great Lakes Basin. This bill also directs DEC to establish a water conservation and efficiency program, another key responsibility of New York State under the Compact.

This bill would result in a strengthening of the water conservation elements of the current

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permitting program for public water supplies and encourage water reuse, consistent with the Compact and sound resource management. Further, increasing the penalties applicable to violations of ECL Article 15 should deter violations that threaten the quality and quantity of the State's water resources.

DEC worked extensively with stakeholders, including agriculture, industry and environmental advocates, to resolve their concerns. As a result, existing agricultural withdrawals are exempt from the new permit requirement as long as these withdrawals are reported to DEC as required under current law. In addition, all existing water withdrawals would be entitled to an initial permit, subject to appropriate terms and conditions, based on the maximum water withdrawal capacity reported to DEC on or before February 15, 2012 pursuant to existing law. Language was also added to the bill to authorize DEC to establish quantitative standards that maintain stream flows protective of aquatic life, consistent with the policy objectives of ECL Article 15. Further, the criteria that DEC must consider in making its permit decisions are based on the decision-making standard in the Compact.

This bill, by authorizing a comprehensive statewide permitting program for significant water withdrawals, would help ensure that water remains available for drinking water supply, agriculture, hydropower, manufacturing, wildlife and plant species, navigation, water-based recreation, wetlands, and other uses, while allowing DEC to regulate withdrawals of water that are unregulated now, like water taken by bottled water companies, or large withdrawals of water for hydraulic fracturing. It would help DEC to protect existing water users, especially for drinking water purposes, and help new businesses to know where to locate in New York, especially if the business is heavily water dependent.

This bill reflects a balanced approach to protecting the State's water resources. It recognizes the importance of regulating significant water withdrawals while not placing undue regulatory burdens on New York's farmers or businesses.

DEC strongly supports this legislation and recommends its approval.

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/s/

Maureen A. Coleman  
Legislative Counsel

c: Commissioner Martens  
Steven Russo  
James Tierney

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**Brookfield**

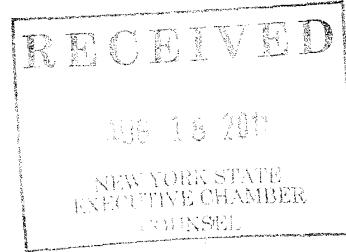
Brookfield Renewable Power Inc.  
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Marlborough, MA 01752-4707

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Fax (508) 485-5207  
www.brookfieldpower.com

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August 17, 2011

The Honorable Andrew M. Cuomo  
Governor of the State of New York  
Capitol Building  
Albany, NY 12224



Dear Governor Cuomo,

The purpose of this letter is to provide information to you in advance of your anticipated signing of the "Water Resources" legislation, A. 5318-A/S.3798, sponsored by Assemblyman Sweeney and Senator Grisanti. As the operator of the State's most extensive fleet of 75 hydropower facilities in 13 New York Counties, we at Brookfield Renewable Power have raised our specific concerns with this bill.

On April 11, we mailed the attached letter expressing our concerns with this matter to your Department of Environmental Conservation (DEC) Commissioner Joe Martens, along with the two legislative sponsors. On April 15, we met with a cross section of the staff of the DEC working on this matter. At that time, we shared with them the attached letter and spoke about the potential for amendments to the bill, as well as the plans for the Department to address certain matters in the regulatory process after the legislation was signed into law.

In that session, DEC staff indicated to us that they were strongly opposed to further amendments to the legislation, since so many parties had specific concerns they wished to see addressed, but they assured us the concerns we raised would be addressed to our satisfaction in the regulatory process to follow.

Specifically, we were informed that:


- hydropower facilities are not a target of this legislation,
- there was no desire by DEC to supersede the exclusive jurisdiction over hydroelectric facilities currently under the jurisdiction of the Federal Energy Regulatory Commission (FERC), and
- there were no changes foreseen for any run of river or "non consumptive" hydropower.

These assurances were comforting, and we have been proceeding under the presumption that these items would specifically be excluded in the regulatory process to follow. If so, Brookfield can be supportive of the direction of the state in this regard.

Brookfield has a substantial economic presence in New York. Brookfield Renewable Power is a wholly owned subsidiary of Brookfield Asset Management, whose companies collectively employs over 700 and pay over \$155 million annually in property taxes within New York State.

Thank you for the opportunity to comment on this matter, and we trust the assurances we received from the DEC will become part of the final regulations on this legislation.

Sincerely,



Daniel Whyte  
Vice President

Attachment: April 11, 2011 Letter to DEC Commissioner Joe Martens

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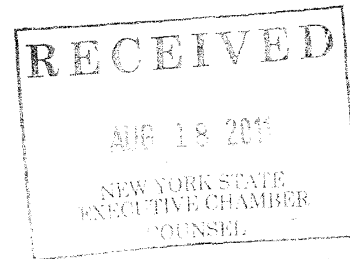
**Brookfield**

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April 11, 2011

Commissioner Joe Martens  
Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-0001



Dear Commissioner Martens,

The Department of Environmental Conservation ("Department") has requested Senate Bill 3798/Assembly Bill 5318-A, "An Act to Amend the Conservation Law". This bill would require permits for inter-basin diversions of water and approval of modifications to existing systems. Brookfield is concerned about the implication that the Department may try to super cede Federal Energy Regulatory Commission authority over hydropower facilities.

Brookfield Renewable Power owns and operates 75 hydropower facilities in 13 New York counties and 25 additional facilities in eight other states. We are also developing wind and transmission. Brookfield Renewable Power is a wholly-owned subsidiary of Brookfield Asset Management whose companies collectively pay over \$155 million a year in New York Property taxes and employ over 700 people within the state. Brookfield has over 100 years of experience operating hydropower facilities. In New York, more than half of our hydropower facilities are certified by the Low Impact Hydropower Institute ([www.lowimpacthydr.org](http://www.lowimpacthydr.org)).

SB 3798/AB 5318-A modifies certain sections of the Conservation Law regarding water withdrawals. It is our understanding that hydropower facilities are not a target of these changes. However, the language contained within the bill leaves open the possibility that the Department will try to use this law to make additional requirements for hydropower facilities even though the Federal Energy Regulatory Commission ("FERC") has exclusive jurisdiction over these facilities.

For example, in Section 1 (2), which amends §15-1501, the bill states that "Until the department promulgates regulations pursuant to subdivision four of this section, nothing contained in subdivision one of this section concerning permits from the department shall be applicable to water withdrawals other than for a public water supply system." This language implies that the regulations may be more expansive and thereby require compliance with the permitting requirements of subdivision one for more water systems than just public water supply systems.

In addition, Section 1 (4), starting at line 31, says "Such regulations may establish quantitative standards that maintain stream flows protective of aquatic life, consistent with the policy objectives of this article and any other conditions, limitations and restrictions that the department, in consultation with the department of health, determines are necessary to protect the environment and the public health, safety and welfare and to ensure the proper management of the waters of the state." This language is very similar to standards established by FERC and incorporated by reference into our FERC licenses.

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**Brookfield**

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Despite the implication that the Department may be able to require permits for hydropower operations, FERC would take jurisdiction.

Similarly, Section 1 (9) makes reference to "diversion" and (15) makes reference to "storage" both of which could be inferred to include hydropower operations.

Brookfield respectfully requests that the bill be amended to include language that recognizes FERC jurisdiction over hydropower facilities therefore exempting such facilities from the provisions of the bill. Brookfield suggests amending Sections 15-501, 15-503, and 15-505 of the environmental conservation law to include the following:

*Nothing contained herein shall require the owner or operator of a hydro-electric generation facility licensed by the Federal Energy Regulatory Commission to obtain a permit under any portion of this Section.*

If you have further questions regarding our concerns, please do not hesitate to contact me.

Sincerely,



Daniel Whyte  
Vice President



342 Hamilton Street, Albany, NY 12210 phone (518) 432-1770 [www.adirondackcouncil.org](http://www.adirondackcouncil.org)

2011 Legislative Session

## MEMORANDUM IN SUPPORT

**A. 5318-A (Sweeney) / S. 3798 (Grisanti)**

**AN ACT to amend the environmental conservation law, in relation to regulating the use of the state's water resources; and to repeal titles 16 and 33 of article 15 of such law relating to Great Lakes water conservation and management and water withdrawal reporting**

The Adirondack Council supports this legislation which would permit the Department of Environmental Conservation (DEC) to create a water withdrawal permitting program for the purposes of regulating the use of New York's water resources. New York's most valuable resource, our abundant fresh water, is at risk from the increased demand for the exportation of vast amounts of our water.

Population shifts and urban sprawl has resulted in increased use of water for commercial, agricultural and industrial purposes that have placed strains on the state's water supply in special places like the Adirondack Park. This legislation would update current regulations regarding water supply and extraction by authorizing DEC to create a statewide water management plan requiring a permit or permit modification in order to make water withdrawals from both new and existing sources as well as regulate water withdrawal systems with the capacity to withdraw 100,000 or more gallons per day.

The bill would strengthen water conservation efforts and assure compliance with the Great Lakes Compact which requires that New York regulate all water withdrawals occurring in the New York portion of the Great Lakes Basin. Similar efforts have been implemented by our neighbors Connecticut, New Jersey, Massachusetts, and Vermont.

**For the above mentioned reasons, the Adirondack Council supports this legislation and urges its passage.**

**The Adirondack Council is a member based not-for-profit organization dedicated to ensuring the ecological integrity and wild character of the Adirondack Park.**

**For more information contact:  
Scott M. Lorey or Alanah N. Keddell**

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August 16, 2011

Hon. Andrew M. Cuomo  
Governor  
Executive Chamber  
New York State Capitol  
Albany, New York 12224

**Re: S. 3798 (Grisanti) / A. 5318-A (Sweeney)  
New York State Water Resources Protection Act**

Dear Governor Cuomo:

On behalf of the 70,000 members of The Nature Conservancy in New York, I am writing to express our strong support for the New York State Water Resources Protection Act (A. 5318-A Sweeney / S. 3798 Grisanti) and urge you to sign the bill into law. As you know, this legislation is a departmental bill. We appreciate the support that you and the Commissioner have given this legislation to date, and look forward to partnering with the state to implement important programs to protect our water resources.

The Nature Conservancy supports this legislation because it would create a comprehensive statewide water management program that protects New York's ecologically important water resources, addresses the limitations of the State's current water resources program, and assist the state with the implementation of the Great Lakes – St. Lawrence River Water Resources Compact. There is an urgent need for a comprehensive water management program in New York to allow the state works to address emerging threats to our water resources. The legislation provides the Department of Environmental Conservation (DEC) the authority to develop scientifically based streamflow standards as part of a water management program in New York State, a key reason for the Conservancy's support.

The Conservancy is committed protecting freshwater resources, and believes that the protection of water for people and nature are not only inseparable but two sides of the same coin. In New York, our rivers, lakes and streams provide clean drinking water for millions of residents and offer countless opportunities for recreation, generating millions of dollars in tourism revenue. They have historically supported fisheries from brook trout to oysters, some of which are now critically endangered. Our rivers, lakes and streams also support a wide array of globally important aquatic species. Freshwater mussels like the federally endangered dwarf wedgemussel and the brook floater live in the rivers and streams of New York State. Ancient fish like the federally endangered shortnose sturgeon, American eel and paddlefish, unchanged for nearly 100 million years are found in New York's waters. A rich heritage of native fish including the treasured brook trout and American shad also occupy New York's freshwater habitats.

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These important species and their habitats depend on a natural pattern of flows with seasonal highs and lows and with the changes from wet years to dry years. These natural variations are a key 'driver' of ecological health in freshwater ecosystems. State laws currently regulate water quality but do not adequately protect water levels and flows, which can be significantly altered by water withdrawals, diversions or retention.

Establishing scientific streamflow protection standards for the state's rivers, lakes and streams will allow DEC to determine whether a proposed water withdrawal, diversion or retention can be made without significant adverse impacts to natural resources. These standards should explicitly protect New York's diversity of native aquatic life, be based on the natural variation of water flows and levels, and be developed using the best available scientific information and approaches. Several other states in the northeast have recently enacted legislation establishing streamflow standards, including Maine and Connecticut. Their experience in developing these statutes and the resultant regulations may be instructive for New York. The Conservancy offers our assistance to the state in developing scientifically based flows standards that respect both private rights and public needs, as well as the tools to implement credible, scientifically-based approaches to water management.

The Nature Conservancy urges you to sign this bill into law and create a comprehensive statewide water management program in New York State.

Thank you for your consideration of this important matter.

Sincerely,



R. Darryl Banks  
Deputy Director for Conservation Strategies and External Affairs

Cc: Ms. Mylan Denerstein, Counsel to the Governor  
Mr. Joseph Martens, Commissioner, Department of Environmental Conservation  
Mr. Thomas Congdon, Deputy Secretary for Energy and the Environment  
Senator Mark Grisanti  
Assemblyman Robert Sweeney

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New York Farm Bureau • 159 Wolf Road P.O. Box 5330 • Albany, New York 12205 • (518) 436-8495 Fax: (518) 431-5656

June 30, 2011

The Honorable Mylan L. Denerstein  
Counsel to the Governor  
State Capitol Building, Second Floor  
Albany, New York 12224-0341

**RE: A. 5318-A**

Dear Ms. Denerstein,

New York Farm Bureau, the State's largest agricultural advocacy organization, is offering our comments in support of this legislation, A. 5318-A. This bill, if enacted, would ease current water reporting requirements on farms in New York State.

New York's farmers depend upon timely access to our abundant sources of water for crop production and watering livestock. Given this need, the integrity of the water supply from the water resources of this region must be protected for use by the next generation of farmers. As such, we recognize that this legislation could help to protect existing water users, including farm operations, from new unpermitted large water users. Given the potential of drilling in the Marcellus Shale and the considerable water use associated with the drilling process, we generally support the effort to protect water supplies.

Farmers are often forced to comply with a vast number of burdensome reporting regulations that require an extensive amount of work by the farmer. The current law that requires farms to report water use capacity exceeding 100,000 gallons in one day is a perfect example of such a requirement, as virtually every farmer meets this threshold. The existing statute was enacted at the last minute as part of the 2009-2010 final state budget. This legislation ignored previous statute and interstate agreements governing water withdrawals enacted as part of the Great Lakes Basin Compact, which had already set a water withdrawal threshold at an average of 100,000 gallons of water used per day during a 30 day time frame.

These new, overly strict record keeping and water use requirements only hurt agricultural operations that are unable to afford the time and/or resources to spend managing yet another regulatory program. The artificially low threshold volume of 100,000 gallons in one day is inequitable for farm operations, because it does not recognize the seasonality of farming in the Northeast.

New York Farm Bureau is appreciative of the language included in A. 5318-A that adopts the threshold of 100,000 gallons used on a 30 day average. As such, this language recognizes that a farm is not like a factory, water bottling facility or a power plant -- farms don't need to use water every day. At certain times during the growing season a farm may need to irrigate their crop in dry weather, but they are not large scale year-round water users and should not be regulated as such.

We stand prepared to work with the Departments of Environmental Conservation and Agricultural and Markets to publicize these new requirements to the agricultural industry. It is also imperative that when the Department of Environmental Conservation promulgates the regulations governing water use permits, that it does so in a way that facilitates the provision of permits in a timely manner.

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We must ensure that new projects requiring permitting by the Department are not delayed without reason -- this could negatively impact rural communities that sorely need economic investment.

This legislation takes a step forward in easing a regulation that impacts the farm economy negatively. For these reasons, New York Farm Bureau respectfully requests the Governor's support of this legislation.

Thank you for your time and consideration of these comments. Should you have any questions or concerns please do not hesitate to contact me at any time.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeff Williams", written in a cursive style.

Jeff Williams  
Manager of Government Relations  
New York Farm Bureau

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**Scenic Hudson, Inc.**  
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## **MEMORANDUM OF SUPPORT**

### **Water Resources Repealer**

#### **A. 5318 (Sweeny, et. al) / S.3798 (Grisante)**

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##### **Summary of Legislation**

An act to amend the environmental conservation law, this legislation authorizes the Department of Environmental Conservation (DEC) to implement a water withdrawal permitting program to regulate the use of the State's water resources and to repeal titles 16 and 33 of article 15 of such law relating to Great Lakes water conservation and management and water withdrawal reporting.

These provisions intend to simplify existing water supply permit criteria, expand the program to require permits for the most significant water uses and would allow New York to meet its legal obligations under the enactment of the Great Lakes-St. Lawrence River Basin Water Resources Compact.

##### **Justification for Position**

New York enjoys an abundance of clean water for drinking and recreation. Residents, businesses, agricultural operations and manufacturing industries all depend on this resource to survive and flourish. On behalf of all the state's inhabitants—including aquatic and terrestrial flora and fauna—the responsibility to conserve and control this precious asset belongs primarily with the DEC.

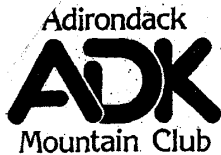
Substantially increasing demands on the State's water resources remain largely unregulated due to outdated statutes written for an environment and an economy from the first half of the last century. The DEC's ability to effectively manage water supplies and health must be reflected in more current legislative language and authority. The new provisions and water-related definitions in this bill will allow DEC to address changes in water use, including increased demand for commercial, industrial and agricultural water operations and potential threats created by oncoming climate change impacts.

Furthermore, attention to significant water withdrawals ensures that the DEC will be focused on the most serious risks to the quantity and quality of the State's water resources. This legislation also includes important provisions that address the unique needs of New York's agricultural industry. This element of the measure is to be commended as farms and farmland play an important role in the region's culture and economy.

**Scenic Hudson supports this legislation.**

*June 2011*

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Conservation

Education

Recreation

Since 1922

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## MEMORANDUM OF SUPPORT

**Bill:** A.5318-A by Assemblymember Sweeney  
S. 3798 by Senator Grisanti

**Status:** Assembly Committee on Environmental Conservation  
Advanced to Third Reading on Senate Floor

**Purpose:** Relates to the regulation of the use of the state's water resources;  
requires permits for interbasin diversions of water and approval of  
modification to existing systems.

**The Adirondack Mountain Club (ADK) strongly supports this legislation.**

This legislation amends the Environmental Conservation Law Section 15 to simplify the current permitting system, and require anyone with the capacity to withdraw more than 100,000 gallons of water per day obtain a permit from the New York State Department of Environmental Conservation.

The new article will clarify the information needed for a permit, along with requiring the DEC to determine whether a proposed withdrawal takes into consideration other water supply sources that have the potential to become available. The agency will decide if the withdrawal can be implemented in a manner that ensures it will not result in significant individual or cumulative adverse impacts. The DEC will also incorporate environmentally sound and economically feasible water conservation measures, consistent with applicable municipal, state and federal laws and regional and international agreements.

This would not be the first time that New York State has taken a proactive step to protect our water resources. New York State has an excellent record cooperating with other states and protecting our waters from mismanagement. Currently New York regulates withdrawals from the Delaware and Susquehanna Rivers as a member of a multi-state river commission. There is no logical reason that the state should regulate withdrawals from some rivers, while leaving others vulnerable to severe degradation.

ADK strongly supports this legislation to protect New York's clean water supply and safe guard this important asset from dwindling due to a lack of oversight. Our clean water resources support multi-million dollar fishing and tourism industries, and provide millions of New Yorker's with fresh drinking water. With the threat of natural gas exploitation consuming water at unprecedented levels, it is more important than ever that we have a regulatory system in place to protect our state's valuable resources.

**For these reasons, ADK respectfully and strongly urges you to support this important legislation.**

The Adirondack Mountain Club is dedicated to conservation, education, outdoor recreation and protection of New York's Forest Preserve, parks, wild lands and waters. The club represents over 28,000 hikers, paddlers, skiers and backpackers.

**For further information contact: ADK Office of Public Affairs at (518) 449-3870.**



# Audubon NEW YORK

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## BOARD OF DIRECTORS

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## MEMORANDUM IN SUPPORT

### CREATING A WATER MANAGEMENT PROGRAM FOR NEW YORK STATE ASSEMBLY BILL 5318-A SENATE BILL 3798

Audubon New York, the state program of the National Audubon Society representing 50,000 members and 27 local chapters, strongly supports Assembly Bill 5318-A (Assemblyman Sweeney) and Senate Bill 3798 (Senator Grisanti), An act to amend the environmental conservation law, in relation to regulating the use of the state's water resources; and to repeal titles 16 and 33 of article 15 of such law relating to Great Lakes water conservation and management and water withdrawal reporting

New York is blessed with an abundance of fresh water which is critical to the quality of life and economic well being for the state's residents. Each day our incredible freshwater ecosystems like the Great Lakes, Hudson River, and the thousands of other rivers, lakes and streams in the state provide millions of people with clean drinking water, and countless other important benefits from supporting commerce and industry to providing for recreation and tourism. Most importantly, our freshwater resources provide vital habitat for birds, fish and other wildlife species, including many which are threatened and endangered. Many of the aquatic habitats that support this great diversity of species are highly susceptible to artificial changes in water levels resulting from misuse and mismanagement of water.

Although seemingly limitless, water is a finite resource which must be properly managed and protected to prevent against depletion. Each day, new threats to our water quantity are emerging from proposals to establish water bottling facilities to expanded natural gas drilling using hydraulic fracturing, all signaling that the state needs a new comprehensive water management program to protect our water resources. This legislation provides for the creation of such a water management program in New York State which would regulate all users who withdraw more than 100,000 gallons/day, and provide the department with better information on the amount of water being used in the State. In addition, this important bill requires the creation of a strong water efficiency and conservation program that will ensure we are not wasting this precious resource. This legislation is also critical for implementing key provisions of the Great Lakes St. Lawrence River Basin Water Resources Compact, an important water management program for the Great Lakes which was passed by each of the eight Great Lakes states and signed by the President in 2008.

While this legislation is a strong step forward for conserving our water resources, this bill could be strengthened by including a permit fee structure which will provide the necessary resources for the Department to properly implement this important program. Additionally, the bill could be furthered strengthened by requiring the Department to develop and adopt strong flow standards, instead of only suggesting the Department may adopt such standards. While we strongly support the bill as drafted, we do urge for these strengthening provisions to be considered during negotiations or in subsequent legislation.

It is for these reasons that Audubon New York strongly supports A.5318-A / S.3798, an act to create a water management program for New York State, and urges its passage in the 2010 legislative session.

*For more information contact Sean Mahar, Director of Government Relations for Audubon New York at 518-869-9731*

**Reported to Assembly Codes Committee Agenda: March 15, 2011**

**On Third Reading in the Senate: March 10, 2011**

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**Brookfield**

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April 11, 2011

Assemblyman Robert Sweeney  
Room 625 Legislative Office Building  
Albany, NY 12248

Dear Assemblyman Sweeney,

The Department of Environmental Conservation ("Department") has requested Senate Bill 3798/Assembly Bill 5318-A, "An Act to Amend the Conservation Law". This bill would require permits for inter-basin diversions of water and approval of modifications to existing systems. Brookfield is concerned about the implication that the Department may try to super cede Federal Energy Regulatory Commission authority over hydropower facilities.

Brookfield Renewable Power owns and operates 75 hydropower facilities in 13 New York counties and 25 additional facilities in eight other states. We are also developing wind and transmission. Brookfield Renewable Power is a wholly-owned subsidiary of Brookfield Asset Management whose companies collectively pay over \$155 million a year in New York Property taxes and employ over 700 people within the state. Brookfield has over 100 years of experience operating hydropower facilities. In New York, more than half of our hydropower facilities are certified by the Low Impact Hydropower Institute ([www.lowimpacthydr.org](http://www.lowimpacthydr.org)).

SB 3798 modifies certain sections of the Conservation Law regarding water withdrawals. It is our understanding that hydropower facilities are not a target of these changes. However, the language contained within the bill leaves open the possibility that the Department will try to use this law to make additional requirements for hydropower facilities even though the Federal Energy Regulatory Commission ("FERC") has exclusive jurisdiction over these facilities.

For example, in Section 1 (2), which amends §15-1501, the bill states that "Until the department promulgates regulations pursuant to subdivision four of this section, nothing contained in subdivision one of this section concerning permits from the department shall be applicable to water withdrawals other than for a public water supply system." This language implies that the regulations may be more expansive and thereby require compliance with the permitting requirements of subdivision one for more water systems than just public water supply systems.

In addition, Section 1 (4), starting at line 31, says "Such regulations may establish quantitative standards that maintain stream flows protective of aquatic life, consistent with the policy objectives of this article and any other conditions, limitations and restrictions that the department, in consultation with the department of health, determines are necessary to protect the environment and the public health, safety and welfare and to ensure the proper management of the waters of the state." This language is very similar to standards established by FERC and incorporated by reference into our FERC licenses.



**Brookfield**

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Despite the implication that the Department may be able to require permits for hydropower operations, FERC would take jurisdiction.

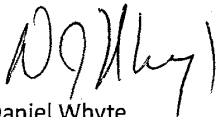
Similarly, Section 1 (9) makes reference to "diversion" and (15) makes reference to "storage" both of which could be inferred to include hydropower operations.

Brookfield respectfully requests that the bill be amended to include language that recognizes FERC jurisdiction over hydropower facilities therefore exempting such facilities from the provisions of the bill. Brookfield suggests amending Sections 15-501, 15-503, and 15-505 of the environmental conservation law to include the following:

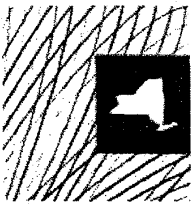
*Nothing contained herein shall require the owner or operator of a hydro-electric generation facility licensed by the Federal Energy Regulatory Commission to obtain a permit under any portion of this Section.*

If you have further questions regarding our concerns, please do not hesitate to contact me.

Sincerely,



Daniel Whyte  
Vice President



**The  
Business  
Council**

## Legislative Memo

**Contact:**  
**Marcus Ferguson**  
Director of Government Affairs  
T 518.465.7517 x212  
[www.bcnys.org](http://www.bcnys.org)

**BILL: S.3798 (Grisanti) / A.5318-A  
(Sweeney)**

**SUBJECT: Water Withdrawal Permits**

**DATE: March 11, 2011**

**SUPPORT**

**S.3798 (Grisanti) /  
A.5318-A (Sweeney)**

The Business Council supports the amended version of this legislation, however we maintain concerns regarding the need for this new regulatory mandate and its potential impact on businesses with direct water withdrawals.

This legislation would establish a major new statewide water withdrawal permitting program within the Department of Environmental Conservation (DEC) for new and existing users. It would authorize DEC to implement a statewide permitting program for all water withdrawals equal to or greater than 100,000 gpd in accordance with the Great Lakes Basin Compact ("Compact").

There were a number of concerns with the original bill which have been addressed. These include:

1. The "grandfathering" of existing water withdrawal capacities;
2. Exemptions for water withdrawals made in connection with remedial projects subject to federal or state judicial or administrative orders;
3. The applicability of minimum water withdrawal standards to newly constructed, not existing, water withdrawal systems; and
4. Requirements that any regulation of quantitative stream flows to be consistent with the policy objectives of Article 15 of the ECL.

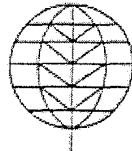
We are still concerned that the bill goes beyond the established provisions of the Compact by imposing a regulatory scheme on the entire state that regulates water users with "capacity" to withdraw 100,000 gpd. Under the Compact, water users are regulated when they use more than 100,000 gpd on average over a 30-day period. We would like to have seen the exact Compact standard applied to industrial users under this legislation.

We are also reluctant to support additional statewide regulatory programs at a time when we, along with others in industry and government, have raised alarms about the growth of regulation in the state and its impact on business.

However, in light of the good faith efforts on the part of the Governor's office and DEC and their willingness to make the appropriate changes to the bill, The Business Council will support S.3798/A.5318-A.

Moreover, The Business Council looks forward to participating in expected water withdrawal stakeholder meetings and to working with DEC as it promulgates the rules and regulations necessary to implement the provisions of this bill, once it becomes law, under the State Administrative Procedures Act (SAPA) process.

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EARTHWORKS

April 29, 2011

**Memorandum of support:** S3798-Grisanti/A5318-A-Sweeney et al.

**Bill summary:** This legislation would require any water users with the capacity to withdraw more than 100,000 gallons of water per day to first obtain a permit from the New York State Department of Environmental Conservation (DEC), unless the withdrawer is already permitted to do so by another entity (such as a basin commission). The bill directs the DEC to promulgate rules and regulations to implement the withdrawal program, create a water conservation and efficiency program, and require registration with the agency for inter-basin transfers of more than one million gallons per day.

**Justification for support:** New York is at a decision point with regard to potential expansion of the natural gas industry that would have significant and potentially devastating impacts on water resources and communities. Like many other states, New York must update and greatly strengthen its regulations if it is to protect people and the environment from modern-day, industrial gas development.

In more than a decade of work nationwide, the EARTHWORKS Oil and Gas Accountability Project has seen water resources severely depleted by extractive energy industries that are under-regulated and under-monitored, and whose demands for water are given primacy over the needs of agriculture, communities, and ecosystem stability. We support New York for taking a step to help avoid this situation through the proposed legislation.

S3798-Grisanti/A5318-A-Sweeney et al. provides—for the first time in New York—a mechanism by which the state must track and measure large withdrawals from streams, rivers, and lakes. This mechanism is one critical piece that will enable the state to prevent withdrawals that could compromise aquatic systems, public health, and other equally important economic activities. By establishing a water conservation and efficiency program, the bills will also help to reduce current and future stresses on New York's vital and precious water.

EARTHWORKS would strongly prefer to see clear statements added to the bills that reaffirm (1) Title 7 of the Environmental Conservation Law as it pertains to private (riparian) rights and (2) that these rights cannot be abrogated by large-scale use permits. In addition, we call on the state to restrict issuance of withdrawal permits if the needs of communities and the environment would be compromised. Elected officials must also ensure that the DEC has the necessary resources to enforce the water permitting and conservation programs and to conduct rigorous oversight of large water users.

On this basis, EARTHWORKS Oil & Gas Accountability Project urges your support of S3798-Grisanti/A5318-A-Sweeney et al.




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ENVIRONMENTAL  
ADVOCATES OF NEW YORK

ASSEMBLY & SENATE THIRD READING CALENDARS — May 2, 2011

# SUPPORTS

Key to Legislative Ratings:  Major Benefit  Substantial Benefit  Beneficial

## **A.5318-A (Sweeney, et. al) S.3798 (Grisanti, Avella) Departmental Bill #36**

### **Summary**

This legislation would require anyone with the capacity to withdraw more than 100,000 gallons of water per day to first obtain a permit from the New York State Department of Environmental Conservation (DEC), unless the withdrawer is already permitted to do so by another entity (such as a basin commission). The bill will not require farms to be permitted, but would instead establish a registration and regulation program for agricultural uses. The bill further directs the DEC to promulgate rules and regulations to implement the withdrawal program, create a water conservation and efficiency program, and require inter-basin transfers of more than one million gallons per day to be registered with the agency.

### **Explanation**

New York State is home to fresh, high-quality water. From the Finger Lakes to the Great Lakes, to the St. Lawrence and the Hudson, our waters are the backbone of our economy and our way of life. These resources support vital multi-million dollar fishing and tourism industries, serve as a means of conveying goods across the state and the country, provide millions of New Yorkers with clean, fresh, drinking water, and provide opportunities to swim, play, and relax.

Although New York's waters may seem abundant, they are a finite resource. The Great Lakes replenish at a rate of less than one percent per year and are at their lowest levels in decades. One need only look west to the Colorado River, which due to poor management decisions no longer flows to the Sea of Cortez, to see how misuse depletes natural flows and decimates ecosystems. New York has a history of protecting our waters from mismanagement. The Delaware and Susquehanna rivers each have multi-state and federal river commissions to oversee water use within their respective basins. The Great Lakes Compact, passed in New York and signed as a multi-state compact by President Bush in 2008, provides for responsible water management within the Great Lakes Basin.

However, nearly 31 percent of New York's waters enjoy a management program. Currently, the state has no formal program to guide large users in water-protective practices. Furthermore, in order to implement the Great Lakes Compact, the DEC needs direction for promulgating regulations. This bill will close these loopholes while addressing limitations in our water resources program.

**Environmental Advocates of New York strongly supports this bill.**

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**New York Farm Bureau**

159 Wolf Road, PO Box 5330  
 Albany, NY 12205  
 (518) 436-8495 \* Fax: (518) 431-5656



# SUPPORTS

March 10, 2011

S. 3798

Senator Grisanti

Full Senate

A. 5318-A

Assemblyman Sweeney

Assembly En. Con. Committee

**AN ACT IN RELATION TO REGULATING THE USE OF THE STATE'S WATER RESOURCES.**

New York Farm Bureau, the state's largest general farm advocacy organization, requests your support of this legislation. This bill, if enacted, would ease current water reporting requirements on farms in New York State.

New York's farmers depend upon timely access to our abundant sources of water for crop production and watering livestock. Given this need, the integrity of the water supply from the water resources of this region must be protected for use by the next generation of farmers. As such, we recognize that this legislation could help to protect existing water users, including farm operations, from new unpermitted large water users. Given the potential of drilling in the Marcellus Shale and the considerable water use associated with the drilling process, we generally support the effort to protect water supplies.

Farmers are often forced to comply with a vast number of burdensome reporting regulations that require an extensive amount of work by the farmer. The current law that requires farms to report water use capacity exceeding 100,000 gallons in one day is a perfect example of such a requirement, as virtually every farmer meets this threshold. The existing statute was enacted at the last minute as part of the 2009-2010 final state budget. This legislation ignored previous statute and interstate agreements governing water withdrawals enacted as part of the Great Lakes Basin Compact, which had already set a water withdrawal threshold at an average of 100,000 gallons of water used per day during a 30 day time frame.

These new, overly strict record keeping and water use requirements only hurt agricultural operations that are unable to afford the time and/or resources to spend managing yet another regulatory program. The artificially low threshold volume of 100,000 gallons in one day is inequitable for farm operations, because it does not recognize the seasonality of farming in the Northeast.

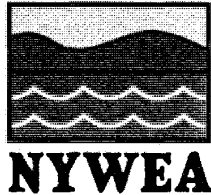
New York Farm Bureau is appreciative of the language included in S. 3798/A. 5318-A that adopts the threshold of 100,000 gallons used on a 30 day average. As such, this language recognizes that a farm is not like a factory, water bottling facility or a power plant -- farms don't need to use water every day. At certain times during the growing season a farm may need to irrigate their crop in dry weather, but they are not large scale year-round water users and should not be regulated as such.

*(Continued on next page)*

***Public Policy Division***

*Julie Suarez, Director - Jeff Williams, Deputy Director  
 Catherine Mural, Nicole Willis, Kelly Young*

000033



**The New York Water Environment Association, Inc.**  
*The Water Quality Management Professionals*

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(315) 422-7811 • Fax: 422-3851  
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March 29, 2011

Senator Mark Grisanti  
NY State Senate - Legislative Office Building, Room 902  
Albany, NY 12247

Assemblyman Robert Sweeney  
NY State Assembly, Legislative Office Building, Room 625  
Albany, NY 12248

RE: Senate Bill No. S3798 and Assembly Bill No. A5318A – Relates to the  
Regulation of the Use of the State Water Resources – NYWEA's Evaluation

Dear Senator Grisanti and Assemblyman Sweeney,

As you know, the New York Water Environment Association (NYWEA) is a statewide nonprofit organization of approximately 2,500 water and wastewater professionals, environmental engineers and scientists, and water quality management professionals dedicated to protecting and enhancing the waters of New York. NYWEA is primarily an educational organization dedicated to educating not only our members but also those who are charged with setting policy and practices intended to protect the water environment here in New York.

Recently, NYWEA was asked by a representative of the New York State Department of Conservation (NYSDEC) if we have a position on the above-referenced Bill. While NYWEA has not routinely taken positions on individual bills, we have a program that uses a series of questions through which we review individual bills in an effort to provide an objective, unbiased third party review of proposed legislation by technical experts in protecting the water environment. Accordingly, NYWEA has reviewed proposed Bill S3798/A5318A and offers the attached summary review and recommendations for your consideration.

- “1. The quality of our environment is fundamental to our concern for the quality of life. It is hereby declared to be the policy of the State of New York to conserve, improve and protect its natural resources and environment... in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well being.
2. It shall further be the policy of the state to ...develop and manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations”.

Fresh water resources are becoming scarcer throughout the world and throughout the United States. NYWEA agrees with the Senate's supporting statement accompanying this Bill that "Good policy and sound natural resource management practices are critical to assuring long-term supplies of water to meet these needs now and into the future." Not only are our State's fresh water resources integral to the quality of life of current New Yorkers, careful management of this resource is imperative to New York's ability to attract positive economic development throughout the state.

The Bill will strengthen DEC's regulatory authority to carry out its duties as the trustee of the State's waters. While New York has recently begun requiring individuals and entities which withdraw 100,000 gpd or more of ground or surface water within the State to register with the State, DEC currently lacks a clear and uncontestable power to prohibit or otherwise regulate water withdrawals for uses other than for use in a Public Water Supply system. Likewise, it is currently not clear whether DEC has the uncontestable authority to regulate the transfer of waters from one water basin to another.

The proposed amendment to 33 ECL 15-3301 provides the DEC with the necessary authority to regulate on the aforementioned issues. It allows DEC to first adopt and then implement, through a permitting program, regulations relating to:

- minimum standards for operation and new construction of water withdrawal systems;
- monitoring, reporting and recordkeeping requirements;
- protections of sources of potable water supply for present and future needs;
- maintaining stream flows protective of aquatic life; and
- requirements deemed necessary to protect the environment and the public health, safety and welfare and to ensure the proper management of the waters of the state.

As good quality water becomes an increasingly scarce commodity, New York's fresh waters may be increasingly targeted for commercial, industrial and, to a lesser extent, new agricultural uses. The state needs clear authority to regulate any and all potentially significant (100,000 gpd or greater) proposed water withdrawals. In addition, the state also needs a clear framework, established within the public purview, for decision making on water withdrawal and interbasin water transfer proposals. The proposed Bill would

On behalf of NYWEA, I commend you and your colleagues' leadership on this important topic. Please contact either me at 718-675-9947 or [tdellavalle@arcadis-us.com](mailto:tdellavalle@arcadis-us.com) or NYWEA's Executive Director Patricia Cerro-Reehil at 315-422-7811, or [pcr@nywea.org](mailto:pcr@nywea.org), if you would like to discuss our evaluation or believe that we can be of further assistance.

If there are other bills which you would like NYWEA to review and comment on, please do not hesitate to contact us.

Respectfully,

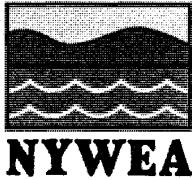


Anthony Della Valle  
President

cc: Commissioner Joe Martens, NYS DEC  
Assistant Commissioner James Tierney, NYS DEC  
Angus Eaton, NYS DEC  
NYWEA Board  
NYWEA Government Affairs Committee

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**The New York Water Environment Association, Inc.**  
*The Water Quality Management Professionals*

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**NYWEA Legislative Monitoring**

**Bill No.:** Senate Bill No. S3798 and Assembly Bill No. A5318A – ***Relates to the Regulation of the Use of the State's Water Resources*** – NYWEA's Evaluation

**Sponsors:** Mark Grisanti (Senate) and Robert Sweeny (Assembly)

**Co-Sponsors:** Senate: Avella; Assembly: Peoples-Stokes, Zebrowski, Gunther, Titone, Reilly, Spano, Jacobs, Paulin, Schimel, Englebright, Hoyt (and multiple other sponsors)

**Brief Summary of the Bill:** The purpose of this Bill is to establish a comprehensive statewide water withdrawal permitting program for new and existing users. The Bill amends the Environmental Conservation Law (ECL) to authorize the New York State Department of Conservation (NYSDEC) to issue permits for all non-agricultural water withdrawals with the capacity to withdraw of 100,000 gallons or more per day from the state's waters and all agricultural water withdrawals who withdraw in excess of an average of 100,000 gallons per day (gpd) in any consecutive 30-day period (withdrawals approved by the Delaware River Basin Commission and Susquehanna River Basin Commission are exempt from these requirements). The Bill also restricts interbasin diversions, requiring that any diversions in excess of one million gpd be registered with DEC. The Bill is consistent with the water withdrawal requirements of the Great Lakes – St. Lawrence River Basin Water Resources Compact (Great Lakes Compact), of which the New York State is a signatory member, and expands these requirements statewide.<sup>1</sup>

**1. How would passage of this bill improve NY waters?**

The proposed bill will improve New York waters by providing clear authority to the DEC to regulate proposed withdrawal and use of New York waters consistent with established New York Policy. New York is blessed with abundant quantities of fresh water, and the DEC has been entrusted with overseeing both the protection and long term management of State waters. As articulated in the State's Environmental Conservation Law<sup>2</sup>:

<sup>1</sup> This extrapolation of the Great Lakes Compact's water withdrawal requirements to the entire State is reasonable since Great Lakes-St. Lawrence River Basin covers approximately 50% of New York State by area.

<sup>2</sup> NY ECL Section 1-0101. Declaration of Policy

provide both the needed regulatory authority, and mandate the establishment of the needed regulatory framework.

**2. How would passage of this bill improve the environmental and/or the public health of NY?**

In addition to creating a transparent mechanism for regulating significant water withdrawals and interbasin transfers, Section 6 of the Bill mandates that when evaluating whether to issue a permit, DEC consider whether a proposed withdrawal

- takes into consideration other sources of supply that are or may become available;
- will be adequate for the proposed use;
- is just and equitable to all affected municipalities and their inhabitants
- cannot be reasonably avoided through efficient use and conservation of existing water supplies;
- is limited to quantities that are considered reasonable for the purposes for which the water use is proposed;
- will be implemented in a manner that ensures it will result in no significant individual or cumulative adverse impacts;
- incorporates environmentally sound and economically feasible water conservation measures; and
- is consistent with applicable municipal, state and federal laws and regional interstate and international agreements.

Thus the Bill, if enacted, will insure that water-related usage decisions are made within a context of the State's long-term water needs, with an emphasis on water conservation and reuse (the latter being a very important environmental protection measure for hydraulic fracturing performed by gas drilling companies) and within the context of possible current and long-term competing uses for our fresh water resources.

The Bill also restricts interbasin diversions (i.e., transfer of water, done by piping or other means, from one river basin into another) requiring that any diversions in excess of one million gpd be registered with DEC. Interbasin diversions could have a detrimental impact on river ecosystem, including fish and wildlife, and could require a significant energy use for pumping.<sup>3</sup>

Finally, passage of the Bill would help address potential negative impacts of climate change through conservation and planned uses of valuable water resources of New York State.

**3. Does this bill address statewide, regional or local impact?**

This Bill would have a statewide impact.

<sup>3</sup> As stated in the Bill, diversions from the Great Lakes-St. Lawrence River Basin are already prohibited by the Great Lakes-St. Lawrence River Basin Water Resources Compact. The Bill states that only limited exceptions specifically for public water supply systems will be considered when in compliance with the Great Lakes Compact.

**4. Who will have new requirements under this bill (i.e., individual, state agency, municipality, industry, etc.)?**

Large public water supplies, and those industrial and commercial facilities (water bottling facilities, hotels, etc.), oil and gas production facilities, new agricultural users, institutions and recreational facilities (golf courses, etc.) that have their own water supply and are not connected to a public water supply.

NYWEA recommends that **the Bill be amended to include** appropriate language clarifying the applicability of the Bill to dewatering operations from construction activities and whether certain types of construction dewatering operations should be exempt from the water withdrawal permit requirements. **Specifically, NYWEA recommends that in Section 1; Subsection 7, the listing of exemptions from the permit requirements be amended to add a new item (G) which would read:**

**(G) Waters from dewatering operations which are returned to the waters of the State within the local watershed.**

**5. Relative to any other environmental mandates on the affected entities, rate the importance of this bill in terms of protecting/improving (i) water quality (ii) environmental protection and/or protection of human health.**

**High** - Unregulated water withdrawals and interbasin diversions, especially in the Great Lakes-St. Lawrence River Basin, have been the source of increased concern related to potential impacts on State's water resources. The passage of the Bill is important for protection of natural water ecosystems and water quality of our waters.

**6. What entity would bear the cost for complying with the proposed law?**

Additional costs will be borne by enterprises and facilities withdrawing water for commercial, industrial, oil and gas production and agricultural uses. Most of the significant public water supplies already have the permits and corresponding fee structure in place and hence the impacts on them should be minor. Furthermore, most agricultural uses of 100,000 gpd or more of water will have already registered their usages, and will not be additionally regulated.

**7. Using the relative scale of low, medium and high, what will be the:**

**(i) Cost to comply**

Generally, **Low** for existing municipal water suppliers and agricultural users, since addressing the permitting requirements primarily requires payment of the permit fee and staff time needed to ensure compliance with these requirements. The cost for new consumptive commercial, industrial and institutional entities could be **high** if costly permit conditions are imposed or if the permit (and hence the water withdrawal) is denied and alternate sources of water must be relied on. NYWEA also recognizes an additional cost to DEC to regulate this new program and supports future increase in DEC funding to manage this new regulation.

**(ii) Water quality, environmental and/or human health benefit**

Potentially **High**. As stated earlier, restriction of water diversions can have a positive impact on natural water ecosystems, thus improving the water quality and recreational conditions and, where applicable, navigability of our waters. Expansion of permitting requirements to include all significant water withdrawal will allow DEC to regulate and better assess individual and cumulative impacts of water withdrawals, consumptive uses and diversions, in order to retain the quantity of the surface water and groundwater in the river basin and, thereby, ensuring sustainable use of waters of the State.

**8. Other NYWEA Comments, Recommendations and an Offer of Assistance**

Based on estimates by NYS DEC and NYS DOH, the conservative costs of upgrading State's aging and deteriorating wastewater and drinking water infrastructure is \$36.2 billion and \$38.7 billion, respectively, over the next 20 years. NYWEA recommends that strong consideration be given to including in this Bill or in a subsequent amendment to this section of the ECL, appropriate language allowing this permitting system to also become a partial dedicated funding mechanism for the State's wastewater and drinking water infrastructure. Specifically, we propose imposing a low volume based fee (along the lines of \$10 per each 100,000 gallons) for water withdrawn or transferred out of basin for commercial, industrial and/or oil and gas related consumptive uses, including such uses as water bottlers/soda bottlers and hydraulic fracturing. The collected fees should be deposited in a dedicated fund for water/wastewater related infrastructure.

In addition to creating a dedicated fund which can be drawn upon to help underwrite the huge water and wastewater infrastructure needs within the State, the establishment of this fund will promote and support's New York's return to a sound fiscal state. According to the U.S. Conference of Mayors, the US Department of Commerce estimates that each public dollar invested in water infrastructure increases private long-term GDP output by \$6.35 and every job created in water infrastructure leads to the creation of 3.7 jobs elsewhere.<sup>4</sup>

As an organization with a strong educational component, NYWEA would be interested in working with both the Senate and Assembly Environmental Conservation Committees as well as the DEC to educate our elected officials at every level of government and the general public on the benefits of this Bill. The two major benefits that could be emphasized in the educational campaign are the establishment of a long term program to insure that New York's waters are used in a sustainable manner which should lead to improvements in water quality and the recreational condition of our waters together with an increased focus on water conservation, recycling and reuse.

<sup>4</sup> Source: U.S. Conference of Mayors' press release entitled "Mayors Water Infrastructure Report Shows Investment Yields High Return," available at [http://www.usmayors.org/urbanwater/documents/NYWATERREPORTRELEASE\\_081408.pdf](http://www.usmayors.org/urbanwater/documents/NYWATERREPORTRELEASE_081408.pdf)

**IRRIGATION ASSOCIATION OF NEW YORK**

Dennis Realmuto, President – P.O. Box 237, Greenlawn, N.Y. 11740

**MEMORANDUM OF SUPPORT****S. 3798 / A. 5318-A**

(Departmental Bill # 36 – Water Withdrawal Regulation)

**Sponsors:**

Sen. Grisanti  
M. of A. Sweeney

**Subject:**

To amend the Environmental Conservation Law, in relation to regulating the use of the state's water resources.

**Reasons for Support:**

The **Irrigation Association of New York** represents more than 80 professional businesses from across the state, who subscribe to the principles of professional competence and good business practice in the installation and maintenance of lawn irrigation systems.

We strongly support this legislation because it helps advance a number of important public policy goals that are also supported by the **Irrigation Association of New York**. Among other things, it protects, and promotes the wise use of, natural resources. Specifically, it would help achieve two of the Association's primary goals:

- ◆ Promote the wise use of natural resources, particularly through public water supply systems.
- ◆ Enhance New York's compliance with the Great Lakes Compact, by incorporating technologies and practices that improve efficiency and minimize wasted water.

We note that this legislation gives the DEC strong regulatory powers. In particular, it requires that prior to issuing a water withdrawal permit, DEC determine that:

*“g. the proposed water withdrawal will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures;”*

Ensuring that proper installation techniques are employed by professional irrigation installers operating within the supply territory of a public water supply permit holder, is one of those sound and feasible measures. In issuing this memorandum of support, the **Irrigation Association of New York** fully anticipates that DEC will make appropriate use of these regulatory powers. Specifically, we urge that upon enactment, DEC undertake a regulatory process which would achieve one of the Association's other goals – certification of professional irrigation installers.

In addition to establishing a certification process for installers, we believe this regulatory process would be able to achieve a number of other laudable goals of the Association:

- ◆ Require installation of rain sensors, to prevent automatic sprinklers from switching on when it is raining.
- ◆ Protect public health, by ensuring that certified contractors are skilled in the proper installation of backflow devices, which prevent contamination of public drinking water.
- ◆ Protect consumers, by preventing the wasting of water.
- ◆ Provide public water supply permit holders with a convenient means to determine which contractors operating within their service territory are qualified.
- ◆ Require that certified contractors obtain continuing education credits.

The **Irrigation Association of New York** was formed to help raise the professional standards of those engaged in the business of installing irrigation systems. This legislation will promote that goal.

**For the reasons above, we respectfully urge that you support S. 3798 / A. 5318-A.**

**For further information contact:**

**Tom Shanahan – THE SHANAHAN GROUP – 518-732-3312**

**tom@shanahangroup.com**

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## MEMORANDUM OF SUPPORT

### New York State Water Management Program

**S. 3798 (Grisanti)**

**A. 5318-A (Sweeney)**

The Nature Conservancy supports this legislation because it would create a comprehensive statewide water management program that protects New York's ecologically important water resources, addresses the limitations of the State's current water resources program, and assist the state with the implementation of the Great Lakes – St. Lawrence River Water Resources Compact. The urgent need for a comprehensive water management program in New York has been underscored as the state works to address emerging threats to our water resources associated with activities such as natural gas drilling. The legislation has been strengthened to provide the Department of Environmental Conservation (DEC) the authority to develop scientifically based streamflow standards as part of a water management program in New York State.

The Conservancy is committed protecting freshwater resources, and believes that the protection of water for people and nature are not only inseparable but two sides of the same coin. In New York, our rivers, lakes and streams provide clean drinking water for millions of residents and offer countless opportunities for recreation, generating millions of dollars in tourism revenue. They have historically supported fisheries from brook trout to oysters, some of which are now critically endangered. Our rivers, lakes and streams also support a wide array of globally important aquatic species. Freshwater mussels like the federally endangered dwarf wedgemussel and the brook floater live in the rivers and streams of New York State. Ancient fish like the federally endangered shortnose sturgeon, American eel and paddlefish, unchanged for nearly 100 million years are found in New York's waters. A rich heritage of native fish including the treasured brook trout and American shad also occupy New York's freshwater habitats.

These important species and their habitats depend on a natural pattern of flows with seasonal highs and lows and with the changes from wet years to dry years. These natural variations are a key 'driver' of ecological health in freshwater ecosystems. State laws currently regulate water quality but do not adequately protect water levels and flows, which can be significantly altered by water withdrawals, diversions or retention.

Establishing scientific streamflow protection standards for the state's rivers, lakes and streams will allow DEC to determine whether a proposed water withdrawal, diversion or retention can be made without significant adverse impacts to natural resources. These standards should explicitly protect New York's diversity of native aquatic life, be based on the natural variation of water flows and levels, and be developed using the best available scientific information and approaches. Several other states in the northeast have recently enacted legislation establishing streamflow standards, including Maine and Connecticut. Their experience in developing these statutes and the resultant regulations may be instructive for New York. The Conservancy offers our assistance to the state in developing scientifically based flows standards that respect both private rights and public needs, as well as the tools to implement credible, scientifically-based approaches to water management.

The Nature Conservancy urges members of the Legislature to support this bill, which will create a comprehensive statewide water management program in New York State.

**For more information contact:**

Jessica Ottney Mahar, Director of State Government Relations, 518-690-7873 or [jottney@tnc.org](mailto:jottney@tnc.org)  
George Schuler, Director of Conservation Science & Practice, 845-642-6716 or [gschuler@tnc.org](mailto:gschuler@tnc.org)



FOR: Assembly Floor, Cal. #212

# NYPIRG SUPPORTS

LEGISLATIVE MEMORANDUM NO: 51-2011 CONTACT: Cathleen Breen PHONE: 212 349-6460

## A.5318A

**IN ASSEMBLY, BILL NUMBER 5318A. INTRODUCED BY M. OF A. SWEENEY, PEOPLES-STOKES, ZEBROWSKI, GUNTHER, TITONE, REILLY, SPANO, JACOBS, PAULIN, SCHIMEL, ENGLEBRIGHT, HOYT, RUSSELL, BRENNAN, GABRYSZAK, MARKEY, MCENENY, MILLER M, PHEFFER, ROBINSON**

**AN ACT** to amend the environmental conservation law, in relation to regulating the use of the state's water resources; and to repeal titles 16 and 33 of article 15 of such law relating to Great Lakes water conservation and management and water withdrawal reporting.

### SUMMARY OF PROVISIONS:

The bill would authorize the New York State Department of Environmental Conservation (DEC) to implement a statewide permitting program, including promulgating rules and regulations, for water withdrawals of equal or greater than 100,000 gallons per day unless the withdrawer is already permitted to do so by another entity such as a basin commission. The bill only requires registration and regulation of agricultural uses and, therefore, will not require farms to obtain permits. However, the bill does direct DEC to create a water conservation and efficiency program, and will require registration of inter-basin transfers of more than one million gallons per day.

### STATEMENT OF SUPPORT:

The importance of protecting both the quality and the quantity New York State's waters cannot be overstated. New York's waters are under siege with many interests competing for this limited resource. When water withdrawals go unchecked, problems of concentrated use can abound threatening aquifer levels and aquatic stream habitats. DEC must be able to ascertain how much water is being used at any given time and for what purpose. To ensure the protection of these critical water supplies it is vital that DEC have the ability to expand its water withdrawal program and water conservation programs.

The importance of the Great Lakes is undeniable and this natural resource is not only vital to New York, but to the entire region and nation. The Great Lakes waters are interconnected and interdependent. Effective management of these waters is critical to habitat and ecosystem protection. The Great Lakes Compact was established to promote the informed use, management and protection of the water and related land resources of the basin. This bill speaks to this need and allows DEC to manage water withdrawals.

**Safeguarding New York's water resources is of vital concern; therefore, NYPIRG urges your support of this important legislation.**

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Mar-25-11 10:20am From-HRD

4159775796

T-350 P.001/001 F-292



March 25, 2011

Senators Mark Grisanti, Chair, and Tony Avella  
Environmental Conservation Committee

Assembly Members Robert Sweeney, Chair, and Sean Hanna  
Environmental Conservation Committee

New York State Legislature  
Albany, New York

Dear Senators and Assembly Members:

Implementation of the Great Lakes Compact is a priority of the Sierra Club, and passage of A.5318-A/ S.3798 in New York will be a key component to protecting this vast water resource from misuse and diversion. To be clear, the Sierra Club does not oppose these bills.

We do not mean to minimize concerns expressed by the local chapter, as this broad new permitting authority should come with the strongest guidance possible in the enacting legislation. But within the context of what is feasible in the New York State Legislature at present, we find nothing in A.5318-A/ S.3798 that will impair either the protection of New York's water or the multi-state agreement set forth in the Compact. We thank you for your leadership in advancing A.5318-A/ S.3798 and we look forward to working with you to implement the strongest and most comprehensive water withdrawal permitting program possible.

Sincerely,

David Scott, Vice-President for Conservation  
Board of Directors  
Sierra Club

cc: Maureen Coleman, Counsel  
Department of Environmental Conservation

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A 5318

**THE WEST FIRM**

A PROFESSIONAL LIMITED LIABILITY COMPANY

**Attorneys And Counselors At Law**

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Thomas F. Puchner  
 Silta Legac  
 Cindy M. Monaco  
 Francis X. O'Connor, Of Counsel\*

March 23, 2011

**VIA ELECTRONIC AND  
 FIRST CLASS MAIL**

Senator Mark Grisanti  
 902 LOB  
 Albany, NY 12247

**Re: S. 3798 Grisanti**

Dear Senator Grisanti:

This legislation should be amended because it does nothing to grandfather existing permits that already regulate water withdrawals. Also, the legislation does not properly reflect the balancing process contemplated by existing law when allocating water among competing uses.

There are number of ski areas across New York State that have permits from the New York State Department of Environmental Conservation ("DEC") that regulate the amount of water that can be withdrawn to support snowmaking at those ski areas. Although this legislation grandfathers public water supply systems that have permits from the DEC, it does nothing to grandfather private companies that have obtained permits from the DEC that regulate water withdrawals. As such, the legislation is flawed. Appropriate amendments should be implemented to provide the same grandfathering rights that are provided to public water supply systems.

Although the legislation attempts to ameliorate its consequences relative to established water withdrawals by providing a registration process and an automatic permit based upon that registration that last for 10 years, the automatic permit is subject to "appropriate terms and conditions," which are not defined. Also, this phase-in process does not take into account operations, such as ski areas, that already have permits that regulate water withdrawals. The lack of a transition in the legislation could affect the rights of ski areas and other businesses that have received permits that regulate water withdrawals to the protections afforded by Section 401 of the State Administrative Procedure Act. That section of law protects the rights of permittees when a new permit requirement is established relative to an ongoing activity. Without recognizing the permitted status of these operations, these important protections may not apply.

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Senator Mark Grisanti  
March 23, 2011  
Page 2 of 2

In addition, the standards set forth in this legislation do not take into account the balancing process contemplated by Article 15 of the Environmental Conservation Law when there are competing users of the water resources of New York State. ECL § 15-0105 charges the Commissioner with conserving and controlling the state's water resources for the benefit of all inhabitants of the state. As interpreted by the courts of this state, "[t]hat responsibility includes ensuring adequate and suitable water not only for the maintenance of fish and wildlife but also for commercial uses and recreational enjoyment." *In the matter of Catskill Center for Conservation and Development vs. New York State Department of Environmental Conservation and Shanty Hollow Corporation*, 235 A.D.2d 4 (3rd Dep't 1997). Notwithstanding this established law, the standards set forth in this proposed legislation for issuing water withdrawal permits does not mention the balancing process already established in law. As such, the legislation should be amended to reflect the balancing process contemplated by existing law.

Lastly, the legislation should be amended to incorporate public safety into the criteria for issuing permits. Although snowmaking is used to support a recreational use, the lack of water at critical times in the skiing season can be a significant safety issue. Following rain events and quick freezes, skiing conditions can be dangerous because of the ice that forms. The ability to rapidly recover through an efficient snowmaking system is important to public safety.

For the foregoing reasons, we respectfully urge that the legislation be amended in accordance with the attached amendments before this legislation is adopted into law.

Thank you for your attention to these issues.

Very truly yours,

  
Thomas S. West

TSW/rsb

Encl.

cc: Laura Manley (via electronic mail)  
Anne Tarpinian (via electronic mail)

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# THE SHANAHAN GROUP

## GOVERNMENT RELATIONS & COMMUNICATIONS

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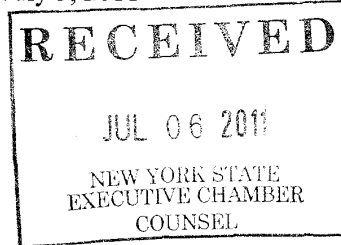
Tom Shanahan, President

www.shanahangroup.com

518-732-3312

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July 5, 2011



Ms. Mylan Denerstein, Counsel to the Governor  
Executive Chamber - Room 225  
The Capitol  
Albany, New York 12224

**Re: A. 5318-A (Departmental Bill # 36) Water Withdrawal – Approval recommended**

Dear Ms. Denerstein:

This letter is written in support of the above-referenced legislation, which has passed the Legislature and is awaiting action by Governor Cuomo. This legislation provides for the permitting of large water withdrawals by the Department of Environmental Conservation (DEC), and the development of regulations by DEC to encourage efficiency and minimize wasted water.

My client, the Irrigation Association of New York, supports this measure, and respectfully urges that the Governor grant his approval to this legislation. Attached is a memorandum of support from the Association, detailing its position in support of this legislation.

This legislation helps advance a number of important public policy goals which are also supported by the Irrigation Association of New York. Among other things, it protects, and promotes the wise use of, natural resources. Specifically, it would help achieve two of the Association's primary goals:

- Promote the wise use of natural resources, particularly through public water supply systems.
- Enhance New York's compliance with the Great Lakes Compact, by incorporating technologies and practices that improve efficiency and minimize wasted water.

We note that this legislation gives the DEC strong regulatory powers. In particular, it requires that prior to issuing a water withdrawal permit, DEC determine that:

***"g. the proposed water withdrawal will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures;"***

Ensuring that proper installation techniques are employed by professional irrigation installers operating within the territory of a public water supply permit holder, is one of those sound and

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tom@shanahangroup.com

feasible measures. In issuing this memorandum of support, the Irrigation Association fully anticipates that DEC will make appropriate use of these regulatory powers.

The Irrigation Association of New York was formed to help raise the professional standards of those engaged in the business of installing irrigation systems. My clients anticipate that if the legislation is approved, DEC will address the requirement that it develop “*environmentally sound and economically feasible water conservation measures*” by, among other measures, addressing the question of professionally-installed irrigation systems. Such systems are growing in popularity because they allow people to enhance the value of their most important investment – their homes – while reducing the amount of time required. It is also important to recognize that professionally-installed systems are a feature at many commercial properties.

We would anticipate that such regulations would address the following issues:

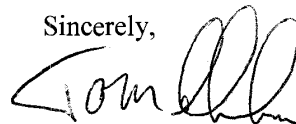
- Require that professional irrigation installers be certified.
- Establish professional standards that do not currently exist.
- Guarantee a high level of professional knowledge, by requiring that certified contractors obtain continuing education credits by attending technical and business related classes.
- Protect public health by ensuring that certified contractors are skilled in the proper installation of backflow devices, which prevent contamination of public drinking water.
- Promote conservation by requiring rain sensors, to prevent wasting water by preventing automatic sprinkling systems from switching on at a time when it is already raining.

The Irrigation Association of New York was formed to raise the professional standards of those engaged in the business of installing irrigation systems. The Association represents more than 80 businesses from across the state who subscribe to the principles of professional competence and good business practice in the installation and maintenance of lawn irrigation systems.

The Association stands ready to provide any assistance DEC may require in the development of appropriate regulations with regard to professionally-installed irrigation. The Association, and its national counterpart – the Irrigation Association, have developed an extensive body of knowledge, and are prepared to serve as a resource in the regulatory process.

For the reasons stated above, my clients respectfully urge that the Governor grant his approval to the above-referenced legislation.

Sincerely,



Tom Shanahan

cc: Joe Martens, Commissioner, DEC

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**IRRIGATION ASSOCIATION OF NEW YORK**

Dennis Realmuto, President – P.O. Box 237, Greenlawn, N.Y. 11740

**MEMORANDUM OF SUPPORT****S. 3798 / A. 5318–A****(Departmental Bill # 36 – Water Withdrawal Regulation)****Sponsors:**

Sen. Grisanti  
M. of A. Sweeney

**Subject:**

To amend the Environmental Conservation Law, in relation to regulating the use of the state's water resources.

**Reasons for Support:**

The **Irrigation Association of New York** represents more than 80 professional businesses from across the state, who subscribe to the principles of professional competence and good business practice in the installation and maintenance of lawn irrigation systems.

We strongly support this legislation because it helps advance a number of important public policy goals that are also supported by the **Irrigation Association of New York**. Among other things, it protects, and promotes the wise use of, natural resources. Specifically, it would help achieve two of the Association's primary goals:

- ◆ Promote the wise use of natural resources, particularly through public water supply systems.
- ◆ Enhance New York's compliance with the Great Lakes Compact, by incorporating technologies and practices that improve efficiency and minimize wasted water.

We note that this legislation gives the DEC strong regulatory powers. In particular, it requires that prior to issuing a water withdrawal permit, DEC determine that:

***“g. the proposed water withdrawal will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures;”***

Ensuring that proper installation techniques are employed by professional irrigation installers operating within the supply territory of a public water supply permit holder, is one of those sound and feasible measures. In issuing this memorandum of support, the **Irrigation Association of New York** fully anticipates that DEC will make appropriate use of these regulatory powers. Specifically, we urge that upon enactment, DEC undertake a regulatory process which would achieve one of the Association's other goals – certification of professional irrigation installers.

In addition to establishing a certification process for installers, we believe this regulatory process would be able to achieve a number of other laudable goals of the Association:

- ◆ Require installation of rain sensors, to prevent automatic sprinklers from switching on when it is raining.
- ◆ Protect public health, by ensuring that certified contractors are skilled in the proper installation of backflow devices, which prevent contamination of public drinking water.
- ◆ Protect consumers, by preventing the wasting of water.
- ◆ Provide public water supply permit holders with a convenient means to determine which contractors operating within their service territory are qualified.
- ◆ Require that certified contractors obtain continuing education credits.

The **Irrigation Association of New York** was formed to help raise the professional standards of those engaged in the business of installing irrigation systems. This legislation will promote that goal.

**For the reasons above, we respectfully urge that you support S. 3798 / A. 5318–A.**

**For further information contact:**

**Tom Shanahan – THE SHANAHAN GROUP – 518-732-3312**

**tom@shanahangroup.com**

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ADIRONDACK COUNCIL • ADIRONDACK MOUNTAIN CLUB • ALLIANCE FOR THE GREAT LAKES •  
 AUDUBON NEW YORK • BUFFALO AUDUBON SOCIETY • BUFFALO NIAGARA RIVERKEEPER •  
 CENTRAL WESTCHESTER AUDUBON SOCIETY • CITIZENS CAMPAIGN FOR THE ENVIRONMENT •  
 DELAWARE-OTSEGO AUDUBON SOCIETY • EARTHJUSTICE • ENVIRONMENTAL ADVOCATES OF  
 NEW YORK • GENESEE VALLEY AUDUBON SOCIETY • GREAT LAKES COMMISSION • GREAT  
 LAKES UNITED • GREAT SOUTH BAY AUDUBON SOCIETY • IRRIGATION ASSOCIATION OF NEW  
 YORK • LAKE ONTARIO TROUT & SALMON ASSOCIATION • NATIONAL WILDLIFE FEDERATION •  
 NATURAL RESOURCES DEFENSE COUNCIL • NEW YORK CITY AUDUBON • NEW YORK LEAGUE  
 OF CONSERVATION VOTERS • NEW YORK PUBLIC INTEREST RESEARCH GROUP • NORTH FORK  
 AUDUBON • NORTH SHORE AUDUBON SOCIETY • ONONDAGA AUDUBON • ORANGE COUNTY  
 AUDUBON ASSOCIATION, INC • PUTNAM HIGHLANDS AUDUBON SOCIETY • RIVERKEEPER, INC. •  
 SAVE THE RIVER • SAW MILL RIVER AUDUBON • THE NATURE CONSERVANCY IN NEW YORK •  
 TROUT UNLIMITED

July 11, 2011

Hon. Andrew M. Cuomo  
 Governor  
 Executive Chamber  
 New York State Capitol  
 Albany, NY 12224

**Re: A. 5318-A (Sweeney) / S. 3798 (Grisanti)**

Dear Governor Cuomo:

As organizations representing hundreds of thousands of New Yorkers committed to protecting our shared water resources, we write to request that you sign into law the Water Resources Protection Act (A. 5318-A Sweeney / S. 3798 Grisanti), a departmental bill from the New York State Department of Environmental Conservation (DEC). We strongly urge you to hold a bill signing ceremony to celebrate this important legislation becoming law.

The bill enjoys widespread support amongst the environmental community, conservationists, outdoor recreation organizations, business interests and the agricultural community and would set up critically needed protections for New York's surface and groundwaters. The bill passed unanimously in both houses during the 2011 session.

Our state has a great resource in our fresh, high-quality water. From the Finger Lakes to the Great Lakes, to the St. Lawrence and Hudson Rivers, our waters are the backbone of our economy and our way of life. They support our vital multi-billion dollar fishing and tourism industries, serve as a means of conveying goods around the state and the country, provide millions of New Yorkers with clean, fresh, drinking water, sustain our family farms, and provide opportunities to swim, play, and relax.

New York has a history of protecting our waters from mismanagement. The Delaware and Susquehanna Rivers each have multi-state river commissions that oversee water use within their respective basins and the Long Island water protection program oversees groundwater

withdrawals. The Great Lakes Compact, passed in New York and signed as a multi-state compact, provides for responsible water management within the Great Lakes Basin.

However, two-thirds of the state remains excluded from any water protection regulatory program and New York has no water conservation and efficiency program to guide large users in water-protective practices. Further, in order to implement the Great Lakes Compact and to comply with the mutually agreed upon deadlines within the Compact, the DEC needs immediate direction to promulgate regulations. This bill will close these loopholes while addressing significant limitations in our water resources program.

Although concerns have been raised by some critics that the 100,000 gallon per day threshold included in the proposed legislation is too low, the level is consistent with programs in other neighboring states (CT, MA, RI, NJ). Now, more than two years in the making, this legislation has been the subject of several Assembly and Senate public hearings. The legislation also in no way jeopardizes New York's public trust obligation which provides that waters of the state are held in trust for everyone. Clearly, the bill provides New York with better protections for our state's waters.

With your approval New York can join other Northeastern states in setting strong state-wide water protections. We look forward to working with you to celebrate the enactment of this important legislation and recognize your administration and the legislative champions that worked so hard to achieve this success.

Thank you in advance for your support.

Sincerely,

Jeanne Alpert, President, Central Westchester Audubon Society  
 Rich Anderson, President, Putnam Highlands Audubon Society  
 R. Darryl Banks, Deputy State Director, The Nature Conservancy in New York  
 Lynn Barber, President, Orange County Audubon Association, Inc.  
 Joel Brammeier, President and CEO, Alliance for the Great Lakes  
 Cathleen Breen, Watershed Coordinator, New York Public Interest Research Group  
 Marcia Bystryn, President, New York League of Conservation Voters  
 Albert E. Caccese, Executive Director, Audubon New York  
 Jennifer Caddick, Executive Director and Upper St. Lawrence Riverkeeper, Save the River  
 Judy Davis, President, Great South Bay Audubon Society  
 Patrick DiNicola, Treasurer, Lake Ontario Trout & Salmon Assn., and South Shore Landowner  
 Katy Dunlap, Esq., Eastern Water Project Director, Trout Unlimited  
 Tim Eder, Executive Director, Great Lakes Commission  
 Adrienne Esposito, Executive Director, Citizens Campaign for the Environment  
 Paul Gallay, Executive Director and Hudson Riverkeeper, Riverkeeper, Inc.  
 Deborah Goldberg, Managing Attorney, Earthjustice  
 Brian Houseal, Executive Director, The Adirondack Council  
 Peggy Maslow, President, North Shore Audubon Society  
 Andrew Mason, Conservation Chair, Delaware-Otsego Audubon Society  
 Robert Moore, Executive Director, Environmental Advocates of New York  
 Julie Barrett O'Neill, Esq., Riverkeeper and Executive Director, Buffalo Niagara Riverkeeper  
 Glenn Phillips, Executive Director, New York City Audubon  
 Thomas Riley, Conservation Chair, Onondaga Audubon  
 Richard Schrader, New York Legislative Director, Natural Resources Defense Council

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Richard Silverman, Legislative Liaison, Irrigation Association of New York  
Loren H. Smith, Ph.D., Executive Director, Buffalo Audubon Society  
Marc Smith, Senior Policy Manager, National Wildlife Federation  
Derek Stack, Executive Director, Great Lakes United  
June Summers, President, Genesee Valley Audubon Society  
Anne Swaim, Executive Director, Saw Mill River Audubon  
Diana Van Buren, President, North Fork Audubon  
Neil Woodworth, Executive Director and Counsel, Adirondack Mountain Club

Cc: Ms. Mylan Denerstein, Counsel to the Governor  
Mr. Joseph Martens, Commissioner, Department of Environmental Conservation  
Mr. Thomas Congdon, Deputy Secretary for Energy and the Environment  
Senator Mark Grisanti, Chair, Committee on Environmental Conservation  
Assemblyman Robert Sweeney, Chair Committee on Environmental Conservation



**Legislative Secretary**

---

**From:** Elizabeth Reisinger <Elizabeth\_Reisinger/NYEC@chamber.state.ny.us>  
**Sent:** Tuesday, August 02, 2011 4:13 PM  
**To:** Legislative Secretary  
**Subject:** Correspondence [Weinstein, Naomi] #173425A

\*\*\* Please Do Not Reply to this e-mail Message.\*\*\*

\*\*\* Any questions regarding this correspondence should be directed to the staff person listed below as the 'Please Respond To' contact. \*\*\*

For Your Information

Ms. Naomi Weinstein  
136 West 24th Street  
New York, NY 10011  
[naomi.weinstein@us.penguingroup.com](mailto:naomi.weinstein@us.penguingroup.com)  
County New York  
Addressed to: Governor

Issue 1 82022 Legislation

Correspondence Number 173425A  
Date Of Correspondence 07/14/2011  
Date Received 07/14/2011  
Date Entered 08/02/2011  
Referred To Legislative Secretary  
Date Referred

Routing History

08/02/2011 04:12 PM (Routed By --> Elizabeth Reisinger) (Routed Via Outside Agency Email to --> Legislative Secretary)  
For Your Information

Protect New York's Water! Pass A.5318A & S.3798. thank you.

000053

C401

**Legislative Secretary**

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**From:** Elizabeth Reisinger <Elizabeth\_Reisinger/NYEC@chamber.state.ny.us>  
**Sent:** Monday, August 22, 2011 5:08 PM  
**To:** Legislative Secretary  
**Subject:** Correspondence [Thuma, David] #177754A

\*\*\* Please Do Not Reply to this e-mail Message.\*\*\*

\*\*\* Any questions regarding this correspondence should be directed to the staff person listed below as the 'Please Respond To' contact. \*\*\*

For Your Information

Mr. David Thuma  
PO Box 613  
Cooperstown, NY 13326  
[dave.thuma@wildblue.net](mailto:dave.thuma@wildblue.net)  
County Otsego  
Addressed to: Governor

Issue 1 82022 Legislation

Correspondence Number 177754A  
Date Of Correspondence 08/20/2011  
Date Received 08/20/2011  
Date Entered 08/22/2011  
Referred To Legislative Secretary  
Date Referred

Routing History

08/22/2011 05:08 PM (Routed By --> Elizabeth Reisinger) (Routed Via Outside Agency Email to --> Legislative Secretary)  
For Your Information

Dear Mr Cuomo ,  
during the recent campaign you said NY states water was sacrosanct . Obviously  
You were lying by the recent law that came across your desk upon which gives  
ANYONE FROM ANYWHERE CAN COME TO OUR (NY) RIVERS AND STREAMS AND TAKE UP  
100,000 GALLONS A DAY FOR FREE. So much for your lying statement that NY states  
water is sacrosanct. Your father you are not .

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## STATE OF NEW YORK

5318--A

2011-2012 Regular Sessions

## IN ASSEMBLY

February 15, 2011

Introduced by M. of A. SWEENEY, PEOPLES-STOKES, ZEBROWSKI, GUNTHER, TITONE, REILLY, SPANO, JACOBS, PAULIN, SCHIMEL, ENGLEBRIGHT, HOYT -- Multi-Sponsored by -- M. of A. BRENNAN, GABRYSZAK, MARKEY, McENENY, M. MILLER, PHEFFER, ROBINSON -- (at request of the Department of Environmental Conservation) -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to regulating the use of the state's water resources; and to repeal titles 16 and 33 of article 15 of such law relating to Great Lakes water conservation and management and water withdrawal reporting

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Section 15-1501 of the environmental conservation law, as
- 2 amended by chapter 233 of the laws of 1979, is amended to read as
- 3 follows:
- 4 § 15-1501. ~~[New or additional sources of water supply]~~ Water
- 5 withdrawals; permit.
- 6 1. Except as otherwise provided in this title, no person ~~[or public~~
- 7 ~~corporation]~~ who is ~~[authorized and]~~ engaged in, or proposing to engage
- 8 in, the ~~[acquisition, conservation, development, use and distribution of~~
- 9 ~~water for potable purposes, for the irrigation of agricultural lands,~~
- 10 ~~for projects taken pursuant to Article 5-B of the County Law, or for~~
- 11 ~~multi-purpose projects authorized by a general plan adopted and approved~~
- 12 ~~pursuant to title 11 of this article,]~~ operation of a water withdrawal
- 13 system with a capacity of greater than or equal to the threshold volume,
- 14 shall have any power to do the following until such person ~~[or public~~
- 15 ~~corporation]~~ has first obtained a permit or permit modification from the
- 16 department pursuant to this title:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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- 1 a. To ~~[acquire or take]~~ make a water ~~[supply]~~ withdrawal from an
- 2 ~~existing or new source or an [additional] increased~~ water ~~[supply]~~ with-
- 3 ~~drawal~~ from an existing ~~[approved]~~ permitted source; ~~[or]~~
- 4 b. To take or condemn lands for the protection of any existing sources
- 5 of public water supply; or for the development or protection of any new
- 6 or additional sources of public water supply ~~[or for the utilization of~~
- 7 ~~such supplies]; [or]~~
- 8 c. To commence or undertake the construction of any works or projects
- 9 in connection with the proposed ~~[plans]~~ withdrawal; or
- 10 d. ~~[To exercise any franchise hereafter granted to supply water to any~~
- 11 ~~inhabitants of the state; or~~
- 12 ~~e.] To extend its supply or distribution mains into [a municipality,~~
- 13 ~~water district, water supply district, or other civil division of the~~
- 14 ~~state wherein it] any new water service area or extension that has not~~
- 15 ~~[heretofore legally supplied water] been approved by the department or a~~
- 16 ~~predecessor commission; or~~
- 17 ~~[f. To construct any extension of its supply mains except within a~~
- 18 ~~service area approved by the department after public hearing; or~~
- 19 ~~g. To extend the boundaries of a water district; or~~
- 20 ~~h. To supply water in or for use in any other municipality or civil~~
- 21 ~~division of the state which owns and operates a water supply system~~
- 22 ~~therein, or in any duly organized water supply or fire district supplied~~
- 23 ~~with water by another person or public corporation]~~
- 24 e. To make a significant change in the principal use of the water
- 25 withdrawal system from that specified in the permit, or permit applica-
- 26 tion.
- 27 2. ~~[A permit shall not be necessary for the extension of supply or~~
- 28 ~~distributing mains or pipes of a municipal water supply plant into and~~
- 29 ~~for the purpose of supplying water in any territory within the limits of~~
- 30 ~~the municipality owning such plant, including territory which has not~~
- 31 ~~been heretofore supplied with water by such plant, nor for the recon-~~
- 32 ~~struction or replacement of existing facilities in connection with an~~
- 33 ~~existing plant wherein the capacity of the plant is in no way increased,~~
- 34 ~~nor for the construction of filtration or other treatment facilities~~
- 35 ~~which will not in any way increase the amount of water which can be made~~
- 36 ~~available from the present sources of supply. A permit shall not be~~
- 37 ~~necessary for the extension of supply or distributing mains or pipes of~~
- 38 ~~a county water authority into and for the purpose of supplying water in~~
- 39 ~~any territory assigned to such county water authority within the limits~~
- 40 ~~of the county but excluding territory specifically assigned to private~~
- 41 ~~or other municipal water companies by the department which has not been~~
- 42 ~~heretofore supplied with water by such county water authority, nor for~~
- 43 ~~the reconstruction or replacement of existing facilities in connection~~
- 44 ~~with an existing plant wherein the capacity of the plant is in no way~~
- 45 ~~increased, nor for the construction of filtration or other treatment~~
- 46 ~~facilities which will not in any way increase the amount of water which~~
- 47 ~~can be made available from the present sources of supply, provided,~~
- 48 ~~however, that nothing herein contained shall be held to authorize such~~
- 49 ~~county water authority to enter into competition with, for the purpose~~
- 50 ~~of service in the area served by the mains, the transmission or distrib-~~
- 51 ~~ution mains of any other water works system, either publicly or private-~~
- 52 ~~ly owned, already legally established in said county for the sale of~~
- 53 ~~water at wholesale or retail, or which hereafter may legally be estab-~~
- 54 ~~lished for said purpose, or to sell water to any other water works~~
- 55 ~~system, either publicly or privately owned, and not now served by said~~
- 56 ~~county authority]~~ All valid public water supply permits and approvals

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1 issued by the department or its predecessors shall remain in full force  
2 and effect for the purpose of satisfying the permit requirements of  
3 subdivision one of this section for existing water withdrawals from a  
4 source and in an amount authorized by such permit or approval. Until  
5 the department promulgates regulations pursuant to subdivision four of  
6 this section, nothing contained in subdivision one of this section  
7 concerning permits from the department shall be applicable to water  
8 withdrawals other than for a public water supply system.

9 3. Nothing contained in this [section provided] title concerning  
10 permits from the department for water withdrawals shall be deemed to  
11 nullify the requirements [of Regulation 2, Chapter V] of the State Sani-  
12 tary Code[as] applicable to drinking water supplies, including public  
13 water systems and bottled water facilities, in effect on [January 1,  
14 1960, that plans for a new water treatment plant for the treatment of an  
15 existing public water supply or for any addition to or modification of  
16 an existing water treatment plant, or for any addition to or modifica-  
17 tion of a public water supply system which will or may affect the quali-  
18 ty of the public water supply, shall be submitted to and approved by the  
19 Commissioner of Health, which regulation has no application to a new or  
20 additional source or sources of public water supply of a permanent char-  
21 acter which require a permit from the Department of Environmental  
22 Conservation under the provisions of this article] February 15, 2012, as  
23 may be amended from time to time. No supplier of water shall make,  
24 install or construct, or allow to be made, installed or constructed, a  
25 public water supply system or any addition or deletion to or modifica-  
26 tion of a public water supply system until the plans and specifications  
27 therefor have been submitted to and approved by the commissioner of  
28 health or his or her designee as may be required by the state sanitary  
29 code.

30 4. The department shall promulgate regulations to implement a permit-  
31 ting program for water withdrawals equal to or greater than the thresh-  
32 old volume consistent with the requirements of this section which shall  
33 establish: (a) minimum standards for operation and new construction of  
34 water withdrawal systems; (b) monitoring, reporting and recordkeeping  
35 requirements; and (c) protections for present and future needs for  
36 sources of potable water supply. Such regulations may establish quanti-  
37 tative standards that maintain stream flows protective of aquatic life,  
38 consistent with the policy objectives of this article and any other  
39 conditions, limitations and restrictions that the department, in consul-  
40 tation with the department of health, determines are necessary to  
41 protect the environment and the public health, safety and welfare and to  
42 ensure the proper management of the waters of the state. The regu-  
43 lations may establish exemptions from permitting requirements in addi-  
44 tion to those exemptions specified in this section.

45 5. The department is authorized to consolidate existing water supply  
46 permits for a public water supply system into one permit, and may  
47 require submission of an application for such permit where the depart-  
48 ment determines that such actions are necessary to protect the environ-  
49 ment and the public health, safety and welfare and to ensure the proper  
50 management of the waters of the state.

51 6. Each person who is required under this section to obtain a permit  
52 shall annually, on a form prescribed by the department, report all  
53 information requested by the department, including but not limited to  
54 water usage and water conservation measures undertaken during the  
55 reporting period. Information on water usage and water conservation  
56 measures shall be posted on the department's website.

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1     7. The following water withdrawals are exempt from the permit require-  
2 ments established by this section: (a) withdrawals used for fire  
3 suppression or public emergency purposes; (b) withdrawals that have  
4 received an approval from a compact basin commission which administers a  
5 program governing water withdrawals; (c) closed loop, standing column,  
6 or similar non-extractive geothermal heat pumps; (d) withdrawals for  
7 which a permit has been issued pursuant to the requirements of section  
8 15-1527 of this title; (e) existing withdrawals for agricultural  
9 purposes provided the withdrawal has been registered with the department  
10 pursuant to the requirements of title sixteen of this article or  
11 reported to the department pursuant to the requirements of title thir-  
12 ty-three of this article on or before February fifteenth, two thousand  
13 twelve; and (f) withdrawals at remediation sites conducted pursuant to a  
14 federal or state court order or federal or state government agency  
15 agreement or order.

16     8. The department shall establish a water conservation and efficiency  
17 program with the goals of (a) ensuring improvement of the waters and  
18 water dependent natural resources, (b) protecting and restoring the  
19 hydrologic and ecosystem integrity of watersheds throughout the state,  
20 (c) retaining the quantity of surface water and groundwater in the  
21 state, (d) ensuring sustainable use of state waters, and (e) promoting  
22 the efficiency of use and reducing losses and waste of water.

23     9. The department shall issue an initial permit, subject to appropri-  
24 ate terms and conditions as required under this article, to any person  
25 not exempt from the permitting requirements of this section, for the  
26 maximum water withdrawal capacity reported to the department pursuant to  
27 the requirements of title sixteen or title thirty-three of this article  
28 on or before February fifteenth, two thousand twelve.

29     § 2. Section 15-1502 of the environmental conservation law is amended  
30 by adding ten new subdivisions 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 to  
31 read as follows:

32     7. "Agricultural purpose" shall mean the practice of farming for  
33 crops, plants, vines and trees, and the keeping, grazing, or feeding of  
34 livestock for sale of livestock or livestock products, and the on-farm  
35 processing of crops, livestock and livestock products.

36     8. "Compact basin commission" shall mean an interstate commission  
37 having jurisdiction with respect to the regulation of water resources  
38 within a basin in the state, created by interstate compact or federal-  
39 interstate compact, including but not limited to, the Susquehanna river  
40 basin commission and the Delaware river basin commission.

41     9. "Environmentally sound and economically feasible water conservation  
42 measures" shall mean those measures, methods, technologies or practices  
43 for efficient water use and for reduction of water loss and waste or for  
44 reducing a withdrawal, consumptive use or diversion that: (i) are envi-  
45 ronmentally sound; (ii) reflect best practices applicable to the water  
46 use sector; (iii) are technically feasible and available; (iv) are  
47 economically feasible and cost effective based on an analysis that  
48 considers direct and avoided economic and environmental costs; and (v)  
49 consider the particular facilities and processes involved, taking into  
50 account the environmental impact, age of equipment and facilities  
51 involved, the processes employed, energy impacts and other appropriate  
52 factors.

53     10. "Interbasin diversion" shall mean the transfer of water or waste-  
54 water from one New York major drainage basin to another drainage basin.

55     11. "Person" shall mean any individual, public or private corporation,  
56 political subdivision, government agency, department or bureau of the

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5

1 state, municipality, industry, co-partnership, association, firm, trust,  
 2 estate or any other legal entity whatsoever.

3 12. "Potable water" shall mean water intended for human consumption  
 4 that meets the requirements for a public water system as set forth in  
 5 the state sanitary code.

6 13. "Public water supply system" shall mean a permanently installed  
 7 water withdrawal system including its source, collection, pumping,  
 8 treatment, transmission, storage and distribution facilities used in  
 9 connection with such system, which provides piped potable water to the  
 10 public for potable purposes, if such system has at least five service  
 11 connections used by year-round residents.

12 14. "Threshold volume" shall mean the withdrawal of water of a volume  
 13 of one hundred thousand gallons or more per day, determined by the  
 14 limiting maximum capacity of the water withdrawal, treatment, or convey-  
 15 ance system; provided that for agricultural purposes the threshold  
 16 volume shall mean a withdrawal of water of a volume in excess of an  
 17 average of one hundred thousand gallons per day in any consecutive thir-  
 18 ty-day period.

19 15. "Water withdrawal system" shall mean any equipment or infrastruc-  
 20 ture operated or maintained for the provision or withdrawal of water  
 21 including, but not limited to, collection, pumping, treatment, transpor-  
 22 tation, transmission, storage, and distribution.

23 16. "Withdrawal" or "withdrawal of water" shall mean the removal or  
 24 taking of water for any purpose from the waters of the state.

25 § 3. Section 15-1503 of the environmental conservation law, as amended  
 26 by chapter 364 of the laws of 1988, is amended to read as follows:

27 § 15-1503. Permits.

28 1. A permit application or request for a permit renewal or modifica-  
 29 tion shall be made on forms [provided] prescribed by the department and  
 30 shall [~~be accompanied by~~] contain all information requested by the  
 31 department relative to the withdrawal, use and discharge of water,  
 32 including:

33 a. with respect to a public water supply system, proof of adequate  
 34 authorization for the proposed project[7];

35 b. such exhibits as may be necessary clearly to indicate the scope of  
 36 the proposed project[7];

37 c. a map of any lands to be acquired [and];

38 d. project plans [~~The application shall also indicate~~];

39 e. a statement of the need for and the reasons why the proposed source  
 40 or sources of supply were selected among the alternative sources which  
 41 are or may become available[7] and the adequacy of the supply selected  
 42 [and the method proposed to determine and provide for the proper compen-  
 43 sation for any direct and indirect legal damages to persons or property  
 44 that will result from the acquisition of any lands in connection with  
 45 the proposed project or from the execution of the proposed project. The  
 46 application shall also contain, in accordance with local water resource  
 47 needs and conditions,]; and

48 f. a description of the applicant's proposed near term and long range  
 49 water conservation program that incorporates environmentally sound and  
 50 economically feasible water conservation measures, including implementa-  
 51 tion and enforcement procedures, effectiveness to date and any planned  
 52 modifications for the future. [Such] For a public water supply system,  
 53 the water conservation program may include but [shall] need not be  
 54 limited to:

55 [a-] i. the identification of and cost effectiveness of distribution  
 56 system rehabilitation to correct sources of lost water;

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1     ~~[b-]~~ ii. measures which encourage proper maintenance and water conser-  
2     vation;  
3     ~~[c-]~~ iii. a public information program to promote water conservation,  
4     including industrial and commercial recycling and reuse;  
5     ~~[d-]~~ iv. household conservation measures; and  
6     ~~[e-]~~ v. contingency measures for limiting water use during seasonal or  
7     drought shortages. ~~[If the proposed project provides for the use of~~  
8     ~~water for potable purposes, the application shall also include adequate~~  
9     ~~proof of the character and purity of the water supply to be acquired or~~  
10    ~~used and the proposed method of treatment.]~~  
11    2. In making its decision to grant or deny a permit or to grant a  
12    permit with conditions, the department shall determine whether:  
13    a. the proposed ~~[project is justified by the public necessity, whether~~  
14    ~~it]~~ water withdrawal takes proper consideration of other sources of  
15    supply that are or may become available~~[, whether all work connected~~  
16    ~~with the project will be proper and construction safe, whether];~~  
17    b. the quantity of supply will be adequate~~[, whether there will be~~  
18    ~~proper protection of the supply and watershed or whether there will be~~  
19    ~~proper treatment of any additional supply, whether]~~ for the proposed  
20    use;  
21    c. the project is just and equitable to all affected municipalities  
22    and their inhabitants ~~[and in particular]~~ with regard to their present  
23    and future needs for sources of potable water supply~~[, whether there is~~  
24    ~~provision for fair and equitable determinations of and payments of any~~  
25    ~~direct and indirect legal damages to persons or property that will~~  
26    ~~result from the acquisition of any lands in connection with the proposed~~  
27    ~~project or from the execution of the proposed project, and whether the~~  
28    ~~applicant has developed and implemented a water conservation program in~~  
29    ~~accordance with local water resource needs and conditions. If the~~  
30    ~~proposed project is a multi-purpose project, in whole or in part author-~~  
31    ~~ized by a general plan adopted and approved pursuant to title 11 of this~~  
32    ~~article, the department in addition shall determine if the proposed~~  
33    ~~project is in conformity with the general plan];~~  
34    d. the need for all or part of the proposed water withdrawal cannot be  
35    reasonably avoided through the efficient use and conservation of exist-  
36    ing water supplies;  
37    e. the proposed water withdrawal is limited to quantities that are  
38    considered reasonable for the purposes for which the water use is  
39    proposed;  
40    f. the proposed water withdrawal will be implemented in a manner to  
41    ensure it will result in no significant individual or cumulative adverse  
42    impacts on the quantity or quality of the water source and water depend-  
43    ent natural resources;  
44    g. the proposed water withdrawal will be implemented in a manner that  
45    incorporates environmentally sound and economically feasible water  
46    conservation measures; and  
47    h. the proposed water withdrawal will be implemented in a manner that  
48    is consistent with applicable municipal, state and federal laws as well  
49    as regional interstate and international agreements.  
50    3. In order to assist the development of local water conservation  
51    ~~[plans]~~ programs for public water supply systems, the department shall~~[,~~  
52    ~~by the effective date of this subdivision,]~~ continue to publish and  
53    distribute a [model local water conservation plan] water conservation  
54    manual that includes beneficial near term and long range water conserva-  
55    tion procedures which reflect local water resource needs and conditions.  
56    Such ~~[plan]~~ manual shall include examples of:



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- 1 a. methods of identifying and determining the cost effectiveness of
- 2 distribution system rehabilitation to correct sources of lost water;
- 3 b. measures which encourage proper maintenance and water conservation;
- 4 c. a public information program to promote water conservation, includ-
- 5 ing industrial and commercial recycling and reuse;
- 6 d. household conservation measures; and
- 7 e. contingency measures for limiting water use during seasonal or
- 8 drought shortages.

9 4. The department may grant or deny a permit or grant a permit with  
 10 such conditions as may be necessary to provide satisfactory compliance  
 11 by the applicant with the matters subject to department determination  
 12 pursuant to subdivision 2 of this section, or to bring into cooperation  
 13 all persons [~~or public corporations~~] that may be affected by the  
 14 project, but it shall make a reasonable effort to meet the needs of the  
 15 applicant, with due regard to the actual or prospective needs, interests  
 16 and rights of others that may be affected by the project.

17 5. The rules and regulations adopted by the department to implement  
 18 this title and the provisions of article 70 of this chapter and rules  
 19 and regulations adopted thereunder shall govern permit applications,  
 20 renewals, modifications, suspensions and revocations under this title.

21 6. A new permit for a water withdrawal system and any subsequent  
 22 renewal thereof shall be valid for a period of time not to exceed ten  
 23 years from the date of issuance. A new permit or permit modification  
 24 must be obtained from the department prior to any transfer or change of  
 25 ownership of a water withdrawal system.

26 § 4. The environmental conservation law is amended by adding a new  
 27 section 15-1504 to read as follows:

28 § 15-1504. Water withdrawals for agricultural purposes.

29 1. Applicability.

30 a. This section applies to withdrawals of water for agricultural  
 31 purposes that have been registered with the department pursuant to the  
 32 requirements of title sixteen of this article or reported to the depart-  
 33 ment pursuant to the requirements of title thirty-three of this article  
 34 on or before February fifteenth, two thousand twelve.

35 b. All persons making a withdrawal of water for agricultural purposes  
 36 shall annually register or report the withdrawal to the department under  
 37 the provisions of this section by March thirty-first of each year.

38 2. When used in this section:

39 a. "Great Lakes basin" shall mean the watershed of the Great Lakes and  
 40 the St. Lawrence River, upstream from Trois-Rivieres, Quebec, consisting  
 41 in New York state of the Lake Erie-Niagara River, Lake Ontario minor  
 42 tributaries, Genesee River, Seneca-Oneida-Oswego River, Black River, St.  
 43 Lawrence River and Lake Champlain drainage basins.

44 b. "Great Lakes water" shall mean the water contained in the  
 45 watershed, including the lakes and rivers, of the Great Lakes basin.

46 3. Registration of water withdrawals in the Great Lakes basin.

47 a. All persons withdrawing Great Lakes water for agricultural purposes  
 48 in excess of an average of one hundred thousand gallons per day in any  
 49 consecutive thirty-day period shall annually register such withdrawal  
 50 with the department.

51 b. Each registration shall be on a form and contain such information  
 52 as may be prescribed by the department and consist of a statement of and  
 53 supporting documentation which shall include but not be limited to the  
 54 following:

- 55 (1) The place and source of the proposed or existing withdrawal;
- 56 (2) The location of any discharge or return flow;

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- 1     (3) The location and nature of the proposed or existing water use;  
2     (4) The actual or estimated average annual and monthly volumes and  
3     rates of withdrawal; and  
4     (5) The actual or estimated average annual and monthly volumes and  
5     rates of water loss from the withdrawal.  
6     c. In calculating the total amount of an existing or proposed with-  
7     drawal for the purpose of determining the applicability of this subdivi-  
8     sion, a person shall combine all separate withdrawals which the person  
9     makes or proposes to make, whether or not such withdrawals are for a  
10    single agricultural purpose or are for related but separate agricultural  
11    purposes.  
12    d. Registrations shall be valid for a period of one year.  
13    e. A registration may be transferred by submitting a notice of trans-  
14    fer to the department prior to the date of a transfer or change of  
15    ownership of a water withdrawal system associated with a registered  
16    withdrawal.  
17    f. The department may cooperate with state soil and water conservation  
18    districts for the preparation and distribution of informational materi-  
19    als to persons who withdraw water for agricultural purposes, regarding  
20    the purposes, benefits and requirements of this section, and which may  
21    also provide information on complying with the registration program and  
22    on any general or applicable methods for calculating or estimating water  
23    withdrawals or water loss.  
24    4. Water withdrawal reporting.  
25    a. Any person who withdraws water for agricultural purposes in excess  
26    of an average of one hundred thousand gallons per day in any consecutive  
27    thirty-day period shall annually report to the department. The report  
28    shall be made on a form and contain such information as may be  
29    prescribed by the department and shall be based on the water withdrawals  
30    for the previous calendar year, and shall include but not be limited to:  
31    (1) the water source, the location of the water source and the source  
32    capacity if known;  
33    (2) the amount of water withdrawn for the reporting period, including  
34    the average or peak withdrawals for intervals specified by the depart-  
35    ment;  
36    (3) a description of the use of the water withdrawn; and  
37    (4) estimated amounts of water to be returned, if any, the locations  
38    of such returns and the method of such returns.  
39    b. The following water withdrawals are exempt from the reporting  
40    requirements of this subdivision:  
41    (1) a withdrawal registered with the department under subdivision  
42    three of this section;  
43    (2) a withdrawal permitted pursuant to section 15-1501 of this title;  
44    (3) a withdrawal reported to the department under any program that  
45    requires the reporting of substantially similar data, including with-  
46    drawals regulated by the Susquehanna River Basin Commission and the  
47    Delaware River Basin Commission;  
48    (4) a withdrawal permitted under section 15-1527 of this title;  
49    (5) closed loop, standing column, or similar non-extractive geothermal  
50    heat pumps; and  
51    (6) reclaimed wastewater withdrawn for reuse.  
52    5. Withdrawals of water for agricultural purposes registered or  
53    reported to the department under the requirements of this section shall  
54    be deemed to be in compliance with the requirements of title sixteen and  
55    title thirty-three of this article, as applicable.

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1 § 5. Section 15-1505 of the environmental conservation law, as amended  
2 by chapter 233 of the laws of 1979, is amended to read as follows:

3 § 15-1505. ~~[Water]~~ Interbasin diversions and water supply to other  
4 states.

5 1. No person ~~[or public corporation]~~ shall transport or carry through  
6 pipes, conduits, ditches or canals the waters of any fresh water lake,  
7 pond, brook, river, stream, or creek in this state or any well, subsur-  
8 face or percolating waters of this state into any other state for use  
9 therein without first obtaining a permit from the department pursuant to  
10 this title.

11 2. No person shall make a new or increased interbasin diversion which  
12 results in a diversion in excess of one million gallons per day, as  
13 determined by the limiting maximum capacity of the treatment or convey-  
14 ance system, or construct facilities or equipment therefor, until such  
15 person has registered the diversion with the department. No later than  
16 February fifteenth, two thousand thirteen, all existing interbasin  
17 diversions in excess of one million gallons per day, as determined by  
18 the limiting maximum capacity of the treatment or conveyance system,  
19 shall be registered with the department.

20 3. Registration is not required for an interbasin diversion which is  
21 part of a water withdrawal system for which the department has issued a  
22 permit under this title, or which is operating pursuant to a duly  
23 authorized permit issued by the department or its predecessors.

24 4. Registration shall be renewed every year or whenever ownership of  
25 the facilities which create an interbasin diversion is transferred,  
26 whichever occurs first. Registration shall be made on forms prescribed  
27 by the department and shall contain all information requested by the  
28 department relative to the water withdrawal, use and discharge. Each  
29 person who is required under this section to register shall annually, on  
30 a form prescribed by the department, report all information requested by  
31 the department, including the amount of water diverted. Information on  
32 interbasin diversions shall be posted on the department's website.

33 5. No person shall make a new or increased interbasin diversion which  
34 results in a significant adverse impact on the water quantity of the  
35 source New York major drainage basin.

36 6. Diversions from the Great Lakes-St. Lawrence river basin are  
37 prohibited by the Great Lakes-St. Lawrence River Basin Water Resources  
38 Compact, as enacted in title ten of article twenty-one of this chapter.  
39 Limited exceptions for public water supply systems will only be consid-  
40 ered when in compliance with that Compact.

41 § 6. Section 15-1521 of the environmental conservation law, as amended  
42 by chapter 233 of the laws of 1979, is amended to read as follows:

43 § 15-1521. Supply of water to other public water supply systems.

44 On any application for a new or ~~[additional]~~ increased withdrawal of  
45 water for a public water supply ~~[or source of water supply]~~ system, the  
46 department may require or authorize ~~[any]~~ the applicant to make  
47 provisions for the supply and to supply water to any area of the state  
48 which as determined by the department in its decision on that applica-  
49 tion properly should be supplied with water from the source or sources  
50 of water supply sought by the applicant. The owner or operator of any  
51 existing or proposed ~~[water works]~~ public water supply system within  
52 such area may apply to the department for a permit to take water from  
53 that source of water supply or from any part of the public water supply  
54 system of the applicant supplied in whole or in part from that source.  
55 If the department so requires, or if it grants a permit, it shall be the  
56 duty of the applicant so to supply water, subject to such requirements

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1 as the department may impose. The price to be paid for the amount of  
 2 water so to be taken [~~and the price to be paid therefor~~] may be agreed  
 3 upon between the applicant and the taker of the water, or if they cannot  
 4 agree, fair and reasonable amounts and rates shall be, after due hear-  
 5 ings thereon, fixed by the [~~department, provided however, that such~~  
 6 ~~department shall have no power to fix rates in any case where the Public~~  
 7 ~~Service Commission has such power, and provided further, that nothing in~~  
 8 ~~this section contained shall be construed as diminishing the powers of~~  
 9 ~~said Public Service Commission in respect to rates of water works compa-~~  
 10 ~~nies subject to its jurisdiction] public service commission. Any such  
 11 agreement or determination of the [~~department~~] public service commission  
 12 may from time to time be modified by further agreement between the  
 13 parties affected thereby or by the further order of the [~~department~~]  
 14 commission.~~

15 § 7. Section 15-1529 of the environmental conservation law is amended  
 16 to read as follows:

17 § 15-1529. [~~Final approval of work~~] Approval of completed water with-  
 18 drawal systems.

19 [~~Before any project authorized to be developed or carried out under~~  
 20 ~~this title 15 shall be operated, it must, as completed, have been~~  
 21 ~~approved by the department~~] The construction of any new or modified  
 22 water withdrawal system authorized under this title shall be under the  
 23 general supervision of a person or firm licensed to practice profes-  
 24 sional engineering in the state. Upon completion of construction, such  
 25 person or firm shall certify to the department that the water withdrawal  
 26 system has been fully completed in accordance with the approved engi-  
 27 neering report, plans and specifications, and the permit issued by the  
 28 department pursuant to this title. The owner shall not commence opera-  
 29 tion of the new or modified water withdrawal system prior to the depart-  
 30 ment receiving such certificate and prior to approval of the system by  
 31 the department of health or its designee as may be required by the state  
 32 sanitary code.

33 § 8. Title 16 of article 15 of the environmental conservation law is  
 34 REPEALED.

35 § 9. Title 33 of article 15 of the environmental conservation law is  
 36 REPEALED.

37 § 10. Subdivision 1 of section 71-1127 of the environmental conserva-  
 38 tion law, as amended by chapter 640 of the laws of 1977, is amended to  
 39 read as follows:

40 1. Any person who violates any of the provisions of, or who fails to  
 41 perform any duty imposed by article 15 except section 15-1713, or who  
 42 violates or who fails to comply with any rule, regulation, determination  
 43 or order of the department heretofore or hereafter promulgated pursuant  
 44 to article 15 except section 15-1713, or any condition of a permit  
 45 issued pursuant to article 15 of this chapter, or any determination or  
 46 order of the former water resources commission or the [~~Department of~~  
 47 ~~Environmental Conservation~~] department heretofore promulgated pursuant  
 48 to former article 5 of the Conservation Law, shall be liable for a civil  
 49 penalty of not more than two thousand five hundred dollars for such  
 50 violation and an additional civil penalty of not more than [~~one~~] five  
 51 hundred dollars for each day during which such violation continues, and,  
 52 in addition thereto, such person may be enjoined from continuing such  
 53 violation as otherwise provided in article 15 except section 15-1713.

54 § 11. This act shall take effect February 15, 2012; provided, however  
 55 that section four of this act shall take effect immediately; and  
 56 provided, further that sections eight and nine of this act shall take

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1 effect December 31, 2013, and provided further that any application for  
2 an adjudication of water rates pursuant to section 15-1521 of the envi-  
3 ronmental conservation law that is filed with the department of environ-  
4 mental conservation and for which the department has issued a notice of  
5 hearing prior to February 15, 2012 shall remain under the jurisdiction  
6 of the department of environmental conservation.

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EXHIBIT B — NOTICE OF PROPOSED RULE MAKING, WATER WITHDRAWAL PERMIT,  
REPORTING AND REGISTRATION PROGRAM, 33 N.Y. REG. 8, NOVEMBER 23, 2011  
[A-909 - A-928]

# RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM     -the abbreviation to identify the adopting agency  
01       -the *State Register* issue number  
96       -the year  
00001   -the Department of State number, assigned upon receipt of notice.  
E        -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

## Department of Corrections and Community Supervision

### NOTICE OF ADOPTION

#### Contraband Drugs

**I.D. No.** CCS-36-11-00007-A

**Filing No.** 1202

**Filing Date:** 2011-11-03

**Effective Date:** 2011-11-23

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of sections 1010.4(c) and 1010.6 of Title 7 NYCRR.

**Statutory authority:** Correction Law, section 112

**Subject:** Contraband Drugs.

**Purpose:** To update the regulation with terminology that was revised in the associated internal management policy.

**Text or summary was published in** the September 7, 2011 issue of the Register, I.D. No. CCS-36-11-00007-P.

**Final rule as compared with last published rule:** No changes.

**Text of rule and any required statements and analyses may be obtained from:** Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, Harriman State Campus - Building 2 - 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.ny.gov

#### Assessment of Public Comment

The agency received no public comment.

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Butler Correctional Facility

**I.D. No.** CCS-47-11-00002-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** This is a consensus rule making to amend section 100.69(c) of Title 7 NYCRR.

**Statutory authority:** Correction Law, section 70

**Subject:** Butler Correctional Facility.

**Purpose:** Amend the text to remove reference to functions that are no longer operational at this correctional facility.

**Text of proposed rule:** The Department of Corrections and Community Supervision proposes to amend section 100.69(c) of Title 7 NYCRR as follows:

Section 100.69 Butler Correctional Facility.

(a) There shall be in the department an institution to be known as the Butler Correctional Facility, which shall be located in the Town of Butler, Wayne County, New York.

(b) Butler Correctional Facility shall be a correctional facility for males 16 years of age or older.

(c) Butler Correctional Facility shall be *classified as a medium security facility to be used as a general confinement correctional facility* [classified as a dual purpose facility consisting of a minimum security compound and an adjacent medium security compound].

[(1) The minimum security compound shall be used as a general confinement facility.

(2) The medium security compound shall be used as an alcohol and substance abuse treatment facility]

**Text of proposed rule and any required statements and analyses may be obtained from:** Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

#### Consensus Rule Making Determination

The Department of Corrections and Community Supervision has determined that no person is likely to object to the proposed action. The amendment of this section removes the reference to functions that are no longer operational at a correctional facility and are no longer applicable to any person. See SAPA section 102(11)(a).

The proposed rule change amends 7 NYCRR § 100.69 to reflect that Butler Correctional Facility no longer has a minimum security compound. The Department's authority resides in section 70 of Correction Law, which mandates that each correctional facility must be designated in the rules and regulations of the Department and assigns the Commissioner the duty to classify each facility with respect to the type of security maintained and the function as specified. See Correction Law § 70(6).

#### Job Impact Statement

A job impact statement is not submitted because this proposed rulemaking will merely amend the regulation to be consistent with the current func-

## Rule Making Activities

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tions of Butler Correctional Facility; therefore it has no adverse impact on jobs or employment opportunities. Additionally, there is no adverse impact on jobs or employment.

## Department of Economic Development

### EMERGENCY RULE MAKING

#### Empire Zones Reform

**I.D. No.** EDV-47-11-00001-E

**Filing No.** 1055

**Filing Date:** 2011-11-02

**Effective Date:** 2011-11-02

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Parts 10 and 11; renumbering and amendment of Parts 12 through 14 to Parts 13, 15 and 16; and addition of new Parts 12 and 14 to Title 5 NYCRR.

**Statutory authority:** General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005, ch. 63; and L. 2009, ch. 57

**Finding of necessity for emergency rule:** Preservation of general welfare.

**Specific reasons underlying the finding of necessity:** Regulatory action is needed immediately to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

**Subject:** Empire Zones reform.

**Purpose:** Allow Department to continue implementing Zones reforms and adopt changes that would enhance program's strategic focus.

**Substance of emergency rule:** The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into "distinct and separate contiguous areas."

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development zones, and the replacement of the Job Training Partnership Act (and private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of "cost-benefit analysis" and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory

definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development ("the Commissioner"). Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

9. The emergency rule tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing applicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had



transferred to its real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing record-keeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

17. The emergency rule clarifies the statutory requirement that certain defined "regionally significant" projects can be located outside of the distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agribusiness or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

20. The emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

The full text of the emergency rule is available at [www.empire.state.ny.us](http://www.empire.state.ny.us)

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires January 30, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Thomas P Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany NY 12245, (518) 292-5123, email: [regan@empire.state.ny.us](mailto:regan@empire.state.ny.us)

#### **Regulatory Impact Statement**

##### **STATUTORY AUTHORITY:**

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

##### **LEGISLATIVE OBJECTIVES:**

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facilitate the administration of this program in a more efficient, effective, and accountable manner.

##### **NEEDS AND BENEFITS:**

The emergency rule is required in order to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

##### **COSTS:**

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's adminis-



## Rule Making Activities

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tration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

### LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

### PAPERWORK:

The emergency rule imposes new record-keeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.

### DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.

### ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

### FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.

### COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

### Regulatory Flexibility Analysis

#### 1. Effect of rule

The emergency rule imposes new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

#### 2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

#### 3. Professional services

No professional services are likely to be needed by small and large businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

#### 4. Compliance costs

No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and large businesses. Local governments are unaffected by this rule.

#### 5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

#### 6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

#### 7. Small business and local government participation

DED is in full compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small businesses and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

### Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

### Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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## Education Department

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### EMERGENCY RULE MAKING

**Teaching Certificate in Earth Science, Biology, Chemistry, Physics, Mathematics or a Closely Related Field**

**I.D. No.** EDU-09-11-00005-E

**Filing No.** 1205

**Filing Date:** 2011-11-08

**Effective Date:** 2011-11-08

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Part 80 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207, 305(1), (2), 3001(2), 3004(1), (6) and 3006(1)

**Finding of necessity for emergency rule:** Preservation of general welfare.

**Specific reasons underlying the finding of necessity:** Supply and demand data has shown that in many regions of New York there is a shortage of certified teachers in the areas of science and mathematics. To address this issue, the proposed regulations have been developed to create an expedited pathway for individuals with advanced degrees in STEM and related teaching experience at the postsecondary level to become certified teachers in mathematics or one of the sciences or a closely related field.

The proposed rule provides eligible candidates with advanced degrees in the STEM areas and teaching experience at the postsecondary level with two certification options. The candidate could obtain a Transitional G certificate to teach math or one of the sciences at the secondary level without completing additional pedagogical study for two years. The district would commit to providing mentoring and appropriate professional development in the areas of pedagogy during the period that the teacher is employed on a Transitional G certificate. After two years of successful teaching experience with the district on a Transitional G certifi-

icate the teacher would be eligible for the initial certificate in that subject area.

The other option is for individuals who meet the other requirements but do not have an offer of employment by a school district they would still have the option of completing six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study.

The proposed rule was adopted as an emergency action at the February 2011 Regents meeting, effective February 15, 2011, and readopted as an emergency rule at the May, June and July 2011 meetings. A Notice of Proposed Rule Making was published in the State Register on March 2, 2011 and a Notice of Revised Rule Making was published on June 1, 2011. The July emergency rule will expire on November 7, 2011. However, additional time is needed for the Department to explore the possible use of Transfer Fund grant funds under the federal Race To The Top program to encourage STEM faculty to work in high-need schools. Emergency action is necessary to ensure that the emergency rule remains continuously in effect until such time as it can be adopted as a permanent rule.

**Subject:** Teaching certificate in Earth Science, Biology, Chemistry, Physics, Mathematics or a Closely Related Field.

**Purpose:** To allow individuals with advanced degrees in the STEM areas and related teaching experience to teach certain subjects in 7-12.

**Text of emergency rule:** 1. Paragraphs (45) through (47) of subdivision (b) of Section 80-1.1 of the Regulations of the Commissioner of Education should be renumbered (46) through (48) of Section 80-1.1 of the Regulations of the Commissioner of Education, effective November 8, 2011.

2. A new paragraph (45) of subdivision (b) is added to Section 80-1.1 of the Regulations of the Commissioner of Education, effective November 8, 2011, to read as follows:

*(45) Transitional G certificate means the first teaching certificate obtained by a candidate who holds an appropriate graduate degree in science, technology, engineering or mathematics and has two years of acceptable experience teaching in a post-secondary institution, that qualifies that individual to teach in the public schools of New York State, subject to the requirements and limitations of this Part, and excluding the provisional certificate, initial certificate, internship certificate, conditional initial certificate, transitional A certificate, transitional B certificate and transitional C certificate.*

3. Subparagraph (i) of paragraph (2) of subdivision (b) of section 80-3.3 of the Regulations of the Commissioner of Education is amended, effective November 8, 2011, to read as follows:

(i) [The] (a) Except as otherwise provided in subdivision (b) of this section, the candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test, written assessment of teaching skills, and content specialty test(s) in the area of the certificate, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test.

(b) Examination requirement for candidates with a graduate degree in science, technology, engineering or mathematics and two years of post-secondary teaching experience in the area of the certificate sought. Any candidate seeking an initial certificate in earth science, biology, chemistry, physics, mathematics or in a closely related field as determined by the Department in (grades 7-12) and who is seeking an initial certificate through individual evaluation under section 80-3.7(a)(3)(ii)(c) shall not be required to achieve a satisfactory level of performance on the written assessment of teaching skills examination or the content specialty test.

4. Section 80-3.7 of the Regulations of the Commissioner of Education is amended, effective November 8, 2011, to read as follows:

This section prescribes requirements for meeting the education requirements for classroom teaching certificates through individual evaluation. [This] Except as otherwise provided in this section, this option for meeting education requirements shall only be available for candidates who apply for a certificate in childhood education by February 1, 2007 and for candidates who apply for any other certificate in the classroom teaching service by February 1, 2012, and who upon application qualify for such certificate. Candidates with a graduate degree in science, technology, engineering or mathematics who apply for an initial teaching certificate under 80-3.7(a)(3)(ii)(c)(3) may continue to meet the education requirements for classroom teaching certificates through individual evaluation after February 1, 2012. The candidate must have achieved a 2.5 cumulative grade point average or its equivalent in the program or programs leading to any degree used to meet the requirements for a certificate under this section. In addition, a candidate must have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course in order for the semester hours associated with that course to be credited toward meeting the content core or pedagogical core semester hour requirements for a certificate under this

section. All other requirements for the certificate, including but not limited to, examination and/or experience requirements, as prescribed in this Part, must also be met.

(a) Satisfaction of education requirements through individual evaluation for initial certificates in all titles in classroom teaching service, except in specific career and technical subjects within the field of agriculture, business and marketing and consumer services, health, a technical area, or a trade (grades 7 through 12).

(1) . . .

(2) . . .

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(3) Additional requirements. A candidate seeking to fulfill the education requirement for the initial certificate through individual evaluation of education requirements shall meet the additional requirements in this paragraph or their substantial equivalent as determined by the commissioner, if so prescribed for that certificate title, in addition to the general requirements prescribed in paragraph (2) of this subdivision.

(i) . . .

(ii) Specialist in middle childhood education (5-9) and adolescence education (7-12).

(a) . . .

(b) . . .

(c) For candidates with a graduate degree in science, technology, engineering or mathematics and two years of postsecondary teaching experience in the certificate area to be taught or in a closely related subject area acceptable to the Department, who apply for a certificate or license in (grades 7-12) on or after February 2, 2011 in earth science, biology, chemistry, physics, mathematics or a closely related field, the candidate shall not be required to meet the general requirements in paragraph (2) (iii), (iv) or (v) of subdivision (a) of this section. However, the candidate shall meet the following requirements:

(1) Degree completion. The candidate shall possess a graduate degree in science, technology, engineering or mathematics from a regionally or nationally accredited institution of higher education, a higher education institution that the Commissioner deems substantially equivalent, or from an institution authorized by the Board of Regents to confer degrees and whose programs are registered by the Department. The candidate shall have completed a graduate major in the subject of the certificate sought, or in a related field approved by the department for this purpose.

(2) Post-secondary teaching experience. The candidate must show evidence of at least two years of satisfactory teaching experience at the post-secondary level in the certificate area to be taught or in a closely related subject area acceptable to the Department.

(3) Pedagogical study or two years of satisfactory teaching experience in a school district under a Transitional G certificate. The candidate shall complete one of the following:

(i) at least six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study for the initial certificate in the area of the candidate's certificate, as prescribed for the certificate title in this paragraph, which shall include study in the methods of teaching in the certificate area, teaching students with disabilities; curriculum and lesson planning aligned with the New York State Learning Standards; and classroom management and teaching at the developmental level of students to be taught; or

(ii) at least two years of satisfactory teaching experience in a school district while the candidate holds a Transitional G certificate under this Part.

(iii) . . .

(iv) . . .

(v) . . .

(vi) . . .

(vii) . . .

(viii) . . .

(ix) . . .

(x) . . .

(xi) . . .

(xii) . . .

(b) . . .

(c) . . .

5. Section 80-5.22 of the Regulations of the Commissioner is added, effective November 8, 2011 as follows:

§ 80-5.22 Transitional G certificate for career changers and others holding a graduate or higher degree in science, technology, engineering or mathematics and with at least two years of acceptable post-secondary teaching experience.

## Rule Making Activities

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## (a) General requirements.

(1) *Time validity.* The transitional G certificate shall be valid for two years.

(2) *Limitations.* The transitional G certificate shall authorize a candidate to teach only in a school district for which a commitment for employment has been made. The candidate shall meet the requirements in each of the following paragraphs:

(i) *Education.* A candidate shall hold a graduate degree in science, technology, engineering or mathematics from a regionally or nationally accredited institution of higher education, a higher education institution that the Commissioner deems substantially equivalent, or from an institution authorized by the Board of Regents to confer degrees. A candidate shall complete study in the means for identifying and reporting suspected child abuse and maltreatment, which shall include at least two clock hours of coursework or training in the identification and reporting of suspected child abuse or maltreatment in accordance with the requirements of section 3004 of the Education Law. In addition, the candidate shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the Department pursuant to Subpart 57-2 of this Title.

(ii) *Examination.* The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test.

(iii) *Post-secondary teaching experience.* The candidate shall submit evidence of at least two years of satisfactory teaching experience at the post-secondary level in the certificate area to be taught or in a closely related subject area acceptable to the Department.

(iv) *Employment and support commitment.* The candidate shall submit satisfactory evidence of having a commitment from a school district of at least two years of employment as a teacher with the school district in the area of the certificate sought, which shall include a plan from the school district for mentoring, appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills, over the two years of employment.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-09-11-00005-EP, Issue of March 2, 2011. The emergency rule will expire January 6, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

**Regulatory Impact Statement****1. STATUTORY AUTHORITY:**

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Subdivision (6) of section 3004 of the Education Law requires the Regents and the Commissioner to develop programs to assist in the expansion of alternative teacher preparation programs.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

**2. LEGISLATIVE OBJECTIVES:**

The proposed amendment carries out the objectives of the above referenced statutes by establishing an alternative certification pathway for candidates with an advanced degree in either science, technology, engineering or mathematics and two years of teaching experience at the post-secondary level, to teach in the certificate area of their advanced degree or one closely related to it.

**3. NEEDS AND BENEFITS:**

The proposed amendment establishes a transitional G certificate to create a mechanism for schools to employ applicants with a graduate degree or higher in science, technology, engineering or mathematics, and two years of experience teaching at the college level in the same area as the certificate requested, or in a closely related field as determined by the Commissioner, to address demonstrated shortage areas in these subjects. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder for two years of employment, which shall include a plan for mentoring, appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment. For individuals who meet the other requirements but do not have an offer of employment by a school district they would still have the option of completing six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study.

The proposed amendment is needed to facilitate the State's ability to address persistent shortages of certified teachers who are qualified to teach in one of the sciences or mathematics at the 7-12 grade level. The proposed amendment is designed to support the Department's continuing efforts to certify a sufficient number of properly qualified candidates to fill the need for science and mathematics teachers in the State's schools.

The transitional G certificate will be valid for two years from its effective date and will not be renewable. It will be limited to employment with an employing entity.

**4. COSTS:**

(a) *Cost to State government.* The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to process certificate applications.

(b) *Cost to local government.* The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) *Cost to private regulated parties.* A candidate seeking a transitional G certificate will be required to pay a \$100 application fee.

(d) *Costs to the regulatory agency.* As stated above in Costs to State Government, the amendment will not impose any additional costs on the State Education Department.

**5. LOCAL GOVERNMENT MANDATES:**

School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, and that the district or BOCES has a plan for mentoring, appropriate instructional support services and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

**6. PAPERWORK:**

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. The employing school district or BOCES will be required to certify that the district wants to employ the candidate in a position for which the candidate would need the transitional G certificate to qualify, and that it will provide a plan for mentoring, appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

**7. DUPLICATION:**

The amendment does not duplicate other existing State or Federal requirements.

**8. ALTERNATIVES:**

No alternative proposals were considered.

**9. FEDERAL STANDARDS:**

There are no Federal standards that address alternative certification requirements in the areas of science and mathematics.

**10. COMPLIANCE SCHEDULE:**

Regulated parties must comply with the proposed amendment on its effective date. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply.

**Regulatory Flexibility Analysis****(a) Small Businesses:**

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 7-12 to address the demonstrated shortage areas in these subjects and grade levels. The amendment does not impose any reporting, record-keeping, or compliance requirements and will not have an economic impact on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken.



## (b) Local Governments:

## 1. Effect of the rule:

The proposed amendment affects all school districts and BOCES in the State that wish to hire a teacher for employment that holds a transitional G certificate.

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 7-12 to address the demonstrated shortage areas in these subjects and grade levels.

The proposed amendment establishes a transitional G certificate which authorizes a qualified applicant, upon meeting the prescribed requirements, a certification to teach at the 7-12 grade level in science, mathematics, or a closely related field as determined by the Commissioner. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, with a plan for mentoring and appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

## 2. Compliance requirements:

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 7-12 to address the demonstrated shortage areas in these subjects and grade levels.

The proposed amendment establishes a transitional G certificate which authorizes a qualified applicant, upon meeting the prescribed requirements, a certification to teach at the 7-12 grade level in science, mathematics, or a closely related field as determined by the Commissioner. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, with a plan for mentoring and appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

## 3. Professional services:

The proposed amendment does not mandate school districts or BOCES to contract for additional professional services to comply.

## 4. Compliance costs:

There are no compliance costs for school districts or BOCES that exercise the option of employing a teacher under a transitional G certificate. However, the candidate will be required to pay an application fee of \$100 for the transitional G certificate.

## 5. Economic and technological feasibility:

Meeting the requirements of the proposed amendment is economically and technologically feasible. As stated above in compliance costs, the amendment imposes no costs on school districts or BOCES.

## 6. Minimizing adverse impact:

The amendment establishes requirements for the issuance of a transitional G certificate. The State Education Department does not believe that establishing different standards for local governments is warranted. A uniform standard ensures the quality of the State's teaching workforce.

## 7. Local government participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES.

**Rural Area Flexibility Analysis**

## 1. Types and estimated numbers of rural areas:

The proposed amendment will affect candidates, New York State school districts and BOCES in all parts of the State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

2. Reporting, recordkeeping, and other compliance requirements and professional services:

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 7-12 to address the demonstrated shortage areas in these subjects and grade levels. The proposed amendment also establishes requirements regarding the application for and issuance of the transitional G certification. This certification will authorize a qualified applicant, with an advanced degree in either science, technology, engineering, mathematics

or a closely related field as determined by the Commissioner, and two years of teaching experience at the post-secondary level, to teach in the certificate area of their advanced degree or one closely related to it, for the period of two years, at which time the candidate may apply for an initial certificate in that subject area. For individuals who meet the other requirements but do not have an offer of employment by a school district they would still have the option of completing six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study. Certificate areas identified for the transitional G include: Biology, Chemistry, Earth Science, Physics, Mathematics, or a closely related field as determined by the Commissioner, at the 7-12 grade level.

School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, which shall include a plan for appropriate mentoring and instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

## 3. Costs:

There are no compliance costs for school districts or BOCES that exercise the option of employing a teacher under a transitional G certificate. However, the candidate will be required to pay an application fee of \$100 for the transitional G certificate.

## 4. Minimizing adverse impact:

The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

## 5. Rural area participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and BOCES.

**Job Impact Statement**

The purpose of the proposed amendment is to establish requirements for an expedited certification pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science and mathematics in grades 5-9 and 7-12.

The proposed amendment is needed to facilitate the Department's continuing ability to certify a sufficient number of properly qualified candidates to address shortage areas in the State's public schools and BOCES. This proposal is intended to increase the supply of teachers who are certified in the sciences and mathematics in grades 5-9 and 7-12, all of which are shortage areas.

Because it is evident from the nature of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

**Assessment of Public Comment**

The agency received no public comment

## Department of Environmental Conservation

### NOTICE OF ADOPTION

**Procedures for Issuance of Summary Abatement Orders**

**I.D. No.** ENV-30-11-00002-A

**Filing No.** 1204

**Filing Date:** 2011-11-07

**Effective Date:** 2011-11-23

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of section 620.2(a) of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, section 71-0301

**Subject:** Procedures for issuance of summary abatement orders.

**Purpose:** To correct two typographical errors from the original 1977 rulemaking to conform the regulatory language to the enabling statute.

## Rule Making Activities

NYS Register/November 23, 2011

**Text or summary was published** in the July 27, 2011 issue of the Register, I.D. No. ENV-30-11-00002-P.

**Final rule as compared with last published rule:** No changes.

**Text of rule and any required statements and analyses may be obtained from:** James T. McClymonds, Chief Administrative Law Judge, NYS-DEC, Office of Hearings and Mediation Services, 625 Broadway, 1st Floor, Albany, New York 12233-1550, (518) 402-9003, email: jtmcclym@gw.dec.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED**

**Water Withdrawal Permit, Reporting and Registration Program**

I.D. No. ENV-47-11-00012-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Repeal of Parts 601 and 675; addition of new Part 601; and amendment of section 621.4 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 3-0301(1)(f), (2)(m), 3-0306(4), 8-0113(2) and 70-0107; art. 15, titles 15, 16 and 33; art. 21, title 10; and art. 70

**Subject:** Water withdrawal permit, reporting and registration program.

**Purpose:** Implement amendments to Environmental Conservation Law (ECL) article 15, title 15, key provisions of ECL article 15 title 16, 6 NYCRR 675 and ECL article 15 title 33.

**Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.ny.gov/65.html>):** This document summarizes the proposed water withdrawal regulations. Most subparts are condensed. Two provisions are presented verbatim. Subparts 15, 16, 19, 20, 21, 22, and 23 are similar to provisions in the part 750 SPDES regulations and are not summarized here. The Express Terms of proposed Part 601 control should a conflict exist between this summary document and the Express Terms.

**§ 601.1 Purpose**

The purpose of part 601 is to regulate the use of NY's water resources pursuant to ECL article 15 title 15 by implementing a permitting, registration and reporting program for water withdrawals equaling or exceeding a threshold volume. This Part also implements New York's commitment under the Great Lakes-St. Lawrence River Basin Water Resources (GLSLRBWR) Compact to create a regulatory program for water withdrawals in the Great Lakes Basin.

**§ 601.2 Definitions**

Subpart § 601.2 provides definitions of terms. One of the numerous definitions is included here. The term threshold volume means "the withdrawal of water of a volume of one hundred thousand gallons or more per day, determined by the limiting maximum capacity of the water withdrawal system; except that for withdrawals for agricultural purposes the threshold volume shall mean the withdrawal of water of a volume in excess of an average of one hundred thousand gpd in any consecutive thirty-day period."

**§ 601.3 Applicability**

"[Part 601] applies to any person who is engaged in, or proposes to engage in, the construction, operation or maintenance of a water withdrawal system that withdraws water of a volume equal to or greater than the threshold volume; the taking, condemnation or acquisition of land for the development or protection of sources of public water supply; the extension of a water service area associated with a water withdrawal system that withdraws water of a volume equal to or greater than the threshold volume; and the interbasin diversion of water or wastewater. This Part also applies to any person who proposes to transport or carry waters of the state to any location outside the state, or to transport or carry by vessel more than ten thousand gallons in any one day of the waters of the state. All valid public water supply permits and approvals issued by DEC or its predecessors that are in effect as of February 15, 2012 shall remain in effect for the purpose of satisfying the [part 601] permit requirements..., except that DEC may seek modification of such a permit in accordance with this Part."

**§ 601.4 Prohibitions**

Any water withdrawal is prohibited if it is subject to and not in compliance with the GLSLRBWR Compact, will result in an interbasin diversion prohibited by § 601.18, or is otherwise subject to and not in compliance with this part, a compact basin commission, or any other law.

**§ 601.5 Annual Reporting**

Submit an annual water withdrawal report if you are subject to the permit requirements of §§ 601.6 or 601.7, the agricultural registration requirements of § 601.17, or the interbasin registration requirements of § 601.18; or you are a hydropower operator under a Federal Energy Regulating Commission license; and are not otherwise exempt under § 601.9.

Complete the annual reports on DEC forms, submit the first one on or before March 31, 2013, and then submit another by March 31 every year thereafter. Annual reports include withdrawals for the previous calendar year and a specific list of elements, including volume withdrawn, the volume, locations and methods of any water returns; volumes and rates of water lost or consumptively used; and water conservation and efficiency measures taken. Exempt withdrawals include those for fire suppression or public emergency, under Long Island water well permits, for non-extractive geothermal heat pumps, and for reuse of reclaimed wastewater.

These annual reports satisfy the registration and annual reporting provisions of ECL article 15 titles 16 and 33 until the effective date of their repeal, December 31, 2013. However, the two-year registration fee of two hundred dollars (\$200) or the annual report fee of fifty dollars (\$50) pursuant to ECL article 15 title 16 or title 33 remain due until their repeal, except for agricultural withdrawals registered under § 601.17.

**§ 601.6 Water Withdrawal Permit**

This subpart lists the actions that may not be undertaken without a water withdrawal permit under Part 601. There are eleven listed actions that require a permit. The core actions are the construction, operation or maintenance of a water withdrawal system with a capacity at or above the threshold volume. Additional listed actions include those that extend, alter or change an existing water withdrawal system such that the system capacity increases to meet or exceed the threshold volume, or exceed the threshold volume more than it did previously. The transport of any amount of NY fresh surface or groundwater to any location outside NY through pipes, conduits, ditches or canals requires a permit as does the transport by vessel (floating craft) of more than ten thousand gpd of NY surface water. For a public water supply system with a capacity at or above the threshold volume, no agreement for the bulk sale of water for commercial, industrial, oil and gas well development outside of the public water supply system's approved water service area may be entered into without a permit.

**§ 601.7 Initial Permits**

A person must apply for an 'initial permit' with respect to a water withdrawal system, other than public water supply, that has a capacity at or above the threshold volume as of February 15, 2012. Such persons must also have properly reported their withdrawals to DEC pursuant to ECL article 15 title 16 or 33 as of February 15, 2012 and must not be exempt under § 601.9. Persons subject to this subpart who failed to report existing withdrawals as of February 15, 2012 must submit a standard permit application under § 601.6 by February 15, 2013.

Persons who qualify for the initial permit process must apply for an initial permit. To do so, complete an initial permit application on DEC forms and submit it to DEC by the following deadlines: February 15, 2013 for systems designed to withdraw 100 million gallons per day (mgd) or more; February 15, 2014 for systems with a capacity of 10 or more but less than 100 mgd; February 15, 2015 for capacities of 2 or more but less than 10 mgd; February 15, 2016 for systems capacities of 0.5 or more but less than 2 mgd; February 15, 2017 for systems capacities of 0.1 or more but less than 0.5 mgd. For withdrawals that are specifically regulated as of February 15, 2012 under a SPDES permit or a permit issued under ECL article 15 (other than title 15), an initial permit application must be submitted within 180 days before the existing permit is scheduled to expire absent renewal.

Initial permits are issued for the capacities previously reported on or before February 15, 2012, are issued for a fixed term of up to ten years, include the terms of a standard water withdrawal permit, including water conservation measures, and are subject to modification, suspension and revocation under this Part.

**§ 601.8 Consolidation of Existing Public Water Supply Permits.** 'Please see Express Terms.'

**§ 601.9 Permit Exemptions**

There are fourteen listed actions that are exempt from the water withdrawal permit requirements. They are quite specific and the reader is referred to the Express Terms. Among the exempt actions are the following: agricultural withdrawals registered or reported pursuant to ECL article 15 title 16 or title 33 by February 15, 2012 (such withdrawals are still subject to § 601.5 and/or § 601.17); withdrawals approved by the DRBC or SRBC; withdrawals of hydropower facilities under a FERC license; withdrawals from the NYS Canal System by the NYS Canal Corporation; non-extractive geothermal systems; Long Island wells with Part 602 permits; on-site water withdrawals for approved inactive hazardous waste remedial site programs; fire suppression or public emergency withdrawals; withdrawals from the Atlantic Ocean or Long Island Sound; water main extensions in an approved water service area, reconstruction

of existing water withdrawal facilities, or construction of filtration or treatment facilities, where there is no change in capacity; ballast water withdrawals necessary for normal and lawful vessel activity; and withdrawals related to routine maintenance and emergency repairs of dams.

§ 601.10 Application for a Permit. Please see Express Terms.

§ 601.11 Action on Permit Applications

DEC may grant or deny a water withdrawal permit, or grant the permit with conditions. Permit terms are up to ten years. In making the permit decisions, DEC will examine whether, for example, other sources were considered, the quantity is adequate and necessary for the proposed use, the project is equitable to affected municipalities, the withdrawal can be avoided or lessened through conservation, there will be significant adverse impacts to the quantity or quality of the source and water dependent natural resources, including aquatic life, and water conservation measures are incorporated. DEC may impose special permit conditions on public water supplies in, adjacent to, or serving an agricultural district.

§ 601.12 General Provisions of a Water Withdrawal Permit

The general provisions in § 601.12 that are fairly standard to DEC permits do not appear in this summary. The permit provisions that are more tailored to water withdrawals are: withdrawal systems must not exceed design capacity without approval; intake structures must sustain any passby flow requirement in the permit; withdrawals in a compact basin commission must comply with those requirements; and if operation pursuant to the permit causes or contributes to a contravention of State water quality standards, or if a permit modification is needed to prevent impairment of the best use of the waters, DEC may require a permit modification, abatement of the contravention or impairment, and may prohibit operation pending the modification.

§ 601.13 Approval of Plans by the Department of Health. "Applies to public water supply systems."

§ 601.14 Approval of Completed Works

Construction must be under the supervision of a professional engineer and cannot be operated until certified that it was completed in accordance with the issued permit. Public water supply permittees may start operation upon submission of an Approval of Completed Works letter issued by the Department of Health.

§ 601.17 Registration of Water Withdrawals for Agricultural Purposes

This subpart applies to persons who operate a water withdrawal system for agricultural purposes above the threshold volume on February 15, 2012 or the effective date of this Part, and who registered or reported, prior to February 15, 2012, their annual water usage pursuant to ECL article 15 title 16 or 33. Such persons must submit a request to register agricultural withdrawals by March 31st of each year. Requests shall include a completed form, a general map showing specified information, and the annual report for the previous year under § 601.5.

§ 601.18 Registration of Interbasin Diversions; Prohibitions

Interbasin diversions of more than an average of 1 mgd must be registered, as must increases in volume that cause such diversions to exceed this threshold. Construction of facilities or use of equipment must await registration. However, interbasin diversions under a part 601 water withdrawal permit need not be registered.

Submit the registration by February 15, 2013 for the subject diversions that exist on February 15, 2012 or the effective date of these regulations. Submit registration renewals annually by March 31 and within 60 days of a transfer. A registration must include: a completed form; a general map with specified information; and the annual report under § 601.5 for the previous calendar year; a professional engineer's report covering specified topics. DEC's receipt of a registration is not an approval. A new or increased interbasin diversion must not cause a significant adverse impact on the source New York major drainage basin quantity. Diversions of any quantity the Great Lakes-St. Lawrence River Basin are prohibited by the GLSLRBWR Compact. Limited exceptions under article 21 for public water supply systems are considered by the GLSLRBWR Council and Regional Body if in compliance with that Compact.

Summary of Part 621

6 NYCRR §§ 621.1(b), 621.4(b), and 621.11(c)(2) are modified to replace the term "supply" with "withdrawals", and establish initial permits under ECL article 15 title 15 as minor projects under 601.7.

**Text of proposed rule and any required statements and analyses may be obtained from:** Robert Simson, Division of Water, New York State Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany, NY 12233-3500, (518) 402-8271, email: rjsimson@gw.dec.state.ny.us

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

**This action was not under consideration at the time this agency's regulatory agenda was submitted.**

#### Summary of Regulatory Impact Statement

1. Statutory Authority. Chapter 401, Laws of 2011, amended ECL article 15 titles 15, 16 and 33, and article 71 section 71-1127 to authorize

the New York State Department of Environmental Conservation (DEC) to implement an expanded permitting, reporting and registration program for water withdrawals and adopt regulations to implement the expanded program.

2. Legislative Objectives. The statutory amendments have a broad array of legislative objectives, all of which are carried out in the proposed revisions to 6 NYCRR part 601. ECL article 15 title 15 originally required permits solely for public water supplies with five or more service connections, regardless of the volume of water withdrawn. The amendments expand the permit program to include withdrawals for purposes beyond public water supply, such as those for commercial, manufacturing, industrial, oil and gas development, and other purposes. However, the amendments also limit the permit program to only include withdrawals that meet or exceed a threshold volume of 100,000 gallons per day (gpd). The effect is to regulate more of the higher-volume withdrawals across the state while no longer issuing water withdrawal permits for lower-volume public water supplies. Withdrawals below the size threshold must still comply with water pollution control laws (ECL article 17), Department of Health regulations and state environmental quality review (SEQR) requirements, as applicable.

To summarize, the legislative objectives: add water conservation elements and encourage water efficiency and reuse consistent with the Great Lakes-St. Lawrence River Basin Water Resources Compact as set forth in ECL article 21 title 10 (Compact); implement key provisions in ECL article 15 title 16 for the registration of Great Lakes watershed withdrawals and in ECL article 15 title 33 for water withdrawal reporting, both of which are now consolidated into title 15 (ECL article 15 titles 16 and 33 are then repealed effective December 31, 2013); exempt agricultural withdrawals from the permit requirement so long as the withdrawals are registered in accordance with current law, including ECL article 15 titles 16 and/or 33, as of February 15, 2012 under the provisions of ECL § 15-1504 (any person withdrawing water for agricultural purposes that has not registered or reported to DEC by February 15, 2012 shall be required to apply for and obtain a water withdrawal permit); allow a more generous size threshold for agricultural withdrawal registrations (100,000 gpd in any consecutive 30-day period) consistent with title 16; provide additional exemptions to the permit requirement; prohibit new or increased interbasin diversions in excess of one million gpd unless it is registered with DEC; require that existing diversions in excess of one million gpd are registered with DEC by February 15, 2013, subject to limited exemptions; provide that the construction of any water withdrawal system must be supervised by a licensed professional engineer; and increase the maximum civil penalty for violations of ECL article 15 from \$500 to \$2,500 per violation and from \$100 to \$500 for each day during which the violation continues.

These legislative objectives are fulfilled (and often statutorily required) by the proposed regulations, which largely mirror the statutory amendments, by: the proposed repeal of 6 NYCRR part 601, Water Withdrawal Regulations, and part 675, Great Lakes Water Withdrawal Registration Regulations; the proposed adoption of a new part 601; and the proposed revision to part 621.4, Uniform Procedures.

3. Needs and Benefits. Pursuant to ECL article 15, DEC has been entrusted with the responsibility to conserve and manage New York State's water resources for the benefit of all the inhabitants of the State. Good policy and sound natural resource management practices are critical to assuring long-term supplies of water to meet these needs. In addition to these benefits, the amendments in Chapter 401 allow DEC to fully comply with commitments under the Compact: regulation of water withdrawals occurring in the New York portion of the Great Lakes Basin. The amendments also direct DEC to establish a water conservation and efficiency program, another key responsibility of New York State under the Compact. The proposed revisions to part 601 carry out this commitment and program.

DEC worked extensively with stakeholders, including agriculture, industry and environmental advocates, to resolve their concerns during development of the legislation. As a result, existing agricultural withdrawals are exempt from the new permit requirement as long as these withdrawals are reported to DEC as of February 15, 2012 as is already required under existing law. In addition, other (non-agricultural) existing water withdrawals above the size threshold are entitled to an initial permit, subject to appropriate terms and conditions, based on the maximum water withdrawal capacity reported to DEC on or before February 15, 2012 pursuant to existing law. Chapter 401 also authorizes DEC to establish quantitative standards that maintain stream flows protective of aquatic life, consistent with the policy objectives of ECL article 15. Further, the criteria that DEC must consider in making its permit decisions are based on the decision-making standard in the Compact. The proposed part 601 reflects and carries out each of these aspects of the legislative amendments.

The proposed regulations implement a comprehensive statewide permitting program for significant water withdrawals, help ensure that water remains available for drinking water supply, agriculture, hydropower,



## Rule Making Activities

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manufacturing, aquatic habitat, navigation, water-based recreation, wetlands, and other uses, while allowing DEC to regulate withdrawals of water that are unregulated now, like water taken by bottled water companies, or large withdrawals of water anticipated for high-volume hydraulic fracturing. The regulations will help the Department to protect existing water users, especially for drinking water purposes, and help new businesses to know where to locate in New York, especially if the business is heavily water dependent.

Modifications to 6 NYCRR part 621.4, Uniform Procedures, are also included in this rule making for consistent use of terms and to expand the 'minor' project category to include water withdrawal initial permits.

The Repeal of 6 NYCRR part 675 is also included in this rulemaking as the proposed 601 includes the requirements of part 675 as necessary.

### 4. Costs.

(a) Costs for initially complying and continuing to comply with the proposed regulations: Such costs will vary depending upon the size, capacity and complexity of the water withdrawal system or interbasin diversion. Reporting costs should be minimized because withdrawal systems within the ambit of the proposed rule are already required to report their withdrawals annually under ECL article 15 title 33, and if they are not required to report under this ECL provision, then they are required to report under another program that requires similar reporting. The new one-time costs primarily consist of the Engineer's Report associated with the permit application process for previously-unregulated water withdrawal systems. For new projects, the cost of an Engineer's Report can range from \$5,000 to \$25,000, depending on the water withdrawal system. It bears mentioning that most persons who construct new or expanded water withdrawal systems of a size that meet or exceed the size threshold in these regulations still typically need to retain a professional engineer, regardless of the new regulations.

Other elements of the permit application process will typically include either a 72-hour pump test and analysis of groundwater withdrawals, or a safe yield analysis for surface water withdrawals. Either of these tests can cost between \$10,000 and \$30,000, with the cost of a safe yield analysis typically occupying the lower end of this range. Again, these tests are routinely pursued, regardless of these regulations, by most water withdrawal system proposals that are above the size threshold.

The preparation and submission of a Water Conservation Program is also required by the permitting provisions of these regulations as well as the preparation and analysis necessary to present the Project Justification. A Water Conservation Program does not need to be prepared by a Professional Engineer, and may typically cost between \$500 and \$5,000, depending on the size of the withdrawal.

The availability of an 'initial permit' for pre-existing water withdrawals will reduce the costs the permit application process for existing withdrawals through the avoidance of the time and costs associated with a public hearings while maintaining the public involvement through the written public comment process.

New, smaller public water supply systems - those that do not exceed the size threshold- are now spared of the costs of the permit application process; however it is expected that many such smaller systems will complete the same or similar elements as a means of good design, less costly asset management, and efficient business practices.

(b) Costs to DEC, the state, and local governments for the implementation and continued compliance with the rule: The greatest direct cost to DEC will occur in the Division of Water, and to a lesser extent, other units needed to support the program's work. DEC may conduct outreach and training, develop additional guidance documents, prepare notifications, develop a compliance database to track receipt of required reports, prepare case referrals to DEC's attorneys for enforcement, and face an increase in water withdrawal permit applications.

There are no significant costs anticipated for state or local governments except with respect to their roles as owners or operators of water withdrawal systems above the size threshold. Many local governments have previously-permitted public water supplies; there should be no significant additional costs for these local governments. Various state agencies may operate water withdrawal systems over the size threshold and unless exempt will be subject to the same costs as provided above for other owners of operators of water withdrawal systems. The regulations and Chapter 401 define "person" to include state agencies.

5. Local Government Mandates. There are no programs, services, duties, or responsibilities imposed by the rule upon any county, city, town, village, school district, fire district or other special district except with respect to their role as owners or operators of water withdrawal systems over the size threshold (unless exempt). New smaller public water supply systems are spared of the costs of the permit application process if the systems do not reach the size threshold.

6. Paperwork. The proposed regulations require water withdrawal permittees to prepare and maintain documents about the water withdrawal system. Annual Reports or Registrations are periodic submissions but the

predominant obligation to prepare and submit documents occurs once during the permit application process.

7. Duplication. For most water withdrawal systems, there are no relevant rules or other legal requirements of the state and federal governments that duplicate, overlap or conflict with the rule. The full text of the RIS provides additional clarification and answers frequent questions concerning potential duplication.

8. Alternatives. The Department considered proposing regulations without the monitoring, recording and recordkeeping provisions (§§ 601.19 and 601.20), the permit denial, suspension and revocation provisions (§ 601.16), the inspection and entry provisions (§ 601.21), the signature of forms provision (§ 601.22), and the references provision (§ 601.24), respectively. However, it was determined that the legislative objectives of the Chapter 401 amendments and the Compact cannot be met without the monitoring, recording and recordkeeping provisions. The Department adapted the proposed regulations in §§ 601.19 and 601.20 from existing SPDES regulations because they are already well-known to and implemented by those who use withdrawn water for purposes that generate waste water discharges. The permit denial, suspension and revocation provision in proposed § 601.16 appears in substantially similar form in the SPDES regulations, and is necessary to put permittees on notice of the circumstances that can lead to rejection of a water withdrawal proposal or suspension or revocation of a permit. The same is true for proposed § 601.22 and 601.24.

9. Federal Standards. The state's water withdrawal law does not derive its authority from federal laws or regulations. The regulations exempt withdrawals that are regulated by FERC from the permit requirements.

10. Compliance Schedule. The proposed regulations provide time to enable regulated persons to achieve compliance with the rule. A table summarizing the applicable time frames is provided in the full text of the Regulatory Impact Statement; however, the proposed regulations should be consulted for a fuller understanding of the time frames.

### Summary of Regulatory Flexibility Analysis

1. Effect of Rule. Recent statutory amendments to Environmental Conservation Law (ECL) article 15, title 15 (Chapter 401 of the 2011 Laws of New York) both expand and limit this water withdrawal permit program. The amendments expand the permit program to include withdrawals for purposes beyond public water supply, such as those for commercial, manufacturing, industrial, oil and gas development, and other purposes. The amendments generally limit the permit program to withdrawals that meet or exceed a threshold volume (of 100,000 gallons per day (gpd)). The effect is to regulate far more of the higher-volume withdrawals across the state while exempting from permitting requirements withdrawals associated with lower-volume public water supply systems (PWSS). The proposed amendments to 6 NYCRR part 601 and subpart 621.4, and the consolidation of part 675 (Great Lakes water withdrawal registration) into part 601, implement this permitting program. The types of water withdrawal systems that are subject to the permit program are located in all areas of the state; so small businesses and local governments that undertake water withdrawals for purposes other than PWSS will be impacted by the proposed regulations, although the impact will be offset by the 100,000 gpd threshold, other exemptions, the availability of an 'initial permit,' and the staggered or delayed implementation schedule.

2. Compliance Requirements. The proposed regulations do not distinguish between water withdrawal systems operated by small businesses and those operated by local governments. Existing agricultural withdrawals of any volume are exempt from the permit requirement altogether so long as these existing withdrawals are registered in accordance with current law (including ECL article 15 titles 16 and/or 33) as of February 15, 2012. Moreover, the registration requirement for agricultural withdrawals is subject to an even more generous size threshold of an average of 100,000 gpd in any consecutive 30-day period. New agricultural withdrawals above the size threshold will require permits. The proposed new part 601 implements other statutory exemptions to the water withdrawal permit requirement, including fire suppression withdrawals and withdrawals approved by the Delaware River Basin Commission or Susquehanna River Basin Commission. Small businesses and local governments may benefit from these provisions.

Initial Permits. An 'initial permit' includes all of the terms and conditions of a water withdrawal permit, but is a 'minor action' under the proposed revision to subpart 621.4 that results in a slightly abbreviated permitting process. A water withdrawal system qualifies for an initial permit under the following circumstances: the withdrawal exists as of February 12, 2012; it is over the size threshold; it is properly reported to DEC by February 15, 2012 under existing law; it is not a public water supply; and the withdrawal is not otherwise exempt. The slightly simpler administrative process for initial permits eases the compliance requirements for existing and previously-unregulated water withdrawals that are not exempt.

In addition, the 'initial permit' application deadline for existing water

withdrawals above the size threshold depends on the amount of water withdrawn. Specifically, applications for initial permits are not due until: February 15, 2017 for withdrawals equal to or greater than 0.1 but less than 0.5 million gallons per day (mgd); February 15, 2016 for withdrawals equal to or greater than 0.5 mgd but less than 2 mgd; February 15, 2015 for withdrawals equal to or greater than 2 mgd but less than 10 mgd; February 15, 2014 for withdrawals equal to or greater than 10 mgd but less than 100 mgd; and February 15, 2013 for withdrawals equal to or greater than 100 mgd. These rolling deadlines will benefit small businesses and local governments that withdraw lesser amounts of water.

3. Professional Services. Small business owners and local governments that own or operate water withdrawal systems are subject to the same requirements as other owners of water withdrawal systems, and would be required to retain the same level of professional services to comply with the regulations. The requirements are described in the 'Costs' section of the Regulatory Impact Statement (RIS). A small business or local government who has a professional engineer with relevant experience on staff may use its engineer to produce the documents required in the proposed regulations.

4. Compliance Costs. Small business owners and local governments that operate water withdrawal systems are subject to the same requirements as others, and will likely incur similar costs as other withdrawal operators. The requirements are summarized in the 'Costs' section in the RIS.

5. Economic and Technological Feasibility. Small businesses and local governments who operate existing, currently-unregulated water withdrawal systems above the size threshold will need to meet the 'initial permit' requirements of the proposed regulations, unless exempt. Applying for an 'initial permit' is quicker and less costly because it usually avoids the need for a permit hearing (as described in the RIS). While public notice and comment on the 'initial permit' application must occur, a permit hearing on top of that would generally not be necessary.

It is important to understand that the economic burden related to the 'initial permit' process would be greater if the applicant has not or does not report or register their withdrawals under ECL article 15 titles 16 or 33 by February 12, 2012, as is discussed in the RIS. The water withdrawal reporting requirements in ECL article 15 title 33 are statutory and compliance is a pre-condition to eligibility to apply for an 'initial permit'. The same is true for the Great Lakes Basin registrations requirements of ECL article 15 title 16. If such existing withdrawals at or above the size threshold are not reported or registered under titles 16 or 33, as applicable, by February 12, 2012, the small business owner or municipal entity will not be eligible to apply for the quicker and less costly 'initial permit' and will instead be required to apply for and obtain a standard water withdrawal permit under its more time consuming and more costly process. The costs associated with applying for an 'initial permit' for existing water withdrawals should be substantially less as most engineering, testing, environmental and alternative analyses costs would have already been incurred when the project was initially constructed.

In addition to creating a more flexible permit application process for existing withdrawals above the size threshold, through the 'initial permit,' the proposed regulations also afford flexibility and enhance the feasibility by providing additional time, up to five years depending on the capacity of the water withdrawal system, to submit the 'initial permit' application to the Department.

6. Minimizing Adverse Impacts. In terms of additional measures taken to minimize potential adverse impacts of complying with the proposed regulations, we note that water hydropower withdrawals that are federally regulated through a FERC (Federal Energy Regulating Commission) license are exempt from the water withdrawal permit requirement. To avoid potential duplication in the annual reporting obligation, and as is further discussed in the RIS, annual reports or registrations of water withdrawals that are submitted under ECL article 15 titles 16 or 33 are deemed sufficient under the proposed regulations until those statutory provisions sunset on December 31, 2013.

As stated above, under the amended statute and these proposed regulations, new public water supply systems below the volume threshold, regardless of the number of service connections, are no longer required to apply for water withdrawal permits. Similarly, existing agricultural withdrawals that are registered or reported to DEC under ECL article 15 titles 16 or 33 on or before February 15, 2012 are exempt altogether from the water withdrawal permit requirement and the registration requirement for agricultural withdrawals is subject to a more generous size threshold.

For water withdrawal systems that are not exempt and that are above the size threshold as of February 15, 2012, the 'initial permit' process is somewhat less costly and time consuming than the standard permit process and provides additional time to comply depending on the capacity of the water withdrawal system.

7. Small Business and Local Government Participation. The public outreach that occurred during the development of the statutory amend-

ments was of significant and material assistance in drafting these proposed regulations. DEC played a role in drafting the legislation underlying this rulemaking. In that process, DEC sought and received input from many stakeholders, including representatives of small businesses and local governments. The discussions were about how regulated entities would be subject to the law, and the discussions resulted in legislative changes to address concerns that are now also carried out in these proposed regulations.

In response to discussions with the New York Farm Bureau, DEC modified the statutory definition of threshold volume for agricultural withdrawals, and made other changes applicable to agricultural withdrawals. During the legislative process, DEC also met with the Business Council and the New York State Chemical Alliance to address concerns of New York's businesses. These groups explained that it would be burdensome for such groups to apply for permits for withdrawals that have already existed. To address this concern, the amended legislation includes provisions allowing existing systems to utilize the more efficient and less costly "initial permit" process. DEC also met with and had discussions with representatives of the New York State Association of Town Superintendents of Highways, Inc.; Ski Areas of New York, Inc. and representatives of the state's ski areas; persons representing the interests of golf courses and installers of irrigation systems; and several local governments. These, either individually or collectively, resulted in changes to the draft statutory amendments prior to their passage and thereby also to these proposed regulations. The regulatory provisions that reflect a direct response to the public outreach include, without limitation, the following: the definitions in § 601.2 ('environmentally sound and economically feasible,' establishment of the 'threshold volume' at a level as high as 100,000 gallons per day, with a more generous interpretation for farm withdrawals, and 'vessel' is defined such that it does not include tanker trucks); the annual reporting in § 601.5 (potential duplication with reporting under ECL article 15 titles 16 and 33 eliminated, the list of over seven exemptions from annual reporting); the 'initial permit' provisions in § 601.7, in their entirety; the provision of fourteen separate water withdrawal permit exemptions in § 601.9, which includes eight more than are in the amended statute, particularly the permit exemption for all withdrawals for agricultural purposes that are properly registered or reported by February 15, 2012; inclusion of "economically feasible" in the water conservation program that is required under the permit application provisions in § 601.10; and the allowance for the water conservation programs to be developed without the services of a professional engineer.

DEC has also undertaken outreach in an effort to ensure that all affected entities were made aware of the water withdrawal reporting requirements of ECL article 15, title 33 that became effective April 1, 2009. DEC posted information about the new reporting requirement on its webpage at <http://www.dec.ny.gov/lands/55509.html>. In 2009, DEC sent letters to thousands of persons potentially subject to the new reporting requirement as well as to organizations representing those persons, including the Association of Towns of the State of New York, public water suppliers, State Pollutant Discharge Elimination System permittees, and Concentrated Animal Feeding Operations. In 2010, DEC contacted the same list of persons via e-mail. In August 2011, DEC met with the New York Farm Bureau to discuss further outreach to alert farmers to the benefits to them of registering or reporting prior to February 15, 2012.

#### **Rural Area Flexibility Analysis**

1. Types and Estimated Numbers of Rural Areas. Environmental Conservation Law (ECL) article 15 title 15 originally required permits solely for public water supplies with five or more service connections, regardless of the volume of water withdrawn. Recent statutory amendments (Chapter 401 of the 2011 Laws of New York) both expand and limit this water withdrawal permit program. The amendments expand the permit program to include withdrawals for purposes beyond public water supply, such as those for commercial, manufacturing, industrial, oil and gas development, and other purposes. The amendments generally limit the permit program to withdrawals that meet or exceed a threshold volume (of 100,000 gallons per day (gpd)). The effect is to regulate far more of the higher-volume withdrawals across the state while no longer issuing water withdrawal permits for lower-volume public water system withdrawals. Withdrawals below the size threshold must still comply with water pollution control laws (ECL article 17), Department of Health regulations, as applicable, and state environmental quality review (SEQR) requirements. The amended law also authorizes the Department of Environmental Conservation (DEC) to establish quantitative standards to maintain stream flows protective of aquatic life, consistent with the policy objectives in ECL article 15 of assuring drinking water supplies, aquatic habitat, and recreational uses. The proposed amendments to 6 NYCRR part 601 and subpart 621.4, and the consolidation of part 675 (Great Lakes water withdrawal registration) into part 601, implement this expanded permitting program and the authorized exemptions thereto. The types of water withdrawal systems that are subject to the expanded permit program are lo-



## Rule Making Activities

NYS Register/November 23, 2011

cated in all areas of the state, including rural areas. Therefore, all rural areas may be impacted by the proposed regulation.

2. Reporting, Recordkeeping and Other Compliance Requirements, and Professional Services. The proposed regulations are the same for water withdrawal systems located in rural areas. However, to the extent that water withdrawal systems in rural areas are less likely to exceed the above-stated size threshold, they are less likely to be subject to the water withdrawal permit requirement. Agricultural withdrawals of any volume are exempt from the permit requirement altogether so long as the withdrawals are registered in accordance with current law (including ECL article 15 titles 16 and/or 33) as of February 15, 2012. Moreover, the registration requirement for agricultural withdrawals is subject to an even more generous size threshold of an average of 100,000 gpd in any consecutive 30-day period. The new part 601 implements other statutory exemptions to the water withdrawal permit requirement, such as those for fire suppression withdrawals and withdrawals approved by the Delaware River Basin Commission or Susquehanna River Basin Commission.

Initial Permits. An "initial permit" includes all of the terms and conditions of a standard water withdrawal permit, but is a "minor action" under the proposed modification to subpart 621.4 4 that results in a slightly abbreviated permitting process. In the absence of a timely application for an initial permit, a standard water withdrawal permit must be applied for and approved under the full permit process. A water withdrawal system qualifies for an initial permit under the following circumstances: the withdrawal exists as of February 12, 2012; it is over the size threshold; it is properly reported to DEC by February 15, 2012 under existing law; it is not a public water supply; and the withdrawal is not otherwise exempt. Existing public water supplies with water supply permits need do nothing different. The slightly simpler administrative process for initial permits eases the compliance requirements for existing and previously-unregulated water withdrawals that are not exempt.

In addition, among water withdrawal systems above the size threshold that qualify for initial permits, the proposed regulations in part 601 provide more time for operators of smaller water withdrawal systems to apply for initial permits. This is more likely to be a benefit in rural areas. Specifically, under the provisions of proposed part 601.7, initial permit applications are not due until February 15, 2017 for withdrawals equal to or greater than 0.1 but less than 0.5 million gallons per day (mgd); February 15, 2016 for withdrawals equal to or greater than 0.5 mgd but less than 2 mgd; February 15, 2015 for withdrawals equal to or greater than 2 mgd but less than 10 mgd; February 15, 2014 for withdrawals equal to or greater than 10 mgd but less than 100 mgd; and February 15, 2013 for withdrawals equal to or greater than 100 mgd.

3. Costs. The cost to comply with the proposed regulations will depend on the size, purpose and complexity of the water withdrawal system. Other than the factors mentioned above, it is not expected that there will be any variation in the compliance costs based upon rural area status.

4. Minimizing Adverse Impacts. Please see Items 1 and 2, above. As stated, public water supply systems below the size threshold, which are more likely to be located in rural areas, are no longer required to have water withdrawal permits. As further stated above, existing agricultural withdrawals that are registered or reported to DEC under ECL article 15 titles 16 or 33 on or before February 15, 2012 are exempt from the water withdrawal permit requirement under the amended law and the proposed part 601 amendments (although such withdrawals must continue to be registered). The registration requirement for agricultural withdrawals is subject to a more generous size threshold.

For water withdrawal systems that are not exempt and that are above the size threshold as of February 15, 2012, the initial permit process is somewhat less costly and time consuming than the standard permit process. Initial permit applications are due last for the smallest withdrawal systems above the size threshold. Existing public water supplies with water supply permits need do nothing different.

5. Rural Area Participation. DEC sought and received input from many stakeholders in the development of the amendments enacted in Chapter 401, which included representatives of farmers as well as business interests which may have some facilities located in rural areas. In 2010 DEC had several discussions with the New York Farm Bureau and modified the proposed statutory amendments to add ECL § 15-1504 (specific to agricultural withdrawals), change the definition of threshold volume for agricultural withdrawals, and make other changes applicable to agricultural withdrawals to address concerns of New York's farmers. DEC also met with the Business Council and the New York State Chemical Alliance in 2010 to address concerns of New York's businesses and significant amendments were made to the proposed law to address their concerns, including the addition of the "initial permit" provisions. In March, April and May 2011 DEC had a meeting and several discussions with persons representing the interests of the New York State Association of Town Superintendents of Highways, Inc. to discuss potential permit requirements for water pumping equipment at mines owned and operated by

towns. In April 2011, DEC met with Ski Areas of New York, Inc. and representatives of the state's ski areas to address concerns related to the impacts the proposed statutory amendments and implementing regulations might have on New York's ski areas. DEC also discussed the proposed amendments with persons representing the interests of golf courses and installers of irrigation systems. In addition, DEC undertook outreach in an effort to ensure that all affected entities were made aware of the water withdrawal reporting requirements of ECL article 15, title 33 that became effective April 1, 2009. DEC posted information about this reporting requirement on its webpage at <http://www.dec.ny.gov/lands/55509.html>. In 2009, DEC sent letters to thousands of persons potentially subject to the new reporting requirement as well as to organizations representing those persons, including the Association of Towns of the State of New York, public water suppliers, State Pollutant Discharge Elimination System permittees, and Concentrated Animal Feeding Operations. In 2010, DEC contacted the same list of persons via e-mail. In August 2011, DEC met with the New York Farm Bureau to discuss further outreach to alert farmers to the benefits to them of registering or reporting prior to February 15, 2012.

### Job Impact Statement

1. Nature of impact. The proposed revision to the water withdrawal regulations may create high-paying technical jobs in engineering and training.

2. Categories and numbers affected. Under the proposed revisions to 6 NYCRR Part 601, operators of previously-unregulated water withdrawal systems must submit several technical documents, such as annual reports as well as various parts of a permit application, including an engineer's report, pump tests and analyses for groundwater withdrawals, safe yield analyses for surface water withdrawals, water conservation programs, and the analysis of alternatives sufficient to complete a project justification. It is expected that the proposed regulatory revisions will generate high-paying engineering jobs, as well as technical jobs that do not require the services of a professional engineer. The field of water withdrawal planning, monitoring and reporting includes specialized areas of expertise: civil/structural engineering and hydrologic/hydraulic analysis, with some utilizing computer modeling. There will be a need for engineers and other professionals to have additional training in water withdrawal and the proposed water conservation programs. Therefore, there will be an opportunity for companies and colleges to develop training programs and offer specialized training in New York. This would create job opportunities for trainers as well as support staff opportunities. The Department has no way of determining the number of engineering or construction jobs or training opportunities.

3. Regions of adverse impact. There are no adverse job impacts expected.

4. Minimizing adverse impacts. There are no adverse job impacts expected.

5. Self-employment opportunities. The proposed regulations will create an environment favorable for experienced engineers, licensed surveyors, computer modelers, and water conservation planners specializing in hydrology and hydraulic analysis to start their own businesses. Self-employment opportunities also will likely exist for experienced engineers to conduct training and inspections, and to prepare engineering reports, and for experienced individuals in the additional trades indicated above.

## Department of Labor

### ERRATUM

A Notice of Adoption, I.D. No. LAB-43-10-00003-A, pertaining to Restrictions on the Consecutive Hours of Work for Nurses as Enacted in Section 167 of the Labor Law, published in the October 12, 2011 issue of the *State Register* failed to reference a previously published revised rule making. A Notice of Emergency Adoption and Revised Rule Making for this rule was published in the August 24, 2011 issue of the *State Register* (I.D. No. LAB-43-10-00003-ERP).

## Public Service Commission

### EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### National Grid's Emergency Economic Development Programs to Provide Immediate Assistance to Qualifying Customers

**I.D. No.** PSC-47-11-00010-EP

**Filing Date:** 2011-11-08

**Effective Date:** 2011-11-08

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Proposed Action:** The PSC adopted an order approving the request of Niagara Mohawk Power Corporation d/b/a National Grid for four new Emergency Economic Development Programs in order to provide immediate assistance to qualifying customers in its service area.

**Statutory authority:** Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

**Finding of necessity for emergency rule:** Preservation of general welfare. **Specific reasons underlying the finding of necessity:** This action is taken on an emergency basis pursuant to State Administrative Procedures Act (SAPA) § 202(6). The Emergency Programs are designed to provide customers and communities with quick and immediate access to all available resources for the repairs and rebuilding necessary after the devastating effect of Hurricane Irene and Tropical Storm Lee. The repair and reconstruction of the electric and gas infrastructure, as well as the supporting reconstruction activities, is essential to the public health and general welfare of the citizens of New York. Failure to implement these Programs now on an emergency basis could deny communities and businesses access to necessary additional funding sources.

**Subject:** National Grid's Emergency Economic Development Programs to provide immediate assistance to qualifying customers.

**Purpose:** To approve National Grid's Emergency Economic Development Programs to provide immediate assistance to qualifying customers.

**Substance of emergency/proposed rule (Full text is posted at the following State website: [www.dps.state.ny.us](http://www.dps.state.ny.us)):** The Public Service adopted an order approving the request of Niagara Mohawk Power Corporation d/b/a National Grid for four new Emergency Economic Development Programs in order to provide immediate assistance to qualifying customers in its service area recovering from the effects of Hurricane Irene and Tropical Storm Lee. The Commission may adopt permanently, reject or modify the provisions of the order.

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 5, 2012.

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: [leann\\_ayer@dps.state.ny.us](mailto:leann_ayer@dps.state.ny.us)

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [secretary@dps.state.ny.us](mailto:secretary@dps.state.ny.us)

**Public comment will be received until:** 45 days after publication of this notice.

#### Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

#### Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

#### Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

#### Job Impact Statement

A job impact statement is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-E-0050EP10)

### EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Approval for NYSEG's Emergency Economic Development Programs to Provide Immediate Assistance to Qualifying Customers

**I.D. No.** PSC-47-11-00011-EP

**Filing Date:** 2011-11-08

**Effective Date:** 2011-11-08

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Proposed Action:** The Public Service Commission adopted an order approving, with modifications, the request of New York State Electric and Gas Corporation for three new Emergency Economic Development Programs in order to provide immediate assistance to qualifying customers in its service area.

**Statutory authority:** Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

**Finding of necessity for emergency rule:** Preservation of general welfare. **Specific reasons underlying the finding of necessity:** This action is taken on an emergency basis pursuant to State Administrative Procedure Act (SAPA) § 202(6). These Emergency Programs are designed to provide customers and communities with quick and immediate access to all available resources for the repairs and rebuilding necessary after the devastating effect of Hurricane Irene and Tropical Storm Lee. The repair and reconstruction of the electric and gas infrastructure, as well as the supporting reconstruction activities, is essential to the public health and general welfare of the citizens of New York. Failure to implement these Programs now on an emergency basis could deny communities and businesses access to necessary additional funding sources.

**Subject:** Approval for NYSEG's Emergency Economic Development Programs to provide immediate assistance to qualifying customers.

**Purpose:** To approve NYSEG's Emergency Economic Development Programs to provide immediate assistance to qualifying customers.

**Substance of emergency/proposed rule (Full text is posted at the following State website: [www.dps.state.ny.us](http://www.dps.state.ny.us)):** The Public Service adopted an order approving, with modification, the request of New York State Electric and Gas Corporation (NYSEG) for three new Emergency Economic Development Programs in order to provide immediate assistance to qualifying customers in its service area recovering from the effects of Hurricane Irene and Tropical Storm Lee. The Commission may adopt permanently, reject or modify the provisions of the order.

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 5, 2012.

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: [leann\\_ayer@dps.state.ny.us](mailto:leann_ayer@dps.state.ny.us)

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [secretary@dps.state.ny.us](mailto:secretary@dps.state.ny.us)

**Public comment will be received until:** 45 days after publication of this notice.

#### Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

#### Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

#### Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

#### Job Impact Statement

A job impact statement is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

## Rule Making Activities

NYS Register/November 23, 2011

(11-E-0559EP1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Incentive Mechanism for Public Utilities Administering Energy Efficiency Programs****I.D. No.** PSC-47-11-00005-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Commission is considering adoption of an incentive mechanism for public utilities administering energy efficiency programs.

**Statutory authority:** Public Service Law, sections 5(2), 66(1) and (2)

**Subject:** Incentive mechanism for public utilities administering energy efficiency programs.

**Purpose:** To establish a mechanism to encourage utilities to achieve the targets for efficiency programs established by the Commission.

**Substance of proposed rule:** The Commission is discontinuing the existing incentive mechanism for utilities administering energy efficiency programs. The Commission has proposed a new mechanism to be put into place effective January 1, 2012. A total pool of \$50 million (based on an average of 5 basis points per year for four years) would be divided into Step One (66% of the pool) and Step Two (33%). Any utility meeting 100% of its aggregate target over four years would earn its proportional share of Step One. If the Commission's statewide efficiency goal is met at the end of 2015, every utility will earn its proportional share of Step Two. Incentives will be positive only, and will require 100% achievement of targets.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(07-M-0548SP45)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Petition for the Submetering of Electricity****I.D. No.** PSC-47-11-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 48-52 Franklin, LLC to submeter electricity at 50 Franklin Street, New York, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Petition for the submetering of electricity.

**Purpose:** To consider the request of 48-52 Franklin, LLC to submeter electricity at 50 Franklin Street, New York, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 48-52 Franklin, LLC to submeter electricity at 50 Franklin Street, New York, New York located in the service territory of Consolidated Edison Company of New York, Inc.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany,

New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-E-0424SP1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Remedying Miscalculations of Delivered Gas as Between Two Customer Classes****I.D. No.** PSC-47-11-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Commission is considering the proposal of Consolidated Edison Company of New York, Inc. for an adjustment for under-deliveries of gas for certain customers for when Con Edison incorrectly calculated its Lost and Unaccounted For Gas.

**Statutory authority:** Public Service Law, sections 4(1), 65 and 66(1)

**Subject:** Remedying miscalculations of delivered gas as between two customer classes.

**Purpose:** Consideration of Con Edison's proposal to address inter-class delivery imbalances resulting from past Company miscalculations.

**Substance of proposed rule:** In an Order dated September 16, 2011, the Public Service Commission directed Consolidated Edison Company of New York, Inc. (Con Edison) to analyze and provide a proposal to remedy the impact of the company's miscalculation of its Lost and Unaccounted For Gas as related to inter-class deliveries of gas to certain customer groups.

In Con Edison's October 17, 2011, filing, the Company proposes that the Commission determine that there be no prospective adjustment for under-deliveries to transportation customers during the historic period; further, that if the Commission determines that an adjustment is necessary and appropriate, that the Commission determine \$1.6 million as the amount to be credited to full service customers and surcharged to transportation customers, over a prospective three-year period.

The Commission may adopt, reject or modify, in whole or in part, Con Edison's proposal.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-G-0643SP2)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Providing a Waiver from Interruptible Gas Tariff Requirements Related to Back-Up Fuel****I.D. No.** PSC-47-11-00008-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:



**Proposed Action:** The Commission is considering the rehearing and clarification petition of E. Tetz and Sons, Inc. for a waiver from certain tariff provisions related to interruptible service.

**Statutory authority:** Public Service Law, sections 4(1), 65 and 66(1)

**Subject:** Providing a waiver from interruptible gas tariff requirements related to back-up fuel.

**Purpose:** Consideration of a rehearing and clarification petition from certain interruptible gas back-up fuel tariff requirements.

**Substance of proposed rule:** In an Order dated September 21, 2011, the Public Service Commission granted a limited waiver to petitioner E. Tetz & Sons, Inc. relieving petitioner of certain Orange and Rockland Utilities, Inc.'s tariff requirements for interruptible gas service relating to on-site back-up fuel requirements.

In an October 28, 2011, filing, petitioner filed for rehearing and clarification of the Commission's September 21, 2011 Order. Specifically petitioner requests that the Commission clarify that it did not intend to constrain petitioner's operations, that it did not intend to make a specific finding regarding petitioner's three-days fuel use requirement, and that petitioner's on-site, three-day supply of back-up fuel with an additional contract for additional supplies is sufficient to meet the tariff requirements. Petitioner requests rehearing on each point raised in the event the Commission fails to clarify each point as requested.

The Commission may adopt, reject or modify, in whole or in part, petitioner's clarification and rehearing proposals.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: [leann\\_ayer@dps.state.ny.us](mailto:leann_ayer@dps.state.ny.us)

**Data, views or arguments may be submitted to:** Jaclyn A. Brillinger, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [Secretary@dps.state.ny.us](mailto:Secretary@dps.state.ny.us)

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-G-0482SP2)

## Department of State

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Construction Standards for Summer Camp Cabins Located in Children's Overnight Camps

I.D. No. DOS-47-11-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** This is a consensus rule making to repeal section 1228.2; and add new section 1228.2 to Title 19 NYCRR.

**Statutory authority:** Executive Law, section 377

**Subject:** Construction standards for summer camp cabins located in children's overnight camps.

**Purpose:** To clarify applicability of the Uniform Code and State Sanitary Code to summer camp cabins.

**Public hearing(s) will be held at:** 10:00 a.m., January 11, 2012 at Department of State, 99 Washington Ave., Conference Rm. 1135, Albany, NY.

**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Text of proposed rule:** Section 1228.2 in Part 1228 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and a new section 1228.2 is added to read as follows:

**Section 1228.2. Summer Camp Cabins.**

(a) This section is intended to clarify the effect of section 378(1) of the Executive Law, as amended by Chapter 443 of the Laws of 2009, and the applicable provisions of the State Sanitary Code (10 NYCRR, Chapter 1), as amended effective July 6, 2011, on construction standards for summer camp cabins located in children's overnight camps.

(b) Pursuant to 10 NYCRR section 7-2.12(b)(2), summer camp cabins located in children's overnight camps are exempt from:

(1) the Uniform Code's automatic sprinkler requirements and

(2) the Uniform Code's minimum floor area per occupant requirements.

However, pursuant to 10 NYCRR section 7-2.12(b)(1), summer camp cabins located in children's overnight camps are subject to all other applicable requirements and provisions of the Uniform Code. In addition, pursuant to 10 NYCRR section 7-2.16(c), summer camp cabins located in children's overnight camps are subject to the following minimum floor area per occupant requirements: "In sleeping quarters housing more than four persons, 40 square feet of floor area per occupant shall be provided, when single beds are provided. When double deck bunk beds are provided, 30 square feet of floor area shall be provided for each occupant. Floor area includes space within the occupied structure to accommodate: the bed, storage for personal belongings, aisles and exitways, and associated assembly space. Space for toilets, lavatories and showers shall not be used to calculate a sleeping quarter's floor area. For structures built prior to 1975, the required minimum floor area for single beds is 36 square feet."

(c) For the purposes of this section, the term "summer camp cabin" shall mean a sleeping quarter which:

(1) is located in a children's overnight camp;

(2) has a sleeping capacity of fewer than twenty-five occupants, with a total combined sleeping room floor area of 1200 square feet or less for all sleeping rooms;

(3) is one story;

(4) is used and occupied only between June 1 and September 14;

(5) has no cooking facilities, no heating systems, and no solid fuel heating or burning systems;

(6) has only sleeping rooms (including the necessary area for storing occupant belongings) and bathrooms;

(7) has no interior corridors or separate common area rooms;

(8) has at least two exits per sleeping room which are remote from each other and which discharge directly to the building's exterior;

(9) has exit doors that open in the direction of, and are non-locking against egress; and

(10) has smoke alarms in each sleeping room that are interconnected such that the activation of one alarm will activate all of the alarms in the cabin.

An existing structure that is altered, enlarged or otherwise improved shall not be deemed to be a summer camp cabin unless such structure, as so altered, enlarged or otherwise improved, satisfies all of the criteria set forth in this subdivision.

(d) For the purposes of this section, the term "children's overnight camp" shall mean a property consisting of a tract of land and any tents, vehicles, buildings or other structures that may be pertinent to its use, any part of which may be occupied by persons under eighteen years of age under general supervision for the purpose of outdoor or indoor organized activities and on which provisions are made for overnight occupancy of children. However, the term "children's overnight camp" shall not include any place or facility which has been excepted from the State Sanitary Code by the Commissioner of the New York State Department of Health pursuant to section 1392(1) of the Public Health Law.

**Text of proposed rule and any required statements and analyses may be obtained from:** Raymond Andrews, Department of State, Division of Code Enforcement and Administration, 99 Washington Ave., Albany, NY 12231, (518) 474-6740, email: [Raymond.Andrews@dos.state.ny.us](mailto:Raymond.Andrews@dos.state.ny.us)

## Rule Making Activities

NYS Register/November 23, 2011

**Data, views or arguments may be submitted to:** Joseph Ball, Department of State, Office of Counsel, 99 Washington Ave., Albany, NY 12231, (518) 474-6740, email: Joseph.Ball@dos.state.ny.us

**Public comment will be received until:** Five days after the last scheduled public hearing.

#### Consensus Rule Making Determination

Subdivision 11 of State Administrative Procedure Act § 102 provides that “consensus rule means a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely . . . makes technical changes or is otherwise non-controversial.” The Department of State has concluded that this rule making is non-controversial and therefore no person is likely to object to its adoption.

In general, the State Uniform Fire Prevention and Building Code (the Uniform Code) specifies the standards for construction for all classes of buildings. However, by reason of a recent amendment of section 378(1) of the Executive Law, construction standards for “sleeping quarters in children’s summer camps” are subject to the State Sanitary Code (10 NYCRR, Chapter 1). The State Sanitary Code was recently amended (effective July 6, 2011) to provide that, in general, all buildings on all children’s camps are subject to the Uniform Code, but that “summer camp cabins” (as defined in the Sanitary Code) are exempt from the Uniform Code’s automatic sprinkler requirements and minimum floor area per occupant requirement. (Summer camp cabins are subject to the minimum floor area per occupant requirements set forth in the State Sanitary Code).

This rule would add a new provision to the Uniform Code to reflect the impact of the recent amendment of the State Sanitary Code. This new provision would be added to Part 1228 of 19 NYCRR, a part reserved for “additional provisions” of the Uniform Code, i.e., for provisions not found in Parts 1220 to 1227 of 19 NYCRR.

The subject of this rule making makes it highly unlikely that any one will object to its adoption. This rule neither adds any new requirement nor repeals any existing requirement. Rather, this rule merely reflects the impact of the recent amendment on Executive Law section 378 (1) and the recent amendment of the State Sanitary Code. By adding this new provision to the Uniform Code, code enforcement officials throughout the State will be more likely to be aware of the new Sanitary Code provisions and the impact of those provisions on “summer camp cabins.”

Therefore, the Department of State has determined that no one is likely to object to the adoption of this rule, and that it is appropriate to characterize this rule making as a consensus rule.

#### Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs and employment opportunities in New York.

This rule would add a new provision to the State Uniform Fire Prevention and Building Code (the Uniform Code) to reflect the impact of the recent amendment of section 378(1) of the Executive Law and the recent amendment of the State Sanitary Code (10 NYCRR, Chapter 1) on “summer camp cabins” (as that term is defined in the State Sanitary Code). By reason of the recent amendment of the State Sanitary Code, such “summer camp cabins” are, in general, subject to the Uniform Code; however, such “summer camp cabins” are exempt from the Uniform Code’s automatic sprinkler requirements and minimum floor area per occupant requirements. (Summer camp cabins are, however, subject to the minimum floor area per occupant requirements set forth in the State Sanitary Code.)

This rule would neither add any new requirement nor repeal any existing requirement. Rather, this rule would merely add a provision to the Uniform Code that reflects the impact of the recent amendment of the State Sanitary Code on “summer camp cabins.” Adding this new provision to the Uniform Code will make it more likely that code enforcement officials throughout the State will become familiar with the provisions of the State Sanitary Code and its effect on summer camp cabins. The Department finds that it is evident from the subject matter of the rule that it will have no adverse impact on jobs and employment opportunities.

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

**Carbon Monoxide Alarms in Bed and Breakfast Dwellings; Minimum Width of Concrete Footings; and Energy Efficiency Requirements in Connection with Additions to and Alterations of Existing One- and Two-Family Dwellings and Townhouses**

**I.D. No.** DOS-47-11-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** This is a consensus rule making to amend section 1220.1(c) of Title 19 NYCRR.

**Statutory authority:** Executive Law, section 377

**Subject:** Carbon monoxide alarms in bed and breakfast dwellings; minimum width of concrete footings; and energy efficiency requirements in connection with additions to and alterations of existing one- and two-family dwellings and townhouses.

**Purpose:** To make corrections to the 2010 Residential Code of New York State.

**Public hearing(s) will be held at:** 11:00 a.m., January 11, 2012 at Department of State, 99 Washington Ave., Conference Rm. 1135, Albany, NY.

**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Text of proposed rule:** Subdivision (c) of section 1220.1 of 19 NYCRR is amended by adding new paragraphs (8), (9), (10), and (11) to read as follows:

(8) 2010 RCNYS Section R313.4.3 Exception 2. Exception 2 in Section R313.4.3 of the 2010 RCNYS, as amended and restated in paragraph (2) of this subdivision, is further amended and restated in its entirety to read as follows:

“2. In buildings other than bed and breakfast dwellings that undergo repair, alteration, change of occupancy, addition or relocation in accordance with Appendix J, carbon monoxide alarms may be battery operated, cord-type or direct plug.”

(9) 2010 RCNYS Table R403.1. The heading of the final column in Table R403.1 on the 2010 RCNYS shall be deemed to be amended to read as follows: “4,000 or more.”

(10) 2010 RCNYS Appendix J, Section J104. Section J104 in Appendix J of the 2010 RCNYS, which currently consists of Section J104.1 only, shall be deemed to be amended and restated in its entirety as a new Section J104, to include Section J104.1 and Section J104.2, to read as follows:

“SECTION J104

“ENERGY EFFICIENCY

“J104.1. Additions and Alterations. Additions and alterations shall comply with Sections N1101.3.1, N1101.3.2 and N1101.3.3.

“J104.2. Change of occupancy. Change of building occupancy shall comply with Section N1101.3.2.”

(11) 2010 RCNYS Appendix J, Section J501.2. Section J501.2 in Appendix J of the 2010 RCNYS shall be deemed to be amended and restated in its entirety to read as follows:

“J501.2 Conformance. An existing building or portion thereof shall not be altered such that the building becomes less safe than its existing condition.

“Exception. Where the current level of safety or sanitation is proposed to be reduced, the portion altered shall conform to the requirements of this code.”

**Text of proposed rule and any required statements and analyses may be obtained from:** Raymond Andrews, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Raymond.Andrews@dos.state.ny.us

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** Five days after the last scheduled public hearing.

**Consensus Rule Making Determination**

Subdivision 11 of State Administrative Procedure Act § 102 provides that “consensus rule means a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely . . . makes technical changes or is otherwise non-controversial.” The Department of State has concluded that no person is likely to object to the adoption of this rule because this rule merely makes technical, non-controversial changes to the State uniform fire prevention and building code (the “Uniform Code”).

The Uniform Code is a fire prevention and building code adopted pursuant to Article 18 of the Executive Law. The provisions of the Uniform Code are contained in publications that are incorporated by reference in Parts 1220 to 1227, inclusive, of Title 19 of the NYCRR. Those publications include the 2010 edition of the Residential Code of New York State (the “2010 RCNYS”), which is incorporated by reference in Part 1220 of Title 19 NYCRR.

The 2010 RCNYS was incorporated by reference in Part 1220 by a rule making that became effective on December 28, 2010. Since the 2010 RCNYS took effect, a number of technical issues in that publication have come to the attention of the Department of State. This proposed rule would address several of those issues by amending the following four items in the 2010 RCNYS: (1) Section 313.4.2, Exception 2; (2) Table 403.1; (3) Section J104 in Appendix J; and (4) Section J501.2 in Appendix J. The proposed changes are discussed in order:

Section 313.4.2. Currently, Section 313.4.2, Exception 2, of the 2010 RCNYS allows the use of battery operated carbon monoxide alarms in bed and breakfast dwellings. This contradicts another section in the 2010 RCNYS, viz., Section J703.2, which requires hard-wiring of carbon monoxide alarms in bed and breakfast dwellings. Historically, hard-wiring of carbon monoxide alarms has been required in bed and breakfast dwellings; therefore, this rule will resolve the conflict between Sections 313.4.2 and J703.2 of the 2010 RCNYS by amending Section 313.4.2 to require hard-wiring of carbon monoxide alarms in bed and breakfast dwellings.

Table 403.1. Table 403.1 in the 2010 RCNYS specifies the minimum width of concrete or masonry footings, based on the load bearing capacity of soil. The heading of the final column in Table 403.1 currently includes the mathematical symbol for “less than or equal to;” therefore, that column heading currently reads “less than or equal to 4,000,” indicating that the minimum footing widths specified in that final column apply when the load bearing capacity of soil is less than or equal 4,000 pounds per square foot. This is a typographical error. The final column in Table 403.1 should apply when the load bearing capacity of soil is equal to or greater than 4,000 pounds per square foot. This rule will correct this typographical error by changing the heading of the final column in Table 403.1 to “4,000 or more.”

Section J104. Section J104 in Appendix J of the 2010 RCNYS addresses energy efficiency requirements in connection with additions to and alterations of existing one- and two-family dwellings and townhouses.

Energy-related requirements for all buildings are set forth in the State Energy Conservation Construction Code (the “State Energy Code”) adopted pursuant to Article 11 of the Energy Law. Currently, the State Energy Code is set forth in the 2010 edition of the Energy Conservation Construction Code of New York State (the 2010 ECCCNYS), a publication that is incorporated by reference in 19 NYCRR Part 1240. Section 101.4.3 of the 2010 ECCCNYS specifies that the 2010 ECCCNYS is intended to apply to additions, alterations, and renovations to existing residential buildings in all cases where the 2009 International Energy Conservation Code (the 2009 IECC) would apply. Section 101.4.6 of the 2010 ECCCNYS specifies that the applicability of the 2010 ECCCNYS to the alteration of a building would be subject such limitations as may be set forth in Chapter 11 of the State Energy Law, as in effect at the time of such alteration. At the time the 2010 ECCCNYS was adopted as the State Energy Code, Section 11-103(b) of the State Energy Law provided that in the case of a renovation of an existing building, the State Energy Code would apply only if the renovation was “substantial.” However, section 11-103(b)

of the State Energy Law was amended shortly after the 2010 ECCCNYS was adopted as the State Energy Code. By reason of the amendment of the State Energy Law, which took effect on January 1, 2011, the application of the State Energy Code to building renovations is no longer limited to “substantial” renovations. Therefore, effective January 1, 2011, the 2010 ECCCNYS applies to all renovations of existing residential buildings, and not just to “substantial” renovations of such buildings.

It was intended that the 2010 ECCCNYS provisions applicable to one- and two-family dwellings and townhouses would be repeated in the 2010 RCNYS as a convenience to builders, design professionals, and other regulated parties. The intent was to produce a single publication (the 2010 RCNYS) that would include all provisions applicable to one- and two-family dwellings and townhouses, i.e., both the Uniform Code provisions applicable to such structures and the State Energy Code provisions applicable to such structures. However, the concept reflected in Section 101.4.6 of the 2010 ECCCNYS (i.e., that statutory limitations on applicability would be as provided in Article 11 of the State Energy Law, as amended from time to time) was not expressly repeated in the 2010 RCNYS.

Section J104 in Appendix J of the 2010 RCNYS reflects the statutory limitation on applicability set forth in section 11-103(b) of the Energy Law, as that statute was in effect prior to January 1, 2011. Specifically, Section J104 in Appendix J of the 2010 RCNYS addresses only energy efficiency requirements for additions and “substantial” (Level 2) alterations. However, as a result of the amendment of the State Energy Law, the application of the State Energy Code is no longer limited “substantial” renovations of existing buildings. This rule would amend Section J104 of the 2010 RCNYS to reflect the impact the amendment of the State Energy Law had on the 2010 ECCCNYS, as contemplated by Section 101.4.6 of the 2010 ECCCNYS. Specifically, this rule would amend Section J104.1 of the 2010 RCNYS to provide that all renovations (and not only “substantial” renovations) of one- and two-family dwellings and townhouses must comply with the energy efficiency requirements set forth in Sections N1101.3.1 through N1101.3.3 of the 2010 RCNYS.

This rule will also amend Section J104.2 in Appendix J of the 2010 RCNYS to provide that an existing building that undergoes a change of occupancy to a one- or two-family dwelling or townhouse must comply with the energy efficiency requirements set forth in Chapter 11 of the 2010 RCNYS. This change to Section J104.2 is required to make this section consistent with the corresponding provisions in the 2010 ECCCNYS (see Section 101.4.4 of the 2010 ECCCNYS).

Section J601.2. Finally, this rule will amend Section J501.2 in Appendix J of the 2010 RCNYS. Currently, this Section J501.2 simply repeats Section J501.1. It was intended that Section J501.2 in Appendix J of the 2010 RCNYS would be the same as Section J501.2 in Appendix J of the 2007 edition of the Residential Code of New York State (the “2007 RCNYS”), the publication that was incorporated by reference in Part 1220 of Title 19 NYCRR prior to the adoption of the 2010 RCNYS. This rule would amend Section J501.2 in Appendix J of the 2010 RCNYS to make that Section the same as Section J501.2 in the 2007 RCNYS.

The Department of State believes that the changes to be made by this rule are technical and non-controversial, and that it is unlikely that builders, architects, engineers, building owners, code enforcement officials, or other interested parties will object to the adoption of this rule. Therefore, the Department of State has concluded that it is appropriate to characterize this rule as a consensus rule.

**Job Impact Statement**

The Department of State has determined that it is apparent from the nature and purpose of the proposed rule making that it will not have a substantial adverse impact on jobs and employment opportunities.

This rule making would make three minor corrections to the text of the 2010 Residential Code of New York State (the 2010 RCNYS), a publication which is incorporated by reference in 19 NYCRR Part 1220 and which constitutes a portion of the State Uniform Fire Prevention and Building Code (the Uniform Code). The 2010 RCNYS specifies construction standards for one- and two-family dwellings and townhouses.



## Rule Making Activities

NYS Register/November 23, 2011

Specifically, this rule would:

(1) resolve a conflict between Section 313.4.2, Exception 2, of the 2010 RCNYS and Section J703.2 of the 2010 RCNYS by amending Section 313.4.2 to require hard-wiring of carbon monoxide alarms in bed and breakfast dwellings;

(2) correct a typographical error in the heading of the final column of Table 403.1 in the 2010 RCNYS by changing “less than or equal to 4,000” to “4,000 or more”; and

(3) amend the energy efficiency requirements in connection with additions to and alterations of existing one- and two-family dwellings and townhouses to reflect that the recent amendment of the State Energy Law had on the 2010 Energy Conservation Construction Code of New York State (the 2010 ECCCNS).

The Department of State concludes that these relatively minor corrections to the 2010 RCNYS will have a negligible impact on the construction and renovation of one- and two-family dwellings and townhouses and, therefore, that this rule making will not have a substantial adverse impact on jobs and employment opportunities within New York.

## Workers' Compensation Board

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Diagnostic Testing Networks

I.D. No. WCB-47-11-00009-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of sections 325-1.5 and 325-2.1; and addition of Subpart 325-7 to Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 13-a and 117

**Subject:** Diagnostic Testing Networks.

**Purpose:** To provide for employer and workers' compensation carrier contracts with diagnostic testing networks.

**Substance of proposed rule (Full text is posted at the following State website: [www.wcb.state.ny.us](http://www.wcb.state.ny.us)):** The proposed regulation amends Section 325-1.5 and 325-2.1 to provide for carrier contracts with a diagnostic testing network and adopts a new Subpart 325-7 setting forth the requirements for Diagnostic Testing Networks.

Subpart 325-7 is added regarding Diagnostic Testing Networks.

Section 325-7.1 defines terms used in the Subpart, such as “affiliated network provider,” “diagnostic examinations and tests” and “reasonable distance.”

Section 325-7.2 sets forth the requirements for insurance carriers to contract with a diagnostic testing network. The insurance carriers must file with the Chair a list of all diagnostic testing networks it has contracts with including the network's name and address, toll-free phone number, email address and website address, as well as contact name and information. The insurance carrier must notify the Chair within twenty days if there are any changes in the diagnostic testing network information and the Chair may request additional information and may inspect any diagnostic testing network facilities.

Section 325-7.3 sets forth the requirements to be authorized as a diagnostic testing network. These requirements include: status as a legal and proper business organization as defined in 325-7.1; filing with the Chair of the Board updated addresses, phone numbers, email and web addresses, and business locations; requiring affiliated network providers to obtain an injured workers consent and to be Board authorized to treat injured workers; prescribing the business hours of each affiliated network provider; and requiring that all tests be conducted within five (5) business days of the date requested or the date authorized by the carrier.

Section 325-7.4 describes the services that may be provided by diagnostic testing networks and affiliated network providers. These services include: scheduling of tests or examinations; providing notice to claimants; processing, paying and objecting to bills. This section also describes the procedure when a case is controverted and the carrier will not pay any medical bills until the controversy is resolved.

Section 325-7.5 sets forth the procedures that must be followed to

require a claimant to obtain a diagnostic test or examination from a network facility. The claimant does not need to use an affiliated network provider when: the network does not have an affiliated network facility within a reasonable distance from the claimant's home or work; the network is unable to schedule the diagnostic test or examination within five (5) business days; when the case is controverted; prior to receiving notice; and in the event of a medical emergency. This section also prescribes the notice that must be given to an injured worker and to the injured worker's treating medical provider. This section requires that reports of a diagnostic test or examination be filed with all parties on the same day, and within three (3) business days of most tests. This section permits the claimant to choose any affiliated network provider to perform the diagnostic test or examination and to choose in consultation with his or her treating medical provider.

Section 325-7.6 provides that any diagnostic testing network or affiliated network facility that alters a report so as to misrepresent the injured worker's condition shall be ineligible from contracting with an insurance carrier as a diagnostic testing network.

Section 325-7.7 provides that no person or entity may interfere with the injured worker's selection of an affiliated network provider, and bars the insurance carrier from participation in the diagnostic testing or examination or the resulting reports.

**Text of proposed rule and any required statements and analyses may be obtained from:** Heather MacMaster, Workers' Compensation Board, Office of General Counsel, 20 Park Street, Albany, New York 12207, (518) 486-9564, email: [regulations@wcb.state.ny.us](mailto:regulations@wcb.state.ny.us)

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

#### Regulatory Impact Statement

1. Statutory authority: The Workers' Compensation Board (hereinafter referred to as Board) is authorized to amend 12 NYCRR 325-1.5 and 325-2.1, and to add a new 12 NYCRR Subpart 325-7. Workers' Compensation Law (WCL) Sections 13-a (7) and 117(1) authorize the Board to adopt reasonable rules consistent with and supplemental to the provisions of the WCL.

2. Legislative objectives: WCL Section 13-a (7) permits the State Insurance Fund, insurance carriers and self-insured employers to contract with diagnostic networks and require injured workers to utilize the networks for diagnostic testing. The proposed amendments to 12 NYCRR Sections 325-1.5 and 325-2.1 and the addition of 12 NYCRR Subpart 325-7 are in accordance with the legislative purpose of permitting the State Insurance Fund, insurance carriers and self-insured employers to contract with diagnostic networks and requiring injured workers to utilize the networks for diagnostic testing.

The statutory provisions regarding diagnostic testing networks are set forth in four subparagraphs of subdivision (7) of section 13-a.

Subparagraph (a) provides that an employer or carrier may contract with a legally and properly organized network or networks for the performance of diagnostic tests, x-ray examinations, magnetic resonance imaging or other radiological examinations or tests. The employer or carrier may require that injured workers use these diagnostic testing networks. There are two exceptions under WCL § 13-a(7)(a) when a claimant may not be required to use a diagnostic testing network: 1) when a medical emergency occurs; and 2) when the diagnostic testing network does not have an affiliated provider or facility “within a reasonable distance from the claimant's residence or place of employment, as defined by regulation of the Board.”

Subparagraph (b) provides that when an employer or carrier requires use of a diagnostic testing network by a claimant, the claimant must be given notice of this requirement by the carrier or employer when it supplies the claimant with the written statement of claimant's rights.

Subparagraph (c) provides that when a carrier or employer approves a request for authorization for a diagnostic test costing \$1000 or more, the employer or carrier, or if so delegated the diagnostic testing network, shall notify the physician requesting the authorization of the requirement regarding use of a diagnostic testing network, including contact information for the network and a list of affiliated facilities and providers, as defined by regulation of the Board. The claimant, in consultation with his or her treating physician, will determine the provider within the network to perform the diagnostic test.

Subparagraph (d) provides that the result of the diagnostic test must be sent to the requesting physician “immediately upon completion of the report detailing the results.”

3. Needs and benefits: The purpose of the proposed rule is to 1) ensure that injured workers receive timely and proper notification that they will be required to utilize a network diagnostic provider; 2) ensure that injured workers receive diagnostic testing expeditiously; and 3) assist the State Insurance Fund, carriers and self-insured employers in reducing the cost of

diagnostic testing, subsequently reducing premium costs for all employers in New York State. In addition, the proposed regulation clarifies and defines aspects of the statute in order to assist in its successful implementation.

The regulations identify what constitutes a “legally and properly organized” network or networks. There are a wide variety of business or organization structures that may identify themselves as a diagnostic testing network. Such organizations may be a professional corporation or may be an independent practice association that contracts directly with providers to supply the diagnostic services. In addition, this provision attempts to address concerns regarding the corporate practice of medicine issues that may develop when physicians refer to a network that may then refer to a particular provider.

The regulations require and describe the notice to the claimant and requesting physician. The statute requires that the claimant receive notice when the employer supplies him or her with a written statement of claimant rights. This occurs at the commencement of the claim when the employer reports the accident to the Board. The statute requires that the requesting physician be given notice whenever he or she has requested prior authorization from the carrier or employer due to the cost of the test. The proposed regulations prescribe when notice is given, how notice is provided and prescribes the contents of the notice.

In addition, there were terms in the statute that were undefined and subject to differing interpretations. The proposed regulations define terms contained in the statute and relevant to the implementation of this process in an attempt to reduce friction between the parties. Examples of terms that are defined or explained in the proposed regulations are: reasonable distance from a claimant’s house, medical emergency, and diagnostic examination and test.

In addition, the proposed regulations create an exception for use of a diagnostic testing network when a claim is controverted and the carrier is denying payment for medical treatment. The proposed regulations articulate that a claimant may not be required to use a diagnostic testing network when the carrier or employer controverts the claim.

4. Costs: There are no projected costs to regulated parties who may be affected by the proposed regulation. There are no projected costs to the Board, State and local governments.

However, there may be savings to regulated parties by controlling the cost of diagnostic testing. Diagnostic testing networks and SIF have advised that the contracts between them provide for a discount of up to 50% in the current Medical Fee Schedule price for the identified diagnostic examinations and tests. The steep discounts are made in exchange for a volume increase in the number of referrals the diagnostic testing networks receive.

The proposed regulations have reserved authority to the Chair to conduct audits to ensure that the savings are being passed to New York State employers.

5. Local government mandates: The proposed regulation does not impose any mandate, duty or responsibility upon any municipality or governmental entity. Self-insured municipalities may use a diagnostic testing network at their election to achieve cost savings.

6. Paperwork: The proposed regulations require workers’ compensation carriers who use diagnostic testing networks to make annual reports to the Chair. The proposed regulations require diagnostic testing networks performing examinations and tests on injured workers to report annually to the Chair. Notice must be provided to the injured worker and treating medical providers by the carrier or the diagnostic testing network. There are no reporting or documentation requirements on insured employers, injured workers, or workers’ compensation carriers electing not to use a diagnostic testing network.

7. Duplication: There is no duplication of State or federal regulations or standards.

8. Alternatives: There were no significant alternative proposals under consideration. However the Board considered alternative approaches and made changes based on comments received from stakeholder groups to various subdivisions of the proposed regulations.

The Board considered several different options for providing notice to injured workers of the requirement to use a diagnostic testing network. Also considered was requiring employers to send a general notice to all employees. This approach was thought to be expensive as only a small percentage of employees file workers’ compensation claims, and it was thought that employees may forget about the notice if it is received before they are actually injured.

The Board considered not requiring insurance carriers to notify medical providers who prescribe diagnostic examinations and tests. However, medical providers often have a better understand of insurance requirements regarding networks than their patients, and thus it was determined that notice to medical providers and to claimant would create better compliance with the requirement to use diagnostic testing networks and thus achieve more savings for employers. Medical providers may receive

notice in one of two ways: either when a bill for treatment of a particular claimant is received, or through general notification using carriers databases of medical providers who treat workers’ compensation claimants.

Based on comments from medical professionals and in consultation with its Medical Director’s Office, the Board added to the types of illness or injuries that may warrant in-office x-ray as part of the ongoing treatment. The Board declined add medical professionals, other than orthopedic specialists, to the medical providers who may perform the in-office x-ray.

With respect to EMG/NCS studies, the Board extended the time for production of the report from three to seven days, based on comments received from diagnostic testing networks. In consultation with its Medical Director’s Office, the Board elected to require that EMG and NCS studies be performed by neurologists, and did not include orthopedic specialists or physical therapists as suggested by some stakeholder groups.

9. Federal standards: There are no applicable federal standards which address the standards contained in the proposed regulation.

10. Compliance schedule: The proposed regulation requires that carriers electing to use a diagnostic testing network provide the Board with information concerning the network and notify the affected parties prior to requiring use of the diagnostic testing network. In addition, diagnostic testing networks must supply the Board with the prescribed information prior to performing diagnostic examination and tests of workers’ compensation claimants pursuant to an agreement with a workers’ compensation carrier.

The proposed regulations will require claimant’s who receive proper notification to obtain prescribed diagnostic examination and tests from an affiliated network provider. However the regulation requires that the affiliated network provider be located within a reasonable distance from the claimant’s home or workplace.

#### **Regulatory Flexibility Analysis**

1. Effect of rule: The proposed regulation will not affect employers, as defined in WCL § 2(3), including the State, municipal corporations, fire districts, public authorities and political subdivisions, who appear before the Board on matters relating to Workers’ Compensation claims. The rule doesn’t directly impact small businesses or local governments as employers, though it is intended to bring down the cost of workers’ compensation coverage by reducing diagnostic testing costs. It may also impact medical practices that are small businesses by directing diagnostic testing to established networks and precluding injured workers from going to providers who are not affiliated with the carrier’s network.

2. Compliance requirements: The proposed regulation does not require any action by small businesses or local governments. The proposed regulation does not impose or require any reporting requirements or additional paperwork on the part of small businesses or local government. Local governments that are self-insured may elect to use a diagnostic testing network to reduce workers’ compensation costs. Such local governments would need to comply with the filing requirements contained in subdivision 325-7.2 of 12 NYCRR.

3. Professional services: Small businesses and local governments will not have to engage any professional services as a result of the proposed regulation.

4. Compliance costs: Small businesses and local governments will not incur any compliance costs as a result of this proposed regulation. It is anticipated that small businesses and local governments will experience a decrease in the cost of their workers’ compensation insurance premiums.

5. Economic and technological feasibility: Small businesses and local governments will not incur any capital costs or annual operating costs or be required to purchase or update technological equipment as a result of the proposed regulation.

6. Minimizing adverse impact: The proposed regulation will have no adverse economic impact on small businesses or local governments.

7. Small business and local government participation: Although the proposed regulation does not adversely impact on public or private entities, the Board requested comment on the proposed regulation from the Business Council of New York State, as well as the City of New York’s workers’ compensation division.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: The proposed regulation should not affect employers, as defined in WCL § 2(3), in rural areas, including municipal corporations, fire districts, public authorities and political subdivisions, who appear before the Board on matters relating to Workers’ Compensation claims.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed regulation does not require any action whatsoever by small businesses or local governments in rural areas. The proposed regulation does not impose or require any reporting requirements or additional paperwork on the part of small businesses or local



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governments in rural areas. Small businesses and local governments in rural areas will not have to engage any professional services as a result of the proposed regulation.

3. Costs: Small businesses and local governments in rural areas will not incur any capital costs, annual operating costs or any compliance costs as a result of the proposed regulation. It is anticipated that small businesses and local governments in rural areas will experience a decrease in the cost of their workers' compensation insurance premiums.

4. Minimizing adverse impact: The proposed regulation will have no adverse economic impact on small businesses or local governments in rural areas.

5. Rural area participation: Although the proposed regulation does not adversely impact on public or private entities in rural areas, the Board has requested comment from entities in rural areas on the proposed regulation.

### ***Job Impact Statement***

1. Nature of impact: The proposed regulation will not have an adverse impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of diagnostic testing. While the proposed regulation may impact where claimants have diagnostic examinations and tests performed, the proposed regulations should not impact the number of diagnostic examinations and testing performed overall, or the number of employees needed to conduct such examinations and tests.

2. Categories and numbers affected: The proposed regulation should have no effect on medical personnel currently employed in the diagnostic testing field. The Board is unable to determine what affect the proposed regulation may have on the employment of medical personnel in the future.

3. Regions of adverse impact: The proposed regulation does not have an adverse impact on jobs or employment opportunities anywhere in the State, therefore, no region is disproportionately affected by the proposed regulation.

4. Minimizing adverse impact: The proposed regulation will have no adverse impact on existing jobs or the development of new employment opportunities.

EXHIBIT C — NOTICE OF ADOPTION, WATER WITHDRAWAL PERMIT, REPORTING  
AND REGISTRATION PROGRAM, 34 N.Y. REG. 4, NOVEMBER 28, 2012 [A-929 - A-959]

# RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency  
01 -the *State Register* issue number  
96 -the year  
00001 -the Department of State number, assigned upon receipt of notice.  
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

## Department of Agriculture and Markets

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Farm Brewery and Farm Distillery Exemption

I.D. No. AAM-48-12-00001-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** This is a consensus rule making to amend Part 276.4 of Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 16, 18, 251-z-4, 251-z-9

**Subject:** Farm brewery and farm distillery exemption.

**Purpose:** Provide farm breweries and farm distilleries with AML Article 20-C food processing license exemption.

**Text of proposed rule:** Subdivision (c) of section 276.4 of 1 NYCRR is amended to read as follows:

(c) Any establishment licensed as a: farm winery, pursuant to section 76-a of the Alcoholic Beverage Control Law[, or as]; a special farm winery, pursuant to section 76-d of said Law[.]; a farm brewery, pursuant to section 51-a of said Law; or a farm distillery, pursuant to section 61 of said Law, shall be exempt from licensing requirements of Article 20-C of the Agriculture and Markets Law, provided that:

(1) such establishment is maintained in a sanitary condition and follows the current good manufacturing practices set forth in Part 261 of this Title; and

(2) no other food processing operations for which licensing under Article 20-C of the Agriculture and Markets Law is required are being conducted at the establishment.

**Text of proposed rule and any required statements and analyses may be obtained from:** Stephen D. Stich, Director, Food Safety and Inspection, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-4492, email: stephen.stich@agriculture.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

**This action was not under consideration at the time this agency's regulatory agenda was submitted.**

#### Consensus Rule Making Determination

This rule is proposed as a consensus rule, within the definition of that term in the State Administrative Procedure Act section 102(11) pursuant to the expectation that no person is likely to object to its adoption because it is non-controversial.

Agriculture and Markets Law § 251-z-4 authorizes the Commissioner of Agriculture and Markets to provide by regulation exemptions from licensing for small food processing establishments when he finds that such exemptions would avoid unnecessary regulation and assist in the administration of Article 20-C (Licensing and Food Processing Establishments) without impairing its purposes. Exempting farm breweries and farm distilleries from obtaining an Article 20-C food processing license implements this directive. Farm wineries are currently exempt from Article 20-C licenses but are still subject to food sanitation inspections by the Department. This amendment would treat farm breweries and farm distilleries consistent with farm wineries. These entities would also be subject to sanitation requirements.

There are approximately twenty-one farm distilleries in the state who are currently licensed by the Department pursuant to Article 20-C. Farm distilleries currently licensed under Article 20-C for the manufacture of distilled spirits will be exempt from having to renew their license at date of expiration. There are currently no farm breweries licensed by the Department. Since the proposed rule will relieve a regulatory burden upon farm breweries and farm distilleries, it is expected that no one is likely to object to the proposed amendment.

#### Job Impact Statement

The proposed rule will exempt farm breweries and farm distilleries from having to obtain food processing licenses, pursuant to Agriculture and Markets Law Article 20-C. The rule will eliminate a regulatory burden upon establishments already licensed by the State Liquor Authority from obtaining an Article 20-C license from the Department and, furthermore, will benefit New York's beer and spirits industry.

The proposed rule is expected to have a positive impact upon jobs and employment opportunities in the State's beer and spirits industry.

## Department of Environmental Conservation

### NOTICE OF ADOPTION

#### Water Withdrawal Permit, Reporting and Registration Program

I.D. No. ENV-47-11-00012-A

Filing No. 1132

Filing Date: 2012-11-13

Effective Date: 2013-04-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

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**Action taken:** Repeal of Parts 601 and 675; addition of a new Part 601; and amendment of section 621.4 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 3-0301(1)(f), (2)(m), 3-0306(4), 8-0113(2), 70-0107; art. 15, titles 15, 16 and 33; art. 21, title 10; art. 70 and SAPA art. 2

**Subject:** Water withdrawal permit, reporting and registration program.

**Purpose:** Implement amendments to ECL art. 15 title 15, key provisions of ECL art. 15 title 16, 6 NYCRR 675 and ECL art. 15 title 33.

**Substance of final rule:** 6 NYCRR Parts 601 and 675 are repealed and a new Part 601 is adopted to read as follows:

Part 601: Water Withdrawal Permitting, Reporting and Registration (Exclusive of Long Island Wells regulated under Part 602)

(Statutory authority: Environmental Conservation Law § 3-0301(2)(m), article 15 titles 15, 16 and 33, title 10 of article 21)

Contents:

Sec.

601.1 Purpose

601.2 Definitions

601.3 Applicability

601.4 Prohibitions

601.5 Annual reporting

601.6 Water withdrawal permits

601.7 Initial permits

601.8 Consolidation of existing public water supply permits

601.9 Permit exemptions

601.10 Application for a permit; Renewal of an Existing Permit

601.11 Action on permit applications

601.12 General provisions of a water withdrawal permit

601.13 Approval of plans by the Department of Health

601.14 Approval of completed works

601.15 Modification of water withdrawal permits

601.16 Denial, suspension or revocation of permits

601.17 Registration of water withdrawals for agricultural purposes

601.18 Registration of interbasin diversions; prohibitions

601.19 Monitoring Requirements

601.20 Routine Monitoring, Recording, and Reporting

601.21 Inspection and Entry

601.22 Signature of forms

601.23 Severability

601.24 References

Chapter 401, Laws of 2011, amended ECL article 15 titles 15, 16 and 33, and article 71 section 71-1127 authorize the New York State Department of Environmental Conservation (DEC) to implement an expanded permitting, reporting and registration program for water withdrawals and to adopt regulations to implement the expanded program. These statutory amendments expanded the permit program to include withdrawals for purposes beyond public water supply, such as commercial, manufacturing, industrial, oil and gas development, and other purposes. However, the amendments also limited the permit program to only address withdrawal systems with a capacity that meets or exceeds a threshold volume of 100,000 gallons per day (gpd). The effect is to regulate more of the higher-volume withdrawals across the state while no longer issuing water withdrawal permits for lower-volume public water supplies.

The adopted rule repeals 6 NYCRR Parts 601 and 675 and adopts a new Part 601 and a revised Part 621. The rule also carries out New York's commitment under the Great Lakes-St. Lawrence River Basin Water Resources Compact to create a regulatory program for water withdrawals in the Great Lakes Basin. The Department is repealing Part 675 because its enabling statute, ECL article 16, was repealed by the legislature and its salient provisions included in ECL article 15 title 15 and Part 601. Lastly, this rule making revises some subparts in the uniform procedures regulations in Part 621 such that applications for "initial permits" (concerns already-existing withdrawals) are "minor" actions.

The rule has been clarified in numerous respects, but the clarifications are non-substantive. For example, due to their substantially similar nature, the rule now explicitly clarifies that agricultural withdrawals and interbasin diversions need not be registered under Part 601 if the withdrawals are already operating pursuant to a Delaware or Susquehanna River Basin Commission approval. The Department also corrected typographical errors, re-ordered certain sub-provisions for the sake of clarity, and specified an effective date of Monday, April 1, 2013. The Department updated the submission deadlines for initial permit applications from February 15, 2013 to June 1, 2013, accordingly. The first submission date for annual reports under the final rule was not changed because it is statutory. It remains Sunday, March 31, 2013.

One new permit exemption appears in the final rule to help resolve some confusion on the part of the regulated community. Temporary withdrawals for construction, dewatering, hydrostatic testing, or aquifer testing purposes, any of which withdrawals is less than an average of

100,000 gallons per day in any thirty day consecutive period (3 million gallons during a 30 day period), are now explicitly exempt. Such short term or one-time withdrawals do not require a permit, however, the outer limits of the definition of "temporary" are left to Staff's best professional judgment as each project, withdrawal and water source is unique. The definition of "threshold volume" has been slightly expanded to simply clarify that for public water supply systems under the threshold volume that are required by the Department of Health to have back-up or "redundant" water supply wells, "threshold volume" is not calculated to include the redundant well capacity so long as actual withdrawals remain under the threshold. Redundant wells may not be operated to withdraw additional water which, in combination with the existing public water supply system, exceeds the size threshold unless the facility first obtains a water withdrawal permit. Lastly, a few phrases have been added to make the water withdrawal permit renewal process easier to understand.

As stated in the Notice of Adoption, non-substantive changes were made to subsections 601.2-601.3, 601.5-601.12, 601.14, 601.17-601.20, and 601.24. The following summarizes changes that were made primarily to reflect the effective date and make the requirements clearer without creating any substantial changes in the meaning.

Subpart § 601.3 (Applicability) clarifies that a permit is required only for systems in excess of the threshold volume with respect to the taking, condemnation or acquisition of land for the development or protection of sources of public water supply. In § 601.5 (Annual Reporting), the due dates in paragraph (c) for annual reports have been clarified during the transition period between the effective date of the statutory amendments on February 15, 2012 and the effective date of re-issued Part 601 on April 1, 2012. In § 601.7 (Initial Permits), the deadline in sub-paragraph (b)(2) for submitting an initial permit application was updated from February 15, 2013 to June 1, 2013, which is 60 days after the effective date of April 1, 2013 for this Part. The deadline for submitting initial permit applications for withdrawals that are also regulated under SPDES permits as of February 15, 2012, in sub-paragraph (b)(3), has been changed from 180 days before the existing SPDES permit is scheduled to expire absent renewal to a deadline that consists of either the same 180-day deadline or June 1, 2013, whichever occurs later. This clarifies the deadline for those with SPDES permits that have expiration dates that fall earlier than June 1, 2013.

In § 601.9 (Permit Exemptions), exemption (o) was added to clarify that temporary water withdrawals for construction or aquifer testing purposes where, the water withdrawn is less than an average of the threshold volume in any consecutive thirty-day period, do not need a permit. In § 601.11 (Action on Permit applications), paragraph (h) was added to reiterate the Department's coordination of water withdrawal application reviews with other Department permit programs, as applicable, including the SPDES program. In § 601.12 (General Provisions of a Water Withdrawal Permit), language was added to the introductory phrase to clarify that § 601.12 applies to both new water withdrawal permits that are issued after the effective date of this Part and to existing public water supply permits.

In § 601.17 (Registration of Water Withdrawals for Agricultural Purposes), paragraph (b) clarifies that the March 31 reporting deadline applies in 2013 because the deadline is statutory and became effective in 2011. Paragraph (f) clarifies that, per the statute, a registration is not required if an agricultural withdrawal is operating pursuant to a DRBC or SRBC Docket (permit). In § 601.18 (Registration of Interbasin Diversions; Prohibitions), Paragraph (a) eliminates the wording, 'of an average' in order to correct an error and Paragraph (b) clarifies that a registration is not required if an interbasin diversion is operating pursuant to a DRBC or SRBC Docket (permit). In § 601.19 (Monitoring Requirements), paragraph (f) replaces "the effective date of this Part" with "April 1, 2013." In § 601.20 (Routine Monitoring, Recording, and Reporting), sub-paragraph (a)(2) further clarifies the reporting requirements for monitoring malfunctions and repairs. In § 601.24 (References), revisions to the HUC codes were included in a map published by the Department, which made incorporation by reference unnecessary.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 601.2-601.3, 601.5-601.12, 601.14, 601.17-601.20 and 601.24.

**Text of rule and any required statements and analyses may be obtained from:** Robert Simson, Division of Water, New York State Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany, NY 12233-3500, (518) 402-8271, email: rjsimson@gw.dec.state.ny.us

#### Summary of Revised Regulatory Impact Statement

1. Chapter 401, Laws of 2011, amended ECL article 15 titles 15, 16 and 33, and article 71 section 71-1127 to authorize the New York State Department of Environmental Conservation (DEC) to implement an expanded permitting, reporting and registration program for water withdrawals and adopt regulations to implement the expanded program.

2. 'Legislative Objectives.' The statutory amendments have a broad array of legislative objectives, all of which are carried out in the revisions to 6 NYCRR part 601. ECL article 15 title 15 originally required permits solely for public water supplies with five or more service connections, regardless of the volume of water withdrawn. The amendments expand the permit program to include withdrawals for purposes beyond public water supply, such as those for commercial, manufacturing, industrial, oil and gas development, and other purposes. However, the amendments also limit the permit program to only include withdrawals that meet or exceed a threshold volume of 100,000 gallons per day (gpd). The effect is to regulate more of the higher-volume withdrawals across the state while no longer issuing water withdrawal permits for lower-volume public water supplies. Withdrawals below the size threshold must still comply with water pollution control laws (ECL article 17), Department of Health regulations and state environmental quality review (SEQR) requirements, as applicable.

To summarize, the legislative objectives: add water conservation elements and encourage water efficiency and reuse consistent with the Great Lakes-St. Lawrence River Basin Water Resources Compact as set forth in ECL article 21 title 10 (Compact); implement key provisions in ECL article 15 title 16 for the registration of Great Lakes watershed withdrawals and in ECL article 15 title 33 for water withdrawal reporting, both of which are now consolidated into title 15 (ECL article 15 titles 16 and 33 are then repealed effective December 31, 2013); exempt agricultural withdrawals from the permit requirement so long as the withdrawals are registered in accordance with current law, including ECL article 15 titles 16 and/or 33, as of February 15, 2012 under the provisions of ECL § 15-1504 (any person withdrawing water for agricultural purposes that has not registered or reported to DEC by February 15, 2012 shall be required to apply for and obtain a water withdrawal permit); allow a more generous size threshold for agricultural withdrawal registrations (100,000 gpd in any consecutive 30-day period) consistent with title 16; provide additional exemptions to the permit requirement; prohibit new or increased interbasin diversions in excess of one million gpd unless it is registered with DEC; require that existing diversions in excess of one million gpd are registered with DEC by February 15, 2013, subject to limited exemptions; provide that the construction of any water withdrawal system must be supervised by a licensed professional engineer; and increase the maximum civil penalty for violations of ECL article 15 from \$500 to \$2,500 per violation and from \$100 to \$500 for each day during which the violation continues.

These legislative objectives are fulfilled (and often statutorily required) by the regulations, which largely mirror the statutory amendments, by: the repeal of 6 NYCRR part 601, Water Withdrawal Regulations, and part 675, Great Lakes Water Withdrawal Registration Regulations; the adoption of a new part 601; and the revision to part 621.4, Uniform Procedures.

### 3. 'Needs and Benefits.'

Pursuant to ECL article 15, DEC has been entrusted with the responsibility to conserve and manage New York State's water resources for the benefit of all the inhabitants of the State. Good policy and sound natural resource management practices are critical to assuring long-term supplies of water to meet these needs. In addition to these benefits, the amendments in Chapter 401 allow DEC to fully comply with commitments under the Compact: regulation of water withdrawals occurring in the New York portion of the Great Lakes Basin. The amendments also direct DEC to establish a water conservation and efficiency program, another key responsibility of New York State under the Compact. The revisions to part 601 carry out this commitment and program.

DEC worked extensively with stakeholders, including agriculture, industry and environmental advocates, to resolve their concerns during development of the legislation. As a result, existing agricultural withdrawals are exempt from the new permit requirement as long as these withdrawals are reported to DEC as of February 15, 2012 as is already required under existing law. In addition, other (non-agricultural) existing water withdrawals above the size threshold are entitled to an initial permit, subject to appropriate terms and conditions, based on the maximum water withdrawal capacity reported to DEC on or before February 15, 2012 pursuant to existing law. Chapter 401 also authorizes DEC to establish quantitative standards that maintain stream flows protective of aquatic life, consistent with the policy objectives of ECL article 15. Further, the criteria that DEC must consider in making its permit decisions are based on the decision-making standard in the Compact. The part 601 reflects and carries out each of these aspects of the legislative amendments.

The regulations implement a comprehensive statewide permitting program for significant water withdrawals, help ensure that water remains available for drinking water supply, agriculture, hydropower, manufacturing, aquatic habitat, navigation, water-based recreation, wetlands, and other uses, while allowing DEC to regulate withdrawals of water that are unregulated now, like water taken by bottled water companies, or large withdrawals of water anticipated for high-volume hydraulic fracturing. The regulations will help the Department to protect existing water users,

especially for drinking water purposes, and help new businesses to know where to locate in New York, especially if the business is heavily water dependent.

Modifications to 6 NYCRR part 621.4, Uniform Procedures, are also included in this rule making for consistent use of terms and to expand the 'minor' project category to include water withdrawal initial permits.

The Repeal of 6 NYCRR part 675 is also included in this rulemaking as the 601 includes the requirements of part 675 as necessary.

### 4. 'Costs.'

'(a) Costs for initially complying and continuing to comply with the regulations.' Such costs will vary depending upon the size, capacity and complexity of the water withdrawal system or interbasin diversion. Reporting costs should be minimized because withdrawal systems within the ambit of the rule are already required to report their withdrawals annually under ECL article 15 title 33, and if they are not required to report under this ECL provision, then they are required to report under another program that requires similar reporting. The new one-time costs primarily consist of the Engineer's Report associated with the permit application process for previously-unregulated water withdrawal systems. For new projects, the cost of an Engineer's Report can range from \$5,000 to \$25,000, depending on the water withdrawal system. It bears mentioning that most persons who construct new or expanded water withdrawal systems of a size that meet or exceed the size threshold in these regulations still typically need to retain a professional engineer, regardless of the new regulations.

Other elements of the permit application process will typically include either a 72-hour pump test and analysis of groundwater withdrawals, or a safe yield analysis for surface water withdrawals. Either of these tests can cost between \$10,000 and \$30,000, with the cost of a safe yield analysis typically occupying the lower end of this range. Again, these tests are routinely pursued, regardless of these regulations, by most water withdrawal system proposals that are above the size threshold.

The preparation and submission of a Water Conservation Program is also required by the permitting provisions of these regulations as well as the preparation and analysis necessary to present the Project Justification. A Water Conservation Program does not need to be prepared by a Professional Engineer, and may typically cost between \$500 and \$5,000, depending on the size of the withdrawal.

The availability of an 'initial permit' for pre-existing water withdrawals will reduce the costs the permit application process for existing withdrawals through the avoidance of the time and costs associated with a public hearings while maintaining the public involvement through the written public comment process.

New, smaller public water supply systems – those that do not exceed the size threshold – are now spared of the costs of the permit application process; however it is expected that many such smaller systems will complete the same or similar elements as a means of good design, less costly asset management, and efficient business practices.

'(b) Costs to DEC, the state, and local governments for the implementation and continued compliance with the rule.' The greatest direct cost to DEC will occur in the Division of Water, and to a lesser extent, other units needed to support the program's work. DEC may conduct outreach and training, develop additional guidance documents, prepare notifications, develop a compliance database to track receipt of required reports, prepare case referrals to DEC's attorneys for enforcement, and face an increase in water withdrawal permit applications.

There are no significant costs anticipated for state or local governments except with respect to their roles as owners or operators of water withdrawal systems above the size threshold. Many local governments have previously-permitted public water supplies; there should be no significant additional costs for these local governments. Various state agencies may operate water withdrawal systems over the size threshold and unless exempt will be subject to the same costs as provided above for other owners of operators of water withdrawal systems. The regulations and Chapter 401 define "person" to include state agencies.

### 5. 'Local Government Mandates.'

There are no programs, services, duties, or responsibilities imposed by the rule upon any county, city, town, village, school district, fire district or other special district except with respect to their role as owners or operators of water withdrawal systems over the size threshold (unless exempt). New smaller public water supply systems are spared of the costs of the permit application process if the systems do not reach the size threshold.

### 6. 'Paperwork.'

The regulations require water withdrawal permittees to prepare and maintain documents about the water withdrawal system. Annual Reports or Registrations are periodic submissions but the predominant obligation to prepare and submit documents occurs once during the permit application process.

### 7. 'Duplication.'

For most water withdrawal systems, there are no relevant rules or other



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legal requirements of the state and federal governments that duplicate, overlap or conflict with the rule. The full text of the RIS provides additional clarification and answers frequent questions concerning potential duplication.

### 8. 'Alternatives.'

The Department considered proposing regulations without the monitoring, recording and recordkeeping provisions (§§ 601.19 and 601.20), the permit denial, suspension and revocation provisions (§ 601.16), the inspection and entry provisions (§ 601.21), the signature of forms provision (§ 601.22), and the references provision (§ 601.24), respectively. However, it was determined that the legislative objectives of the Chapter 401 amendments and the Compact cannot be met without the monitoring, recording and recordkeeping provisions. The Department adapted the regulations in §§ 601.19 and 601.20 from existing SPDES regulations because they are already well-known to and implemented by those who use withdrawn water for purposes that generate waste water discharges. The permit denial, suspension and revocation provision in § 601.16 appears in substantially similar form in the SPDES regulations, and is necessary to put permittees on notice of the circumstances that can lead to rejection of a water withdrawal proposal or suspension or revocation of a permit. The same is true for § 601.22 and 601.24.

### 9. 'Federal Standards.'

The state's water withdrawal law does not derive its authority from federal laws or regulations. The regulations exempt withdrawals that are regulated by FERC from the permit requirements.

### 10. 'Compliance Schedule.'

The regulations become effective April 1, 2013 and the relevant 2013 permit application deadlines falls on June 1. The regulations provide time to enable regulated persons to achieve compliance with the rule. A table summarizing the applicable time frames is provided in the full text of the Regulatory Impact Statement; however, the regulations should be consulted for a fuller understanding of the time frames.

### Summary of Revised Regulatory Flexibility Analysis

1. 'Effect of Rule.' Statutory amendments to Environmental Conservation Law (ECL) article 15, title 15 (Chapter 401 of the 2011 Laws of New York) both expand and limit this water withdrawal permit program. The amendments expand the permit program to include withdrawals for purposes beyond public water supply, such as those for commercial, manufacturing, industrial, oil and gas development, and other purposes. The amendments generally limit the permit program to withdrawals that meet or exceed a threshold volume (of 100,000 gallons per day (gpd)). The effect is to regulate far more of the higher-volume withdrawals across the state while exempting from permitting requirements withdrawals associated with lower-volume public water supply systems (PWSS). The amendments to 6 NYCRR part 601 and subpart 621.4, and the consolidation of part 675 (Great Lakes water withdrawal registration) into part 601, implement this permitting program. The types of water withdrawal systems that are subject to the permit program are located in all areas of the state; so small businesses and local governments that undertake water withdrawals for purposes other than PWSS will be impacted by the regulations, although the impact will be offset by the 100,000 gpd threshold, other exemptions, the availability of an 'initial permit,' and the staggered or delayed implementation schedule.

2. 'Compliance Requirements.' The adopted regulations, which become effective April 1 2013, do not distinguish between water withdrawal systems operated by small businesses and those operated by local governments. Existing agricultural withdrawals of any volume are exempt from the permit requirement altogether so long as these existing withdrawals are registered in accordance with current law (including ECL article 15 titles 16 and/or 33) as of February 15, 2012. Moreover, the registration requirement for agricultural withdrawals is subject to an even more generous size threshold of an average of 100,000 gpd in any consecutive 30-day period. New agricultural withdrawals above the size threshold will require permits. The new part 601 implements other statutory exemptions to the water withdrawal permit requirement, including fire suppression withdrawals and withdrawals approved by the Delaware River Basin Commission or Susquehanna River Basin Commission. Small businesses and local governments may benefit from these provisions.

Initial Permits. An 'initial permit' includes all of the terms and conditions of a water withdrawal permit, but is a 'minor action' under the revision to subpart 621.4 that results in a slightly abbreviated permitting process. A water withdrawal system qualifies for an initial permit under the following circumstances: the withdrawal exists as of February 15, 2012; it is over the size threshold; it is properly reported to DEC by February 15, 2012 under existing law; it is not a public water supply; and the withdrawal is not otherwise exempt. The slightly simpler administrative process for initial permits eases the compliance requirements for existing and previously-unregulated water withdrawals that are not exempt.

In addition, the 'initial permit' application deadline for existing water withdrawals above the size threshold depends on the amount of water

withdrawn. Specifically, applications for initial permits are not due until: February 15, 2017 for withdrawals equal to or greater than 0.1 but less than 0.5 million gallons per day (mgd); February 15, 2016 for withdrawals equal to or greater than 0.5 mgd but less than 2 mgd; February 15, 2015 for withdrawals equal to or greater than 2 mgd but less than 10 mgd; February 15, 2014 for withdrawals equal to or greater than 10 mgd but less than 100 mgd; and June 1, 2013 for withdrawals equal to or greater than 100 mgd. These rolling deadlines will benefit small businesses and local governments that withdraw lesser amounts of water.

3. 'Professional Services.' Small business owners and local governments that own or operate water withdrawal systems are subject to the same requirements as other owners of water withdrawal systems, and would be required to retain the same level of professional services to comply with the regulations. The requirements are described in the 'Costs' section of the Regulatory Impact Statement (RIS). A small business or local government who has a professional engineer with relevant experience on staff may use its engineer to produce the documents required in the regulations.

4. 'Compliance Costs.' Small business owners and local governments that operate water withdrawal systems are subject to the same requirements as others, and will likely incur similar costs as other withdrawal operators. The 'Costs' section in the RIS summarizes the requirements.

5. 'Economic and Technical Feasibility.' Small businesses and local governments who operate existing, currently-unregulated water withdrawal systems above the size threshold will need to meet the 'initial permit' requirements of the regulations, unless exempt. Applying for an 'initial permit' is quicker and less costly because it usually avoids the need for a permit hearing (as described in the RIS). While public notice and comment on the 'initial permit' application must occur, a permit hearing on top of that would generally not be necessary.

It is important to understand that the economic burden related to the 'initial permit' process would be greater if the applicant has not or does not report or register their withdrawals under ECL article 15 titles 16 or 33 by February 15, 2012, as is discussed in the RIS. The water withdrawal reporting requirements in ECL article 15 title 33 are statutory and compliance is a pre-condition to eligibility to apply for an 'initial permit'. The same is true for the Great Lakes Basin registrations requirements of ECL article 15 title 16. If such existing withdrawals at or above the size threshold are not reported or registered under titles 16 or 33, as applicable, by February 15, 2012, the small business owner or municipal entity will not be eligible to apply for the quicker and less costly 'initial permit' and will instead be required to apply for and obtain a standard water withdrawal permit under its more time consuming and more costly process. The costs associated with applying for an 'initial permit' for existing water withdrawals should be substantially less as most engineering, testing, environmental and alternative analyses costs would have already been incurred when the project was initially constructed.

In addition to creating a more flexible permit application process for existing withdrawals above the size threshold, through the 'initial permit,' the regulations also afford flexibility and enhance the feasibility by providing additional time, up to five years depending on the capacity of the water withdrawal system, to submit the 'initial permit' application to the Department.

6. 'Minimizing Adverse Impacts.' In terms of additional measures taken to minimize potential adverse impacts of complying with the regulations, we note that water hydropower withdrawals that are federally regulated through a FERC (Federal Energy Regulating Commission) license are exempt from the water withdrawal permit requirement. To avoid potential duplication in the annual reporting obligation, and as is further discussed in the RIS, annual reports or registrations of water withdrawals that are submitted under ECL article 15 titles 16 or 33 are deemed sufficient under the regulations until those statutory provisions sunset on December 31, 2013.

As stated above, under the amended statute and these regulations, new public water supply systems below the volume threshold, regardless of the number of service connections, are no longer required to apply for water withdrawal permits. Similarly, existing agricultural withdrawals that are registered or reported to DEC under ECL article 15 titles 16 or 33 on or before February 15, 2012 are exempt altogether from the water withdrawal permit requirement and the registration requirement for agricultural withdrawals is subject to a more generous size threshold.

For water withdrawal systems that are not exempt and that are above the size threshold as of February 15, 2012, the 'initial permit' process is somewhat less costly and time consuming than the standard permit process and provides additional time to comply depending on the capacity of the water withdrawal system.

7. 'Small Business and Local Government Participation.' The public outreach that occurred during the development of the statutory amendments was of significant and material assistance in drafting these regulations. DEC played a role in drafting the legislation underlying this

rulemaking. In that process, DEC sought and received input from many stakeholders, including representatives of small businesses and local governments. The discussions were about how regulated entities would be subject to the law, and the discussions resulted in legislative changes to address concerns that are now also carried out in these regulations.

In response to discussions with the New York Farm Bureau, DEC modified the statutory definition of threshold volume for agricultural withdrawals, and made other changes applicable to agricultural withdrawals. During the legislative process, DEC met with the Business Council and the New York State Chemical Alliance to address concerns of New York's businesses. These groups explained that it would be burdensome for such groups to apply for permits for withdrawals that have already existed. To address this concern, the amended legislation includes provisions allowing existing systems to utilize the more efficient and less costly "initial permit" process. The Department also met with the Independent Power Producers of New York, Inc. After consideration of the concerns raised, the Department committed to ensuring Department's water withdrawal regulations would not impose requirements duplicative of federal requirements and would require the Department to coordinate its review of water withdrawal permits with State Pollutant Discharge Elimination System (SPDES) permits, and any other applicable DEC permits which may already include conditions related to water withdrawals. These regulations, therefore, exempt withdrawals that are regulated by FERC from the regulations' permit requirements. In addition, these regulations expressly require that the Department review a water withdrawal permit application in coordination with the SPDES permit or other permit program.

DEC also met with and had discussions with representatives of the New York State Association of Town Superintendents of Highways, Inc.; Ski Areas of New York, Inc. and representatives of the state's ski areas; persons representing the interests of golf courses and installers of irrigation systems; and several local governments. These, either individually or collectively, resulted in changes to the draft statutory amendments prior to their passage and thereby also to these regulations. The regulatory provisions that reflect a direct response to the public outreach include, without limitation, the following: the definitions in § 601.2 ('environmentally sound and economically feasible,' establishment of the 'threshold volume' at a level as high as 100,000 gallons per day, with a more generous interpretation for farm withdrawals, and 'vessel' is defined such that it does not include tanker trucks); the annual reporting in § 601.5 (potential duplication with reporting under ECL article 15 titles 16 and 33 eliminated, the list of over seven exemptions from annual reporting); the 'initial permit' provisions in § 601.7, in their entirety; the provision of fifteen separate water withdrawal permit exemptions in § 601.9, which includes nine more than are in the amended statute, particularly the permit exemption for all withdrawals for agricultural purposes that are properly registered or reported by February 15, 2012; inclusion of "economically feasible" in the water conservation program that is required under the permit application provisions in § 601.10; and the allowance for the water conservation programs to be developed without the services of a professional engineer.

DEC has also undertaken outreach in an effort to ensure that all affected entities were made aware of the water withdrawal reporting requirements of ECL article 15, title 33 that became effective April 1, 2009. DEC posted information about the new reporting requirement on its webpage at <http://www.dec.ny.gov/lands/55509.html>. In 2009, DEC sent letters to thousands of persons potentially subject to the new reporting requirement as well as to organizations representing those persons, including the Association of Towns of the State of New York, public water suppliers, State Pollutant Discharge Elimination System permittees, and Concentrated Animal Feeding Operations. In 2010, DEC contacted the same persons via e-mail. In August 2011, DEC met with the New York Farm Bureau to discuss further outreach to alert farmers to the benefits of registering or reporting prior to February 15, 2012.

#### ***Revised Rural Area Flexibility Analysis***

1. 'Types and Estimated Numbers of Rural Areas.' Prior to its amendment in 2011, Environmental Conservation Law (ECL) article 15 title 15 required permits solely for public water supplies with five or more service connections, regardless of the volume of water withdrawn. The statutory amendments (Chapter 401 of the 2011 Laws of New York) both expanded and limited this water withdrawal permit program. The amendments expanded the permit program to include withdrawals for purposes beyond public water supply, such as those for commercial, manufacturing, industrial, oil and gas development, and other purposes. The amendments generally limited the permit program to withdrawals that meet or exceed a threshold volume (of 100,000 gallons per day (gpd)). The effect is to regulate far more of the higher-volume withdrawals across the state while no longer issuing water withdrawal permits for lower-volume public water system withdrawals. Withdrawals below the size threshold must still comply with water pollution control laws (ECL article 17), Department of Health regulations, as applicable, and state environmental quality review

(SEQR) requirements. The amended law also authorizes the Department of Environmental Conservation (DEC) to establish quantitative standards to maintain stream flows protective of aquatic life, consistent with the policy objectives in ECL article 15 of assuring drinking water supplies, aquatic habitat, and recreational uses. The repeal and replacement of 6 NYCRR part 601, the revision of subpart 621.4, and the consolidation of part 675 (Great Lakes water withdrawal registration) into part 601, implement this expanded permitting program and the authorized exemptions thereto. The types of water withdrawal systems that are subject to the expanded permit program are located in all areas of the state, including rural areas. Therefore, all rural areas may be impacted by the regulation.

2. 'Reporting, Recordkeeping and Other Compliance Requirements, and Professional Services.' The regulations are the same for water withdrawal systems located in rural areas. However, to the extent that water withdrawal systems in rural areas are less likely to exceed the above-stated size threshold, they are less likely to be subject to the water withdrawal permit requirement. Agricultural withdrawals of any volume are exempt from the permit requirement altogether so long as the withdrawals were registered in accordance with ECL article 15 titles 16 and/or 33 as of February 15, 2012. Moreover, the registration requirement for agricultural withdrawals is subject to an even more generous size threshold of an average of 100,000 gpd in any consecutive 30-day period. The new part 601 implements other statutory exemptions to the water withdrawal permit requirement, such as those for fire suppression withdrawals and withdrawals approved by the Delaware River Basin Commission or Susquehanna River Basin Commission.

Initial Permits. An "initial permit" includes all of the terms and conditions of a standard water withdrawal permit, but is a 'minor action' under the modification to subpart 621.4 4 that results in a slightly abbreviated permitting process. In the absence of a timely application for an initial permit, a standard water withdrawal permit must be applied for and approved under the full permit process. A water withdrawal system qualifies for an initial permit under the following circumstances: the withdrawal existed as of February 15, 2012; it is over the size threshold; it was properly reported to DEC by February 15, 2012 under existing law; it is not a public water supply; and the withdrawal is not otherwise exempt. Existing public water supplies with water supply permits need do nothing different. The slightly simpler administrative process for initial permits eases the compliance requirements for existing and previously-unregulated water withdrawals that are not exempt.

In addition, among water withdrawal systems above the size threshold that qualify for initial permits, the regulations in part 601 provide more time for operators of smaller water withdrawal systems to apply for initial permits. This is more likely to be a benefit in rural areas. Specifically, under the provisions of part 601.7, initial permit applications are not due until February 15, 2017 for withdrawals equal to or greater than 0.1 but less than 0.5 million gallons per day (mgd); February 15, 2016 for withdrawals equal to or greater than 0.5 mgd but less than 2 mgd; February 15, 2015 for withdrawals equal to or greater than 2 mgd but less than 10 mgd; February 15, 2014 for withdrawals equal to or greater than 10 mgd but less than 100 mgd; and June 1, 2013 for withdrawals equal to or greater than 100 mgd.

3. 'Costs.' The cost to comply with the regulations will depend on the size, purpose and complexity of the water withdrawal system. Other than the factors mentioned above, it is not expected that there will be any variation in the compliance costs based upon rural area status.

4. 'Minimizing Adverse Impacts.' Please see Items 1 and 2, above. As stated, public water supply systems below the size threshold, which are more likely to be located in rural areas, are no longer required to have water withdrawal permits. As further stated above, agricultural withdrawals that were registered or reported to DEC under ECL article 15 titles 16 or 33 on or before February 15, 2012 are exempt from the water withdrawal permit requirement under the amended law and the part 601 amendments (although such withdrawals must continue to be registered). The registration requirement for agricultural withdrawals is subject to a more generous size threshold.

For water withdrawal systems that are not exempt and that are above the size threshold as of February 15, 2012, the initial permit process is somewhat less costly and time consuming than the standard permit process. Initial permit applications are due last for the smallest withdrawal systems above the size threshold. Existing public water supplies with water supply permits need do nothing different.

5. 'Rural Area Participation.' DEC sought and received input from many stakeholders in the development of the amendments enacted in Chapter 401, which included representatives of farmers as well as business interests which may have some facilities located in rural areas. In 2010 DEC had several discussions with the New York Farm Bureau and modified the proposed statutory amendments to add ECL § 15-1504 (specific to agricultural withdrawals), change the definition of threshold volume for agricultural withdrawals, and make other changes applicable

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to agricultural withdrawals to address concerns of New York's farmers. DEC met with the Business Council and the New York State Chemical Alliance in 2010 to address concerns of New York's businesses and significant amendments were made to the proposed law to address their concerns, including the addition of the "initial permit" provisions. The Department also met with the Independent Power Producers of New York, Inc. After consideration of the concerns raised, the Department committed to ensuring Department's water withdrawal regulations would not impose requirements duplicative of federal requirements and would require the Department to coordinate its review of water withdrawal permits with State Pollutant Discharge Elimination System (SPDES) permits, and any other applicable DEC permits which may already include conditions related to water withdrawals. These regulations, therefore, exempt withdrawals that are regulated by FERC from the regulations' permit requirements. In addition, these regulations expressly require that the Department review a water withdrawal permit application in coordination with the SPDES permit or other permit program.

In March, April and May 2011 DEC had a meeting and several discussions with persons representing the interests of the New York State Association of Town Superintendents of Highways, Inc. to discuss potential permit requirements for water pumping equipment at mines owned and operated by towns. In April 2011, DEC met with Ski Areas of New York, Inc. and representatives of the state's ski areas to address concerns related to the impacts the proposed statutory amendments and implementing regulations might have on New York's ski areas. DEC also discussed the proposed amendments with persons representing the interests of golf courses and installers of irrigation systems.

In addition, DEC undertook outreach in an effort to ensure that all affected entities were made aware of the water withdrawal reporting requirements of ECL article 15, title 33 that became effective April 1, 2009. DEC posted information about this reporting requirement on its webpage at <http://www.dec.ny.gov/lands/55509.html>. In 2009, DEC sent letters to thousands of persons potentially subject to the new reporting requirement as well as to organizations representing those persons, including the Association of Towns of the State of New York, public water suppliers, State Pollutant Discharge Elimination System permittees, and Concentrated Animal Feeding Operations. In 2010, DEC contacted the same list of persons via e-mail. In August 2011, DEC met with the New York Farm Bureau to discuss further outreach to alert farmers to the benefits to them of registering or reporting prior to February 15, 2012.

### Revised Job Impact Statement

1. 'Nature of Impact.' The proposed revision to the water withdrawal regulations may create high-paying technical jobs in engineering and training.

2. 'Categories and Numbers Affected.' Under the proposed revisions to 6 NYCRR Part 601, operators of previously-unregulated water withdrawal systems must submit several technical documents, such as annual reports as well as various parts of a permit application, including an engineer's report, pump tests and analyses for groundwater withdrawals, safe yield analyses for surface water withdrawals, water conservation programs, and the analysis of alternatives sufficient to complete a project justification. It is expected that the proposed regulatory revisions will generate high-paying engineering jobs, as well as technical jobs that do not require the services of a professional engineer. The field of water withdrawal planning, monitoring and reporting includes specialized areas of expertise: civil/structural engineering and hydrologic/hydraulic analysis, with some utilizing computer modeling. There will be a need for engineers and other professionals to have additional training in water withdrawal and the proposed water conservation programs. Therefore, there will be an opportunity for companies and colleges to develop training programs and offer specialized training in New York. This would create job opportunities for trainers as well as support staff opportunities. The Department has no way of determining the number of engineering or construction jobs or training opportunities.

3. 'Regions of adverse impact.' There are no adverse job impacts expected.

4. 'Minimizing Adverse Impacts.' There are no adverse job impacts expected.

5. 'Self-employment opportunities.' The proposed regulations will create an environment favorable for experienced engineers, licensed surveyors, computer modelers, and water conservation planners specializing in hydrology and hydraulic analysis to start their own businesses. Self-employment opportunities also will likely exist for experienced engineers to conduct training and inspections, and to prepare engineering reports, and for experienced individuals in the additional trades indicated above.

### Assessment of Public Comment

Comments were received from a variety of sources through regular and electronic mail: 186 submissions comprising over 650 individual comments. NYSDEC appreciates the public input and thoroughly consid-

ered each comment. Changes were made to the regulations to reiterate or further clarify the original meaning for the benefit of the public and take questions into account. As stated in the Notice of Adoption, non-substantive changes were made to subsections 601.2-601.3, 601.5-601.12, 601.14, 601.17-601.20, and 601.24. The Assessment of Public Comment (APC) presents and responds to all of the comments that were received during the public comment period. A revised or new rule making is not required. The effective date of the regulations is April 1, 2013 and the first due date for permit applications is June 1, 2013.

This summary condenses the comments that were frequently posed and NYSDEC's responses from the APC. Frequent Comment 1 concerned the schedule for "initial permit" applications in 601.7(b)(2). Diverse views were received. Response. Initial Permits are only available for already-existing withdrawals above the threshold volume that were properly reported before February 15, 2012 and not exempt. Pursuant to ECL 15-1501(9), NYSDEC is to issue initial permits for these existing withdrawals for the maximum capacity reported as of February 15, 2012. The statute does not include a deadline for NYSDEC.

Since 2010, water withdrawal systems with the capacity to withdraw more than 100,000 gallons per day have been required to report water use data per ECL article 15 title 33. Of these reporting systems, more than 600 that will need initial permits. Through the 601.7 initial permit schedule, NYSDEC will evaluate the largest already-existing systems first as they are likely to have the greatest impact on the State's water resources. This will bring them under regulation and subject them to the new ten-year permit renewal process sooner than the remaining initial permittees. Pursuant to 601.5(a), the remaining already-existing withdrawals that require initial permits must be reported annually even though permits are not required yet.

Frequent Comment 2 – Fees on usage, applications and annual reporting 601.5(c). Diverse views were expressed and a question was raised as to whether there was a new permit fee structure. Response. To the extent a fee structure does not exist under an existing statute, this comment is outside the scope of this rule making as it recommends legislation. Absent such legislation, NYSDEC does not have authority to impose application or usage fees on withdrawals or system capacities. As to the \$50 or \$200 annual reporting fees in ECL article 15 titles 16 and 33, these provisions were repealed and no replacement fee was legislated in the 2011 statutory amendments to title 15.

Frequent Comment 3 – Ten-year Term of Permits 601.7 (e), 601.11 (b). Diverse views were expressed. Response. ECL 15-1503(6) requires water withdrawal permits with maximum term of ten years. While NYSDEC anticipates that most water withdrawal permits will have this ten year term, shorter time frames may be used on a case by case basis when appropriate. In addition, NYSDEC's review of Annual Reports may identify scenarios that may trigger the need for a permit modification or indicate possible permit violations. One scenario is systems that are approaching their permitted withdrawal limits.

Frequent Comment 4 – water conservation measures that are "environmentally sound and economically feasible" 601.2(g), 601.7(e), 601.10(f), 601.10(k)(4), 601.11(c)(7). There was inquiry as to the meaning of this phrase. Response. These terms are used in the Great Lakes - St. Lawrence River Basin Water Resources Compact and are defined in ECL 15-1502 as well as the regulations in 601.2 (g). NYSDEC currently has a manual (Water Conservation Manual for Development of a Water Conservation Plan") and Water Conservation Program Form that are used for public water supply, both of which are available on DEC's website at [www.dec.ny.gov/lands/39346.html](http://www.dec.ny.gov/lands/39346.html). The forms and manual are being updated to address non-potable withdrawals. The annual reports required of each permitted withdrawal will include an update on the progress and effectiveness of ongoing water conservation measures.

Frequent Comment 5 – Smaller withdrawals and high volume hydraulic fracturing (HVHF). The regulations do not adequately consider water withdrawals, including those below the 100,000 gallon per day threshold volume, which may be used by the natural gas industry for HVHF or other purposes. Response. All proposed water withdrawals above the threshold volume, no matter the intended purpose or usage, unless exempt, will be evaluated under Part 601 based upon the ability of the source to supply the proposed withdrawal demand while taking into account the cumulative impacts of multiple withdrawals on the source. A single water withdrawal facility will need a permit for its multiple sources of supply that cumulatively equal or exceed 100,000 gallons per day. Multiple facilities on the same source will be evaluated jointly for possible cumulative impacts when evaluating an application to modify or renew a water withdrawal permit or for a new permit to withdraw from the same source. If New York decides to allow HVHF, then it is anticipated that all water withdrawn or purchased for HVHF, regardless of the volume, would be required to be obtained from sources that are either permitted pursuant to these Part 601 regulations or approved by the Susquehanna River Basin Commission (SRBC) or Delaware River Basin Commission (DRBC).



Frequent Comment 6 – Withdrawal data, monitoring data. The withdrawal data required in annual reports and all required water monitoring data should be available to the public in a uniform manner via NYSDEC's website. Response. NYSDEC maintains as much data as possible electronically. The annual report form on NYSDEC's website may be submitted electronically, which is encouraged. The annual reports will be expanded to include updates on water conservation measures. The goal is to make as much of this data as possible publicly available on NYSDEC's website. Under Part 601, any records required to be kept by the permittee are to be made available to NYSDEC upon request, including monitoring data. Information verifying the accuracy of equipment is also to be made available to NYSDEC upon request. Some water withdrawal permits may require, as a condition, the submission of monitoring data to NYSDEC on a periodic basis, rather than on request.

Frequent Comment 7 – Stream flows, flow standards. NYSDEC should specify how minimum stream flows (aka flow standard) that will be protective of aquatic life will be determined and enforced. Response. NYSDEC is developing a technical guidance for use in determining minimum (passby) flows. The guidance document will include methods to be used to monitor stream flows and ensure compliance with permit conditions.

Frequent Comment 8 – Withdrawals already regulated by SPDES permits. Regulating such withdrawals under two permits would be burdensome. Response. NYSDEC will coordinate the review of Part 601 permit applications with the SPDES permit process. This is reflected in 601.7 and 601.11(h) whereby the timing and review of initial and standard withdrawal permit applications is coordinated with SPDES permit renewals. The deadline in 601.7(b)(2) requires facilities with SPDES permits that control water withdrawals to apply for an initial water withdrawal permit 180 days prior to the expiration of their SPDES permits. The Department acknowledges this may not be possible for facilities with SPDES permits that are expiring in 2012 and administratively extended. The deadline has been clarified as follows such that it is the later of the 180 period or June 1, 2013. Further, the Part 601 applicant will be able to develop documents that satisfy both permitting programs (e.g. Engineering Report), to the extent appropriate.

Frequent Comment 9 – Evaluation of cumulative impacts. Diverse statements were received, such as, NYSDEC is required to assess the cumulative impacts posed by existing withdrawals (including impacts due to consumptive use) before proceeding with this rule making; NYSDEC is required to assess cumulative impacts as part of the water withdrawal permitting process under these regulations; and the definition of 'significant individual or cumulative adverse impacts' should be defined. Response. The short environmental assessment form for this rule making explains the basis for the negative declaration for this rule making. The expansion of the water withdrawal permitting program to cover non-potable withdrawals (e.g., in addition to public water supplies) does not allow a new activity to be undertaken. Rather, it regulates an already-existing activity (non-potable withdrawals above the threshold volume).

Since 1989, non-potable withdrawals over 100,000 gpd in the Great Lakes basin have been required to be registered and reported to NYSDEC on an annual basis. Under the Great Lakes Compact, NYSDEC compiled baseline data of permitted, registered facilities withdrawing 100,000 gpd or more in the Great Lakes Basin. The water withdrawal reporting requirement was extended statewide in 2009 by article 15 title 33. Through the 2011 statutory amendments to article 15 title 15, these three programs have been consolidated into one. The data NYSDEC has gathered so far has provided comprehensive information on the water resources in the state of New York, the reported withdrawals, and the overall impacts of these withdrawals.

The potable water use remains the paramount use of water under ECL article 15, and the water withdrawal permit application review process takes that into account. Sub-section 601.11(c)(6), in conjunction with sub-sections (c)(3) and (c)(8), and the over-arching statutory authority, without limitation, allow for the consideration of consumptive use in the permitting process. Concerning whether to define, 'significant individual or cumulative adverse impacts,' each water withdrawal system and source are unique and vary widely. The evaluation of significant individual or cumulative adverse impacts is undertaken in the best professional judgment of Department staff. Specific projected impacts may be very significant in one instance but insignificant in a different water withdrawal system relative to its source. Uniform application of a single definition would diminish NYSDEC's broad statutory authority to regulate water withdrawals. However, it is anticipated that guidance may be developed to better illustrate various impacts in relation to sources.

Frequent Comment 10 -- An exemption for dewatering and emergency situations should be included in the regulations. Response. The regulations have been clarified by specifically addressing temporary water withdrawals for construction, dewatering, or for hydrostatic or aquifer testing purposes less than an average of 100,000 gallons per day in any

thirty day consecutive period (3 million gallons during a 30 day period). Such withdrawals are not designed as permanent systems of water allocation and do not require a permit based on a single, rare or truly short-term withdrawal above the threshold within a given month that may occur for testing or construction dewatering purposes. This exemption would not apply to water withdrawals intended for HVHF. If New York decides to allow HVHF, then it is anticipated that all water withdrawn or purchased for HVHF, regardless of the quantity, would be required to be obtained from sources that are either permitted pursuant Part 601 or approved by SRBC or DRBC.

Frequent Comment 11 – Forms to be used for permit applications, annual reports, and inter-basin diversions. Response. NYSDEC is updating the forms. They are administrative in nature, will reflect the statutory and regulatory requirements, and cannot be finalized until the regulations are finalized. NYSDEC is authorized to require information necessary to make a determination on the requirements in the regulations. The information requested of the applicant will be similar to existing forms. No permit applications under adopted Part 601 are due until June 1, 2013. NYSDEC anticipates having all necessary forms available in advance of that date.

Frequent Comment 12 – Inquiries were received about the public comment process. Response. The notice of proposed rule making was published in the State Register and the Environmental News Bulletin (ENB) on November 23, 2011. Public hearings were not required. However, Staff provided three public information meetings regarding the proposed rule making on December 6, 8 and 12, 2012, in New Paltz, West Henrietta and Albany, respectively. The public comment period for the proposed rulemaking was longer than is required under the State Administrative Procedures Act, was scheduled to close on January 22, 2012, but was further extended to February 6, 2012, as published.

## NOTICE OF ADOPTION

**LEV, ZEV, GHG, Environmental Performance Label, New Aftermarket Catalytic Converter, and Emissions Warranty/Recall Standards**

**I.D. No.** ENV-31-12-00009-A

**Filing No.** 1127

**Filing Date:** 2012-11-09

**Effective Date:** 30 days after filing; section 218-7.2(c) eff. June 1, 2013

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Parts 200 and 218; repeal of Part 252 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-1101, 19-1103, 19-1105, 71-2103, 71-2105; and section 177 of the Federal Clean Air Act (42 USC 7507)

**Subject:** LEV, ZEV, GHG, environmental performance label, new aftermarket catalytic converter, and emissions warranty/recall standards.

**Purpose:** To incorporate California's most recent low emission vehicle program standards.

**Substance of final rule:** The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Part 218, 6 NYCRR Part 252 and Section 200.9. Section 200.9 is a list that cites Federal and California codes and regulations that have been referenced by the Department in the course of amending Parts 218 and 252. The purpose of the amendment is to revise the existing low emission vehicle (LEV) program to incorporate modifications California has made to its vehicle emission control program to reduce criteria pollutant and greenhouse gas (GHG) emissions. The Department is amending Sections 218-1.2, Definitions; 218-2.2, Reporting; 218-3.1, Fleet Average; 218-3.2, Fleet average reporting and projection; 218-4.1, ZEV percentages; 218-4.2, Voluntary alternative compliance plan (ACP); 218-5.1, Assembly-line quality audit testing and reporting for 1993, 1994, 1996 and subsequent model-years; 218-7.2, Prohibitions; 218-8.2, Prohibitions; 218-8.3, Fleet average greenhouse gas requirements; and 218-8.5, Greenhouse gas exhaust emissions reporting. New Sections 218-9, Emissions control system warranty requirements; 218-10, Recall requirements; and 218-11, Environmental performance labels are being created. Existing Section 218-9, Severability is being renumbered as Section 218-12. The remaining Sections in Part 218 are unchanged. The existing Part 252 Environmental Performance Labels will be repealed.

Section 218-1.2 is amended to include revisions to definitions that govern the provisions of this Part.

Section 218-2.2 is amended to revise the certification reporting requirements.



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Section 218-3.1 is amended to incorporate California's latest LEV standards. These changes will apply to all 2014 and subsequent model year passenger cars (PC), light-duty trucks (LDT), and medium-duty vehicles (MDV) up to 14,000 pounds Gross Vehicle Weight Rating (GVWR).

The LEV proposal will: require fleet average Super Ultra-low Emission Vehicle (SULEV) performance by model year 2022; increase the stringency and restructure the Non-Methane Organic Gas (NMOG) and oxides of nitrogen (NOx) standards; increase the stringency of the Particulate Matter (PM) standards; increase emission control component durability requirements; increase the stringency and coverage of evaporative emission control requirements; permit manufacturers to pool emissions of criteria pollutants including hydrocarbon (HC), carbon monoxide (CO), and NOx in California and Section 177 states to demonstrate compliance.

Section 218-3.2 is amended to revise the fleet average reporting requirements. The words "and projection" are being deleted from the title. Section 218-3.2(b) is also being deleted. Manufacturers will no longer be required to submit annual fleet average projection reports to the Department. This change will align the Department's requirements with California and other Section 177 State requirements.

Section 218-4.1 is amended to incorporate California's latest zero emission vehicle (ZEV) standards. The California regulations take effect for all vehicles up to 10,000 pounds GVWR beginning with the 2012 model year. The ZEV proposal will essentially be split into two periods covering the 2012-2017 model years and the 2018-2025 model years.

The amendments for the 2012-2017 timeframe will: create new ZEV types; extend the travel provision; reduce the ZEV requirement for intermediate low volume manufacturers (IVM); remove credit carry forward restrictions; clarify vehicle credit eligibility. An optional Section 177 ZEV compliance path will also be created as an alternative to the base ZEV requirements. The alternative compliance option meets the states' interests in placing BEV and PHEV in Section 177 states earlier than would be required under the base program, while also providing vehicle manufacturers with a smoother ramp-up in the number of vehicles required and a reduced ZEV obligation over the life of the program.

The amendments for the 2018-2025 timeframe will: amend manufacturer size definitions, aggregated ownership criteria, and lead time provisions; eliminate partial zero emission vehicles (PZEV) and advanced technology PZEV (ATPZEV) as compliance options; increase ZEV compliance requirements; allow IVM to meet entire ZEV requirement with transitional ZEV (TZEV); limit the use of banked PZEV, ATPZEV, and neighborhood electric vehicle (NEV) credits to meet ZEV requirements; eliminate the travel provision for Type I, I.5, II, and III ZEV; allow GHG over-compliance credits to be used to offset a portion of a manufacturer's ZEV requirement.

Section 218-4.2 is being repealed. The voluntary ACP program concluded at the end of the 2009 model year and was not extended.

Section 218-5.1 is being amended to remove existing Section 218-5.1(a).

Section 218-7.2 is being amended to include a new Section 218-7.2(c). Section 218-7.2(c) incorporates California's new aftermarket catalytic converter requirements and prohibition of used catalytic converters.

Sections 218-8.2 and 218-8.3 are being amended to incorporate California's latest GHG standards. These changes will apply to all 2017 and subsequent model year PC, LDT, and MDV up to 10,000 pounds GVWR. The amendments will: establish separate footprint indexed CO2 grams per mile emission standards for PC and LDT harmonized with proposed federal GHG standards; establish separate emission standards for CH4 and N2O to harmonize with federal standards; include mandatory requirements for motor vehicle air conditioning (MVAC) refrigerants; include MVAC fleet average leak rate limits and indirect emission limits; create off-cycle credit provisions similar to federal provisions; create incentives for full-size pickup truck emission reductions; create optional credit provisions for upstream emissions.

Section 218-8.5(a) is being amended to change the reporting date from March 1st to May 1st. This change will align New York's reporting date with California's.

Existing Section 218-9 is renumbered to create Section 218-12. This Section contains severability provisions.

A new Section 218-9 is being created to incorporate California's emissions control system warranty requirements. These requirements will apply to 2016 and subsequent model year PC, LDT, and MDV up to 14,000 pounds GVWR.

A new Section 218-10 is being created to incorporate California's recall requirements. These requirements will apply to 2016 and subsequent model year PC, LDT, and MDV up to 14,000 pounds GVWR. The California emissions warranty and recall regulations are designed to reduce vehicle emissions by identifying, recalling, and repairing noncompliant vehicles to meet applicable emission standards and test procedures.

A new Section 218-11 is being created to incorporate California's

environmental performance label standards. These standards were previously incorporated in Part 252. The standards will be updated and moved to Part 218 to consolidate all of the new motor vehicle emission standards in one Part.

Existing Part 252 will be repealed.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 200.9.

**Text of rule and any required statements and analyses may be obtained from:** Jeff Marshall, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3255, (518) 402-8292, email: airregs@gw.dec.state.ny.us

**Additional matter required by statute:** Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

**Revised Regulatory Impact Statement, Revised Regulatory Flexibility Analysis, Revised Rural Area Flexibility Analysis and Revised Job Impact Statement**

No changes were made to previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

#### Assessment of Public Comment

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines; 6 NYCRR Part 200, General Provisions; and repeal 6 NYCRR Part 252, Environmental Performance Labels to reflect changes to California's low emission vehicle (LEV) program that incorporate updated LEV, greenhouse gas (GHG), zero emission vehicle (ZEV), environmental performance label, aftermarket catalytic converter, and emissions warranty and recall standards; and to maintain identical standards with California for a given weight class as required under Section 177 of the Clean Air Act. Section 177 provides that states may adopt the California new vehicle emissions standards provided that these standards are identical to California's.

The Department published the proposed regulations on August 1, 2012. Hearings were held in Avon on September 17, 2012; Albany on September 19, 2012; and Long Island City on September 20, 2012. The comment period closed at 5:00 p.m. on September 27, 2012. The Department received written and oral comments from seven commenters representing vehicle and emission control component manufacturer trade organizations, environmental groups, and public health groups. All of the comments have been reviewed, summarized, and responded to by the Department.

The commenters expressed support for the Department's adoption of the proposed regulations. No comments were received expressing opposition to the regulation. Comments covered general support for the regulation, public health and environmental benefits, LEV standards, greenhouse gas standards, ZEV standards, aftermarket catalytic converter standards, and emissions warranty and recall. There were also several comments that were determined to be beyond the scope of this rulemaking.

## Department of Financial Services

### EMERGENCY RULE MAKING

#### Unclaimed Life Insurance Benefits and Policy Identification

**I.D. No.** DFS-48-12-00003-E

**Filing No.** 1131

**Filing Date:** 2012-11-09

**Effective Date:** 2012-11-09

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Addition of Part 226 (Regulation 200) to Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 316, 1102, 1104, 2601, 4521 and 4525 and art. 24

**Finding of necessity for emergency rule:** Preservation of general welfare.

**Specific reasons underlying the finding of necessity:** Many life insurance companies and fraternal benefit societies ("insurers") have not adopted or implemented reasonable procedures and standards for investigating claims

and locating beneficiaries with respect to death benefits payable under life insurance policies, annuity contracts and accounts ("policies and accounts"). The Department conducted an investigation into how such insurers track life insurance policy holders. The Department's investigation found that many insurers regularly use lists of recent deaths from the U.S. Social Security Administration ("SSA") to promptly cease making annuity payments. However, most insurers had not been using that list to determine whether death benefits were payable to beneficiaries or amounts under accounts appropriately distributed. While insurers were extremely diligent about terminating benefits, they were much less so in seeing that benefits were paid to beneficiaries and that monies held by them in accounts were properly distributed.

On July 5, 2011, the Department issued a letter to insurers, pursuant to New York Insurance Law section 308 ("308 Letter"), that required every insurer to submit a report that included a narrative summary of the SSA's Death Master File ("SSA Master File") cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. To date, well over \$260 million has been paid to beneficiaries nationwide, including more than \$95 million paid to New York beneficiaries. The 308 Letter required a one-time cross-check of the SSA Master File. This rule requires insurers to continue to perform regular SSA Master File cross-checks and to request more detailed beneficiary information (e.g., social security number, address) when policies are issued to facilitate locating and making payments to beneficiaries.

The current system leads to many abuses, for example in situations where deaths occur but without claims being filed, with an insurer continuing to deduct premiums from the account value or cash value until policies lapse. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed. Insurers must take reasonable steps to ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled.

To ensure that policyowners and policy beneficiaries are provided with all such benefits, this Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, to further ensure payment of unclaimed benefits, this Part requires insurers to respond to requests from the Superintendent to search for policies insuring the life of, or owned by, decedents, and to initiate the claims process for any death benefits that are identified as a result of those requests. Any delay in implementing these requirements will result in beneficiaries not receiving benefits or having monies distributed to them to which they are entitled, and in insurers thereby undeservedly retaining such amounts.

For the reasons stated above, the promulgation of this regulation on an emergency basis is necessary for the general welfare.

**Subject:** Unclaimed Life Insurance Benefits and Policy Identification.

**Purpose:** To ensure payment of unclaimed benefits to policyowners and policy beneficiaries.

**Text of emergency rule: UNCLAIMED LIFE INSURANCE BENEFITS AND POLICY IDENTIFICATION**

#### Section 226.0 Purpose

(a) Many life insurance companies and fraternal benefit societies have not adopted or implemented reasonable procedures and standards to investigate claims and locate beneficiaries with respect to death benefits under life insurance policies, annuity contracts and accounts. The Department conducted an investigation into how such insurers track life insurance policy holders. The Department's investigation has found that many insurers have been regularly using lists of recent deaths from the Social Security Administration to promptly cease making annuity payments. However, most had not been using it to determine whether death benefits were payable to beneficiaries.

(b) The public needs to know that insurers are taking reasonable steps to ensure that policyowners and policy beneficiaries are provided with all of the life insurance benefits for which they have paid and to which they are entitled. In particular, there may be instances where a death has occurred and no claim has been filed, but premiums continue to be deducted from the account value or cash value until the policy lapses. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

(c) To ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled, this Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, to further ensure payment of unclaimed benefits, this Part requires insurers to respond to requests from the superintendent to search for policies insuring the life of, or owned by, decedents

and to initiate the claims process for any death benefits that are identified as a result of those requests.

#### Section 226.1 Definitions

(a) Account means:

(1) any mechanism, whether denoted as a retained asset account or otherwise, whereby the settlement of proceeds payable to a beneficiary under a policy is accomplished by the insurer or an entity acting on behalf of the insurer placing the proceeds into an account where those proceeds are retained by the insurer and the beneficiary has check or draft writing privileges; or

(2) any other settlement option relating to the manner of distribution of the proceeds payable under a policy.

(b) Death index means the death master file maintained by the United States social security administration or any other database or service acceptable to the superintendent.

(c) Insured includes an annuitant when the annuity contract provides for benefits to be paid or other monies to be distributed upon the death of the annuitant.

(d) Insurer means a life insurance company or fraternal benefit society.

(e) Lost policy finder means a service made available by the Department on its website or otherwise to assist consumers in locating unclaimed life insurance benefits.

(f) Policy means a life insurance policy, annuity contract, or a certificate under a life insurance policy or annuity contract, or a certificate issued by a fraternal benefit society, under which benefits are to be paid upon the death of the insured.

#### Section 226.2 Applicability

(a) This Part shall apply to:

(1) every policy issued by a domestic insurer and any account established under or as a result of such policy; and

(2) every policy delivered or issued for delivery in New York by an authorized foreign insurer and any account established under or as a result of such policy.

(b) Notwithstanding subdivision (a) of this section, with respect to a policy delivered or issued for delivery outside this State, an insurer may, in lieu of the requirements of this Part, implement procedures that meet the minimum requirements of the state in which the policy was delivered or issued, provided that the superintendent concludes that such other requirements are no less favorable to the policyowner and beneficiary than those required by this Part.

#### Section 226.3 Multiple Policy Search Procedures

(a) Upon receiving notification of the death of an insured or account holder or in the event of a match made by a death index cross-check pursuant to section 226.4 of this Part, an insurer shall search every policy or account subject to this Part to determine whether the insurer has any other policies or accounts for the insured or account holder.

(b) Every insurer that receives a notification of death of the insured or account holder, or identifies a death index match, shall notify each insurer in its holding company system of the notification or verified death index match.

Section 226.4 Standards for investigating claims and locating claimants under policies and accounts

(a) Prior to a policy's issuance or an account's establishment, and upon any change of insured, owner, or beneficiary, every insurer shall request information sufficient to ensure that all benefits or other monies are distributed to the appropriate persons upon the death of the insured or account holder, including, at a minimum, the name, address, social security number, and telephone number of every owner, insured and beneficiary of such policy or account, as applicable.

(b)(1) Every insurer shall use the latest available updated version of the death index to cross-check every policy and account subject to this Part, except as specified in subdivision (h) of this section. The cross-checks shall be performed no less frequently than quarterly. An insurer may submit a request to the superintendent for the insurer to perform the cross-checks less frequently than quarterly. The superintendent may grant such a request upon the insurer's demonstration of hardship.

(2) The cross-checks shall be performed using:

(i) the social security number of the insured or account holder; or  
(ii) where the social security number is not known to the insurer, the name and date of birth of the insured or account holder.

(c) If an insurer uses a resource instead of or in addition to a death index in order to terminate benefits or close an account, the insurer shall also use that resource when cross-checking policies or accounts pursuant to subdivision (b) of this section.

(d) If an insurer uses a resource more frequently than quarterly in order to terminate benefits or close an account, the insurer shall use that resource with the same frequency when cross-checking policies or accounts pursuant to subdivision (b) of this section.

(e) If an insurer only has a partial name, social security number, date of birth, or a combination thereof, of the insured or account holder under

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a policy or account, the insurer shall use the available information to perform the cross-check pursuant to subdivision (b) of this section.

(f)(1) Every insurer shall implement reasonable procedures to account for common variations in data that would otherwise preclude an exact match with a death index, including:

(i) nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;

(ii) compound last names, and blank spaces or apostrophes in last name;

(iii) incomplete date of birth data, and transposition of the "month" and "date" portions of the date of birth;

(iv) incomplete social security number; and

(v) common data entry errors in name, date of birth and social security data.

(2) An insurer that does not have in place on the effective date of this Part reasonable procedures to implement paragraph (1) of this subdivision shall do so as expeditiously as possible but no later than 150 days after such effective date.

(g) Every insurer shall establish reasonable procedures to locate beneficiaries and shall make prompt payments or distributions in accordance with Part 216 of this Title (Insurance Regulation 64).

(h) This section shall not apply to any policy or any account in the event of the death of an insured or account holder:

(1) where the insurer has fully satisfied all obligations under the policy or account prior to the date that the cross-check is performed;

(2) where the insurer has paid full death benefits on all insureds under the policy, or where the remaining obligations have been transferred to one or more new policies or accounts providing benefits of any kind in the event of the death of the insured or account holder;

(3) where the insurer has paid full surrender benefits on the policy, including a policy that is replaced after full surrender;

(4) where the policy has been rescinded and the insurer has returned all paid premiums;

(5) where the policy has been returned under a free-look provision and the insurer has returned all paid premiums;

(6) where the insurer has paid full maturity benefits under the policy;

(7) where the insurer has no record of certificate holders under a group policy administered by the group policyholder;

(8) where all monies due under the policy or account have escheated in accordance with state unclaimed property statutes;

(9) where the insurer has novated the policy;

(10) where the policy is a group annuity contract that funds employer-sponsored retirement plans and the insurer is not obligated by the terms of the contract to pay death benefits directly to the plan participant's beneficiary;

(11) where the insurer receives payroll deduction contributions for either a group annuity contract or premium payment for a group policy and a payment has been made 90 days prior to a cross-check;

(12) except as to retired employees, where premiums are wholly paid by an employer on an individual or group policy; or

(13) where a policy has lapsed or otherwise terminated and no death has been reported and the policy has been cross-checked with a death index for a period of at least two years since lapse or termination with no match.

#### Section 226.5 Lost policy finder application procedures

(a) Every insurer shall:

(1) upon receiving a request forwarded by the superintendent through a lost policy finder application, search for policies and any accounts subject to this Part that insure the life of, or are owned by, an individual named as the decedent in the request forwarded by the superintendent;

(2) report to the superintendent through a lost policy finder application:

(i) within 30 days of receiving the request, the findings of the search; and

(ii) where the search reveals that benefits may be due, within 30 days of the final disposition of the request, the benefit paid and any other information requested by the superintendent; and

(3) within 30 days of receiving the request, for each identified policy and account insuring the life of, or owned by, the named decedent, provide to:

(i) a requestor who is also the beneficiary of record on the identified policy or account all items, statements and forms that the insurer reasonably believes to be necessary in order to file a claim; or

(ii) a requestor who is not the beneficiary of record on the identified policy or account the requested information to the extent permissible to be disclosed in accordance with Part 420 (Insurance Regulation 169) of this Title and any other applicable privacy law, and to take such other steps necessary to facilitate the payment of any benefit that may be due under the identified policy or account.

(b)(1) Every insurer shall establish procedures to electronically receive the lost policy finder application request from, and make reports to, the superintendent as provided for in subdivision (a) of this section. When transmitted electronically, the date that the superintendent forwards the request shall be deemed to be the date of receipt by the insurer unless the day is a Saturday, Sunday or a public holiday, as defined in General Construction Law section 25 and, in such case, the date of receipt shall be as provided in General Construction Law section 25-A.

(2) An insurer required to electronically receive and submit pursuant to this Part may apply to the superintendent for an exemption from the requirement that the submission be electronic by submitting a written request to the superintendent for approval.

(3) The insurer's request for an exemption shall specify whether it is making the request for an exemption based upon undue hardship, impracticability, or good cause, and set forth a detailed explanation as to the reason that the superintendent should approve the request.

(4) The insurer requesting an exemption shall submit, upon the superintendent's request, any additional information necessary for the superintendent to evaluate the insurer's request for an exemption.

(5) The insurer shall be exempt from the electronic submission requirement upon the superintendent's written determination so exempting the insurer. The superintendent's determination will specify the basis upon which the superintendent is granting the request and for how long the exemption applies.

(6) If the superintendent approves an insurer's request for an exemption from the electronic submission requirement, then the insurer shall make a physical submission in a form and manner acceptable to the superintendent.

#### Section 226.6 Report to the comptroller

By February first of each year, every insurer shall submit a report to the office of the comptroller of this State specifying the number of policies and accounts that the insurer has identified pursuant to section 226.4 of this Part for the prior calendar year under which any outstanding monies have not been paid or distributed by December thirty-first of such year.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 6, 2013.

**Text of rule and any required statements and analyses may be obtained from:** David Neustadt, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1690, email: david.neustadt@dfs.ny.gov

#### Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 316, 1102, 1104, 2601, 4521 and 4525 and Article 24 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services.

FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting, among others, the Insurance Law.

Insurance Law section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity that makes a filing or submission with the Superintendent, pursuant to the Insurance Law, to do so by electronic means.

Insurance Law section 1102 authorizes the Superintendent to refuse to issue or renew an insurer's license if such refusal will best promote the interests of the people of this state.

Insurance Law section 1104 authorizes the Superintendent to revoke the license of a foreign insurer if such revocation is reasonably necessary to protect the interests of the people of this state.

Insurance Law Article 24 regulates trade practices in the insurance industry by prohibiting practices that constitute unfair methods of competition or unfair or deceptive acts or practices.

Insurance Law section 2601 prohibits insurers from engaging in unfair claim settlement practices, including the failure to adopt and implement reasonable standards for prompt investigation of claims.

Insurance Law section 4521 authorizes the Superintendent to revoke or suspend a fraternal benefit society's license if such society is not carrying out its contracts in good faith.

Insurance Law section 4525 applies Articles 3 and 24 of the Insurance Law to authorized fraternal benefit societies.

2. Legislative objectives: The Department has been investigating allegations of unfair claims and trade practices by authorized life insurers and fraternal benefit societies (collectively herein, "insurers"). The Department is concerned that many insurers have not adopted or implemented



reasonable procedures and standards to investigate claims and locate beneficiaries with respect to death benefits due under policies and accounts. In particular, there may be instances in which a death has occurred and no claim has been filed, but premiums continue to be deducted from the account value or cash value until the policy lapses. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

The Department met with several insurers that have substantial writings in New York to discuss past and current claim and death benefit payment practices. Some insurers have used the U.S. Social Security Administration's Death Master File ("SSA Master File") to confirm the death of a contract holder so that it may cease making annuity payments, but have not used the SSA Master File to determine whether any death benefit payments are due under insurance policies or other accounts.

The Department sent a letter dated July 5, 2011, to every insurer requesting the submission of a special report, pursuant to Insurance Law section 308 (the "308 Letter"). The 308 Letter required the insurer to submit a report that included a narrative summary of the SSA Master File cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. After matches were identified, each insurer was directed to provide to the Superintendent a final report updating the actions it had taken to investigate the matches to determine whether a death benefit payment was due, and to describe the procedures it had implemented to locate the beneficiaries and make payments, where appropriate. To date, well over \$262 million has been paid nationwide to beneficiaries, including more than \$95 million that was paid to New York beneficiaries.

The 308 Letter was a one-time comparison of the SSA Master File. This rule is necessary to require insurers to continue to make the cross-checks on an ongoing basis. This rule requires insurers to continue to perform regular cross-checks using the SSA Master File, or other database or service acceptable to the Superintendent, and to request more detailed beneficiary information (e.g., social security number, address) to facilitate locating and making payments to beneficiaries.

The regulation also addresses another matter of concern. The Department regularly receives requests from family members and other potential beneficiaries requesting assistance in locating lost policies. Although certain fee-based services have been available to provide some assistance, there has not been an efficient, no-fee mechanism by which the Department could assist the public.

The Department has now developed a Lost Policy Finder application that offers a free-of-charge service to assist in locating unclaimed benefits on policies insuring the life of, or owned by, the deceased and accounts that are established under or as a result of such policies.

This rule requires insurers to establish procedures to respond within 30 days of the Department's notification of a request to identify coverage, which the Department received through its new Lost Policy Finder application. The rule also requires the insurer to notify the beneficiary, within 30 days of the notification, of all items necessary to file a claim, if the insurer determines that there are benefits to be paid or other monies to be distributed.

3. Needs and benefits: Many insurers have still not adopted or implemented reasonable procedures and standards to investigate claims and locate beneficiaries with respect to death benefits under policies and accounts. The Department conducted an investigation into how insurers track life insurance policy holders. The Department found that many insurers have been regularly using lists of recent deaths from the Social Security Administration to promptly cease making annuity payments. However, most had not been using it to determine whether death benefits were payable to beneficiaries.

This leads to many abuses. For example, in some instances, a death may occur and no claim filed, but premiums continue to be deducted from the account value or cash value until the policy lapses. In other cases, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

While insurers were extremely diligent about terminating benefits, they were much less so in seeing that benefits were paid to beneficiaries and monies held by them in accounts were properly distributed. Insurers must take reasonable steps to ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled.

To ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled, this Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, this Part requires insurers to respond to requests from the Superintendent to search for policies insuring the life of, or owned by, decedents and to initiate the claims process for any death benefits that are

identified as a result of those requests. It also establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

4. Costs: Many insurers have already implemented procedures similar to those required by this rule to terminate annuity payments. In response to the 308 Letter sent by the Department to insurers in July 2011, a number of insurers confirmed that they have already established, or are in the process of establishing, the standards and procedures required by this rule. As a result, such insurers should incur minimal additional costs to comply with the requirements of this rule. The public benefit of ensuring that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled outweighs the incidental costs of complying with this rule.

The cost to the Department, and the Office of the Comptroller, will be minimal because existing personnel are available to verify and ensure compliance of this rule. There are no costs to any other state government agency or local government.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Section 226.5 of this rule requires every insurer to report to the Superintendent, within 30 days of receiving the Superintendent's request to search for policies and accounts, the findings of that search. In addition, within 30 days of the final disposition of the request, every insurer is required to report the benefits or amounts paid, if any, as a result of the search, and any other information requested by the Superintendent. Section 226.6 of this rule requires every insurer to submit a report to the Office of the Comptroller specifying the number of policies and accounts that the insurer has identified through a death index match or notification of the death of an insured or account holder, for the prior calendar year, any outstanding monies that have not been paid or distributed by December thirty-first of such year.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: There are no viable alternatives to this rule. As a result of the 308 Letter, to date, more than \$262 million has been paid to beneficiaries nationwide, including more than \$95 million paid to New York beneficiaries. The benefit to the public on an on-going basis is unquestionable. While some insurers may voluntarily implement these procedures, promulgation of this rule is necessary to require all insurers to do so. This rule addresses unfair claims and trade practices by insurers in a manner that protects the public while providing minimal burdens on insurers.

After considering comments received from insurers after the 308 Letter was issued, the Department issued guidance to supplement the 308 Letter. This rule incorporates those comments.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: Many insurers have already implemented procedures similar to those required by this rule to terminate annuity payments. In response to the 308 Letter, a number of insurers confirmed that they have already established, or are in the process of establishing, the standards and procedures required by this rule. Additionally, the standards included in this rule were previously adopted on an emergency basis, effective June 13, 2012. Thus, insurers have been required to comply with the requirements of the rule since that time. Therefore, this rule will take effect upon filing with the Secretary of State; however, under section 226.4(f)(2), an insurer that does not have in place on the effective date of this Part reasonable procedures to implement section 226.4(f)(1) shall do so as expeditiously as possible but no later than 150 days after such effective date.

#### **Regulatory Flexibility Analysis**

1. Small businesses: The Department of Financial Services finds that this rule will not impose any adverse economic impact or any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at life insurers and fraternal benefit societies (collectively, "insurers") authorized to do business in New York State, none of which fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Department of Financial Services has reviewed filed reports on examination and annual statements of these authorized insurers and believes that none of them fall within the definition of "small business," because there are none which are both independently owned and have less than one hundred employees.

2. Local governments: This rule does not impose any adverse economic impact on local governments, including reporting, recordkeeping, or other compliance requirements.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: Insurers covered by this rule do business in every county in this state, including rural areas as defined under State Administrative Procedure Act Section 102(13).

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2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule requires authorized life insurers and fraternal benefit societies (collectively, "insurers") to establish standards for investigating claims and locating claimants under policies and accounts providing benefits in the event of the death of an insured or account holder. It also requires insurers to establish procedures to search for policies and accounts upon receipt of a death notice or the Superintendent's notification of a request to identify coverage, which was received through the Lost Policy Finder application. It requires insurers to perform, no less than quarterly, a cross-check of the death index (i.e., the U.S. Social Security Administration's Death Master File ("SSA Master File")) or any other database or service that is acceptable to the Superintendent. In addition, it requires insurers to establish procedures for lost policy searches, and establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

Section 226.5 of this rule requires every insurer to report to the Superintendent, within 30 days of receiving the Superintendent's request to search for policies and accounts, the findings of that search. In addition, within 30 days of the final disposition of the request, every insurer is required to report the benefits or amounts paid, if any, as a result of the search, and any other information requested by the Superintendent. Additionally, section 226.6 of this rule requires every insurer to submit a report to the Office of the Comptroller specifying the number of policies and accounts that the insurer has identified through a death index match or notification of the death of an insured or account holder, for the prior calendar year, any outstanding monies that have not been paid or distributed by December thirty-first of such year.

3. Costs: Many insurers have already implemented procedures similar to those required by this rule to terminate annuity payments. In response to a letter sent by the Department to insurers in July 2011, pursuant to Insurance Law section 308, a number of insurers confirmed that they have already established, or are in the process of establishing, the standards and procedures required by this rule. As a result, such insurers should incur minimal additional costs to comply with the requirements of this rule. The public benefit of ensuring that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled outweighs the incidental costs of complying with this rule.

The cost to the Department, and the Office of the Comptroller, will be minimal because existing personnel are available to verify and ensure compliance with this rule. There are no costs to any other state government agency or local government.

4. Minimizing adverse impact: The public needs to know that insurers are taking reasonable steps to ensure that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled. In particular, there may be instances where a death has occurred and no claim has been filed, but premiums continue to be deducted from the account value or cash value until the policy lapses. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

The Department sent a letter, dated July 5, 2011, to every insurer requesting the submission of a special report, pursuant to Insurance Law section 308 (the "308 Letter"). The 308 Letter required the insurer to submit a report that included a narrative summary of the SSA Master File cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a serial listing of death benefits paid as a result of the SSA Master File cross-check. After matches were identified, each insurer was directed to provide to the Superintendent a final report updating the actions it had taken to investigate the matches to determine whether a death benefit payment was due, and to describe the procedures it had implemented to locate the beneficiaries and make payments, where appropriate. To date, well over \$262 million has been paid nationwide to beneficiaries, including more than \$95 million that was paid to New York beneficiaries.

The 308 Letter was a one-time comparison of the SSA Master File. This rule is necessary to require insurers to continue to make the cross-checks on an ongoing basis. This rule requires insurers to continue to perform regular cross-checks using the SSA Master File, or other database or service acceptable to the Superintendent, and to request more detailed beneficiary information (e.g., social security number, address) to facilitate locating and making payments to beneficiaries.

The regulation also addresses another matter of concern. The Department regularly receives requests from family members and other potential beneficiaries requesting assistance in locating lost policies. Although certain fee-based services have been available to provide some assistance, there has not been an efficient, no-fee mechanism by which the Department could assist the public.

The Department has now developed a Lost Policy Finder application

that offers a free-of-charge service to assist in locating unclaimed benefits on policies insuring the life of, or owned by, the deceased and accounts that are established under or as a result of such policies.

This rule requires insurers to establish procedures to respond within 30 days of the Department's notification of a request to identify coverage, which the Department received through its new Lost Policy Finder application. The rule also requires the insurer to notify the beneficiary, within 30 days of the notification, of all items necessary to file a claim, if the insurer determines that there are benefits to be paid or other monies to be distributed.

The rule thus ensures that insurers will continue to make death index cross-check efforts so that policyowners and policy beneficiaries will be provided with all of the benefits for which they have paid and to which they are entitled. This rule will result in the rightful payment of millions of dollars of additional benefits to beneficiaries. Therefore, it is necessary for all insurers to comply with the requirements of this rule.

5. Rural area participation: The Department received comments from insurers, including those doing business in rural areas of the State, regarding the 308 Letter. Those comments have been incorporated into this rule.

**Job Impact Statement**

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. This rule requires insurers to set forth standards for investigating claims and locating claimants under policies and accounts providing benefits in the event of an individual's death. It also requires insurers to set up procedures for lost policy searches, and establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

The Department does not believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities.

**NOTICE OF ADOPTION****The Healthy New York Program**

**I.D. No.** DFS-23-12-00003-A

**Filing No.** 1136

**Filing Date:** 2012-11-13

**Effective Date:** 2012-11-28

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Part 362 (Regulation 171) of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202, 301 and 302; and Insurance Law, sections 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4326 and 4327

**Subject:** The Healthy New York Program.

**Purpose:** To mitigate large premium increases for current enrollees in Healthy NY by limiting new enrollees to the high deductible plan.

**Text or summary was published** in the June 6, 2012 issue of the Register, I.D. No. DFS-23-12-00003-P.

**Final rule as compared with last published rule:** No changes.

**Text of rule and any required statements and analyses may be obtained from:** David Neustadt, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1690, email: david.neustadt@dfs.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Credit for Reinsurance**

**I.D. No.** DFS-48-12-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of Part 125 (Regulations 17, 20 and 20-A) of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 307(a), 308, 1301(a)(9), (c) and 1308

**Subject:** Credit for Reinsurance.

**Purpose:** Establish rules governing when an authorized ceding insurer may take credit on its balance sheet for a reinsurance recoverable.

**Substance of proposed rule (Full text is posted at the following State website: <http://www.dfs.ny.gov>):** The following is a summary of the substance of the amendment to the rule:

Section 125.4 is amended by repealing the current Section 125.4(h) and enacting a new Section 125.4(h). Substantively, the new Section 125.4(h) does not differ extensively from the repealed provision; rather, the new provision conforms New York's regulatory language more closely to that of the National Association of Insurance Commissioner's recently adopted Credit for Reinsurance Model Law and Model Regulation. The new Section 125.4(h), similar to the provision that it replaces, provides an alternative method for allowing ceding insurers balance sheet credit for cessions to unauthorized assuming insurers. This section adjusts the credit that a ceding insurer may take in its financial statement based upon the financial strength of the unauthorized assuming insurer. In order to allow the ceding insurer to take full credit for the reinsurance without the assuming insurer posting 100% collateral, the unauthorized assuming insurer in the transaction must:

- 1) maintain a minimum net worth of \$250 million;
- 2) be authorized and meet the standards of solvency and capital adequacy in its domiciliary jurisdiction;
- 3) have a credit rating from at least two rating agencies;
- 4) file documents with the Superintendent evidencing its financial condition; and
- 5) have been assigned a rating from the Superintendent authorizing the ceding insurer to take credit for the reinsurance without the assuming insurer posting 100% collateral.

The reinsurance contract itself must contain an insolvency clause, a funding clause, a designation of a person in New York or the ceding insurer's domestic state for service of process, a requirement that any disputes will be subject to United States courts and laws, and a requirement that the unauthorized assuming insurer will notify the ceding insurer of any changes in its license status or any change in its rating from a credit rating agency.

While this alternative credit for cessions to unauthorized assuming insurers will reduce the collateral requirement in a manner that corresponds to the financial strength of the unauthorized assuming insurer, where an order of rehabilitation, liquidation or conservation is entered against the ceding insurer, the unauthorized assuming insurer must, as a general matter, post full collateral for all outstanding liabilities owed to the ceding insurer.

Section 125.5 is amended to conform certain language to that of section 125.4(h) as revised.

Section 125.7 is amended to conform certain language to that of section 125.4(h) as revised.

Section 125.8 is amended to conform certain language to that of section 125.4(h) as revised.

**Text of proposed rule and any required statements and analyses may be obtained from:** David Neustadt, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1690, email: david.neustadt@dfs.ny.gov

**Data, views or arguments may be submitted to:** Michael Campanelli, New York State Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5290, email: michael.campanelli@dfs.ny.gov

**Public comment will be received until:** 45 days after publication of this notice.

#### **Regulatory Impact Statement**

1. Statutory authority: Financial Services Law sections 202 and 302 and Insurance Law sections 301, 307(a), 308, 332, 1301(a)(9), 1301(c), and 1308.

The above-cited Financial Services Law and Insurance Law sections establish the Superintendent's authority to promulgate regulations governing when an authorized ceding insurer (i.e., an insurer authorized or licensed to do business in New York) may take credit on its balance sheet for reinsurance recoverable from an assuming insurer not authorized in this state.

Financial Services Law section 202 establishes the office of the Superintendent. Financial Services Law section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded to him by the Insurance Law and prescribe regulations interpreting the Insurance Law.

Insurance Law section 307(a) requires an insurer doing business in this state to file an annual statement, in a form and containing such matters as shall be prescribed by the Superintendent, with the office of the Superintendent.

Insurance Law section 308 vests the Superintendent with the authority to require an authorized insurer to file reports relating to the insurer's transactions, financial condition or any matter connected therewith.

Insurance Law sections 1301(a)(9) and (c) and 1308 authorize the Superintendent to prescribe by regulation the conditions under which an au-

thorized ceding insurer may be allowed credit as an asset or a deduction from loss and unearned premium reserves, for reinsurance recoverable from an assuming insurer not authorized to do an insurance business in this state.

2. Legislative objectives: Article 13 of the Insurance Law establishes minimum standards for the assets of insurers, including when an authorized ceding insurer may take credit on its balance sheet for reinsurance recoverable from an assuming insurer not authorized to do an insurance business in this state.

3. Needs and benefits: Reinsurance is insurance for an insurer. It is a means of redistributing risk throughout the global insurance industry. Often, an insurer will transfer (or "cede") part or all of its risk to another party (the "assuming insurer"). The assuming insurer is ultimately responsible for paying its part of those ceded claims. The ceding insurer is given credit on its balance sheet for the business ceded to an assuming insurer recognized by New York. This allows the ceding insurer to reduce its reserves and increase the number of policies it can write. Prior to the promulgation of the Tenth Amendment to Regulations 17, 20, and 20-A (the "Tenth Amendment"), the ability to take credit for ceded claims was very limited where the assuming insurer, irrespective of its financial strength, was not authorized to do business in New York. Generally, a ceding insurer could not take credit for reinsurance from an unauthorized insurer unless the unauthorized assuming insurer posted collateral equal to 100% of its obligations to the ceding insurer. The promulgation of the Tenth Amendment provided an alternative regime that allowed highly capitalized unauthorized assuming insurers to dispense with all or part of the collateral posting requirement, depending upon the strength of their credit rating. This Eleventh Amendment continues the regime with slight refinements intended to align the regulation more closely with the NAIC's recently adopted Credit for Reinsurance Model Law and Model Regulation.

Adoption of this amended rule will maintain and improve upon the Tenth Amendment's reduction of reinsurance transactional costs and increase in reinsurance capacity. It also will keep New York aligned with the global insurance markets and worldwide accounting standards governing reinsurance contracts. Most jurisdictions outside the U.S. do not require non-domestic assuming insurers to post collateral in order for authorized ceding insurers to take credit. Under the Eleventh Amendment, the most financially healthy assuming insurers need not post collateral, or at least not 100% collateral. The Eleventh Amendment will continue to level the playing field among assuming insurers by predicated credit for reinsurance principally on financial strength, not geography. Assuming insurers with strong credit ratings will post less collateral than those with weak ratings.

On November 6, 2011, the National Association of Insurance Commissioners ("NAIC") adopted a revised Credit for Reinsurance Model Law and a revised Credit for Reinsurance Model Regulation (the "Model Law and Model Regulation") as developed by the NAIC's Reinsurance Task Force. The Department actively participated in the NAIC Reinsurance Task Force's efforts. The Eleventh Amendment is consistent with the Model Law and Regulation to the extent that they are consistent with the needs of the New York insurance market.

The proposed rule also reflects the purpose of the Dodd-Frank Wall Street Reform and Consumer Protection Act [Public Law 111-203; 7/21/10] (hereinafter, the "Dodd-Frank Act") which preempts certain state laws relating to reinsurance ceded by authorized non-domestic insurers.

4. Costs: The proposed rule does not impose additional costs upon assuming insurers. The rule also does not impose additional costs upon the Department of Financial Services or other state government agencies or local governments. Nor is it expected that either the Department of Financial Services or regulated entities will directly incur additional costs.

5. Local government mandates: This rule does not impose any program, service, duty or responsibility upon a city, town or village, or school or fire district.

6. Paperwork: Assuming insurers seeking to be designated as "certified reinsurers" by the Superintendent, which status will allow ceding insurers to take credit for reinsurance without the assuming reinsurer having to post 100% collateral, must file certain documents annually with the Superintendent. However, these documents should be readily available, since they serve purposes relating to regulation of the unauthorized assuming insurers by other entities.

7. Duplication: This amendment will not duplicate any existing state or federal rule. The Eleventh Amendment is aimed at making New York's rules consistent with the NAIC's recently adopted Model Law and Model Regulation, to the extent that they are consistent with the needs of the New York insurance market.

8. Alternatives: As a substantive matter, the Eleventh Amendment essentially consists of only minor adjustments to the rule as amended by the Tenth Amendment. These adjustments were aimed at more closely conforming the rule to the NAIC Model Law and Model Regulation. Ac-



## Rule Making Activities

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cordingly, there were no possible alternatives for the Department to consider.

9. Federal standards: There are no minimum federal standards for the same or similar subject areas. The regulation is consistent with the Dodd-Frank Act inasmuch as that legislation preempts the state from denying credit for reinsurance of a ceding insurer whose state of domicile is an NAIC-accredited state, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk. See Pub. Law 111-203, § 532.

10. Compliance schedule: Once the amended regulation is adopted, regulated parties will be able to comply immediately. Any reinsurer currently complying with the provisions of 11 NYCRR § 125.4(h) as promulgated by the Tenth Amendment will be deemed to be in compliance with the requirements of the Eleventh Amendment, provided that such reinsurer successfully applies to the Superintendent for status as a certified reinsurer prior to July 1, 2013. Accordingly, this proposal will apply to new or renewed reinsurance contracts effective on or after July 1, 2011.

#### Regulatory Flexibility Analysis

The Department of Financial Services (the "Department") finds that this rule would not impose reporting, recordkeeping or other requirements on small businesses. This rule applies to ceding insurers authorized to do business in New York State, as well as unauthorized assuming insurers. The rule establishes certain requirements for ceding insurers domiciled in New York and for foreign authorized ceding insurers that are domiciled in a state that is neither NAIC-accredited nor has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and does not recognize credit for reinsurance for the insurer's ceded risk. The rule also establishes standards for assuming insurers, in order to enable ceding insurers to take credit on their balance sheets for risks ceded to assuming insurers.

The Department has reviewed the filed Reports on Examination and Annual Statements of authorized insurers and the trustee's surpluses of alien insurers subject to this amendment, and believes that none of them comes within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because there are none which are both independently owned and have under 100 employees.

This rule also is not expected to have any adverse economic impact on local governments, and does not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that this rule is directed at ceding insurers and assuming insurers, none of which is a local government.

#### Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This amendment applies to domestic ceding insurers and reinsurers that are not authorized to do business in New York State ("assuming insurers") and addresses whether a ceding insurer may take credit on its balance sheet, as an asset or deduction from reserves, for reinsurance recoverable from an assuming reinsurer. The amendment establishes certain requirements for assuming insurers that wish to obtain status as a certified reinsurer from the Superintendent. The ceding insurers do business in every county in this state, including rural areas as defined under State Administrative Procedure Act, Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: An assuming insurer applying for status as a certified reinsurer from the Superintendent, which status will allow a ceding insurer to take credit for reinsurance without the assuming insurer having to post 100% collateral, must file certain documents annually with the Superintendent. However, these documents should be readily available, since they serve purposes relating to regulation of the assuming insurers by other entities.

There are no other additional paperwork requirements specific to ceding insurers that are based in rural areas.

3. Costs: This rule imposes no additional costs for ceding insurers, including those based in rural areas.

4. Minimizing adverse impact: This rule applies uniformly to regulated parties that do business in both rural and nonrural areas of New York State. This rule provides certain minor refinements intended to further level the playing field for all reinsurers, continuing the Department's efforts to keep New York competitive while bringing the state into the 21st century of financial services regulation.

5. Rural area participation: In developing this rule, which makes only minor substantive changes to the existing regulation, the Department conducted limited outreach by contacting insurers, reinsurers, trade groups, other regulators, and other interested parties, including those located or domiciled in rural areas.

#### Job Impact Statement

The proposed amendment should have no negative impact on jobs or economic opportunities in New York State. The amendment applies to re-

insurance contracts, and modifies slightly the framework by which a ceding insurer may take credit on its balance sheet, as an asset or deduction from reserves, for reinsurance recoverable from any unauthorized assuming insurer that maintains a sufficiently high interactive financial strength rating from at least two rating agencies. In addition, the Superintendent must evaluate the unauthorized assuming insurer and determine the proper amount of collateral to be maintained by the assuming insurer for the ceding insurer to take credit on its balance sheet.

While ceding insurers may change their choice of assuming insurers to ensure that they receive credit as an asset or deduction from reserves for such reinsurance, the amendment will not change the fact that authorized insurers need to obtain such reinsurance.

The proposal requires an unauthorized assuming insurer applying to the Superintendent for status as a certified reinsurer, which status will allow a ceding insurer to take credit for reinsurance without the assuming reinsurer having to post 100% collateral, to file certain documents annually with the Superintendent.

Thus, there should be no negative impact on jobs or economic opportunities in New York State.

## Department of Health

### EMERGENCY RULE MAKING

#### Nursing Home Sprinklers

**I.D. No.** HLT-36-12-00005-E

**Filing No.** 1130

**Filing Date:** 2012-11-09

**Effective Date:** 2012-11-09

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Addition of section 86-2.41 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2803(2)

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** It is necessary to issue the proposed regulations on an emergency basis in order to ensure financially challenged nursing homes can secure the loans required to finance and perform the necessary work required to purchase and install a Federally compliant sprinkler system on or before August 13, 2013. Providing nursing homes as much time as possible to meet the Federal requirements will protect the health and safety of nursing homes residents by maintaining access to care and ensuring that financially distressed nursing homes avoid penalties for non-compliance (i.e., civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, and the termination of Medicaid and Medicare provider certifications).

**Subject:** Nursing Home Sprinklers.

**Purpose:** To assist eligible nursing homes with accessing credit markets to finance the costs of installing automatic sprinkler systems.

**Text of emergency rule:** Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803(2) of the Public Health Law, Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new section 86-2.41 to be effective upon filing with the Secretary of State, to read as follows:

#### 86-2.41 Sprinkler systems

(a) Subject to the availability of federal financial participation, the capital cost components of the rates of eligible residential health care facilities for periods on and after the effective date of this regulation shall be adjusted in accordance with the following:

(1) For the purposes of this section, eligible facilities are those facilities which the commissioner determines are financially distressed in terms of their being unable to finance, at terms acceptable to the commissioner, the installation of automatic sprinkler systems, in conformity with the provisions of federal regulations set forth in 42 CFR 483.70(a)(8). In making such determinations of eligibility the commissioner shall consider information obtained from a facility's cost report, other more recent financial information to be provided by the facility, and such other information as may be required by the commissioner, including, but not limited to:

(i) operating profits and losses;

(ii) eligibility for funding pursuant to subdivision twenty-one of section 2808 of the Public Health Law;  
 (iii) unrestricted fund balances;  
 (iv) documentation demonstrating the inability of the facility to obtain credit, at terms acceptable to the commissioner, without the reimbursement treatment accorded pursuant to this section;  
 (v) working capital;  
 (vi) days of cash expense on hand;  
 (vii) days of revenue in accounts receivable;  
 (viii) transfers and withdrawals;  
 (ix) information related to the health and safety of a facility's residents;  
 (x) other financial information as may be required from the facility by the commissioner; and  
 (xi) the filing of a Notice pursuant to Subdivision 1-a of Section 2802 of the Public Health Law, or the receipt of required CON approvals, as appropriate.

(2) The capital cost component of the Medicaid rates of each eligible facility shall be adjusted in an amount, as determined by the commissioner, to reflect the costs of the annual debt service related to the financing of equipment and other capital improvements directly related to the financing of an automatic sprinkler system that will be in compliance with applicable federal regulations.

(3) As a condition for receipt of funding pursuant to this section, each eligible facility shall submit to the commissioner the costs of the project, the proposed terms of the financing, including interest rate and term of the financing, and a schedule setting forth by month the estimated debt service payable over the life of the financing. Such schedule, along with such other information as may be required by the commissioner, shall be provided to the commissioner for review and approval at least sixty days prior to the due date of such first debt service payment, or such shorter period as the commissioner may permit.

(4) As a condition for receipt of funding pursuant to this section, Medicaid revenues attributable to the rate adjustments authorized by this section and any other additional facility revenues needed to cover scheduled debt service payments relating to the financing of an automatic sprinkler system that is in compliance with federal regulation as described in this section, shall be deposited into a separate account maintained by the facility and the deposits in such account shall be used solely for the purpose of satisfying such debt service payments.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-36-12-00005-P, Issue of September 5, 2012. The emergency rule will expire January 7, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

#### **Regulatory Impact Statement**

##### **Statutory Authority:**

The statutory authority for this regulation is contained in the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803(2) of the Public Health Law, which authorizes the Council to "adopt and amend rules and regulations, subject to the approval of the commissioner" and which further provides that such rules may address the "establishment...of rates, payments, reimbursements, grants and other charges..." for medical facilities, including nursing homes.

##### **Legislative Objectives:**

Federal regulations require that on or before August 13, 2013, all nursing homes be protected throughout by a supervised automatic sprinkler system. Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new section 2.41 to assist eligible nursing homes (i.e., those which are determined to be financially distressed) with accessing the credit markets to finance the costs of equipment and other capital costs directly related to the installation of an automatic sprinkler system that is compliant with the Federal regulations. To provide an immediate source of revenue to financially distressed nursing homes to pay the debt service on loans to finance sprinkler systems, the Medicaid capital rate will be adjusted to accelerate the reimbursement of such costs (e.g., reimbursement will begin in 2012 rather than 2014 - the normal 2 year lag under which capital reimbursement normally occurs). In addition, to provide assurance to prospective lenders that such funds will be available to pay debt service, the proposed regulation also requires eligible facilities to deposit in a separate account Medicaid revenues attributable to the capital rate adjustments for sprinklers, and other facility revenues as may be required to cover 100% of debt service payments due. The funds held in such separate

account may only be used for the purpose of paying the debt service on the outstanding sprinkler loans. The Department of Health estimates there are approximately 98 nursing homes that are financially distressed and that do not meet the Federal mandate for sprinklers.

##### **Needs and Benefits:**

Federal regulations require that all nursing homes be protected by an automatic sprinkler system. There are roughly 98 nursing homes that are not compliant with the Federal mandate and that are estimated to be financially distressed (as described by the criteria established in the regulation). This regulation will ensure that the health and safety of nursing homes residents is protected and access to care is maintained by ensuring that financially distressed nursing homes avoid penalties for non-compliance (i.e., civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, the termination of Medicaid and Medicare provider certifications).

##### **Costs to Private Regulated Parties:**

There will be no additional costs to private regulated parties.

##### **Costs to State Government:**

There is no additional aggregate increase in Medicaid expenditures anticipated as a result of these regulations. The acceleration of the reimbursement of Medicaid capital costs anticipated by this provision will be accommodated in the nursing home appeals cap and in the processing of annual capital rates. Depending on the terms of the financing, it is likely the acceleration of capital costs will reduce over the life debt service costs and result in long term savings for the State.

##### **Costs to Local Government:**

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

##### **Costs to the Department of Health:**

There will be no additional costs to the Department of Health as a result of this proposed regulation.

##### **Local Government Mandates:**

The regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

##### **Paperwork:**

The regulation will require nursing homes to apply to the Department to determine if they meet the financially challenged criteria established by the regulation and to submit a schedule of debt service payments. This additional paperwork is expected to be minimal, as the Department will primarily use information already required to be submitted by nursing homes (i.e., annual cost report data) to determine eligibility and to reimburse capital costs.

##### **Duplication:**

These regulations do not duplicate existing state or federal regulations. These regulations will assist financially distressed nursing homes with meeting the requirements of an existing federal regulation for sprinkler systems.

##### **Alternatives:**

The regulation is prompted by the requirement that nursing homes comply with the Federal mandate for sprinklers and the lack of alternative financing vehicles for financially distressed homes that cannot, in the absence of this regulation, independently access the credit markets. Absent this regulation, nursing homes that are unable to comply with the Federal mandate are at risk for losing their provider certifications.

##### **Federal Standards:**

The regulation will assist nursing homes with meeting an existing Federal mandate which requires nursing homes to be equipped with an automatic sprinkler system.

##### **Compliance Schedule:**

This proposed regulation will help nursing homes meet the August 13, 2013 deadline for becoming compliant with Federal regulations that require homes to be equipped with an automatic sprinkler system.

#### **Regulatory Flexibility Analysis**

##### **Effect of Rule:**

For the purpose of this regulatory flexibility analysis, small businesses were considered to be residential health care facilities with 100 or fewer employees. Based on recent financial and statistical data extracted from Residential Health Care Facility Cost Reports, approximately 60 residential health care facilities (i.e., nursing homes) were identified as employing fewer than 100 employees. It is estimated that 7 of these small business nursing homes are not currently compliant with Federal regulations requiring automatic sprinklers and will meet the financially distressed criteria established by this regulation.

This rule will have no direct effect on local governments.

##### **Compliance Requirements:**

There are no new compliance requirements. The regulation will assist financially distressed nursing homes, 7 of which are estimated to be small businesses, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.



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## Professional Services:

No new or additional professional services are required by small business nursing homes to apply to the Department to determine if they are eligible to receive accelerated Medicaid reimbursement of capital costs for sprinklers.

## Compliance Costs:

There are no new compliance costs. The regulation will assist financially distressed nursing homes, 7 of which are estimated to be small businesses, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

## Economic and Technological Feasibility:

The proposed rule doesn't require additional technological or economic requirements.

## Minimizing Adverse Impact:

This regulation will assist homes, some of which will be small businesses as described above, with meeting the requirements of Federal regulations that mandate all nursing homes be protected by an automatic sprinkler system. Assisting nursing homes (including nursing homes which are small businesses), with meeting this mandate will minimize the adverse implications of failing to comply, which include potentially jeopardizing the health and safety of nursing home residents, civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, and the termination of Medicaid and Medicare provider certifications.

## Small Business and Local Government Participation:

The Department, in collaboration with the Nursing Home Industry Associations (which include representation of small business nursing homes) worked collaboratively to develop the regulation. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

**Rural Area Flexibility Analysis**

## Effect on Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 persons or less per square mile. The following 43 counties have populations of less than 200,000:

|             |              |             |
|-------------|--------------|-------------|
| Allegany    | Hamilton     | Schenectady |
| Cattaraugus | Herkimer     | Schoharie   |
| Cayuga      | Jefferson    | Schuyler    |
| Chautauqua  | Lewis        | Seneca      |
| Chemung     | Livingston   | Steuben     |
| Chenango    | Madison      | Sullivan    |
| Clinton     | Montgomery   | Tioga       |
| Columbia    | Ontario      | Tompkins    |
| Cortland    | Orleans      | Ulster      |
| Delaware    | Oswego       | Warren      |
| Essex       | Otsego       | Washington  |
| Franklin    | Putnam       | Wayne       |
| Fulton      | Rensselaer   | Wyoming     |
| Genesee     | St. Lawrence | Yates       |
| Greene      |              |             |

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

|          |         |          |
|----------|---------|----------|
| Albany   | Erie    | Oneida   |
| Broome   | Monroe  | Onondaga |
| Dutchess | Niagara | Orange   |

## Compliance Requirements:

There are no new compliance requirements. The regulation will assist approximately 98 financially distressed nursing homes that are located across the State, including in many of the counties listed above, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

## Professional Services:

No new or additional professional services are required by nursing homes located in rural areas to apply to the Department to determine if they are eligible to receive accelerated Medicaid reimbursement of capital costs for sprinklers.

## Compliance Costs:

No additional compliance costs are anticipated as a result of this

regulation. The regulation will assist financially distressed nursing homes located across the State, including in many of the counties listed above, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

## Minimizing Adverse Impact:

This regulation will assist nursing homes located across the State, with meeting the requirements of Federal regulations that mandate all nursing homes be protected by an automatic sprinkler system. Assisting nursing homes (including nursing homes located in many of the counties listed above), with meeting this mandate will minimize the adverse implications of failing to comply, which include potentially jeopardizing the health and safety of nursing home residents, civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, and the termination of Medicaid and Medicare provider certifications.

## Rural Area Participation:

The Department, in collaboration with the Nursing Home Industry Associations (which include representation of rural nursing homes) worked collaboratively to develop the regulation. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

**Job Impact Statement**

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is not expected that the proposed rule to accelerate capital reimbursement for costs related to the installation of automatic sprinkler systems will have a material impact on jobs or employment opportunities across the Nursing Home industry.

**Assessment of Public Comment**

The agency received no public comment since publication of the last assessment of public comment.

**NOTICE OF ADOPTION****Early Intervention Program**

**I.D. No.** HLT-36-12-00010-A

**Filing No.** 1137

**Filing Date:** 2012-11-13

**Effective Date:** 2013-01-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Subpart 69-4 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2559-b

**Subject:** Early Intervention Program.

**Purpose:** Eliminate conflicts of interest by evaluators, service coordinators, and service providers in the Early Intervention Program.

**Text of final rule:** A new paragraph (7)(ii) is added to subdivision (a) of section 69-4.11 to read as follows:

(7) If the early intervention official and the parent agree on the initial or subsequent IFSPs, the IFSP shall be deemed final and the ongoing service coordinator shall be authorized to implement the plan.

(i) The early intervention official shall request, and the parent shall supply, the parent's social security number and the social security number for their child at the time of the IFSP meeting; provided, however that if the parent refuses to furnish such information to the early intervention official, early intervention services contained within the IFSP must still be provided and such refusal by the parent shall be documented in the child's record.

(ii)(a) For children referred to the early intervention program on or after January 1, 2013, or for children referred to the early intervention program prior to January 1, 2013 for whom an additional evaluation or partial evaluation is requested on or after January 1, 2013 for the purpose of adding a new service, neither the evaluator which conducts an evaluation of a child, an approved agency which employs or contracts with the evaluator, nor a relative or business associate of the evaluator, shall provide early intervention services to such child unless authorized by the commissioner, after consultation with the early intervention official, due to special circumstances related to the evaluator's qualifications or availability or other extraordinary circumstances in which there is a clear showing that the child will not be able to access needed services absent such authorization.

(1) For purposes of this paragraph, the following terms shall have the following meanings:

(i) "business associate" shall mean a person joined or united with one or more individuals in a business or enterprise; and

(ii) "relative" shall mean any person living in the same household as an individual or the individual's spouse, child, stepchild,

stepparent, or any person who is a direct descendant of that individual's grandparents or the spouse of such descendant.

(b) Any request for such authorization shall be made by the child's service coordinator, which shall fully document the basis for the request in a manner and format prescribed by the commissioner. Requests for authorization shall be made no later than twenty days after the child's IFSP meeting; provided, however, that any request for authorization shall not delay the timely delivery of early intervention services authorized in the child's IFSP. The commissioner shall issue a determination upon such a request within ten calendar days after the request is received.

(c) If the commissioner finds there is a shortage of evaluators or approved providers in certain disciplines in a particular region of the state, the commissioner may issue a standing authorization, on such terms or conditions as he or she deems appropriate, which shall remain in effect in such region until such time as the commissioner determines that such shortage no longer exists.

(d) A service coordinator shall not assign as a service provider, a business associate of the service coordinator, a relative of such service coordinator or an agency provider which employs or contracts with such relative, who is not otherwise prohibited from serving as the provider for a child pursuant to subparagraph (a) of this paragraph, unless such relationship is disclosed to the parent and the parent does not object to the assignment.

A new paragraph (6) is added to subdivision (a) of section 69-4.5 to read as follows:

(6) Commencing on and after January 1, 2013, individuals shall not be approved to deliver both service coordination and evaluations in the early intervention program. Individuals approved prior to January 1, 2013 to deliver both service coordination and evaluations shall notify the department regarding which of these services the individual wishes to continue providing after January 1, 2013, and approval to deliver the service not selected by the individual in accordance with this paragraph shall terminate on January 1, 2013.

A new paragraph is added to subdivision (e) of section 69-4.5 to read as follows:

(e) Approved providers shall not disseminate, or cause to be disseminated on their behalf, marketing materials that are false, deceptive, or misleading. Upon the Department's request, providers shall periodically submit copies of marketing materials for review. Marketing materials that do not comply with the provisions of this subdivision may be a basis for action against the provider's approval in accordance with the provisions of section 69-4.24 of this subpart. The Department shall develop standards on appropriate marketing materials and shall require that marketing materials that seek to promote or advertise early intervention program evaluations or services adequately inform parents or guardians of potentially eligible or at-risk children less than three years of age about the early intervention program. Marketing materials that seek to promote or advertise early intervention program evaluations or services shall include the following statements or their equivalent:

(1) Clear identification that the early intervention program and early intervention services available through the early intervention program are for children less than three years of age who have or are suspected of having a developmental delay and/or disability.

(2) A statement that the early intervention program is a public program funded by New York State and county governments.

(3) A statement that all children must be referred to the municipality to access early intervention program services, and including the municipal agency's telephone number.

(4) Clear identification of the provider referenced in the marketing and advertising materials, and an accurate statement that the provider is approved as a provider of early intervention program services and under contract with the municipality to deliver early intervention program services.

(5) A statement that all services provided under the early intervention program are provided at no out-of-pocket cost to parents, but that health insurance may be accessed for reimbursement for early intervention services provided to eligible children and their families.

(6) A statement that eligibility for the early intervention program can be determined only by State-approved evaluators under contract with the municipality.

(7) A statement that if a child is found eligible for the early intervention program, all needed early intervention services are identified in collaboration with the parent and must be authorized by the municipality.

(8) A statement that the municipality will arrange for service providers, considering the individual needs of the child and family, to deliver services authorized by the municipality.

(9) A statement that when early intervention services are delivered in child care settings or community locations that require a fee, the parent is responsible for paying any associated costs with such access to child care or community locations.

Service coordinators, evaluators and approved providers, and any individual or entity which performs paid or unpaid marketing activities related to early intervention program services on their behalf, shall not engage in any marketing and advertising practices that offer incentives, or could be construed or appear to offer incentives of any kind to the parents or relatives of an eligible or potentially eligible child, or to the service coordinator, evaluator, or other approved providers authorized to deliver services to an eligible or potentially eligible child, that attempts to or would appear to influence selection of a service coordinator, evaluator or provider of services. Approved agency providers shall not offer incentives or appear to offer incentives to its employees or subcontractors in the form of payment, performance evaluations, or other awards or benefits that are based on the number of referrals and/or services authorized under the early intervention program.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 69-4.5(a)(6) and 69-4.11 7(ii).

**Text of rule and any required statements and analyses may be obtained from:** Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqa@health.state.ny.us

#### **Revised Regulatory Impact Statement**

Due to the impact of Hurricane Sandy, a minor revision was made delaying the effective date to January 1, 2013.

#### **Statutory Authority:**

The Early Intervention Program is established in Title II-A of Article 25 of the Public Health Law (PHL) and implements Part C of the federal Individuals with Disabilities Education Act (IDEA). PHL § 2550(1) establishes the Department of Health (Department) as the lead agency responsible for the general administration and supervision of programs under the Early Intervention Program. PHL § 2550(2) authorizes the Department to establish standards for evaluators, service coordinators and providers of early intervention services and requires the Department to monitor agencies, institutions and organizations providing early intervention services. In addition, PHL § 2544(4) and (5) require that the evaluation of each child be made without regard to the availability of services in the municipality or who might provide those services, and prohibits an evaluation from including a reference to any specific provider of early intervention services. PHL § 2543 sets forth the responsibilities of service coordinators. PHL § 2545(10) requires the service coordinator to implement the child's and family's IFSP in a timely manner. PHL § 2559-b authorizes the Commissioner of Health (Commissioner) to adopt regulations necessary to carry out the Early Intervention Program.

#### **Legislative Objectives:**

The legislative objectives of the Early Intervention Program include establishing a coordinated, comprehensive array of services; enhancing the development of infants and toddlers with disabilities and minimizing the need for special education services after infants and toddlers with disabilities become eligible for services under Part B of IDEA.

PHL § 2544 entitles a child thought to be eligible for the Early Intervention Program to a multidisciplinary evaluation. The evaluation must be made without regard to who might provide those services. If the child is found eligible, an Individualized Family Service Plan (IFSP) must be jointly developed by the Early Intervention Official, service coordinator, parent, and evaluator. 10 NYCRR §§ 69-4.11(a)(6). Once an agreement is reached on an IFSP, the service coordinator must implement the plan in a timely manner. PHL § 2545(10).

To ensure that children receive an objective multidisciplinary evaluation and to prohibit conflicts of interest that may impact the results of the evaluation, for children referred to the Early Intervention Program on or after January 1, 2013 or for children referred to the Early Intervention Program prior to January 1, 2013 for whom an additional evaluation or partial evaluation is requested on or after January 1, 2013 for the purpose of adding a new service, the proposed rule prohibits the evaluator which conducts an evaluation of a child, an approved agency which employs or contracts with the evaluator, and relatives and business associates of the evaluator from providing services to such child unless authorized by the Commissioner due to special circumstances related to the evaluator's qualifications or availability or other extraordinary circumstances in which there is a clear showing that the child will not be able to access needed services absent such authorization. Requests for authorization must be made by the child's service coordinator within twenty days after the child's IFSP meeting. The commissioner must issue a determination within ten calendar days after the request is received. The proposed rule allows the Commissioner to issue a standing authorization if there is a shortage of evaluators or approved providers in certain disciplines in a particular region of the state. The standing order remains in effect in such region until the Commissioner determines that such shortage no longer exists.

The proposed rule also prohibits a service coordinator from assigning as a service provider, a business associate or relative of such service

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coordinator, or an agency provider which employs or contracts with such relative, who is not otherwise prohibited from serving as the provider for a child, unless such relationship is disclosed to the parent and the parent does not object.

Commencing on and after January 1, 2013, individuals cannot be approved to deliver both service coordination and evaluations. Individuals approved prior to January 1, 2013 to deliver both service coordination and evaluations are required to notify the Department regarding which of these services the individual wishes to continue providing after January 1, 2013. Approval to deliver the service not selected by the individual terminates on January 1, 2013.

The proposed rule incorporates into regulation existing marketing standards issued by the Department in December, 2006. Service coordinators, evaluators and approved providers, and any individual or entity which performs paid or unpaid marketing activities related to Early Intervention Program services on their behalf, are prohibited from engaging in any marketing/ advertising practices that offer or appear to offer incentives to the parents or relatives of an eligible or potentially eligible child, or to the service coordinator, evaluator, or other approved providers that attempts to or would appear to influence selection of a service coordinator, evaluator or provider of services. Approved agency providers are prohibited from offering or appearing to offer incentives to employees or subcontractors that are based on the number of referrals and/or services authorized under the Early Intervention Program.

### Needs and Benefits:

As indicated, it is important that a child receive an objective multidisciplinary evaluation that provides comprehensive information about the child's developmental status, strengths and needs, and that recommendations for early intervention services are discussed at the IFSP meeting. An objective planning process that focuses on the child's strengths and needs, measurable results to be achieved through early intervention, and the frequency, intensity, duration, location, and method of early intervention services requires participation of evaluators who have no vested interest in these decisions, or in what provider is authorized to deliver those services.

In New York City, over 90 percent of evaluators provide services to children whom they evaluated, and average utilization levels and costs are higher than in the rest of the State. Outside New York City, more than 44 percent, on average, of evaluators also provide services to children whom they evaluated. One factor that potentially contributes to the difference in utilization levels is the conflict of interest created when agencies and their staff or contractors responsible for conducting evaluations to determine eligibility for services could potentially render services included in children's IFSPs.

The proposed rule will ensure that the relationship between evaluator and provider does not encourage the inappropriate provision of services, fostering the objectivity of evaluations and decreasing costs for taxpayers. The proposed rule also recognizes that in certain circumstances, it may be appropriate for an evaluator, a business associate or relative of the evaluator, or approved agency which employs or contracts with the evaluator, to also render services to the child, and allows the Commissioner, after consultation with the Early Intervention Official, to authorize service provision in certain circumstances, as outlined above.

The proposed rule prohibiting service provision by the evaluator, business associate or relative of the evaluator, or agency which employs or contracts with the evaluator will apply only to those children referred to the Early Intervention Program on or after January 1, 2013, or for children referred prior to January 1, 2013 for whom an additional evaluation or partial evaluation is requested on or after January 1, 2013 for the purpose of adding a new service, to ensure continuity of care for children and families receiving early intervention services prior to the effective date, by allowing them to continue to receive services from their current providers.

The proposed rule also ensures that familial or business relationships between the service coordinator and the provider does not improperly influence the assignment of service providers and that service coordinators identify those providers who are most appropriately qualified to meet the child's and family's needs.

The proposed rule ensures that approved individuals may not serve as both the service coordinator and evaluator for the child, fostering the objectivity of evaluations and decreasing costs for taxpayers.

Finally, the proposed rule codifies existing marketing standards for the Early Intervention Program.

### Costs to Regulated Parties:

Evaluators which conduct evaluations of children, relatives or business associates of such evaluators, and approved agency providers which employ or contract with such evaluators will be impacted by the proposed rule to the extent that they will no longer be able to render services to children evaluated by the evaluator unless authorized to do so by the Department. However, their overall participation in the Early Intervention Program will not be impacted and they will continue to be able to serve other children.

Likewise, while the new rule prohibits a service coordinator from assigning as a service provider, a person or entity which has a business or familial relationship with the service coordinator, unless such relationship is disclosed to the parent and the parent does not object to the assignment, the overall participation of providers in the Early Intervention Program who have these types of relationships with the service coordinator will not be impacted in that they will continue to be able to serve other children.

Individual providers in the program who are currently approved to deliver both evaluation services and service coordination services will be provided with adequate notice to determine which of these services they wish to continue to deliver as of January 1, 2013.

Incorporating existing marketing standards for the Early Intervention Program into regulation will result in no costs to regulated parties which are currently required to adhere to the standards.

Costs to the Agency, the State and Local Governments for the Implementation of and Continuing Compliance with the Rule:

By prohibiting evaluators from acting as service providers under the Early Intervention Program, the proposed rule will reduce inappropriate service utilization and can be expected to result in an undefined level of savings to the program. Further, the proposed rule will require the Department to consult with the Early Intervention Official to review and act upon requests for authorization for a child to receive early intervention services from an evaluator, agency that employs or contracts with the evaluator, or a business associate or relative of the evaluator, in appropriate circumstances, which is not expected to have a measurable impact on administrative resources.

### Local Government Mandates:

The proposed rule does not impose any new duty upon any county, city, town, village, school district, fire district, or other special district.

### Paperwork:

The proposed rule will require a minimal amount of paperwork for service coordinators that request authorization from the Department for a child to receive early intervention services from an evaluator in appropriate circumstances.

### Duplication:

The proposed rule does not duplicate, overlap, or conflict with relevant rules and other legal requirements of the State and federal government.

### Alternatives:

The alternative course of action is to make no change to the regulatory requirements, which would not address either the potential conflict that arises (i) when an evaluator, an agency that employs or contracts with an evaluator, or a relative or business associate of the evaluator, also acts as a service provider; or (ii) when a service coordinator seeks to assign a business associate or relative of such service coordinator, or an agency provider which employs or contracts with such relative; or (iii) when an individual provider delivers both evaluation and service coordination services.

### Federal Standards:

While neither federal statute nor regulation specifically prohibit evaluators from also serving as the providers of early intervention services, Part C of the IDEA and the associated federal regulations, 34 CFR Part 303, establish broad authority for states to oversee and administer Early Intervention Programs.

There are no applicable federal standards with respect to marketing of early intervention services.

### Compliance Schedule:

The Department anticipates implementing the proposed rule effective January 1, 2013, allowing sufficient time to notify early intervention evaluators, service coordinators and providers of the rule's provisions and ensuring continuity of care for children and families participating in the program prior to the effective date.

### Revised Regulatory Flexibility Analysis

Due to the impact of Hurricane Sandy, a minor revision was made delaying the effective date to January 1, 2013.

### Effect of Rule:

Currently, there are approximately 600 agency and 1,100 individual qualified personnel who are approved and under contract with municipal governments to deliver early intervention services. Approved agencies are incorporated entities, partnerships, and state operated facilities. Qualified personnel are individuals approved by the Department of Health (Department) in accordance with 10 NYCRR Subpart 69-4 to provide services in the Early Intervention Program and who have appropriate licensure, certification, or registration in the area in which they are providing services (including allied health professionals, physicians, special educators, psychologists, and vision specialists).

### Compliance Requirements:

For children referred to the Early Intervention Program on or after January 1, 2013, or for children referred to the Early Intervention Program prior to January 1, 2013 for whom an additional evaluation or partial evaluation is requested on or after January 1, 2013 for the purpose of adding a



new service, the proposed rule prohibits the evaluator which conducts an evaluation of a child, an approved agency which employs or contracts with the evaluator, and relatives and business associates of the evaluator, from providing early intervention services to such child unless authorized by the Commissioner of Health (Commissioner), after consultation with the early intervention official, due to special circumstances related to the evaluator or provider's qualifications or availability or other extraordinary circumstances in which there is a clear showing that the child will not be able to access needed services absent such authorization. The child's service coordinator is required to submit requests for such authorizations no later than twenty days after the child's initial IFSP meeting, and must fully document the basis for the request in a manner and format prescribed by the Commissioner. Any request for authorization cannot delay the timely delivery of early intervention services authorized in the child's IFSP. The Commissioner must issue a determination upon such a request within ten calendar days after the request is received.

The Commissioner, if he or she finds there is a shortage of evaluators or approved providers in certain disciplines in a particular region of the state, may issue a standing authorization, on such terms or conditions as he or she deems appropriate. Such authorization remains in effect in such region until such time as the Commissioner determines that such shortage no longer exists.

Effective January 1, 2013, service coordinators are prohibited from assigning as a service provider, a business associate or relative of such service coordinator or an agency provider which employs or contracts with such relative, who are not otherwise prohibited from serving as the provider for a child, unless such relationship is disclosed to the parent and the parent does not object to the assignment.

For purposes of the proposed rule, "business associate" shall mean a person joined or united with one or more individuals in a business or enterprise, and "relative" shall mean any person living in the same household as an individual or the individual's spouse, child, stepchild, stepparent, or any person who is a direct descendant of that individual's grandparents or the spouse of such descendant.

Commencing on and after January 1, 2013, individuals shall no longer be approved to deliver both service coordination and evaluations in the Early Intervention Program. Individuals approved prior to January 1, 2013 to deliver both service coordination and evaluations will be required to notify the department regarding which of these services the individual wishes to continue providing after January 1, 2013. Approval to deliver the service not selected by the individual shall terminate on January 1, 2013.

Service coordinators, evaluators and approved providers, and any individual or entity which performs paid or unpaid marketing activities related to Early Intervention Program services on their behalf, are prohibited from engaging in any marketing and advertising practices that offer incentives, or could be construed or appear to offer incentives of any kind to the parents or relatives of an eligible or potentially eligible child, or to the service coordinator, evaluator, or other approved providers authorized to deliver services to an eligible or potentially eligible child, that attempts to or would appear to influence selection of a service coordinator, evaluator or provider of services.

Approved agency providers are prohibited from offering incentives or appearing to offer incentives to employees or subcontractors in the form of payment, performance evaluations, or other awards or benefits that are based on the number of referrals and/or services authorized under the Early Intervention Program.

#### Professional Services:

It is not anticipated that evaluators, service coordinators or providers will require additional professional services to comply with proposed rule.

#### Compliance Costs:

There are no anticipated initial capital costs that will be incurred by a regulated business or industry or local government for compliance with the proposed rule.

#### Economic and Technological Feasibility:

There are no economically or technologically challenging aspects to the requirements of the proposed rule that do not already exist in current requirements for the Early Intervention Program.

#### Minimizing Adverse Impact:

The proposed rule prohibiting the evaluator which conducts an evaluation of a child, an approved agency which employs or contracts with the evaluator, and relatives and businesses associates of the evaluators from also rendering early intervention services to the child, unless authorized by the Commissioner, applies only to those children referred to the Early Intervention Program on or after January 1, 2013, and to children referred prior to January 1, 2013 for whom an additional evaluation or partial evaluation is requested after that date for the purpose of adding a new service. This phase-in of the new requirements will ensure continuity of care for children and families receiving early intervention services prior to the effective date.

There will be no adverse impact as a result of the proposed rule on local governments. The proposed rule allows the Commissioner, after consultation with the Early Intervention Official, to authorize service provision by the evaluator, approved agency, or relative or business associate of the evaluator in certain circumstances, as outlined above. Maintaining sufficient capacity to deliver appropriate and timely evaluations and early intervention services in rural areas is a high priority for the Department.

Individual providers in the program who are currently approved to deliver both evaluation services and service coordination services will be provided with adequate notice to determine which of these services they wish to continue to deliver as of January 1, 2013.

Under the proposed rule, service coordinators, evaluators and approved providers, and any individual or entity which performs paid or unpaid marketing activities related to Early Intervention Program services on their behalf, are prohibited from engaging in any marketing and advertising practices that offer incentives, or could be construed or appear to offer incentives of any kind to the parents or relatives of an eligible or potentially eligible child, or to the service coordinator, evaluator, or other approved providers authorized to deliver services to an eligible or potentially eligible child, that attempts to or would appear to influence selection of a service coordinator, evaluator or provider of services. Approved agency providers are prohibited from offering incentives or appearing to offer incentives to employees or subcontractors in the form of payment, performance evaluations, or other awards or benefits that are based on the number of referrals and/or services authorized under the Early Intervention Program. The proposed rule incorporates into regulation existing marketing standards issued by the Department, and which have had no adverse impact on jobs since their issuance in December, 2006.

#### Small Business and Local Government Participation:

A copy of this notice of proposed rulemaking will be posted on the Department's website and submitted to the electronic mail listserv for the Early Intervention Program. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including small businesses and local governments. The proposed rule will also be submitted to the Early Intervention Coordination Council (EICC), which is charged in statute with reviewing all proposed rules and regulations related to the Early Intervention Program and offering any comment thereon prior to the Commissioner's approval of the final rule.

#### Revised Rural Area Flexibility Analysis

Due to the impact of Hurricane Sandy, a minor revision was made delaying the effective date to January 1, 2013.

#### Types and Estimated Numbers of Rural Areas:

The proposed rule applies to all municipalities, evaluators, service coordinators, and providers in the Early Intervention Program, including those in rural areas of the State. The proposed rule prohibiting the evaluator which conducts an evaluation of a child, an approved agency which employs or contracts with the evaluator, and relatives and businesses associates of the evaluator from providing early intervention services to the child, unless authorized by the Commissioner of Health (Commissioner), applies only to those children referred to the Early Intervention Program on or after January 1, 2013, and to children referred prior to January 1, 2013 for whom an additional evaluation or partial evaluation is requested after that date for the purpose of adding a new service. The proposed rule prohibiting individuals from being approved to deliver both service coordination and evaluations is effective on and after January 1, 2013. Individual providers who are currently approved to deliver both evaluation services and service coordination services will be provided with adequate notice to determine which of these services they wish to continue to deliver after January 1, 2013. Approval to deliver the service not selected by the individual provider will terminate on January 1, 2013.

#### Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

Municipalities and providers in the Early Intervention Program in rural areas of the State will have no additional reporting or record-keeping requirements associated with the proposed rule, except that a minimal amount of paperwork will be required of service coordinators that request authorization from the Commissioner for a child to receive early intervention services from an evaluator, and others associated with the evaluator, in appropriate circumstances.

It is not anticipated that municipalities and providers will require additional professional services to comply with the proposed rule.

#### Costs:

Evaluators which conduct evaluations of children, approved agency providers which employ or contract with such evaluators, and relatives and business associates of evaluators, will be impacted by the proposed rule to the extent that they will no longer be able to render services to children evaluated by the evaluator unless authorized to do so by the Commissioner. However, their overall participation in the Early Intervention

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tion Program will not be impacted and they will continue to be able to serve other children.

Likewise, while the new rule prohibits a service coordinator from assigning as a service provider, a business associate or relative of such service coordinator, or an agency provider which employs or contracts with such relative, who are not otherwise prohibited from serving as the provider for a child, unless such relationship is disclosed to the parent and the parent does not object to the assignment, the overall participation of providers in the Early Intervention Program who have these types of relationships with the service coordinator will not be impacted in that they will continue to be able to serve other children.

Individual providers who are currently approved to deliver both evaluation services and service coordination services will be provided with adequate notice to determine which of these services they wish to continue to deliver after January 1, 2013. Approval to deliver the service not selected shall terminate on January 1, 2013.

Incorporating existing marketing standards for the Early Intervention Program into regulation will result in no costs to regulated parties which adhere to the standards.

There are no costs for municipalities and providers in rural areas associated with the proposed rule. By prohibiting evaluators from acting as service providers under the Early Intervention Program, the proposed rule will reduce inappropriate service utilization and can be expected to result in an undefined level of savings to the program which is funded with both state and local funds.

### Minimizing Adverse Impact:

It is not anticipated that the proposed rule will result in any adverse impact in rural areas. The proposed rule prohibiting the evaluator which conducts an evaluation of a child, an approved agency which employs or contracts with the evaluator, and relatives and businesses associates of the evaluators from provide early intervention services to the child, unless authorized by the Commissioner, applies only to those children referred to the Early Intervention Program on or after January 1, 2013, and to children referred prior to January 1, 2013 for whom an additional evaluation or partial evaluation is requested after that date for the purpose of adding a new service. This will ensure continuity of care for children and families receiving early intervention services prior to the effective date, by allowing them to continue to receive services from their current providers.

The proposed rule ensures sufficient capacity will be maintained to provide appropriate evaluation services and early intervention services to children in rural areas, by allowing the Commissioner, after consultation with the Early Intervention Official, to authorize the evaluator, approved agency which employs or contracts with the evaluator, or a business associate or relative of the evaluator, to also serve as the provider due to special circumstances related to the evaluators qualifications or availability or other extraordinary circumstances in which there is a clear showing that the child will not be able to access needed services absent such authorization. The proposed rule also allows the Commissioner to issue a standing authorization, on terms or conditions he or she deems appropriate, upon finding there is a shortage of evaluators or approved providers in certain disciplines in a particular region of the State.

The proposed rule prohibiting individuals from being approved to deliver both service coordination and evaluations is effective on and after January 1, 2013. Individual providers in the program who are currently approved to deliver both evaluation services and service coordination services will be provided with adequate notice to determine which of these services they wish to continue to deliver as of January 1, 2013.

### Rural Area Participation:

A copy of this notice of proposed rulemaking will be posted on the Department of Health's website and submitted to the electronic mail listserve for the Early Intervention Program. The notice will invite public comment on the proposal and include instructions for anyone interested in submitting comments, including small businesses and local governments. The proposed rule will also be reviewed by the Early Intervention Coordination Council (EICC), which is charged in statute with reviewing all proposed rules and regulations related to the Early Intervention Program and offering any comment thereon prior to the Commissioner's approval of the final rule. The EICC includes in its membership municipal and provider representatives located in rural areas.

### Revised Job Impact Statement

Due to the impact of Hurricane Sandy, a minor revision was made delaying the effective date to January 1, 2013.

### Nature of Impact:

The proposed rule will have minimal or no impact on jobs. While an evaluator which conducts an evaluation of a child, approved agency providers which employ or contract with such evaluator, and relatives and business associates of the evaluators may be impacted by the proposed rule to the extent that they will no longer be able to render services to the child unless authorized to do so by the Department of Health (Department), their overall participation in the Early Intervention Program will

not be impacted and they will continue to be able to serve other children. Likewise, the proposed rule prohibits a service coordinator from assigning as a service provider, a business associate of the service coordinator, a relative of such service coordinator, or an agency provider which employs or contracts with such relative, who are not otherwise prohibited from serving as the provider for a child, unless such relationship is disclosed to the parent and the parent does not object to the assignment, the overall participation of providers in the Early Intervention Program who have these types of relationships with the service coordinator will not be impacted in that they will continue to be able to serve other children.

The proposed rule prohibiting individuals from being approved by the Department to deliver both service coordination and evaluations in the Early Intervention Program after January 1, 2013 will not impact the overall participation of individual providers in the Early Intervention Program.

The proposed rule maintains adequate capacity to provide evaluations and services, by allowing the Department, after consultation with the Early Intervention Official, to authorize the provision of services to a child by the evaluator which conducted the child's evaluation, the approved agency which employs or contracts with the evaluator, or a relative or business associate of the evaluator, due to special circumstances related to the evaluator's qualifications or availability or other extraordinary circumstances in which there is a clear showing that the child will not be able to access needed services absent such authorization. The proposed rule also allows the Commissioner of Health (Commissioner) to issue a standing authorization, on such terms and conditions as he or she deems appropriate, if he or she finds there is a shortage of evaluators or approved providers in certain disciplines in a particular region of the state. The standing order will remain in effect in such region until such time as the Commissioner determines that such shortage no longer exists.

Under the proposed rule, service coordinators, evaluators and approved providers, and any individual or entity which performs paid or unpaid marketing activities related to Early Intervention Program services on their behalf, are prohibited from engaging in any marketing and advertising practices that offer incentives, or could be construed or appear to offer incentives of any kind to the parents or relatives of an eligible or potentially eligible child, or to the service coordinator, evaluator, or other approved providers authorized to deliver services to an eligible or potentially eligible child, that attempts to or would appear to influence selection of a service coordinator, evaluator or provider of services. Approved agency providers are prohibited from offering incentives or appearing to offer incentives to employees or subcontractors in the form of payment, performance evaluations, or other awards or benefits that are based on the number of referrals and/or services provided under the early intervention program. The proposed rule incorporates into regulation existing marketing standards issued by the Department, and which have had no adverse impact on jobs since their issuance in December, 2006.

### Categories and Numbers Affected:

Currently, there are approximately 600 agency and 1,100 individual qualified personnel who are approved and under contract with municipal governments to deliver early intervention services. Approved agencies are incorporated entities, partnerships, and state operated facilities. Qualified personnel are individuals approved by the Department in accordance with 10 NYCRR 69-4 to provide services in the Early Intervention Program and who have appropriate licensure, certification, or registration in the area in which they are providing services (including allied health professionals, physicians, special educators, psychologists, and vision specialists).

The type of business entities includes a mix of business corporations, professional corporations, professional limited liability corporations, not-for-profit organizations and local governmental agencies.

### Regions of Adverse Impact:

It is anticipated that New York City will be the most heavily impacted by the proposed rule. In New York City, over 90 percent of children receive early intervention services from providers who conducted their evaluations, and average utilization levels and costs are higher than in the rest of the State. Outside New York City, more than 44 percent, on average, of children receive services from providers who also act as evaluators. One factor that potentially contributes to the difference in utilization levels is the conflict of interest created when agencies and their staff or contractors responsible for conducting evaluations to determine eligibility for services and level of need could potentially render services included in children's IFSPs.

In addition, New York City contracts with agency providers to deliver service coordination services and the majority of these agencies also provide early intervention evaluations and services. Most county governments outside New York City are approved to deliver service coordination services and deliver initial service coordination services and/or ongoing service coordination services using county employees.

Rural areas with fewer providers may also be more heavily impacted.

### Minimizing Adverse Impact:

The proposed rule prohibiting service provision by the evaluator, business associate or relative of the evaluator, or agency which employs or contracts with the evaluator will apply only to those children referred to the Early Intervention Program on or after January 1, 2013, and to children referred prior to January 1, 2013 for whom an additional evaluation or partial evaluation is requested after that date for the purpose of adding a new service. This phase-in of the new requirements will ensure continuity of care for children and families receiving early intervention services prior to the effective date.

Likewise, individual providers in the program who are currently approved to deliver both evaluation services and service coordination services will be provided with adequate notice to determine which of these services they wish to continue to deliver after January 1, 2013.

The proposed rule provides the Department with sufficient authority to minimize adverse impact on children and families and on employment opportunities within the program by allowing the Department, after consultation with the Early Intervention Official, to authorize service provision by the evaluator, approved agency, or relative or business associate of the evaluator in certain circumstances, as outlined above. Maintaining sufficient capacity to deliver appropriate and timely evaluations and early intervention services in rural areas is a high priority for the Department.

Under the proposed rule, service coordinators, evaluators and approved providers, and any individual or entity which performs paid or unpaid marketing activities related to Early Intervention Program services on their behalf, are prohibited from engaging in any marketing and advertising practices that offer incentives, or could be construed or appear to offer incentives of any kind to the parents or relatives of an eligible or potentially eligible child, or to the service coordinator, evaluator, or other approved providers authorized to deliver services to an eligible or potentially eligible child, that attempts to or would appear to influence selection of a service coordinator, evaluator or provider of services. Approved agency providers are prohibited from offering incentives or appearing to offer incentives to employees or subcontractors in the form of payment, performance evaluations, or other awards or benefits that are based on the number of referrals and/or services authorized under the Early Intervention Program. The proposed rule incorporates into regulation existing marketing standards issued by the Department, and which have had no adverse impact on jobs since their issuance in December, 2006.

#### **Assessment of Public Comment**

A Notice of Proposed Rulemaking was published in the State Register on September 5, 2012. All comments were reviewed and evaluated. Due to the impact of Hurricane Sandy, a minor revision was made delaying the effective date to January 1, 2013. The issues raised by commenters, significant alternatives suggested and statements of reasons why additional revisions were not made are summarized below.

Comments were received from over 3,500 commenters, including 11 members of the Assembly. The majority of commenters were opposed to the proposed rule.

Commenters opposed to the proposed rule were concerned about adverse affects on families by eliminating parents' choice of evaluator, and on the interruption of the continuity of care. Statutory provisions in the Public Health Law (PHL) continue to allow parents to select an evaluator to conduct an evaluation of a child. The Department understands there are special circumstances related to individual children that may necessitate continuous specialty care from evaluation through service provision and has incorporated an authorization process in the proposed rule for these circumstances. Due to the impact of Hurricane Sandy, a minor revision has been made to the proposed rule delaying the effective date to January 1, 2013. The proposed rule applies only to those children referred to the Early Intervention Program (EIP) on or after January 1, 2013 and to children referred prior to January 1, 2013 for whom an additional evaluation or partial evaluation is requested for the purpose of adding a new service, to ensure continuity of care for children and families receiving services prior to this date.

Commenters suggested that licensed professionals are bound by ethical standards and the proposed rule will limit the professional's scope of practice. Commenters also noted that the New York State Education Department (SED) has authority to monitor and protect against conflicts of interest. The proposed rule does not impact a professionals' scope of practice as professionals will maintain their ability to both evaluate and treat children in the EIP. The professional is only prohibited from both evaluating and treating the same child unless the Department grants authorization or issues a standing waiver. The Department is authorized to establish standards to prevent against conflicts of interest in the EIP. A provider must meet program standards set forth in 10 NYCRR 69-4.5 to participate in the EIP.

Commenters stated that there are existing procedural safeguards and controls in place to address conflicts of interest and those existing safeguards should be strengthened in lieu of implementation of the

proposed rule. The Department will continue to monitor and audit providers to ensure services are provided to children in compliance with laws and regulations and take appropriate action when necessary. However, the proposed rule furthers the Department's goal of prohibiting conflicts of interest in the first instance.

Commenters were concerned that the proposed rule would create capacity issues and a lack of access for families to providers that have a unique skill set. The proposed rule addresses this concern in that it allows the Commissioner to authorize service provision by the evaluator, approved agency, or relative or business associate of the evaluator in certain circumstances, including the evaluator's qualifications or provider availability. It also allows the issuance of standing waivers if there is a shortage of evaluators or approved providers in certain disciplines or regions of the State. The Department is working to analyze existing capacity and issue standing waivers in advance of the effective date of the proposed rule.

Commenters expressed concern with the administrative burden and impact the authorization process will have on the timely provision of services. Commenters suggested that the authorization should be provided by the Early Intervention Official, and that the time period to request an authorization should be shortened. The proposed rule furthers the Department's goal of reducing the administrative burden on localities by placing the responsibility of authorization determinations on the Department. The Department will establish administrative procedures and provide training to service coordinators to ensure requests for authorizations are submitted immediately upon the detected need, with a maximum allowance of twenty days. The Department will expeditiously render determinations on the authorization and continue to monitor timely service provision.

Commenters expressed concern with the fiscal impact of the proposed rule resulting from a decrease on their scope of activities, and that the fiscal impact will be directed at small agencies. All providers, with the exception of individuals who are approved to deliver both service coordination services and evaluations, will continue to have the ability to deliver all lines of business in the EIP that they are approved to render. With respect to those individuals who will no longer be approved to deliver both service coordination, or case management, services, and evaluations, these individuals will continue to be able to provide both evaluations and early intervention services. The Department believes that the proposed rule would not impact these individuals' overall participation in the EIP.

Commenters expressed concern that the Department did not present sufficient evidence to indicate that conflicts of interest are occurring in the EIP. Commenters suggested that the proposed rule was a statewide solution to a perceived issue isolated to New York City (NYC). The Department has conducted data analysis on evaluation and service provision patterns and has concerns about the high percentage of evaluators who go on to render services to children for whom they evaluated. While the percentage of providers who serve as both evaluator and provider for a child is high in NYC (over 90%), the percentage of providers who serve as both evaluator and provider to the same child is also of concern in the remainder of the State, as almost 45% of evaluators are providing services to children whom they evaluated. The Department feels that a statewide approach furthers the goals of the proposed rule.

Commenters argued that the proposed rule is similar to a proposal included in the New York State 2012-13 Executive Budget Proposal, which was rejected by the New York State Legislature. The fact that the proposal referenced in the comments was not included in the enacted budget does not preclude the Department from proposing and adopting this rule in accordance with the State Administrative Procedure Act.

Commenters expressed concern that the Department did not publish along with the Notice of Proposed Rulemaking, the motion passed by the State Early Intervention Coordinating Council (EICC) on September 6, 2012 requesting that the Department consider withdrawing the proposed rules and pursue administrative controls to detect fraud and abuse. PHL § 2553 provides that the EICC may require that an alternative approach to the proposed rules and regulations be published with the Notice of Proposed Rulemaking. At its September 6, 2012 meeting, the EICC passed the following motion:

That the Department publish the SEICC's recommended alternative approach and the reasons why the alternative approach was not considered, if the Department does not act in a manner consistent with the SEICC's recommendation.

Although the EICC moved to require the Department to publish the EICC's recommended alternative, it did NOT require the Department to publish it "with the Notice of Proposed Rulemaking". The EICC was well aware that the Notice of Proposed Rulemaking had already been properly published a day prior to the EICC's meeting. The EICC's awareness that the Notice of Proposed Rulemaking had already been published is clearly evidenced by its proposed alternative which asked that the Department consider "withdrawing its proposed regulatory language". In compliance with the EICC's motion, the EICC's proposed alternative, and



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the reasons why the Department did not choose to follow the proposed alternative is set forth below.

A commenter raised the following arguments: the Department is usurping legislative powers and the authority of the SED over professional licenses; the Department does not possess legislative authority to issue the regulations; the regulations constitute an unlawful constraint on a professional's license and acts to revoke the provider's license without an opportunity to be heard; and there were errors and omissions in the regulatory documents included in the Notice of Proposed Rulemaking, including in the needs and benefits section of the Regulatory Impact Statement and the assessment of the job impact of the proposed regulation.

The Department believes these arguments to be without merit. The Department is authorized to promulgate regulations, and to establish standards for evaluators, service coordinators and providers of early intervention services. The proposed rule furthers the Department's goal in that it establishes standards that would eliminate the potential for conflicts of interest for evaluators, service coordinators and providers who participate in the EIP. A provider's license to practice his or her profession and scope of practice will not be impacted by the proposed rule. The proposed rule will prohibit an individual provider from rendering both service coordination, or case management, services and evaluations, but the individual may continue to provide evaluations and professional services in accordance with the individual's license, certification or registration.

The EICC and commenters provided the following alternatives to the proposed rule. On September 6, 2012, the EICC passed the following motion:

"The SEICC requests that DOH EI consider withdrawing their proposed regulatory language on conflict of interest and, rather, propose that the Bureau identify abuses including, but not limited to, determining eligibility, level of services, and identifying specific EI service providers, which constitute conflict of interest and take appropriate action as described in regulations."

The majority of comments received urged that the Department follow the EICC's alternative approach. After careful consideration, the Department feels that the alternative approach does not further the goals of the proposed rule in preventing conflicts of interest in the EIP. The Department will continue to monitor and audit providers to ensure services are provided in compliance with laws and regulations. However, the proposed rule furthers the Department's goal of prohibiting conflicts of interest in the EIP in the first instance.

Commenters proposed that the Department strengthen existing monitoring of providers and use SED authority to take action against providers when appropriate. The Department will continue to monitor providers and refer matters to the SED's Office of the Professions, as appropriate. However, the proposed rule furthers the Department's goal of taking on a more preventative approach to conflicts of interest.

Commenters suggested providing enhanced training to providers, Early Intervention Officials/Designees (EIO) and service coordinators to make appropriate service provision choices. The Department supports an extensive training contract for provision of training to all professionals engaged in the program and will continue its efforts at revising training curricula as needed to address the needs of the EIP.

It was suggested that Individualized Family Service Plan (IFSP) teams develop justifications when potential conflicts of interest are possible. The Department does not believe that this approach furthers the goals of the proposed rule. The IFSP team does not currently make determinations on who should be assigned as the provider of services.

It was recommended that the Department develop metrics to identify agencies with excessive recommended services and that the State fiscal agent conduct data analysis on these metrics. The Department has conducted data analyses on service utilization patterns in conjunction with its programmatic and fiscal monitoring efforts and will continue those efforts. However, the Department feels strongly that conflicts of interest continue to be a significant concern requiring more proactive controls.

Commenters recommended that the effective date of the proposed rule be delayed or implemented over 6 months. The Department feels that the proposed rule should be implemented expeditiously to address conflicts of interest in the EIP. However, due to the impact of Hurricane Sandy, the Department has made a minor revision to the proposed rule, delaying the effective date to January 1, 2013.

Commenters suggested that the rule be extended to include the conflict between the same individual serving as an EIO/D and a service coordinator for a child. The Department has been made aware of this issue and provided guidance to municipalities to address it. The Department will continue to monitor this issue and take appropriate action, as necessary.

## Long Island Power Authority

### NOTICE OF ADOPTION

#### Fuel and Purchased Power Cost Adjustment ("FPPCA") Rate in the Authority's Tariff

**I.D. No.** LPA-33-12-00008-A

**Filing Date:** 2012-11-13

**Effective Date:** 2012-11-13

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** The Long Island Power Authority adopted a proposal to modify its Tariff for Electric Service ("Tariff") to authorize full recovery of the Authority's fuel and purchased power costs and modify the Fuel and Purchased Power Cost Adjustment rate.

**Statutory authority:** Public Authorities Law, sections 1020-f(z) and (u)

**Subject:** Fuel and Purchased Power Cost Adjustment ("FPPCA") rate in the Authority's Tariff.

**Purpose:** To authorize full recovery of fuel and purchased power costs and alter the FPPCA rate to reflect monthly changes in pricing.

**Text or summary was published** in the August 15, 2012 issue of the Register, I.D. No. LPA-33-12-00008-P.

**Final rule as compared with last published rule:** No changes.

**Text of rule and any required statements and analyses may be obtained from:** Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

#### Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

#### Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

#### Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

#### Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

#### Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

## Office of Mental Health

### NOTICE OF ADOPTION

#### Prior Approval Review for Quality and Appropriateness

**I.D. No.** OMH-36-12-00006-A

**Filing No.** 1126

**Filing Date:** 2012-11-08

**Effective Date:** 2012-11-28

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Part 551 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 31.04 and 31.23

**Subject:** Prior Approval Review for Quality and Appropriateness.

**Purpose:** To repeal an outdated reference and establish consistency with Federal requirements regarding accessibility standards.

**Text or summary was published in:** the September 5, 2012 issue of the Register, I.D. No. OMH-36-12-00006-P.

**Final rule as compared with last published rule:** No changes.

**Text of rule and any required statements and analyses may be obtained from:** Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Sue.Watson@omh.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

## Public Service Commission

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Removal of References to Standby Sales Service

I.D. No. PSC-48-12-00005-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Commission is considering a filing by Central Hudson Gas & Electric Corporation proposing revisions to the Company's rates, charges, rules and regulations contained in P.S.C. No. 12 - Gas.

**Statutory authority:** Public Service Law, section 66(12)

**Subject:** Removal of references to Standby Sales Service.

**Purpose:** To remove references to Standby Sales Service which is no longer offered to Interruptible Transportation customers.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to remove references to Standby Sales Service in its gas tariff schedule because it is no longer offered to Interruptible Transportation customers. The filing has a proposed effective date of February 1, 2013. The Commission may resolve related matters and may apply its decision here to other companies.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2659, email: [deborah.swatling@dps.ny.gov](mailto:deborah.swatling@dps.ny.gov)

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530, email: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

**Public comment will be received until:** 45 days after publication of this notice.

#### Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-G-0498SP1)

## Racing and Wagering Board

### EMERGENCY RULE MAKING

#### Implementation of Substantive Changes and Procedures Pertaining to Equine Drugs and Reporting Requirements for Thoroughbreds

I.D. No. RWB-48-12-00006-E

Filing No. 1133

Filing Date: 2012-11-13

Effective Date: 2012-12-12

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of sections 4038.5, 4043.2, 4043.4 and 4012.5 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1) and 902(1)

**Finding of necessity for emergency rule:** Preservation of public safety and general welfare.

**Specific reasons underlying the finding of necessity:** The Board has determined that immediate adoption of these rule amendments is necessary for the preservation of the public safety and general welfare and that compliance with the requirements of subdivision 1 of Section 202 of the State Administrative Procedure Act would be contrary to the public interest.

On September 27, 2012, the New York State Task Force on Racehorse Health and Safety released their report on the investigation of 21 equine fatalities at the 2011-12 fall and winter meet at Aqueduct Racetrack. The Task Force determined that there may have been opportunities to prevent 11 of those 21 fatalities. Among its recommendations were several amendments to the Board's thoroughbred rules to allow an owner to void a claim if the horse is injured during the race and must be transported off the racetrack. The amendments contained in this emergency rulemaking are based upon the findings and recommendations of the Task Force.

Given the danger of a horse breaking down, and the safety threat presented to both the horse and the jockeys racing in close proximity, these rule amendments are necessary to protect the safety of human and equine athletes. Thoroughbred horses travel over the racetrack at an average speed of approximately 40 miles per hour, sometimes exceeding that average as they sprint to the finish or sprint to gain positional advantage. An unsound horse or a horse influenced by the administration of certain medications may be forced to race beyond its limits and result in a fatal breakdown, oftentimes in a sudden or uncontrollable breakdown.

This rule is also necessary to protect the general welfare of the horse racing industry and the thousands of jobs that are created through it. Public confidence in both the process of racing and in pari-mutuel wagering system is necessary for the sport to survive, and with it the jobs and revenue generated in support of government.

**Subject:** Implementation of substantive changes and procedures pertaining to equine drugs and reporting requirements for thoroughbreds.

**Purpose:** To protect the health and safety of thoroughbred race horses, jockeys and exercise riders.

**Text of emergency rule:** Subdivision (a) of Section 4012.5 of 9E NYCRR is amended to read as follows:

(a) Sampling horses

(1) The board may at a reasonable time on any date take a blood, urine, or other biologic sample, from a horse that is on a nomination list or under the care or control of a trainer or owner who is licensed by the board, for the purpose of testing for the impermissible presence or administration of substances prohibited by section 4043.12 and/or restricted by section 4043.2(i). The board shall perform no other forensic tests on a sample.

Subdivision (c) is added to Section 4038.5 of 9 NYCRR to read as follows:

(c) The previous trainer of a claimed horse shall, within 48 hours after the race is made official, provide to the new owner an accurate record of all corticosteroid joint injections that were administered to the horse within 30 days before the race.

Amend Subdivision (g) of Section 4043.2 of 9E NYCRR by repealing paragraph (5) and renumbering paragraphs (6) through (16) as follows:

4043.2 Restricted use of drugs, medication and other substances.

(g) The following substances are permitted to be administered by any means until 96 hours before the scheduled post time of the race in which the horse is to compete:

- (1) acepromazine;
- (2) albuterol;
- (3) atropine;
- (4) butorphanol;
- (5) clenbuterol;
- (6)(5) detomidine;
- (7)(6) glycopyrrolate;
- (8)(7) guaifenesin;
- (9)(8) hydroxyzine;
- (10)(9) isoxsuprine;
- (11)(10) lidocaine;
- (12)(11) mepivacaine;
- (13)(12) pentoxifylline;
- (14)(13) phenytoin;
- (15)(14) pyrilamine;
- (16)(15) xylazine.

They may not be administered within 96 hours of the scheduled post time of the race in which the horse is to compete. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and



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drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 96 hours.

Paragraph 9 of Subdivision (e) of Section 4043.2 of 9 NYCRR is amended to read as follows:

(9) hormones [and steroids] (e.g., [testosterone, progesterone, estrogens,] chorionic gonadotropin[, glucocorticoids])[, except in conjunction with joint aspiration as restricted in subdivision (i) of this section; the use of anabolic steroids is governed by section 4043.15 of this Part];

Subdivision (i) of Section 4043.2 of 9E NYCRR is amended to read as follows:

(i) In addition, a horse [which has had a joint aspirated (in conjunction with a steroid injection)] may not race for [at least five days following such procedure, and whenever such procedure is performed, the trainer shall notify the stewards of such fact, in writing, before the horse is entered to race] *the following periods of time:*

(1) *for at least five days following a systemic administration of a corticosteroid;*

(2) *for at least seven days following a joint injection of any corticosteroid;*

(3) *for at least fifteen days following a joint injection of methylprednisolone (e.g., DepoMedrol); and*

(4) *for at least twenty-one days following an administration of clenbuterol.*

*In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such time periods.*

Section 4043.4 of 9E NYCRR is amended to read as follows:

4043.4. Trainer's responsibility.

(a) A trainer shall be responsible at all times for the condition of all horses trained by him. No trainer shall start or permit a horse in his custody, care or control to be started if he knows, or he might have known or have cause to believe, that the horse has received any drug or other restricted substance that could result in a positive test. The trainer shall be held responsible for any positive test unless he can show by substantial evidence that neither he nor any employee nor agent was responsible for the administration of the drug or other restricted substance. Every trainer must guard each horse trained by him in such manner and for such period of time prior to racing the horse so as to prevent any person, whether or not employed by or connected with the owner or trainer, from administering any drug or other restricted substance to such horse contrary to this Part.

(b) *Trainers shall maintain accurate records of all corticosteroid joint injections to horses trained by them. The record(s) of every corticosteroid joint injection shall be submitted, in a form and manner approved by the Board, by the trainer to the Board within 48 hours of the treatment. It shall be accessible to the examining veterinarian for the purpose of assisting with pre-race veterinary examinations.*

***This notice is intended*** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires February 10, 2013.

***Text of rule and any required statements and analyses may be obtained from:*** John Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305, (518) 395-5400, email:info@racing.ny.gov.

#### **Regulatory Impact Statement**

1. Statutory authority and legislative objectives of such authority: The Board is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 101(1) and 902(1). Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel betting activities in the state, both on track and off-track, and the persons engaged therein, including the authority to regulate the use of drugs that can manipulate race performance. Section 902(1) prescribes that a state college within New York with an approved equine science program shall conduct equine drug testing to assure public confidence in and to continue the high degree of integrity at pari-mutuel race meetings, and authorizes the Board to promulgate any rules and regulations necessary to implement its equine drug testing program and to impose substantial administrative penalties for anyone who races drugged horses.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: These rule amendments have been identified by the New York Task Force on Racehorse Health and Safety as emergency measures required to protect the safety and health of thoroughbred race horses and jockeys in New York State. The New York State Racing and Wagering Board has reviewed these recommendations and has endorsed them for emergency adoption.

The Task Force was formed in 2012 after 21 equine deaths occurred between November 2011 and March 2012. The 21 deaths was more than double the expected frequency rate. The Task Force's investigation re-

vealed troubling aspects as to the way horses are examined and managed in this State, and found that the health and safety of racehorses and jockeys will be improved by reducing the use of legal anti-inflammatory medications in the time after the horse is entered to race.

On September 27, 2012, the Task Force published its report and included recommendations for the adoption of several emergency rules, which are contained in this Emergency Rulemaking. With the exception of Section 4012.5, the emergency rules contained herein are expressly requested by the Task Force. The amendment to Section 4012.5 of 9 NYCRR pertains to out of competition testing, and while it was not expressly included in the Task Force recommendations, it is by implication necessary to give force and effect to the equine drug program to detect the use of certain medications that the Task Force has identified as possible contributing factors to recent equine deaths.

The amendments to Board Rule 4043.2(i) are necessary to control the administration of corticosteroids to thoroughbred horses. These amendments are necessary for the health and safety of both the horse and the jockeys/riders. The withdrawal periods in the rule were prescribed directly by the Task Force and are necessary to provide clear guidance as to when administration should be discontinued for the purposes of testing and for the safety of the horse. In the case of Methylprednisolone acetate (DepoMedrol), the Task Force found that Methylprednisolone acetate has a degradative effect on articular cartilage: "The repetitive use of intra-articular corticosteroids, particularly methylprednisolone, may cause significant damage to the cartilage in the joint. Additionally, the intra-articular use of corticosteroids can mask the inflammatory changes ordinarily associated with joint disease, and can confound the pre-race clinical examination. For these reasons, regulation of intra-articular administration of corticosteroids is appropriate." The term "intra-articular" has been revised to "joint injection" in the rule text to more accurately reflect a more common vernacular of the trade.

The Task Force recommended the amendment to Section 4038.5(c) of 9E NYCRR to require the disclosure to the successful claimant of any intra-articular corticosteroid injection performed within 30 days of the race. The Task Force found that "Currently, there is no way for a claimant to determine if the claimed horse has been recently injected with an intra-articular corticosteroid, putting that horse at risk for redundant medical treatment as well as preventing an accurate assessment of the horse's soundness." Four of the fatally injured horses injured horses in this investigation received intra-articular corticosteroid injections within seven days of racing.

The Task Force also identified the need to tighten controls over the use of clenbuterol, which is currently permitted as a 96-hour rule under the Board's rules. It is a potent bronchodilator that is Food and Drug Administration-approved for treatment of lower airway inflammation and upper respiratory infections in the horse. It is used to prevent respiratory infections in horses experiencing exercise-induced pulmonary hemorrhage (respiratory bleeding), while some trainers have indicated that their horses look better and have increased appetites when treated with clenbuterol.

Nevertheless, the report stated that in addition to its pharmacological effect on the respiratory tract, clenbuterol mimics anabolic steroids in that it increases muscle and decreases fat in cattle, pigs, poultry and sheep. The report stated that there is a belief that illegally compounded clenbuterol has been used in thoroughbred horses as an alternative to the prohibited anabolic steroids. The Task Force found that "It was abundantly clear to the Task Force that while the NYSRWB's time limit regarding clenbuterol was being followed, the medication is in common use as a substitute for anabolic steroids and not for the legitimate therapeutic purpose for which it is intended."

Therefore, the amendment to 4043.2(g)(5) is necessary to remove it from the permissible 96-hour drug rule and only permit its administration 21 days before a race by virtue of amendment to Board rule 4043.2(i)(4).

The Board also amended Paragraph (9) of Subdivision (e) of 4043.2 of 9 NYCRR to remove any references to steroids. This was not a recommendation by the Task Force, but in light of the Board's existing rule limiting the administration of anabolic steroids (Rule 4043.15) and the restrictions placed on corticosteroids in this rulemaking, the Board believes that no reference to steroids should be contained in 4043.2(e)(9) in order to avoid confusion.

The Task Force reported that "The failure of trainers to report intra-articular injections as required prevented the NYRA veterinarians from identifying a pattern of redundant...treatments that had the potential to misrepresent the true clinical condition of a horse..." Therefore, in order to ensure proper notification, the Board will amend Section 4043.4 of 9 NYCRR, which is commonly known as the "Trainer's Responsibility Rule," to require that trainers maintain accurate records of all corticosteroid joint injections to horse trained by them. The corticosteroid reporting will require that a trainer submit a corticosteroid joint injection record to the Board within 48 hours of treatment so that examining veterinarians

will have access as part of the pre-race examinations. This amendment will improve the quality of pre-examinations, provide the Board with timely notice of any potential ailments and ensure that a document trail is available in the event the horse's fitness comes into question.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The costs for the New York Drug Testing and Research Program will be substantial. The cost for conducting administration trials necessary for Cortisone Testing will be \$36,000. The cost of related laboratory testing of samples for corticosteroids is \$18,000. The cost of trial administrations of clenbuterol is \$6,000. The related laboratory testing of clenbuterol samples is \$5,000.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will require the New York State Racing and Wagering Board to develop a filing system for corticosteroid reporting.

There will be no costs to local government because the New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Board relied on its experience in collecting information and based upon its experience in the equine drug testing program. The costs associated with clenbuterol and corticosteroid testing was provided directly from the New York Drug Testing and Research Program.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be a need for reporting corticosteroid injections. Trainers will be required submit paperwork to the Board in a manner prescribed by the Board.

7. Duplication: None.

8. Alternatives. These rule amendments are based upon the finding and recommendations of the Task Force and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: The rule will be effective December 12, 2012. The Board intends to submit this rule as a Proposed Rulemaking in the future and the extension of this rule may be necessary pursuant to the provisions of the State Administrative Procedure Act.

**Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, Job Impact Statement**

As is evident by the nature of this rulemaking, this will not have an adverse affect on jobs or rural areas. This proposal concerns the restricted administration of certain drugs to thoroughbred race horses, the testing procedures to ensure compliance with those restrictions, and reporting of the administration of certain drugs. These medications – corticosteroids and clenbuterol – are currently permitted and will continue to be permitted but under different administration schedules. These schedules will have no impact on jobs or rural areas. This amendment is intended to reduce equine deaths in thoroughbred racing, and as such will have a positive effect on horseracing and the revenue generated through pari-mutuel wagering and breeding in New York State. This will not adversely impact rural areas or jobs or local governments and does not require a Rural Area Flexibility Statement or Job Impact Statement.

## Department of Taxation and Finance

### NOTICE OF ADOPTION

**Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith**

**I.D. No.** TAF-37-12-00003-A

**Filing No.** 1134

**Filing Date:** 2012-11-13

**Effective Date:** 2012-11-13

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of section 492.1(b)(1) of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

**Subject:** Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

**Purpose:** To set the sales tax component and the composite rate per gallon for the period October 1, 2012 through December 31, 2012.

**Text or summary was published** in the September 12, 2012 issue of the Register, I.D. No. TAF-37-12-00003-P.

**Final rule as compared with last published rule:** No changes.

**Text of rule and any required statements and analyses may be obtained from:** John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

### NOTICE OF ADOPTION

**Elimination of the One-week Stay Test to Determine Nontaxable Occupancy of Bungalows and Similar Living Units**

**I.D. No.** TAF-37-12-00004-A

**Filing No.** 1135

**Filing Date:** 2012-11-13

**Effective Date:** 2012-11-28

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of section 527.9 of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided)

**Subject:** Elimination of the one-week stay test to determine nontaxable occupancy of bungalows and similar living units.

**Purpose:** To conform the regulations to current statutory interpretation concerning sales tax on hotel occupancy.

**Text or summary was published** in the September 12, 2012 issue of the Register, I.D. No. TAF-37-12-00004-P.

**Final rule as compared with last published rule:** No changes.

**Text of rule and any required statements and analyses may be obtained from:** John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith**

**I.D. No.** TAF-48-12-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of section 492.1(b)(1) of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

**Subject:** Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

**Purpose:** To set the sales tax component and the composite rate per gallon for the period January 1, 2013 through March 31, 2013.

**Text of proposed rule:** Pursuant to the authority contained in subdivision First of section 171, subdivision (c) of section 301-h, subdivision 7 of section 509, subdivision (b) of section 523, and subdivision (a) of section 528 of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendment to the Fuel Use Tax Regulations, as published in Article 3 of Subchapter C of Chapter III of

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Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxix) to read as follows:

| Motor Fuel                       |                |                | Diesel Motor Fuel   |                |                |
|----------------------------------|----------------|----------------|---------------------|----------------|----------------|
| Sales Tax Component              | Composite Rate | Aggregate Rate | Sales Tax Component | Composite Rate | Aggregate Rate |
| (lxviii) October - December 2012 |                |                |                     |                |                |
| 16.0                             | 24.0           | 41.8           | 16.0                | 24.0           | 40.05          |
| (lxix) January - March 2013      |                |                |                     |                |                |
| 16.0                             | 24.0           | 42.6           | 16.0                | 24.0           | 40.85          |

**Text of proposed rule and any required statements and analyses may be obtained from:** John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

#### Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Tax Return Filings for Licensed Farm Breweries

I.D. No. TAF-48-12-00008-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of section 60.1 of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subdivision First; 429(1); 436 (not subdivided)

**Subject:** Tax return filings for licensed farm breweries.

**Purpose:** To allow licensed farm breweries to file annual beer tax returns.

**Text of proposed rule:** Pursuant to the authority contained in subdivision First of section 171, subdivision (1) of section 429, and section 436 (not subdivided) of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the Alcoholic Beverage Tax regulations of the Department of Taxation and Finance, as published in Subchapter H of Chapter I of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Subparagraphs (i) and (ii) of paragraph (3) of subdivision (a) of section 60.1 of such regulations are amended to read as follows:

(i) A distributor that:

“(a)” is required to register as a distributor solely because such person’s activities relate to the production of beer in New York State; and

“(b)” is licensed by the State Liquor Authority of New York State as either:

“(1)” a brewer, pursuant to sections 51 and 56 of the Alcoholic Beverage Control Law, or a farm brewery pursuant to sections 51-a and 56 of such law, whose annual production of beer will not exceed 60,000 barrels (“i.e.”, a “micro-brewer” or “farm brewery”); or

“(2)” a restaurant-brewer,” pursuant to section 64-c of the Alcoholic Beverage Control Law; may file an annual tax return in lieu of the monthly returns required by paragraph (1) of this subdivision. Such annual return shall relate to the distributor’s activities during the calendar year and shall be due on or before January 20th of the succeeding calendar year. Such return must show the information required in paragraph (1) of this subdivision, except that “month” shall be read as “year,” and must be accompanied by proof of such distributor’s continuing license as a “micro-brewery,” “farm brewery,” or [as a] “restaurant-brewer.”

(ii) If a distributor meeting the requirements of subparagraph (i) of this paragraph (a “qualifying distributor”) at any time during the period to be covered by an annual return ceases to be licensed by the State Liquor Authority as [either] a “micro-brewery,” “farm brewery,” or [a] “restaurant-brewer,” but continues to be a licensed brewer, such distribu-

tor must immediately begin filing monthly tax returns, as described in paragraph (1) of this subdivision. Similarly, if at any time during the period to be covered by an annual return, a qualifying distributor imports any beer into New York State or engages in any activities of a distributor other than those related to the production of beer in New York State, such distributor must immediately begin filing monthly tax returns, as described in paragraph (1) of this subdivision.

**Text of proposed rule and any required statements and analyses may be obtained from:** John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

#### Regulatory Impact Statement

1. Statutory authority: Tax Law, sections 171, subdivision First; 429(1); and 436 (not subdivided). Section 171, subdivision First of the Tax Law provides the Commissioner of Taxation and Finance with the authority to make reasonable rules and regulations which are consistent with the law that may be necessary for the exercise of the Commissioner’s powers and the performance of the Commissioner’s duties under the Tax Law. Section 429(1) of the Tax Law, while providing generally for monthly alcoholic beverage tax returns, provides that the Commissioner may require tax returns to be made at such times and covering such periods as is deemed necessary in order to insure the payment of the tax. Section 436 of the Tax Law provides for the authority provided by section 171 to be exercisable specifically with respect to the alcoholic beverage tax imposed by Article 18 of the Tax Law.

2. Legislative objectives: The rule is being proposed pursuant to this authority to allow returns to be filed by certain filers for periods and upon such dates other than those prescribed in the Tax Law.

3. Needs and benefits: Section 60.1 of the regulations allows micro-brewers and restaurant brewers to elect to file annual beer tax returns. Chapter 108 of the Laws of 2012 amended the Alcoholic Beverage Control Law to create a new class of licensees, farm breweries, which would be authorized to manufacture and sell beer and cider made from crops grown in New York State. Farm breweries, like micro-brewers licensed under sections 51 and 56 of the Alcoholic Beverage Control Law, are restricted to producing no more than 60,000 barrels of beer annually. This rule would provide that persons registered as farm breweries pursuant to section 51-a of the Alcoholic Beverage Control Law may also file annual beer tax returns.

4. Costs:

(a) Costs to regulated parties: There is no cost to regulated parties for the implementation of and continuing compliance with the rule. If anything, the impact on taxpayers will be positive as the regulated parties will be allowed to file annual returns in lieu of monthly returns.

(b) Costs to the State and its local governments including this agency: This rule will not impose any costs on New York State or its local governments. The implementation and continued administration of this rule will not impose costs on the Department of Taxation and Finance.

(c) Information and methodology. This analysis is based on discussions among personnel from the Department’s Office of Tax Policy Analysis, the Office of Counsel and the Office of Budget and Management Analysis, which examined the rule that merely allows farm breweries to file annual rather than monthly beer tax returns.

5. Local government mandates: This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This rule imposes no reporting requirements, forms or other paperwork upon regulated parties beyond those required by statute. The rule allows licensed farm breweries to file annual beer tax returns rather than monthly tax returns, reducing the number of returns that could be required to be filed by affected parties and, in turn, processed by the Department.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

8. Alternatives: An alternative to this rule would be to require farm breweries to file monthly beer tax returns. While it may be advantageous for many micro-brewers to convert their license to a farm brewery license for State Liquor Authority purposes, they would lose their status as annual filers for tax purposes.

9. Federal standards: This rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

10. Compliance schedule: This rule would become effective on the date that the Notice of Adoption is published in the State Register.

#### Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because the rule will



not impose any adverse economic impact or any reporting, recordkeeping, or other compliance requirements on small businesses or local governments beyond those required by statute. This rule does not distinguish between regulated parties located in different geographical areas.

The purpose of this rule is to amend section 60.1 of the regulations to allow persons registered as farm breweries pursuant to section 51-a of the Alcoholic Beverage Control Law to file annual beer tax returns.

#### **Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on rural areas or any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. This rule does not distinguish between regulated parties located in different geographical areas.

The purpose of this rule is to amend section 60.1 of the regulations to allow persons registered as farm breweries pursuant to section 51-a of the Alcoholic Beverage Control Law to file annual beer tax returns.

#### **Job Impact Statement**

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities.

The purpose of this rule is to amend section 60.1 of the regulations to allow persons registered as farm breweries pursuant to section 51-a of the Alcoholic Beverage Control Law to file annual beer tax returns.

## Workers' Compensation Board

### EMERGENCY RULE MAKING

#### **Filing Written Reports of Independent Medical Examinations (IMEs)**

**I.D. No.** WCB-48-12-00002-E

**Filing No.** 1129

**Filing Date:** 2012-11-09

**Effective Date:** 2012-11-09

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of section 300.2(d)(11) of Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 117 and 137

**Finding of necessity for emergency rule:** Preservation of general welfare.

**Specific reasons underlying the finding of necessity:** This amendment is adopted as an emergency measure because time is of the essence. Memorandum of Decisions issued by Panels of three members of the Workers' Compensation Board (Board) have interpreted the current regulation as requiring reports of independent medical examinations be received by the Board within ten calendar days of the exam. Due to the time it takes to prepare the report and mail it, the fact the Board is not open on legal holidays, Saturdays and Sundays to receive the report, and the U.S. Postal Service is not open on legal holidays and Sundays, it is extremely difficult to timely file said reports. If a report is not timely filed it is not accepted into evidence and is not considered when a decision is rendered. As the medical professional preparing the report must send the report on the same day and in the same manner to the Board, the workers' compensation insurance carrier/self-insured employer, the claimant's treating provider, the claimant's representative and the claimant it is not possible to send the report by facsimile or electronic means. The Decisions have greatly, negatively impacted the professionals who conduct independent medical examinations and the entities that arrange and facilitate these exams, as well as the workers' compensation insurance carriers and self-insured employers. When untimely reports are not accepted into evidence, the insurance carriers and self-insured employers are prevented from adequately defending their position in a workers' compensation claim. Accordingly, emergency adoption of this rule is necessary.

**Subject:** Filing written reports of Independent Medical Examinations (IMEs).

**Purpose:** To amend the time for filing written reports of IMEs with the Board and furnished to all others.

**Text of emergency rule:** Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall

be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 business days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 business days after the examination. *A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires February 6, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Heather MacMaster, Workers' Compensation Board, Office of General Counsel, 328 State Street, Schenectady, NY 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

#### **Regulatory Impact Statement**

##### **1. Statutory authority:**

The Workers' Compensation Board (hereinafter referred to as Board) is authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

##### **2. Legislative objectives:**

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in 2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

##### **3. Needs and benefits:**

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for

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mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

### 4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

### 5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed".

### 6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

### 7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

### 8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all requests for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

### 9. Federal standards:

There are no federal standards applicable to this proposed rule.

### 10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

## Regulatory Flexibility Analysis

### 1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. Any independent medical exams conducted at their request must be filed by the physician, chiropractor, psychologist or podiatrist conducting the exam or by an independent medical examination (IME) entity. Workers' Compensation Law § 137 (1)(a) does not permit self-insured employers or insurance carriers to file these reports,

therefore there is no direct action a self-insured local government must or can take with respect to this rule. However, self-insured local governments are concerned about the timely filing of an IME report as one filed late will not be admissible as evidence in a workers' compensation proceeding. This rule makes it easier for a report to be timely filed as it expands the timeframe from 10 calendar days to 10 business days. Small businesses that are self-insured will also be affected by this rule in the same manner as self-insured local governments.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

### 2. Compliance requirements:

This rule requires the filing of IME reports within 10 business days rather than 10 calendar days. Prior to this rule medical providers authorized to conduct IMEs and IME entities hired to perform administrative functions for IME examiners, such as filing the report with the Board, had less time to file such reports. Self-insured local governments and small employers, who are not authorized or registered with the Chair to perform IMEs or related administrative services, are not required to take any action to comply with this rule. As noted above, WCL § 137(1)(a) does not permit self-insured employers or insurance carriers to file IME reports with the Board. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

### 3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

### 4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

### 5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

### 6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

### 7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

## Rural Area Flexibility Analysis

### 1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

### 2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

### 3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

### 4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

### 5. Rural area participation:

The Board received input from a number of entities who derive income

from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

#### **Job Impact Statement**

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.

### **NOTICE OF ADOPTION**

#### **Pharmacy and Durable Medical Equipment Fee Schedules and Requirements for Designated Pharmacies**

**I.D. No.** WCB-36-12-00003-A

**Filing No.** 1128

**Filing Date:** 2012-11-09

**Effective Date:** 2012-11-28

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Addition of Parts 440 and 442 to Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 117, 13 and 13-o

**Subject:** Pharmacy and durable medical equipment fee schedules and requirements for designated pharmacies.

**Purpose:** To adopt pharmacy and durable medical equipment fee schedules, payment process and requirements for use of designated pharmacies.

**Substance of final rule:** The proposed amendments to Part 324 of 12 NYCRR adopt Medical Treatment Guidelines (MTG) for Carpal Tunnel Syndrome (CTS).

In addition, the Guidelines for the neck, back, shoulder and knee have been amended to permit 10 chiropractic, physical therapy or occupational therapy visits each year following a determination that the claimant has reached maximum medical improvement (MMI) and has chronic pain. No variance is allowed from the maximum of 10 annual visits.

Section 324.2(d)(2) has been amended to remove anterior acromioplasty and chondroplasty from the list of procedures that require prior authorization by the payer.

Section 324.3 has also been amended to prohibit the repeated submission of variance requests by a treating medical provider for substantially similar treatment when an earlier variance request has not yet been denied or without additional information when the earlier substantially similar request has been previously denied.

Paragraph (3) of subdivision (a) of Section 324.3 has been amended to specifically state that a variance must be submitted within two business days of the preparation of the request.

Paragraph (5) of subdivision (a) has been added to provide that no variance is required for ongoing maintenance care.

Section 324.3 has been amended to remove the requirement that the parties attempt to informally resolve disputes for eight days and to direct that requests for review of a denial of a variance request will be directed to medical arbitration unless the claimant or payer requests review by a Workers' Compensation Law Judge.

In addition, Section 324.3 has been amended to give the Chair discretion to direct the resolution of variance denials based on the claimant's failure to appear for an independent medical examination.

The Board proposes further changes to Part 324 of 12 NYCRR by modification of the definition of MMI to conform it to the definition developed by the Advisory Committee and incorporated in the Board's 2012 Guidelines for the Determination of Permanent Impairment and Loss of Wage Earning Capacity.

At subdivision (c) of section 324.1, the proposed amendment adds a definition of "Denial, deny or denies" to include instances when the carrier or Special Fund partially grants or approves only a portion of a variance or request for optional prior approval.

Throughout the regulation the language has been modified from use of words like "form" and "file" to terms such as "format prescribed by the Chair" and "submit."

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 440.2(a), 440.3(a)(1), 440.5(c) and 440.8(b)(2).

**Text of rule and any required statements and analyses may be obtained from:** Heather MacMaster, Workers' Compensation Board, 328 State Street, Office of General Counsel, Schenectady, New York 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

#### **Revised Regulatory Impact Statement**

A revised Regulatory Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial and therefore do not change any statements in the document. Specifically the changes: 1) update the publisher of AWP; 2) remove a sentence that may have led to unnecessary bill disputes; 3) change the one filing requirement from a monthly update of any material changes to a quarterly update of any unnecessary changes; 4) clarify procedures for identifying repackaged medications; and, 5) clarifies that the self-insured employer or insurance carrier shall be responsible to notification that more information is required on a pharmacy bill.

#### **Revised Regulatory Flexibility Analysis**

A revised Regulatory Flexibility Analysis for Small Business and Local Governments is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not have any impact on small businesses or local governments and therefore do not change any statements in the document. Specifically the changes: 1) update the publisher of AWP; 2) remove a sentence that may have led to unnecessary bill disputes; 3) change the one filing requirement from a monthly update of any material changes to a quarterly update of any unnecessary changes; 4) clarify procedures for identifying repackaged medications; and, 5) clarifies that the self-insured employer or insurance carrier shall be responsible to notification that more information is required on a pharmacy bill.

#### **Revised Rural Area Flexibility Analysis**

A revised Rural Area Flexibility Analysis is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not have any impact on rural areas and therefore do not change any statements in the document. Specifically the changes: 1) update the publisher of AWP; 2) remove a sentence that may have led to unnecessary bill disputes; 3) change the one filing requirement from a monthly update of any material changes to a quarterly update of any unnecessary changes; 4) clarify procedures for identifying repackaged medications; and, 5) clarifies that the self-insured employer or insurance carrier shall be responsible to notification that more information is required on a pharmacy bill.

#### **Revised Job Impact Statement**

A revised Job Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not have any impact on jobs and therefore do not change any statements in the document. Specifically the changes: 1) update the publisher of AWP; 2) remove a sentence that may have led to unnecessary bill disputes; 3) change the one filing requirement from a monthly update of any material changes to a quarterly update of any unnecessary changes; 4) clarify procedures for identifying repackaged medications; and, 5) clarifies that the self-insured employer or insurance carrier shall be responsible to notification that more information is required on a pharmacy bill.

#### **Assessment of Public Comment**

The 45-day public comment period with respect to Proposed Rule I.D. No. WCB361200003 commenced on September 5, 2012, and expired on October 22, 2012. The Chair and the Workers' Compensation Board (Board) accepted formal written public comments on the proposed rule through October 26, 2012.

The Chair and Board received six written comments. The Board received written comments from Injured Workers' Pharmacy (a home delivery pharmacy), Stone River Pharmacy and Progressive Medical (a pharmacy processor and a pharmacy benefits manager or "PBM"), CompPharma (a consortium of nine PBMs), Express Scripts (a PBM), MyMatrixx (a PBM and member of CompPharma), and PMSI (a pharmacy and DME service provider). These comments were reviewed and assessed. Many of the commenters made similar comments. Accordingly, this assessment will summarize and respond to the comments by subject.

Definition of "Average Wholesale Price (AWP)" (12 NYCRR 440.1[a]):

Several commenters suggested that the Board select only one authorized publisher of AWP rather than permitting use of either Red Book published by Thomson Reuters or Medi-Span Master Drug Database published by Wolters Kluwer Health. The commenters suggested that permitting more than one AWP source would create confusion. In the alternative, the commenters suggested that the Board eliminate the last sentence of the paragraph defining AWP at 12 NYCRR 440.1(a). This sentence requires insurance carriers or employers to pay the lesser of any difference in the AWP published by Red Book or Medi-Span.



## Rule Making Activities

NYS Register/November 28, 2012

When the Chair initially adopted 12 NYCRR Parts 440 and 442 as emergency regulations, the regulation required AWP be calculated using Red Book. However, in June of 2011, the Board added Medi-Span as an additional source for determining AWP. This change to the emergency regulation was made for several reasons. The Board had been advised that Red Book does not publish an AWP for all drugs that may be prescribed to workers' compensation claimants. In addition, Red Book by Thomson Reuters has discontinued its print and CD publications, and at least one user of the Pharmacy Fee Schedule has contended that it can no longer afford a subscription to Red Book. Finally, Medi-Span also publishes AWP. Thus, the Board selected two sources for AWP to provide payers with a choice. Insurance carriers and self-insured employers may elect to use one source over another or may use both sources.

Based on the fact that an insurer or self-insured employer may not have access to both RedBook and Medi-Span, the Board has accepted the commenters suggestion to remove this sentence in 12 NYCRR 440.1(a): "In the event of a difference in the average wholesale price of a prescription drug in the two publications, or other pricing index adopted by the Chair or the Chair's designee, the lowest published average wholesale price on the day the prescription drug is dispensed shall prevail." Removal of this sentence will still permit an insurance carrier or self-insured employer to select the lowest published AWP, but will not create confusion and bill disputes when an insurance carrier or self-insured employer uses a single source for determining AWP.

Notification of the Board of any material changes to its list of designated pharmacies (12 NYCRR 440.3[1]):

In the emergency regulation originally adopted in 2007, insurance carriers and employers are required to provide the Board with notice of any material changes to their list of designated pharmacies on a monthly basis. This requirement was carried over into the published proposal in 12 NYCRR 440.3(1). One commenter suggested, and the Board's Health Management Bureau agrees, that monthly updates are burdensome and do not enhance efficient operation of pharmacy networks. The Board has accepted the suggested change that notification of material changes must occur quarterly. It is noted that the notice requirements contained in 12 NYCRR 440.4 to the injured worker are unchanged: an up-to-date list of designated pharmacies must be published by employers and available to the injured worker by a phone call and available on a website.

An insurance carrier's obligation when a case is controverted is not clear.

One commenter suggested that 12 NYCRR 440.3(d) setting forth the insurance carrier and self-insured employer's obligations when a case is controverted requires clarification. The commenter did not have any specific suggestions as to what portion is unclear or how to improve the subdivision's clarity. Following internal review, the Board maintains that this subdivision is sufficiently clear and has not made any change.

Claimant's rights when a case is apportioned

One commenter suggested that 12 NYCRR 440.3(f) is confusing and should be removed. However, under the Workers' Compensation Law when a claim is apportioned, more than one insurance carrier may be liable for payment of the claimant's benefits including pharmacy benefits. Accordingly, it is necessary to establish a rule as to how a claimant may select a pharmacy network in these cases. Each liable insurance carrier or self-insured employer will supply the claimant with pharmacy network information and the claimant may select a pharmacy from among these networks. If an insurance carrier or self-insured employer does not notify the claimant that he or she must use a network, the claimant may obtain pharmaceuticals from an out-of-network pharmacy and submit the bill to the liable insurance carrier or self-insured employer that did not provide notification of the requirement to use a network.

The Fee Schedule is too low

One commenter suggested that the proposed fee schedule is too low and that it should be set at AWP plus a \$5 dispensing fee for generic drugs and \$4 dispensing fee for brand name drugs. The Board has not accepted this suggestion as the fee schedule is an important cost-savings component of the 2007 reform of the workers' compensation system. The fee schedule has remained unchanged since its introduction in 2007, and appears to be functioning well for all parties.

Board's right to audit

Two commenters expressed concern that the regulation does not require that the Board keep confidential the results of an audit of the agreements between a carrier and its network as performed by the Chair pursuant to subdivision (b) of section 440.5. The language of the regulation as currently drafted reflects a change from the original draft that would have required production of these agreements to the Board. After due consideration, the Board determined that it did not need to routinely collect this information, but rather could conduct audits when necessary. As New York State Law does not permit the Board to guarantee that any information it collects while performing its statutory or regulatory duties remain confidential, the regulation may not be modified. The Chair's right to

audit is designed to be a minimally intrusive means for the Board to conduct its regulatory function.

One commenter stated that the Board may not interfere with its contracts even when such contracts are inconsistent with the fee schedule. As Workers' Compensation Law section 13(o) states that the pharmaceutical fee schedule "establishes the maximum allowable fees for prescription medicines provided pursuant to this chapter," the Board may audit contracts to ensure that they do not reimburse in excess of the fee schedule.

The Board should not permit carriers to require use of networks

One commenter suggested that the Board should allow injured workers to select their own pharmacy and not require use of a network. As Workers' Compensation Law section 13(i)(5) expressly authorizes carriers and employers to enter into contracts with pharmacy networks, the Board has made no change to the regulations based on this comment. Pharmacy networks are an important cost savings component of the 2007 workers' compensation reform.

Carriers should not be able to deny payment to a pharmacy when a prescription does not conform to the Medical Treatment Guidelines

One commenter stated that it is unfair to permit a carrier to deny payment to a pharmacy when the prescription was not consistent with the Medical Treatment Guidelines as the pharmacist filling the prescription is not providing the claimant with medical treatment. Compliance with the Medical Treatment Guidelines (MTG) is an integral component of the 2007 workers' compensation reform. The MTG are designed to ensure that the claimant receives medically necessary care using an evidence based medical standard and in accordance with protocols recognized within the medical community. The MTG are published on the Board's website. A pharmacist who is concerned that a prescription does not conform to the standards of the MTG may confirm with the prescribing physician that the prescription is appropriate under the MTGs. Allowing carriers and employers to object to improperly prescribed medications is a key method to ensure compliance with the MTGs.

Carrier is responsible for requesting further information when a bill is disputed

One commenter suggested that subdivision (b) be amended to explicitly state that the insurance carrier or self-insured employer is responsible for sending any notices about billing or requesting further information regarding the bill from the pharmacy, PBM, pharmacy processing agent or third-party biller. The Board has made this suggested change to eliminate any ambiguity as to who is responsible for this notification.

Carriers should pay bills from out-of-network pharmacies when the pharmacy has not received notice

One commenter objected to the language in subdivision (d) of section 440.8 that permits a carrier to deny payment to an out-of-network pharmacy for a prescription dispensed more than ninety days after notice to a claimant for a controlled substance and more than sixty after notice to a claimant for a non-controlled substance. The commenter states that it is unfair to deny payment to the pharmacy when it has not received notice of a network requirement. While it is true that the pharmacy may not have received notice in this situation, the cost savings associated with use of pharmacy networks is an important piece of the 2007 workers' compensation reform. Under the current emergency regulation, a carrier is not required to give out-of-network pharmacies any notice. In the permanent regulation, a carrier must pay a bill from an out-of-network pharmacy within the first sixty days or ninety days following notice to the claimant and until the out-of-network pharmacy has received notice. It is believed that this additional "transition period" will prevent most cases of unreimbursed pharmacy bills. Furthermore, most insurance carriers and self-insured employers are likely to notify any out-of-network pharmacy that it will not pay for prescriptions following the ninety or sixty day transition period.

The Durable Medical Equipment Fee Schedule should permit reimbursement for shipping fees

One commenter states that the fee schedule for durable medical equipment should permit separate billing for shipping, handling and delivery and that permitting the supplier to bill separately for shipping would result in a more accurate and lower price for the equipment. By not permitting a separate charge for shipping, the commenter suggests, the Board encourages suppliers to build the shipping charges into every piece of durable medical equipment. The Board has not accepted this comment due to the difficulty in regulating shipping charges and the risk of ensuing bill disputes. Furthermore, the Board is not aware of inflated costs for durable medical equipment since adoption of the emergency regulation in 2007.

The Board should permit Durable Medical Equipment Networks

One commenter suggested that many disputes regarding the purchase of durable medical equipment could be avoided if the Board permitted carriers and employers to enter into contracts with durable medical equipment networks. The Board does not have statutory authority to permit a carrier to require that a claimant use a particular durable medical equipment supplier. Workers' Compensation Law section 13-j states that a carrier

may not participate in the care of an injured worker except as set forth in that provision, such as requiring a claimant to use a diagnostic testing network or a pharmacy network. Accordingly, the Board may not create by regulation the ability of a carrier to require use of a durable medical equipment network.

**CHANGES TO THE REGULATION:**

The Regulation that is being adopted contains the following insubstantial changes from the proposed rule published in the September 5, 2012 State Register:

- In section 440.2(a), the reference to “Thompson Media” has been changed to “Thompson Reuters” the successor publisher of RedBook.
- In section 440.2(a), the sentence “In the event of a difference in the average wholesale price of a prescription drug in the two publications, or other pricing index adopted by the Chair or the Chair’s designee, the lowest published average wholesale price on the day the prescription drug is dispensed shall prevail” has been removed.
- In section 440.3(a)(1), the reference to “monthly” has been changed to “quarterly” in two places.
- In section 440.5(c), the sentence “If the NDC is not supplied with the bill for the prescription drug or medicine, the self-insured employer or insurance carrier may identify the NDC of the underlying drug product to calculate reimbursement” has been added.
- In section 440.8(b)(2), “by the self-insured employer or insurance carrier” has been added to the last sentence of the subparagraph.



EXHIBIT D — TRIAL COURT DECISION IN SIERRA CLUB V. MARTENS ET AL.,  
INDEX NO. 02949/2014 (N.Y. SUP. CT., QUEENS CTY)., OCTOBER 1, 2014 [A-960 -  
A-969]

MEMORANDUM

SUPREME COURT - STATE OF NEW YORK  
COUNTY OF QUEENS - IAS PART 34

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SIERRA CLUB  
85 Second Street, 2<sup>nd</sup> Floor San Francisco,  
California 94105

BY: McDONALD, J.

Index No.: 2949/14

HUDSON RIVER FISHERMAN'S ASSOCIATION, NEW  
JERSEY CHAPTER, INC.  
P.O. Box 421  
Cresskill, New Jersey 07626

Motion Date: 6/6/14

Motion Cal. No.: 104

Motion Seq. No.: 1

Petitioners,

For a Judgment Pursuant to Article 78 of  
the Civil Practice Law and Rules,

- against -

JOSEPH MARTENS, COMMISSIONER, NEW YORK  
STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION  
625 Broadway Albany, NY 12233-1011,

Respondents,

TRANS CANADA RAVENSWOOD LLC  
38-54 Vernon Boulevard  
Long Island City, NY 11101,

Necessary Party.

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This is an Article 78 proceeding brought to annul the  
September 7, 2013 determination of the Commissioner of the New  
York State Department of Environmental Conservation that, inter  
alia, the application of Trans Canada Ravenswood LLC for the  
withdrawal of water from the East River can be classified as a  
"Type II" action under the relevant laws and regulations.

Trans Canada Ravenswood, LLC (TC Ravenwood) owns Ravenswood  
Generating Station, an electric generating facility located in  
Long Island City, New York. Ravenswood began operating in the  
early nineteen sixties, and it produces electricity which is sold

through the New York State Independent System Operator for use throughout New York City. The Ravenswood facility can generate 2,480 megawatts of electricity, and it has at times produced up to 21% of the electricity used in New York City.

The Ravenswood facility borders on the East River, a tidal strait which links upper New York Bay with Long Island Sound and which connects to the Hudson River through the Harlem River and Spuyten Devil Creek at the north end of Manhattan Island. The East River, about sixteen miles in length and from 600 to 4,000 feet wide, separates Manhattan Island from Brooklyn and Queens.

For about fifty years, the Ravenswood facility has used a "once through" cooling water system which takes water from the East River, circulates it through a cooling system to cool three steam boiler turbine/generators known as Units 10, 20, and 30, and discharges the water back into the East River. The cooling system, the same as that originally installed in the nineteen sixties, has a maximum withdrawal capacity of 1,527.84 million gallons per day (MGD) which is needed to prevent Units 10, 20, and 30 from overheating when all three are operating at maximum capacity. The water use varies with the number of units in operation and their time of operation. In 2012, the Ravenswood facility made a daily average withdrawal of about 480 MGD and in 2013 made a daily average withdrawal of 363.1 MGD. In times of emergency, such as Superstorm Sandy, all three units have operated at full capacity with a corresponding need for the maximum withdrawal of water.

According to the petitioners, the use of a "once through" water cooling system requires Ravenswood to withdraw an excessive amount of water from the East River. A closed cycle cooling system would be better for the environment, the petitioners assert. A closed cycle cooling system recirculates the cooling water by passing it through the condenser system where it is heated in the process of converting steam back into water, then transported to cooling towers or similar equipment to be cooled, and then returned to the condenser system. The petitioners quote an article which states "[c]losed-cycle cooling is a proven technology that reduces power plant water intake by up to 98 percent, thereby reducing the damage to aquatic life by up to 98 percent."

When water is withdrawn for cooling purposes, fish and other aquatic life may be killed by becoming impinged on intake screens or by passing through screens (entrainment), if small enough, and entering the facility. Gilbert Hawkins, the President of petitioner Hudson River Fishermen's Association, alleges that

"the East River is one of the main fish migration routes between the Atlantic Ocean and both the Hudson River and Long Island Sound." There are tidal flows in the East River, and, according to Hawkins, "[m]illions of fish are riding on these flows in the migratory seasons." The petitioners allege that a study has shown that Ravenswood's water cooling system entrains millions of young fish, eggs, and larvae each year, and kills or injures millions of larger fish by impingement.

The Ravenswood facility's cooling water system is subject to the federal Clean Water Act ([CWA], 33 USC § 1251 et seq.) and state regulation which require the operator of the plant to use the best technology available (BTA) for cooling water intake structures. (See, CWA § 316[b], 33 USC § 1326[b] and 6 NYCRR § 704.5). The court notes that the federal Environmental Protection Agency may use a cost benefit analysis in its determination of the best technology available for intake water cooling systems, and the agency has not mandated the use of closed cycle cooling systems in all cases. (See, *Entergy Corp. v. Riverkeeper, Inc.*, 556 US 208.) Moreover, the Ravenswood facility is operated with permits issued pursuant to the CWA and the State Pollutant Discharge Elimination System (SPDES). (The Ravenswood facility discharges heat which is regulated as a pollutant.)

The Ravenswood facility is also subject to the New York State Water Resources Law, codified as Article 15 of the Environmental Conservation Law, which declares that "[i]t is in the best interest of the state that provision be made for the regulation and supervision of activities that deplete, defile, damage or otherwise adversely affect the waters of the state and land resources associated therewith." (ECL 15-0103[13].)

On or about February 15, 2011, Assembly Bill 5318-A was introduced as "AN ACT to amend the environmental conservation law, in relation to regulating the use of the state's water resources \*\*\*." The Memorandum in Support of Legislation stated that: "The purpose of this bill is to authorize the Department of Environmental Conservation (DEC) to implement a water withdrawal permitting program to regulate the use of the State's water resources." The summary of provisions stated in relevant part: "Specifically, ECL §15-1501 would be amended to: \*\*\* ( 3) provide that existing water withdrawals would be entitled to an initial permit based on their maximum water withdrawal capacity reported to DEC on or before February 15, 2012 pursuant to existing law \*\*\*." (Emphasis added.) After passage by the New York State Legislature, Governor Cuomo signed the bill into law.

The act required operators of all water withdrawal systems

capable of withdrawing 100,000 gallons per day (gpd) or more to obtain a permit from the New York State Department of Conservation (DEC). (See, Environmental Conservation Law §15-1501 et seq.) The old law had not applied to the Ravenswood facility. After passage of the act, DEC could issue two types of permits for water withdrawal systems that did not need permits before the 2011 amendments: (1) initial permits for most systems that existed as of February, 2012 and reported their maximum capacity to DEC and (2) new permits for all other systems.

On or about May 31, 2013, TC Ravenswood submitted a water withdrawal application to DEC for an initial water withdrawal permit. The Ravenswood facility received an initial permit to which the DEC decided that it had an automatic entitlement. ECL §15-1501, "Water Withdrawals, permit," provides in relevant part: "9. The department shall issue an initial permit, subject to appropriate terms and conditions as required under this article, to any person not exempt from the permitting requirements of this section, for the maximum water withdrawal capacity reported to the department pursuant to the requirements of title sixteen or title thirty-three of this article on or before February fifteenth, two thousand twelve." (Emphasis added.)

In its response to public comments invited on the Ravenswood application for an initial water withdrawal permit, DEC explained the basis of its action: "As provided by ECL §15-1501.9 the Department has no discretion but to issue 'initial permits' for the amount of water withdrawals for users that were in operation and properly reported their withdrawals to the Department as of February 15, 2012. Under these circumstances, the issuance of the water withdrawal permit here is covered by the Type II category for ministerial actions set out in section 617.5(c)(19) of the Department's SEQR regulations. \*\*\* Here, above and beyond the amount of the permitted withdrawal (which is prescribed by statute), the Legislature has restricted the Department's discretion to the standard form permit and the imposition of sound water conservation measures." (Emphasis added.)

Operators of water withdrawal systems who did not meet the standard for an initial permit had to apply for a new permit pursuant to ECL §15-1503, and the DEC does not regard them as having an automatic entitlement to the permit. When issuing a new permit, DEC may take into consideration the numerous environmental criteria specified in ECL §15-1503, "Permits."

DEC adopted regulations pertaining to water withdrawal to implement the new law (see, 6 NYCRR Part 601), and these regulations reflected the restrictions on its discretion

expressed in ECL §15-1501(9) such as on withdrawal volumes. DEC regulation 6 NYCRR 601.7., "Initial permits," provides in relevant part: "(d) An initial permit that is issued by the Department under this subpart is for the withdrawal volume equal to the maximum withdrawal capacity reported to the Department on or before February 15, 2012."

On August 7, 2013, DEC issued a notice stating that it had made a tentative determination to issue an initial permit to TC Ravenswood allowing a water withdrawal of approximately 1.5 billion gallons per day. The notice stated further that the "[p]roject is not subject to SEQR because it is a Type II action" and that no SEQR lead agency had been designated. There are three types of actions under SEQRA - Type 1, Type 2, or unlisted. The distinction between Type 1 and Type 2 actions is essentially that the former require environmental review while the latter do not. 6 NYCRR 617.5, "Type 2 Actions," provides in relevant part: "(a) Actions or classes of actions identified in subdivision (c) of this section are not subject to review under this Part. These actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law, article 8. The actions identified in subdivision (c) of this section apply to all agencies. \*\*\* (c) The following actions are not subject to review under this Part: \*\*\* (19) official acts of a ministerial nature involving no exercise of discretion \*\*\*."

On or about November 15, 2013, DEC issued an initial 601 WW permit to TC Ravenswood for water withdrawals from the East River at a maximum capacity of 1,390 MGD, and on or about March 7, 2014 DEC issued a revised Initial 601 WW permit with a maximum capacity of 1,527.84 MGD. The initial permit expires on October 31, 2017.

The New York State Environmental Quality Review Act ([SEQRA] ECL art 8) was enacted in 1975, and its "fundamental policy is to inject environmental considerations directly into governmental decision making \*\*\*." (*Coca-Cola Bottling Co. of New York, Inc. v. Board of Estimate of City of New York*, 72 NY2d 674, 679.) ECL § 8-0103, "Legislative findings and declaration," provides in relevant part: "Social, economic, and environmental factors shall be considered together in reaching decisions on proposed activities." SEQRA mandates an environmental impact statement (EIS) for any "action" proposed or approved by a governmental agency that may have a significant effect on the environment. ECL § 8-0109, "Preparation of environmental impact statement," provides in relevant part: "2. All agencies (or applicant as hereinafter provided) shall prepare, or cause to be prepared by



contract or otherwise an environmental impact statement on any action they propose or approve which may have a significant effect on the environment. \*\*\*."

However, SEQRA expressly exempts actions of a ministerial nature from environmental review. ECL §8-0105, "Definitions," provides in relevant part: "5. 'Actions' do not include: \*\*\*(ii) official acts of a ministerial nature, involving no exercise of discretion \*\*\*." (See, *Incorporated Village of Atlantic Beach v. Gavalas*, 81 NY2d 322; *Fisher v. New York City Bd. of Standards and Appeals*, 71 AD3d 487; 220 CPS "Save Our Homes" Ass'n v. New York State Div. of Housing and Community Renewal, 60 AD3d 593.) 6 NYCRR 617.2, "Definitions," provides: "(w) 'Ministerial act' means an action performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the act, such as the granting of a hunting or fishing license."

"While the issuance of a permit may constitute an 'action' within the purview of the statute (see, ECL 8-0105[4]), SEQRA provides an express exemption from its application for 'official acts of a ministerial nature, involving no exercise of discretion' (ECL 8-0105[5] [ii]; 6 NYCRR 617.5 [c][19])." (*Ziemba v. City of Troy*, 37 AD3d 68, 73.)

"Where, as here, an administrative agency takes action without an evidentiary hearing, the standard of review is not whether there was substantial evidence in support of the determination (see CPLR 7803[4]), but rather, whether the determination had a rational basis, and was not 'arbitrary and capricious' (see CPLR 7803[3] \*\*\*. (*Ball v. New York State Dept. of Environmental Conservation*, 35 AD3d 732, 733; *Gramando v. Putnam County Personnel Dept.*, 58 AD3d 842.) "Further, in a proceeding seeking judicial review of administrative action, the court may not substitute its judgment for that of the agency responsible for making the determination \*\*\*." (*Ball v. New York State Dept. of Environmental Conservation*, *supra*, 733; *Gramando v. Putnam County Personnel Dept.*, *supra*.) "[I]n a proceeding seeking judicial review of administrative action, the court may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the decision or whether it is arbitrary and capricious \*\*\*." (*Flacke v. Onondaga Landfill Sys.*, 69 NY2d 355, 363; *Fogelman v. New York State Dept. of Environmental Conservation*, 74 AD3d 809.)

In the case at bar, DEC determined that the issuance of an initial permit for the Ravenswood facility was a ministerial act

not requiring SEQRA review. In determining whether an act is merely ministerial in nature, "the pivotal inquiry \*\*\*is whether the information contained in an EIS may form the basis for a decision whether or not to undertake or approve such action \*\*\*." (*Incorporated Village of Atlantic Beach v. Gavalas*, *supra*, 326 [internal quotation marks and citations omitted]; *Filmways Communications of Syracuse, Inc. v. Douglas*, 106 AD2d 185, *affd*, 65 NY2d 878; *see, Island Park, LLC v. New York State Dept. of Transp.*, 61 AD3d 1023; *Ziemba v. City of Troy*, 37 AD3d 68.)

"It is well settled that the determination of whether a particular action is ministerial depends on the underlying regulation or municipal code authorizing the action \*\*\*. The pivotal inquiry does not turn on a mechanical distinction between ministerial and discretionary acts, however, but requires us to consider whether the underlying regulatory scheme invests the authorizing agency with discretion to act or refuse to act based on the type of information contained in an EIS \*\*\*." (*Ziemba v. City of Troy*, *supra*, 73-74; *see, Island Park, LLC v. New York State Dept. of Transp.*, *supra*.)

In *Filmways Communications of Syracuse, Inc. v. Douglas* (*supra*), an applicant for a building permit brought an Article 78 proceeding in the nature of mandamus to compel a building inspector to issue the permit. The Appellate Division, Fourth Department, whose decision was affirmed by the Court of Appeals for the reasons stated by the lower court, held that the applicant was not required to comply with SEQRA and that the building inspector's granting or denying of a building permit for a 500-foot communication antenna tower was a ministerial act, not a discretionary act. "There is no provision in the building code," the Appellate Division wrote, "that gives the building inspector a latitude of choice." (*Filmways Communications of Syracuse, Inc. v. Douglas*, *supra*, 186.) The building inspector did not need information about the effect of the project on the environment because he had no discretion concerning the permit.

In *Incorporated Village of Atlantic Beach v. Gavalas* (*supra*), The Court of Appeals held that the issuance of a building permit there was not the type of agency action which required an EIS because an underlying ordinance did not give the municipal building inspector the type of discretion which would allow permit grant or denial to be based on environmental concerns detailed in an EIS. In holding that the issuance of a building permit under the relevant regulatory scheme was a ministerial act, The Court of Appeals stated: "Logically, where an agency is empowered to 'act' by granting or denying a permit based only on compliance with a conventional Building Code or

fire safety regulations, it makes little sense to require preparation of an EIS. Such a requirement would certainly not advance the Legislature's clear intent that an EIS be used as an informational tool to aid in the planning process ( see, ECL 8-0109[2] )." (*Incorporated Village of Atlantic Beach v. Gavalas, supra*, 326.)

In *Island Park, LLC v. New York State Dept. of Transp.* (*supra*), The Appellate Division, Third Department, held that the Department of Transportation's issuance of an order for the closure of a private rail crossing was a ministerial act not subject to SEQRA because its determination had to be based upon consideration of the safety issues presented by the particular crossing and was unrelated to the environmental concerns that might be raised in an environmental impact statement. The issuance of the closure order was a ministerial act "because the Commissioner is 'vested with discretion in only a limited area' and could not, upon finding that the public safety could only be insured by closing a crossing, refuse to order such closure 'on the basis of SEQRA's broader environmental concerns' \*\*\*." (*Island Park, LLC v. New York State Dept. of Transp., supra*, 1028.)

In *Ziemba v. City of Troy* (*supra*), The Appellate Division, Third Department, held that the issuance of a demolition permit for historic buildings was a ministerial act pursuant to SEQRA, since the discretion allowed by the city code in issuing a demolition permit was limited to a narrow set of criteria that were unrelated to environmental concerns that an EIS statement would address. The issuance of the demolition permit was based on an applicant's compliance with predetermined statutory criteria concerning safety and was not based on the potential impact of the demolition on the environment.

*Filmways Communications of Syracuse, Inc. v. Douglas* (*supra*), *Incorporated Village of Atlantic Beach v. Gavalas* (*supra*), *Island Park, LLC v. New York State Dept. of Transp.* (*supra*), and *Ziemba v. City of Troy* (*supra*) guide this court to the conclusion that DEC had a rational basis in fact and law for classifying the issuance of an initial permit to TC Ravenswood as a ministerial act not subject to SEQRA review. While ECL §15-1501(9) does state that DEC "shall issue an initial permit, subject to appropriate terms and conditions as required under this article," the statute does not give the agency the type and breadth of discretion which would allow permit grant or denial to be based on environmental concerns detailed in an EIS. (See, *Incorporated Village of Atlantic Beach v. Gavalas, supra*; *Island Park, LLC v. New York State Dept. of Transp., supra*.) The statute



left DEC with only one course of action regarding Ravenswood – the issuance of a permit allowing the facility to withdraw water from the East River at existing volumes. The statute does not vest DEC with the discretion to in effect compel TC Ravenswood to switch to a closed cycle cooling system using lower water volumes because of information contained in an EIS.

In the case at bar, the 2011 amendments to the Environmental Conservation Law and the implementing regulations did not leave DEC with the discretion to refuse TC Ravenswood an initial permit. The Memorandum in Support of Assembly Bill 5318-A made it clear that the statute " would be amended to: \*\*\* (3) provide that existing water withdrawals would be entitled to an initial permit \*\*\*." (Emphasis added.) ECL §15-1501, "Water Withdrawals, permit," provides in relevant part that "The department shall issue an initial permit \*\*\* for the maximum water withdrawal capacity reported to the department pursuant to the requirements of title sixteen or title thirty-three of this article on or before February fifteenth, two thousand twelve." (Emphasis added.) The statute even denied DEC the discretion to change the "maximum water withdrawal capacity," and DEC regulation 6 NYCRR 601.7, "Initial permits," is consistent with the statute on that point. Whatever information DEC could have obtained from conducting an environmental review could not have affected its decision to issue or deny an initial permit to TC Ravenswood. (See, *Filmways Communications of Syracuse, Inc. v. Douglas*, *supra*.) The Environmental Conservation Law and implementing regulations did not leave DEC with a "latitude of choice." (See, *Filmways Communications of Syracuse, Inc. v. Douglas* *supra*, 186.) The DEC had to issue the initial permit to TC Ravenswood on the basis of statutory specifications regardless of environmental concerns (see, *Ziemba v. City of Troy*, *supra*) which, if met, as TC Ravenswood did, established that it was "entitled" to the permit. (See, *Incorporated Village of Atlantic Beach v. Gavalas*, *supra*.)

The petitioners argue that DEC had broad discretion to specify the terms and conditions of all water withdrawal permits, including initial permits, pursuant to ECL §15-1503, "Permits," which establishes various criteria for the issuance of permits such as "2f. the proposed water withdrawal will be implemented in a manner to ensure it will result in no significant individual or cumulative adverse impacts on the quantity or quality of the water source and water dependent natural resources \*\*\*." However, ECL §15-1501(9) is the more specific and applicable statute, and it is a rule of statutory construction that a general provision yields to a specific provision. (*Ford v. New York State Racing and Wagering Bd.*, 107 AD3d 1071.) Furthermore,

DEC did not interpret the ECL as authorizing it to issue initial permits based on broad environmental concerns, and the interpretation that an administrative agency with expertise places upon a statutory and regulatory scheme is entitled to judicial deference. (See, *LMK Psychological Services, P.C. v. State Farm Mut. Auto. Ins. Co.*, 12 NY3d 217; *Samiento v. World Yacht Inc.*, 10 NY3d 70; *Nestle Waters North America, Inc. v. City of New York*, - AD3d -, 990 NYS2d 512; ) "It is well settled that the construction given statutes and regulations by the agency responsible for their \*\*\*administration, if not irrational or unreasonable, should be upheld." (*Howard v. Wyman*, 28 NY2d 434, 438; *Samiento v. World Yacht Inc.*, *supra*.)

Contrary to the petitioner's contention, the issuance of an initial permit to TC Ravenswood by DEC without conducting an "assessment" did not violate New York State's Waterfront Revitalization of Coastal Areas and Inland Waterway Act (Executive Law, Article 42) and related acts. The issuance of an initial permit to TC Ravenswood was a Type II action, not a Type I action. The regulations issued under SEQRA and the Waterfront Act provide that an action is not subject to review under the Waterfront Act if it is not subject to review under SEQRA. (See, 6 NYCRR 617.6[a][5]; 19 NYCRR §600.2[b].) The issuance of an initial permit is a ministerial act not subject to review under either SEQRA or the Waterfront Act.

Accordingly, the petition is denied.

Settle judgment.

Dated: Long Island City, N.Y.  
October 1, 2014


  
\_\_\_\_\_  
ROBERT J. McDONALD  
J.S.C.

EXHIBIT E — TRIAL COURT ORDER IN SIERRA CLUB V. MARTENS ET AL.,  
 INDEX NO. 02949/2014 (N.Y. SUP. CT., QUEENS CTY), OCTOBER 2, 2014 [A-970 -  
 A-971]

SHORT FORM ORDER

NEW YORK SUPREME COURT : QUEENS COUNTY

P R E S E N T.: HON. ROBERT J. McDONALD IAS PART 34  
 Justice

- - - - - x

SIERRA CLUB  
 85 Second Street, 2<sup>nd</sup> Floor San  
 Francisco, California 94105

Index No.: 2949/14

Motion Date: 5/9/14

HUDSON RIVER FISHERMAN'S ASSOCIATION,  
 NEW JERSEY CHAPTER, INC.  
 P.O. Box 421  
 Cresskill, New Jersey 07626

Motion No.: 92

Motion Seq.: 2

Petitioners,

For a Judgment Pursuant to Article 78  
 of the Civil Practice Law and Rules,

- against -

JOSEPH MARTENS, COMMISSIONER, NEW YORK  
 STATE DEPARTMENT OF ENVIRONMENTAL  
 CONSERVATION  
 625 Broadway Albany, NY 12233-1011,

Respondents,

TRANS CANADA RAVENSWOOD LLC  
 38-54 Vernon Boulevard  
 Long Island City, NY 11101,

Necessary Party.

- - - - - x

The following papers numbered 1 to 8 read on this motion by  
 respondent Trans Canada Ravenswood, LLC for an order pursuant  
 to CPLR 404, 406, 7804(f), and 3211(a) dismissing the petition

Papers  
Numbered

|  |     |
|--|-----|
| Notice of Motion - Affidavits - Exhibits | 1-3 |
| Answering Affidavits - Exhibits          | 4-6 |
| Reply Affidavits      Memoranda of Law   | 7-8 |

Upon the foregoing papers it is ordered that those branches of the motion which are for an order dismissing the petition on procedural grounds are denied. The court notes that petitioner Sierra Club and petitioner Hudson River Fishermen's Association have standing to maintain this Article 78 proceeding. (See, *Save the Pine Bush, Inc. v. Common Council of City of Albany*, 13 NY3d 297; *Protect the Adirondacks Inc. v. Adirondack Park Agency*, 121 AD3d 63.) That branch of the motion which is deemed to be for summary judgment is granted. (See the memorandum rendered on the petition.) The court notes that "objections in point of law" referred to in CPLR 7804(f) are threshold objections of the kind listed in CPLR 3211(a) which can be dispositive of the case without reaching the merits. (See, *Matter of Hop-Wah v. Coughlin*, 118 AD2d 275, revd. on other grounds 69 NY2d 791; Siegel, *New York Practice* § 567, at 979 [4th ed.]). "CPLR article 78 proceedings are summary in nature (see CPLR 409 [b]; *Matter of Lakeshore Nursing Home v. Axelrod*, 181 A.D.2d 333, 340) and, thus, a motion for summary judgment addressed to the merits of the petition is unnecessary."

Dated: Long Island City, NY  
October 2, 2014



ROBERT J. McDONALD  
J.S.C.

EXHIBIT F — TRIAL COURT JUDGMENT IN SIERRA CLUB V. MARTENS ET AL.,  
INDEX NO. 02949/2014 (N.Y. SUP. CT., QUEENS CTY), NOVEMBER 25, 2014 [A-972 -  
A-976]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

In the Matter of the Application of

**SIERRA CLUB, and HUDSON RIVER  
FISHERMEN'S ASSOCIATION, NEW JERSEY  
CHAPTER, INC.,**

Petitioners,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules

-against-

**JOSEPH MARTENS, COMMISSIONER, NEW  
YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION,**

Respondent,

**TRANSCANADA RAVENSWOOD LLC,**

Necessary Party.

**NOTICE OF ENTRY**  
Index No. 002949/2014

Hon. Robert J. McDonald

**PLEASE TAKE NOTICE** that a Judgment, of which the attached is a copy, was issued by the  
Hon. Robert J. McDonald, on November 25, 2014, and entered in the Office of the Clerk of the County of  
Queens on December 10, 2014.

DATED: December 18, 2014

**ERIC T. SCHNEIDERMAN**  
Attorney General of State of New York  
Attorney for Respondent

By: *Laura Heslin*  
Laura Heslin  
Assistant Attorney General  
Office of the New York State Attorney General  
120 Broadway, 26th Floor  
New York, New York 10271  
(212) 416-6091

**Notice Of Entry Addressed To:**

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Yvonne E. Hennessey, Esq.  
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Albany, New York 12207  
Telephone: (518) 429-4200  
*Counsel for Necessary Party, TC Ravenswood.*

At I.A.S. Part 34 of the Supreme  
Court, State of New York  
Held in and for the County of  
Queens, at the Supreme Court, 25-10  
Court Square, Courtroom 304 Long  
Island City, New York, 11101  
on the 25 day of November 2014.

Present: HON. ROBERT J. McDONALD

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS  
In the Matter of the Application of

SIERRA CLUB and the HUDSON RIVER  
FISHERMEN'S ASSOCIATION NEW JERSEY  
CHAPTER, INC.,

Petitioners,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Laws and Rules

-against-

JOSEPH MARTENS, COMMISSIONER,  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION,

Respondent,

T.C. RAVENSWOOD L.L.C.,

Necessary Party.

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Index No. 2949-14

PETITIONERS  
PROPOSED JUDGMENT

FILED & RECORDED

DEC 10 2014

COUNTY CLERK,  
QUEENS COUNTY

WHEREAS, petitioners SIERRA CLUB and HUDSON RIVER FISHERMAN'S  
ASSOCIATION, NEW JERSEY CHAPTER, INC., filed a notice of petition and verified petition  
pursuant to CPLR Article 78 on February 26, 2014, and served and filed in support of the  
petition a memorandum of law dated March 21, 2014, the affirmation of Rachel Treichler in  
support of the memorandum of law, with exhibits, sworn to on March 21, 2014, the affidavit of  
Roger Downs, with exhibits, sworn to on March 21, 2014, the affidavit of Gilbert Hawkins, with  
exhibits, sworn to on March 21, 2014; and



WHEREAS, respondent JOSEPH MARTENS, COMMISSIONER, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION ("DEC"), opposed the petition by serving and filing a verified answer dated April 24, 2014, memorandum of law dated April 24, 2014, and an administrative record certified on March 13, 2014, and served and filed in support of the verified answer the affidavit of Roy A. Jacobson, Jr., with exhibits, sworn to on April 24, 2014, and the affidavit of Kent P. Sanders, with exhibits, sworn to on April 24, 2014; and

WHEREAS, necessary party TRANS CANADA RAVENSWOOD LLC, opposed the petition by serving and filing a notice of motion to dismiss dated April 24, 2014, and a memorandum of law dated April 24, 2014, and served and filed the affirmation of Yvonne E. Hennessey, Esq., with exhibits, sworn to on April 24, 2014 and the affidavit of Daniel O'Donnell, with exhibits, sworn to on April 23, 2014, in support of the motion to dismiss; and

WHEREAS, petitioners SIERRA CLUB and HUDSON RIVER FISHERMAN'S ASSOCIATION, NEW JERSEY CHAPTER, INC., filed in support of the petition a reply memorandum of law dated May 8, 2014, and the affirmation of Rachel Treichler in support of the reply memorandum of law, with exhibits, sworn to on May 8, 2014; and

WHEREAS, the Court, upon consideration of all the pleadings filed, issued a decision dated October 1, 2014, a copy of which is attached hereto and incorporated herein, denying the petition; and

WHEREAS, the Court, upon consideration of all the papers filed with respect to Necessary Party TRANS CANADA RAVENSWOOD LLC's motion to dismiss, issued a decision dated October 2, 2014, a copy of which is attached hereto and incorporated herein.




wherein it found, based upon the October 1, 2014 decision rendered on the petition, that the  
"branch of the motion which is deemed to be for summary judgment is granted;" and

NOW, THEREFORE, it is hereby

ADJUDGED that the verified petition is denied and the proceeding is dismissed on the  
merits according to the decision dated October 1, 2014 and the decision dated October 2, 2014,  
with no restitution, damages or costs awarded to either side.

DATED: Long Island City, New York  
November 25, 2014

  
\_\_\_\_\_  
Honorable Robert J. McDonald, J.S.C.

Judgment entered this 10<sup>th</sup> day  
of DECEMBER, 2014

  
\_\_\_\_\_  
CLERK OF COURT

FILED & RECORDED

DEC 10 2014

COUNTY CLERK  
QUEENS COUNTY

|                                  |
|----------------------------------|
| ENTERED                          |
| <u>1:20</u> AM/PM                |
| DEC 10 2014                      |
| COUNTY CLERK<br>COUNTY OF QUEENS |

EXHIBIT G — OPINION AND ORDER, SIERRA CLUB V. MARTENS ET AL.,  
DKT. NO. 2015-02317 (2D DEP'T), JANUARY 10, 2018 [A-977 - A-987]

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION SECOND DEPARTMENT

In the Matter of the Application of

SIERRA CLUB and the HUDSON RIVER  
FISHERMEN'S ASSOCIATION NEW JERSEY  
CHAPTER, INC.,

Petitioners-Appellants

For a Judgment Pursuant to Article 78 of the  
Civil Practice Laws and Rules

-against-

JOSEPH MARTENS, COMMISSIONER,  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION,

Respondent-Respondent

TRANS CANADA RAVENSWOOD LLC,

Necessary Party-Respondent

NOTICE OF ENTRY

Queens County  
Index No. 2949-14

Appellate Division  
Docket No.: 2015-02317

PLEASE TAKE NOTICE that the attached document is a true and correct copy of the  
Opinion and Order of the Appellate Division of the Supreme Court in the Second Judicial  
Department entered on January 10, 2018.

DATED: Hammondsport, New York  
May 29, 2018

By:   
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*Attorneys for Petitioners-Appellants*

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*Attorneys for Respondent-Respondent, Joseph  
Martens, Commissioner, New York State  
Department of Environmental Conservation*

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D53268  
C/htr

\_\_\_\_AD3d\_\_\_\_

Argued - February 6, 2017

L. PRISCILLA HALL, J.P.  
 LEONARD B. AUSTIN  
 SANDRA L. SGROI  
 FRANCESCA E. CONNOLLY, JJ.

2015-02317

OPINION & ORDER

In the Matter of Sierra Club, et al.,  
 appellants, v Joseph Martens, Commissioner, New  
 York State Department of Environmental Conservation,  
 et al., respondents.

(Index No. 2949/14)

APPEAL by the petitioners, in a proceeding pursuant to CPLR article 78 to review a determination of the New York State Department of Environmental Conservation dated November 15, 2013, as amended March 7, 2014, which granted the application of the respondent Trans Canada Ravenswood, LLC, for a water withdrawal permit pursuant to Environmental Conservation Law § 15-1501(9), from a judgment of the Supreme Court (Robert J. McDonald, J.), entered December 10, 2014, in Queens County, which, upon decisions of the same court dated October 1, 2014, and October 2, 2014, respectively, denied the petition and dismissed the proceeding

Lippes & Lippes, Buffalo, NY (Richard J. Lippes of counsel), Rachel Treichler, Hammondsport, NY, Gary Abraham, Allegany, NY, and Jonathan L. Geballe, New York, NY, for appellants (one brief filed).

Eric T. Schneiderman, Attorney General, New York, NY (Anisha S. Dasgupta and Bethany A. Davis Noll of counsel), for respondent Joseph Martens, Commissioner, New York State Department of Environmental Conservation.

Barclay Damon, LLP, Albany, NY (Yvonne E. Hennessey, Danielle E. Mettler-LaFeir, and Laura L. Mona of counsel), for respondent Trans Canada Ravenswood,

LLC.

CONNOLLY, J.

We hold that the issuance of an “initial permit” for making water withdrawals pursuant to Environmental Conservation Law § 15-1501(9) is not a ministerial act that is excluded from the definition of “action” under the State Environmental Quality Review Act (hereinafter SEQRA; *see* ECL 8-0105[5][ii]).

I

The respondent Trans Canada Ravenswood, LLC (hereinafter TC Ravenswood), operates the Ravenswood thermoelectric generating station (hereinafter Ravenswood Station or the station) in Long Island City, Queens, which produces energy for the City of New York. In connection with electrical generation by three of the station’s four steam generators, Ravenswood Station withdraws large amounts of water from the East River to cool the station’s boiler equipment, turbines, and auxiliary equipment. The water is used only once and then discharged back into the East River. This “once-through cooling” system is the original cooling system that has been used by Ravenswood Station since it began operating in 1963. The station’s fourth generator uses a multi-celled air-cooled condenser system that does not require the withdrawal of water from the river. When operating at full load, the station has a maximum withdrawal capacity of 1.5 billion gallons of water per day, although the actual amount of water used to operate the station is typically less, and varies depending upon the station’s operating needs. This sizable water withdrawal has environmental consequences, most notably to fish and other local aquatic life. When the cooling water is drawn in, larger fish are killed when they become “impinged” on the screens that cover the intake structures to prevent debris in the water from entering. Juvenile fish, larvae, and eggs that are small enough to pass through the intake screens are killed when they become “entrained” in the cooling system. Additionally, the discharge of heated water back into the East River also has an impact on the aquatic environment. In the early 1990s, studies by ConEdison, the station’s prior owner, demonstrated that, each year, approximately 83,000 fish became impinged and an average of 220 million eggs, larvae, and juvenile fish became entrained by the station’s cooling system. Technology installed at the station in 2005 reduced annual impingement to approximately 25,000 fish and entrainment to 150 million organisms and eggs. Additional measures implemented in 2012

resulted in further reductions in impingement and entrainment.

## II

Since the 1970s, Ravenswood Station has been regulated by the Federal Clean Water Act (*see* 33 USC § 1251 *et seq.*), and required to maintain a State Pollutant Discharge Elimination System (hereinafter SPDES) discharge permit (*see* ECL 17-0801 *et seq.*; *see also* 33 USC § 1342[b]). The SPDES permitting system, which the New York State Department of Environmental Conservation (hereinafter the DEC) administers at the state level, regulates the discharge of pollutants from point sources (*see* 33 USC § 1311[a]). With respect to cooling water intake structures, the Clean Water Act provides that effluent standards for discharges “shall require that the location, design, construction, and capacity of cooling water intake structures reflect the *best technology available* for minimizing adverse environmental impact” (33 USC § 1326[b] [emphasis added]). “Best technology available,” or “BTA,” is a standard of performance established through detailed regulations promulgated by the United States Environmental Protection Agency (40 CFR 125.94[a]; *see Entergy Corp. v Riverkeeper, Inc.*, 556 US 208). The Clean Water Act expressly provides that states may adopt and enforce more stringent effluent limitations or standards of performance than required by federal law (*see* 33 USC § 1370; *Islander E. Pipeline Co., LLC v Connecticut Dept. of Env’tl. Protection*, 482 F3d 79, 90 n 9 [2d Cir]).

While the SPDES permitting system generally authorized the DEC to regulate entities that *discharge* into water, under prior law (*see* former ECL 15-1501), the DEC also had separate authority to regulate *withdrawals* of water, i.e., the removal or taking of water from the waters of the state, but only with respect to withdrawals made by public water suppliers (*see* Assembly Sponsor’s Mem in Support, Bill Jacket, L 2011, ch 401; *see also* ECL 15-1502[16]). However, the “*consumptive* uses of water for agricultural, commercial, and industrial purposes remain[ed] largely unregulated” (Assembly Sponsor’s Mem in Support, Bill Jacket, L 2011, ch 401 [emphasis added]). Neighboring states, including “Connecticut, New Jersey, Rhode Island, and Massachusetts all ha[d] programs that regulate[d] industrial, commercial and agricultural water withdrawals” (*id.*; *see* Conn Gen Stat §§ 22a-365 to 22a-379; NJ Stat § 58:1A-1 *et seq.*; RI Gen Laws tit 46, ch 15.7; Mass Gen Laws ch 21G).

Accordingly, in 2011, the State Legislature amended ECL article 15 by enacting the Water Resources Protection Act (*see* ECL 15-1501 *et seq.* [hereinafter the WRPA]), which directed



the DEC to implement a water withdrawal permitting program to regulate the use of the state's water resources. Pursuant to the WRPA, all commercial and industrial operators of water withdrawal systems with a capacity to withdraw more than 100,000 gallons per day are required to obtain a water withdrawal permit (*see* ECL 15-1501[1]; 15-1502[14]). Applicants for water withdrawal permits are required to submit a "proposed near term and long range water conservation program that incorporates environmentally sound and economically feasible water conservation measures" (ECL 15-1503[1][f]). The DEC has the power to grant or deny a permit, or to grant a permit with conditions, and in doing so, must consider a number of statutory factors, including whether "the proposed water withdrawal will be implemented in a manner to ensure it will result in no significant individual or cumulative adverse impacts on the quantity or quality of the water source and water dependent natural resources," and whether "the proposed water withdrawal will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures" (ECL 15-1503[2][f], [g]).

As pertinent to this appeal, with respect to existing operators of water withdrawal systems, the WRPA provides for the issuance of an "initial permit" based upon an operator's self-reported "maximum water withdrawal capacity" prior to the statute's effective date (ECL 15-1501[9]). Specifically, the statute states: "[the DEC] *shall issue* an initial permit, *subject to appropriate terms and conditions as required under this article*, to any person not exempt from the permitting requirements of this section, for the maximum water withdrawal capacity reported to [the DEC] . . . on or before February [15, 2012]" (ECL 15-1501[9] [emphasis added]; *see* 6 NYCRR 601.7[d]). The DEC's regulations implementing the WRPA state that an "initial permit . . . includes all terms and conditions of a water withdrawal permit, including environmentally sound and economically feasible water conservation measures to promote the efficient use of supplies, and is subject to modification, suspension and revocation" (6 NYCRR 601.7[e]).

### III

In order to comply with the WRPA, in 2013, TC Ravenswood applied for an initial permit. The DEC determined that the permit application was not subject to SEQRA. In response to public comments that the application should be reclassified as a Type I action under SEQRA, the DEC asserted that the issuance of the permit was ministerial, because it "has no discretion but to issue 'initial permits' for the amount of the water withdrawals for users that were in operation and

properly reported their withdrawals to [the DEC] as of February 15, 2012.” On November 15, 2013, the DEC issued TC Ravenswood an initial permit authorizing the withdrawal of 1.39 billion gallons of water per day. The initial permit incorporated monitoring requirements from TC Ravenswood’s SPDES permit, and imposed several additional conditions related to the installation of meters and the collection of data regarding water withdrawals. Subsequent to the issuance of the initial permit, the DEC amended the initial permit to authorize the withdrawal of just over 1.5 billion gallons of water per day.

The petitioners, who are nonprofit organizations dedicated to the protection of the environment and conservation of water resources, commenced this proceeding pursuant to CPLR article 78, arguing that the DEC erroneously classified the issuance of the permit as a ministerial action not subject to SEQRA. The Supreme Court denied the petition and dismissed the proceeding, concluding that the WRPA and its implementing regulations did not leave the DEC with any discretion to deny TC Ravenswood an initial permit, and that it was thus required to issue the initial permit regardless of environmental concerns. The petitioners appeal, and we reverse.

#### IV

“In a CPLR article 78 proceeding to review a determination of an administrative agency, the standard of judicial review is whether the determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion” (*Matter of Wilson v New York City Dept. of Hous. Preserv. & Dev.*, 145 AD3d 905, 907; *see* CPLR 7803[3]). For the reasons that follow, we find that the issuance of an initial permit pursuant to ECL 15-1501(9) is not a ministerial act and, therefore, the DEC’s determination was affected by an error of law (*see* CPLR 7803[3]; *Matter of 149 Glen St. Corp. v Jefferson*, 140 AD3d 742, 743; *cf. Matter of Long Is. Pine Barrens Socy., Inc. v Central Pine Barrens Joint Planning & Policy Commn.*, 138 AD3d 996, 998).

“SEQRA’s fundamental policy is to inject environmental considerations directly into governmental decision making; thus the statute mandates that ‘[social], economic, and environmental factors shall be considered together in reaching decisions on proposed activities’” (*Matter of Coca-Cola Bottling Co. of N.Y. v Board of Estimate of City of N.Y.*, 72 NY2d 674, 679, quoting ECL 8-0103[7]). “The procedures necessary to fulfill SEQRA review are carefully detailed



in the statute and its implementing regulations, and [courts] have recognized the need for strict compliance with SEQRA requirements” (*Matter of City Council of City of Watervliet v Town Bd. of Town of Colonie*, 3 NY3d 508, 515 [citations omitted]; see *Matter of King v Saratoga County Bd. of Supervisors*, 89 NY2d 341, 347).

“To promote the Legislature’s goals, and to provide an informational tool to aid in the decision-making process, SEQRA requires agencies to prepare an [environmental impact statement] ‘on any *action* they propose or approve which may have a significant effect on the environment’” (*Incorporated Vil. of Atl. Beach v Gavalas*, 81 NY2d 322, 325, quoting ECL 8-0109[2]). “[SEQRA] broadly defines the term ‘action’ to include projects or activities that the agency either directly undertakes or funds, policy and procedure-making and *the issuance of permits, licenses or leases*” (*Incorporated Vil. of Atl. Beach v Gavalas*, 81 NY2d at 325 [emphasis added]; see ECL 8-0105[4]). When undertaking an action, a governmental agency (or designated “lead agency” where more than one agency is involved in the decision-making process) must initially determine whether a proposed action “may have a significant effect on the environment” (*Matter of Coca-Cola Bottling Co. of N.Y. v Board of Estimate of City of N.Y.*, 72 NY2d at 680; see ECL 8-0109[2]; see also ECL 8-0111[6]). “If no significant effect is found, the lead agency may issue a ‘negative declaration,’ identifying areas of environmental concern, and providing a reasoned elaboration explaining why the proposed action will not significantly affect the environment” (*Matter of Coca-Cola Bottling Co. of N.Y. v Board of Estimate of City of N.Y.*, 72 NY2d at 680; see 6 NYCRR former 617.6[g]). However, “[i]f the lead agency determines that there may be significant environmental impact, it must see to it that an environmental impact statement [hereinafter EIS] is prepared, which fully evaluates the potential environmental effects, assesses mitigation measures, and considers alternatives to the proposed action” (*Matter of Coca-Cola Bottling Co. of N.Y. v Board of Estimate of City of N.Y.*, 72 NY2d at 680; see ECL 8-0109[2], [4]).

To assist agencies in determining whether a proposed action may have a significant effect on the environment, SEQRA directs the DEC to promulgate regulations identifying, inter alia, “[a]ctions or classes of actions that are likely to require preparation of environmental impact statements,” and “[a]ctions or classes of actions which have been determined not to have a significant effect on the environment and which do not require environmental impact statements” (ECL 8-0113[2][c]). In furtherance of this mandate, the DEC classifies actions as Type I, Type II,

or Unlisted (*see Matter of South Bronx United v New York City Indus. Dev. Agency*, 115 AD3d 607, 609 n 4). “[A] Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS” (6 NYCRR 617.4[a][1]). Type II “actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under [SEQRA]” (6 NYCRR 617.5[a]). “[A]ll remaining actions are classified as ‘unlisted’ actions” (*Matter of City Council of City of Watervliet v Town Bd. of Town of Colonie*, 3 NY3d at 518 n 8). “Type I and unlisted actions are subject to SEQRA review, and Type I actions ‘are more likely to require the preparation of an EIS than Unlisted actions’” (*id.*, quoting 6 NYCRR 617.4[a]).

As relevant to the case at bar, the DEC classifies “a project or action that would use ground or surface water in excess of 2,000,000 gallons per day” as a Type I action (6 NYCRR 617.4[b][6][ii]). Ravenswood Station has the capacity to withdraw over 1.5 billion gallons of water per day, an amount approximately 750 times greater than the DEC’s Type I threshold.

However, SEQRA also expressly excludes from the definition of “action,” “official acts of a ministerial nature, involving no exercise of discretion” (ECL 8-0105[5][ii]). The DEC construes the words “shall issue” in ECL 15-1501(9) to mean that the issuance of an initial permit to an existing operator is mandatory and involves no agency discretion, and is, therefore, a ministerial act. The petitioners argue that the words “subject to appropriate terms and conditions as required under this article” in ECL 15-1501(9) give the DEC the discretion to impose conditions on the initial permit and, therefore, the issuance of an initial permit is not excluded from the definition of “action” under SEQRA. We agree with the petitioners’ interpretation of the statute.

Whether a particular action is ministerial or discretionary depends upon the underlying statute or regulatory scheme (*see Incorporated Vil. of Atl. Beach v Gavalas*, 81 NY2d at 325; *Matter of Ziemba v City of Troy*, 37 AD3d 68, 73). “Discretionary or quasi-judicial acts involve the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result” (*Tango v Tulevech*, 61 NY2d 34, 41; *see Matter of Filmways Communications of Syracuse v Douglas*, 106 AD2d 185, 186, *aff’d* 65 NY2d 878). Generally, determinations that involve an agency’s expertise, the application of law, and exercise of judgment are nonministerial (*see New York Civ. Liberties Union v State of New York*, 4 NY3d 175, 184; *Tango v Tulevech*, 61

NY2d 34, 41; *see also Tarter v State of New York*, 68 NY2d 511, 518-519). “[W]hen an agency has some discretion, but that discretion is circumscribed by a narrow set of criteria which do not bear any relationship to the environmental concerns that may be raised in an EIS, its decisions will not be considered ‘actions’ for purposes of SEQRA’s EIS requirements” (*Incorporated Vil. of Atlantic Beach v Gavalas*, 81 NY2d at 326).

Here, while ECL 15-1501(9) states that the DEC “shall issue” an initial permit to an existing operator for its self-reported maximum water withdrawal capacity, the statute provides that such initial permit is “subject to appropriate terms and conditions as required under this article.” Notably, the WRPA specifically provides the DEC with the power “to grant or deny a permit or to grant a permit *with conditions*” (ECL 15-1503[2] [emphasis added]). The statutory factors that the DEC is required to consider when reviewing an application and imposing conditions on the permittee do not lend themselves to mechanical application. For instance, whether “the proposed water withdrawal will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures” (ECL 15-1503[2][g]) will almost certainly vary from operator to operator, or from water source to water source. The DEC’s own regulations state that an “initial permit” must include “environmentally sound and economically feasible water conservation measures to promote the efficient use of supplies” (6 NYCRR 601.7[e]). Whether a condition is “appropriate” for a given operator is a matter that falls within the DEC’s expertise and involves the exercise of judgment, and, therefore, implicates matters of discretion (*see New York Civ. Liberties Union v State of New York*, 4 NY3d at 184; *Tango v Tulevech*, 61 NY2d at 41; *see also Tarter v State of New York*, 68 NY2d at 518-519).

While ECL 15-1501(9) may be mandatory with respect to the maximum volume of water an operator receiving an initial permit is authorized to withdraw, i.e., its pre-WRPA maximum withdrawal capacity, the statute clearly authorizes the DEC to act in a discretionary manner with respect to the imposition of “appropriate terms and conditions as required under [ECL article 15].” Thus, while the phrase “shall issue” implies a nondiscretionary act, “[s]tatutory language, however strong, must yield to what appears to be intention and that is to be found not in the words of a particular section alone but by comparing it with other parts or provisions of the general scheme of which it is part” (McKinney’s Cons Laws of NY, Book I, Statutes § 97, Comment at 213 [1971 ed]).

In light of our determination, the parties’ remaining contentions have been rendered

academic.

Accordingly, the initial permit, as amended, must be annulled, and the matter remitted to the DEC for further proceedings on TC Ravenswood's permit application in accordance with SEQRA. Therefore, the judgment is reversed, on the law, that branch of the petition which was to annul the determination dated November 15, 2013, as amended March 7, 2014, is granted, the petition is otherwise denied as academic, and the matter is remitted to the DEC for further proceedings in accordance herewith.

HALL, J.P., AUSTIN and SGROI, JJ., concur.

ORDERED that the judgment is reversed, on the law, with one bill of costs, that branch of the petition which was to annul the determination dated November 15, 2013, as amended March 7, 2014, is granted, the petition is otherwise denied as academic, and the matter is remitted to the New York State Department of Environmental Conservation for further proceedings in accordance herewith.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court

EXHIBIT H — WIND POWER ETHICS GROUP V. PLANNING BD. OF TOWN OF  
CAPE VINCENT, NO. 2010-2882 (SUP. CT., JEFFERSON CNTY., JAN. 26, 2011) [A-988 -  
A-994]

At a Term of Supreme Court held in  
and for the County of Jefferson,  
in the City of Watertown, New York  
on the 13<sup>th</sup> day of January, 2011.

H PRESENT: HONORABLE HUGH A. GILBERT  
Supreme Court Justice

STATE OF NEW YORK

SUPREME COURT COUNTY OF JEFFERSON

WIND POWER ETHICS GROUP,

Petitioner-Plaintiff,

- vs -

A  
PLANNING BOARD OF THE TOWN OF CAPE  
VINCENT, and RICHARD EDSALL, TOM RIENBECK,  
GEORGE MINGLE, ANDREW BINSLEY and  
KAREN BOURCY, in their capacities as planning  
board members,

Respondents-Defendants,

-and-

ST. LAWRENCE WINDPOWER, LLC,

Respondent-Defendant.

MEMORANDUM  
DECISION AND ORDER

Index No. 2010-2882

RJI No. 22-10-0990

Article 78 of the New York Civil Practice Law and Rules provides an  
expeditious and essentially uniform procedure for judicial review of challenges to  
action or inaction by agencies and officers of State and local government. The  
challenges asserted by the Wind Power Ethics Group stem from a State law

involving environmental review.

Article 8 of the New York Environmental Conservation Law is entitled "Environmental Quality Review". Commonly known as the State Environmental Quality Review Act or SEQRA, it and its implementing regulations establish a procedure framework designed to incorporate the consideration of environmental factors into the existing planning, review and decision-making process of State, regional and local government agencies at the earliest possible time so as to minimize to the greatest degree possible the adverse environmental consequences of any project that is approved. ***Aldrich vs. Pattison***, 107 AD2d 258, 263 (1985). SEQRA and its implementing regulations require agencies to act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects. ECL 8-0109 (1); ***E.F.S. Ventures Corp. vs. Foster***, 128 AD2d 28, 34 (1987). The record must establish that Respondents complied, both procedurally and substantively, with the provisions of the State Environmental Quality Review Act (ECL Article 8). ***McCaffrey vs. Board of Estimate***, 130 AD2d 465 (1987).

Challenges involving a failure to follow SEQRA are maintainable in an Article 78 proceeding. ***Matter of Save the Pine Bush vs. Planning Bd. of City of***

*Albany*, 70 NY2d 193, 203 (1987). It is not the role of the Court to weigh the desirability of any action or choose among alternatives, however, but to assure that the agency itself has satisfied SEQRA procedurally and substantively. *Akpan vs. Koch*, 152 AD2d 113, 118 (1989).

Entitling itself as a Petitioner-Plaintiff this Wind Power Ethics Group files an October 26, 2010 Petition and Complaint in which (1) a first cause of action asserts a failure to take a "hard look" at potential environmental impact; (2) a second cause of action of a failure to undertake "coordinated review" pursuant to SEQRA; (3) a third cause of action of failure to consider public comments pursuant to SEQRA; (4) a fourth cause of action of failure to consider cumulative impacts; (5) a fifth cause of action of conflict of interest violations; and (6) a sixth cause of action of violations of the Town of Cape Vincent Code of Ethics.

In its judicial review of an agency's substantive determination on environmental matters, without determining the merits of the project, the Court is obliged to determine whether the agency has complied with the applicable law, identified the relevant areas of environmental concern, taken a "hard look" at them and made a reasoned elaboration of the basis for its determinations. *Matter of Jackson vs. New York State Urban Dev. Corp.*, 110 AD2d 304, 308-309 (1985), affirmed 67 NY2d 400 (1986).

Therefore, one of the pre-requisites is that the local agency take a "hard look" at the relevant areas of environmental concern. ***E.F.S. Ventures Corp. vs. Foster***, 128 AD2d 28, 38 (1987); reversed on other grounds 71 NY2d 359, 367 (1988); ***Matter of Briarwood Community Assoc. vs. City of New York***, 147 AD2d 639, 639-640 (1989). The "hard look" standard does not authorize a Court to conduct a detailed de novo analysis of every environmental impact of, or alternative to, a proposed project which was included in, or omitted from, an environmental impact statement. ***Matter of Schiff vs. Board of Estimate of City of N.Y.***, 122 AD2d 57, 59 (1986). The issue is whether a "hard look" was taken. ***Matter of Main Seneca Corp. vs. Erie County Indus. Dev. Agency***, 125 AD2d 930, 931 (1986). The issue is whether the administrative agency made a thorough investigation of the problems involved and reasonably exercised its discretion. ***Matter of New Scotland Ave. Neighborhood Assn. vs. Planning Bd. of City of Albany***, 142 AD2d 257, 263 (1988). Before an agency has made a finding of nonsignificance pursuant to SEQRA, has it identified the relevant areas of environmental concern, taken a "hard look" at them, and made a reasoned elaboration for the basis of its declaration? ***Matter of Fernandez vs. Planning Bd. Of Vil. of Pomona***, 122 AD2d 139, 140-141 (1986).

The determination of the Planning Board of the Town of Cape Vincent being challenged is a September 15, 2010 Resolution adopting and accepting the



statement of SEQRA findings by a vote of 3-0 with two abstentions. This Court concurs with Respondents that the abstentions negate any potential of conflict or ethics that may have been asserted in the Fifth and Sixth causes of action of the Petition and Complaint. A review of the one hundred fourteen (114) page statement of SEQRA findings attached to the Resolution and incorporated therein by reference, the contents of the four bankers' boxes of records and proceedings submitted to the Court and the persuasive legal and factual arguments by counsel for Respondents establishes to this Court that the requisite environmental SEQRA review was undertaken and completed.

Furthermore, Respondents here raised a significant and fatal issue concerning Petitioner's standing to pursue the SEQRA claims. Wind Power Ethics Group is the only Petitioner in this proceeding. No individual members were named or joined. In order to establish that it has the requisite organizational standing, Wind Power Ethics Group was required to establish "that at least one of its members would have standing to sue, that it is representative of the organizational purposes it asserts and that the case would not require the participation of individual members." ***New York Association of Nurse Anesthetists vs. Novello***, 2 NY3d 207, 211 (2004). Whether Wind Power Ethics Group is an unincorporated association or a limited liability company as it now claims, we must concur with Respondents that it failed to prove that it had standing to pursue the claims made herein.

Petitioner's allegations concerning standing are found in paragraphs 8, 9, 25 and 26 of the Petition. We concur with Respondents that while these conclusory allegations may be sufficient to state a claim of standing, Petitioner has failed to establish standing. ***Matter of Nolsen Corp. vs. Ontario County Board of Supervisors***, 295 AD2d 924 (2002); ***Matter of Piela vs. Van Voris***, 229 AD2d 94 (1997).

Unlike the Petitioner in ***Matter of Wind Power Ethics Group, et ano vs. Town of Cape Vincent TBA***, (Index No. 07-0789) previously decided by this Court, the Petition herein was not accompanied by sworn affidavits of any individual members. We concur with Respondents that the adjudication of this proceeding required the participation of individual members who Petitioner failed to join. ***Matter of Citizens Organized to Protect the Environment vs. Planning Board of the Town of Irondequoit***, 50 AD3d 1460 (2008). The submission of Affidavits of John Byrne, Clifford Schneider, Albert Bowers III and Michael Bell in Reply does not cure the defect in the Petition or confer standing. ***Jackson Cutler vs. Long***, 2 AD3d 590 (2003); ***Hoyte vs. Epstein***, 12 AD3d 487 (2004).

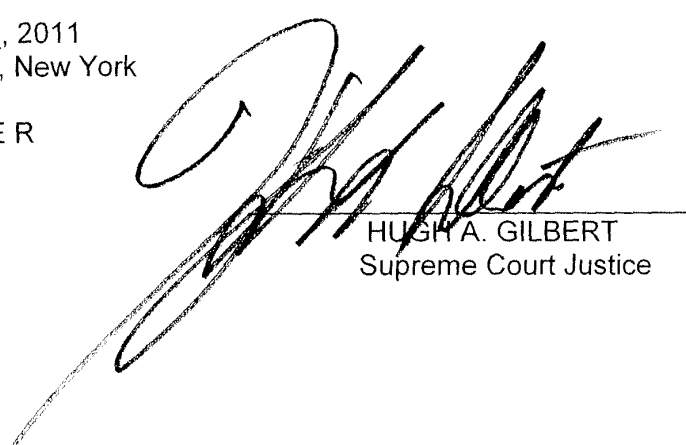
It is not our role to substitute our Judgment for that of the Planning Board. ***Akpan vs. Koch***, 75 NY2d 561 (1990). Having found that the Planning Board fully complied with the procedural and substantive requirements of SEQRA, it is

THEREFORE, it is

ORDERED, ADJUDGED AND DECREED that the Petition is  
respectfully denied and dismissed.

Dated: January 26, 2011  
at Watertown, New York

ENTER

A large, stylized handwritten signature in black ink, likely belonging to Hugh A. Gilbert, is written over a horizontal line.

HUGH A. GILBERT  
Supreme Court Justice

EXHIBIT I — SLIP OPINION IN SIERRA CLUB, ET AL., V DEC, ET AL.,  
STATE OF NEW YORK SUPREME COURT, COUNTY OF YATES, INDEX NO. 2017-0232  
(NOVEMBER 8, 2018) [A-995 - A-1015]

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF YATES

In the Matter of the Application of

SIERRA CLUB, COMMITTEE TO PRESERVE  
THE FINGER LAKES by and in the name of  
PETER GAMBA, its President; COALITION TO  
PROTECT NEW YORK by and in the name of  
KATHRYN BARTHOLOMEW, its Treasurer; and  
SENECA LAKE GUARDIAN, A  
WATERKEEPER AFFILIATE by and in the name  
of YVONNE TAYLOR, its Vice President,

Petitioners,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, BASIL  
SECCOS, COMMISSIONER, GREENIDGE  
GENERATION, LLC, and LOCKWOOD HILLS, LLC,  
Respondents.

NYS OFFICE OF THE ATTORNEY GENERAL  
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ENVIRONMENTAL PROTECTION BUREAU  
ALBANY

DECISION  
Index No. 2017-0232

Petitioners brought this application by way of a Notice of Petition and Verified Petition challenging the issuance of two permits to Respondent Greenidge Generation ("GGLLC") on September 11, 2017. The challenges for each permit focus on both the alleged violations of the Environmental Conservation Law and respondent New York State Department of Environmental Conservation's ("DEC") State Environmental Quality Review Act ("SEQRA") determinations. Both GGLLC and the DEC have answered the Petition<sup>1</sup>.

<sup>1</sup> The issue of standing has been resolved by the parties and will not be addressed.

As a preliminary matter, this Court previously issued a Decision regarding the challenge to the SEQRA review in conjunction with the claim that the issuance of air permits to GLLC was in error (the Greenidge I action). Following the determination that the air permits were, in all respects properly issued, the present Petitioners filed this action challenging the issuance of the Water Withdrawal Permit and the SPDES permit.

Following oral argument of the case on May 22, 2018, Respondent GLLC submitted a number of documents related to Petitioners' motion practice at the Appellate Division, Fourth Department in Petitioners' appeal from this Court's order in the Greenidge I action. Petitioners objected to the submission on the ground that they were improper and untimely.

#### **FINDINGS OF FACT**

The Greenidge Station ("the Facility") is an electric generating facility located in the Town of Torrey, Yates County, New York. It currently consists of one 107 megawatt generating unit, known as Unit 4, which historically operated as a coal-fired power plant. The Facility was initially constructed in the 1930s. The plant was built to use once-through condenser cooling, taking water withdrawn from Seneca Lake to cool the turbines and then discharge the water into the Keuka Outlet, upstream from Seneca Lake. Unit 4 was installed in 1953. In 1999, the facility and the Lockwood Ash Disposal Site ("LADS"), located across NYS Route 14 from the Facility, were acquired by AES AEE2, LLC.

On January 29, 2010, the DEC renewed the SPDES permit for the Facility effective February 1, 2010. The permit required various reports in compliance with 6 NYCRR 704.5. Following an Impingement and Entrainment Characterization Study, the DEC issued a modification to the SPDES permit.

In September 2010, AES AEE2, LLC, notified the New York State Public Service Commission that the Greenidge Unit 4 would be placed in protective lay-up status in March 2011. In May 2011, a lay-up plan for LADS was submitted to the DEC.

In December 2011, AES AEE2, LLC and its parent company, AES Eastern, filed for Chapter 11 bankruptcy. Petitioners allege that in September 2012, AES AEE2, LLC indicated in bankruptcy papers that the Facility would be permanently retired and transferred to a salvage company to dismantle. Thereafter, AES AEE2, LLC sought permission to sell the Facility to GMMM Holdings I, LLC. In October 2012 the sale was approved by the bankruptcy court. On January 15, 2013, the SPDES permit for the Facility, then held by AES Eastern, was transferred to GMMM Greenidge LLC, a subsidiary of GMMM Holdings. In March of 2013, AES AEE2, LLC deeded certain property to GMMM Greenidge and additional adjoining property to GMMM Lockwood LLC, also a subsidiary of GMMM Holdings. In May 2013, GMMM Greenidge applied to the DEC for a water withdrawal permit for the Facility.

In February and March of 2014, GMMM Greenidge was sold to Atlas Holdings and renamed Greenidge Generation, LLC (GGLLC). At the same time, GMMM Lockwood, LLC was sold and renamed Lockwood Hills, LLC.

On May 16, 2014, GGLLC submitted an air permit application for the Facility. Thereafter, in August 2014, GGLLC applied to renew the SPDES permit for the Facility. One year later, in August 2015, the DEC published notices that GGLLC had applied for air permits, water withdrawal permits and a renewal of the permit. The notice for the renewal of the SPDES permit indicated that the DEC was proposing a department-initiated modification to the SPDES

permit. The notice further indicated that the DEC, as lead agency, had determined that the entire project was a Type I action and would not have a significant impact on the environment.

In September 2015, petitioner Committee to Preserve the Finger Lakes filed comments with the DEC opposing all three permits. Specifically, Petitioners objected to the permits contending that had the applications been treated as applications for new permits, additional permit conditions would have been imposed. Petitioners further opposed the issuance of the petitions on the basis that the DEC failed to take a hard look at the environmental impacts of resuming operation at the Facility.

On June 29, 2016, the DEC issued an Amended Negative Declaration covering the SPDES permit. On September 11, 2017, the DEC issued the water withdrawal permit and SPDES permit to GLLC. The water withdrawal permit authorizes the withdrawal of 139,248,000 gallons of water per day from Seneca Lake. The SPDES permit authorizes the discharge of 134,000,000 gallons of water per day into the Keuka Outlet. The permit requires the installation of wedge-wire screens and variable speed drives.

### **CONCLUSIONS OF LAW**

Petitioners commenced this proceeding challenging certain actions of the Respondent DEC. The “review of an agency determination that was not made after a quasi-judicial hearing is limited to consideration of whether the determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion”

*(Matter of Harpur v Cassano, 129 AD3d 964, 965, lv denied 26 NY3d 916; see also Town of Marilla v Travis, 151 AD3d 1588, 1589).*

### **PETITIONERS' FIRST CAUSE OF ACTION**

As a first cause of action, Petitioners contend that the Water Withdrawal Permit dated September 11, 2017 was issued in error. Specifically, Petitioners contend that the DEC should have considered the Water Withdrawal Permit application as an application for a new withdrawal rather than treating GGLLC as an existing user. Petitioners also contend that the DEC failed to consider the environmental impacts of the permit and failed to set appropriate conditions in issuing the permit.

As noted above, the Facility operated as a coal burning electric generating station since the 1930s. Although the Facility was placed in protective lay-up in March of 2011, on January 16, 2012, the Facility's water withdrawals were reported to the DEC pursuant to ECL 15-1501(9) which provides,

The department shall issue an initial permit, subject to appropriate terms and conditions as required under this article, to any person not exempt from the permitting requirements of this section, for the maximum water withdrawal capacity reported to the department pursuant to the requirements of title sixteen or title thirty-three of this article on or before February fifteenth, two thousand twelve.

Therefore, the DEC issued the initial permit to GGLLC as an existing user.

The DEC's interpretation of ECL 15-1501(9) as mandating the issuance of an initial permit to any person who reported the maximum water withdrawal capacity before February 15, 2012 was not irrational or unreasonable. "Where the interpretation of a statute or its application involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom the courts regularly defer to the governmental agency charged with the responsibility for administration of the statute. If its interpretation is not irrational or unreasonable, it will be upheld" (*Kuresics v Merchants Mut. Ins.*



*Co.*, 49 NY2d 451, 459). Here, the requirement of ECL 1501(9) was for reporting of water withdrawal capacity. Had the legislature intended to consider only facilities that were operating as of February 15, 2012, the reporting requirement would have been for actual gallons withdrawn, and not for capacity.

Petitioners further contend that even had the DEC properly determined that GGLLC was an existing water user, the DEC erred in failing to impose adequate conditions on the Water Withdrawal Permit. The DEC does not dispute that it was entitled to place appropriate terms and conditions on the permit but does dispute that it was required to satisfy the requirements of ECL 15-1503. ECL 15-1503 requires the DEC to consider several factors when deciding whether to grant a permit, deny a permit or grant a permit with conditions. Those factors include whether “the proposed water withdrawal will be implemented in a manner to ensure it will result in no significant individual or cumulative adverse impacts on the quantity or quality of the water source and water dependent natural resources,” and whether “the proposed water withdrawal will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures” (ECL 15-1503 [2] [f], [g]).

In *Sierra Club v Martens* (158 AD3d 169 [2d Dept 2018]), the Second Department cited the consideration and application of the factors set forth in ECL 15-1503(2) as a reason why the issuance of an initial water withdrawal permit is a Type II action under SEQRA. The Court noted that the DEC is required to consider the factors set forth in ECL 15-1503.

This Court finds that the DEC was required to consider the factors set forth in ECL 15-1503. However, it is clear from the record that the DEC did consider the factors set forth in ECL 15-1503 when it placed permit conditions “including environmentally sound and economically

feasible water conservation measures to promote the efficient use of supplies” (6 NYCRR 601.7). The conditions placed on the Water Withdrawal Permit, including the installation of meters, water auditing, and reporting of audits and leaks as well as the “Incorporation of the Cooling Water SPDES Water Conservation and Fisheries Protection Measures,” satisfied the requirements of both ECL 15-1503 and 6 NYCRR 601.7.

Petitioners’ contention that the DEC’s failure to consider wet closed-cycle cooling as a viable alternative in the issuance of the water withdrawal permit violates the Water Supply Law is without merit. As discussed below, the closed-cycle cooling system is only an absolute requirement for new facilities. Furthermore, and again, as discussed below, the alternative conditions placed on the SPDES permit present equivalent results to closed-cycle cooling. Petitioners’ attempt to compare the permits and conditions of an unrelated project to the permits issued in relation to the Facility are unpersuasive. The DEC considers the Best Technology Available on a “site specific, case by case basis” (Commissioner’s Policy on Best Technology Available [sp-52], Record, 729).

The issuance of the Water Withdrawal Permit was not arbitrary and capricious, or an abuse of discretion and the Petitioners’ first cause of action is dismissed.

#### **PETITIONERS’ SECOND CAUSE OF ACTION**

Petitioners contend that the DEC failed to comply with SEQRA when it determined that the Water Withdrawal Permit constituted a Type II action. The DEC contends that even though the issuance of the Water Withdrawal permit was considered a Type II action, the entire project was reviewed as a Type I action and a negative declaration was properly issued.

As a preliminary matter, “[a] four-month statute of limitations is applicable to allegations of SEQRA violations” (*Matter of Eadie v Town Bd. of Town of N. Greenbush*, 22 AD3d 1025, 1027, *affd.* 7 NY3d 306). The question is whether the four-month statute of limitations commenced when the negative declaration was issued as respondent Greenidge contends or whether it commenced when the DEC issued the Water Withdrawal Permit and SPDES Permit as Petitioners contend.

In *Eadie v Town Bd. of Town of N. Greenbush* (7 NY3d 306, 317), relied upon by the Petitioners, the Court of Appeals cited two factors in determining when the statute of limitations begins to run. The Court noted that in cases involving the enactment of legislation, the four-month period commences with the date of enactment of the legislation, and not the issuance of the SEQRA findings. The Court also found that where “the completion of the SEQRA process was the last action taken by the agency whose determination petitioners challenged,” the running of the four months begins upon the issuance of the SEQRA findings. The *Eadie* case does not directly answer the question presented here, that is, when does the statute of limitations begin to run where there is no legislation to be enacted and where the SEQRA determination is not the “last action taken by the agency.” This Court is persuaded by the fact that the DEC was required to issue several permits following the negative declaration before the petitioners suffered harm and therefore, the statute of limitation did not begin to run until the DEC issued the permits (*see, Town of Marilla v Travis*, 49 Misc3d 1203(A), *affd.* 151 AD3d 1588) and Petitioners’ SEQRA claims are not time barred.

Furthermore, Respondent GLLC contends that Petitioners’ SEQRA claims are barred by the doctrine of *res judicata*. In the previous Greenidge Decision, this Court stated,

“Petitioners’ request to annul Respondent DEC’s SEQRA finding and June 28, 2016 negative declaration is also denied. A review of the findings contained in this decision finds that Respondent DEC followed the law and its decision was not arbitrary, capricious or an abuse of discretion.”

Petitioners contend that the doctrine of *res judicata* cannot be applied because there is an additional party in the present proceeding and because the claims in the previous proceeding involved permits that are different from the permits being challenged in the present action. Petitioners’ claims in the second and fourth causes of action challenge not the issuance of the permits but the way the SEQRA review was conducted and the conclusions reached from the SEQRA review. The fact that the issuance of the permits was the manifestation of the “harm” suffered by the Petitioners does not change the fact that the SEQRA review challenged in Greenidge I is the same as that challenged in the present action. Therefore, with respect to the Petitioners involved in that case, the challenge to the SEQRA review is barred by the doctrine of *res judicata*. Due to the fact that the present action involves a Petitioner that was not a party to the prior action, this Court will discuss the merits of Petitioners’ claims as if there was no *res judicata* preclusion.

Under SEQRA, actions are classified a Type I, Type II or Unlisted (*see* 6 NYCRR 617.2[ai], [aj], [ak]). Type I actions are those actions that “may have a significant adverse impact on the environment and require the preparation of an EIS” (6 NYCRR 617.4[a][1]). Type II actions are activities that “have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law, article 8” (6 NYCRR 617.5[a]). Unlisted actions are “all actions not

identified as a Type I or Type II action in this Part” (6 NYCRR 617.2[ak]). All Type I and unlisted actions initially require the preparation of an Environmental Assessment Form (EAF), whose purpose is to aid an agency “in determining the environmental significance or non-significance of actions” (6 NYCRR 617.6[a][2], [3]; 6 NYCRR 617.2[m]). If an action is determined to be Type II, no further action is required (6 NYCRR 617.6[a][1][i]).

After reviewing the EAF, if the lead agency determines the significance of a Type I or Unlisted action. If “the action may include the potential for at least one significant adverse environmental impact,” an Environmental Impact Statement (EIS) is required (6 NYCRR 617.7[a][1]). If the lead agency determines “that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant” no EIS is required (a negative declaration) (6 NYCRR 617.7[a][2]).

Importantly for the determination of this case, Type II actions include “official acts of a ministerial nature involving no exercise of discretion” (6 NYCRR 617.5[c][19]). This was the DEC’s basis for determining that the issuance of the Water Withdrawal Permit was a Type II action. This Court is persuaded by the holding in *Sierra Club v Martens* (158 AD3d 169, *supra*, at 177) that the issuance of the initial Water Withdrawal Permit was not a ministerial act. The *Martens* court stated,

Here, while ECL 15-1501 (9) states that the DEC “shall issue” an initial permit to an existing operator for its self-reported maximum water withdrawal capacity, the statute provides that such initial permit is “subject to appropriate terms and conditions as required under this article.” Notably, the WRPA specifically provides the DEC with the power “to grant or deny a permit or to grant a permit *with conditions*” (ECL 15-1503 [2] [emphasis added]). The statutory factors that the DEC is required to consider when reviewing an application and imposing conditions on the permittee do not lend themselves to mechanical application. For instance,

whether “the proposed water withdrawal will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures” (ECL 15-1503 [2] [g]) will almost certainly vary from operator to operator, or from water source to water source. The DEC’s own regulations state that an “initial permit” must include “environmentally sound and economically feasible water conservation measures to promote the efficient use of supplies” (6 NYCRR 601.7 [e]). Whether a condition is “appropriate” for a given operator is a matter that falls within the DEC’s expertise and involves the exercise of judgment, and, therefore, implicates matters of discretion (*see New York Civ. Liberties Union v State of New York*, 4 NY3d at 184; *Tango v Tulevech*, 61 NY2d at 41; *see also Tarter v State of New York*, 68 NY2d at 518-519).

As Petitioners contend, the issuance of the Water Withdrawal Permit constitutes a Type I action (6 NYCRR 617.4[b][6][ii]).

Although the DEC may have incorrectly considered the issuance of the Water Withdrawal Permit as a Type II action, it is clear from the record that the DEC properly conducted a consolidated SEQRA review and considered the entire project a Type I action. The SEQR full EAF lists the title of the action as “Greenidge Station Reactivation” and specifically discusses “an initial permit for the withdrawal of water pursuant to 6 NYCRR Part 601” (Record, 1054-1055). Furthermore, the EAF specifically notes, “Although the Department has classified the issuance of an initial permit under 6 NYCRR Part 601 as a Type II action under SEQR (6 NYCRR 617.5[c][19]) and, therefore not subject to SEQR, substantively, in this instance – because the initial water withdrawal permit is proposed to be issued along with permits that are subject to SEQR – the impact or impact of any change in withdrawal has been considered alongside the impacts of the air and SPDES permits” (Record, 1055).

Here, after preparing a full EAF, the DEC, as the lead agency, issued a negative declaration. The Record establishes that the DEC “identified the relevant areas of environmental

concern, took a ‘hard look’ at them, and made a ‘reasoned elaboration’ of the basis for its determination” (*Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 417). The DEC “complied with the requirements of SEQRA in issuing the negative declaration and, ...the ‘designation as a type I action does not, per se, necessitate the filing of an environmental impact statement ..., nor was one required here’” (*Wooster v Queen City Landing, LLC*, 150 AD3d 1689, 1692, *rearg denied*, 151 AD3d 1970, *quoting Matter of Mombaccus Excavating, Inc. v Town of Rochester, N.Y.*, 89 AD3d 1209, *lv. denied* 18 NY3d 808; *see also, Fichera v New York State Dept. of Envtl. Conservation*, 159 AD3d 1493, 1497).

Petitioners’ second cause of action for a violation of SEQRA in the issuance of the Water Withdrawal Permit is dismissed.

### PETITIONERS’ THIRD CAUSE OF ACTION

Petitioners contend that the DEC violated the Water Pollution Control Law in issuing a State Pollution Discharge Elimination System (SPDES) permit without conducting a full technical review and without imposing adequate terms and conditions<sup>2</sup>. Respondent DEC states that a full technical review of the application was conducted before the SPDES permit was renewed and that appropriate and adequate conditions were imposed.

“[T]hermal discharge—which deleteriously impacts fish populations—falls within the definition of water pollution regulated by the Clean Water Act (*see* 33 USC § 1326[b]; § 1362[6]). New York, mirroring federal regulations, requires power plants that employ water intake and thermal discharge systems [ ] to obtain a permit from respondent Department of

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<sup>2</sup> To the extent that petitioners challenge the 2013 transfer of the Greenidge SPDES permit, the challenge to that action is barred by the four-month statute of limitations.

Environmental Conservation (hereinafter DEC) under the State Pollutant Discharge Elimination System (*see* ECL 17-0701, 17-0801—17-0831)” (*Riverkeeper, Inc. v Crotty*, 28 AD3d 957, 957).

Petitioners contend that the DEC was required to treat the SPDES renewal application as a new application because the Facility “has not operated” during the term of the prior permit pursuant to 6 NYCRR 621.11(b)(3). Respondent DEC contends that a renewed SPDES permit must be treated as a new permit application pursuant to 6 NYCRR 621.11(i). “In 1994 the Legislature amended the procedure for the renewal and review of SPDES permits \* \* \* by providing that all SPDES permits may be ‘administratively renewed,’ but that the DEC would conduct a ‘full technical review’ of SPDES permits according to a ‘priority ranking system’ (ECL 17-0817 [2], [4])” (*Nat. Resources Defense Council, Inc. v New York State Dept. of Envtl. Conservation*, 54 AD3d 866, 866). Full technical review is defined as “the complete evaluation of all elements of the permit associated with the ranking system's priority ranking factors, together with substantive issues identified in comments submitted during the public comment period, and the verification of the accuracy and appropriateness of all other information contained in the permit” (ECL 17-0817[4]).

From a review of the record, and contrary to Petitioners’ allegations, it is clear that the permit application underwent a full technical review resulting in a renewal of the permit with additional conditions imposed. The documents reviewed as part of the full technical review are included in the record at pages 464-709. The full technical review is further evidenced by the conditions attached to the SPDES permit.



The Petitioners also contend that the DEC erred in failing to require the installation of closed-cycle cooling. The DEC's regulations require the use of the "best technology available" in the construction of cooling water intake structures (6 NYCRR 704.5). The DEC Policy sheet on Best Technology Available issued on July 10, 2011 states that it applies to "all existing and proposed industrial facilities designed to withdraw twenty (20) million gallons per day." The documents make clear that wet closed-cycle cooling is not the sole means of obtaining the performance goal. "The performance goal for existing industrial facilities in New York is closed-cycle cooling or the equivalent. Department staff believe that the majority of facilities that install and properly operate and maintain approved closed-cycle-equivalent technologies should be capable of meeting the performance goals established in this policy" (Record, 730). The policy sheet also states that staff will impose permit conditions on "a site specific, case by case basis." The document makes clear that wet closed-cycle cooling is the performance goal for all new facilities and wet closed cycle cooling *or its equivalent* is the goal for all existing industrial facilities. Equivalent is defined as "reductions in impingement mortality and entrainment from calculation baseline that are 90 percent or greater of that which would be achieved by a wet closed-cycle cooling system" (Record, 726).

Despite Petitioners' arguments to the contrary, wet closed-cycle cooling was not the only option for the SPDES permit for the Facility. The DEC was authorized to consider other options for the Facility as it was in existence at the time the SPDES permit was issued. The DEC imposed cylindrical wedge screens and variable speed pumps as the equivalent of closed-cycle cooling. Petitioners have failed to submit any statements to contradict the DEC's opinion that the conditions imposed will reduce impingement mortality by 95% and entrainment mortality by

85%. In fact, Petitioners' argument is not that the wedge screens and variable speed pumps are inequivalent to wet closed-cycle cooling but rather that the DEC lacked the ability to impose anything but wet closed-cycle cooling. As discussed above that argument fails as a reading of the 2011 policy statement indicates.

The DEC's issuance of the SPDES permit, with the imposed requirements, was not arbitrary and capricious nor was it an abuse of discretion and Petitioners' third cause of action is dismissed.

#### **PETITIONERS' FOURTH CAUSE OF ACTION**

Petitioners contend that the DEC erred in finding that there were no significant adverse impacts with the renewal of the SPDES permit. Petitioners also contend that the DEC erred in issuing a negative declaration because it constitutes a "conditioned negative declaration" which is impermissible for Type I actions. Petitioner further contends that the DEC improperly segmented the SEQRA review of the Facility from the review of the LADS and applied an incorrect baseline.

"Judicial review of SEQRA findings 'is limited to whether the determination was made in accordance with lawful procedure and whether, substantively, the determination "was affected by an error of law or was arbitrary and capricious or an abuse of discretion"' (*Akpan v Koch*, 75 NY2d 561, 570, *quoting* CPLR 7803[3]). This review is deferential for 'it is not the role of the courts to weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally and substantively' (*Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 416)" (*Friends of P.S. 163, Inc. v Jewish Home*

*Lifecare*, 30 NY3d 416, 430, *rearg denied sub nom. Friends of P.S. 163, Inc. v Jewish Home Lifecare, Manhattan*, 31 NY3d 929).

A review of the EAF prepared by the DEC reveals that the DEC fully considered all of the potential environmental impacts of the renewed SPDES permit, including those to surface waters (Record, 1043). Furthermore, as the 2017 SPDES permit contained more stringent conditions than had existed previously, it would have been arbitrary and capricious should the DEC have determined that there was a significant adverse environmental impact. The DEC was reviewing an application for a renewed SPDES application on an existing facility. To have compared the environmental impacts of the renewed SPDES permit to a fictional nonexistent facility would have been an abuse of discretion.

Petitioners contend that the negative declaration fails to evaluate the thermal impacts on the area of the lake surrounding the Keuka Outlet.

[T]here is nothing inherently improper in “allow[ing] for ambient [temperature] above the criteria in small areas near outfalls” (EPA, *Water Quality Standards Handbook: Second Edition* at 5–1 [Aug.1994], available at <https://www.epa.gov/sites/production/files/2016-06/documents/wqs-handbook-1994.pdf> [accessed July 13, 2017]). New York has adopted such a “mixing zone” policy (*see* 6 NYCRR 704.1[b]; 704.3; *see also* 40 CFR 131.13), and such a zone will pass muster so long as it is defined in scope, does “not interfere with spawning areas, nursery areas and fish migration routes” (6 NYCRR 704.3[c]) and avoids lethality “in contravention of water quality standards to aquatic biota which may enter” it (6 NYCRR 704.3[b]). Lethality, for purposes of mixing zones, focuses upon the impacts of a mixing zone upon an entire population, not whether the water temperature in the zone will prove deadly to an individual organism (*see* 6 NYCRR 704.1[a]; EPA, *Water Quality Standards Handbook: Second Edition* at 5–6 [Aug.1994], available at <https://www.epa.gov/sites/production/files/2016-06/documents/wqs-handbook-1994.pdf> [accessed July 13, 2017]).

(*Riverkeeper, Inc. v New York State Dept. of Envtl. Conservation*, 152 AD3d 1016, 1019).

This Court has reviewed the Discharge Monitoring Report Summaries for Greenridge Station (Record, 710-723) for the year prior to the lay-up. The report indicates that the maximum temperature of the water being discharged from the Facility in the summer was 102° and the maximum temperature of the water being discharged from the Facility in the winter was 85°. Both the current and prior SPDES Permit require a maximum discharge temperature of 108° in the summer and 86° in the winter, with a differential of 26° in the summer and 31° in the winter. Furthermore, the current SPDES Permit requires GGLLC to submit an updated schedule to the Thermal Discharge Study Plan that was submitted on January 27, 2011 within three months of the reactivation date. The existing Thermal Discharge Study Plan (Record 690-707) fully detailed the manner in which the study and monitoring of the thermal discharge is to be conducted. The foregoing constitutes a rational basis from which the respondent DEC could conclude that issuance of SPDES Permit would result in no significant adverse environmental impact.

Petitioners contend that the DEC utilized the wrong baseline in determining that the recommencement of operations at the Greenridge Facility would not result in any significant adverse environmental impacts. Specifically, the Petitioners contend that the baseline should have been “no operations” rather than pre-layup operations. Petitioners are unable to cite any authority for their position that the Facility’s lay-up status required using a baseline as if there was no existing facility. The determination to use a pre-layup baseline was not arbitrary or capricious.

Petitioners are correct that a conditioned negative declaration cannot be issued for a Type I Action (*Ferrari v Town of Penfield Planning Bd.*, 181 AD2d 149, 151). Although the SPDES permit contains sections titled “Additional Requirements” and “Biological Monitoring Requirements” (Record, 1427-1429), this does not make the negative declaration a conditioned negative declaration. The amended negative declaration was for a project that involved a SPDES permit with requirements. Notably, Part 3 of the EAF states. “The project will ultimately involve a modification of the cooling water intake structure (CIWS) at the facility. The modification will include the installation of ‘Best Technology Available’ (BTA) measures *in accordance with Commissioner’s Policy CP-52* to reduce fish entrainment and impingement” (Record, 1054). Therefore, the inclusion of the BTA requirements in the SPDES Permit only clarified that GGLLC was required to do to be in compliance with the Commissioner’s Policy CP-52 and other regulations. They should not be considered conditions any more than other requirements that the permittee comply with the law are requirements.

A conditioned negative declaration is defined as “a negative declaration issued by a lead agency for an Unlisted action, involving an applicant, in which the action as initially proposed may result in one or more significant adverse environmental impacts; however, mitigation measures identified and required by the lead agency, pursuant to the procedures in section 617.7(d) of this Part, will modify the proposed action so that no significant adverse environmental impacts will result” (6 NYCRR 617.2[h]). The Court of Appeals has discussed the issuance of conditioned negative declaration in *Merson v McNally* (90 NY2d 742). The Court stated that determining whether a conditioned negative declaration has been impermissibly issued involves a two-part analysis. “(1) whether the project, as initially proposed, might result in

the identification of one or more ‘significant adverse environmental effects’; and (2) whether the proposed mitigating measures incorporated into part 3 of the EAF were ‘identified and required by the lead agency’ as a condition precedent to the issuance of the negative declaration” (*Merson v McNally* at 752-53). This analysis “allows for consideration of the legitimate maturation of a development project in accordance with the goals of environmental regulation” (*Merson v McNally*, 90 NY2d 742, 750).

Inasmuch as Petitioners contend that it is the conditions placed on the SPDES permit that created the conditioned negative declaration, this Court will consider whether the environmental impacts of a SPDES permit without the conditions may have resulted in a significant adverse environmental impact. This Court concludes that it would have. To determine otherwise would be to ignore the importance of minimizing or eliminating entrainment and impingement. Therefore, because the first prong of the test established by the Court of Appeals has been satisfied, the Court will go on to consider the second prong, whether the mitigating measures were required by the lead agency as a condition precedent to issuing the negative declaration. The Court determines that they were not.

Here, the “mitigating measures” were not truly conditions as they were a statement of the policy and regulations required to be imposed upon the issuance of a permit. The “revisions” were a natural part of the permitting process, to specify the conditions the permittee must meet to follow the law. The provisions were submitted and publicly evaluated prior to the issuance of the negative declaration (*Merson v McNally*, 90 NY2d at 755).

“Where mitigating measures are part of the ‘give and take’ of the application process, rather than a condition of approval, a negative declaration may be valid (see, *Matter of Merson v McNally*, *supra*, at 753)” (*Hoffman v Town Bd. of Town of Queensbury*, 255 AD2d 752, 754).

Petitioners further contend that the DEC improperly segmented its review of the environmental impacts of the operations of the Greenidge Station from its review of the operations of Lockwood Ash Disposal Site, Petitioners contend that the impact of depositing the waste from the Greenidge Station should have been included in the EAF. The DEC contends that the consideration of the Facility as separate from the landfill was appropriate.

Segmentation is defined as “the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance” (6 NYCRR 617.2[ag]). Although the SPDES permit associated with the Landfill was not formally part of the negative declaration issued as part of the re-activation of the Facility, the DEC did consider the environmental impact of the waste from the Facility. The DEC specifically stated, in a section titled “Solid Waste Management” that there would be no impacts related to solid waste management. “By eliminating the use of coal as a fuel source, the generation of solid waste from the facility will be significantly reduced compared to prior operations” (Record, 1057). This Court finds that the DEC did not improperly segment the review of the environmental impacts of operating the Facility from the environmental impacts of operating the landfill.

Petitioners’ fourth cause of action for a violation of SEQRA in the issuance of the Water Withdrawal Permit is dismissed.


## RESPONDENT GLLC'S ADDITIONAL SUBMISSIONS

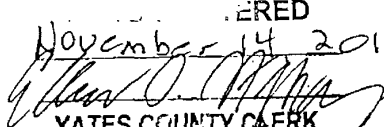
Finally, following the argument of this case, Respondent GLLC submitted to this Court a number of documents that had been submitted to the Appellate Division, Fourth Department by the Petitioners. As a preliminary matter, this Cases makes no determination on whether the papers submitted to this Court by Respondent GLLC are properly before the Appellate Division.

This Court does disagree with Respondent GLLC that the recent motion practice at the Appellate Division renders the present Greenridge action moot. This Court finds that this Greenridge action is not moot and is properly before this Court.

The Petition is dismissed in its entirety. This constitutes the Decision of the Court. Respondent DEC to submit an order, on notice to the Petitioners and Respondent GLLC on or before December 3, 2018.

Dated: 11/8/18 <sup>WFK</sup>  
Penn Yan, New York.

  
Hon. William F. Kocher  
Acting Supreme Court Justice

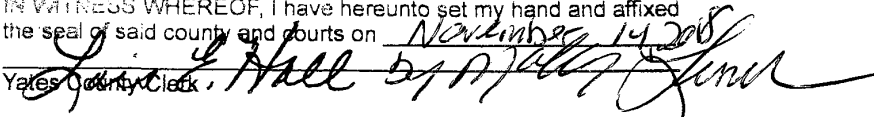
RECORDED  
November 14 2018 10:40pm  
  
YATES COUNTY CLERK

STATE OF NEW YORK, COUNTY OF YATES, SS:

I, LOIS E. HALL, Clerk of the County of Yates  
and clerk of the Supreme and County Courts of the County of Yates,  
both being Clerks of Record having a common seal,  
DO HEREBY CERTIFY that I have compared the copy with the  
original filed and recorded in this office and that the same is  
a true and correct copy of the whole of said original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
the seal of said county and courts on November 14 2018

Yates County Clerk

  
Lois E. Hall



**AFFIRMATION OF JAMES SCULLIN IN SUPPORT OF RESPONDENT HRLLC'S  
VERIFIED ANSWER, DATED AUGUST 9, 2019 [A- 1016 - A- 1025]**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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In the Matter of the Application of

**SIERRA CLUB, and HUDSON RIVER  
FISHERMEN'S ASSOCIATION, NEW JERSEY  
CHAPTER, INC.,**

Petitioners,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules

-against-

**NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, BASIL  
SEGGOS, COMMISSIONER OF THE NEW YORK  
STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION, and HELIX RAVENSWOOD  
LLC,**

Respondents.

**AFFIDAVIT OF  
JAMES SCULLIN**

Index No. 2402/2019

Hon. Ulysses B. Leverett

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STATE OF NEW YORK    )  
                                      ) SS.:  
COUNTY OF QUEENS    )

**James Scullin**, being duly sworn, deposes and states as follows under the penalties of perjury:

1.       My name is James Scullin. I am over 21 years of age, and I am competent in all respects to make this Affidavit.

**GENERAL BACKGROUND**

2.       I graduated from Manhattan College, Bronx, New York with a Bachelor of Science degree in Biology in 1994. In 2002, I completed a Master of Public Health degree in Health Policy and Management from Columbia University, New York, New York.

3. Currently, I am employed by Helix Ravenswood, LLC (“Helix Ravenswood”) as the Environmental Manager of the Ravenswood Generating Station (“Ravenswood Facility”), located at 38-54 Vernon Boulevard, Long Island City, New York 11101.

4. I have been employed at the Ravenswood Facility in various capacities since 2008. In addition to my current position, during my tenure at Ravenswood, I have also served as Regulatory Coordinator, Safety Coordinator, Compliance Manager, and Compliance Specialist.

5. My statements in this Affidavit are based upon my personal knowledge that I have obtained through the various positions I have held at the Ravenswood Facility as well as my review of relevant documentation and personal observations.

#### **PURPOSE OF AFFIDAVIT**

6. I make this Affidavit in support of Ravenswood’s Verified Answer and Memorandum of Law. Specifically, this Affidavit establishes that:

- a) the Ravenswood Facility has been in operation for decades, during which time it has been authorized to withdraw water from the East River;
- b) the Ravenswood Facility’s water withdrawal permit, which is being challenged in this proceeding by Petitioners, did not authorize any activity that was not already authorized by the New York State Department of Environmental Conservation (“NYSDEC”);
- c) despite Petitioners’ claims, the Ravenswood Facility’s cooling water intake system and associated water withdrawals have been thoroughly reviewed by the NYSDEC; and

- d) in accordance with the Ravenswood Facility's State Pollution Discharge Elimination System ("SPDES") permit issued by the NYSDEC, the Ravenswood Facility utilizes Best Technology Available ("BTA") for its cooling water intake structure requirements, which minimizes to the maximum extent practicable the environmental impacts associated with the Ravenswood Facility's cooling water intake structures and associated water withdrawals.

### **THE RAVENSWOOD FACILITY**

7. The Ravenswood Facility is an electric generating facility located on the East River in Long Island City, Queens, New York. It was initially constructed in the early to mid-1960s. Two of the electric generating units began operating in 1963 and one unit began operating in 1965.

8. The Ravenswood Facility produces electricity, which is sold via the New York State Independent System Operator ("NYISO"), for use throughout the New York City area.

9. The Ravenswood Facility consists of three (3) steam boiler turbine/generators, known as Units 10, 20 and 30; a combined cycle unit, known as Unit 40 and; several simple cycle combustion turbines. (A.R.<sup>1</sup> at 169, 258, 366).

10. The Ravenswood Facility's combined capacity is 2,480 megawatts ("MW").

11. The Ravenswood Facility has the ability to, and has, produced up to 21% of the total electricity used by New York City.

12. Unit 40, which went into service in May 2004, utilizes a multi-cell air cooled condenser for cooling, not water withdrawn from the East River.

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<sup>1</sup> "A.R." refers to the Administrative Record, dated June 19, 2019.

13. For approximately 50 years, the Ravenswood Facility has used a once-through cooling water system, which withdraws water from the East River that is circulated through the cooling system to cool the Unit 10, 20 and 30 boiler equipment, turbines, and auxiliary equipment, and then discharges it back into the East River. (A.R. at 164, 169, 342, 366 ).

14. The Ravenswood Facility's cooling water system consists of two individual circulating water pumps per unit, for a total of six circulating water pumps, to withdraw cooling water. (A.R. at 169, 262). Each unit also has two low pressure salt water pumps that provide cooling water to auxiliary equipment associated with the operation of each unit. (A.R. at 169, AR-263, 340). This is the same cooling water system that was originally installed at the Ravenswood Facility back in the 1960s.

15. Cooling water from the East River is a critical component of the production of electricity at the Ravenswood Facility, as it is necessary for proper operation and to prevent overheating. (A.R. at 170, 263).

16. The maximum capacity of the Ravenswood Facility's cooling water system is 1527.84 million gallons per day ("MGD"). (A.R. at 172, 265). This maximum capacity has not increased since the facility was initially installed in the 1960s.

17. A maximum water withdrawal capacity of 1527.84 MGD is required in case Units 10, 20 and 30 are all operating at maximum generating capacity. (A.R. at 265). This ensures that there is sufficient water to keep the units properly cooled and to prevent overheating.

18. The actual amount of cooling water needed per day to keep the boilers and equipment at the Ravenswood Facility from overheating varies based on which units are operating and the amount of time that the units are operating (*i.e.*, load).

19. When only one or two of the Ravenswood Facility's units are operating, or the units are operating at less than full load, the amount of cooling water withdrawn and used is reduced accordingly, through the use of the variable speed pumps on the circulating water pumps of each unit. (A.R. at 170).

20. In 2017, the daily average withdrawal by the Ravenswood Facility was approximately 371 million gallons per day ("MGD"). (A.R. at 583). In 2018, the average withdrawal was 520 MGD. According to current projections, the average daily withdrawal for 2019 will remain steady.

21. Despite this, the Ravenswood Facility's maximum capacity of 1527.84 MGD remains necessary. For example, in 2012, during Super Storm Sandy, Ravenswood operated all three units at full load to supply needed electricity to New York City.

#### **REGULATION OF THE RAVENSWOOD FACILITY'S COOLING WATER INTAKE SYSTEM**

22. The Ravenswood Facility's cooling water system is regulated under the Clean Water Act ("CWA").

23. As such, it is subject to the Best Technology Available ("BTA") for cooling water intake structure requirements contained in section 316(b) of the CWA and 6 NYCRR Part 704.5.

24. The purpose of BTA is to minimize environmental impacts associated with cooling water intake structures.

25. The §316(b) and §704.5 requirements applicable to the Ravenswood Facility are contained in its SPDES permit issued by the NYSDEC, effective date May 1, 2007 (A.R. at 70), and the renewed SPDES permit, effective date November 1, 2012 (A.R. at 120).

26. In 2006, as part of a NYSDEC initiated SPDES modification, the NYSDEC conducted an environmental review of the Ravenswood Facility's cooling water intake system under the State Environmental Quality Review Act ("SEQRA". Numerous studies and evaluations of the potential environmental impacts and alternatives were performed. Based on this review, the NYSDEC ultimately imposed certain permit conditions and determined that there was no significant environmental impact associated with the Ravenswood Facility's cooling water intake system and issued a negative declaration. (A.R. at 66).

27. On December 20, 2006, the NYSDEC's negative declaration for the Ravenswood Facility's SPDES permit was published in the Environmental Notice Bulletin ("ENB"). A true and accurate copy of the ENB Notice is attached hereto as **Exhibit A**.

28. On April 20, 2007, the NYSDEC issued the Ravenswood Facility's SPDES permit, which had a five year effective period. (A.R. at 70 –90).

29. On November 1, 2011, the Ravenswood Facility submitted its application for renewal of its SPDES permit.

30. On July 18, 2012, the NYSDEC published notice of the draft Ravenswood Facility's SPDES renewal permit in the ENB. A true and accurate copy of the ENB Notice is attached hereto as **Exhibit B**.

31. The only parties that commented on the draft 2012 SPDES permit during the public comment period were the Ravenswood Facility and the United States Environmental Protection Agency. A true and accurate copy of the Response to Public Comments, dated September 2012, is attached hereto as **Exhibit C**.

32. NYSDEC issued the 2012 SPDES Permit renewal for the Ravenswood Facility, which is dated October 1, 2012. (A.R. at 120 –140).<sup>2</sup>

33. The BTA requirements contained in the Ravenswood Facility’s 2012 SPDES permit, which are binding, (A.R. at 129), include:

- (a) the installation of variable speed capability pumps on both of the circulating water pumps associated with each of Units 10, 20 and 30, for a total of six variable speed capable circulating water pumps, which has been completed at a cost of \$11,162,477;
- (b) upgrades to traveling intake screens to allow for continuous operation and to increase impingement survival; and,
- (c) scheduling of outages that require the cooling water intake pumps to be shut down at certain periods of time to reduce the volume of cooling water used.

34. The Ravenswood Facility’s SPDES permit requires that the three BTA measures achieve a reduction of 90% in fish impingement mortality and 65% in entrainment from NYSDEC approved baseline. (A.R. at 130).

### **WATER WITHDRAWAL PERMIT**

35. In August 2011, a new law was enacted in New York requiring all water withdrawal systems with the capability to withdraw 100,000 gallons per day (“gpd”) or more obtain a permit from the NYSDEC and file water withdrawal reports annually. Previously, the

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<sup>2</sup> Because a timely renewal application was submitted to the NYSDEC, the Ravenswood Facility’s 2012 SPDES permit remains in full force in effect. NYSDEC is currently reviewing the renewal application and evaluating again the facility’s BTA.

law applied only to public water supply withdrawals and not Ravenswood's cooling water system.

36. The new law was codified at Environmental Conservation Law ("ECL") §15-1501 *et seq.*

37. In November 2012, the NYSDEC promulgated regulations implementing ECL 15-501 *et seq* to be effective April 1, 2103. 6 NYCRR Part 601 *et seq.*

38. Under this new law, permits are now required for any potable and non-potable water withdrawal system having the capacity to withdraw 100,000 gpd or more of surface water, groundwater, or combination thereof.

39. The requirement applies to all facilities with water intake structures that have the capacity to withdraw 100,000 gpd or more water. It applies to new facilities as well as facilities like the Ravenswood Facility with existing, permitted systems.

40. Therefore, on or about May 31, 2013, the Ravenswood Facility submitted an application to the NYSDEC for an initial water withdrawal permit. (A.R. at 163).

41. Following public notice, on or about November 15, 2013, the NYSDEC issued an initial water withdrawal permit for water withdrawals from the East River for the Ravenswood Facility that contained a maximum capacity of 1,390 MGD. (A.R. at 55, and -198).

42. Because this was less than the maximum capacity of the Ravenswood Facility's cooling water system, the Ravenswood Facility submitted revised water withdrawal reports to the NYSDEC on or about December 18, 2013 setting forth the accurate maximum capacity of the facility's cooling water system of 1527.84 MGD. (A.R. at 141).



43. Based on these revised reports, on or about March 7, 2014, the NYSDEC issued a revised initial water withdrawal permit for the Ravenswood Facility, which contains a maximum capacity of 1527.84 MGD. (A.R. at 158).

44. Thereafter, following litigation and in connection with the Ravenswood Facility's submittal of its SPDES permit renewal application, the Ravenswood Facility submitted a second water withdrawal permit application to NYSDEC on April 12, 2017. This application included all of the materials previously submitted to NYSDEC in 2013, including, among other things maps, engineer's report, water conservation forms, project justification, and water withdrawal reporting forms, as well as the required joint application form and a SEQRA Short Environmental Assessment Form. (A.R. at 203).

45. Based on a subsequent request from NYSDEC, the Ravenswood Facility submitted a Full Environmental Assessment Form associated with its water withdrawal application to NYSDEC on May 4, 2018. (A.R. at 340).

46. On September 25, 2018, NYSDEC issued a Notice of Complete Application for the Ravenswood Facility's water withdrawal permit. (A.R. at 362), which was published in the Environmental Notice Bulletin, with a Notice of Negative Declaration, on October 3, 2018. (A.R. at 395).

47. On February 20, 2019, I received from NYSDEC a water withdrawal permit for the Ravenswood Facility, a Response to Public Comments, and an Amended Negative Declaration dated February 14, 2019. (A.R. at 541).

*James Scullin*

James Scullin

Subscribed and sworn to  
before me this 9<sup>th</sup> day of  
August, 2019.

*Mirsada Lukolic*

Notary Public

Mirsada Lukolic  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 01LU6136583  
Qualified in Queens County  
My Commission Expires November 14, 2021

**EXHIBIT A — ENB NOTICE OF NEGATIVE DECLARATION FOR THE  
RAVENSWOOD FACILITY'S SPDES PERMIT, DECEMBER 20, 2006 [A- 1026 - A- 1029]**

ENB Region 2 Completed Applications 12/20/2006

Page 1 of 4

Region 2 SEQR and Other Notices

Region 2 SPDES Renewals

## **ENB Region 2 Completed Applications 12/20/2006**

### **Kings County**

**Applicant:** NYC Dept of Environmental Protection  
96-05 Horace Harding Expwy  
Flushing, NY 11368

**Facility:** Avenue V Pump Station  
76 Ave V  
Brooklyn, NY 11223

**Application ID:** 2-6107-00336/00004

**Permit(s) Applied for:** Article 15 Title 15 Long Island Well

**Project is Located:** Brooklyn, Kings County

**Project Description:**

Applicant proposes to operate a temporary dewatering system to facilitate the construction and upgrade of the Avenue V Pump Station with a maximum withdrawal of 8,640,000 gallons per day. Construction will take place at the job site located 76 Avenue V in Brooklyn, NY. The pumped groundwater discharge is to be treated with appropriately sized settling tanks and oil/water separators and directed to the Coney Island Creek via Outfall OH-021.

**Availability of Application Documents:**

Filed application documents, and Department draft permits where applicable, are available for inspection under the provisions of the Freedom of Information Law during normal business hours at the address of the contact person.

**State Environmental Quality Review (SEQR) Determination:**

Project is an Unlisted Action and will not have a significant impact on the environment. A Negative Declaration is on file. A coordinated review was performed.

**SEQR Lead Agency:**

NYC Dept of Environmental Protection

**State Historic Preservation Act (SHPA) Determination:**

The proposed activity is not subject to review in accordance with SHPA. The permit type is exempt or the activity is being reviewed in accordance with federal historic preservation regulations.

**Coastal Management:**

This project is located in a Coastal Management area and is subject to the Waterfront Revitalization and Coastal Resources Act.

**Opportunity for Public Comment:**

Comments on this project must be submitted in writing to the Contact Person no later than *Jan 10, 2007*.

**Contact:** Steve A Watts  
NYSDEC Region 2 Headquarters  
47-40 21ST St  
Long Island City, NY 11101  
(718)482-4997  
[r2dep@gw.dec.state.ny.us](mailto:r2dep@gw.dec.state.ny.us)

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## Queens County

**Applicant:** Keyspan - Ravenswood Services Corp  
175 East Old Country Rd  
Hicksville, NY 11801

**Facility:** Ravenswood Generating Station  
38-54 Vernon Blvd  
Queens, NY 11101

**Application ID:** 2-6304-00024/00004

**Permit(s) Applied for:** Article 17 Titles 7 & 8 Industrial SPDES

**Project is Located:** Queens, Queens County

**Project Description:**

The New York State Department of Environmental Conservation (Department) proposes to renew and modify the State Pollutant Discharge Elimination System (SPDES) Permit of the Ravenswood Generating Station (Ravenswood). Ravenswood is located in Long Island City, Queens County, on the East River. The facility consists of three units with rated capacities of 400, 400 and 1027 megawatts. The facility has a combined flow of condenser cooling water and service water of 1457 million gallons per day. The draft modified permit requires that the permittee, Keyspan Generation, LLC (Keyspan), reduce entrainment and impingement impacts to aquatic organisms of the East River from the operation of Ravenswood water withdrawal pursuant to 6 NYCRR Part 704.5 and Section 316(b) of the Clean Water Act. Reductions are to be accomplished through:

- Continued use of the low stress fish return lines constructed at each unit in 2005;
- Installation of variable speed pumps and ancillary equipment;
- Scheduling of a planned outage process that will require pumps to be shutdown;

- Upgrades to existing traveling screens to allow for the continuous operation of all traveling intake screens.

The above referenced measures will reduce entrainment mortality by 65% from the full flow baseline. Impingement mortality will be reduced by 79% by the above measures. The use of the continuous screen operation is expected to further reduce impingement mortality to an approximate 85% reduction from the full flow baseline. Keyspan must also propose additional measures to further reduce impingement mortality, achieving a 90% reduction from full flow baseline. These levels of impact reduction meet the federal 316(b) Phase II performance standards.

In addition to the above modifications the draft SPDES permit also requires Keyspan to conduct a thermal study to demonstrate Part 316(a) compliance with 6 NYCRR Part 704.2. The permit provides timelines for completion of a protocol and the thermal study. The draft permit also contains administrative changes and modified effluent limitations. In all cases, the effluent limitations are more stringent than the existing limits. A copy of the draft permit and the fact sheets are available for review.

**Availability of Application Documents:**

Filed application documents, and Department draft permits where applicable, are available for inspection under the provisions of the Freedom of Information Law during normal business hours at the address of the contact person.

**State Environmental Quality Review (SEQR) Determination:**

Project is an Unlisted Action and will not have a significant impact on the environment. A Negative Declaration is on file. A coordinated review was not performed.

**SEQR Lead Agency:**

None Designated

**State Historic Preservation Act (SHPA) Determination:**

The proposed activity is not subject to review in accordance with SHPA. The permit type is exempt or the activity is being reviewed in accordance with federal historic preservation regulations.

**Coastal Management:**

This project is not located in a Coastal Management area and is not subject to the Waterfront Revitalization and Coastal Resources Act.

**Opportunity for Public Comment:**

Comments on this project must be submitted in writing to the Contact Person no later than *Feb 09, 2007*.

**Contact:**

Christopher M Hogan  
NYSDEC Headquarters  
625 Broadway  
Albany, NY 12233  
(518)402-9167  
[depprmt@gw.dec.state.ny.us](mailto:depprmt@gw.dec.state.ny.us)

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Region 2 SEQR and Other Notices

Region 2 SPDES Renewals

EXHIBIT B —ENB NOTICE OF RAVENSWOOD FACILITY'S DRAFT SPDES  
PERMIT RENEWAL APPLICATION, JULY 18, 2012 [A- 1030 - A- 1033]



Department of  
Environmental  
Conservation

## ENB Region 2 Completed Applications 07/18/2012

[Region 2 SEQR and Other Notices](#)

[Region 2 SPDES Renewals](#)

### Bronx County

**Applicant:**

Jamie Towers Housing Co Inc  
633 Olmstead Ave  
Bronx, NY 10473

**Facility:**

Jamie Towers  
2070 Seward Ave  
Bronx, NY 10473

**Application ID:**

2-6007-00245/00002

**Permit(s) Applied for:**

Article 19 Air State Facility

**Project is Located:**

Bronx, Bronx County

**Project Description:**

The Department has made a tentative decision to approve an application for an existing residential apartment complex that operates combustion installation consisting of three Cleaver Brooks CB400 boilers rated at 16.8 mmBtu/hr each firing #2 or #6 fuel oil. The facility NO<sub>x</sub> emissions are capped at 24.9 tons per year. The facility is subject to the provisions of State Facility requirements specified under 6NYCRR 201-7. This facility formerly held a Title V Permit for Small Combustion Installations. The application, draft permit, relevant supporting materials and regulations are available for review during normal business hours at the DEC office provided in this notice. Comments of support or objection may be made by filing a written statement by the deadline date indicated. DEC may schedule a public hearing based upon an evaluation of the nature and scope of any written objections raised. Hearing notices will contain instructions on filing for party status and submitting comments.

**Availability of Application Documents:**

Filed application documents, and Department draft permits where applicable, are available for inspection during normal business hours at the address of the contact person. To ensure timely service at the time of inspection, it is recommended that an appointment be made with the contact person.

**State Environmental Quality Review (SEQR) Determination:**

Project is an Unlisted Action and will not have a significant impact on the environment. A Negative Declaration is on file. A coordinated review was performed.

SEQR Lead Agency: NYS Department of Environmental Conservation

**State Historic Preservation Act (SHPA) Determination:**

A cultural resources survey has been completed. The report of the survey is on file. No archaeological sites or historic structures were identified at the project location. No further review in accordance with SHPA is required.

**Coastal Management:**

This project is not located in a Coastal Management area and is not subject to the Waterfront Revitalization and Coastal Resources Act.

**Opportunity for Public Comment:**

Comments on this project must be submitted in writing to the Contact Person no later than *Aug 17, 2012*.

**Contact:**

Elizabeth A Clarke  
NYSDEC Region 2 Headquarters  
47-40 21st St  
Long Island City, NY 11101  
(718)482-4997  
[dep.r2@dec.ny.gov](mailto:dep.r2@dec.ny.gov)

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## Queens County

**Applicant:**

TC Ravenswood LLC  
110 Turnpike Rd Ste 203  
Westborough, MA 01581

**Facility:**

Ravenswood Generating Station  
38-54 Vernon Blvd  
Queens, NY 11101

**Application ID:**



2-6304-00024/00004

**Permit(s) Applied for:**

Article 17 Titles 7 & 8 Industrial SPDES - Surface Discharge

**Project is Located:**

Queens, Queens County

**Project Description:**

The Department of Environmental Conservation (DEC) has prepared a draft permit and has made a tentative determination to issue a renewal of State Pollutant Discharge Elimination Systems (SPDES) permit (NY#0005193) for discharges to the East River, a class I water.

The SPDES permit for this facility addresses the discharges of once through cooling water, stormwater, boiler blowdown, wastewater treatment, floor drains, condensate, intake screen wash/fish returns, ion exchange regeneration and reverse osmosis concentrate.

DEC proposes to incorporate the following modifications to this permit: - Updated permit pages and conditions reflect current permit language, DEC guidance, format and nomenclature. - Latitude and longitude information were corrected for outfall 009 and 010. - Discharge limit for total chlorine residual at outfall 001 was reduced. - Monthly avg limits for total suspended solids has been added to outfalls 01D, 01E, 01F, 01G and 01H. -Daily maximum limits for oil and grease have been added at outfalls 01E, 01F and 01H. - Outfall 004 limits and monitoring for Aroclors 1254 and 1260 have been removed as results have been reported as not detected for the past 10 years. - The discharge limit for ethylbenzene at outfalls 004, 006 and 007 was reduced. -PCB monitoring for stormwater at outfall 001 has been removed. - Footnotes have been updated and consolidated onto page 8. - The old condition 4 (Water Treatment Chemicals) in the Additional Requirements Section has been removed and replaced by the Water Treatment Chemical Requirements section. - The Biological Monitoring Requirements section has been revised to eliminate the completed requirements.

**Availability of Application Documents:**

Filed application documents, and Department draft permits where applicable, are available for inspection during normal business hours at the address of the contact person. To ensure timely service at the time of inspection, it is recommended that an appointment be made with the contact person.

**State Environmental Quality Review (SEQR) Determination:**

Project is not subject to SEQR because it is a Type II action.

SEQR Lead Agency: None Designated

**State Historic Preservation Act (SHPA) Determination:**

The proposed activity is not subject to review in accordance with SHPA. The permit type is exempt or the activity is being reviewed in accordance with federal historic preservation regulations.

**Coastal Management:**

This project is not located in a Coastal Management area and is not subject to the Waterfront Revitalization and Coastal Resources Act.

**Opportunity for Public Comment:**

Comments on this project must be submitted in writing to the Contact Person no later than *Aug 17, 2012*.

**Contact:**

Teresa Diehsner  
NYSDEC Headquarters  
625 Broadway  
Albany, NY 12233  
(518)402-9167  
[deppermitting@dec.ny.gov](mailto:deppermitting@dec.ny.gov)

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## Richmond County

**Applicant:**

Richmond Valley Professional Plaza LLC  
88 Battin Rd  
Fair Haven, NJ 07704

**Facility:**

Richmond Valley Professional Plaza - B 7580 L 21  
245 Richmond Valley Rd B 7580 L 21  
Staten Island, NY 10309

**Application ID:**

2-6405-00579/00001

**Permit(s) Applied for:**

Article 24 Freshwater Wetlands

**Project is Located:**

Staten Island, Richmond County

**Project Description:**

The applicant proposes to demolish existing buildings, and construct two-two-story commercial and medical buildings, and a parking lot for 52 cars, plus associated utilities, paving and landscaping, at 245 Richmond Valley Road, Staten Island, NY 10309, Richmond Co. Tax Block 7580, Lot 21. The buildings are set back at least 60 feet from the wetland, which is east of the property, and the parking lot is set back approximately 40 to 60 feet from the wetland, which is located partially within Sowell Avenue, a mapped street which will not be opened.

**EXHIBIT C — DEC RESPONSE TO PUBLIC COMMENTS ON ADMINISTRATIVE  
RENEWAL OF SPDES PERMIT NY 0005193, SEPTEMBER 2012 [A- 1034 - A- 1036]**

**TC Ravenswood, LLC  
Ravenswood Generating Station  
DEC # 2-6304-00024/00004  
SPDES Permit NY 0005193**

**Response to Public Comments on Administrative Renewal of SPDES Permit  
September, 2012**

**Background:** The Department public noticed a draft State Pollutant Discharge Elimination System (SPDES) for the renewal of the above referenced facility in the July 18, 2012 Environmental Notice Bulletin. This renewal was based upon a November 1, 2011 submission of an industrial SPDES permit application form and sampling data to the Department for review. This document provides the Department's response to the comments received during this comment period. Comment letters were received on August 17, 2012 from Kenneth Yager, Compliance Manager for the Ravenswood Generating Station and August 21, 2012 from Karen O'Brien, Acting NPDES Section Chief, Clean Water Regulatory Branch, US Environmental Protection Agency (USEPA). A revised permit was provided to USEPA and accepted on 9/12/2012.

**Comments from Kenneth Yager, Compliance Manager for the Ravenswood Generating Station dated  
August 17, 2012**

Comment 1 - The Water Treatment Chemical (WTC) requirements currently included on page 16 of the Draft Permit do not account for the WTCs that Ravenswood uses during different operating and maintenance scenarios. Therefore, as discussed with the Department, TransCanada has submitted revised WTC Usage Notifications to the Department, which more accurately reflect the amount of WTCs that Ravenswood uses in different operating and maintenance scenarios, and more accurately reflect the affected outfalls.

*DEC Response – The Department will review the revised WTC Usage Notification forms. If the revised dosages are acceptable, revisions to WTCs will require Department approval, but not a formal SPDES permit modification.*

Comment 2 - TransCanada requests that the Schedule of Compliance found on page 18 of the Draft Permit be revised to include additional language contained in Condition B. 4. c. TransCanada requests that the following statement contained in B.4.c be **added** to the Schedule of Compliance:

If the Verification Monitoring Plan Study does not demonstrate compliance with biological Monitoring Requirement B. 2, TransCanada shall propose additional mitigative measures and a schedule to meet the performance standards of Condition B.2.

*DEC Response – The Schedule of Compliance language has been revised to: "Submit an approvable report to demonstrate compliance in accordance with permit condition in Biological Monitoring Requirement B.4.c."*

Comment 3 - Outfall No. 011 - As discussed with the Department, Outfall No. 011 footnotes 13 and 14 for pH do not exist in the footnote section found on page 8 of the Draft Permit.

*DEC Response – The referenced footnotes have been corrected to 8 and 9 which are intended to address stormwater sampling requirements for Outfall 011.*

Comment 4 - Tank Test Water, Xylene Sampling - TransCanada assumes that the required sampling parameter Xylenes for tank test water found on page 7 implies that o-Xylene and m,p-Xylene are required and would make up Xylene, total.

*DEC Response – The sampling parameter listed as xylenes for tank test water monitoring has been corrected to Xylene, total in order to be consistent with xylene monitoring at other permitted outfalls in this permit.*

**Comments from Karen O'Brien, Acting NPDES Section Chief, Clean Water Regulatory Branch, USEPA dated August 21, 2012**

Comment 1 – General Conditions. The draft Ravenswood Generating Station permit does not adequately incorporate general permit conditions as required by federal regulations. As specified in 40 CFR § 122.41, all conditions applicable to NPDES permits and corresponding State programs shall be incorporated into permits either expressly or by reference. If incorporated by reference, specific citations to these regulations (or the corresponding approved State regulations) must be given in the permit. The NYSDEC must include in the permits either expressly or by reference all general conditions. In addition to the general conditions specified in 40 CFR § 122.41 that are applicable to all permittees, the EPA notes that additional conditions applicable to certain categories of NPDES permits in 40 CFR § 122.42 may apply.

*DEC Response – The last page of the permit includes the most current language specific to the General Conditions that EPA and DEC management have agreed to.*

Comment 2 – Mercury. TOGS 1.3.10 Mercury provides that the Multiple Discharger Variance (MDV) for mercury is in effect "for five years from the effective date specified on page 1 of this document". Page 1 indicates that the issue date (assuming this is the effective date as well) is October 2010; therefore, the MDV is only effective until September 2015. As the term of Ravenswood Generating Station permit extends beyond the expiration date of the MDV, the permit must establish a final water quality based effluent limit (WQBEL) of 0.7 ng/l as of September 2015 unless other relief is provided in the permit (i.e., compliance schedule, renewal of the MDV).

*DEC Response – While the Department agrees that TOGS 1.3.10 provides that the MDV is in effect "for five years from the effective date specified on page 1 of this document" it also states "After that date, high priority permits may not be renewed or modified unless they incorporate requirements of either a new MDV or an IDV, or include a limit of 0.70 ng/L. It is likely that the water quality goal will not be achieved for many years and that it will be necessary to pursue one or more subsequent MDVs in the future."*

*Therefore, to clearly state the MDV term as provided in TOGS 1.3.10 the following footnote has been added to page 7 of the permit: "This permit may not be renewed or modified unless it incorporates requirements of either a new MDV or an Individual Discharge Variance (IDV), or include a limit of 0.70 ng/L."*

Comment 3 – Metal Cleaning Waste Discharge. The draft Ravenswood Generating Station permit does not contain copper and iron effluent limits for the discharge of metal cleaning wastes as required by the Effluent Limitation Guidelines (ELGs) at 40 CFR Part 423 and the fact sheet does not include a discussion for their absence. Please ensure that the Ravenswood Generating Station permit includes the applicable copper and iron effluent limits for metal cleaning wastes or a provision that prohibits the discharge of metal cleaning wastes.

*DEC Response – Condition 1 of the Additional Requirements Section on page 9 has been revised to state, “There shall be no discharge of the following wastes to surface waters or groundwater of the State; fly ash and bottom ash, sluice wastes, evaporator blowdown, or boiler and metal cleaning wastewater.”*

Comment 4 – Oil and Grease. The draft Ravenswood Generating Station permit establishes QBELs of 15 mg/l for oil and grease based on a maximum daily and requires monitoring and reporting only based on the average monthly for all internal and external outfalls. The permit does not establish numeric effluent limitations for oil and grease based on the monthly average. However, since the ELGs at 40 CFR 423.12(b)(3) establish monthly average requirements for oil and grease, where a QBEL based on the monthly average has not been established, the permit must include instead a numeric technology-based effluent limitation (TBEL) for the monthly average based on the ELG. Therefore, where the ELGs apply for the discharges listed in the permit, the permit must establish a TBEL of 15 mg/l for oil and grease to meet the requirements of 40 CFR 423.12(b)(3). In determining final effluent limitations, the Clean Water Act and its implementing regulations require that both technology and water quality standards are met.

*DEC Response – A monthly average limit 15 mg/l for Oil & Grease at discharge Outfalls 01A-01H have been added to the permit to address the monthly average technology-based effluent limitation in 40 CFR 423 for the low volume waste source discharges.*

Comment 5 - Whole Effluent Toxicity. The fact sheet does not provide a reasonable potential analysis of whole effluent toxicity (WET) and the draft Ravenswood Generating Station permit does not contain WET monitoring or limits, or a justification for their absence. WET effluent limitations are required based on the determination of whether the effluent is or may be discharged at a level that will cause, have the reasonable potential to cause or contribute to an excursion above any numeric WET criterion or narrative criterion within New York State Water Quality Standards at 6 NYCRR Part 700. See 40 CFR § 132.6, Appendix F, Procedure 6. It is not clear from that fact sheet the basis for not addressing WET at any of the outfalls from the facility and whether WET effluent limitations are required based on reasonable potential analysis. With no discussion of existing WET data, it is not clear how the permit meets the requirements of either 40 CFR § 122.41(d)(ii) or Part 132. Please provide an analysis of WET and, at minimum, establish WET monitoring as a condition of the permit.

*DEC Response – The fact sheet has been revised to include a description regarding WET testing and justification for not including WET testing in this permit.*

#### **Additional Typos/Corrections**

- 1) The draft permit cover page incorrectly listed the facility to be in Westchester County. This has been corrected to Queens County.
- 2) The Permit Limits, Levels and Monitoring table on Page 7 for Tank Test Water lists the receiving water to be Long Island Sound. This has been corrected to the East River.

**AFFIDAVIT OF ROGER DOWNS IN OPPOSITION TO RESPONDENTS' ANSWERS  
AND IN SUPPORT OF THE VERIFIED PETITION, DATED SEPTEMBER 5, 2019 [A- 1037 -  
A- 1045]**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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In the Matter of the Application of

SIERRA CLUB and HUDSON RIVER FISHERMEN'S  
ASSOCIATION, NEW JERSEY CHAPTER INC.

Petitioners,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules,

—against—

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, BASIL SEGGOS,  
COMMISSIONER, and HELIX RAVENSWOOD LLC,

Respondents.

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**AFFIDAVIT OF  
ROGER DOWNS**

Index No. 2402/19

Hon. Ulysses B. Leverett

State of New York     )  
Albany County         )     ss.:

Roger Downs, being duly sworn, deposes and says:

1. I am the Conservation Director of the Atlantic Chapter of the Sierra Club, a  
Petitioner in the above-captioned proceeding.
2. The Sierra Club is a not-for-profit corporation organized under the laws of the  
State of California. It is the oldest and largest environmental organization in the country.
3. The Sierra Club has more than 784,000 members nationwide, including  
approximately 50,000 members in New York State, and approximately 20,000 members in New  
Jersey. Many New York and New Jersey members of the Club live in the Hudson River  
watershed.

4. Sierra Club members fish in the East River, the Hudson River Harbor Estuary and the Hudson River and are adversely affected by the actions complained of in this petition. Their ability to fish in these waters is adversely affected by the project complained of herein.

5. The protection of water resources is a key aspect of the Sierra Club's work, at the national, state and local levels. The Sierra Club and its members have worked to educate the public to assure healthy water resources for its members and the public, have lobbied for laws to protect water resources and have brought numerous lawsuits to protect water resources under various federal, state and local laws.

6. One water issue on which the Sierra Club has focused is the issue of fish kills by thermoelectric power plants, including power plants in the Hudson River watershed. In 2011, the Club released a report, *Giant Fish Blenders: How Power Plants Kill Fish & Damage Our Waterways (And What Can Be Done to Stop Them)* as part of a campaign to end the devastating impacts that large water withdrawals can have upon aquatic ecosystems. A copy of the report is attached as **Exhibit A**.

7. The report has a section on "How Power Plant Intake Structures Harm the Hudson River, Long Island Sound and New York Harbor." The section states:

A total of 17 power plants using once-through cooling are located in the region: four on the Hudson River, eight on the Long Island Sound and five in New York Harbor. New York has 12 of these plants, and Connecticut five. Two of these plants are nuclear, and the rest burn natural gas or oil, with the exceptions of the Bridgeport Harbor plant in Connecticut and Danskammer plant in New York, both of which have coal-fired units. All these plants use exorbitant amounts of water. The two nuclear plants, the Indian Point plant on the Hudson and the Millstone plant on the Sound, can withdraw 2.5 billion and 2.19 billion gallons per day, respectively. The Hudson River plants have a combined intake capacity of nearly 5 billion gallons per day; the Long Island Sound plants have a combined intake capacity exceeding 5 billion gallons per day; and the New York Harbor and East River plants have a combined intake capacity of more than 3.5 billion gallons per day. Altogether, the

17 plants can withdraw almost 14 billion gallons per day from the two estuaries and the harbor. . . .

Because of these waters' importance as spawning and nursery grounds, it is unsurprising that entrainment of eggs and larvae occur in astronomic numbers. . . .

Indian Point and the other three power plants using once-through cooling on the Hudson have a huge, detrimental impact on the ecology of the estuary—and this impact goes well beyond the loss of large numbers of individual fish. In a 2007 report, New York State found that the cumulative impact of multiple facilities on the river substantially reduces the population of young fish in the entire river. In certain years those plants have entrained between 33 and 79 percent of the eggs and larvae spawned by striped bass, American shad, Atlantic tomcod and five other important species. Over the time the plants have been operating, the ecology of the Hudson River has been altered, with many fish species in decline and populations becoming less stable. Of the 13 key species subject to intensive study, ten have declined in abundance, some greatly. Power plants have played a considerable role in that decline. [Footnotes omitted.]

8. I have personal experience in fish entrainment and impingement issues. From 1996 -2006 I served as project manager for a shad (*Alosa sapidissima*) restoration effort on the Hudson River, which involved the harvesting, fertilization and care of fish eggs. In addition, I collected data on spawning behavior, habitat and egg mortality in support of this project to restore a wild shad population to the Susquehanna River using stock from the Hudson River. As a result of that expertise I became interested in fish entrainment and impingement issues involving the cooling water intake structures on the Hudson River power plants. I participated in public comment periods for SPDES permits, legal challenges and environmental impact statements for electrical generating facilities that use vast quantities of water from the river. In general, I have advocated that the long-term health of Hudson River fisheries will be jeopardized if we continue to destroy generations of shad, striped bass, Atlantic sturgeon and winter flounder through cooling intake structures.



9. My expertise on this issue has been useful in my work on behalf of the Sierra Club Atlantic Chapter. Chapter members have done substantial work on fish entrainment and impingement issues over the years.

10. In connection with the Club's work to protect New York's water resources, as Conservation Director for the Sierra Club Atlantic Chapter, I worked with others in the Club in 2011 to lobby for passage of A5318A/S3798, amending New York's water resources law.

11. In June 2011 the New York legislature enacted the Water Resources Protection Act of 2011, Chapters 400-402, Laws of 2011. The Act, which amended the Water Resources Law ("WRL"), ECL Article 15, Title 15, was signed into law by Governor Cuomo on August 15, 2011. The 2011 amendments are the first statutory provisions in New York law to require that users other than public water supply systems obtain water withdrawal permits. Water withdrawal permits have been required for public water supply systems since 1905. The amendments require that any person taking 100,000 gallons or more per day from any of the state's waters obtain a water withdrawal permit (with certain exemptions).

12. The 2011 amendments to the WRL were enacted to comply with the requirements of Great Lakes-St. Lawrence River Basin Compact (the "Compact"). ECL 21-1001. The Compact is a bi-national agreement between the federal governments of the United States and Canada, eight US states and two Canadian provinces. The purpose of the Compact is to protect the waters of the Great Lakes-St. Lawrence River Basin, one of the largest fresh water reservoirs in the world. Shortly after the Compact was ratified in 2008, Respondent New York State Department of Environmental Conservation ("DEC") drafted new water withdrawal permitting legislation to bring New York into compliance with the Compact and give Respondent DEC additional powers to regulate water withdrawals in New York.

13. Sierra Club committees at the national, state and local levels have been active in pushing for the adoption and implementation of the Compact.

14. Governor Cuomo’s press release announcing his signing of the 2011 amendments stated that “This law will ensure that New York upholds its commitments under the [Great Lakes-St. Lawrence River Basin Water Resources] Compact.” A copy of the press release is attached as **Exhibit B**. The press release quoted Senator Mark Grisanti, Chairman of the Senate Environmental Conservation Committee in 2011, “Passage of this monumental legislation will protect our environment by regulating the amount of water that can be extracted. Under current law, the state does not have the proper oversight to regulate water withdrawals, and with this legislation they will be able to better protect our state’s greatest natural resource its water.”

15. Following the enactment of the legislation, Respondent DEC promulgated new water withdrawal regulations, 6 NYCRR Part 601. The new regulations became effective April 1, 2013.<sup>1</sup> Selected pages from DEC’s responses to public comments on proposed regulations are attached as **Exhibit C**.

16. The new water permitting statute and regulations provide that existing water users who registered their use with DEC before February 2012 are entitled to an initial permit in the amount of their registered withdrawal capacity. A list of users registered with DEC in 2012 obtained from DEC in 2013 through a Freedom of Information Law request. A copy of the list is attached as **Exhibit D**.

17. The list shows that about 1600 users registered their average and maximum daily water withdrawals in 2012. A number of these users are public water supplies who were

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<sup>1</sup> Water Withdrawal Permit Program, Water Supply Law Revision, <https://www.dec.ny.gov/permits/6036.html>.

permitted under the previous law. I estimate that about a 1,000 of the registered water users are non-public users who have been required to obtain permits for the first time under the new law.

18. Respondent DEC published notice of the first non-public water withdrawal application under the new law on August 6, 2013. This was the application of TransCanada LLC to take up to 1.39 billion gallons per day from the East River for operation of the once-through cooling systems at its Ravenswood Generating Station in Long Island City. The notice announced that Respondent DEC was treating the application as a Type II action under SEQRA on the ground that it had no discretion under the new law in setting the terms and conditions of a water withdrawal permit issued to a new user.

19. Club members were greatly concerned that these claimed limitations on Respondent DEC's authority undermined the purposes for which the new water permitting law was enacted, and I submitted comments on the 2013 Ravenswood application on behalf of the Sierra Club Atlantic Chapter on September 11, 2013, pointing out that this new interpretation was contrary to the clear wording of the law.

20. Over the next several months, the Sierra Club Atlantic Chapter, on its own behalf and in conjunction with other environmental groups, filed comments on ten of the first water withdrawal permit applications objecting to Respondent DEC's interpretation of its responsibilities under the new law.

21. Our concerns with the lack of environmental review and Respondent DEC's failure to make the determinations required by the new law led the Sierra Club to join with the Hudson River Fishermen's Association ("HRFA") in bringing an Article 78 proceeding challenging the process for issuance of the Ravenswood water withdrawal permit application.

The petition was filed in Queens County Supreme Court on December 6, 2013, and refiled on February 25, 2014.

22. Respondent DEC modified the Ravenswood permit on March 7, 2014, to increase the permitted amount to 1.528 billion gallons per day.

23. We received two unfavorable decisions on our petition by the Queens County Supreme Court in 2015, but our appeal of those decisions to the Appellate Division Second Department was decided in our favor in January 2018. The Second Department invalidated the 2013 Ravenswood Permit on the ground that Respondent DEC does have discretion under the water withdrawal law in setting the terms and conditions of water withdrawal permits issued to existing users and therefore determined that the issuance of the 2013 permit was not exempt from SEQRA review.

24. When notice of the application of Respondent Helix Ravenswood LLC (“HRLLC”) for a water withdrawal permit for the Ravenswood Generating Station was published last fall and the Club learned that Respondent DEC planned to reissue the same permit that was invalidated by the Second Department in reliance on a negative declaration that was based almost entirely on a negative declaration issued by Respondent DEC for the Ravenswood SPDES permit in 2005, Club members were deeply concerned.

25. On October 10, 2018, I worked with Club members and staff to send out an emailed action alert inviting Club members and associates to send comments about the proposed reissuance of the 2013 Ravenswood permit to Respondent DEC. Thousands of our members and associates used this opportunity to submit comments to Respondent DEC as a result. AR 689-3280.

26. I submitted comments on behalf of the Club with detailing our objections to the procedures Respondent DEC was following in reissuing the Ravenswood water withdrawal permit on November 16, 2018. These comments objected to the negative declaration and stressed the obligation of Respondent DEC under the WRL to evaluate the need for “environmentally sound and economically feasible water conservation measures” at the Ravenswood Generating Station and evaluate cumulative impacts. A copy of these comments is provided in the administrative record at AR474-483

27. When Respondent DEC issued the new Ravenswood permit on February 20, 2019, and provided the Club with its Response to Public Comments we learned that Respondent DEC had not acted on our concerns.

28. We therefore joined with HRFA in bringing the current Article 78 proceeding challenging the process for issuance of the new Ravenswood water withdrawal permit application. The petition was filed in Queens County Supreme Court on April 18, 2019.

29. Respondent DEC’s violation of the WRL through its failure to make the determinations required by ECL 15–1503.2 before circulating the draft Ravenswood permit for comments and its failure to take a hard look at the environmental impacts of the proposed Ravenswood permit in accordance with the requirements of SEQRA deprived Sierra Club and our members of an adequate ‘airing’ of the relevant issues and impacts of the proposed water withdrawal permit, as well as an accurate assessment of the environmental impacts involved.

30. As long as DEC maintains its pattern and practice of non-compliance with SEQRA and the water resources law, Sierra Club and its members are profoundly hindered in our ability to protect the water resources of New York State on behalf of our members and the public.

31. In my view, granting a water withdrawal permit to Respondent HRLLC to take up to 1,527,840,000 from the New York harbor estuary without making the determinations required by ECL 15-1503.2 defies the intent and purpose of the water resources law —especially as there are many practical alternatives to once through wet cooling that use significantly less water without killing fish. The intent of the newly enacted legislation is not to duplicate existing SPDES permits, but to provide the DEC with tools to manage New York’s water resources in a comprehensive manner. A primary tool to facilitate this goal is the environmental impact assessment process prescribed in the WRL and mandated by SEQRA.

32. Respondent DEC should be ensuring that large water users are employing all “environmentally sound and economically feasible water conservation measures” and avoiding “significant adverse environmental impacts” as required by the 2011 amendments to the WRL. Instead, DEC has been issuing permits that simply rubber-stamp existing practices without consideration of more water-efficient alternatives and without regard to the environmental consequences.



Roger Downs

Subscribed and sworn to before me  
This 5<sup>th</sup> day of September 2019



Notary Public



EXHIBIT A —SIERRA CLUB REPORT, “GIANT FISH BLENDERS: HOW POWER PLANTS  
KILL FISH & DAMAGE OUR WATERWAYS (AND WHAT CAN BE DONE TO STOP  
THEM),” JULY 2011 [A- 1046 - A- 1061]



# GIANT FISH BLENDERS:

## HOW POWER PLANTS KILL FISH & DAMAGE OUR WATERWAYS

(AND WHAT CAN BE DONE TO STOP THEM)







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#### GIANT FISH BLENDERS: HOW POWER PLANT INTAKE STRUCTURES KILL FISH AND DAMAGE ECOSYSTEMS (AND WHAT CAN BE DONE TO STOP THEM)

This report is a publication of the Sierra Club

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JULY 2011





# EXECUTIVE SUMMARY



From an airplane window, you might see power plants lining the banks of the Mississippi River, our coastal shores or the Great Lakes. It is no coincidence that power plants are located along some of our mightiest rivers and most treasured waterways: steam-electric power plants using older technologies need an extraordinary amount of water to operate. The power industry uses more water than any other sector in the United States, withdrawing more than 200 billion gallons of water each day. Nearly all this water is used for “once-through cooling,” an antiquated technology where power plants suck enormous volumes of water to cool down their systems and then discharge it at an elevated temperature.

A power plant with once-through cooling draws hundreds of millions, in some cases billions, of gallons of water each day from the closest lake, river or ocean and indiscriminately sucks in whatever aquatic life is near the intake pipe. In this process, fish and other aquatic life are smashed and mutilated against crude screens (known as “impingement”) or are sucked into the cooling system itself (known as “entrainment”). It is estimated that billions of fish and other aquatic organisms at all stages of life are killed each year by power plants’ water-intake systems.

The full spectrum of aquatic species are impacted by once-through cooling, as are the other wildlife that rely on the complex food web—from phytoplankton to fish, birds, and marine mammals, including species that are threatened or endangered. Power plants’ intake structures kill billions of fish and destabilize wildlife populations. A single power plant can obliterate billions of fish eggs and larvae and millions of adult fish in a single year, and the heated water it discharges also alters surrounding ecosystems, compounding the damage. The death toll of wildlife from power plant intakes is staggeringly high. Some areas face devastating economic impacts as fisheries are threatened and recreational uses are diminished.

This report looks at the impact of once-through cooling systems on some of the nation’s most iconic waterways: the Great Lakes; the Gulf of Mexico; the Mississippi River; the Hudson

River, New York Harbor and Long Island Sound; the California Coast; and the Chesapeake Bay. These great American waterways are at risk of losing untold species and ecosystems that have shaped the history, economy and culture of the surrounding areas.

We also look at the history of and actions taken by decision makers in regulating once-through cooling systems. Almost 40 years after Congress identified cooling water intake as a threat to our waterways and the life sustained by them, the U.S. Environmental Protection Agency (EPA) has failed to force the owners of power plants—the nation’s largest water users—to reduce their destructive impact.

Today, the EPA is proposing regulations that, unfortunately, fail to set a clear, consistent national policy and fail to modernize our electric sector by phasing out once-through cooling systems. Even though the EPA has identified cost-effective alternatives, which are already being used in new power plants across the country, industry lobbyists are fighting hard to prevent any modernization of the outdated cooling systems at power plants, many built more than 30 years ago. This report highlights why the EPA must move quickly to strengthen proposed regulations and phase out the most destructive water-cooling practices by putting in place common-sense protections for fisheries and waterways across the United States.



## INTRODUCTION

**P**OWER PLANTS USE WATER—and lots of it. In the United States, more than 500 power plants withdraw billions of gallons of water each day to use in the most antiquated and destructive type of cooling system, known as “once-through cooling.” Once-through cooling systems draw water from a nearby waterbody and then discharge it at an elevated temperature, causing severe ecosystem destruction.

Collectively, steam-electric power plants have the capacity to withdraw more than 370 billion gallons per day—more than 135 trillion gallons per year—from our nation’s waters for cooling.<sup>1</sup> Currently, those plants’ average withdrawal exceeds 200 million gallons each day.<sup>2</sup> This accounts for 93 percent of the country’s total salwater use, 41 percent of total freshwater use, and 49 percent of all water use. That’s more water than all irrigation and public water supplies combined.<sup>3</sup>

One-through cooling systems use large pipes as water-intake structures. These pipes sit below the water’s surface and suck in not only water but also anything else in the vicinity. After the water is drawn through the power plant to help cool systems that have generated heat during the energy-making process, it is discharged at an elevated temperature back into the waterbody. This process affects the full spectrum of wildlife in the aquatic ecosystem at all life stages—eggs, larvae, juveniles and adults—from tiny photosynthetic organisms to fish, shrimp, crabs, birds and marine mammals, including threatened and endangered species.<sup>4</sup>

### How Power Plant Intake Structures Harm Our Waterways

Power plants’ intake structures kill billions of fish and destabilize wildlife populations. Since intake structures sit well below the surface of the water, fish and other aquatic life are hit the hardest. A single power plant can destroy billions of fish eggs and larvae and millions of adult fish in a single year, and its heated discharges alter the surrounding ecosystems, compounding the damage. In addition to fish, these outdated intake structures also kill or harm sea turtles, seals, sea lions and numerous other larger animals.<sup>5</sup>

This excessive mortality occurs despite rudimentary attempts to filter extraneous materials, including fish, from the cooling water stream. Fish eggs, larvae and other organisms are too small to be filtered out by even the best screens. The destruction is twofold: Larger fish and wildlife must fight against “impingement,” or getting trapped on intake screens. And aquatic organisms too small to be trapped against these screens become “entrained,” or sucked through plants’ heat exchangers, where most are smashed and boiled to death before being dumped back into a waterbody.

The EPA has found that the loss of large numbers of aquatic wildlife may affect the overall health of ecosystems.<sup>6</sup> Once-through cooling not only reduces adult populations of the species, but also kills their eggs and larvae, causing disruptions to the food chain. These antiquated intake structures also reduce the species’ ability to survive other unfavorable environmental conditions such as drought and climate change.<sup>7</sup>

### The History of Once-through Cooling Destruction

In the late 1960s, Congress first considered the impacts of power plants’ massive water usage during exorbitant hearings on the effects of waste heat discharged from industrial facilities.<sup>8</sup> Senator Warren Magnuson warned that “by 1980 thermal power plants throughout the nation will require an amount of cooling water greatly in excess of the average flow of the mighty Mississippi at St. Louis.”<sup>9</sup> Around the same time, the White House issued

LEFT: Just one outdated power plant can trap and kill millions of fish and other aquatic animals against crude water intake screens, like the ones shown here.

a report explaining that “the large volumes of water withdrawn in once-through cooling processes [can have] as much or more effect on aquatic life than the waste discharges on which control measures are required.”<sup>10</sup>

In the early 1970s, a number of well-publicized massive fish kills occurred at intake structures around the country. In response to the fish kills and other threats to our waterways, Congress voted overwhelmingly to pass the Clean Water Act of 1972 into law. While it focuses mostly on the discharge of pollution, the law also specifically regulates cooling water intake structures. Section 316(b) of the Clean Water Act requires the EPA to issue regulations requiring that “the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.”<sup>11</sup> Those adverse environmental impacts are primarily the entrainment and impingement of fish, shellfish and other forms of aquatic life, along with thermal pollution in the discharge of cooling water.

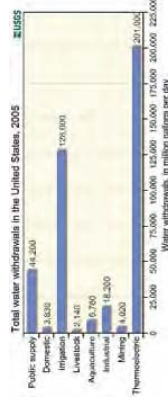
In 2001, after decades of delay, the EPA took an important step forward by ordering new plants to use “closed-cycle cooling” and prohibiting once-through cooling for new projects except in extremely limited circumstances.<sup>12</sup> In a closed-cycle cooling system, water withdrawn from a natural waterbody is circulated through condensers to remove the plant’s excessive heat, then circulated through cooling towers, and then recirculated (i.e., recycled) back to the condensers. Compared with a once-through system—in which water is drawn into the condenser and then sent back to the waterbody from which it came—closed-cycle cooling can reduce total water withdrawals by about 95 percent. Because closed-cycle cooling is a better and newer technology, Clean Water Act permits issued by state and the EPA’s regional offices for the construction of new power plants invariably require that it be installed.

However, the EPA has failed to follow through on its legal obligation to require existing power plants to modernize and phase out once-through cooling. Industry lobbyists have successfully stalled EPA action for a decade after it set new standards for new power plants. As a result, outdated power plants across the U.S. continue to kill billions of fish and other aquatic organisms annually on our nation’s most iconic waterways.

### About This Report

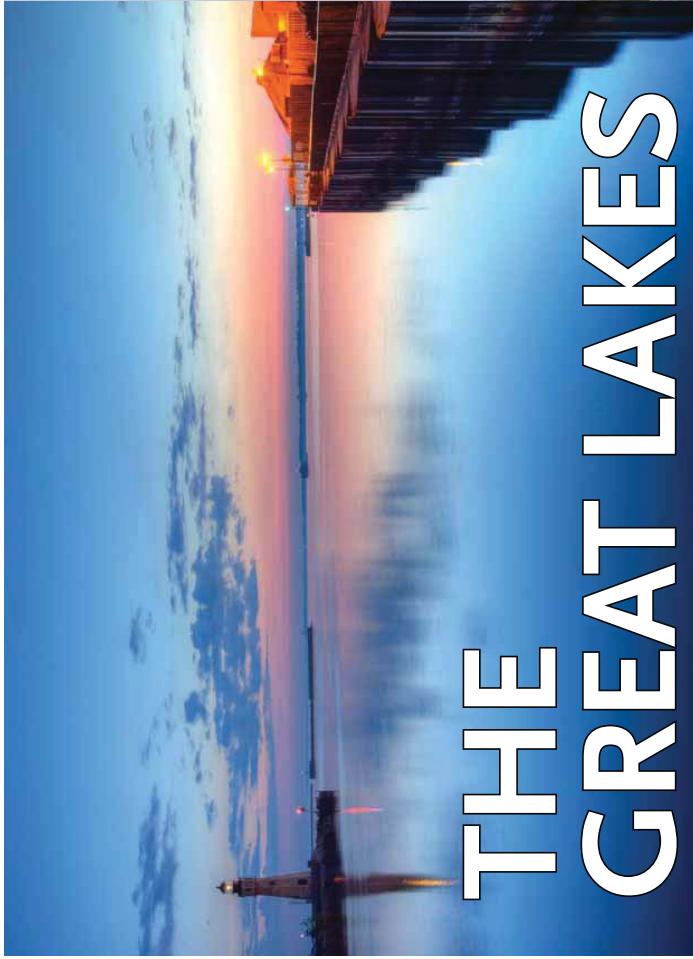
In the pages that follow, we provide specific examples of how antiquated cooling water intake structures are directly impacting some of our nation’s most iconic waterways and their ecosystems: the Gulf of Mexico; the Mississippi River; the Hudson River, New York Harbor and Long Island Sound; the California Coast; the Great Lakes and the Chesapeake Bay. While we discuss only a handful of examples, there are many other waterways around the country being similarly harmed by antiquated power plants.

We must stop the giant fish blenders that line our shores, lakes and rivers. By phasing out once-through cooling, the EPA can help begin the process to restore and preserve our waterways for generations to come.



GIANT FISH-BLENDERS

PHOTO: FISCS CONSERVATION, LTD



# THE GREAT LAKES

**T**HE GREAT LAKES—Superior, Michigan, Huron, Erie and Ontario—and their connecting channels form the largest freshwater system on Earth. Covering more than 94,000 square miles, and draining twice as much land area, these freshwater bodies hold about 6 quadrillion gallons of water, about one-fifth of the world's fresh surface water supply and 90 percent of the U.S. freshwater supply. The Great Lakes provide drinking water to more than 40 million people.<sup>13</sup>

The Great Lakes region possesses a mosaic of connected ecosystems containing diverse communities of species, including about 180 native fish species such as brook trout, lake sturgeon, lake trout, lake herring, largemouth bass, northern pike, whitefish, smallmouth bass, walleye and yellow perch.

Each species within the Great Lakes has its place within the food chain and is dependent on the abundance and health of the whole ecosystem. At the base of the food chain are the primary producers, like algae, that collect energy from light. Feeding on these are the small zooplankton amphipods and other organisms that are, in turn, eaten by larger invertebrates such as shrimp. The next link includes fishes such as alewives, shiners and lake

herring, which provide sustenance to the predatory fish, like lake trout and bass. All these fish then provide food for birds, reptiles, amphibians and mammals that live by the Great Lakes, including humans.

The Great Lakes are linked to coastal wetland and bordering terrestrial ecosystems that support many threatened and endangered animals, including the whooping crane, Canadian lynx, gray wolf, bog turtle, as well as plants such as the dwarf lake iris. They also provide essential habitat to a symbol of our country, the once-endangered bald eagle.

Because of the importance of these lakes, many underwater preserves and parks have been established throughout the area, and outdoor recreation is a major part of life in the region. With pristine wilderness in close proximity to major cities in eight states—Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin—as well as the Canadian province of Ontario, the Great Lakes region provides abundant opportunities for fishing, boating, swimming, bird-watching and tourism.

The Great Lakes states have about 3.7 million registered recreational boats, about a third of the nation's total,<sup>14</sup> and the commercial and sport fishing industry is collectively valued at more than \$7 billion annually.<sup>15</sup>



PHOTO: LAKE ERIE WATERKEEPER

A 2007 report by the Brookings Institution determined that a healthy, restored Great Lakes could generate some \$50 billion in long-term economic benefits for the region, not only for industries like fishing, which rely on clean, healthy ecosystems, but also for the tourist industry and for nonworkers, in the form of higher property values.<sup>16</sup>

Most lake ecosystems are dependent on their shores and shallows for their productivity, and the Great Lakes are no different. However, the Great Lakes are unique because of their size. Only a small proportion of their volume is within these productive shallow zones. The Great Lakes are therefore particularly vulnerable to any damage to their shallows, where shoreline power plant intake structures are located.

## How Power Plant Intake Structures Harm the Great Lakes

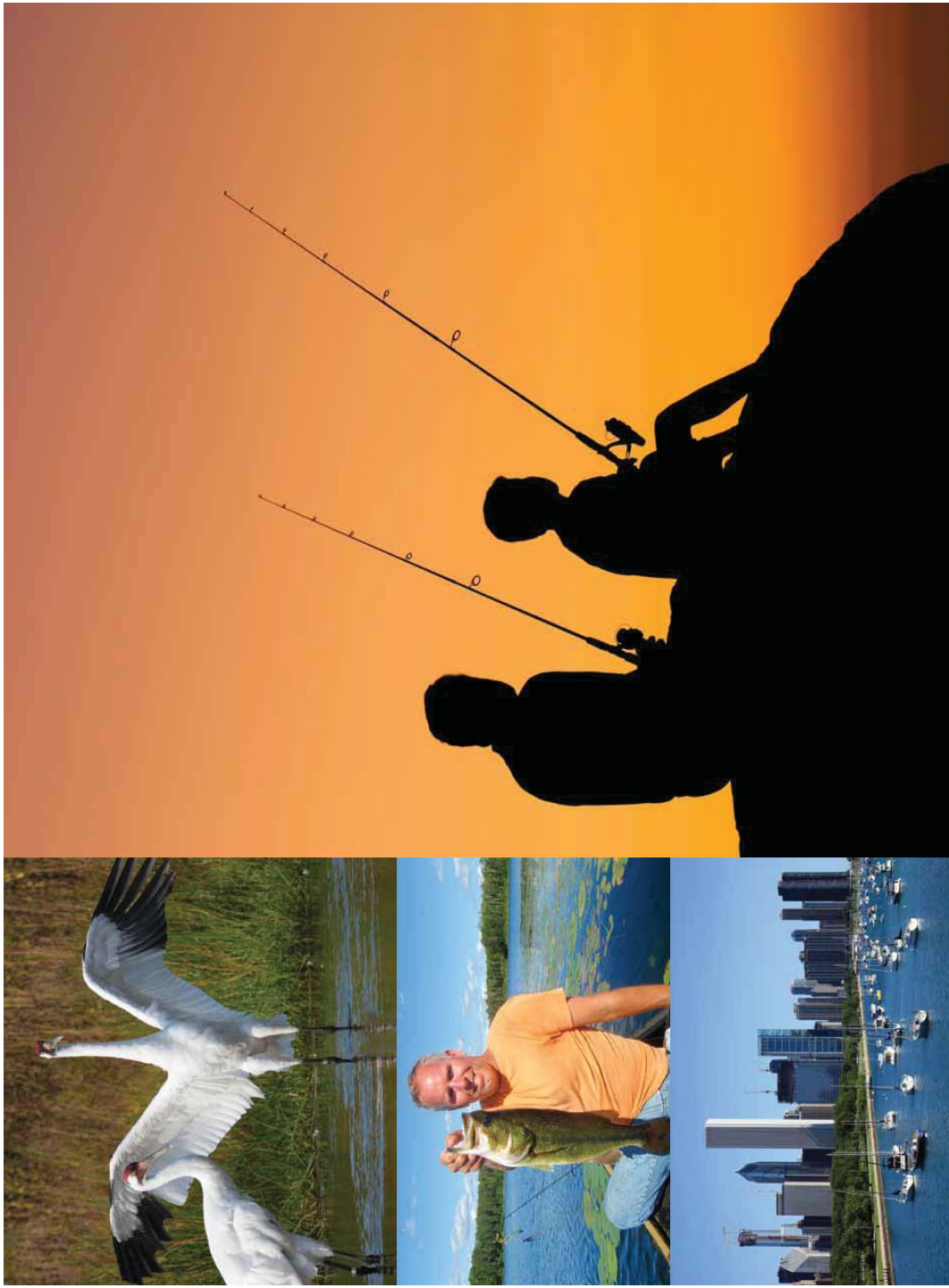
At least 42 power plants using once-through cooling systems ring the Great Lakes. Lake Michigan has the largest number of these plants, with 19, followed by Lake Erie's 11, Lake Huron's six, Lake Ontario's five, and Lake Superior's one. Thirty-three of the plants run on coal, six are nuclear, and the rest burn natural gas or oil. These plants withdraw massive volumes of water, ranging from the relatively small Harbor Beach

plant on Lake Huron, which can withdraw 129 million gallons per day, to the behemoth D.C. Cook plant on Lake Michigan and the Monroe plant on Lake Erie, both of which can withdraw more than 2 billion gallons.<sup>17</sup> The 42 Great Lakes plants have a combined intake flow of more than 30 billion gallons per day. (See Appendix, Table 1, for a full list of Great Lakes plants and their intake flow rates.)

These plants' intake structures kill huge numbers of fish and shellfish of virtually every species present and at every life stage. All links in the Great Lakes food chain are adversely affected by these power plants. For example, when operating at full capacity, the Bayshore plant in Ohio sucks up more than 700 million gallons of water per day from the middle of Maumee Bay, in western Lake Erie, the most productive fishery in the Great Lakes.

**LEFT:** Scenic Lake Erie has 12 antiquated power plants on its shores that use almost 10 billion gallons of water everyday.  
**ABOVE:** Bayshore power plant in Ohio has been known to kill 60 million fish in just one year because of outdated water intake structures.





A 2005-6 study conducted by Bayshore's owner estimated that more than 60 million adult fish and more than 2.5 billion fish eggs and larvae were killed per year.<sup>16</sup> A later study of the Bayshore plant by the University of Toledo put the number of fish eggs and larvae killed at more than 12 billion per year. The plant's once-through cooling system also dumps hot water into western Lake Erie, contributing to foul-smelling, toxic algal blooms and causing further harm to fish populations in a vital but already heavily stressed ecosystem.

On the shores of Lake Michigan in Wisconsin, the Oak Creek power plant was estimated by its operator to impinge well over 2 million fish weighing 57-plus tons in a single year on its intake screens. In addition, between April and October of 2002, it entrained over 6 million larvae and over 9 million fish eggs.<sup>17</sup>

New York's Hurndey Generating station, located along the Niagara River, which connects Lake Ontario to Lake Erie near the world-famous Niagara Falls, is estimated to entrain over 105 million fish eggs and larvae per year, with annual impingement of well over 96 million adult and juvenile fish—the largest of any power plant in the state.<sup>18</sup>

A clear illustration of the ecological benefits that could be obtained by installing closed-cycle cooling at the 42 Great Lakes plants is evident from the experience of the Palisades nuclear power plant on Lake Michigan, which was built with once-through cooling and later installed closed-cycle cooling. When operating in once-through mode, the plant impinged almost half a million fish per year, but this figure was reduced by an astounding 98 percent once the plant switched to closed-cycle cooling.<sup>21</sup>

Ecosystems in the Great Lakes face many other stresses, including pollution and destructive invasive species. This makes mortality from once-through intake structures more potentially detrimental to native species than it would be in healthy ecosystems. Since so many fish and other aquatic creatures are killed, their populations become smaller, weaker and more vulnerable to collapse.

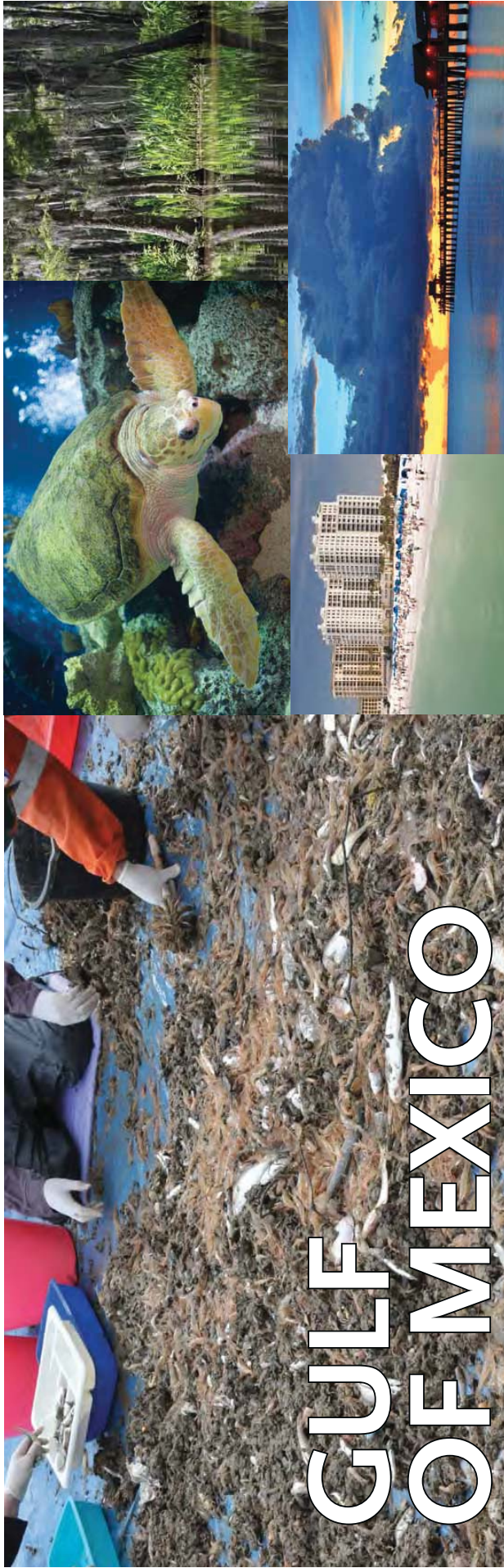
The Great Lakes are an important resource for the nation. The region's unique environment includes wetlands, marshes, swamps and bogs that play a critical role in linking land with water. These lakes enrich the lives of communities around them and define the region. They are a haven for hunters, anglers and all outdoor enthusiasts, and also an economic driver of the nation. Updating the 42 power plants on the shores of the Great Lakes would help ensure that they remain clean and healthy for future generations.

**ABOVE:** Endangered whooping cranes, like these, are dependent on healthy fish populations in the Great Lakes.

**CENTER:** On Lake Michigan in Wisconsin, the Oak Creek power plant was estimated by its operator to impinge well over 2 million fish weighing 57-plus tons in a single year.

**BELOW:** The Great Lakes communities have long been a vital part of the nation's economy, with boats, about a third of the nation's total.

**FAR RIGHT:** A healthy Great Lakes, such as this one, is a vital part of the nation's economy, with boats, about a third of the nation's total.



# GULF OF MEXICO

**T**HE GULF OF MEXICO is the ninth-largest body of water in the world, covering 600,000 square miles, and it receives water from 33 major rivers, including the Mississippi and Rio Grande.<sup>21</sup> More than half of the coastal wetlands within the continental United States are in the Gulf of Mexico, including 15,316 square miles of estuarine habitat along the shoreline in the Gulf.

Coast states of Alabama, Florida, Louisiana, Mississippi and Texas. This important coastal habitat is essential for healthy fisheries, migrating waterfowl, seabirds and wading birds. Wetlands also play an irreplaceable role in protecting shoreline communities from increasingly dangerous storms.

The Gulf's estuaries, with their associated mangrove and seagrass habitats, are essential feeding and nursery grounds for large numbers of fish and other wildlife, including threatened and endangered species such as sea turtles, Gulf sturgeon and manatees. Mangroves defend coastlines from flooding and erosion and provide essential habitat for reptiles such as the American crocodile and American alligator; sea turtles such as the loggerhead; fish such as snapper and tarpon; crustaceans such as shrimp and crabs; and coastal and migratory birds, including pelicans, spoonbills and bald eagles. Seagrass beds are also fish nurseries, where manatees and sea turtles feed and thrive. Additionally, the Gulf of Mexico yields more shrimp and shellfish annually than the mid-Atlantic, Chesapeake and New England areas combined.<sup>23</sup>

Of the 28 species of marine mammals known to inhabit the Gulf of Mexico, three are protected species of dolphin (Atlantic spotted, Risso's and bottlenose).<sup>24</sup> A number of endangered fish live in the coastal and estuarine waters, including the Gulf sturgeon, Alabama shad, saltmarsh topminnow and mangrove rivulus. The Gulf's threatened and endangered sea turtles include the loggerhead and leatherback, which thrive in the Gulf's expansive and unique waterways.

Besides being home to all types of wildlife, the Gulf supports major fishing industries.<sup>25</sup> Gulf fisheries are among the most productive in the world, with commercial fish and shellfish valued at \$661 million annually.<sup>26</sup> In 2008, recreational fishermen took more than 24 million trips, catching 190 million fish in the Gulf of Mexico and surrounding waters.<sup>27</sup> The Gulf of Mexico's shores and beaches, an ideal location for swimming, sun and all water sports, support a \$20 billion tourism industry.<sup>28</sup>

## How Power Plant Intake Structures Harm the Gulf of Mexico

The Gulf coastal region has at least 17 power plants that use once-through cooling systems: seven in Florida, seven in Texas, two in Louisiana, and one in Mississippi. Four of the plants—the Big Bend, Crystal River and Lansing Smith plants in Florida, and the Jack Watson plant in Mississippi—burn coal; the Crystal River plant site also has a nuclear reactor. The rest of the plants along the Gulf burn natural gas or oil.

These plants withdraw billions of gallons of water each day from the Gulf

of Mexico and its coastal bays, entraining and impinging huge numbers of fish and shellfish of virtually every species present—at every life stage—and discharging heated water back into the Gulf. The largest-flow plants are the Andore plant, north of St. Petersburg, Florida, at more than 2.8 billion gallons per day; the Crystal River plant complex, just 50 miles up the west coast of Florida from Andore, at more than 2.1 billion gallons per day; and the P. H. Robinson power plant in Galveston Bay, Texas, which is designed to take in more than 1.7 billion gallons per day. Combined, the 17 Gulf plants can withdraw nearly 13 billion gallons of water per day, and there are many other power plants withdrawing even larger volumes of freshwater from the rivers that feed the Gulf, killing aquatic life and discharging heated water back into the ecosystem as well. (See Appendix, Table 2, for a full list of Gulf plants and their intake flow rates.)

In the Gulf especially, thermal pollution can directly impact plants and animals, degrading habitat and reducing biodiversity. Both mangrove and seagrass beds are sensitive to power plants' thermal pollution. For example, the *Thalassia* seagrass beds in Florida estuaries are drastically affected when contacted by discharges 41 degrees Fahrenheit or more above the ambient summer temperature. These overly warm discharges on the seagrass beds can result in total destruction of this plant life and in turn damage the populations of wildlife that depend on it.<sup>29</sup>

A number of protected fish and sea turtle species live in waters impacted by power plants and are impinged or trapped on intake

screens. For example, the Crystal River plant has impinged five species of endangered sea turtles—loggerhead, green, Kemp's ridley, leatherback and hawksbill.<sup>30</sup> At the Big Bend generating station in Tampa Bay, Florida, the annual impingement from 1976 to 1977 was estimated to be more than a quarter of a million fish.<sup>31</sup>

Entrainment of young species is a major problem in productive coastal and estuarine waters. At the Big Bend plant, the annual entrainment of a single species, the bay anchovy, was estimated at more than 68 billion from 1976 to 1977.<sup>32</sup> The Big Bend power plants still uses that same once-through cooling system today, 30-plus years later.

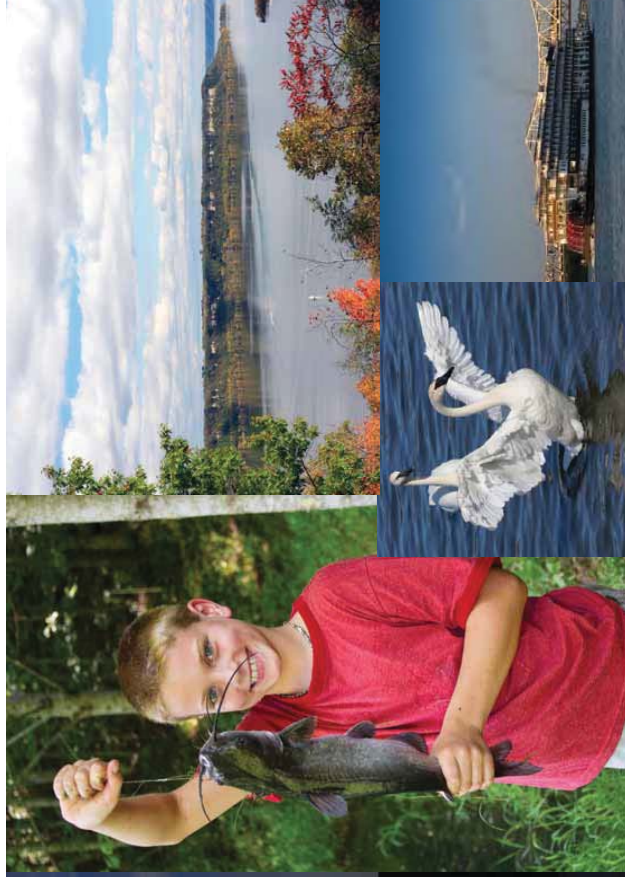
The Gulf of Mexico is one of the most biodiverse bodies of water on the planet and one of the most economically productive regions in the world.<sup>33</sup> It is home to a range of sea life including dolphins, oysters and coral reefs. Its coastline encompasses wetlands and includes tidal flats, mangrove swamps, estuaries and bays. Power plants along the Gulf should be required to update their cooling system technologies to protect aquatic life, coastal communities, tourism and commercial fishing in the region.

**CLOCKWISE FROM UPPER LEFT:** The Gulf of Mexico yields more shrimp and sea turtles than any other body of water in the world. Shrimp and sea turtles combined. However, outdated water intake structures can trap and kill them, as shown here. Not only fish are killed by power plants. Turtles, like the endangered loggerhead shown here, can become trapped on crude intake screens. The Gulf is not only known for its wildlife, but also as a destination for many outdoor enthusiasts such as beachcombers and boaters.

PHOTO: FISHERIES CONSERVATION LTD



# MISSISSIPPI RIVER



A-1053

**ONE OF THE MOST FAMOUS RIVERS** in the world, the Mississippi is the largest river system in North America, draining almost one-third of the total U.S. land mass. At approximately 2,350 miles long, the Mississippi is the third-longest river in North America,<sup>34</sup> is the fifth largest river in the world by volume and has the third largest drainage basin in the world,<sup>35</sup> covering more than a million square miles.<sup>36</sup> The river basin drains all or parts of 31 states and two Canadian provinces, and flows through ten states: Arkansas, Illinois, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Tennessee, and Wisconsin.

By virtue of its great size and other geographic factors, the Mississippi river system is one of North America's most important environmental resources, containing a variety of habitats and an extraordinarily great aquatic biodiversity. The river basin supports at least 375 species of native fish, which are rather evenly distributed across the region.<sup>37</sup>

The Mississippi is noted for its numerous large river fish, which include the shovelnose sturgeon, gar, and bowfin. Other native fish of the Mississippi are the shad, chub, perch and bass.<sup>38</sup> Migratory birds visiting the river include Canadian geese, swans, bluebirds, and pelicans, many types of songbirds, and mallard, wildgeese, pintail and ring-necked ducks.

The upper river valley contains large wetland areas, magnificent hardwood forests and some of the richest soils and most pristine habitats for wildlife found in the United States. Species living within the upper river

valley's catchments include white-tailed deer, wild turkeys, mink, muskrats and otters—all of which depend on a healthy Mississippi River.

The Lower Mississippi, below the Ohio River confluence, lies within the lowland gulf coastal plain, a basin between the Appalachians to the east and the Ozark and Ouachita Mountains to the west. The Lower Mississippi is distinguished by its extraordinary richness of species, particularly fish, shellfish and crayfish. It is also home to nearly 70 species of amphibians and aquatic reptiles, including the American alligator and two common turtles—the ringed map turtle and yellow-bellied map turtle. Among the numerous marine species commonly recorded in the Mississippi's lower reaches, where it meets the saltwater environment of the Gulf of Mexico, are minnows, catfish, killifish and darters.

Because of its rich diversity and beautiful scenery, the Mississippi River has seven National Park sites along its banks; in 1997, two portions of the Mississippi were designated as American Heritage Rivers. In 2009, the Upper Mississippi River floodplains, which include the 240,000-acre Upper Mississippi River National Wildlife and Fish Refuge, were designated as a Wetland of International Importance.

In addition to its ecological and social values, the Mississippi has significant economic value as the nation's chief navigable water route for commerce. It provides many states with drinking water and has spurred the growth of its neighboring cities and economies. The Mississippi provides abundant hunting, fishing, canoeing, camping and other recreational

opportunities for millions of Americans. Its riverside parks and trails are popular spots for hiking, biking, fishing and bird-watching. A healthy Mississippi River is vital to the quality of life in its nearby communities.

## How Power Plant Intake Structures Harm the Mississippi River

At least 28 power plants still using once-through cooling systems are located on the Mississippi River. Louisiana is home to six of these plants; Iowa has five; Minnesota, Missouri and Wisconsin each have four; Illinois has two; and Arkansas, Mississippi and Tennessee each have one. Seventeen of these plants burn coal; seven burn natural gas or oil; three are nuclear; and one, the Waterford plant in Louisiana, has a nuclear unit as well as oil or gas units. These 28 plants have a combined cooling water withdrawal capacity of more than 15 billion gallons per day, and their massive water withdrawals entrain and impinge enormous numbers of fish and shellfish of virtually every species and at every life stage. (See Appendix, Table 3, for a full list of Mississippi River plants and their intake flow rates.)

Mississippi power plants using once-through cooling range from the relatively small Burlington plant in Iowa, which can withdraw 116 million gallons per day, to the behemoth Nine Mile Point plant in Illinois and the Quad Cities plant in Louisiana, which each withdraw well more than a billion gallons per day.<sup>39</sup>

As just one example of the impact of these power plants on fish, consider the coal-fired Mernace power plant, located 16 miles south of St. Louis,

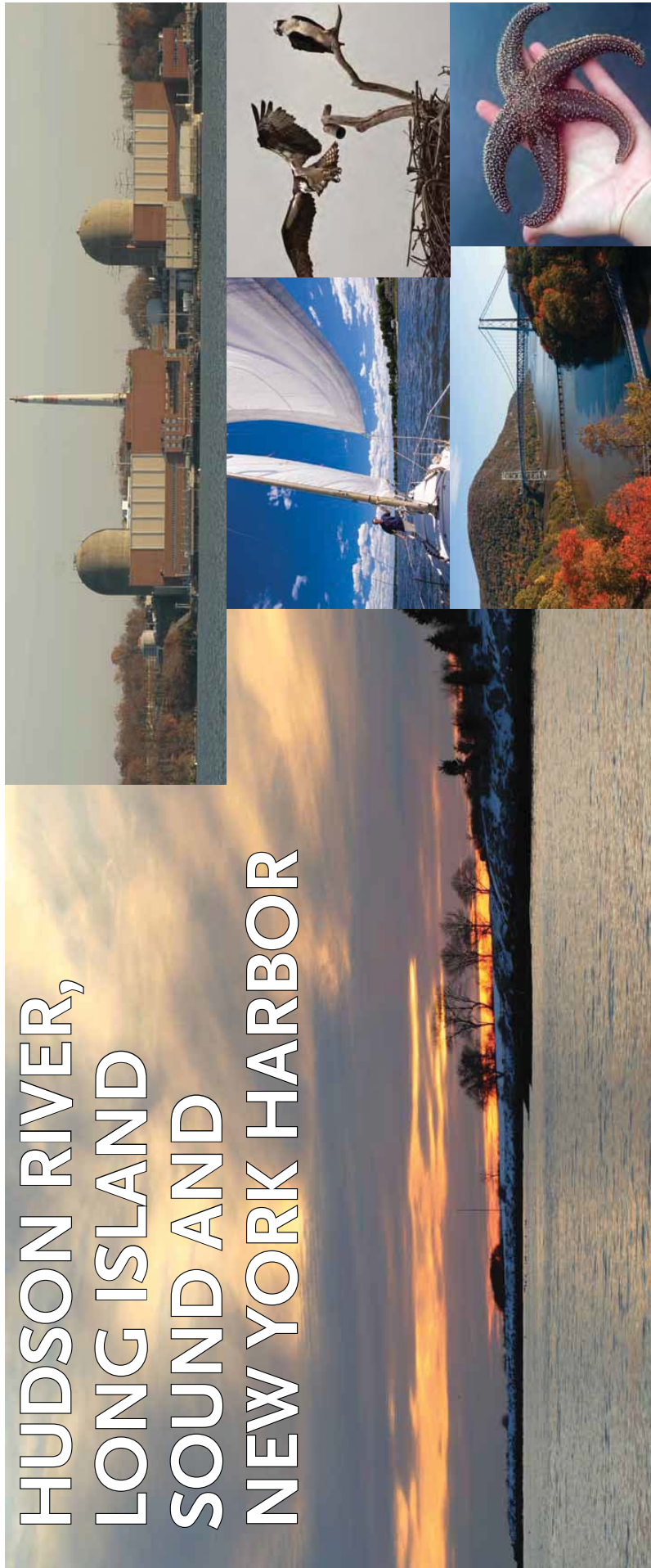
Missouri, at the confluence of the Mississippi with the Mernace Rivers. Impingement and entrainment studies conducted there in the 1970s, when the plant's maximum flow was about 550 million gallons per day, an estimated annual impingement of almost a million fish, including the vulnerable shovel-nosed sturgeon.

Mernace's entrainment of fish eggs was greatest in July, when an average of 70.7 fish eggs was entrained per 100,000 gallons. Given that the plant utilized more than 9.5 billion gallons of cooling water in July 1974 during the study period, the estimated entrainment for that one month alone was well over a half a million eggs.<sup>40</sup> Since Mernace's intake capacity has increased to 675 million gallons per day, with no change to its outdated intake structures, the impingement and entrainment impacts are likely even worse today.

The Mississippi River, from the small headwaters in the Northwoods of Minnesota to the large ecosystem of the Gulf of Mexico, is a true national treasure that has played a large role in shaping American culture and history. Power plants along the Mighty Mississippi should use the best and most modern technology to protect the wildlife and the economy the river provides.

**CLOCKWISE FROM UPPER LEFT:** Mernace power plant, located 16 miles south of St. Louis, Missouri, at the confluence of the Mississippi with the Mernace Rivers, impinged and entrained almost a million fish per day. The Mississippi River needs healthy fish populations for the next generation of anglers. The 28 power plants on the mighty Mississippi have a combined cooling water withdrawal capacity of more than 15 billion gallons of water per day. A healthy Mississippi River is vital to the quality of life in its nearby communities and wildlife.

# HUDSON RIVER, LONG ISLAND SOUND AND NEW YORK HARBOR



A-1054

## Hudson River

Known as "America's First River," the Hudson begins at Lake Tear of the Clouds in the Adirondack Mountains and flows more than three hundred miles before emptying into New York Harbor at the southern tip of Manhattan. Called *Mahwahkanick* ("the river that flows both ways") by Native Americans and now named for the British explorer Henry Hudson, the historic Hudson River played a starring role in the American Revolution and provided a crucial transportation link from the eastern seaboard through the Erie Canal to the country's interior.

The lower Hudson's unique configuration as a narrow, 154-mile-long estuary creates a huge, diverse nursery that supports a mix of freshwater and saltwater fish. The river's marshes and tidal flats contribute essential minerals and nutrients to the food chain, allowing its quiet backwaters

to become an essential nursery habitat for many types of wildlife. In fact, the Hudson is one of the two principal spawning grounds for aquatic life in the East Coast.

More than two hundred species of fish are found in the Hudson and its tributaries, which make up one of the most biodiverse temperate estuaries on the planet. The river is a refuge for rare and endangered species such as the shortnose sturgeon and heartleaf plantain.<sup>41</sup> The Hudson is also part of the great Atlantic flyway for migratory birds and ducks: geese and osprey, among others, stop to feed in its shallows.

The ecological influence of the Hudson estuary extends far into the Atlantic Ocean and along the coast. For vast schools of migratory sturgeon, herring, blue crab, mackerel and striped bass, the Hudson is a nearly unimpeded corridor from the Atlantic to their ancestral spawning

grounds. These fish support a 350-year-old recreational and commercial fishery along the Atlantic coast that's worth hundreds of millions of dollars.<sup>42</sup>

In 1998, the Hudson River was designated as one of the nation's first American Heritage Rivers, a much-deserved recognition of its central place in American history and culture. The New York State Legislature has declared the estuary "of statewide and national importance as a habitat for marine, anadromous, catadromous, riverine and freshwater fish species,"<sup>43</sup> and two federal agencies—the U.S. National Oceanographic and Atmospheric Administration and the U.S. Fish and Wildlife Service—have designated the Hudson as an Essential Fish Habitat because it sustains large numbers of commercially important fish species.<sup>44</sup>

INDIAN POINT PHOTO: RIVERKEEPER, INC.

CLOCKWISE FROM LEFT: Long Island Sound, pictured here, has eight outdated power plants that use over 5 billion gallons of water per day. At the Indian Point power plant, situated in a narrow section of the Hudson River estuary and pictured here, has entrained 1.2 to 1.3 billion fish eggs and larvae in a year. Ospreys, like these in Long Island Sound, are only a sanctuary for wildlife, like the starfish pictured here, but also for people and communities who enjoy the outdoors. The Hudson River, pictured here, has four outdated power plants on its shores that use well over 4 billion gallons of water per day.





### Long Island Sound

The Long Island Sound is a 110-mile-long estuary bordered by the Connecticut coastline and the north shore of Long Island, New York. It receives the flow of several major rivers that drain freshwater from Massachusetts, New Hampshire, Vermont and other states. The Sound is a unique estuary in that it has two connections to the sea: to the east, it opens to the Atlantic Ocean, and to the west, it connects to New York Harbor and the Hudson and East Rivers. The Sound provides feeding, breeding, resting and nursery areas for a broad diversity of plant and animal life, including marine fish and shellfish species such as winter flounder, Atlantic menhaden, blue crabs, shrimp and lobster.

The extensive tidal marshes bordering the sound are some of the most productive biological systems in the world. They produce between three and seven tons per acre per year of vegetation; much of this eventually enters the waters of the sound to support fish and shellfish habitat.

More than eight million people live in the Long Island Sound watershed, which contributes an estimated \$8 billion per year to the regional economy through boating, commercial fishing and sportfishing, swimming and tourism.<sup>45</sup> Long Island Sound was designated as an Estuary of National Significance, and some of its harbors have been designated

as a Significant Coastal Fish and Wildlife Habitat Area or Essential Fish Habitat under the Magnuson-Stevens Fishery Conservation and Management Act.

### New York Harbor

In the shadow of Manhattan's skyscrapers, New York Harbor and the East River connect the metropolitan area's two major estuary systems, the Hudson and Long Island Sound. The National Marine Fisheries Service has noted that four species of sea turtles may inhabit the vicinity of New York's Kemp's Ridley, green, leatherback and loggerhead; the first three are listed as endangered.

### How Power Plant Intake Structures Harm the Hudson River, Long Island Sound and New York Harbor

A total of 17 power plants using once-through cooling are located in the region: four on the Hudson River, eight on the Long Island Sound and five in New York Harbor. New York has 12 of these plants, and Connecticut five. Two of these plants are nuclear, and the rest burn natural gas or oil, with the exceptions of the Bridgeport Harbor plant in Connecticut and Danskammer plant in New York, both of which have coal-fired units. All these plants use exorbitant amounts of water. The two nuclear plants, the Indian Point plant on the Hudson and the Millstone plant on the Sound, can withdraw 2.5 billion and 2.19 billion gallons per day, respectively.

The Hudson River plants have a combined intake capacity of nearly 5 billion gallons per day; the Long Island Sound plants have a combined

intake capacity exceeding 5 billion gallons per day; and the New York Harbor and East River plants have a combined intake capacity of more than 3.5 billion gallons per day. Altogether, the 17 plants can withdraw almost 14 billion gallons per day from the two estuaries and the harbor. (See Appendix, Table 4, for a full list of the Hudson River, Long Island Sound and New York Harbor plants and their intake flow rates.)

Because of these waters' importance as spawning and nursery grounds, it is unsurprising that entrainment of eggs and larvae occur in astronomical numbers.

According to Soundkeeper's calculations, based on available data, the Millstone plant is responsible for killing 154 billion fish in all life stages over the span of more than three decades.<sup>46</sup> These calculations are very conservative, considering that the data only include seven species found in the Sound—winter flounder, cunner, bay anchovies, tautog, menhaden, grubby and American sand lance—and do not include lobsters, crabs, shellfish and other area fish.<sup>47</sup> In particular, Millstone killed nearly 42 billion tautog eggs and larvae between 1979 and 2002 and well over 4 billion winter flounder between 1976 and 2003.<sup>48</sup>

Huge numbers of fish are also entrained at the Indian Point power plant, situated in a narrow section of the Hudson River estuary just south of Peekskill. As reported by the New York State Department of Environmental Conservation, 1.2 to 1.3 billion fish eggs and larvae are entrained at Indian Point each year.<sup>49</sup> Further, an average of 1.18 million fish per year was impinged by Indian Point from 1986 to 1990.<sup>50</sup>

The Indian Point plant impinges the endangered shortnose sturgeon

and the Atlantic sturgeon, a candidate for threatened species status, thereby negatively contributing to the already low populations of these fish.<sup>51</sup> These devastating impacts were understood decades ago: In the 1970s, the Atomic Energy Commission, and its successor, the Nuclear Regulatory Commission, directed the owners of Indian Point to install closed-cycle cooling because of the anticipated damage to the Hudson's fisheries and ecosystem.<sup>52</sup>

Indian Point and the other three power plants using once-through cooling on the Hudson have a huge, detrimental impact on the ecology of the estuary, and this impact goes well beyond the loss of large numbers of individual fish. In a 2007 report, New York State found that the cumulative impact of multiple facilities on the river substantially reduces the population of young fish in the entire river. In certain years those plants have entrained between 33 and 79 percent of the eggs and larvae spawned by striped bass, American shad, Atlantic tomcod and five other important species.<sup>53</sup> Over the time the plants have been operating, the ecology of the Hudson River has been altered, with many fish species in decline and populations becoming less stable. Of the 13 key species subject to intensive study, ten have declined in abundance, some greatly.<sup>54</sup>

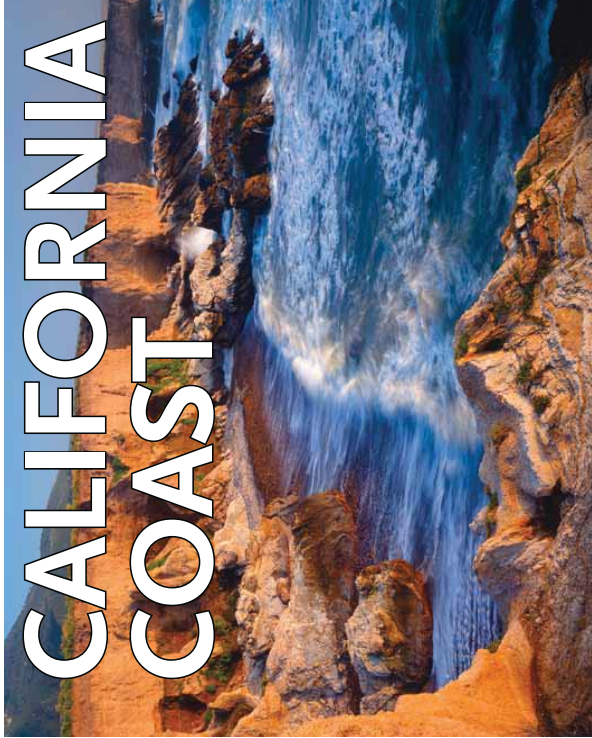
The power plants that rely on outdated once-through cooling to generate

electricity affect the full spectrum of wildlife in the aquatic ecosystem at all life stages. New York's iconic Hudson River, New York Harbor and Long Island Sound are not only home to countless wildlife species but are also vital waterways for the cities and communities around them.

PHOTO: GILES ASHFORD



# CALIFORNIA COAST



A-1056

**T**HE SPECTACULAR 840-MILE Pacific Coast of California, legendary to surfers and beachcombers around the world, offers an incredible variety of shoreline habitats—exposed rocky shores, kelp forests, sandy beaches, sheltered muddy estuaries and hypersaline lagoons. The Pacific Ocean supports a rich diversity of species and habitats, including populations of seabirds and shorebirds; marine mammals like humpback whales, elephant seals and sea lions; and fish such as barracuda, mackerel, salmon, albacore, bluefin and yellowfin tuna, and sardine and rainbow trout, to name just a few. A number of threatened and endangered fish species live in California's coastal waters.

The northern portion, stretching from the Oregon border to San Francisco, is a landscape of rugged coastlines and towering majestic redwood forests along the water's edge, with incredible vistas and opportunities for hiking, kayaking, river rafting, mountain biking, wildlife-watching, rock climbing, fishing and camping. Tidelands and marshes in this area provide important habitat for many species of waterfowl, shorebirds and marine invertebrates, as well as nursery areas for fish and crustaceans. The Point Reyes peninsula alone supports 45 percent of North American bird species and almost 15 percent of Californian plant species, including 23 threatened and endangered species.<sup>55</sup>

The San Francisco Bay and Delta is one of the largest estuarine systems on the West Coast and a highly dynamic and complex environment. The delta is a maze of river channels and diked islands, covering over 1,000 square miles, including 78 square miles of water, formed by the

confluence of the Sacramento and San Joaquin Rivers, which ultimately drain into San Francisco Bay.<sup>56</sup>

San Francisco Bay is made up of deepwater channels, tidelands, marshlands, freshwater streams and rivers that provide a wide variety of habitats that sustain a highly biologically diverse ecosystem. More than half of the endangered species in San Francisco Bay depend on wetlands to survive, including the California clapper rail and salt marsh harvest mouse. Local fish species on the federal endangered and threatened species list include the wirenet-run chinook salmon and the Sacramento splittail. Nearly all of the San Francisco Bay region beaches form part of the Golden Gate National Recreation Area, one of the most visited National Parks, with more than 13 million visitors each year.<sup>57</sup>

The central and southern coasts extend from the Monterey Peninsula to the Mexican border. Here one finds wildlife refuges, state parks and pristine beaches popular for surfing, hiking and camping. There are graceful, towering sand dunes that protect bays, coastal lagoons, harbors and coves popular for kayaking and fishing.

The angle of the Southern California coastline creates a huge backwater eddy in which equatorial waters flow north near the shore, and subarctic waters flow south offshore. The mixing of these waters creates a highly diverse system that supports about 500 fish and more than 5,000 invertebrate species.<sup>58</sup> This scenic and diverse region contains numerous wilderness areas, nature reserves, wildlife preserves and open-space areas.

California's commercial fishing operations rank higher than any other state in the nation. Tuna is the most valuable fish caught, followed by

swordfish, halibut, herring, mackerel, rockfish, sablefish, salmon and sole are also important to the fishery, as are crabs, shrimp and squid.<sup>59</sup>

As a mark of this waterway's importance, the California Coastal National Monument, encompassing the entire coastline, was created by presidential proclamation in 2000 to ensure the protection of all islets, reefs and rock outcroppings from the coast to a distance of 12 nautical miles.

## How Power Plant Intake Structures Harm the California Coast

There are 17 coastal Californian power plants using once-through cooling systems. These plants can withdraw more than 14 billion gallons per day from the Pacific Ocean. Nearly 5 billion gallons of that flow is withdrawn by two nuclear plants: the San Onofre Nuclear Generating Station near San Clemente and the Diablo Canyon plant near San Luis Obispo. (See Appendix, Table 5, for a full list of Californian plants and their intake flow rates.)

These power plants kill an astounding number of fish. The annual entrainment of larval fish at the Diablo Canyon plant at average flow is estimated to be over 1.5 billion individuals.<sup>60</sup> At the San Onofre Nuclear Generating Station on the Southern California coast, 121 tons of midwater fish are entrained, causing a 34 to 70 percent decline in Pacific Ocean fish populations within about two miles (three kilometers).<sup>61</sup> Unit 3 of the San Onofre plant alone is estimated to entrain an average of over 3.1 billion individual aquatic organisms.

The Pittsburg and Contra Costa power plants in the San Francisco Bay Delta impinge and entrain more than 300,000 endangered and threatened fish per year, including the Sacramento splittail, Chinook salmon and

steelhead trout. The Contra Costa and Pittsburg power plants entrain and impinge threatened Delta smelt and endangered Longfin smelt.<sup>62</sup>

In addition to the entrainment of young life stages, Californian coastal plants impinge and kill huge numbers of older fish on their filter screens. At average flow rates, San Onofre's Units 2 and 3 combined were estimated to impinge 1.3 million fish with a total weight of over 14 tons.<sup>63</sup> This is the worst example on the California coast, but other plants also impinge significantly large numbers of fish. Units 6 and 7 at the Moss Landing plant were estimated to annually impinge a quarter of a million fish weighing 4,060 pounds, even though the plant's average intake flow is a relatively modest 387 million gallons per day.<sup>64</sup>

In May 2010, California adopted a strong state policy requiring most coastal power plants to upgrade over the next decade to achieve protections equivalent to those offered by closed-cycle cooling. However, the dirty energy industry continues to fight these requirements.

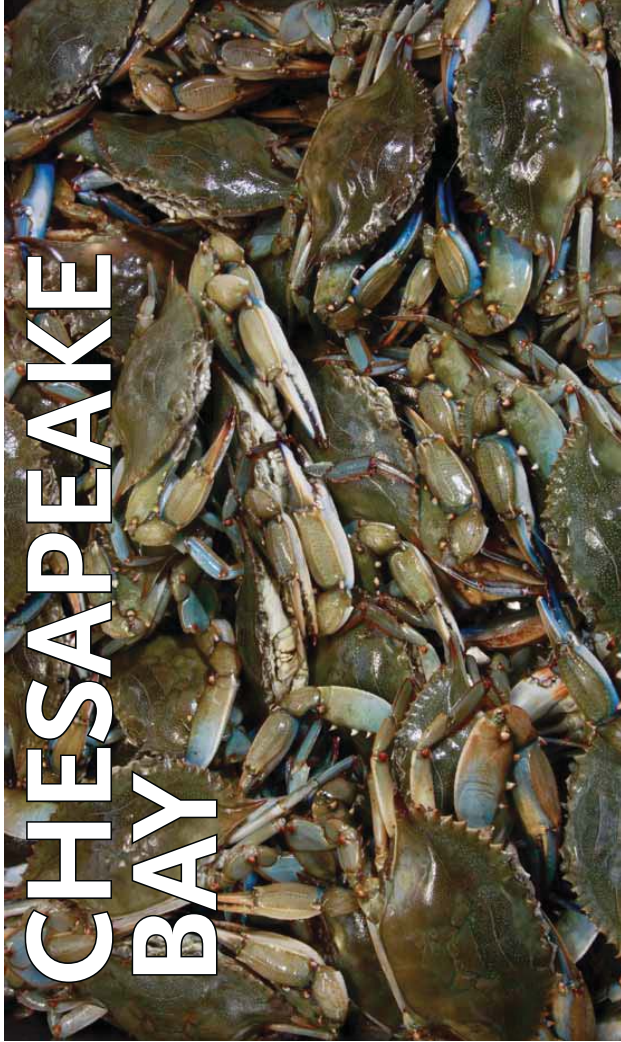
When contemplating the beauty of the Golden State, admirers invariably point to the breathtaking shoreline that has shaped California both culturally and historically. Power plants must help protect the beauty and economic vitality of the California Coast by using modern cooling system technologies.

**CLOCKWISE FROM LEFT:** On the California coast, there are 17 antiquated power plants that have been shown to harm the coastal environment. The plants have killed by outdated power plants, the affects move up the food chain to larger animals like whales that pass the California coast. California's shores are known not only for its amazing wildlife, but also its outdoor activities like scuba diving and surfing. Healthy tuna shoals, like the one shown here, are vital to economy of California.

SAN ONOFRE PHOTO © 2010 DARRYL CLARKE, COURTESY SIERRA CLUB LIBRARY



# CHESAPEAKE BAY



A-1057

**S**TRETCHING 200 MILES across Maryland and Virginia—and with a watershed also encompassing Pennsylvania, Delaware, West Virginia, New York and the District of Columbia—Chesapeake Bay is the largest estuary in the United States and the third-largest in the world. The Chesapeake was formed about 12,000 years ago as glaciers melted and flooded the Susquehanna River valley. The Chesapeake Bay watershed is 64,000 square miles and includes more than 10,000 miles of tidal shoreline, including tidal wetlands and islands.

The Chesapeake Bay is fed by five major rivers: the Susquehanna, Potomac, Kappahannock, York and James. The Chesapeake holds more than 15 trillion gallons of water and, although its length and width are dramatically expansive, its average depth is only about 21 feet, making it sensitive to temperature changes and discharges.<sup>60</sup> Approximately 17 million people live in the watershed, 10 million of them along its shores or near them.<sup>60</sup>

Together with the rivers, creeks and streams that feed it, the Chesapeake Bay provides a vital habitat for many aquatic species. Within the sheltered waters of the Chesapeake, underwater seagrass beds support the base of the food chain. These beds offer food and protection for a large number of small animals and a nursery for young fish. More than 300 species of fish, 170 species of shellfish and 2,700 species of plants are found in the Chesapeake.<sup>60</sup>

The Chesapeake's fish species include striped bass, trout, flounder, bluefish, Spanish mackerel, channel bass, yellow and white perch, herring and American shad. The Chesapeake is a key component in the Atlantic flyway. More than a million ducks, geese and swans spend winters here each year and it provides stopover habitat to thousands of other migrating birds.<sup>60</sup> This delicate, complex ecosystem is home to a number of plant and animal species that are currently designated as threatened or endangered, including the peregrine falcon, loggerhead and Atlantic Ridley turtles and the shortnose sturgeon. The once-endangered bald eagle lives in the region, too, appropriately in close proximity to our nation's capital.

Along with being a vital ecosystem with a rich diversity of species, the Chesapeake offers wonderfully scenic places to visit. The shallow, protected waters of the Chesapeake Bay and its tributaries are ideal for canoeing and kayaking. The region offers opportunities for water recreation sports, including fishing, boating and swimming, as well as excellent trails along the water for bird-watching, hiking and mountain biking.

One of the Chesapeake's most significant contributions to the region's economy is its seafood industry. The Chesapeake is especially renowned for its blue crabs, clams, oysters and striped bass. More than 500 million pounds of seafood are harvested from the Chesapeake every year.<sup>60</sup> A 2008 U.S. National Oceanic and Atmospheric Administration report indicated that the commercial seafood industry in Maryland and Virginia

contributed \$3 billion and more than 41,000 jobs to the local economy.<sup>60</sup>

## How Power Plant Intake Structures Harm Chesapeake Bay

At least seven power plants in Maryland and six in Virginia use once-through cooling systems on the shoreline of the Chesapeake Bay or on saline or brackish waters in immediate proximity to the bay. Of these 13 plants, two are nuclear (Calvert Cliffs in Maryland and Surry in Virginia), four are coal-fired (the Chesapeake, Chesterfield and Potomac River plants in Virginia and the Morgantown plant in Maryland), and seven burn natural gas or oil. The Calvert Cliffs nuclear plant is the largest cooling water user in the Chesapeake, with a design intake flow rate of more than 2.2 billion gallons per day. It is followed by Virginia's Surry and Yorktown plants and Maryland's Morgantown and Herbert A. Wagner plants, each of which can withdraw between 1 and 1.5 billion gallons of water per day. Together, these 13 power plants can withdraw more than 8 billion gallons of water per day. (See Appendix, Table 6, for a full list of Chesapeake plants and their intake flow rates.)

The removal of large volumes of water from a habitat as rich in wildlife as the Chesapeake Bay inevitably leads to environmental degradation. For example, Calvert Cliffs plant in Maryland was estimated to impinge an average of 1.3 million fish a year between 1975 and 1995 with a total weight of about 10 tons.<sup>71</sup> The plant also impinges an average of 627,000 blue crab per year.<sup>72</sup> In certain environmental conditions, Calvert Cliffs

has caused fish impingement incidents of staggering proportion: On August 28, 1984, the plant impinged 146,000 spot fish in just one hour, and on August 2, 1984, 12,650 blue crab were collected from its Unit 1 screens in one hour.<sup>73</sup> Such massive fish kills have also caused operational problems like blockages and damage to the screens.<sup>74</sup>

Entrainment losses of Chesapeake populations are also considerable. The Chalk Point power plant on the Patuxent River estuary in Prince George's County, Maryland, has two units but use once-through cooling, which together extract 500,000 gallons per minute from the estuary.<sup>75</sup> The Power Plant Research Program of the Maryland Department of Natural Resources estimated that Chalk Point's entrainment of bay anchorages could be as high as 76 percent of the local stock.<sup>76</sup>

The Chesapeake Bay and its tributaries are broadly recognized as a national treasure and vital resource. The Chesapeake creates opportunities for recreational and commercial fishing; is a beautiful place to swim, hike and boat; and is a world-class ecosystem for an untold number of species. The power plants along the Bay must upgrade their outdated systems to protect this iconic waterbody.

Famous for its blue crabs, the fishing communities around the Chesapeake Bay are dependent on healthy populations for their livelihoods. The Chesapeake creates opportunities for recreational and commercial fishing; is a beautiful place to swim, hike and boat; and is a world-class ecosystem for an untold number of species. The power plants along the Bay must upgrade their outdated systems to protect this iconic waterbody.



## CONCLUSION



**T**he six examples in this report illustrate the real and immediate impacts of cooling water intake structures. The massacre caused by this antiquated technology is clear: The full spectrum of aquatic species and wildlife that rely on complex food chains in our lakes and rivers and on our shores—from phytoplankton to fish, birds, and marine mammals, and including species that are already threatened or endangered—is impacted by once-through cooling. Some areas face devastating economic impacts as fisheries are threatened and recreational uses are diminished.

The Environmental Protection Agency is charged with implementing Section 316(b) of the Clean Water Act, which requires the use of the best available technologies to minimize the environmental impact of power plants' cooling water withdrawals.

The modern closed-cycle cooling technology reduces the impacts of cooling water systems, is cost-effective, and is in use at many power plants across the country. It reduces water intakes by approximately 95 percent, drastically reducing the amount of water needed for power plant operations, thus resulting in a corresponding reduction in their impact on fish and other species.

Unfortunately, the EPA, under intense pressure from powerful industry interests, has ducked its responsibilities by not requiring existing power plants to upgrade to closed-cycle cooling or similar systems. Instead, in March 2011, the EPA proposed a rule that largely maintains the status quo, mandating little to no improvement in the technologies necessary to protect our waterways and our wildlife. The EPA's proposed rule sets a goal for impingement reductions that is already being achieved by 75 percent of U.S. power plants, thus requiring only marginal improvement in fish impingement across the country, and fails to set a performance standard for entrainment of wildlife.

Worse yet, the EPA left decisions about modernizing existing power plants to already overburdened state permitting

agencies. These are the same state permitting agencies that have been authorized to order improvements for more than 30 years but have instead done almost nothing to reduce the impact power plants have on aquatic ecosystems. Today, almost half of the water permits for existing coal-fired power plants are expired because state agencies have either abandoned their obligation to faithfully uphold and enforce our clean water protections or are too overburdened to comply.

Almost 40 years after Congress identified cooling water intake as a threat to our waterways, the EPA has failed to force the owners of existing power plants—the nation's largest water users—to reduce their destructive impact. With its recent proposed rule, the EPA perpetuates this missed opportunity by leaving decisions about technology improvements to overburdened states that have proven incapable or unwilling to require power plants to phase out once-through cooling.

A clear, consistent national policy that restores and protects our waterways by phasing out once-through cooling is long overdue. The simple and cost-effective step of phasing out this outdated and destructive technology would represent a huge step forward in the nation's unfinished business of ensuring clean, safe and abundant waterways for all Americans.



PHOTO: PICES CONSERVATION LTD

# APPENDIX

## POWER PLANTS USING ONCE-THROUGH COOLING

TABLE 1: GREAT LAKES FACILITIES

| PLANT NAME                          | STATE     | FUEL TYPE | DAILY INTAKE CAPACITY<br>(millions of gallons) |
|-------------------------------------|-----------|-----------|--|
| LAKE ERIE                           |           |           |  |
| Ashland                             | Ohio      | Coal      | 1,017  |
| Avon Lake                           | Ohio      | Coal      | 1,608  |
| Bay Shore                           | Ohio      | Coal      | 742  |
| Conners Creek                       | Michigan  | Coal      | 323  |
| Dunkirk                             | New York  | Coal      | 579  |
| Eastlake                            | Ohio      | Coal      | 1,158  |
| J.R. Whiting                        | Michigan  | Coal      | 308  |
| Lake Shore                          | Ohio      | Coal      | 623  |
| Mitsenky                            | Michigan  | Oil/Gas   | 198  |
| Monroe                              | Michigan  | Coal      | 2,013  |
| River Rouge                         | Michigan  | Coal      | 648  |
| Total Lake Erie facilities (12)     |           |           |  |
| 92.17                               |           |           |  |
| LAKE MICHIGAN                       |           |           |  |
| B.C. Cobb                           | Michigan  | Coal      | 558  |
| Bailly                              | Indiana   | Coal      | 443  |
| Crawford                            | Illinois  | Coal      | 552  |
| Dean H. Mitchell                    | Indiana   | Coal      | 746  |
| Donald C. Cook                      | Michigan  | Nuclear   | 2,143  |
| Edgewater                           | Wisconsin | Coal      | 407  |
| Fisk                                | Illinois  | Coal      | 302  |
| J.H. Campbell                       | Michigan  | Coal      | 865  |
| Kewaunee Nuclear                    | Wisconsin | Nuclear   | 460  |
| Michigan City                       | Indiana   | Coal      | 230  |
| Point Beach Nuclear                 | Wisconsin | Nuclear   | 1,025  |
| Port Washington                     | Wisconsin | Gas       | 594  |
| Pulliam                             | Wisconsin | Coal      | 965  |
| South Oak Creek                     | Wisconsin | Coal      | 1,137  |
| State Line                          | Indiana   | Coal      | 606  |
| Trenton Channel                     | Michigan  | Coal      | 516  |
| Valley                              | Wisconsin | Coal      | 162  |
| Waukegan                            | Illinois  | Coal      | 852  |
| Will County                         | Illinois  | Coal      | 1,292  |
| Total Lake Michigan facilities (18) |           |           |  |
| 13,476                              |           |           |  |

TABLE 2: GULF OF MEXICO FACILITIES

| PLANT NAME                        | STATE    | FUEL TYPE | DAILY INTAKE CAPACITY<br>(millions of gallons) |
|-----------------------------------|----------|-----------|--|
| LAKE HURON                        |          |           |  |
| Belle River                       | Michigan | Coal      | 950  |
| Dan E. Karn                       | Michigan | Coal      | 465  |
| Harbor Beach                      | Michigan | Coal      | 129  |
| J. C. Weadock                     | Michigan | Coal      | 945  |
| Marysville                        | Michigan | Coal      | 609  |
| St. Clair                         | Michigan | Coal      | 1,344  |
| Total Lake Huron facilities (6)   |          |           |  |
| 3,442                             |          |           |  |
| LAKE ONTARIO                      |          |           |  |
| Gina                              | New York | Nuclear   | 490  |
| Huntley                           | New York | Coal      | 846  |
| James A. Fitzpatrick              | New York | Nuclear   | 596  |
| Nine Mile Point                   | New York | Nuclear   | 490  |
| Oswego Harbor Power               | New York | Oil/Gas   | 1,399  |
| Total Lake Ontario facilities (5) |          |           |  |
| 3,821                             |          |           |  |
| LAKE SUPERIOR                     |          |           |  |
| Presque Isle                      | Michigan | Coal      | 415  |
| Total Great Lakes facilities (42) |          |           |  |
| 30,771                            |          |           |  |

Sources: U.S. Energy Information Administration, Form EA-867, Annual Electric Generator Report, 1999.  
New York State Department of Environmental Conservation, Best Technology Available (BTA) For Cooling Water Intake Structures, draft policy, March 4, 2010, App. A, Table 1: Environmental Directory of U.S. Power Plants, Edison Electric Institute, 1991.  
Note: Includes plants located on the shore of a Great Lakes on a tributary in close proximity.

TABLE 3: MISSISSIPPI RIVER FACILITIES

| PLANT NAME                              | STATE       | FUEL TYPE       | DAILY INTAKE CAPACITY<br>(millions of gallons) |
|---|-------------|-----------------|--|
| LAKE SUPERIOR                           |             |                 |  |
| Alton Steam Plant                       | Tennessee   | Coal            | 497  |
| Alma                                    | Wisconsin   | Coal            | 182  |
| Baxter Wilson                           | Mississippi | Oil/Gas         | 592  |
| Big Cajun 2                             | Louisiana   | Coal            | 362  |
| Burlington                              | Iowa        | Oil/Gas         | 116  |
| Genoa                                   | Wisconsin   | Coal            | 244  |
| High Bridge                             | Minnesota   | Gas             | 202  |
| John P. Midgett                         | Wisconsin   | Coal            | 322  |
| Lanning                                 | Iowa        | Coal            | 331  |
| LuO Energy Systems                      | Louisiana   | Gas             | 131  |
| Little Gypsy                            | Louisiana   | Oil/Gas         | 934  |
| Meramec                                 | Missouri    | Coal            | 675  |
| Milton L. Kopp                          | Iowa        | Coal            | 175  |
| Monticello                              | Minnesota   | Nuclear         | 367  |
| Muscataine Unit 1                       | Iowa        | Coal            | 301  |
| Nelson Dewey                            | Wisconsin   | Coal            | 144  |
| New Madrid                              | Missouri    | Coal            | 956  |
| Nine Mile Point                         | Louisiana   | Coal            | 1,497  |
| Prairie Island                          | Minnesota   | Nuclear         | 911  |
| Quad Cities                             | Illinois    | Nuclear         | 1,353  |
| Riverside                               | Iowa        | Coal            | 247  |
| Riverdale                               | Minnesota   | Coal            | 277  |
| Robert E. Nichle                        | Arkansas    | Oil             | 449  |
| Rush Island                             | Missouri    | Coal            | 863  |
| Sioux                                   | Missouri    | Coal            | 705  |
| Waterford Units 1, 2 & 3                | Louisiana   | Oil/Gas/Nuclear | 2,021  |
| Willow Glen                             | Louisiana   | Gas             | 1,292  |
| Wood River                              | Illinois    | Coal            | 589  |
| Total Mississippi River facilities (28) |             |                 |  |
| 16,428                                  |             |                 |  |

Sources: U.S. Energy Information Administration, Form EA-860, Annual Electric Generator Report, 2009.  
Environmental Directory of U.S. Power Plants, Edison Electric Institute, 1991.  
Note: Includes plants located on the main stem of the Mississippi. Where there is more than one cooling water intake structure at a plant, the plant is counted only once. The plant is counted as a coal plant if the plant is a coal plant or if the plant is a gas plant and the plant is a coal plant. The Monticello nuclear plant uses mechanical draft cooling towers from May through September.



# ENDNOTES

## INTRODUCTION

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TABLE 5: CALIFORNIA COAST FACILITIES

| PLANT NAME                              | FUEL TYPE | RAW WATER CAPACITY (million g.p.m.) |
|---|-----------|-------------------------------------|
| Alamitos                                | Oil/Gas   | 1,273                               |
| Contra Costa Units 6 & 7                | Oil/Gas   | 440                                 |
| Diablo Canyon                           | Nuclear   | 2,528                               |
| El Segundo                              | Oil/Gas   | 399                                 |
| Encina                                  | Oil/Gas   | 857                                 |
| Harbor                                  | Gas       | 108                                 |
| Haynes                                  | Oil/Gas   | 968                                 |
| Huntington Beach                        | Oil/Gas   | 514                                 |
| Mandaly                                 | Oil/Gas   | 233                                 |
| Morro Bay                               | Oil/Gas   | 668                                 |
| Moss Landing Units 1, 2, 6 & 7          | Oil/Gas   | 1,226                               |
| Ormond Beach                            | Oil/Gas   | 685                                 |
| Pittsburg Units 5, 6 & 7                | Oil/Gas   | 462                                 |
| Redondo Beach                           | Oil/Gas   | 892                                 |
| San Onofre Units 5, 6, 7 & 8            | Oil/Gas   | 2,438                               |
| Scattergood                             | Oil/Gas   | 495                                 |
| South Bay                               | Oil/Gas   | 601                                 |
| <b>Total California facilities (17)</b> |           | <b>15,038</b>                       |

Source: Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling, California Environmental Protection Agency, May 4, 2010, pp. 36-38, Section 2.4, Table 4, [http://www.waterboards.ca.gov/water\\_issues/programs/coolingwater/decisions/cwa316\(b\)/cwa316\(b\)\\_final.pdf](http://www.waterboards.ca.gov/water_issues/programs/coolingwater/decisions/cwa316(b)/cwa316(b)_final.pdf).  
Note: The following plants were not included because they are testing or retesting with dry cooling: Humboldt Bay (PGE), San Jose Bay (PGE), and San Jose Bay (PGE).

TABLE 6: CHESAPEAKE BAY FACILITIES

| PLANT NAME                                  | SITE     | FUEL TYPE | RAW WATER CAPACITY (million g.p.m.) |
|---|----------|-----------|-------------------------------------|
| Calvert Cliffs                              | Maryland | Nuclear   | 2,233                               |
| Chalk Point                                 | Maryland | Oil/Gas   | 731                                 |
| Chesapeake                                  | Virginia | Coal      | 514                                 |
| Chesterfield                                | Virginia | Coal      | 846                                 |
| Gould Street                                | Maryland | Oil/Gas   | 99                                  |
| Herbert A. Wagner                           | Maryland | Oil/Gas   | 1,098                               |
| Morgantown                                  | Maryland | Coal      | 1,442                               |
| Possum Point                                | Virginia | Oil/Gas   | 224                                 |
| Potomac River                               | Virginia | Coal      | 460                                 |
| Riverside                                   | Maryland | Oil/Gas   | 54                                  |
| Sparrows Point                              | Maryland | Gas       | 297                                 |
| Surry                                       | Virginia | Nuclear   | 1,550                               |
| Yorcktown                                   | Virginia | Oil/Gas   | 1,445                               |
| <b>Total Chesapeake Bay facilities (13)</b> |          |           | <b>10,983</b>                       |

Source: U.S. Energy Information Administration, "Chesapeake Bay Area Electric Generating Report, 2009," [http://www.eia.doe.gov/cabs/chesapeake/2009/2009\\_chesapeake\\_electric\\_gen\\_report.pdf](http://www.eia.doe.gov/cabs/chesapeake/2009/2009_chesapeake_electric_gen_report.pdf).  
Note: Includes plants located on Chesapeake Bay or on other saline or brackish waters in immediate proximity to the bay.

TABLE 4: HUDSON RIVER, LONG ISLAND SOUND, AND NEW YORK HARBOR FACILITIES

| PLANT NAME   | STATE       | FUEL TYPE | RAW WATER CAPACITY (million g.p.m.) |
|--|-------------|-----------|-------------------------------------|
| <b>HUDSON RIVER</b>                                      |             |           |                                     |
| Bowline  | New York    | Oil/Gas   | 912                                 |
| Daniskammer  | New York    | Coal      | 457                                 |
| Indian Point   | New York    | Nuclear   | 2,500                               |
| Roseton  | New York    | Oil       | 926                                 |
| <b>Total Hudson River facilities (4)</b>                 |             |           | <b>4,795</b>                        |
| <b>LONG ISLAND SOUND</b>                                 |             |           |                                     |
| Bridgeport Harbor  | Connecticut | Coal/Oil  | 541                                 |
| Devon  | Connecticut | Oil       | 262                                 |
| Glenwood   | New York    | Oil/Gas   | 179                                 |
| Millstone  | Connecticut | Nuclear   | 2,190                               |
| New Haven Harbor   | Connecticut | Oil/Gas   | 404                                 |
| Northport  | New York    | Oil/Gas   | 939                                 |
| Norwalk Harbor   | Connecticut | Oil       | 298                                 |
| Port Jefferson   | New York    | Oil/Gas   | 399                                 |
| <b>Total Long Island Sound facilities (8)</b>            |             |           | <b>5,212</b>                        |
| <b>NEW YORK HARBOR</b>                                   |             |           |                                     |
| Arthur Kill  | New York    | Oil       | 713                                 |
| Astoria Generating                                       | New York    | Oil/Gas   | 1,254                               |
| Brooklyn Navy Yard                                       | New York    | Gas       | 55                                  |
| East River Generating                                    | New York    | Oil/Gas   | 369                                 |
| Ravenswood   | New York    | Oil/Gas   | 1,391                               |
| <b>Total New York Harbor facilities (5)</b>              |             |           | <b>3,782</b>                        |
| <b>Total New York Sound &amp; Harbor facilities (19)</b> |             |           | <b>13,789</b>                       |

Source: New York State Department of Environmental Conservation, Best Technology Available (BTA) for Cooling Water Intake Structures, draft policy, March 4, 2010, App. A, Table 1, U.S. Energy Information Administration Form 104-804, Annual Electric Generating Report, 2009; Environmental Directory of U.S. NRCES permit, Revised Dec. 1, 2007, December 10, 2007, [http://www.ecp.gov/docs/tables/public\\_notice\\_attachments/cdrf\\_permit071210\\_millstone\\_revised\\_bta\\_cher.pdf](http://www.ecp.gov/docs/tables/public_notice_attachments/cdrf_permit071210_millstone_revised_bta_cher.pdf) (last visited May 11, 2011).  
Note: Includes plants on the tidal estuary portion of the Hudson River, the shoreline of the Long Island Sound, or on saline or brackish waters in immediate proximity to the Sound and on the East River and Arthur Kill.

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**EXHIBIT B — GOVERNOR CUOMO, PRESS RELEASE ANNOUNCING SIGNING OF THE  
WATER RESOURCES PROTECTION ACT OF 2011, CHAPTERS 400-402,  
LAWS OF 2011, AUGUST 15, 2011 [A- 1062 - A- 1064]**

Governor Cuomo to Sign Law to Protect New York's Waters | Governor... <https://www.governor.ny.gov/news/governor-cuomo-sign-law-protect-ne...>



**AUGUST 15, 2011** Albany, NY

## **Governor Cuomo to Sign Law to Protect New York's Waters**

Governor Andrew M. Cuomo today announced he will sign a new law to protect New York's waters and the Great Lakes by requiring a state permit for the withdrawal of large volumes of water from the state's rivers, lakes, streams and groundwater.

The new law is designed to foster responsible conservation practices and economic growth while protecting water bodies and wildlife habitats. The permitting process will ensure a continued water supply to existing municipal, agricultural and industrial users, and will help identify areas that could support new water-dependent businesses. Specifically, the law requires approval before operating or proposing a system with the capacity to withdraw 100,000 gallons or more per day of surface and groundwater.

"The preservation and protection of New York's water resources is vital to the state's residents, farmers and businesses," Governor Cuomo said. "This law will enhance the state's ability to manage its water to promote economic growth and address droughts while protecting the environment. My administration worked with a broad array of interests to ensure a balanced program that manages significant water withdrawals across the state and protects New York's farmers and businesses from undue regulatory burdens."

The law ensures water withdrawals throughout the state are regulated with a holistic approach. DEC proposed this law to significantly enhance the state's ability to manage water supplies in response to climate change, droughts, natural resource protection, future water supply demands from outside New York and other unanticipated threats in the future.

Significantly, this law will enable DEC to comply with commitments under the Great Lakes-St. Lawrence River Basin Water Resources Compact (Compact) by regulating all significant water withdrawals occurring in the New York portion of the Great Lakes Basin. The law also directs DEC to establish an effective water conservation and efficiency program, which is another key responsibility of states under the Compact. This legislation also increases penalties to deter violations that threaten the quality and quantity of the state's water resources.

Department of Environmental Conservation Commissioner Joseph Martens said, "This new law will enable DEC to do its part to protect the valuable resources of the Great Lakes while also enhancing the state's ability to manage water resources in response to climate change, droughts and future demands. Good policy and sound natural resource management practices are critical to assuring long-term supplies of water are available to meet the needs of the state's residents, businesses and farmers. Managing water withdrawals will help DEC protect existing water uses and help new water-dependent businesses know where to locate in New York."

Senator Mark Grisanti, Chairman of the Senate Environmental Conservation Committee, said, "Passage of this monumental legislation will protect our environment by regulating the amount of water that can be extracted. Under current law, the state does not have the proper oversight to regulate water withdrawals, and with this legislation they will be able to better protect our state's greatest natural resource its water. This protection is critical throughout New York, as well as in Western New York where the Great Lakes hold one-fifth



of the world's fresh water. This legislation is supported by both the environmental and business community and shows how working together can achieve sound and necessary environmental policy. I thank Governor Cuomo for his leadership on this important issue, and I look forward to continuing to work together to protect our environment and all the citizens of New York."

Assemblyman Bob Sweeney, Chairman of Assembly Committee on Environmental Conservation said, "New York State is fortunate to have an abundant supply of water. This law will help the state to remain vigilant in the preservation and protection of this resource. Water is vital to New York's residents and businesses, for drinking, agriculture, commerce and recreation. The measure will help ensure that future generations of New Yorkers can enjoy a vibrant, healthy environment and a healthier and more prosperous future."

The Great Lakes and their watersheds contain more than 18 percent of the world's supply and nearly 90 percent of the United States' supply of fresh surface water. Only about one percent of the water volume is renewed or replaced by precipitation and tributary inflow each year. Consequently, Great Lakes levels can be drawn down dramatically by sizeable water withdrawals. Large withdrawals could adversely affect wetland habitat, spawning grounds, municipal and agricultural water supplies, recreational boating access and hydropower production.

As the nation's population increases and water supplies in other regions are consumed, pressure to utilize Great Lakes water outside the region will grow. This valuable resource must be carefully managed to ensure that it continues to provide environmental and economic benefits for future generations. This law will ensure that New York upholds its commitments under the Compact.

**EXHIBIT C — SELECTED PAGES FROM DEC’S RESPONSES TO PUBLIC COMMENTS  
ON THE ADOPTION OF WATER WITHDRAWAL REGULATIONS, NOVEMBER 2012  
[A- 1065 - A- 1069]**

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
ADOPTION OF WATER WITHDRAWAL REGULATIONS NOVEMBER 2012  
ASSESSMENT OF PUBLIC COMMENTS**

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**I. INTRODUCTION**

The New York State Department of Environmental Conservation (NYSDEC) issued a Notice of Proposed Rule Making on November 23, 2011, to repeal the existing water withdrawal regulations at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 601 and adopt a new Part 601. The proposed rule also repealed Part 675 and incorporated its salient provisions into Part 601, and modified subpart 621.4, Uniform Procedures, to ensure consistent use of terms and to include water withdrawal “initial permits” in the ‘minor’ project category. These regulations were proposed to harmonize the Department’s regulations with the water withdrawal bill (A.5318-A/ S.3798) signed into law by Governor Cuomo on August 15, 2011.

Three public information meetings were held regarding the proposed rule making on December 6, 8 and 12, 2012, in New Paltz, West Henrietta and Albany, respectively. The public comment period for the proposed rulemaking was scheduled to close on January 22, 2012, but was extended to February 6, 2012. During the public comment period, comments were received from a variety of sources through regular and electronic mail. NYSDEC received 186 submissions of public comments, comprising over 650 individual comments. The Department appreciates the input of the public and thoroughly considered each comment. As a result of the comments, changes were made to the regulations to reiterate or further clarify the original meaning for the benefit of the public and take questions into account. However, the changes made are non-substantive and do not require a revised or new rule making.

This Assessment of Public Comment (APC) presents all of the comments that were received during the public comment period, and summarizes and assigns a code to each in an effort to make the comments more accessible and searchable.

## V. TABLE OF COMMENTS AND RESPONSES

**The Table of Comments and Responses** begins on the next page. It contains a complete listing of all comments and NYSDEC's responses. The table allows readers to find answers to specific questions they have raised and is organized as follows:

- The first column lists the name of the individual or entity that submitted the comment.
- The second column identifies the alphanumeric code assigned to each comment (please see Section II, entitled "Methodology," in this APC).
- The third column provides a summary of the comment.
- The fourth column provides the response to the comment or a reference to the specific Frequent Comment Response in Section III herein that addresses the comment.

Example:

| Name          | Comment Code | Content Summary  | Response  |
|---------------|--------------|--|---|
| Sanders, Kent | S-2.16       | 601.10(g) Why do they need to submit a copy of an annual report they already submitted to DEC? | The submittal of an annual report will be part of the application completeness determination. |

In a few instances, the name of an individual or entity may appear in the Table of Comments and Responses more than once, because he or she sent more than one letter. For example, an individual who spoke for a group and then wrote a letter in his or her own name (or vice-versa) will find that these submissions were coded separately and that each appears in the Table of Comments and Responses.

It was not always clear if an individual made comments on his or her own behalf or on behalf of an organization. The reader is advised to examine both the group (G) listing for the name of the group, firm, or association used on the letterhead of a written submission and the individual (I) listing for his/her own name.

**ASSESSMENT OF PUBLIC COMMENT: SECTION V -- TABLE OF COMMENTS AND RESPONSES**  
**(sorted by 'Name/Organization')**

| A   | B               | C   | D   |
|---|-----------------|---|---|
| Name/<br>Organization                       | Comment<br>Code | Comment Summary   | Response                                    |
| 1<br><br>Adirondack Council<br>Lorey, Scott | G-16.1          | We are still concerned about several parts of the proposed regulation as currently drafted. First, some existing water withdrawals will not have to seek a permit for five years! While we understand that new sources and existing larger sources will be required to obtain a permit sooner, we do not believe DEC should allow these numerous smaller sources wait this amount of time for an initial permit   | Please see Response to Frequent Comment #1. |
| 2<br><br>Adirondack Council<br>Lorey, Scott | G-16.2          | We suggest that DEC can better implement the permit system and protect New York's water by staggering the permits into a three year phase-in cycle. For example, new permits and those over 5 million gpd would be issued in the first year (Class I) by the spring of 2013. Withdrawals between 1 and 4.99 million gpd (Class II) would be in the second year and any withdrawals between .1 and .99 million gpd (Class. III) would be permitted in the third year. Any new permits after the first year can then be placed in its respective class based on its size. | Please see Response to Frequent Comment #1. |
| 3<br><br>Adirondack Council<br>Lorey, Scott | G-16.3          | DEC should reduce the length of permits down from the proposed 10 years to five. This will better ensure that any major changes in the amount of permits sought or water to be withdrawn can be more adequately addressed by DEC in less than a decade. While we understand that DEC has experienced a 25 percent reduction in staff over the last 21 years and that this is a new regulation it must enforce, that is not a good reason to shirk your responsibility to strongly protect the environment.  | Please see Response to Frequent Comment #3. |
| 4   |                 |   |   |

**ASSESSMENT OF PUBLIC COMMENT: SECTION V -- TABLE OF COMMENTS AND RESPONSES**  
**(sorted by 'Name/Organization')**

| A  | B             | C   | D  |
|--|---------------|---|--|
| <p>Entergy Nuclear Operations, Inc. - Zoli, Elise</p> <p>145</p> | <p>C-10.5</p> | <p>A determination to ensure a proposed project "will result in no significant individual or cumulative adverse impacts on the ... <i>quality</i> of the water" is duplicative of the SPDES permit program standards. Similarly, a determination on "environmentally sound" and "economically feasible" conservation measures for reducing water withdrawals overlaps with §704.5 of the SPDES permit program governing the location, design, construction and capacity of cooling water intake structures. <i>See</i> 6 NYCRR § 704.5.</p>               | <p>Please see Response to Frequent Comment #8.</p>   |
| <p>Entergy Nuclear Operations, Inc. - Zoli, Elise</p> <p>146</p> | <p>C-10.6</p> | <p>Importantly, open-cycle cooling systems do not interfere with water conservation, and their cooling water intake structures, including the capacity of such structures, are regulated under the Best Technology Available ("BTA") standard set forth in §704.5, which ensures that the structures will minimize adverse environmental impact.</p>  | <p>Please see responses to Frequent Comments #8 and #11.</p>   |
| <p>Entergy Nuclear Operations, Inc. - Zoli, Elise</p> <p>147</p> | <p>C-10.7</p> | <p>As noted above, we respectfully submit that the proposed exemption is narrowly tailored to ensure NYSDEC's right of review of substantial consumptive water users, including those with SPDES permits.</p>   | <p>Please see response to Frequent Comment #8. Large cooling water facilities often consumptively use significant amounts of water. However, initial permits for withdrawals above the threshold are to be issued to existing facilities that reported their water use to the Department prior to 2/15/12, but only for a withdrawal equal to the maximum withdrawal capacity reported by 2/15/12 per §601.7(d).</p>   |
| <p>Entergy Nuclear Operations, Inc. - Zoli, Elise</p> <p>148</p> | <p>C-10.8</p> | <p>The initial permits for existing facilities are purportedly meant to reduce the cost and time associated with a permit hearing by classifying the initial permit as a "minor action" under 6 NYCRR § 621.4 (b). There appears to be, however, no provision in the Proposed Regulations prohibiting substantive review of initial permits, and therefore no reason to believe NYSDEC will refrain from substantively reviewing initial permits for existing facilities or requiring that new substantive provisions be included in initial permits.</p> | <p>ECL §15-1501(9) requires that the Department issue an initial permit for the maximum capacity reported or registered with the Department on or before February 15, 2012; however, it also provides that the permit will be subject to appropriate terms and conditions as required under ECL Article 15. While the Department expects the initial permit process to be an expedited and less costly permit process, it will review the permit applications and include in the permit appropriate conditions, including water conservation measures.</p> |

**ASSESSMENT OF PUBLIC COMMENT: SECTION V -- TABLE OF COMMENTS AND RESPONSES**  
**(sorted by 'Name/Organization')**

| A  | B             | C  | D   |
|--|---------------|--|---|
| <p>Energy Nuclear Operations, Inc. - Zoli, Elise</p> | <p>C-10.9</p> | <p>Further, the Proposed Regulations do not provide different standards for the issuance of initial permits and new permits. Instead, the Proposed Regulations make clear that an initial permit for existing facilities must include "all terms and conditions of a water withdrawal permit." <i>Id.</i> at §601.7(e). Without a definitive statement that initial permits for existing facilities are subject to different issuance standards, it is logical to assume that initial permits are subject to the same issuance standards as new permits. Entergy therefore requests that NYSDEC provide clarification on the standards for issuance of initial permits for existing facilities and whether the standards will be the same as those for new permits for proposed facilities.</p>  | <p>ECL §15-1503 establishes permit application requirements and standards for permit issuance. This Section applies to all permits. The statute does not authorize the Department to apply different standards for the issuance of initial permits. It requires only that the applicant obtain a permit for the maximum withdrawal capacity reported to the Department.</p>   |
| <p>Env. Energy Alliance of NY - Calazza, Roger</p>   | <p>G-14.1</p> | <p>The Alliance requests an explicit exemption for once through cooling withdrawals because existing regulations under 6 NYCRR 704.5 adequately protect the environment and existing rules already require the reporting of substantially similar data. Alliance member companies require the use of cooling water for its electric generating facilities. The DEC has a long history – dating back to the passage of the Clean Water Act almost 40 years ago - in regulating the use of the State's water for cooling purposes through its State Pollutant Discharge Elimination System (SPDES) permitting process. Most recently; DEC has updated its policy on the uses of cooling water, and many electrical generating facilities have conducted exhaustive studies on the ways in which cooling water intakes structures can minimize the impact of impingement and entrainment.</p> | <p>The Department does not agree that these withdrawals should be exempt from Part 601 permitting requirements. The water withdrawal statute and regulations concern the withdrawal and location of return or possible transfer of the water. The quantity analysis must meet criteria under ECL article 15 title 15 that previously applied only to public water supplies. This is not duplicative with SPDES, but the permitting requirements of each may be satisfied by similar documentation so as to avoid duplicative work product development. Section 601.7(f) expressly provides that the initial permit application will be reviewed in coordination with the SPDES permit or other permit program. Section 601.7(b)(3) provides that the initial permit application is not due until 180 days prior to the date the SPDES permit is due to expire, absent renewal. These help ensure consistency. The final regulations have been clarified in Section 601.11(h).</p> |

# EXHIBIT D — LIST OF WATER USERS REGISTERED WITH DEC IN 2012 [A- 1070 - A- 1089]

Water Withdrawal Registrations 2012, <http://nywateraction.org/withdrawals/2012waterregis.xlsx>

| #  | FACILITY NAME                             | FACILITY TOWN/CITY | FACILITY COUNTY | Ave_Day_W | Units_Ave_Max_Day_W | Units_Max_Day_W |
|----|---|--------------------|-----------------|-----------|---------------------|-----------------|
| 1  | Shaker Ridge Country Club                 | Colonie (T)        | Albany          | 33563     | GPD                 | 0.12 MGD        |
| 2  | Pinehaven Country Club                    | Guiderland (T)     | Albany          | 109000    | GPD                 | 0.4 MGD         |
| 3  | Voorheesville, Vg                         | New Scotland (T)   | Albany          | 0.348     | MGD                 | 0.547 MGD       |
| 4  | Mohawk Fine Papers - Cohoes               | Cohoes (C)         | Albany          | 0.9       | MGD                 | 1.42 MGD        |
| 5  | Watervliet, City                          | Guiderland (T)     | Albany          | 2.84      | MGD                 | 3.195 MGD       |
| 6  | Guiderland, Tn                            | Guiderland (T)     | Albany          | 2.757     | MGD                 | 4.9 MGD         |
| 7  | Lydall Thermal                            | Green Island (T)   | Albany          | 1.74      | MGD                 | 4.902 MGD       |
| 8  | Bethlehem Energy Center                   | Bethlehem (T)      | Albany          | 2.52      | MGD                 | 5.25 MGD        |
| 9  | Lafarge Building Materials                | Coeymans (T)       | Albany          | 3.2       | MGD                 | 6.4 MGD         |
| 10 | Bethlehem Water District #1               | New Scotland (T)   | Albany          | 5.367     | MGD                 | 9.057 MGD       |
| 11 | Albany Water Filtration                   | Coeymans (T)       | Albany          | 19.6      | MGD                 | 23.6 MGD        |
| 12 | Empire State Plaza                        | Albany (C)         | Albany          | 25.117    | MGD                 | 67.39 MGD       |
| 13 | Northeast Water District (New Scotland)   | New Scotland (T)   | Albany          | 22068     | GPD                 | 38300 GPD       |
| 14 | Van Schaick Island Country Club           | Cohoes (C)         | Albany          | 32000     | GPD                 | 55000 GPD       |
| 15 | Clarksville Water District                | New Scotland (T)   | Albany          | 28415     | GPD                 | 81260 GPD       |
| 16 | Norlite Corporation                       | Colonie (T)        | Albany          | 60000     | GPD                 | 90000 GPD       |
| 17 | Altamont Orchards                         | Guiderland (T)     | Albany          | 1000      | GPD                 | 120000 GPD      |
| 18 | Colonie Golf and Country Club             | New Scotland (T)   | Albany          | 43906     | GPD                 | 220000 GPD      |
| 19 | Capital Hills at Albany Golf Course       | Bethlehem (T)      | Albany          | 14429     | GPD                 | 250000 GPD      |
| 20 | Altamont, Vg                              | Guiderland (T)     | Albany          | 158000    | GPD                 | 279000 GPD      |
| 21 | Schuyler Meadows Club                     | Colonie (T)        | Albany          | 48329     | GPD                 | 300000 GPD      |
| 22 | Normanside Country Club                   | Albany (C)         | Albany          | 92720     | GPD                 | 302570 GPD      |
| 23 | Clover-Leaf Nursery                       | Colonie (T)        | Albany          | 155737    | GPD                 | 311474 GPD      |
| 24 | Guiderland Parks & Recreation             | Guiderland (T)     | Albany          | 175000    | GPD                 | 337500 GPD      |
| 25 | Albany Country Club                       | Guiderland (T)     | Albany          | 33415     | GPD                 | 482143 GPD      |
| 26 | Wolferts Roost Country Club               | Albany (C)         | Albany          | 46575     | GPD                 | 561000 GPD      |
| 27 | Green Island, Vg                          | Green Island (T)   | Albany          | 499949    | GPD                 | 705800 GPD      |
| 28 | Orchard Creek Golf Club                   | Guiderland (T)     | Albany          | 24758     | GPD                 | 1152000 GPD     |
| 29 | Callanan - Bethlehem Site                 | Coeymans (T)       | Albany          | 341223    | GPD                 | 3197643 GPD     |
| 30 | Cohoes, City                              | Cohoes (C)         | Albany          | 674160    | GPD                 | 3856000 GPD     |
| 31 | Canaseraga, Vg                            | Burns (T)          | Allegany        | 0.074     | MGD                 | 0.096 MGD       |
| 32 | Friendship Dairies LLC                    | Friendship (T)     | Allegany        | 0.37      | MGD                 | 0.55 MGD        |
| 33 | Friendship, Tn                            | Friendship (T)     | Allegany        | 0.31      | MGD                 | 0.864 MGD       |
| 34 | Wellsville, Vg                            | Wellsville (T)     | Allegany        | 0.701     | MGD                 | 1.4 MGD         |
| 35 | Hume, Tn                                  | Hume (T)           | Allegany        | 59963     | GPD                 | 100000 GPD      |
| 36 | Scio Water Dept                           | Amity (T)          | Allegany        | 75175     | GPD                 | 124000 GPD      |
| 37 | Belfast Water District                    | Belfast (T)        | Allegany        | 57000     | GPD                 | 180000 GPD      |
| 38 | Angelica, Vg                              | West Almond (T)    | Allegany        | 121334    | GPD                 | 228000 GPD      |
| 39 | Empire Cheese                             | Cuba (T)           | Allegany        | 152126    | GPD                 | 248446 GPD      |
| 40 | Belmont, Vg                               | Amity (T)          | Allegany        | 228000    | GPD                 | 318000 GPD      |
| 41 | Bolivar, Vg                               | Bolivar (T)        | Allegany        | 170553    | GPD                 | 337000 GPD      |
| 42 | Andover, Vg                               | Andover (T)        | Allegany        | 194660    | GPD                 | 392000 GPD      |
| 43 | Cuba, Vg                                  | Cuba (T)           | Allegany        | 221512    | GPD                 | 399000 GPD      |
| 44 | Wellsville Country Club                   | Wellsville (T)     | Allegany        | 170441    | GPD                 | 414425 GPD      |
| 45 | Allegany Station                          | Hume (T)           | Allegany        | 86500     | GPD                 | 499000 GPD      |
| 46 | Houghton Water District                   | Caneadea (T)       | Allegany        | 167000    | GPD                 | 558000 GPD      |
| 47 | Alfred, Vg                                | Alfred (T)         | Allegany        | 363500    | GPD                 | 600000 GPD      |
| 48 | Van Cortlandt Park Golf Course            | Bronx (T)          | Bronx           | 53384     | GPD                 | 167543 GPD      |
| 49 | Pelham-Split Rock Golf                    | Bronx (T)          | Bronx           | 39725     | GPD                 | 450000 GPD      |
| 50 | Chenango, Tn - Applewood                  | Chenango (T)       | Broome          | 0.0988    | MGD                 | 0.165 MGD       |
| 51 | Hillcrest Water District #1               | Fenton (T)         | Broome          | 0.275     | MGD                 | 0.319 MGD       |
| 52 | Windsor, Vg                               | Windsor (T)        | Broome          | 0.168     | MGD                 | 0.36 MGD        |
| 53 | Former IBM - Endicott                     | Union (T)          | Broome          | 0.842     | MGD                 | 1.01 MGD        |
| 54 | Chenango, Tn - Northgate                  | Chenango (T)       | Broome          | 0.511     | MGD                 | 1.026 MGD       |
| 55 | Tri City - Broad Street Industrial        | Dickinson (T)      | Broome          | 1.06      | MGD                 | 1.3 MGD         |
| 56 | Tri City - Yary's Quarry                  | Fenton (T)         | Broome          | 1.06      | MGD                 | 1.3 MGD         |
| 57 | Huron Campus                              | Union (T)          | Broome          | 0.24      | MGD                 | 2.3 MGD         |
| 58 | Tri City - Gorick Route 369 Pit           | Chenango (T)       | Broome          | 1.85      | MGD                 | 2.31 MGD        |
| 59 | Tri City - Route 369 Pit                  | Kirkwood (T)       | Broome          | 1.85      | MGD                 | 2.31 MGD        |
| 60 | Johnson City, Vg                          | Union (T)          | Broome          | 2.7       | MGD                 | 4.4 MGD         |
| 61 | Vestal, Tn                                | Vestal (T)         | Broome          | 2.16      | MGD                 | 4.6 MGD         |
| 62 | Endicott Water District                   | Union (T)          | Broome          | 4.82      | MGD                 | 8.2 MGD         |
| 63 | AES Westover LLC                          | Union (T)          | Broome          | 50.7      | MGD                 | 57.6 MGD        |
| 64 | Pauls Garden                              | Fenton (T)         | Broome          | 7222      | GPD                 | 60000 GPD       |
| 65 | Winsor Acres                              | Colesville (T)     | Broome          | 86676     | GPD                 | 95893 GPD       |
| 66 | Saunders - Lisle Aggregate Plant          | Lisle (T)          | Broome          | 92571     | GPD                 | 144000 GPD      |
| 67 | Saunders - Whitney Point                  | Barker (T)         | Broome          | 20042     | GPD                 | 144000 GPD      |
| 68 | Conklin, Tn                               | Conklin (T)        | Broome          | 221000    | GPD                 | 381000 GPD      |
| 69 | Deposit, Vg                               | Sanford (T)        | Broome          | 217700    | GPD                 | 563300 GPD      |
| 70 | Kirkwood, Tn                              | Kirkwood (T)       | Broome          | 750000    | GPD                 | 953000 GPD      |
| 71 | Binghamton, City                          | Binghamton (C)     | Broome          | 6.5       | MGD                 |                 |
| 72 | Whitney Point, Vg                         | Triangle (T)       | Broome          |           |                     |                 |
| 73 | Cattaraugus County Department of Public W | Little Valley (T)  | Cattaraugus     | 0.25682   | MGD                 | 0.25682 MGD     |
| 74 | Franklinville, Vg                         | Franklinville (T)  | Cattaraugus     | 0.521     | MGD                 | 0.588 MGD       |
| 75 | Salamanca, City                           | Salamanca (C)      | Cattaraugus     | 1.16      | MGD                 | 2.03 MGD        |
| 76 | Randolph Hatchery                         | Cold Spring (T)    | Cattaraugus     | 2.74      | MGD                 | 3.01 MGD        |
| 77 | Corbett Hill Gravel Products              | Randolph (T)       | Cattaraugus     | 2.86      | MGD                 | 3.71 MGD        |
| 78 | Olean, City                               | Olean (C)          | Cattaraugus     | 2.34      | MGD                 | 4.23 MGD        |
| 79 | Win-Sum Ski Corp                          | Ellicottville (T)  | Cattaraugus     | 340157    | GPD                 | 6.9 MGD         |
| 80 | Allegany State Park - Barton Weller       | Cold Spring (T)    | Cattaraugus     | 15.6      | GPM                 | 230 GPM         |

Water Withdrawal Registrations 2012, <http://nywateraction.org/withdrawals/2012waterregis.xlsx>

| #   | FACILITY NAME                             | FACILITY TOWN/CITY | FACILITY COUNTY | Ave_Day_W_Units_Ave_Max_Day_Units_Max |             |
|-----|---|--------------------|-----------------|---------------------------------------|-------------|
| 81  | Gernatt - Gowanda                         | Persia (T)         | Cattaraugus     | 1650 GPD                              | 1800 GPD    |
| 82  | Gernatt - South Dayton                    | Dayton (T)         | Cattaraugus     | 2500 GPD                              | 2880 GPD    |
| 83  | Gernatt - Freedom                         | Freedom (T)        | Cattaraugus     | 2800 GPD                              | 3600 GPD    |
| 84  | Gernatt - Great Valley                    | Great Valley (T)   | Cattaraugus     | 3200 GPD                              | 3630 GPD    |
| 85  | Arcade, Vg, Sandusky Water                | Freedom (T)        | Cattaraugus     | 11688 GPD                             | 18677 GPD   |
| 86  | Edelweiss Farms                           | Freedom (T)        | Cattaraugus     | 90950 GPD                             | 95088 GPD   |
| 87  | South Dayton, Vg                          | Dayton (T)         | Cattaraugus     | 68616 GPD                             | 115000 GPD  |
| 88  | Central Water District (Perrysburg)       | Perrysburg (T)     | Cattaraugus     | 35000 GPD                             | 125000 GPD  |
| 89  | Hinsdale, Tn                              | Hinsdale (T)       | Cattaraugus     | 63600 GPD                             | 140000 GPD  |
| 90  | East Randolph                             | Cold Spring (T)    | Cattaraugus     | 152075 GPD                            | 161000 GPD  |
| 91  | Yorkshire Water District                  | Yorkshire (T)      | Cattaraugus     | 78600 GPD                             | 174000 GPD  |
| 92  | West Valley Demonstration Project         | Ashford (T)        | Cattaraugus     | 93278 GPD                             | 195552 GPD  |
| 93  | Delevan, Vg                               | Yorkshire (T)      | Cattaraugus     | 141920 GPD                            | 223000 GPD  |
| 94  | Elkdale Country Club                      | Little Valley (T)  | Cattaraugus     | 31968 GPD                             | 250000 GPD  |
| 95  | West Valley Crystal Water Company, Inc.   | Ashford (T)        | Cattaraugus     | 250000 GPD                            | 250000 GPD  |
| 96  | Portville, Vg                             | Portville (T)      | Cattaraugus     | 134000 GPD                            | 351000 GPD  |
| 97  | Little Valley, Vg                         | Little Valley (T)  | Cattaraugus     | 263000 GPD                            | 364000 GPD  |
| 98  | Randolph, Tn                              | Randolph (T)       | Cattaraugus     | 255181 GPD                            | 379000 GPD  |
| 99  | Olean Advanced Products                   | Olean (T)          | Cattaraugus     | 322060 GPD                            | 520000 GPD  |
| 100 | Allegany, Vg                              | Allegany (T)       | Cattaraugus     | 462199 GPD                            | 548200 GPD  |
| 101 | Lafarge Freedom Pit                       | Freedom (T)        | Cattaraugus     | 43500 GPD                             | 648000 GPD  |
| 102 | Holimont Ski Resort                       | Ellicottville (T)  | Cattaraugus     | 34000 GPD                             | 8640000 GPD |
| 103 | Allegany State Park - Route 1 (Red House) | Red House (T)      | Cattaraugus     | GPD                                   | GPD         |
| 104 | Ellicottville, Tn Water District #1       | Ellicottville (T)  | Cattaraugus     |                                       |             |
| 105 | Ellicottville, Vg                         | Ellicottville (T)  | Cattaraugus     | 415000 GPD                            |             |
| 106 | Gowanda, Vg                               | Persia (T)         | Cattaraugus     |                                       |             |
| 107 | Machias, Tn                               | Machias (T)        | Cattaraugus     |                                       |             |
| 108 | Hanson Aggregates - Oakwood Plant         | Springport (T)     | Cayuga          | 0 GPD                                 | 0 GPD       |
| 109 | Syracuse - Sennett Pit                    | Sennett (T)        | Cayuga          | 0 GPD                                 | 0 GPD       |
| 110 | Wells College                             | Ledyard (T)        | Cayuga          | 0.09 MGD                              | 0.15 MGD    |
| 111 | Auburn, City                              | Owasco (T)         | Cayuga          | 4.829 MGD                             | 6.21 MGD    |
| 112 | Patterson Farms, Inc                      | Springport (T)     | Cayuga          | 7506 GPD                              | 10000 GPD   |
| 113 | Cato, Vg                                  | Cato (T)           | Cayuga          | 25000 GPD                             | 25000 GPD   |
| 114 | Green Hill Dairy                          | Scipio (T)         | Cayuga          | 45800 GPD                             | 51000 GPD   |
| 115 | Vansridge Dairy                           | Scipio (T)         | Cayuga          | 62298 GPD                             | 68923 GPD   |
| 116 | Locke, Tn                                 | Locke (T)          | Cayuga          | 23537 GPD                             | 83000 GPD   |
| 117 | Richard Snyder                            | Montezuma (T)      | Cayuga          | 21700 GPD                             | 104550 GPD  |
| 118 | Lincoln Dairy                             | Fleming (T)        | Cayuga          | 105205 GPD                            | 113329 GPD  |
| 119 | Dutch Hollow Country Club                 | Owasco (T)         | Cayuga          | 4000 GPD                              | 120000 GPD  |
| 120 | Aurora Ridge Dairy LLC                    | Ledyard (T)        | Cayuga          | 100274 GPD                            | 123333 GPD  |
| 121 | Roach Farm                                | Venice (T)         | Cayuga          | 116305 GPD                            | 125860 GPD  |
| 122 | Cayuga, Vg                                | Aurelius (T)       | Cayuga          | 59000 GPD                             | 150000 GPD  |
| 123 | Dudley Water Supply                       | Cato (T)           | Cayuga          | 50000 GPD                             | 150000 GPD  |
| 124 | Oakwood Dairy                             | Aurelius (T)       | Cayuga          | 135616 GPD                            | 150000 GPD  |
| 125 | Genoa-King Ferry Water District           | Genoa (T)          | Cayuga          | 69758 GPD                             | 160900 GPD  |
| 126 | Spruce Haven Farms                        | Fleming (T)        | Cayuga          | 115590 GPD                            | 174480 GPD  |
| 127 | Sunnyside Farms Inc                       | Venice (T)         | Cayuga          | 173352 GPD                            | 189263 GPD  |
| 128 | Ridgecrest Dairy                          | Venice (T)         | Cayuga          | 194630 GPD                            | 209660 GPD  |
| 129 | Owasco Country Club                       | Owasco (T)         | Cayuga          | 32533 GPD                             | 268190 GPD  |
| 130 | Willet Dairy                              | Genoa (T)          | Cayuga          | 203712 GPD                            | 299667 GPD  |
| 131 | Union Springs, Vg                         | Springport (T)     | Cayuga          | 279845 GPD                            | 400000 GPD  |
| 132 | Moravia, Vg                               | Moravia (T)        | Cayuga          | 465942 GPD                            | 507200 GPD  |
| 133 | Highland Park Golf Course                 | Sennett (T)        | Cayuga          | 156840 GPD                            | 519824 GPD  |
| 134 | Owasco, Tn                                | Owasco (T)         | Cayuga          | 419474 GPD                            | 639249 GPD  |
| 135 | Gernatt - Hanover                         | Hanover (T)        | Chautauqua      | 0 GPM                                 | 0 GPM       |
| 136 | Clymer Water District                     | Clymer (T)         | Chautauqua      | 0.077 MGD                             | 0.078 MGD   |
| 137 | Former TRW Site                           | Jamestown (C)      | Chautauqua      | 0.03 MGD                              | 0.09 MGD    |
| 138 | Jamestown BPU - Power                     | Jamestown (C)      | Chautauqua      | 0.03 MGD                              | 0.09 MGD    |
| 139 | Brocton, Vg                               | Portland (T)       | Chautauqua      | 0.3 MGD                               | 0.539 MGD   |
| 140 | Chautauqua Hatchery                       | Chautauqua (T)     | Chautauqua      | 0.21 MGD                              | 1.71 MGD    |
| 141 | Fredonia Water Plant                      | Pomfret (T)        | Chautauqua      | 1.58 MGD                              | 2.22 MGD    |
| 142 | Dunkirk, City of                          | Dunkirk (C)        | Chautauqua      | 3.449 MGD                             | 4.597 MGD   |
| 143 | Jamestown City                            | Poland (T)         | Chautauqua      | 4.692 MGD                             | 7.989 MGD   |
| 144 | Spellman Farm                             | Ripley (T)         | Chautauqua      |                                       | 5000 GPD    |
| 145 | Allegany State Park - Long Point          | Ellery (T)         | Chautauqua      | 4000 GPD                              | 8000 GPD    |
| 146 | Monofrax - Jamestown                      | Ellicott (T)       | Chautauqua      | 12316 GPD                             | 21716 GPD   |
| 147 | Sugar Hill Golf Course                    | Portland (T)       | Chautauqua      | 21800 GPD                             | 24480 GPD   |
| 148 | Cherry Creek, Vg                          | Cherry Creek (T)   | Chautauqua      | 82384 GPD                             | 114000 GPD  |
| 149 | Peek'n Peak                               | French Creek (T)   | Chautauqua      | 103217 GPD                            | 154826 GPD  |
| 150 | Cassadaga, Vg                             | Stockton (T)       | Chautauqua      | 101907 GPD                            | 177000 GPD  |
| 151 | Tri-County Country Club                   | Hanover (T)        | Chautauqua      | 40385 GPD                             | 190412 GPD  |
| 152 | Moon Brook Country Club                   | Ellicott (T)       | Chautauqua      | 44156 GPD                             | 226000 GPD  |
| 153 | Frewsburg Water                           | Carroll (T)        | Chautauqua      | 216935 GPD                            | 250000 GPD  |
| 154 | Ripley Water District                     | Ripley (T)         | Chautauqua      | 108289 GPD                            | 272442 GPD  |
| 155 | Shorewood Association                     | Dunkirk (T)        | Chautauqua      | 164471 GPD                            | 313666 GPD  |
| 156 | Mayville, Vg                              | Chautauqua (T)     | Chautauqua      | 207000 GPD                            | 353000 GPD  |
| 157 | Chautauqua Golf Club                      | Chautauqua (T)     | Chautauqua      | 82117 GPD                             | 360700 GPD  |
| 158 | Chautauqua Utility District               | Chautauqua (T)     | Chautauqua      | 157787 GPD                            | 622937 GPD  |
| 159 | Westfield, Vg                             | Westfield (T)      | Chautauqua      | 563599 GPD                            | 1281600 GPD |
| 160 | Dunkirk Generating Station                | Dunkirk (C)        | Chautauqua      | 304 MGD                               |             |



Water Withdrawal Registrations 2012, <http://nywateraction.org/withdrawals/2012waterregis.xlsx>

| #   | FACILITY NAME                              | FACILITY TOWN/CITY | FACILITY COUNTY | Ave_Day_WUnits_Ave_Max_Day_WUnits_Max |              |
|-----|--|--------------------|-----------------|---------------------------------------|--------------|
| 161 | John Munch                                 | Sheridan (T)       | Chautauqua      |                                       |              |
| 162 | Narde Paving - Hurley Pit                  | Southport (T)      | Chemung         | 0 GPD                                 | 0 GPD        |
| 163 | Talisman Energy                            | Baldwin (T)        | Chemung         | 0 GPD                                 | 0 GPD        |
| 164 | Motor Components                           | Horseheads (T)     | Chemung         | 0.18 MGD                              | 0.576 MGD    |
| 165 | Big Flats, Tn                              | Big Flats (T)      | Chemung         | 0.524 MGD                             | 1.045 MGD    |
| 166 | Hardinge Inc                               | Horseheads (T)     | Chemung         | 0.38 MGD                              | 1.08 MGD     |
| 167 | Former Westinghouse Facility               | Horseheads (T)     | Chemung         | 1.37 MGD                              | 1.58 MGD     |
| 168 | Horseheads, Vg                             | Horseheads (T)     | Chemung         | 2 MGD                                 | 2.7 MGD      |
| 169 | Elmira Water Board                         | Elmira (C)         | Chemung         | 5.53 MGD                              | 8.45 MGD     |
| 170 | Elmira College - Murray Center             | Veteran (T)        | Chemung         | 172 GPM                               | 342 GPM      |
| 171 | Corning Inc - Big Flats                    | Big Flats (T)      | Chemung         | 29500 GPD                             | 29500 GPD    |
| 172 | Catlin, Tn (Beaver Valley Water District)  | Catlin (T)         | Chemung         | 23293 GPD                             | 87900 GPD    |
| 173 | Mark Twain State Park                      | Veteran (T)        | Chemung         | 16905 GPD                             | 316741 GPD   |
| 174 | Eaton Corporation                          | Horseheads (T)     | Chemung         | 125000 GPD                            | 900000 GPD   |
| 175 | Narde Paving - Paladino Pit                | Horseheads (T)     | Chemung         | 1944000 GPD                           | 2916000 GPD  |
| 176 | Syracuse - Norwich Pit                     | North Norwich (T)  | Chenango        | 0 GPD                                 | 0 GPD        |
| 177 | Bainbridge, Vg                             | Bainbridge (T)     | Chenango        | 0.213 MGD                             | 0.296 MGD    |
| 178 | Sherburne, Vg                              | Sherburne (T)      | Chenango        | 0.199 MGD                             | 0.442 MGD    |
| 179 | Agro-Farma - New Berlin                    | Columbus (T)       | Chenango        | 0.579 MGD                             | 0.971 MGD    |
| 180 | Tri City - Brisben Mine Site               | Oxford (T)         | Chenango        | 1.06 MGD                              | 1.3 MGD      |
| 181 | Norwich, City                              | Norwich (T)        | Chenango        | 0.98 MGD                              | 1.5 MGD      |
| 182 | South Otselec Hatchery                     | Otselec (T)        | Chenango        | 1.3 MGD                               | 1.9 MGD      |
| 183 | Mount Upton Water District                 | Guilford (T)       | Chenango        | 22000 GPD                             | 22000 GPD    |
| 184 | Agro-Farma Campus                          | Norwich (T)        | Chenango        | 10298 GPD                             | 25560 GPD    |
| 185 | Guilford Water District                    | Guilford (T)       | Chenango        | 20000 GPD                             | 70000 GPD    |
| 186 | Saunders - Norwich                         | Norwich (T)        | Chenango        | 20042 GPD                             | 108000 GPD   |
| 187 | Saunders - Bainbridge                      | Bainbridge (T)     | Chenango        | 92571 GPD                             | 144000 GPD   |
| 188 | Saunders - Greene Ready Mix                | Greene (T)         | Chenango        | 20042 GPD                             | 144000 GPD   |
| 189 | New Berlin, Vg                             | New Berlin (T)     | Chenango        | 107422 GPD                            | 157000 GPD   |
| 190 | Norwich Meadows Farm                       | Norwich (T)        | Chenango        | 31120 GPD                             | 175000 GPD   |
| 191 | Genegantslet Golf Club                     | Greene (T)         | Chenango        | 6868 GPD                              | 178349 GPD   |
| 192 | Greene, Vg                                 | Greene (T)         | Chenango        | 195082 GPD                            | 195082 GPD   |
| 193 | Afton, Vg                                  | Afton (T)          | Chenango        | 203288 GPD                            | 520000 GPD   |
| 194 | Kerry Bio-Science                          | Norwich (T)        | Chenango        | 354616 GPD                            | 530754 GPD   |
| 195 | Oxford, Vg                                 | Oxford (T)         | Chenango        | 281733 GPD                            | 563000 GPD   |
| 196 | Graymont Materials - Clinton Quarry        | Clinton (T)        | Clinton         | 0 GPD                                 | 0 GPD        |
| 197 | Clinton Correctional Facility              | Saranac (T)        | Clinton         | 0.816 MGD                             | 1.49 MGD     |
| 198 | Georgia-Pacific Consumer Operations LLC    | Plattsburgh (C)    | Clinton         | 1.07 MGD                              | 2.02 MGD     |
| 199 | Plattsburgh, Tn                            | Plattsburgh (T)    | Clinton         | 1.355 MGD                             | 2.1 MGD      |
| 200 | Plattsburgh, City                          | Plattsburgh (T)    | Clinton         | 2.2 MGD                               | 2.86 MGD     |
| 201 | Harris/Brault (Superfund)                  | Chazy (T)          | Clinton         | 129 GPM                               | 168 GPM      |
| 202 | Peru Water District                        | Peru (T)           | Clinton         | 166071 GPD                            | 600 GPM      |
| 203 | Gonyo Brothers LLC                         | Mooers (T)         | Clinton         | 7882 GPD                              | 9092 GPD     |
| 204 | Rovers' Farm Inc                           | Chazy (T)          | Clinton         | 30858 GPD                             | 35607 GPD    |
| 205 | Giroux Poultry Farm                        | Chazy (T)          | Clinton         | 81163 GPD                             | 81163 GPD    |
| 206 | Cha-liz Farm                               | Chazy (T)          | Clinton         | 105674 GPD                            | 113000 GPD   |
| 207 | Altona Correctional Facility               | Altona (T)         | Clinton         | 79361 GPD                             | 118600 GPD   |
| 208 | Adirondack Farm LLC                        | Ausable (T)        | Clinton         | 104938 GPD                            | 121545 GPD   |
| 209 | Plattsburgh, Tn - Cadyville Water District | Plattsburgh (T)    | Clinton         | 83180 GPD                             | 184600 GPD   |
| 210 | Champlain, Vg                              | Champlain (T)      | Clinton         | 120000 GPD                            | 300000 GPD   |
| 211 | Graymont Materials - Mooers Quarry         | Mooers (T)         | Clinton         | 264000 GPD                            | 792000 GPD   |
| 212 | Rouses Point, Vg                           | Champlain (T)      | Clinton         | 656516 GPD                            | 1116000 GPD  |
| 213 | Graymont Materials - Plattsburgh Quarry    | Plattsburgh (T)    | Clinton         | 1750000 GPD                           | 2750000 GPD  |
| 214 | Morrisville Water District                 | Schuyler Falls (T) | Clinton         |                                       |              |
| 215 | Copake Country Club                        | Copake (T)         | Columbia        | 0.024 MGD                             | 0.22 MGD     |
| 216 | Stockport, Tn                              | Stockport (T)      | Columbia        | 0.152 MGD                             | 0.288 MGD    |
| 217 | Olde Kinderhook Golf Club                  | Kinderhook (T)     | Columbia        | 0.04 MGD                              | 0.386 MGD    |
| 218 | Schweitzer-Mauduit International Inc.      | Ancram (T)         | Columbia        | 0.884 MGD                             | 0.951        |
| 219 | Greenport Water District #1- Mt Ida        | Claverack (T)      | Columbia        | 21800 GPD                             | 47000 GPD    |
| 220 | Golden Harvest Farms, Inc.                 | Kinderhook (T)     | Columbia        | 9493 GPD                              | 52500 GPD    |
| 221 | Taconic Farms                              | Germantown (T)     | Columbia        | 31000 GPD                             | 60000 GPD    |
| 222 | Colarusso Quarry Co.                       | Greenport (T)      | Columbia        | 84834 GPD                             | 88000 GPD    |
| 223 | Berkshire Farm Center                      | Canaan (T)         | Columbia        | 42349 GPD                             | 100128 GPD   |
| 224 | Corning - Erwin Facility                   | Copake (T)         | Columbia        | 76986 GPD                             | 128814 GPD   |
| 225 | Klein's Kill Fruit Farms                   | Livingston (T)     | Columbia        | 147400 GPD                            | 147400 GPD   |
| 226 | Hearty Roots Community Farm Ltd            | Clermont (T)       | Columbia        | 12370 GPD                             | 175000 GPD   |
| 227 | Kinderhook, Vg                             | Kinderhook (T)     | Columbia        | 118750 GPD                            | 247000 GPD   |
| 228 | Columbia Golf & Country Club               | Claverack (T)      | Columbia        | 45536 GPD                             | 262000 GPD   |
| 229 | Philmont, Vg                               | Claverack (T)      | Columbia        | 166000 GPD                            | 320000 GPD   |
| 230 | Samascott Orchards                         | Kinderhook (T)     | Columbia        | 29589 GPD                             | 360000 GPD   |
| 231 | George Saulpaugh & Son                     | Clermont (T)       | Columbia        | 300000 GPD                            | 388000 GPD   |
| 232 | Mark Eger & Bros.                          | Livingston (T)     | Columbia        | 336000 GPD                            | 504000 GPD   |
| 233 | Fix Bros                                   | Livingston (T)     | Columbia        | 41621 GPD                             | 508800 GPD   |
| 234 | Chatham, Vg                                | Ghent (T)          | Columbia        | 260846 GPD                            | 523781 GPD   |
| 235 | Colarusso Sand & Gravel                    | Greenport (T)      | Columbia        | 864761 GPD                            | 1090285 GPD  |
| 236 | Greenport Water District #1                | Greenport (T)      | Columbia        | 528000 GPD                            | 1112000 GPD  |
| 237 | FH Stickles Mine                           | Livingston (T)     | Columbia        | 18116000 GPD                          | 28899000 GPD |
| 238 | Grandview Water Works                      | Kinderhook (T)     | Columbia        |                                       |              |
| 239 | Hill Water Works                           | Kinderhook (T)     | Columbia        | 92100 GPD                             |              |
| 240 | Yonder Fruit Farms                         | Kinderhook (T)     | Columbia        |                                       |              |

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| #   | FACILITY NAME                              | FACILITY TOWN/CITY  | FACILITY COUNTY | Ave_Day_W_Units_Ave_Max_Day_Units_Max |              |
|-----|--|---------------------|-----------------|---------------------------------------|--------------|
| 241 | Marathon, Vg                               | Marathon (T)        | Cortland        | 0.08 MGD                              | 0.278 MGD    |
| 242 | Greek Peak Mountain Resort                 | Virgil (T)          | Cortland        | 307397 GPD                            | 1.4 MGD      |
| 243 | Elm Tree Golf Course                       | Virgil (T)          | Cortland        |                                       | 9000 GPD     |
| 244 | Scott Water District #1                    | Scott (T)           | Cortland        | 12600 GPD                             | 15600 GPD    |
| 245 | Suit-Kote Terminal                         | Cortlandville (T)   | Cortland        | 13713 GPD                             | 29666 GPD    |
| 246 | Preble Hill Farm, LLC                      | Preble (T)          | Cortland        | 31810 GPD                             | 36409 GPD    |
| 247 | Cortland Asphalt Products                  | Cortlandville (T)   | Cortland        | 15820 GPD                             | 45765 GPD    |
| 248 | Virgil Water District #1                   | Virgil (T)          | Cortland        | 24905 GPD                             | 71270 GPD    |
| 249 | Cornell Hartford T & R Center              | Harford (T)         | Cortland        | 52894 GPD                             | 79989 GPD    |
| 250 | Cincinnati, Tn                             | Cincinnati (T)      | Cortland        | 40035 GPD                             | 113000 GPD   |
| 251 | Saunders - Cortland Ready Mix              | Cortlandville (T)   | Cortland        | 20042 GPD                             | 144000 GPD   |
| 252 | McGraw, Vg                                 | Cortlandville (T)   | Cortland        | 110970 GPD                            | 160900 GPD   |
| 253 | Cooperstown Dreams Park                    | Homer (T)           | Cortland        | 58613 GPD                             | 164000 GPD   |
| 254 | Willowbrook Golf Club                      | Cortlandville (T)   | Cortland        | 13678.93 GPD                          | 316800 GPD   |
| 255 | Albany International                       | Homer (T)           | Cortland        | 147052 GPD                            | 318380 GPD   |
| 256 | Cortland Country Club                      | Cortlandville (T)   | Cortland        | 80000 GPD                             | 400000 GPD   |
| 257 | Kinsella - EZAcres                         | Homer (T)           | Cortland        | 336000 GPD                            | 500000 GPD   |
| 258 | Intertek                                   | Cortlandville (T)   | Cortland        | 532308 GPD                            | 658080 GPD   |
| 259 | Newton Water Works                         | Homer (T)           | Cortland        | 402000 GPD                            | 660000 GPD   |
| 260 | Polkville Crushed Stone                    | Cortlandville (T)   | Cortland        | 332013 GPD                            | 720040 GPD   |
| 261 | Cortlandville, Tn                          | Cortlandville (T)   | Cortland        | 627000 GPD                            | 805000 GPD   |
| 262 | Labrador Development Corp                  | Truxton (T)         | Cortland        | 1682118 GPD                           | 2144250 GPD  |
| 263 | Cortland Water Department                  | Cortland (C)        | Cortland        | 2547487 GPD                           | 3297686 GPD  |
| 264 | New Hope View Farm                         | Homer (T)           | Cortland        | 35967 GPD                             |              |
| 265 | Walton, Vg                                 | Walton (T)          | Delaware        | 0.365 MGD                             | 0.416 MGD    |
| 266 | Delhi, Vg                                  | Delhi (T)           | Delaware        | 0.33 MGD                              | 0.644 MGD    |
| 267 | Hancock Quarry                             | Hancock (T)         | Delaware        | 0.72 MGD                              | 0.72 MGD     |
| 268 | Morningstar Foods                          | Delhi (T)           | Delaware        | 0.6066 MGD                            | 0.72 MGD     |
| 269 | Sidney Water Supply                        | Sidney (T)          | Delaware        | 671800 GPD                            | 1.1708 MGD   |
| 270 | Kraft Foods - Walton                       | Walton (T)          | Delaware        | 0.618 MGD                             | 1.301 MGD    |
| 271 | Ski Platekill, Inc.                        | Roxbury (T)         | Delaware        | 3.2 MGD                               | 3.2 MGD      |
| 272 | SUNY Delhi, Lower Campus Farm              | Delhi (T)           | Delaware        | 7611 GPD                              | 110 GPM      |
| 273 | Andes Water District #1                    | Andes (T)           | Delaware        | 22272 GPD                             | 51390 GPD    |
| 274 | Ouleout Golf Course                        | Franklin (T)        | Delaware        | 27913 GPD                             | 53760 GPD    |
| 275 | Hanah Mountain Resort Country Club         | Middletown (T)      | Delaware        |                                       | 100000 GPD   |
| 276 | Franklin, Vg                               | Franklin (T)        | Delaware        | 29100 GPD                             | 110000 GPD   |
| 277 | Delhi College Golf Course                  | Delhi (T)           | Delaware        | 14177 GPD                             | 187695 GPD   |
| 278 | Margaretville, Vg                          | Middletown (T)      | Delaware        | 95000 GPD                             | 210000 GPD   |
| 279 | Fleischmanns, Vg                           | Middletown (T)      | Delaware        | 165000 GPD                            | 305800 GPD   |
| 280 | Roxbury, Tn                                | Roxbury (T)         | Delaware        | 193000 GPD                            | 336000 GPD   |
| 281 | Friesland Campina Domo                     | Delhi (T)           | Delaware        | 430183 GPD                            | 852537 GPD   |
| 282 | Wadson Mini Mall                           | Hancock (T)         | Delaware        | 973 GPD                               |              |
| 283 | Terhune Orchards                           | Pleasant Valley (T) | Dutchess        | 0 GPM                                 | 0 GPM        |
| 284 | Hopewell Hamlet Water District             | East Fishkill (T)   | Dutchess        | 46235 GPD                             | 0.0864 MGD   |
| 285 | Merritt Park Water                         | Fishkill (T)        | Dutchess        | 0.024 MGD                             | 0.094 MGD    |
| 286 | Tivoli, Vg                                 | Red Hook (T)        | Dutchess        | 0.074 MGD                             | 0.102 MGD    |
| 287 | Brinkerhoff Water District                 | Fishkill (T)        | Dutchess        | 0.281 MGD                             | 0.483 MGD    |
| 288 | Four Corners                               | East Fishkill (T)   | Dutchess        | 81278 GPD                             | 0.746544 MGD |
| 289 | Wappinger, Tn - Hilltop Wells              | Wappinger (T)       | Dutchess        | 0.3178 MGD                            | 0.815 MGD    |
| 290 | Wappinger, Tn - Atlas Wells                | Wappinger (T)       | Dutchess        | 0.6205 MGD                            | 1.297 MGD    |
| 291 | Dutchess Quarry & Supply Co - Pleasant Val | Pleasant Valley (T) | Dutchess        | 0.4243 MGD                            | 1.38 MGD     |
| 292 | Peckham - Wingdale Materials, LLC          | Dover (T)           | Dutchess        | 2.4 MGD                               | 2.4 MGD      |
| 293 | Peckham Materials - Wingdale               | Dover (T)           | Dutchess        | 2.4 MGD                               | 2.4 MGD      |
| 294 | Fishkill, Vg                               | Fishkill (T)        | Dutchess        | 1.92 MGD                              | 2.8 MGD      |
| 295 | Red Wing - Roe Jan Mine                    | Milan (T)           | Dutchess        | 278598 GPD                            | 2.9 MGD      |
| 296 | Beacon, City                               | Fishkill (T)        | Dutchess        | 2.35 MGD                              | 3.2 MGD      |
| 297 | IBM Hudson Valley Research Park            | East Fishkill (T)   | Dutchess        | 2.06 MGD                              | 3.39 MGD     |
| 298 | Tilcon - Clinton Point Quarry              | Poughkeepsie (T)    | Dutchess        | 9.5865 MGD                            | 11.3757 MGD  |
| 299 | Poughkeepsie, City                         | Poughkeepsie (T)    | Dutchess        | 9.997 MGD                             | 15.76 MGD    |
| 300 | IBM Poughkeepsie                           | Poughkeepsie (T)    | Dutchess        | 23.6 MGD                              | 46 MGD       |
| 301 | Pawling, Vg                                | Pawling (T)         | Dutchess        | 228000 GPD                            | 196 GPM      |
| 302 | Rose Hill Farm                             | Red Hook (T)        | Dutchess        |                                       | 2500 GPD     |
| 303 | Taconic Estates                            | East Fishkill (T)   | Dutchess        | 5971 GPD                              | 13000 GPD    |
| 304 | Green Meadow Park Water                    | La Grange (T)       | Dutchess        | 13500 GPD                             | 23564 GPD    |
| 305 | Cedar Valley                               | Pawling (T)         | Dutchess        | 16000 GPD                             | 28000 GPD    |
| 306 | Pleasant Valley Farm - Salt Point          | Pleasant Valley (T) | Dutchess        | 21600 GPD                             | 43200 GPD    |
| 307 | Arlington High School                      | La Grange (T)       | Dutchess        | 10225 GPD                             | 45900 GPD    |
| 308 | Secor Strawberries                         | East Fishkill (T)   | Dutchess        | 1580 GPD                              | 71424 GPD    |
| 309 | Millbrook Golf & Tennis Club               | Washington (T)      | Dutchess        | 5945 GPD                              | 80000 GPD    |
| 310 | Windemere Highlands                        | Red Hook (T)        | Dutchess        | 26734 GPD                             | 85000 GPD    |
| 311 | Fishkill Farms                             | East Fishkill (T)   | Dutchess        | 7397 GPD                              | 90000 GPD    |
| 312 | Valley Dale (Hillis Park)                  | Pleasant Valley (T) | Dutchess        | 40003 GPD                             | 98000 GPD    |
| 313 | Little Switzerland                         | East Fishkill (T)   | Dutchess        | 69811 GPD                             | 108500 GPD   |
| 314 | James Baird State Park                     | La Grange (T)       | Dutchess        | 55000 GPD                             | 110000 GPD   |
| 315 | Cranesville - Blue Stores Mine             | Rhinebeck (T)       | Dutchess        | 120000 GPD                            | 120000 GPD   |
| 316 | Pine Plains Water Improvement Area         | Pine Plains (T)     | Dutchess        | 70300 GPD                             | 136800 GPD   |
| 317 | Dover Plains Water                         | Dover (T)           | Dutchess        | 139000 GPD                            | 146000 GPD   |
| 318 | Dalton Farms - DCWWA                       | Beekman (T)         | Dutchess        | 104651 GPD                            | 147600 GPD   |
| 319 | Bard College                               | Red Hook (T)        | Dutchess        | 74780 GPD                             | 157000 GPD   |
| 320 | Wassaic TDDSO                              | Amenia (T)          | Dutchess        | 66667 GPD                             | 170000 GPD   |

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| #   | FACILITY NAME                         | FACILITY TOWN/CITY | FACILITY COUNTY | Ave_Day_WUnits | Ave_Max_Day_WUnits |
|-----|---------------------------------------|--------------------|-----------------|----------------|--------------------|
| 321 | Amenia Water District #1              | Amenia (T)         | Dutchess        | 95091 GPD      | 186300 GPD         |
| 322 | LaGrange Town Center                  | La Grange (T)      | Dutchess        | 82200 GPD      | 219000 GPD         |
| 323 | Red Hook Water District #1            | Red Hook (T)       | Dutchess        | 82000 GPD      | 227000 GPD         |
| 324 | Links at Unionvale                    | Union Vale (T)     | Dutchess        | 50476 GPD      | 230000 GPD         |
| 325 | Dutchess Golf & Country Club          | Poughkeepsie (T)   | Dutchess        | 230000 GPD     | 250000 GPD         |
| 326 | Carvel Country Club                   | Pine Plains (T)    | Dutchess        | 14385 GPD      | 270000 GPD         |
| 327 | Red Hook, Vg                          | Red Hook (T)       | Dutchess        | 238333 GPD     | 287000 GPD         |
| 328 | Mead Orchards                         | Red Hook (T)       | Dutchess        | 20000 GPD      | 290000 GPD         |
| 329 | Route 82 Sand & Gravel                | Washington (T)     | Dutchess        | 252000 GPD     | 306000 GPD         |
| 330 | Millerton, Vg                         | Northeast (T)      | Dutchess        | 189800 GPD     | 338000 GPD         |
| 331 | Millbrook, Vg                         | Washington (T)     | Dutchess        | 213000 GPD     | 400000 GPD         |
| 332 | Beekman Country Club - Water Company  | East Fishkill (T)  | Dutchess        | 94774 GPD      | 403300 GPD         |
| 333 | Casperkill Golf Club                  | Poughkeepsie (T)   | Dutchess        | 250000 GPD     | 465000 GPD         |
| 334 | West Beekman                          | Beekman (T)        | Dutchess        | 84328 GPD      | 624000 GPD         |
| 335 | Harlem Valley Materials               | Amenia (T)         | Dutchess        | 504000 GPD     | 720000 GPD         |
| 336 | Beekman Country Club                  | East Fishkill (T)  | Dutchess        | 76004 GPD      | 900945 GPD         |
| 337 | Manchester Water District             | La Grange (T)      | Dutchess        | 338000 GPD     | 920000 GPD         |
| 338 | Green Haven Correctional Facility     | Beekman (T)        | Dutchess        | 662891 GPD     | 936135 GPD         |
| 339 | Migliorelli Farm                      | Red Hook (T)       | Dutchess        | 500000 GPD     | 1000000 GPD        |
| 340 | Rhinebeck, Vg                         | Rhinebeck (T)      | Dutchess        | 457000 GPD     | 1179000 GPD        |
| 341 | Hyde Park - DCWWA                     | Hyde Park (T)      | Dutchess        | 1031408 GPD    | 1375000            |
| 342 | Callanan - Amenias Facility           | Amenia (T)         | Dutchess        | 385009 GPD     | 2013018 GPD        |
| 343 | West Hook Sand & Gravel               | East Fishkill (T)  | Dutchess        | 1968685 GPD    | 5712000 GPD        |
| 344 | Greig Farm                            | Red Hook (T)       | Dutchess        |                |                    |
| 345 | Hardeman Orchards                     | Red Hook (T)       | Dutchess        |                |                    |
| 346 | Montclair Condominiums                | Wappinger (T)      | Dutchess        | 36649 GPD      |                    |
| 347 | Red Hook Golf Club                    | Red Hook (T)       | Dutchess        | 37357 GPD      |                    |
| 348 | State Farm                            | Collins (T)        | Erie            | 0 GPD          | 0 GPD              |
| 349 | Collins, Tn                           | Collins (T)        | Erie            | 0.11 MGD       | 0.318 MGD          |
| 350 | Links at Ivy Ridge                    | Newstead (T)       | Erie            | 0.05 MGD       | 0.35 MGD           |
| 351 | Collins Correctional Facility         | Collins (T)        | Erie            | 0.568 MGD      | 0.71 MGD           |
| 352 | IsleChem, LLC                         | Grand Island (T)   | Erie            | 0.377 MGD      | 1.16 MGD           |
| 353 | Perry's Ice Cream Co. Inc.            | Newstead (T)       | Erie            | 1.153 MGD      | 1.59 MGD           |
| 354 | Grand Island, Tn                      | Grand Island (T)   | Erie            | 1.646 MGD      | 2.561 MGD          |
| 355 | Kissing Bridge Corp                   | Concord (T)        | Erie            | 2.6 MGD        | 3.7 MGD            |
| 356 | Tonawanda Coke Corp                   | Tonawanda (T)      | Erie            | 2.18 MGD       | 4.18 MGD           |
| 357 | DuPont Co - Yerkes Plant              | Tonawanda (T)      | Erie            | 3.25 MGD       | 4.93 MGD           |
| 358 | Goodyear Dunlop Tires, NA Ltd.        | Tonawanda (T)      | Erie            | 4.2 MGD        | 5.3 MGD            |
| 359 | Buffalo River Improvement Corporation | Buffalo (C)        | Erie            | 5.23 MGD       | 9 MGD              |
| 360 | County Line Stone Co, Inc             | Newstead (T)       | Erie            | 11 MGD         | 14 MGD             |
| 361 | FMC Corporation                       | Tonawanda (T)      | Erie            | 9,822 MGD      | 14,699 MGD         |
| 362 | Tonawanda, Tn                         | Tonawanda (T)      | Erie            | 13 MGD         | 16.4 MGD           |
| 363 | ArcelorMittal Lackawanna              | Hamburg (T)        | Erie            | 25 MGD         | 25 MGD             |
| 364 | ECWA - Van De Water                   | Tonawanda (T)      | Erie            | 18.48 MGD      | 41.43 MGD          |
| 365 | ECWA - Sturgeon Point                 | Evans (T)          | Erie            | 49 MGD         | 74 MGD             |
| 366 | Buffalo Water Authority               | Buffalo (C)        | Erie            | 68.1 MGD       | 86.21 MGD          |
| 367 | Huntley Generating Station            | Tonawanda (T)      | Erie            | 200 MGD        | 406 MGD            |
| 368 | Springville, Vg                       | Concord (T)        | Erie            | 437 GPM        | 822 GPM            |
| 369 | Gernatt - Springville                 | Concord (T)        | Erie            | 1500 GPD       | 1650 GPD           |
| 370 | Gernatt - Collins                     | Collins (T)        | Erie            | 1900 GPD       | 2300 GPD           |
| 371 | Como Plant #21                        | Cheektowaga (T)    | Erie            | 1455 GPM       | 2825 GPM           |
| 372 | Gernatt - Chaffee                     | Sardinia (T)       | Erie            | 2850 GPD       | 3150 GPD           |
| 373 | Frey Concrete, Inc                    | Lancaster (T)      | Erie            | 9546 GPD       | 17730 GPD          |
| 374 | Wehrle Plant #23                      | Lancaster (T)      | Erie            | 13884 GPM      | 24900 GPM          |
| 375 | Phillips Family Farm                  | Brant (T)          | Erie            | 30000 GPD      | 32000 GPD          |
| 376 | East Aurora Country Club              | Elma (T)           | Erie            | 38641 GPD      | 38641 GPD          |
| 377 | Kreher's Farm Fresh Eggs, LLC         | Clarence (T)       | Erie            | 30000 GPD      | 50000 GPD          |
| 378 | Country Club of Buffalo               | Amherst (T)        | Erie            |                | 99000 GPD          |
| 379 | Amos Zittel & Sons                    | Eden (T)           | Erie            | 34000 GPD      | 100000 GPD         |
| 380 | Gowanda Country Club                  | Collins (T)        | Erie            | 24411 GPD      | 120000 GPD         |
| 381 | Springville Country Club              | Concord (T)        | Erie            | 23337 GPD      | 135000 GPD         |
| 382 | Westwood Country Club                 | Amherst (T)        | Erie            | 28997 GPD      | 168000 GPD         |
| 383 | Park Country Club                     | Amherst (T)        | Erie            | 66000 GPD      | 225000 GPD         |
| 384 | Lancaster Country Club                | Lancaster (T)      | Erie            | 42150 GPD      | 227307 GPD         |
| 385 | Wanakah Country Club                  | Hamburg (T)        | Erie            | 65810 GPD      | 250000 GPD         |
| 386 | Glen Oak Golf Course                  | Amherst (T)        | Erie            | 288000 GPD     | 288000 GPD         |
| 387 | Alden, Vg                             | Alden (T)          | Erie            | 215341 GPD     | 321300 GPD         |
| 388 | Orchard Park Country Club             | Orchard Park (T)   | Erie            | 48387 GPD      | 325167 GPD         |
| 389 | Fox Valley Club                       | Lancaster (T)      | Erie            | 27894 GPD      | 339375 GPD         |
| 390 | Brierwood Country Club                | Hamburg (T)        | Erie            | 55746 GPD      | 350000 GPD         |
| 391 | Turnbull Nursery                      | Brant (T)          | Erie            | 25000 GPD      | 350000 GPD         |
| 392 | CET - Tonawanda Engine Site           | Tonawanda (T)      | Erie            | 257621 GPD     | 373787 GPD         |
| 393 | North Collins, Vg                     | Brant (T)          | Erie            | 160000 GPD     | 380000 GPD         |
| 394 | Crag Burn Golf Club                   | Elma (T)           | Erie            | 25457 GPD      | 386919 GPD         |
| 395 | Brookfield Country Club               | Clarence (T)       | Erie            | 35279 GPD      | 450000 GPD         |
| 396 | Bowman Farms                          | North Collins (T)  | Erie            | 228000 GPD     | 501600 GPD         |
| 397 | D & J Brawdy Farms, Inc               | Eden (T)           | Erie            | 188852 GPD     | 504000 GPD         |
| 398 | Henry W. Agle & Sons Inc.             | Eden (T)           | Erie            | 60000 GPD      | 565000 GPD         |
| 399 | Ford Gum                              | Newstead (T)       | Erie            | 970500 GPD     | 970500 GPD         |
| 400 | M K Phelps Farm                       | Sardinia (T)       | Erie            | 5000 GPD       | 1550000 GPD        |

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| #   | FACILITY NAME                             | FACILITY TOWN/CITY | FACILITY COUNTY | Ave_Day_WUnits_Ave_Max_Day_WUnits_Max | Ave_Max_Day_WUnits_Max |
|-----|---|--------------------|-----------------|---------------------------------------|------------------------|
| 401 | Chiavetta's                               | Evans (T)          | Erie            |                                       |                        |
| 402 | Westport Consolidated Water District      | Westport (T)       | Essex           | 0.074 MGD                             | 0.1983 MGD             |
| 403 | Port Henry , Vg                           | Moriah (T)         | Essex           | 0.15 MGD                              | 0.295 MGD              |
| 404 | Whiteface Club                            | North Elba (T)     | Essex           | 45506 GPD                             | 0.38 MGD               |
| 405 | Saranac Lake, Vg                          | North Elba (T)     | Essex           | 1.03 MGD                              | 1.319 MGD              |
| 406 | Lake Placid, Vg                           | North Elba (T)     | Essex           | 1.081082 MGD                          | 2.076 MGD              |
| 407 | International Paper - Ticonderoga Mill    | Ticonderoga (T)    | Essex           | 16.8 MGD                              | 21.5 MGD               |
| 408 | Wilmington Water District #2              | Wilmington (T)     | Essex           | 250 GPM                               | 250 GPM                |
| 409 | New Russia Water District                 | Elizabethtown (T)  | Essex           | 900 GPD                               | 1400 GPD               |
| 410 | Lewis Water District #1                   | Lewis (T)          | Essex           | 28000 GPD                             | 37000 GPD              |
| 411 | Ray Brook Water District                  | North Elba (T)     | Essex           | 41000 GPD                             | 81000 GPD              |
| 412 | Harmony Golf Club                         | Chesterfield (T)   | Essex           | 33400 GPD                             | 88000 GPD              |
| 413 | Ausable Club                              | Keene (T)          | Essex           | 33000 GPD                             | 109000 GPD             |
| 414 | Elizabethtown Water District              | Elizabethtown (T)  | Essex           | 140000 GPD                            | 150000 GPD             |
| 415 | Minerva, Tn                               | Minerva (T)        | Essex           | 80000 GPD                             | 210000 GPD             |
| 416 | Jay, Water Plant                          | Jay (T)            | Essex           | 202304 GPD                            | 263000 GPD             |
| 417 | Au Sable Forks Water District             | Jay (T)            | Essex           | 193238 GPD                            | 300000 GPD             |
| 418 | Adirondack Correctional Facility          | North Elba (T)     | Essex           | 326590 GPD                            | 386910 GPD             |
| 419 | Ticonderoga, Tn - Gooseneck Pond          | Ticonderoga (T)    | Essex           | 334389 GPD                            | 471000 GPD             |
| 420 | Keeseville, Vg                            | Chesterfield (T)   | Essex           | 195101 GPD                            | 485020 GPD             |
| 421 | Ticonderoga Golf Corp                     | Ticonderoga (T)    | Essex           |                                       | 725000 GPD             |
| 422 | Schroon Lake Water District               | Schroon (T)        | Essex           | 260000 GPD                            | 728000 GPD             |
| 423 | Ticonderoga, Tn - Lake George             | Ticonderoga (T)    | Essex           | 450526 GPD                            | 800000 GPD             |
| 424 | Graymont Materials - Lewis Quarry         | Lewis (T)          | Essex           | 700000 GPD                            | 828000 GPD             |
| 425 | Moriah Water District                     | Moriah (T)         | Essex           | 422923 GPD                            | 962000 GPD             |
| 426 | NYCO Minerals                             | Lewis (T)          | Essex           | 750000 GPD                            | 2060000 GPD            |
| 427 | Forever Wild Water Co.                    | Jay (T)            | Essex           | 52141 GPD                             |                        |
| 428 | Winebrook Hills Water District            | Newcomb (T)        | Essex           |                                       |                        |
| 429 | Chateaugay, Vg                            | Chateaugay (T)     | Franklin        | 0.735 MGD                             | 1.008 MGD              |
| 430 | Tupper Lake, Vg                           | Tupper Lake (T)    | Franklin        | 0.811 MGD                             | 1.59 MGD               |
| 431 | Chateaugay Hatchery                       | Chateaugay (T)     | Franklin        | 1.6 MGD                               | 1.6 MGD                |
| 432 | Malone, Vg                                | Malone (T)         | Franklin        | 2.2 MGD                               | 3 MGD                  |
| 433 | Adirondack Hatchery                       | Santa Clara (T)    | Franklin        | 2.61 MGD                              | 3.17 MGD               |
| 434 | Carsada Dairy                             | Malone (T)         | Franklin        | 40595 GPD                             | 49837 GPD              |
| 435 | Chateaugay Correctional Facility          | Chateaugay (T)     | Franklin        | 25599 GPD                             | 65500 GPD              |
| 436 | Burke, Vg                                 | Burke (T)          | Franklin        | 15800 GPD                             | 70000 GPD              |
| 437 | Trainer Farm                              | Chateaugay (T)     | Franklin        | 42912 GPD                             | 78253 GPD              |
| 438 | Billow Farm                               | Bellmont (T)       | Franklin        | 90878 GPD                             | 98890 GPD              |
| 439 | Papas Dairy                               | Malone (T)         | Franklin        | 92456 GPD                             | 103964 GPD             |
| 440 | Paul Smith's College                      | Brighton (T)       | Franklin        | 67943 GPD                             | 172800 GPD             |
| 441 | Boralex NY (ReEnergy New York)            | Chateaugay (T)     | Franklin        | 157000 GPD                            | 338000 GPD             |
| 442 | Graymont Materials - Saranac Lake Quarry  | Harrietstown (T)   | Franklin        | 530000 GPD                            | 870000 GPD             |
| 443 | Childstock Farms                          | Malone (T)         | Franklin        | 125500 GPD                            | 1167000 GPD            |
| 444 | Titus Mountain Family Ski Center          | Malone (T)         | Franklin        | 960000 GPD                            | 2880000 GPD            |
| 445 | Graymont Materials - Malone Quarry        | Malone (T)         | Franklin        | 720000 GPD                            | 2970000 GPD            |
| 446 | Agri-Mark, Inc - Chateaugay Plant         | Chateaugay (T)     | Franklin        | 628939 GPD                            |                        |
| 447 | Aqua Arbor                                | Chateaugay (T)     | Franklin        |                                       |                        |
| 448 | Aqua Arbor                                | Chateaugay (T)     | Franklin        |                                       |                        |
| 449 | St. Regis Falls Water District            | Waverly (T)        | Franklin        |                                       |                        |
| 450 | Canajoharie Water Works                   | Johnstown (T)      | Fulton          | 0.95 MGD                              | 1.43 MGD               |
| 451 | Royal Mountain Ski Area                   | Caroga (T)         | Fulton          | 67000 GPD                             | 1.7 MGD                |
| 452 | Gloversville Board of Water Commissioners | Johnstown (T)      | Fulton          | 1.94 MGD                              | 2.68 MGD               |
| 453 | Johnstown, City                           | Johnstown (T)      | Fulton          | 1.81 MGD                              | 2.8 MGD                |
| 454 | Pinelands Nursery                         | Bleecker (T)       | Fulton          | 500 GPD                               | 3000 GPD               |
| 455 | Saint Johnsville, Vg                      | Oppenheim (T)      | Fulton          | 53539 GPD                             | 70872 GPD              |
| 456 | Sacandaga Park Water District             | Northampton (T)    | Fulton          | 49000 GPD                             | 107000 GPD             |
| 457 | Delaney Crushed Stone                     | Northampton (T)    | Fulton          | 9000 GPD                              | 120000 GPD             |
| 458 | Broadalbin, Vg                            | Broadalbin (T)     | Fulton          | 108000 GPD                            | 130000 GPD             |
| 459 | Mayfield, Vg                              | Mayfield (T)       | Fulton          | 85500 GPD                             | 174900 GPD             |
| 460 | Northville, Vg                            | Northampton (T)    | Fulton          | 95411 GPD                             | 273600 GPD             |
| 461 | Cranesville - Maple Ave                   | Johnstown (T)      | Fulton          | 456000 GPD                            | 456000 GPD             |
| 462 | Hanson Aggregates - Leroy                 | Le Roy (T)         | Genesee         | 0 GPD                                 | 0 GPD                  |
| 463 | Patsy Vigneri & Sons                      | Elba (T)           | Genesee         | 0 GPD                                 | 0 GPD                  |
| 464 | Elba, Vg                                  | Elba (T)           | Genesee         | 0.084 MGD                             | 0.278 MGD              |
| 465 | Hanson Aggregates - Batavia Sand & Gravel | Batavia (T)        | Genesee         | 0.475 MGD                             | 1.47 MGD               |
| 466 | CV Farms LLC                              | Elba (T)           | Genesee         | 70100 GPD                             | 1.75 MGD               |
| 467 | OATKA Milk Products Coop Inc              | Batavia (T)        | Genesee         | 1.198 MGD                             | 2.004 MGD              |
| 468 | Batavia, City                             | Batavia (C)        | Genesee         | 2.78 MGD                              | 4.49 MGD               |
| 469 | Hanson Aggregates - Stafford Quarry       | Stafford (T)       | Genesee         | 3.1 MGD                               | 6.8 MGD                |
| 470 | US Gypsum Co                              | Oakfield (T)       | Genesee         | 9.42 MGD                              | 24.172 MGD             |
| 471 | Star Growers Farm LLC                     | Elba (T)           | Genesee         | 117500 GPD                            | 252 GPM                |
| 472 | Reyncrest Farms                           | Darien (T)         | Genesee         | 42500 GPD                             | 45000 GPD              |
| 473 | Oak Orchard Dairy                         | Elba (T)           | Genesee         | 47337 GPD                             | 50000 GPD              |
| 474 | Lamb Farms # 2                            | Elba (T)           | Genesee         | 48758 GPD                             | 55680 GPD              |
| 475 | Chestnut Hill Country Club, Inc.          | Darien (T)         | Genesee         | 49428 GPD                             | 60000 GPD              |
| 476 | Zuber Farms                               | Byron (T)          | Genesee         | 52000 GPD                             | 65000 GPD              |
| 477 | Hildene Farms, Inc                        | Pavilion (T)       | Genesee         | 60000 GPD                             | 70000 GPD              |
| 478 | Torrey Farms Dairy Inc.                   | Elba (T)           | Genesee         | 96427 GPD                             | 106681 GPD             |
| 479 | Lamb Farms # 1                            | Oakfield (T)       | Genesee         | 97796 GPD                             | 111680 GPD             |
| 480 | Corfu, Vg                                 | Pembroke (T)       | Genesee         | 101605 GPD                            | 145870 GPD             |

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|-----|--|--------------------|-----------------|-----------------|---------------------|---------------|
| 481 | Terry Hills Golf Course                  | Batavia (T)        | Genesee         | 24473 GPD       | 240000 GPD          |               |
| 482 | Stafford Country Club                    | Stafford (T)       | Genesee         | 18000 GPD       | 250000 GPD          |               |
| 483 | Bonduelle USA - Bergen Facility          | Bergen (T)         | Genesee         | 94342 GPD       | 479900 GPD          |               |
| 484 | Frey Sand and Gravel                     | Alexander (T)      | Genesee         | 1050000 GPD     | 1050000 GPD         |               |
| 485 | Bonduelle USA - Oakfield Facility        | Oakfield (T)       | Genesee         | 189029 GPD      | 1055582 GPD         |               |
| 486 | L-Brooke Farms, LLC                      | Byron (T)          | Genesee         |                 | 1260000 GPD         |               |
| 487 | Dolomite Products - Circular Hill        | Le Roy (T)         | Genesee         | 720000 GPD      | 2160000 GPD         |               |
| 488 | Del Mar Farms Inc                        | Batavia (T)        | Genesee         | 1225000 GPD     | 4550000 GPD         |               |
| 489 | Big O Farms Inc                          | Elba (T)           | Genesee         | 3168000 GPD     | 4752000 GPD         |               |
| 490 | Dolomite Products - Leroy Quarry         | Le Roy (T)         | Genesee         | 0.875 MGD       |                     |               |
| 491 | My-T-Acres, Inc                          | Batavia (T)        | Genesee         | 2.89 MGD        |                     |               |
| 492 | Tilcon - High Hill Road Pit              | Coxsackie (T)      | Greene          | 0 GPD           | 0 GPD               |               |
| 493 | Greenville, Tn                           | Greenville (T)     | Greene          | 0.054 MGD       | 0.079 MGD           |               |
| 494 | Cairo Water District                     | Cairo (T)          | Greene          | 0.096 MGD       | 0.189 MGD           |               |
| 495 | Story Farms                              | Catskill (T)       | Greene          | 8250 GPD        | 0.3 MGD             |               |
| 496 | Hunter, Vg                               | Hunter (T)         | Greene          | 0.181 MGD       | 0.464 MGD           |               |
| 497 | New Athens Generating                    | Athens (T)         | Greene          | 0.153 MGD       | 0.77 MGD            |               |
| 498 | Peckham Materials - Catskill             | Catskill (T)       | Greene          | 0.84 MGD        | 0.84 MGD            |               |
| 499 | Ravena, Vg                               | New Baltimore (T)  | Greene          | 0.5 MGD         | 0.934 MGD           |               |
| 500 | Coxsackie, Vg                            | Coxsackie (T)      | Greene          | 1.051 MGD       | 1.34 MGD            |               |
| 501 | Windham Mountain Ski Resort              | Windham (T)        | Greene          | 486000 GPD      | 2.88 MGD            |               |
| 502 | Hunter Mountain                          | Hunter (T)         | Greene          | 0.868 MGD       | 12.96               |               |
| 503 | Tannersville, Vg                         | Hunter (T)         | Greene          | 176 GPM         | 297 GPM             |               |
| 504 | Holcim (US) Inc.                         | Catskill (T)       | Greene          | 21224 GPD       | 750 GPM             |               |
| 505 | Kiskatun Mobil Home Park                 | Catskill (T)       | Greene          | 5000 GPD        | 6000 GPD            |               |
| 506 | Sunny Hill Resort & Golf                 | Greenville (T)     | Greene          | 28000 GPD       | 33000 GPD           |               |
| 507 | Falke Quarry                             | Lexington (T)      | Greene          | 64000 GPD       | 64000 GPD           |               |
| 508 | Windham Mountain, Vg                     | Windham (T)        | Greene          | 49883 GPD       | 64712 GPD           |               |
| 509 | Windham Country Club                     | Windham (T)        | Greene          | 58117 GPD       | 85474 GPD           |               |
| 510 | Blackhead Mountain Lodge & Country Club  | Cairo (T)          | Greene          | 50000 GPD       | 120000 GPD          |               |
| 511 | River Garden                             | Cairo (T)          | Greene          | 65000 GPD       | 130000 GPD          |               |
| 512 | Windham Water District #1, Hensonville   | Windham (T)        | Greene          | 81438 GPD       | 144400 GPD          |               |
| 513 | Coxsackie Correctional Facility          | Coxsackie (T)      | Greene          | 21246 GPD       | 406530 GPD          |               |
| 514 | Catskill, Vg                             | Coxsackie (T)      | Greene          | 831490 GPD      | 1192645 GPD         |               |
| 515 | Sunrise Farms                            | Catskill (T)       | Greene          | 608640 GPD      | 1248000 GPD         |               |
| 516 | Onteora Club                             | Hunter (T)         | Greene          |                 |                     |               |
| 517 | Prattsville Water District               | Prattsville (T)    | Greene          | 25417 GPD       |                     |               |
| 518 | Blue Mountain Lake Water District #1     | Indian Lake (T)    | Hamilton        | 0.04 MGD        | 0.132 MGD           |               |
| 519 | Indian Lake Water District #2            | Indian Lake (T)    | Hamilton        | 0.113 MGD       | 0.295 MGD           |               |
| 520 | Wells Water District                     | Wells (T)          | Hamilton        | 0.18 MGD        | 0.435 MGD           |               |
| 521 | Speculator, Vg                           | Lake Pleasant (T)  | Hamilton        | 84786 GPD       | 245970 GPD          |               |
| 522 | Inlet Golf Club                          | Inlet (T)          | Hamilton        | 16055 GPD       | 300000 GPD          |               |
| 523 | Long Lake Water District #2              | Long Lake (T)      | Hamilton        | 328597 GPD      | 623000 GPD          |               |
| 524 | Rocky Point Homeowners Assn              | Inlet (T)          | Hamilton        |                 |                     |               |
| 525 | Hanson Aggregates - Gravesville          | Russia (T)         | Herkimer        | 0 GPD           | 0 GPD               |               |
| 526 | Thendara Golf Course                     | Webb (T)           | Herkimer        | 0.36 MGD        | 0.36 MGD            |               |
| 527 | Barrett - Litchfield Quarry              | Litchfield (T)     | Herkimer        | 0.35 MGD        | 0.74 MGD            |               |
| 528 | Hanson Aggregates - Jordanville          | Warren (T)         | Herkimer        | 0.335 MGD       | 0.933 MGD           |               |
| 529 | Remington Arms Co                        | German Flatts (T)  | Herkimer        | 0.82 MGD        | 0.95 MGD            |               |
| 530 | Frankfort, Vg                            | Frankfort (T)      | Herkimer        | 700000 GPD      | 1 MGD               |               |
| 531 | Burrows Paper Corporation                | Little Falls (C)   | Herkimer        | 0.795 MGD       | 1.6 MGD             |               |
| 532 | Iilon, Vg                                | German Flatts (T)  | Herkimer        | 1.29 MGD        | 1.66 MGD            |               |
| 533 | Burrows Paper Corporation - East Mill St | Little Falls (C)   | Herkimer        | 1.45 MGD        | 2.36 MGD            |               |
| 534 | Mohawk Valley Water Authority            | Russia (T)         | Herkimer        | 20.6 MGD        | 24.25 MGD           |               |
| 535 | Hanson Aggregates - Poland Sand & Gravel | Russia (T)         | Herkimer        | 27 GPD          | 40 GPD              |               |
| 536 | Van Hornesville Hatchery                 | Stark (T)          | Herkimer        | 364 GPM         | 364 GPM             |               |
| 537 | Newport, Vg                              | Newport (T)        | Herkimer        | 78000 GPD       | 100000 GPD          |               |
| 538 | Middleville, Vg                          | Fairfield (T)      | Herkimer        | 95233 GPD       | 100065 GPD          |               |
| 539 | Poland, Vg                               | Russia (T)         | Herkimer        | 55588 GPD       | 169200 GPD          |               |
| 540 | West Winfield, Vg                        | Winfield (T)       | Herkimer        | 96240 GPD       | 181000 GPD          |               |
| 541 | Bonded Concrete - Gravesville Plant      | Russia (T)         | Herkimer        | 207000 GPD      | 360000 GPD          |               |
| 542 | Old Forge Water District                 | Webb (T)           | Herkimer        | 188000 GPD      | 477000 GPD          |               |
| 543 | Mohawk, Vg                               | German Flatts (T)  | Herkimer        | 541528 GPD      | 832000 GPD          |               |
| 544 | Dolgeville, Vg                           | Salisbury (T)      | Herkimer        | 655380 GPD      | 879120 GPD          |               |
| 545 | Little Falls, City                       | Salisbury (T)      | Herkimer        | 2600000 GPD     | 3100000 GPD         |               |
| 546 | Black River Generation, LLC (ReEnergy)   | Le Ray (T)         | Jefferson       | 0 GPD           | 0 GPD               |               |
| 547 | Wellesley Island Water Corp              | Alexandria (T)     | Jefferson       | 0.045 MGD       | 0.162 MGD           |               |
| 548 | Clayton, Vg                              | Clayton (T)        | Jefferson       | 0.154 MGD       | 0.299 MGD           |               |
| 549 | Philadelphia, Vg                         | Le Ray (T)         | Jefferson       | 0.226 MGD       | 0.394 MGD           |               |
| 550 | Fort Drum Public Works                   | Le Ray (T)         | Jefferson       | 0.576 MGD       | 0.763 MGD           |               |
| 551 | Climax Paperboard, Inc.                  | Champion (T)       | Jefferson       | 0.275 MGD       | 0.785 MGD           |               |
| 552 | Adams, Vg                                | Adams (T)          | Jefferson       | 0.695 MGD       | 0.909 MGD           |               |
| 553 | Hanson Aggregates - Great Bend Quarry    | Champion (T)       | Jefferson       | 0.361 MGD       | 1 MGD               |               |
| 554 | Hanson Aggregates - Watertown Quarry     | Pamelia (T)        | Jefferson       | 0.989 MGD       | 1.8 MGD             |               |
| 555 | Barrett - Watertown Quarry               | Pamelia (T)        | Jefferson       | 1.2 MGD         | 2.64 MGD            |               |
| 556 | Watertown, City                          | Watertown (C)      | Jefferson       | 5.03 MGD        | 6.91 MGD            |               |
| 557 | Carthage Energy LLC                      | Wilna (T)          | Jefferson       | 0.198 MGD       | 11.017 MGD          |               |
| 558 | Clark Farm                               | Clayton (T)        | Jefferson       | 8877 GPD        | 10000 GPD           |               |
| 559 | Frontenac Crystal Springs                | Clayton (T)        | Jefferson       | 10744 GPD       | 15356 GPD           |               |
| 560 | Wilna Water District #2                  | Wilna (T)          | Jefferson       | 12001 GPD       | 27569 GPD           |               |

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| #   | FACILITY NAME                              | FACILITY TOWN/CITY  | FACILITY COUNTY | Ave_Day_W | Units_Ave_Max_Day_W | Units_Max_Max_Day_W |
|-----|--|---------------------|-----------------|-----------|---------------------|---------------------|
| 561 | Morning Star Farm                          | Adams (T)           | Jefferson       | 31427     | GPD                 | 35971 GPD           |
| 562 | CTS Dairy                                  | Ellisburg (T)       | Jefferson       | 68987     | GPD                 | 78690 GPD           |
| 563 | Hi Hope Farm                               | Ellisburg (T)       | Jefferson       | 69102     | GPD                 | 79092 GPD           |
| 564 | Murcrest Farm LLC                          | Champion (T)        | Jefferson       | 60400     | GPD                 | 82500 GPD           |
| 565 | Sheland Farms                              | Ellisburg (T)       | Jefferson       | 57000     | GPD                 | 85000 GPD           |
| 566 | Hillcrest Farm LLC                         | Ellisburg (T)       | Jefferson       | 77400     | GPD                 | 88000 GPD           |
| 567 | Deer Run Dairy                             | Henderson (T)       | Jefferson       | 43573     | GPD                 | 90400 GPD           |
| 568 | North Harbor Dairy                         | Hounsfield (T)      | Jefferson       | 27060     | GPD                 | 91935 GPD           |
| 569 | Antwerp, Vg                                | Antwerp (T)         | Jefferson       | 60889     | GPD                 | 93000 GPD           |
| 570 | Milk Street Dairy                          | Rutland (T)         | Jefferson       | 72201     | GPD                 | 95114 GPD           |
| 571 | Henderson, Tn                              | Henderson (T)       | Jefferson       | 35008     | GPD                 | 106600 GPD          |
| 572 | Grand Venture Dairy LLC                    | Lorraine (T)        | Jefferson       | 73150     | GPD                 | 110300 GPD          |
| 573 | Dexter, Vg                                 | Brownville (T)      | Jefferson       | 67500     | GPD                 | 117000 GPD          |
| 574 | Butterville Farms                          | Henderson (T)       | Jefferson       | 108345    | GPD                 | 119866 GPD          |
| 575 | Porterdale Farms                           | Rodman (T)          | Jefferson       | 114978    | GPD                 | 131600 GPD          |
| 576 | HP Hood dba Crowley                        | Orleans (T)         | Jefferson       | 157546    | GPD                 | 162883 GPD          |
| 577 | Golf Club on Wellesley Island              | Alexandria (T)      | Jefferson       | 33355     | GPD                 | 175000 GPD          |
| 578 | Ellisburg, Tn, Water District #1           | Ellisburg (T)       | Jefferson       | 82885     | GPD                 | 177000 GPD          |
| 579 | Evans Mills, Vg                            | Le Ray (T)          | Jefferson       | 78000     | GPD                 | 186000 GPD          |
| 580 | Mannsville, Vg                             | Ellisburg (T)       | Jefferson       | 32190     | GPD                 | 198800 GPD          |
| 581 | North Branch Farms                         | Ellisburg (T)       | Jefferson       | 200000    | GPD                 | 200000 GPD          |
| 582 | Black River, Vg                            | Le Ray (T)          | Jefferson       | 179488    | GPD                 | 290000 GPD          |
| 583 | Brownville, Vg                             | Brownville (T)      | Jefferson       | 143000    | GPD                 | 331000 GPD          |
| 584 | Leray Water District #2                    | Le Ray (T)          | Jefferson       | 247860    | GPD                 | 344860 GPD          |
| 585 | Bedford Creek Golf Course                  | Hounsfield (T)      | Jefferson       | 16000     | GPD                 | 360000 GPD          |
| 586 | FiberMark - Brownville                     | Hounsfield (T)      | Jefferson       | 203361    | GPD                 | 387723 GPD          |
| 587 | Cranesville - Watertown                    | Watertown (T)       | Jefferson       | 432000    | GPD                 | 432000 GPD          |
| 588 | Knowlton Technologies, LLC                 | Watertown (C)       | Jefferson       | 399000    | GPD                 | 545100 GPD          |
| 589 | Sackets Harbor, Vg                         | Hounsfield (T)      | Jefferson       | 299767    | GPD                 | 594026 GPD          |
| 590 | Dry Hill Ski Area                          | Watertown (T)       | Jefferson       | 474000    | GPD                 | 720000 GPD          |
| 591 | Cape Vincent, Vg                           | Cape Vincent (T)    | Jefferson       | 478598    | GPD                 | 786560 GPD          |
| 592 | New York Air Brake Co                      | Watertown (C)       | Jefferson       | 12296     | GPD                 |                     |
| 593 | Greenpoint Remediation                     | Kings (T)           | Kings           | 619       | GPM                 | 704 GPM             |
| 594 | Dyker Beach Golf Course                    | Kings (T)           | Kings           | 43953     | GPD                 | 475000 GPD          |
| 595 | Brooklyn Navy Yard                         | Kings (T)           | Kings           | 52729233  | GPD                 | 73490591 GPD        |
| 596 | Virkler - Watson Operations                | Watson (T)          | Lewis           | 0.122     | MGD                 | 0.122 MGD           |
| 597 | Virkler - West Lowville                    | Lowville (T)        | Lewis           | 0.285     | MGD                 | 0.285 MGD           |
| 598 | Croghan, Vg                                | Croghan (T)         | Lewis           | 0.168     | MGD                 | 0.516 MGD           |
| 599 | Carthage/West Carthage, Vgs                | Croghan (T)         | Lewis           | 0.66      | MGD                 | 0.75 MGD            |
| 600 | Interface Solutions, Inc - Lewis Plant     | Croghan (T)         | Lewis           | 0.71      | MGD                 | 1.34 MGD            |
| 601 | Burrows Paper Corporation - Lyonsdale      | Lyonsdale (T)       | Lewis           | 1.65      | MGD                 | 2.13 MGD            |
| 602 | Boonville Quarry                           | Leyden (T)          | Lewis           | 1.32      | MGD                 | 3.44 MGD            |
| 603 | RT Vanderbilt Co, Inc - Gouverneur Mineral | Diana (T)           | Lewis           | 2.6       | MGD                 | 3.84 MGD            |
| 604 | WPS Beaver Falls Generation                | Croghan (T)         | Lewis           | 1.36      | MGD                 | 44.6 MGD            |
| 605 | Virkler - Martinsburg Quarry               | Martinsburg (T)     | Lewis           | 9300      | GPD                 | 9300 GPD            |
| 606 | Pominville Farm                            | Croghan (T)         | Lewis           | 14000     | GPD                 | 18000 GPD           |
| 607 | Moserdale Farm                             | Denmark (T)         | Lewis           | 31125     | GPD                 | 31125 GPD           |
| 608 | Glenfield Water District                   | Martinsburg (T)     | Lewis           | 31045     | GPD                 | 82200 GPD           |
| 609 | Port Leyden, Vg                            | Lyonsdale (T)       | Lewis           | 47985     | GPD                 | 84516 GPD           |
| 610 | Lyons Falls, Vg                            | Lyonsdale (T)       | Lewis           | 103083    | GPD                 | 103083 GPD          |
| 611 | Demko Farms Inc                            | Lowville (T)        | Lewis           | 97000     | GPD                 | 108000 GPD          |
| 612 | Copenhagen, Vg                             | Denmark (T)         | Lewis           | 61638     | GPD                 | 108500 GPD          |
| 613 | Turin, Vg                                  | Turin (T)           | Lewis           | 60100     | GPD                 | 111000 GPD          |
| 614 | Martinsburg Water District                 | Martinsburg (T)     | Lewis           | 72141     | GPD                 | 141500 GPD          |
| 615 | Harrisville, Vg                            | Diana (T)           | Lewis           | 88000     | GPD                 | 259000 GPD          |
| 616 | Hidden Falls Spring Water                  | Greig (T)           | Lewis           | 288000    | GPD                 | 288000 GPD          |
| 617 | Marks Farm                                 | Martinsburg (T)     | Lewis           | 294705    | GPD                 | 294705 GPD          |
| 618 | Lyonsdale Biomass, LLC                     | Lyonsdale (T)       | Lewis           | 260829    | GPD                 | 563000 GPD          |
| 619 | Lowville, Vg                               | New Bremen (T)      | Lewis           | 924417    | GPD                 | 1073000 GPD         |
| 620 | Riverview Dale Farm                        | New Bremen (T)      | Lewis           |           |                     |                     |
| 621 | Fairview Golf Course                       | Avon (T)            | Livingston      | 75000     | GPD                 | 0.144 MGD           |
| 622 | Nunda, Vg                                  | Nunda (T)           | Livingston      | 0.154     | MGD                 | 0.284 MGD           |
| 623 | Groveland Correctional Facility            | Groveland (T)       | Livingston      | 0.342     | MGD                 | 0.48 MGD            |
| 624 | Dansville, Vg                              | North Dansville (T) | Livingston      | 0.673     | MGD                 | 1.15 MGD            |
| 625 | Avon, Vg                                   | Livonia (T)         | Livingston      | 0.839     | MGD                 | 1.39 MGD            |
| 626 | Geneseo, Vg                                | Geneseo (T)         | Livingston      | 1.3       | MGD                 | 2.1 MGD             |
| 627 | Seneca Foods Corp                          | Leicester (T)       | Livingston      | 0.397     | MGD                 | 2.16 MGD            |
| 628 | Hanson Aggregates - Honeoye Falls Quarry   | Lima (T)            | Livingston      | 6         | MGD                 | 8.9 MGD             |
| 629 | Cedar Springs Fish Hatchery                | Caledonia (T)       | Livingston      | 600       | GPM                 | 600 GPM             |
| 630 | Caledonia Fish Hatchery                    | Caledonia (T)       | Livingston      | 5250      | GPM                 | 6232 GPM            |
| 631 | Edgewood Farms                             | Groveland (T)       | Livingston      | 24818     | GPD                 | 26875 GPD           |
| 632 | Walker Farm - Wayland                      | Springwater (T)     | Livingston      | 25927     | GPD                 | 30000 GPD           |
| 633 | Coyne Farms                                | Avon (T)            | Livingston      | 35786     | GPD                 | 35786 GPD           |
| 634 | Mount Morris Dairy Farms                   | Mount Morris (T)    | Livingston      | 32000     | GPD                 | 36000 GPD           |
| 635 | Woodlynn Hills Golf Course                 | Nunda (T)           | Livingston      | 1808      | GPD                 | 40000 GPD           |
| 636 | Lang's Nursery                             | West Sparta (T)     | Livingston      | 48000     | GPD                 | 72000 GPD           |
| 637 | Springwater, Tn                            | Springwater (T)     | Livingston      | 47150     | GPD                 | 85000 GPD           |
| 638 | Noblehurst Farms, Inc.                     | York (T)            | Livingston      | 83000     | GPD                 | 102000 GPD          |
| 639 | Lima Golf & Country Club                   | Lima (T)            | Livingston      | 84000     | GPD                 | 168000 GPD          |
| 640 | JCI Jones Chemicals - Caledonia            | Caledonia (T)       | Livingston      | 326000    | GPD                 | 498000 GPD          |

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| #   | FACILITY NAME                                | FACILITY TOWN/CITY  | FACILITY COUNTY | Ave_Day_WUnits | Ave_Max_Day_WUnits |
|-----|--|---------------------|-----------------|----------------|--------------------|
| 641 | Valley Sand & Gravel                         | Caledonia (T)       | Livingston      | 1221000 GPD    | 1887000 GPD        |
| 642 | Dolomite Products - Avon Sand & Gravel       | Avon (T)            | Livingston      | 0.129 MGD      |                    |
| 643 | Owera Water District                         | Cazenovia (T)       | Madison         | 0.0076 MGD     | 0.02 MGD           |
| 644 | Hamilton, Vg                                 | Hamilton (T)        | Madison         | 0.392282 MGD   | 0.835 MGD          |
| 645 | Cazenovia, Vg                                | Cazenovia (T)       | Madison         | 261000 GPD     | 1 MGD              |
| 646 | Morrisville State College - Aquaculture Cent | Eaton (T)           | Madison         | 91.04 GPM      | 132.2 GPM          |
| 647 | New Woodstock Water District                 | Cazenovia (T)       | Madison         | 23300 GPD      | 90000 GPD          |
| 648 | Oriskany Falls, Vg                           | Madison (T)         | Madison         | 56110 GPD      | 96412 GPD          |
| 649 | White Eagle Farms                            | Eaton (T)           | Madison         | 96698 GPD      | 106981 GPD         |
| 650 | Morrisville, Vg                              | Eaton (T)           | Madison         | 65000 GPD      | 117000 GPD         |
| 651 | Rogues Roost Golf & Country Club             | Sullivan (T)        | Madison         | 8333 GPD       | 120000 GPD         |
| 652 | Madison, Vg                                  | Madison (T)         | Madison         | 65000 GPD      | 150000 GPD         |
| 653 | Kanon Valley Country Club                    | Lenox (T)           | Madison         | 13157 GPD      | 166500 GPD         |
| 654 | DeRuyter, Vg                                 | De Ruyter (T)       | Madison         | 44000 GPD      | 167000 GPD         |
| 655 | Earlville, Vg                                | Hamilton (T)        | Madison         | 60600 GPD      | 181000 GPD         |
| 656 | Mosher Farms                                 | Eaton (T)           | Madison         | 30450 GPD      | 300900 GPD         |
| 657 | Morrisville State College                    | Eaton (T)           | Madison         | 199830 GPD     | 387000 GPD         |
| 658 | Callanan - Clockville Site                   | Lincoln (T)         | Madison         | 3061856 GPD    | 3603050 GPD        |
| 659 | Oneida Community Golf Club                   | Oneida (C)          | Madison         | 10900 GPD      |                    |
| 660 | Monroe County Water Authority - Brockport    | Hamlin (T)          | Monroe          | 0 MGD          | 0 MGD              |
| 661 | Pittsford, Tn - Recreational                 | Pittsford           | Monroe          | 0 GPD          | 0 GPD              |
| 662 | Russel Generating Station                    | Greece (T)          | Monroe          | 0 MGD          | 0 MGD              |
| 663 | Oak Hill Country Club                        | Pittsford (T)       | Monroe          | 0.11 MGD       | 0.49 MGD           |
| 664 | Salmon Creek Country Club                    | Ogden (T)           | Monroe          | 12904 GPD      | 1.08 MGD           |
| 665 | Webster, Vg                                  | Webster (T)         | Monroe          | 468337 GPD     | 1.192 MGD          |
| 666 | JB Martin Farms, Inc                         | Clarkson (T)        | Monroe          | 2 MGD          | 2.05 MGD           |
| 667 | Monroe County Water Authority - Shoremon     | Greece (T)          | Monroe          | 55.4 MGD       | 109 MGD            |
| 668 | Chili Country Club                           | Chili (T)           | Monroe          | 63333 GPD      | 64800 GPD          |
| 669 | Mendon Country Club                          | Mendon (T)          | Monroe          | 19589 GPD      | 80000 GPD          |
| 670 | Colby Homestead Farms                        | Ogden (T)           | Monroe          | 14200 GPD      | 150000 GPD         |
| 671 | Powers Farm                                  | Pittsford (T)       | Monroe          | 2200 GPD       | 150000 GPD         |
| 672 | Xerox Joseph C. Wilson Center for Technolog  | Webster (T)         | Monroe          | 147785 GPD     | 215088 GPD         |
| 673 | Durand-Eastman Golf Club                     | Rochester (C)       | Monroe          | 118033 GPD     | 225000 GPD         |
| 674 | Deerfield Country Club                       | Clarkson (T)        | Monroe          | 40800 GPD      | 243000 GPD         |
| 675 | Locust Hill Country Club                     | Henrietta (T)       | Monroe          | 100000 GPD     | 250000 GPD         |
| 676 | Brook-Lea Country Club                       | Gates (T)           | Monroe          | 37676 GPD      | 288000 GPD         |
| 677 | Perinton Golf & Country Club                 | Perinton (T)        | Monroe          | 230000 GPD     | 297000 GPD         |
| 678 | Churchville Park Golf Course                 | Riga (T)            | Monroe          | 157377 GPD     | 300000 GPD         |
| 679 | Country Club of Rochester                    | Pittsford (T)       | Monroe          | 51000 GPD      | 300000 GPD         |
| 680 | Penfield Country Club                        | Penfield (T)        | Monroe          | 16114 GPD      | 315214 GPD         |
| 681 | Timber Ridge Golf Club                       | Clarkson (T)        | Monroe          | 156776 GPD     | 360000 GPD         |
| 682 | Twin Hills Golf Course                       | Parma (T)           | Monroe          | 20055 GPD      | 410000 GPD         |
| 683 | Mill Creek Golf Club                         | Riga (T)            | Monroe          | 426000 GPD     | 432000 GPD         |
| 684 | Wildwood Country Club                        | Rush (T)            | Monroe          | 109000 GPD     | 450000 GPD         |
| 685 | Genesee Valley Park Golf Course              | Rochester (C)       | Monroe          | 251803 GPD     | 480000 GPD         |
| 686 | Leverenz Farms                               | Hamlin (T)          | Monroe          |                | 500000 GPD         |
| 687 | Conrow Farms                                 | Clarkson (T)        | Monroe          | 600000 GPD     | 600000 GPD         |
| 688 | Midvale Country Club                         | Perinton (T)        | Monroe          | 283000 GPD     | 942000 GPD         |
| 689 | Monroe Golf Club                             | Pittsford (T)       | Monroe          | 86470 GPD      | 950000 GPD         |
| 690 | Ridgemont Country Club                       | Greece (T)          | Monroe          | 150000 GPD     | 1000000 GPD        |
| 691 | Eastman Kodak Water Treatment Plant          | Greece (T)          | Monroe          | 13189442 GPD   | 16493439 GPD       |
| 692 | Chase Farm                                   | Perinton (T)        | Monroe          | 2652 GPD       |                    |
| 693 | Dolomite Products - Brockport Quarry         | Penfield (T)        | Monroe          | 1.45 MGD       |                    |
| 694 | Dolomite Products - Gates Quarry             | Gates (T)           | Monroe          | 1.74 MGD       |                    |
| 695 | Dolomite Products - Ogden Quarry             | Ogden (T)           | Monroe          | 1.2 MGD        |                    |
| 696 | Dolomite Products - Penfield Quarry          | Penfield (T)        | Monroe          | 0.726 MGD      |                    |
| 697 | Dolomite Products - Shadow Lake Golf Club    | Penfield (T)        | Monroe          | 0.047 MGD      |                    |
| 698 | Dolomite Products - Shadow Pine Golf Club    | Penfield (T)        | Monroe          | 0.042 MGD      |                    |
| 699 | Irondequoit Country Club                     | Pittsford (T)       | Monroe          |                |                    |
| 700 | Pinewood Country Club                        | Ogden (T)           | Monroe          |                |                    |
| 701 | Logan Farms                                  | Palatine (T)        | Montgomery      | 0              | 0                  |
| 702 | Hanson Aggregates - St. Johnsville Quarry    | St Johnsville (T)   | Montgomery      | 30910 GPD      | 0.118 MGD          |
| 703 | Fort Plain, Vg                               | Palatine (T)        | Montgomery      | 0.35 MGD       | 0.5 MGD            |
| 704 | Free Bird Farm                               | Palatine (T)        | Montgomery      | 1000 GPD       | 2000 GPD           |
| 705 | Bruce Matis                                  | Palatine (T)        | Montgomery      | 17500 GPD      | 17500 GPD          |
| 706 | R&R Farms / Dykeman & Sons, Inc              | Glen (T)            | Montgomery      | 42734 GPD      | 48911 GPD          |
| 707 | Cashins Farm                                 | Root (T)            | Montgomery      | 20000 GPD      | 120000 GPD         |
| 708 | Palatine Bridge, Vg                          | Palatine (T)        | Montgomery      | 101000 GPD     | 137000 GPD         |
| 709 | Fultonville, Vg                              | Glen (T)            | Montgomery      | 100000 GPD     | 180000 GPD         |
| 710 | Fonda Water Plant                            | Mohawk (T)          | Montgomery      | 535000 GPD     | 699000 GPD         |
| 711 | Callanan - Pattersonville Site               | Amsterdam (C)       | Montgomery      | 105796 GPD     | 2360754 GPD        |
| 712 | Rolling Hills at Antlers                     | Amsterdam (T)       | Montgomery      |                |                    |
| 713 | Albertson Water District                     | North Hempstead (T) | Nassau          | 2 MGD          | 4.6 MGD            |
| 714 | Old Westbury, Vg                             | North Hempstead (T) | Nassau          | 1.989 MGD      | 6.969 MGD          |
| 715 | Locust Valley Water District                 | Oyster Bay (T)      | Nassau          | 1.725 MGD      | 7.053 MGD          |
| 716 | Glen Cove, City                              | Glen Cove (C)       | Nassau          |                | 7.8 MGD            |
| 717 | Unisys (Former) - OffSite Remedial Facility  | North Hempstead (T) | Nassau          | 437 GPM        | 517 GPM            |
| 718 | Unisys (Former) - OU1 - Groundwater Treatm   | North Hempstead (T) | Nassau          | 574 GPM        | 719 GPM            |
| 719 | Gunthers Greenhouse                          | Hempstead (T)       | Nassau          | 7000 GPD       | 10000 GPD          |
| 720 | North Hills Country Club                     | North Hempstead (T) | Nassau          | 70800 GPD      | 250000 GPD         |

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| #   | FACILITY NAME                            | FACILITY TOWN/CITY  | FACILITY COUNTY | Ave_Day_WUnits_Ave_Max_Day_WUnits_Max |             |
|-----|--|---------------------|-----------------|---------------------------------------|-------------|
| 721 | Creek Country Club                       | Oyster Bay (T)      | Nassau          | 35027 GPD                             | 580000 GPD  |
| 722 | Jones Beach State Park                   | Hempstead (T)       | Nassau          | 151000 GPD                            | 631000 GPD  |
| 723 | Long Beach, City                         | Long Beach (C)      | Nassau          | 3200000 GPD                           | 5178000 GPD |
| 724 | Pine Hollow Country Club                 | Oyster Bay (T)      | Nassau          | 104559 GPD                            |             |
| 725 | 59th Street Steam Station                | New York (T)        | New York        | 1.6 MGD                               | 4.3 MGD     |
| 726 | World Financial Center                   | New York (T)        | New York        | 15.24 MGD                             | 28.55 MGD   |
| 727 | One New York Plaza                       | New York (T)        | New York        | 10.9 MGD                              | 32.1 MGD    |
| 728 | East River Generating Station            | New York (T)        | New York        | 264.1 MGD                             | 371.8 MGD   |
| 729 | 102nd Street Landfill                    | Niagara Falls (C)   | Niagara         | 0.001 MGD                             | 0.0034 MGD  |
| 730 | Modern Landfill Inc                      | Lewiston (T)        | Niagara         | 0.01 MGD                              | 0.03 MGD    |
| 731 | Love Canal                               | Niagara Falls (C)   | Niagara         | 0.015 MGD                             | 0.0982 MGD  |
| 732 | Former Carborundum Complex               | Wheatfield (T)      | Niagara         | 0.124 MGD                             | 0.138 MGD   |
| 733 | Niagara North Tonawanda                  | North Tonawanda (C) | Niagara         | 0.112 MGD                             | 0.269 MGD   |
| 734 | Hyde Park Landfill                       | Niagara Falls (C)   | Niagara         | 0.107 MGD                             | 0.462 MGD   |
| 735 | Olin Chemicals                           | Niagara Falls (C)   | Niagara         | 0.92 MGD                              | 0.95 MGD    |
| 736 | McCollum Farms                           | Royalton (T)        | Niagara         | 2.5 MGD                               | 3.5 MGD     |
| 737 | North Tonawanda, City                    | North Tonawanda (C) | Niagara         | 3.93 MGD                              | 5.4 MGD     |
| 738 | Lockport, City                           | North Tonawanda (C) | Niagara         | 5.27 MGD                              | 7.24 MGD    |
| 739 | Occidental Chemical Corp - Niagara Plant | Niagara Falls (C)   | Niagara         | 12 MGD                                | 22 MGD      |
| 740 | Niagara Falls Water Board                | Niagara Falls (C)   | Niagara         | 18.4 MGD                              | 24.3 MGD    |
| 741 | Niagara County Water District            | Niagara Falls (C)   | Niagara         | 17 MGD                                | 34 MGD      |
| 742 | Praxair, Inc                             | Niagara Falls (C)   | Niagara         | 39.9 MGD                              | 48.8 MGD    |
| 743 | DuPont Niagara                           | Niagara Falls (C)   | Niagara         | 31 MGD                                | 50 MGD      |
| 744 | AES Somerset (Somerset Operating Compan  | Somerset (T)        | Niagara         | 239 MGD                               | 274 MGD     |
| 745 | Seabert Farm                             | Cambria (T)         | Niagara         | 4392 GPD                              | 9150 GPD    |
| 746 | Niagara Power Project                    | Lewiston (T)        | Niagara         | 47463 MGD                             | 62164 MGD   |
| 747 | Freatman Farm                            | Cambria (T)         | Niagara         | 75000 GPD                             | 75000 GPD   |
| 748 | Tan Tara Golf Club                       | Pendleton (T)       | Niagara         | 83333 GPD                             | 99288 GPD   |
| 749 | Niagara Frontier Country Club            | Porter (T)          | Niagara         | 81500 GPD                             | 120000 GPD  |
| 750 | Deerwood Golf Course                     | North Tonawanda (C) | Niagara         | 122396 GPD                            | 383274 GPD  |
| 751 | Lockport Town & Country Club             | Lockport (C)        | Niagara         | 26275 GPD                             | 385000 GPD  |
| 752 | Willowbrook Golf Course                  | Lockport (T)        | Niagara         | 400000 GPD                            | 720000      |
| 753 | Lafarge Niagara Quarry                   | Niagara (T)         | Niagara         | 1190000 GPD                           | 2880000 GPD |
| 754 | Lafarge Lockport Quarry                  | Lockport (C)        | Niagara         | 1930000 GPD                           | 4320000 GPD |
| 755 | Hanson Aggregates - Boonville            | Western (T)         | Oneida          | 0 GPD                                 | 0 GPD       |
| 756 | Hanson Aggregates - Forestport Quarry    | Forestport (T)      | Oneida          | 0 GPD                                 | 0 GPD       |
| 757 | Waterville, Vg                           | Sangerfield (T)     | Oneida          | 0.248 MGD                             | 0.339 MGD   |
| 758 | Camden, Vg                               | Camden (T)          | Oneida          | 0.36 MGD                              | 0.618 MGD   |
| 759 | Oneida, City                             | Annsville (T)       | Oneida          | 3.05 MGD                              | 4.36 MGD    |
| 760 | Revere Copper Products                   | Rome (C)            | Oneida          | 5.8 MGD                               | 5.8 MGD     |
| 761 | Rome Fish Hatchery                       | Rome (C)            | Oneida          | 7.1 MGD                               | 8.4 MGD     |
| 762 | Rome, City                               | Annsville (T)       | Oneida          | 9.5 MGD                               | 14.8 MGD    |
| 763 | Hanson Aggregates - Oriskany Falls       | Augusta (T)         | Oneida          | 184 GPM                               | 209 GPM     |
| 764 | Prospect, Vg                             | Trenton (T)         | Oneida          | 23430 GPD                             | 27700 GPD   |
| 765 | Barneveld, Vg                            | Trenton (T)         | Oneida          | 35087 GPD                             | 57000 GPD   |
| 766 | Deansboro Water District                 | Marshall (T)        | Oneida          | 27940 GPD                             | 61700 GPD   |
| 767 | Forestport,Tn                            | Forestport (T)      | Oneida          | 0.023 MGD                             | 65900 GPD   |
| 768 | Remsen, Vg                               | Remsen (T)          | Oneida          | 49387 GPD                             | 150153 GPD  |
| 769 | Harden Furniture                         | Annsville (T)       | Oneida          | 153000 GPD                            | 153000 GPD  |
| 770 | McConnellsville Golf Club                | Vienna (T)          | Oneida          | 153000 GPD                            | 153000 GPD  |
| 771 | Cleveland, Vg                            | Vienna (T)          | Oneida          | 126000 GPD                            | 253000 GPD  |
| 772 | Clinton, Vg                              | Kirkland (T)        | Oneida          | 423249 GPD                            | 494420 GPD  |
| 773 | International Wire - Camden Wire         | Camden (T)          | Oneida          | 544000 GPD                            | 685000 GPD  |
| 774 | International Wire - Sherrill Operations | Sherrill (C)        | Oneida          | 460000 GPD                            | 721000 GPD  |
| 775 | Boonville, Vg                            | Boonville (T)       | Oneida          | 248000 GPD                            | 785700 GPD  |
| 776 | Homogeneous Metals                       | Paris (T)           | Oneida          | 559983 GPD                            | 1332000 GPD |
| 777 | Clayville, Vg                            | Paris (T)           | Oneida          | 68398 GPD                             |             |
| 778 | Norman Brennan                           | Paris (T)           | Oneida          |                                       |             |
| 779 | Sauquoit Water District                  | Paris (T)           | Oneida          | 293000 GPD                            |             |
| 780 | Barrow's View Club                       | Spafford (T)        | Onondaga        | 0 GPD                                 | 0 GPD       |
| 781 | Syracuse - Apulia                        | Fabius (T)          | Onondaga        | 0 GPD                                 | 0 GPD       |
| 782 | Syracuse - Black Creek Road              | Clay (T)            | Onondaga        | 0 GPD                                 | 0 GPD       |
| 783 | Syracuse - Brickyard Pit                 | Van Buren (T)       | Onondaga        | 0 GPD                                 | 0 GPD       |
| 784 | Tully, Vg                                | Tully (T)           | Onondaga        | 0.129 MGD                             | 0.181 MGD   |
| 785 | Hanson Aggregates - Skaneateles Quarry   | Skaneateles (T)     | Onondaga        | 0.18 MGD                              | 0.456 MGD   |
| 786 | Hanson Aggregates - Jamesville Quarry    | Dewitt (T)          | Onondaga        | 0.88 MGD                              | 1.64 MGD    |
| 787 | Baldwinsville, Vg                        | Lysander (T)        | Onondaga        | 0.951 MGD                             | 1.743 MGD   |
| 788 | Onondaga County Water Authority - Otisco | Marcellus (T)       | Onondaga        | 17.584 MGD                            | 20.893 MGD  |
| 789 | Syracuse, City                           | Skaneateles (T)     | Onondaga        | 35.51 MGD                             | 37.85 MGD   |
| 790 | Tre-G Farms, LLC                         | Pompey (T)          | Onondaga        | 10000 GPD                             | 12000 GPD   |
| 791 | Hafner, LLC                              | Lysander (T)        | Onondaga        | 770.96 GPD                            | 44100 GPD   |
| 792 | Pine Grove Health and Country Club       | Camillus (T)        | Onondaga        | 45600 GPD                             | 68400 GPD   |
| 793 | Marshall Skiff Orchards                  | Onondaga (T)        | Onondaga        | 63000 GPD                             | 70000 GPD   |
| 794 | Four Seasons Ski Center                  | Manlius (T)         | Onondaga        | 90000 GPD                             | 110000 GPD  |
| 795 | Beak & Skiff Apple Farms                 | Onondaga (T)        | Onondaga        | 126000 GPD                            | 126000 GPD  |
| 796 | Twin Birch Dairy LLC                     | Skaneateles (T)     | Onondaga        | 123341 GPD                            | 132645 GPD  |
| 797 | Saunders - Nedrow Plant                  | Onondaga (T)        | Onondaga        | 20042 GPD                             | 144000 GPD  |
| 798 | West Hill Golf Course                    | Camillus (T)        | Onondaga        | 144000 GPD                            | 144000 GPD  |
| 799 | Arrowhead Golf Club                      | Cicero (T)          | Onondaga        | 92076 GPD                             | 243000 GPD  |
| 800 | Omega Wire - Jordan                      | Elbridge (T)        | Onondaga        | 179000 GPD                            | 291000 GPD  |



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| #   | FACILITY NAME                              | FACILITY TOWN/CITY  | FACILITY COUNTY | Ave_Day_WUnits | Ave_Max_Day_WUnits |
|-----|--|---------------------|-----------------|----------------|--------------------|
| 801 | Skaneateles Country Club                   | Skaneateles (T)     | Onondaga        | 90715 GPD      | 299391 GPD         |
| 802 | Kinsella - Fayetteville Quarry             | Manlius (T)         | Onondaga        | 142000 GPD     | 400000 GPD         |
| 803 | Emmi & Sons Inc                            | Lysander (T)        | Onondaga        | 139751.33 GPD  | 418415 GPD         |
| 804 | Saunders - South Onondaga                  | Onondaga (T)        | Onondaga        | 205185 GPD     | 432000 GPD         |
| 805 | Cranesville - Tully Pit                    | Tully (T)           | Onondaga        | 456000 GPD     | 456000 GPD         |
| 806 | Lockheed Martin Corp.                      | Salina (T)          | Onondaga        | 304827 GPD     | 469028 GPD         |
| 807 | Kinsella - Barber Walters Pit              | Pompey (T)          | Onondaga        | 336000 GPD     | 500000 GPD         |
| 808 | Saunders - Marcellus Plant                 | Camillus (T)        | Onondaga        | 520000 GPD     | 576000 GPD         |
| 809 | Clinton's Ditch Cooperative Co., Inc.      | Cicero (T)          | Onondaga        | 447900 GPD     | 727000 GPD         |
| 810 | Onondaga Golf and Country Club             | Dewitt (T)          | Onondaga        | 6986 GPD       | 971000 GPD         |
| 811 | Toggenburgh Mountain                       | Fabius (T)          | Onondaga        | 447386 GPD     | 5443200 GPD        |
| 812 | Cavalry Veterans of Syracuse Golf Club     | Manlius (T)         | Onondaga        | 42390 GPD      |                    |
| 813 | Hourigan Dairy Farm                        | Elbridge (T)        | Onondaga        | 35000 GPD      |                    |
| 814 | Reeves Farms                               | Lysander (T)        | Onondaga        | 0.075 MGD      |                    |
| 815 | Hanson Aggregates - Phelps                 | Phelps (T)          | Ontario         | 0 GPD          | 0 GPD              |
| 816 | Rushville, Vg                              | Gorham (T)          | Ontario         | 0.11 MGD       | 0.234 MGD          |
| 817 | Hanson Aggregates - Phelps Sand & Gravel   | Phelps (T)          | Ontario         | 0.232 MGD      | 0.528 MGD          |
| 818 | Hanson Aggregates - Victor                 | Victor (T)          | Ontario         | 0.232 MGD      | 0.528 MGD          |
| 819 | Gorham, Tn                                 | Gorham (T)          | Ontario         | 0.414 MGD      | 0.842 MGD          |
| 820 | Geneva, City                               | Geneva (T)          | Ontario         | 1.87 MGD       | 3.171 MGD          |
| 821 | Newark, Vg                                 | Canandaigua (T)     | Ontario         | 3.06 MGD       | 4.272 MGD          |
| 822 | Hanson Aggregates - Oaks Corners Quarry    | Phelps (T)          | Ontario         | 2.87 MGD       | 4.4 MGD            |
| 823 | Bristol Mountain                           | South Bristol (T)   | Ontario         | 0.45 MGD       | 10.08 MGD          |
| 824 | Rochester, City                            | Canadice (T)        | Ontario         | 36.6 MGD       | 40.26 MGD          |
| 825 | Champion Hills Country Club                | Victor (T)          | Ontario         | 80 GPM         | 100 GPM            |
| 826 | Great Lake Kraut                           | Manchester (T)      | Ontario         | 19750 GPD      | 48420 GPD          |
| 827 | Parkview Fairways Golf Course              | East Bloomfield (T) | Ontario         | 17925 GPD      | 85500 GPD          |
| 828 | Canandaigua Country Club                   | Canandaigua (T)     | Ontario         | 70000 GPD      | 90000 GPD          |
| 829 | Willowcrest Farms                          | Manchester (T)      | Ontario         | 81917 GPD      | 91437 GPD          |
| 830 | El-Vi Farms                                | Phelps (T)          | Ontario         | 105674 GPD     | 113000 GPD         |
| 831 | Willow Bend Farm                           | Manchester (T)      | Ontario         | 34699 GPD      | 153130 GPD         |
| 832 | Hemdale Farms                              | Seneca (T)          | Ontario         | 4841 GPD       | 200000 GPD         |
| 833 | Centerpointe Golf Course                   | Canandaigua (T)     | Ontario         | 20143 GPD      | 210000 GPD         |
| 834 | Hansen Farms                               | Seneca (T)          | Ontario         | 8285 GPD       | 216000 GPD         |
| 835 | Victor Hills Golf Club                     | Victor (T)          | Ontario         | 256320 GPD     | 256320 GPD         |
| 836 | Pedersen Farms                             | Seneca (T)          | Ontario         | 75000 GPD      | 270000 GPD         |
| 837 | Naples, Vg                                 | Naples (T)          | Ontario         | 250000 GPD     | 275000 GPD         |
| 838 | Clifton Springs Country Club               | Hopewell            | Ontario         | 95000 GPD      | 325000 GPD         |
| 839 | Cobblestone Creek Country Club             | Victor (T)          | Ontario         | 67900 GPD      | 375000 GPD         |
| 840 | Ravenwood Golf Club                        | Victor (T)          | Ontario         | 141441 GPD     | 400000 GPD         |
| 841 | Elam Sand & Gravel - West Bloomfield       | West Bloomfield (T) | Ontario         | 292213 GPD     | 546840 GPD         |
| 842 | Palmyra, Vg                                | Canandaigua (T)     | Ontario         | 370300 GPD     | 605900 GPD         |
| 843 | Elam Sand & Gravel - Oaks Corners          | Phelps (T)          | Ontario         | 324072 GPD     | 620496 GPD         |
| 844 | Syracuse - Lake Road Pit                   | Phelps (T)          | Ontario         | 1920000 GPD    | 1920000 GPD        |
| 845 | Bloomfield, Vg                             | East Bloomfield (T) | Ontario         | 155510 GPD     |                    |
| 846 | Dolomite Products - Manchester Quarry      | Manchester (T)      | Ontario         | 1.99 MGD       |                    |
| 847 | Dolomite Products - Mendon Sand & Gravel   | West Bloomfield (T) | Ontario         | 0.139 MGD      |                    |
| 848 | Hunt Hollow Ski Club                       | Naples (T)          | Ontario         | 0.517 MGD      |                    |
| 849 | Reservoir Creek Golf Course                | Naples (T)          | Ontario         |                |                    |
| 850 | Spring Hope Dairy                          | Hopewell (T)        | Ontario         | 59579 GPD      | GPD                |
| 851 | Cavallaro Farms                            | Goshen (T)          | Orange          | 0 GPD          | 0 GPD              |
| 852 | Wickham Village Water District             | Warwick (T)         | Orange          | 0.00778 MGD    | 0.01605 MGD        |
| 853 | Blooming Grove Water District #2, Oxford   | Blooming Grove (T)  | Orange          | 0.01 MGD       | 0.02 MGD           |
| 854 | Blooming Grove Water District #3, Tomahav  | Blooming Grove (T)  | Orange          | 0.011 MGD      | 0.034 MGD          |
| 855 | Amdur Park, Woodbury Water District #6     | Woodbury (T)        | Orange          | 0.014 MGD      | 0.036 MGD          |
| 856 | Blooming Grove Water District #5, Mountair | Blooming Grove (T)  | Orange          | 0.021 MGD      | 0.04 MGD           |
| 857 | Blooming Grove Water District #4, Tappan   | Blooming Grove (T)  | Orange          | 0.031 MGD      | 0.057 MGD          |
| 858 | Highland Lake Estates                      | Woodbury (T)        | Orange          | 0.0385 MGD     | 0.088 MGD          |
| 859 | Lake Tiorati Water Supply                  | Tuxedo (T)          | Orange          | 0.017 MGD      | 0.115 MGD          |
| 860 | Dagele Bros Produce                        | Warwick (T)         | Orange          | 0.05 MGD       | 0.12 MGD           |
| 861 | Davandjer Farms                            | Warwick (T)         | Orange          | 0.05 MGD       | 0.12 MGD           |
| 862 | Bear Mountain Water Supply                 | Highlands (T)       | Orange          | 0.156 MGD      | 0.242 MGD          |
| 863 | Blooming Grove Water District #1           | Blooming Grove (T)  | Orange          | 0.25 MGD       | 0.299 MGD          |
| 864 | Crist Bros Orchards                        | Montgomery (T)      | Orange          | 0.049 MGD      | 0.31 MGD           |
| 865 | Pine Bush Water District                   | Crawford (T)        | Orange          | 0.155 MGD      | 0.332 MGD          |
| 866 | Montgomery, Vg                             | Montgomery (T)      | Orange          | 0.263 MGD      | 0.377 MGD          |
| 867 | Maybrook, Vg                               | Hamptonburgh (T)    | Orange          | 0.195 MGD      | 0.5 MGD            |
| 868 | Greenwood Lake, Vg                         | Warwick (T)         | Orange          | 0.32 MGD       | 0.519 MGD          |
| 869 | Highland Falls, Vg                         | Highlands (T)       | Orange          | 0.435 MGD      | 0.6 MGD            |
| 870 | Harriman, Vg                               | Monroe (T)          | Orange          | 0.451 MGD      | 0.734 MGD          |
| 871 | Florida, Vg                                | Chester (T)         | Orange          | 0.468 MGD      | 0.743 MGD          |
| 872 | Chester, Vg                                | Chester (T)         | Orange          | 445000 GPD     | 0.772 MGD          |
| 873 | Tuxedo Park, Vg                            | Tuxedo (T)          | Orange          | 0.3442 MGD     | 0.812 MGD          |
| 874 | Hoeffner Farms - Montgomery                | Montgomery (T)      | Orange          | 600000 GPD     | 1.02 MGD           |
| 875 | Dutchess Quarry & Supply Co - Goshen       | Goshen (T)          | Orange          | 102439 GPD     | 1.08 MGD           |
| 876 | Goshen, Vg                                 | Goshen (T)          | Orange          | 0.828 MGD      | 1.173 MGD          |
| 877 | Port Jervis, City                          | Port Jervis (C)     | Orange          | 0.7 MGD        | 1.2 MGD            |
| 878 | Walden, Vg                                 | Montgomery (T)      | Orange          | 0.71 MGD       | 1.3 MGD            |
| 879 | Woodbury, Vg                               | Woodbury (T)        | Orange          | 0.94 MGD       | 1.48 MGD           |
| 880 | Kiryas Joel, Vg                            | Monroe (T)          | Orange          | 1.57 MGD       | 2.16 MGD           |

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| #   | FACILITY NAME                              | FACILITY TOWN/CITY | FACILITY COUNTY | Ave_Day_W_Units | Ave_Max_Day_Units_Max |
|-----|--|--------------------|-----------------|-----------------|-----------------------|
| 881 | West Point - Stoney Lonesome               | Highlands (T)      | Orange          | 1.22 MGD        | 2.56 MGD              |
| 882 | Newburgh Consolidated Water District       | Newburgh (T)       | Orange          | 0.63 MGD        | 2.74 MGD              |
| 883 | West Point - Lusk                          | Highlands (T)      | Orange          | 2.03 MGD        | 2.82 MGD              |
| 884 | Wallkill Water District #1                 | Wallkill (T)       | Orange          | 2.43 MGD        | 3.8 MGD               |
| 885 | Cromwell Hill Commons                      | Monroe (T)         | Orange          | 9 GPM           | 13 GPM                |
| 886 | Myruski Farms Inc                          | Goshen (T)         | Orange          | 70 GPM          | 70 GPM                |
| 887 | Tetz & Sons - Phillipsburg                 | Wallkill (T)       | Orange          | 150 GPD         | 150 GPD               |
| 888 | Morgiewicz Produce                         | Warwick (T)        | Orange          | 3500 GPD        | 300 GPM               |
| 889 | Danskammer Generating                      | Newburgh (T)       | Orange          | 278.8 MGD       | 455.04 MGD            |
| 890 | Madura Farm                                | Warwick (T)        | Orange          | 300 GPD         | 500 GPD               |
| 891 | Jones Farm                                 | Cornwall (T)       | Orange          | 250 GPM         | 740 GPM               |
| 892 | Roseton Generating Station                 | Newburgh (T)       | Orange          | 340.54 MGD      | 794.4 MGD             |
| 893 | Eastern Alloys                             | Montgomery (T)     | Orange          | 226 GPD         | 1763 GPD              |
| 894 | Rogowski Farm                              | Warwick (T)        | Orange          | 250 GPD         | 2500 GPD              |
| 895 | J Glebocki Farms                           | Goshen (T)         | Orange          | 2500 GPD        | 3000 GPD              |
| 896 | West Point - Transportation Pool           | Highlands (T)      | Orange          | 1125 GPD        | 5200 GPD              |
| 897 | Corbin Hills Water Supply                  | Highlands (T)      | Orange          | 9412 GPD        | 12500 GPD             |
| 898 | Whitlock Farms Water Co.                   | Wallkill (T)       | Orange          | 11200 GPD       | 16800 GPD             |
| 899 | Ridgebury Lake Water District              | Wawayanda (T)      | Orange          | 17172 GPD       | 41100 GPD             |
| 900 | New Vernon Water Co                        | Mount Hope (T)     | Orange          | 15736 GPD       | 44600 GPD             |
| 901 | Westbrook Water Corp                       | Deerpark (T)       | Orange          | 22265 GPD       | 56400 GPD             |
| 902 | Robinn Meadows Water Company               | Wawayanda (T)      | Orange          | 22626 GPD       | 59600 GPD             |
| 903 | Huguenot Estates East                      | Deerpark (T)       | Orange          | 46462 GPD       | 63200 GPD             |
| 904 | Coleman Ditch                              | Warwick (T)        | Orange          | 394 GPD         | 72000 GPD             |
| 905 | Lake Vue Park Water District               | Montgomery (T)     | Orange          | 11000 GPD       | 73000 GPD             |
| 906 | Fleurchem Inc                              | Middletown (C)     | Orange          | 39195 GPD       | 78390 GPD             |
| 907 | Country Crossing                           | Woodbury (T)       | Orange          | 16663 GPD       | 83000 GPD             |
| 908 | Sugar Loaf Hills                           | Chester (T)        | Orange          | 50433 GPD       | 102000 GPD            |
| 909 | Kings Estates (Warwick Water Corp)         | Warwick (T)        | Orange          | 70024 GPD       | 107000 GPD            |
| 910 | Greenwood Lake, West Side #1               | Warwick (T)        | Orange          | 103500 GPD      | 125600 GPD            |
| 911 | Lake Hill Farms Water District             | Chester (T)        | Orange          | 79834 GPD       | 133000 GPD            |
| 912 | Surrey Meadows Water District              | Chester (T)        | Orange          | 52925 GPD       | 144000 GPD            |
| 913 | Tuxedo Club                                | Tuxedo (T)         | Orange          |                 | 150000 GPD            |
| 914 | Orange County Golf Club                    | Wallkill (T)       | Orange          | 100000 GPD      | 180000 GPD            |
| 915 | JCI Jones Chemicals - Warwick              | Warwick (T)        | Orange          | 143000 GPD      | 187000 GPD            |
| 916 | Powelton Club                              | Newburgh (T)       | Orange          | 62085 GPD       | 193065 GPD            |
| 917 | Wallkill Golf Club                         | Wallkill (T)       | Orange          | 24199 GPD       | 216095 GPD            |
| 918 | Mansion Ridge Golf Club                    | Monroe             | Orange          | 185000 GPD      | 270000 GPD            |
| 919 | Montgomery Water District #1               | Montgomery (T)     | Orange          | 32000 GPD       | 302000 GPD            |
| 920 | West Point - Camp Buckner                  | Highlands (T)      | Orange          | 97175 GPD       | 328000 GPD            |
| 921 | Highland Sand & Gravel                     | Woodbury (T)       | Orange          | 280000 GPD      | 350000 GPD            |
| 922 | Mid-Orange Correctional Facility           | Warwick (T)        | Orange          | 162604 GPD      | 403200 GPD            |
| 923 | Otisville, Vg                              | Mount Hope (T)     | Orange          | 213981 GPD      | 407400 GPD            |
| 924 | Mount Peter Ski Area                       | Warwick (T)        | Orange          | 144000 GPD      | 576000 GPD            |
| 925 | Wieck Well (Zangrillo)                     | Goshen (T)         | Orange          | 576000 GPD      | 576000 GPD            |
| 926 | DeBuck's Sod Farm                          | Warwick (T)        | Orange          | 390000 GPD      | 1000000 GPD           |
| 927 | Pine Island Turf Nursery, Inc.             | Warwick (T)        | Orange          | 20000 GPD       | 1000000 GPD           |
| 928 | Monroe, Vg                                 | Monroe (T)         | Orange          | 874436 GPD      | 1325599 GPD           |
| 929 | Warwick, Vg                                | Warwick (T)        | Orange          | 710356 GPD      | 1361000 GPD           |
| 930 | Middletown, City                           | Wallkill (T)       | Orange          | 2620521 GPD     | 3178000 GPD           |
| 931 | Newburgh, City                             | New Windsor (T)    | Orange          | 4926000 GPD     | 6514000 GPD           |
| 932 | Horizon Heights (Monroe Water District #1) | Monroe (T)         | Orange          |                 |                       |
| 933 | Jados Farms                                | Warwick (T)        | Orange          |                 |                       |
| 934 | Joseph Sidoti                              | Warwick (T)        | Orange          |                 |                       |
| 935 | Monroe Hills Water District                | Monroe (T)         | Orange          |                 |                       |
| 936 | Pasquale Sidoti                            | Warwick (T)        | Orange          |                 |                       |
| 937 | Shuback Farms                              | Warwick (T)        | Orange          |                 |                       |
| 938 | Unionville, Vg                             | Minisink (T)       | Orange          | 37959 GPD       |                       |
| 939 | Lyndonville, Vg                            | Yates (T)          | Orleans         | 0.193 MGD       | 0.408 MGD             |
| 940 | James Piedimonte & Sons                    | Murray (T)         | Orleans         | 39600 GPD       | 1.6 MGD               |
| 941 | Hanson Aggregates - Clarendon Quarry       | Clarendon (T)      | Orleans         | 1.19 MGD        | 2.1 MGD               |
| 942 | Albion, Vg                                 | Carlton (T)        | Orleans         | 1.48 MGD        | 2.27 MGD              |
| 943 | Barre Stone Products                       | Barre (T)          | Orleans         | 3.9 MGD         | 6.6 MGD               |
| 944 | Ledge Rock Farms LLC                       | Shelby (T)         | Orleans         | 556 GPD         | 7000 GPM              |
| 945 | Sun Rich Farms                             | Barre (T)          | Orleans         | 27019 GPD       | 30926 GPD             |
| 946 | Root Bros. Farms                           | Barre (T)          | Orleans         | 36819 GPD       | 325800 GPD            |
| 947 | K & W Enterprises                          | Gaines (T)         | Orleans         | 363000 GPD      | 363000 GPD            |
| 948 | Shelridge Country Club                     | Ridgeway (T)       | Orleans         | 104350 GPD      | 432000 GPD            |
| 949 | Torrey Farms Inc.                          | Barre (T)          | Orleans         | 1243000 GPD     | 1728000 GPD           |
| 950 | Panek Farms, LLC                           | Albion (T)         | Orleans         | 51325 GPD       | 2715000 GPD           |
| 951 | Hanson Aggregates - Lacona North           | Sandy Creek (T)    | Oswego          | 0 GPD           | 0 GPD                 |
| 952 | Hanson Aggregates - Lacona South           | Sandy Creek (T)    | Oswego          | 0 GPD           | 0 GPD                 |
| 953 | Syracuse - Fulton Office                   | Volney (T)         | Oswego          | 0 GPD           | 0 GPD                 |
| 954 | Syracuse - Hastings Main                   | Hastings (T)       | Oswego          | 0 GPD           | 0 GPD                 |
| 955 | Sandy Creek & Lacona Joint Water Works     | Sandy Creek (T)    | Oswego          | 0.17 MGD        | 0.28 MGD              |
| 956 | Huhtamaki Inc                              | Fulton (C)         | Oswego          | 220440 GPD      | 0.857 MGD             |
| 957 | Novelis Corporation                        | Scriba (T)         | Oswego          | 0.534 MGD       | 2 MGD                 |
| 958 | Interface Solutions, Inc - Fulton          | Volney (T)         | Oswego          | 0.975 MGD       | 2.17 MGD              |
| 959 | Oneida Fish Hatchery                       | Constantia (T)     | Oswego          | 1 MGD           | 2.3 MGD               |
| 960 | Fulton City Water Works                    | Volney (T)         | Oswego          | 1.29 MGD        | 2.97 MGD              |

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| #    | FACILITY NAME                              | FACILITY TOWN/CITY  | FACILITY COUNTY | Ave_Day_W_Units | Ave_Max_Day_Units_Max |
|------|--|---------------------|-----------------|-----------------|-----------------------|
| 961  | Salmon River Hatchery                      | Albion (T)          | Oswego          | 7.7 MGD         | 7.7 MGD               |
| 962  | Oswego County Energy Recovery Facility     | Volney (T)          | Oswego          | 8.25 MGD        | 14 MGD                |
| 963  | Oswego, City                               | Oswego (C)          | Oswego          | 7.85 MGD        | 14.091 MGD            |
| 964  | Metropolitan Water Board                   | Oswego (T)          | Oswego          | 19.564 MGD      | 40.17 MGD             |
| 965  | Oswego Harbor Power                        | Oswego (C)          | Oswego          | 167.7 MGD       | 364.21 MGD            |
| 966  | Nine Mile Point Nuclear Station            | Scriba (T)          | Oswego          | 401.1 MGD       | 457.1 MGD             |
| 967  | James A. Fitzpatrick Nuclear Power Plant   | Scriba (T)          | Oswego          | 543 MGD         | 596 MGD               |
| 968  | Sorbello & Sons                            | Granby (T)          | Oswego          | 5000 GPD        | 5000 GPD              |
| 969  | Grindstone Farm                            | Richland (T)        | Oswego          | 5000 GPD        | 60000 GPD             |
| 970  | Oswego Country Club                        | Oswego (C)          | Oswego          | 10500 GPD       | 215000 GPD            |
| 971  | Richland Water District #1 & #2            | Richland (T)        | Oswego          | 169264 GPD      | 289227 GPD            |
| 972  | Battle Island Golf                         | Granby (T)          | Oswego          | 101342 GPD      | 338350 GPD            |
| 973  | Phoenix, Vg                                | Schroepfel (T)      | Oswego          | 251504 GPD      | 548310 GPD            |
| 974  | Mexico, Vg                                 | Mexico (T)          | Oswego          | 372833 GPD      | 590200 GPD            |
| 975  | Omega Wire - Williamstown                  | Williamstown (T)    | Oswego          | 404000 GPD      | 612000 GPD            |
| 976  | Syracuse - Granby Pit                      | Granby (T)          | Oswego          | 720000 GPD      | 720000 GPD            |
| 977  | Bieler Enterprises                         | Williamstown (T)    | Oswego          | 698512.5 GPD    | 1259000 GPD           |
| 978  | North Country Concrete                     | Constantia (T)      | Oswego          | 1320000 GPD     | 1320000 GPD           |
| 979  | Northern Aggregates - Fulton               | Volney (T)          | Oswego          | 1620000 GPD     | 1620000 GPD           |
| 980  | Hopkinson Farms                            | Williamstown (T)    | Oswego          | 360000 GPD      |                       |
| 981  | Pulaski, Vg                                | Richland (T)        | Oswego          |                 |                       |
| 982  | Richfield Springs, Vg                      | Springfield (T)     | Otsego          | 0.13 MGD        | 0.221 MGD             |
| 983  | Oneonta, City                              | Oneonta (T)         | Otsego          | 1.69 MGD        | 2.09 MGD              |
| 984  | Meadows                                    | Middlefield (T)     | Otsego          | 16300 GPD       | 18600 GPD             |
| 985  | Otsego Manor                               | Otsego (T)          | Otsego          | 17312 GPD       | 25364 GPD             |
| 986  | Laurens, Vg                                | Laurens (T)         | Otsego          | 18078 GPD       | 30000 GPD             |
| 987  | Cobleskill Stone Products - Broe Pit       | Milford (T)         | Otsego          | 36000 GPD       | 36000 GPD             |
| 988  | Darin Hickling                             | Edmeston (T)        | Otsego          | 30300 GPD       | 40320 GPD             |
| 989  | Maryland Water District                    | Maryland (T)        | Otsego          | 39392 GPD       | 54000 GPD             |
| 990  | Woodland Water District                    | Oneonta (T)         | Otsego          | 19060 GPD       | 57100 GPD             |
| 991  | Gilbertsville, Vg                          | Butternuts (T)      | Otsego          |                 | 97000 GPD             |
| 992  | Cherry Valley, Vg                          | Cherry Valley (T)   | Otsego          | 45359 GPD       | 102000 GPD            |
| 993  | Otego, Vg                                  | Otego (T)           | Otsego          | 78400 GPD       | 126000 GPD            |
| 994  | Morris, Vg                                 | Morris (T)          | Otsego          | 59333 GPD       | 147000 GPD            |
| 995  | Milford, Vg                                | Milford (T)         | Otsego          | 94000 GPD       | 152000 GPD            |
| 996  | Worcester Water District #2                | Worcester (T)       | Otsego          | 70110 GPD       | 204900 GPD            |
| 997  | Leatherstocking Golf Course                | Otsego (T)          | Otsego          | 314741 GPD      | 384500 GPD            |
| 998  | Unadilla, Vg                               | Unadilla (T)        | Otsego          | 161000 GPD      | 385000 GPD            |
| 999  | Cooperstown, Vg                            | Otsego (T)          | Otsego          | 553900 GPD      | 991000 GPD            |
| 1000 | Peckham - Putnam Materials Corp.           | Patterson (T)       | Putnam          | 0.135 MGD       | 0.169 MGD             |
| 1001 | Watchtower Bible and Tract Society         | Patterson (T)       | Putnam          | 0.097 MGD       | 0.213 MGD             |
| 1002 | Carmel Water District #2                   | Carmel (T)          | Putnam          | 0.85 MGD        | 1.5 MGD               |
| 1003 | Carmel Water District #9                   | Carmel (T)          | Putnam          | 31.6 GPM        | 38.7 GPM              |
| 1004 | Carmel Water District #8                   | Carmel (T)          | Putnam          | 207 GPM         | 257 GPM               |
| 1005 | Fox Hill Estates                           | Southeast (T)       | Putnam          | 2748 GPD        | 9640 GPD              |
| 1006 | Mountain Brook Water District              | Southeast (T)       | Putnam          | 2502 GPD        | 10700 GPD             |
| 1007 | Starr Ridge Manor Water District           | Southeast (T)       | Putnam          | 8015 GPD        | 33710 GPD             |
| 1008 | Springhouse Estates                        | Southeast (T)       | Putnam          | 13390 GPD       | 33770 GPD             |
| 1009 | Hillcrest Water District (Southeast, Tn)   | Southeast (T)       | Putnam          | 21895 GPD       | 48770 GPD             |
| 1010 | Blackberry Hill Water District             | Southeast (T)       | Putnam          | 41101 GPD       | 64430 GPD             |
| 1011 | Brewster Heights                           | Southeast (T)       | Putnam          | 41101 GPD       | 64430 GPD             |
| 1012 | Carmel Water District #3                   | Carmel (T)          | Putnam          | 98420 GPD       | 129345 GPD            |
| 1013 | Brewster, Vg                               | Southeast (T)       | Putnam          | 202000 GPD      | 213510 GPD            |
| 1014 | Garrison Golf Club                         | Philipstown (T)     | Putnam          | 123120 GPD      | 246240 GPD            |
| 1015 | Back O'Beyond                              | Southeast (T)       | Putnam          | 41318 GPD       | 275000 GPD            |
| 1016 | Mahopac Golf Club                          | Carmel (T)          | Putnam          | 22091 GPD       | 366742 GPD            |
| 1017 | Centennial Golf Club                       | Carmel (T)          | Putnam          | 36784 GPD       | 385000 GPD            |
| 1018 | Brewster Heights - Middle Branch           | Southeast (T)       | Putnam          | 92600 GPD       |                       |
| 1019 | Astoria Generating Station                 | Queens (T)          | Queens          | 455.6 MGD       | 723.7 MGD             |
| 1020 | Ravenswood Generating Station              | Queens (T)          | Queens          | 512.9 MGD       | 1390 MGD              |
| 1021 | New York City DEP Wells                    | Queens (T)          | Queens          |                 |                       |
| 1022 | Castleton, Vg                              | Schodack (T)        | Rensselaer      | 0.153 MGD       | 0.238 MGD             |
| 1023 | Castleton Power                            | Schodack (T)        | Rensselaer      | 81630 GPD       | 0.286 MGD             |
| 1024 | Peckham - William E. Dailey Inc.           | Hoosick (T)         | Rensselaer      | 0.6 MGD         | 0.6 MGD               |
| 1025 | Interface Solutions, Inc - Hoosick Falls   | Hoosick (T)         | Rensselaer      | 0.3166 MGD      | 0.672 MGD             |
| 1026 | AMRI Rensselaer                            | Rensselaer (C)      | Rensselaer      | 0.835 MGD       | 1.613 MGD             |
| 1027 | Warren W Fane - Wynantskill Pit            | North Greenbush (T) | Rensselaer      | 1.5 MGD         | 3.5 MGD               |
| 1028 | Troy, City - John P. Buckley WTP           | Pittstown (T)       | Rensselaer      | 18.49 MGD       | 27.84 MGD             |
| 1029 | Oak-Mitsui                                 | Hoosick (T)         | Rensselaer      | 553 GPD         | 669 GPD               |
| 1030 | Warren W Fane                              | Schaghticoke (T)    | Rensselaer      | 1710 GPM        | 1810 GPM              |
| 1031 | Evergreen Farm                             | Petersburg (T)      | Rensselaer      | 13526 GPD       | 15256 GPD             |
| 1032 | Swartz Dairy and Produce LLC               | Schodack (T)        | Rensselaer      | 45000 GPD       | 45000 GPD             |
| 1033 | Schodack Water District #1                 | Schodack (T)        | Rensselaer      | 38685 GPD       | 98416 GPD             |
| 1034 | Nassau, Vg                                 | Nassau (T)          | Rensselaer      | 149650 GPD      | 249000 GPD            |
| 1035 | Hampton Manor / Hillview Water District #4 | East Greenbush (T)  | Rensselaer      | 130000 GPD      | 250000 GPD            |
| 1036 | Troy Country Club                          | Brunswick (T)       | Rensselaer      | 51795 GPD       | 325000 GPD            |
| 1037 | Bonded Concrete - Cammarota Pit            | Schaghticoke (T)    | Rensselaer      | 207000 GPD      | 360000 GPD            |
| 1038 | Bonded Concrete - Nassau Quarry            | Nassau (T)          | Rensselaer      | 207000 GPD      | 360000 GPD            |
| 1039 | Bonded Concrete - Weir Sand & Gravel Min   | Schaghticoke (T)    | Rensselaer      | 207000 GPD      | 360000 GPD            |
| 1040 | Polaro                                     | Poestenkill (T)     | Rensselaer      | 207000 GPD      | 360000 GPD            |

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|------|--|----------------------|-----------------|-----------------|-----------------------|
| 1041 | Hoosick Falls, Vg                          | Hoosick (T)          | Rensselaer      | 441419 GPD      | 670616 GPD            |
| 1042 | Bonded Concrete - West Sand Lake Pit       | Sand Lake (T)        | Rensselaer      | 450000 GPD      | 780000 GPD            |
| 1043 | Schodack Water District #9                 | Schodack (T)         | Rensselaer      | 144283 GPD      | 1214000 GPD           |
| 1044 | Callanan - Cropseyville Site               | Brunswick (T)        | Rensselaer      | 899724 GPD      | 2209018 GPD           |
| 1045 | Arthur Kill Generating Station             | Richmond (T)         | Richmond        | 480 MGD         | 712.8 MGD             |
| 1046 | South Shore Golf Course                    | Richmond (T)         | Richmond        | 42245 GPD       | 155116 GPD            |
| 1047 | Tilcon - Suffern Quarry                    | Ramapo (T)           | Rockland        | 0 GPD           | 0 GPD                 |
| 1048 | Tilcon - Tomkins Cove Quarry               | Stony Point (T)      | Rockland        | 0.1606 MGD      | 0.2915 MGD            |
| 1049 | Tilcon - Haverstraw Quarry                 | Clarkstown (T)       | Rockland        | 0.2342 MGD      | 0.4217 MGD            |
| 1050 | Suffern, Vg                                | Ramapo (T)           | Rockland        | 1.347 MGD       | 2.324 MGD             |
| 1051 | Nyack, Vg                                  | Clarkstown (T)       | Rockland        | 1.9 MGD         | 2.5 MGD               |
| 1052 | Tilcon - West Nyack Quarry                 | Clarkstown (T)       | Rockland        | 0.993 MGD       | 2.712 MGD             |
| 1053 | United Water New York                      | Ramapo (T)           | Rockland        | 29.12 MGD       | 43.697 MGD            |
| 1054 | Genon Bowline                              | Haverstraw (T)       | Rockland        | 74.94 MGD       | 989.29 MGD            |
| 1055 | Van Houten Farms                           | Orangetown (T)       | Rockland        | 1200 GPD        | 3000 GPD              |
| 1056 | PJ Rotella Memorial GC                     | Haverstraw (T)       | Rockland        | 18120 GPD       | 155000 GPD            |
| 1057 | New York Country Club                      | Ramapo (T)           | Rockland        |                 | 200000 GPD            |
| 1058 | Manhattan Woods Golf Club                  | Orangetown (T)       | Rockland        | 35773 GPD       | 460000 GPD            |
| 1059 | Spook Rock Golf Course                     | Ramapo (T)           | Rockland        | 252324 GPD      | 501276 GPD            |
| 1060 | Wyeth Pharmaceuticals                      | Orangetown (T)       | Rockland        | 1148708 GPD     | 3474669 GPD           |
| 1061 | Rockland Country Club                      | Orangetown (T)       | Rockland        | 2056745 GPD     | 7192075 GPD           |
| 1062 | Hadley, Tn Water District #1               | Hadley (T)           | Saratoga        | 0.0353 MGD      | 0.125 MGD             |
| 1063 | Hadley, Tn Water District #2               | Hadley (T)           | Saratoga        | 0.0471 MGD      | 0.15 MGD              |
| 1064 | Peckham Materials - Greenfield             | Greenfield (T)       | Saratoga        | 0.42 MGD        | 0.42 MGD              |
| 1065 | Pallete Stone - Saratoga Quarry            | Saratoga Springs (C) | Saratoga        | 0.53976 MGD     | 0.7667 MGD            |
| 1066 | Knolls Atomic Power Lab - Kesselring Site  | Milton (T)           | Saratoga        | 0.34 MGD        | 1.1 MGD               |
| 1067 | South Glens Falls, Vg                      | Moreau (T)           | Saratoga        | 0.59 MGD        | 1.25 MGD              |
| 1068 | Pallete Stone - South Corinth              | Corinth (T)          | Saratoga        | 1.2 MGD         | 1.5 MGD               |
| 1069 | Ballston Spa, Vg                           | Saratoga Springs (C) | Saratoga        | 0.87 MGD        | 1.804 MGD             |
| 1070 | Clifton Park Water Authority               | Clifton Park (T)     | Saratoga        | 3.19 MGD        | 5.66 MGD              |
| 1071 | Amsterdam, City                            | Providence (T)       | Saratoga        | 5.6 MGD         | 7.1 MGD               |
| 1072 | Saratoga Springs, City                     | Saratoga Springs (C) | Saratoga        | 4.128 MGD       | 8.373 MGD             |
| 1073 | Mohawk Fine Papers - Waterford             | Waterford (T)        | Saratoga        | 9 MGD           | 9 MGD                 |
| 1074 | MPM Silicones, LLC                         | Waterford (T)        | Saratoga        | 11.6 MGD        | 18 MGD                |
| 1075 | Pomapa Bros. Inc.- Milton                  | Saratoga Springs (C) | Saratoga        | 4218 GPD        | 4219 GPD              |
| 1076 | Barber Brothers                            | Northumberland (T)   | Saratoga        | 29673 GPD       | 34070 GPD             |
| 1077 | Kings Ransom Farm                          | Northumberland (T)   | Saratoga        | 35110 GPD       | 39480 GPD             |
| 1078 | Eagle Crest Golf Club                      | Clifton Park (T)     | Saratoga        | 36000 GPD       | 89000 GPD             |
| 1079 | Saratoga Golf and Polo Club                | Saratoga Springs (C) | Saratoga        | 31000 GPD       | 110000 GPD            |
| 1080 | Northwood Water Company                    | Malta (T)            | Saratoga        | 94400 GPD       | 151000 GPD            |
| 1081 | McGregor Country Club                      | Wilton (T)           | Saratoga        | 62411 GPD       | 183000 GPD            |
| 1082 | Mount McGregor Correctional Facility       | Corinth (T)          | Saratoga        | 72391 GPD       | 220846 GPD            |
| 1083 | Airway Meadows Golf Course                 | Northumberland (T)   | Saratoga        | 20834 GPD       | 300000 GPD            |
| 1084 | Rowlands Hollow Water Works                | Milton (T)           | Saratoga        | 136000 GPD      | 304000 GPD            |
| 1085 | Fairways of Halfmoon                       | Halfmoon (T)         | Saratoga        | 155700 GPD      | 305000 GPD            |
| 1086 | Van Patten Golf Club                       | Clifton Park (T)     | Saratoga        | 13800           | 350000 GPD            |
| 1087 | Heritage Springs Water Works               | Milton (T)           | Saratoga        | 184000 GPD      | 353000 GPD            |
| 1088 | Ballston Spa Country Club                  | Milton (T)           | Saratoga        | 100000 GPD      | 360000 GPD            |
| 1089 | Bonded Concrete - Schultz Construction Min | Ballston (T)         | Saratoga        | 207000 GPD      | 360000 GPD            |
| 1090 | Mohawk River Golf Course                   | Clifton Park (T)     | Saratoga        |                 | 360000 GPD            |
| 1091 | Saratoga National Golf Club                | Saratoga Springs (C) | Saratoga        | 50000 GPD       | 400000 GPD            |
| 1092 | Stillwater, Vg                             | Stillwater (T)       | Saratoga        | 309718 GPD      | 404000 GPD            |
| 1093 | Cranesville - Hudson Valley Sand & Stone   | Wilton (T)           | Saratoga        | 420000 GPD      | 420000 GPD            |
| 1094 | Fort Edward, Vg                            | Moreau (T)           | Saratoga        | 379545 GPD      | 607000 GPD            |
| 1095 | Edison Club Golf Course                    | Clifton Park (T)     | Saratoga        | 29939 GPD       | 760000 GPD            |
| 1096 | Wilton Water and Sewer Authority           | Wilton (T)           | Saratoga        | 652000 GPD      | 1124000 GPD           |
| 1097 | Mechanicville, City                        | Stillwater (T)       | Saratoga        | 0.97 MGD        | 1176000 GPD           |
| 1098 | Saratoga Sod Farm, Inc.                    | Stillwater (T)       | Saratoga        | 122236 GPD      | 3168000 GPD           |
| 1099 | Saratoga County Water Authority            | Halfmoon (T)         | Saratoga        | 2861130 GPD     | 7111450 GPD           |
| 1100 | Galway Golf Club                           | Galway (T)           | Saratoga        | 2314 GPD        | GPD                   |
| 1101 | Saratoga Water Services, Inc               | Malta (T)            | Saratoga        |                 |                       |
| 1102 | GE - Global Research Center                | Niskayuna (T)        | Schenectady     | 0 GPM           | 0 GPM                 |
| 1103 | Niskayuna Consolidated Water District      | Niskayuna (T)        | Schenectady     | 1.4 MGD         | 1.7 MGD               |
| 1104 | Knolls Atomic Power Lab - Knolls Site      | Niskayuna (T)        | Schenectady     | 3.5 MGD         | 3.9 MGD               |
| 1105 | Schenectady, City                          | Rotterdam (T)        | Schenectady     | 12.9 MGD        | 21 MGD                |
| 1106 | GE - Schenectady                           | Rotterdam (T)        | Schenectady     | 11 MGD          | 50 MGD                |
| 1107 | Princeton, Tn                              | Princeton (T)        | Schenectady     | 62711 GPD       | 180000 GPD            |
| 1108 | Rotterdam, Tn - Main St                    | Rotterdam (T)        | Schenectady     | 223560 GPD      | 377500 GPD            |
| 1109 | Cranesville - Scotia Sand & Stone          | Glenville (T)        | Schenectady     | 456000 GPD      | 456000 GPD            |
| 1110 | Adirondack Beverages                       | Glenville (T)        | Schenectady     | 286254 GPD      | 539444 GPD            |
| 1111 | Scotia Pumping Station                     | Glenville (T)        | Schenectady     | 1236536 GPD     | 1627000 GPD           |
| 1112 | SI Group                                   | Rotterdam (T)        | Schenectady     | 1728000 GPD     | 1728000 GPD           |
| 1113 | Glenville, Tn                              | Glenville (T)        | Schenectady     | 1717189 GPD     | 3074000 GPD           |
| 1114 | Rotterdam, Tn - Rice Road                  | Rotterdam (T)        | Schenectady     | 3.85 MGD        | 8885000 GPD           |
| 1115 | Schoharie Quarry                           | Schoharie (T)        | Schoharie       | 0.84 MGD        | 0.84 MGD              |
| 1116 | Howes Cave Quarry                          | Cobleskill (T)       | Schoharie       | 1.32 MGD        | 1.32 MGD              |
| 1117 | Middleburg, Vg                             | Middleburg (T)       | Schoharie       | 22167 GPD       | 300 GPM               |
| 1118 | Central Bridge W.D.                        | Schoharie (T)        | Schoharie       | 56000 GPD       | 109000 GPD            |
| 1119 | Barber Family Farm                         | Fulton (T)           | Schoharie       | 2071 GPD        | 126000 GPD            |
| 1120 | Richmondville, Vg                          | Richmondville (T)    | Schoharie       | 74380 GPD       | 127303 GPD            |

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|------|--|--------------------|-----------------|--------------------------------------|-------------|
| 1121 | Schoharie Valley Farms                     | Schoharie (T)      | Schoharie       | 986 GPD                              | 180000 GPD  |
| 1122 | Stamford, Vg                               | Jefferson (T)      | Schoharie       | 132572 GPD                           | 294113 GPD  |
| 1123 | Schoharie, Vg                              | Schoharie (T)      | Schoharie       | 134000 GPD                           | 382000 GPD  |
| 1124 | Sharon Springs, Vg                         | Sharon (T)         | Schoharie       | 171000 GPD                           | 432000 GPD  |
| 1125 | Shaul Farms                                | Fulton (T)         | Schoharie       | 474444 GPD                           | 720000 GPD  |
| 1126 | Cobleskill, Vg                             | Cobleskill (T)     | Schoharie       |                                      |             |
| 1127 | Hanson Aggregates - Cayuta                 | Cayuta (T)         | Schuyler        | 0 GPD                                | 0 GPD       |
| 1128 | Cargill Salt                               | Dix (T)            | Schuyler        | 8.6 MGD                              | 10.4 MGD    |
| 1129 | US Salt LLC                                | Reading (T)        | Schuyler        | 8.99 MGD                             | 10.88 MGD   |
| 1130 | Glenview Dairy                             | Montour (T)        | Schuyler        | 20000 GPD                            | 30000 GPD   |
| 1131 | Seneca Valley Farm                         | Hector (T)         | Schuyler        | 89822 GPD                            | 96000 GPD   |
| 1132 | Bergen Farms                               | Hector (T)         | Schuyler        | 80000 GPD                            | 130000 GPD  |
| 1133 | Odessa, Vg                                 | Catharine (T)      | Schuyler        | 53090 GPD                            | 200900 GPD  |
| 1134 | Hector Water District                      | Hector (T)         | Schuyler        | 112000 GPD                           | 273000 GPD  |
| 1135 | Montour Falls, Vg                          | Montour (T)        | Schuyler        | 193000 GPD                           | 662000 GPD  |
| 1136 | Watkins Glen, Vg                           | Dix (T)            | Schuyler        | 311372 GPD                           | 767300 GPD  |
| 1137 | Seneca Falls, Vg                           | Fayette (T)        | Seneca          | 1.1 MGD                              | 1.5 MGD     |
| 1138 | Waterloo, Vg                               | Fayette (T)        | Seneca          | 1.325 MGD                            | 2.826       |
| 1139 | Evans Chemetics LP                         | Waterloo (T)       | Seneca          | 4.5 MGD                              | 6.3 MGD     |
| 1140 | Clinton Erie Associates, Inc.              | Tyre (T)           | Seneca          | 15 MGD                               | 15 MGD      |
| 1141 | Ovid, Vg                                   | Ovid (T)           | Seneca          | 69716 GPD                            | 101000 GPD  |
| 1142 | Interlaken, Vg                             | Covert (T)         | Seneca          | 55244 GPD                            | 117000 GPD  |
| 1143 | Willard Drug Treatment Campus              | Romulus (T)        | Seneca          | 195100 GPD                           | 347000 GPD  |
| 1144 | Seneca Falls Country Club                  | Seneca Falls (T)   | Seneca          | 30186 GPD                            | 350000 GPD  |
| 1145 | Graymont Materials - Parishville Plant     | Potsdam (T)        | St. Lawrence    | 0 GPD                                | 0 GPD       |
| 1146 | Newton Falls Fine Paper Company, LLC       | Clifton (T)        | St. Lawrence    | 0                                    | 0           |
| 1147 | RT Vanderbilt Co, Inc - Gouverneur Mineral | Fowler (T)         | St. Lawrence    | 0.033 MGD                            | 0.046 MGD   |
| 1148 | Parishville Water District #1              | Parishville (T)    | St. Lawrence    | 0.045 MGD                            | 0.08 MGD    |
| 1149 | Waddington, Vg                             | Waddington (T)     | St. Lawrence    | 0.06 MGD                             | 0.126 MGD   |
| 1150 | Madrid Water District #1                   | Madrid (T)         | St. Lawrence    | 0.054 MGD                            | 0.133 MGD   |
| 1151 | APC Paper Company of New York              | Norfolk (T)        | St. Lawrence    | 0.194 MGD                            | 0.38 MGD    |
| 1152 | Balmat Mines                               | Fowler (T)         | St. Lawrence    | 0.37 MGD                             | 0.53 MGD    |
| 1153 | Hanson Aggregates - Ogdensburg Quarry      | Oswegatchie (T)    | St. Lawrence    | 0.335 MGD                            | 0.556 MGD   |
| 1154 | Former GM Powertrain Facility              | Massena (T)        | St. Lawrence    | 0.057 MGD                            | 0.64 MGD    |
| 1155 | Alcoa East Plant Intake (Reynolds Metals)  | Massena (T)        | St. Lawrence    | 0.48 MGD                             | 0.7 MGD     |
| 1156 | Canton, Vg                                 | Pierrepont (T)     | St. Lawrence    | 0.55 MGD                             | 0.74 MGD    |
| 1157 | Gouverneur, Vg                             | Gouverneur (T)     | St. Lawrence    | 0.6451 MGD                           | 1.0824 MGD  |
| 1158 | Massena, Vg                                | Massena (T)        | St. Lawrence    | 1.2 MGD                              | 1.7 MGD     |
| 1159 | Potsdam Specialty Paper Inc.               | Potsdam (T)        | St. Lawrence    | 1.11 MGD                             | 1.93 MGD    |
| 1160 | Cellu Tissue - Natural Dam                 | Gouverneur (T)     | St. Lawrence    | 1.556 MGD                            | 2.537 MGD   |
| 1161 | Massena Intake                             | Massena (T)        | St. Lawrence    | 2.2 MGD                              | 2.7 MGD     |
| 1162 | Ogdensburg, City                           | Ogdensburg (C)     | St. Lawrence    | 2.04 MGD                             | 5 MGD       |
| 1163 | Barrett - Norwood Quarry                   | Norfolk (T)        | St. Lawrence    | 2.23 MGD                             | 6.82 MGD    |
| 1164 | Potsdam Town & Country Club                | Potsdam (T)        | St. Lawrence    | 300 GPM                              | 900 GPM     |
| 1165 | Losurdo Foods                              | Oswegatchie (T)    | St. Lawrence    | 22000 GPD                            | 28000 GPD   |
| 1166 | Corning Inc - Canton Plant                 | Dekalb (T)         | St. Lawrence    | 19152 GPD                            | 42027 GPD   |
| 1167 | Greenwood Dairy Farm                       | Potsdam (T)        | St. Lawrence    | 19679 GPD                            | 57000 GPD   |
| 1168 | Stauffer Farms LLC                         | Lawrence (T)       | St. Lawrence    | 50000 GPD                            | 60000 GPD   |
| 1169 | St. Lawrence University Golf Course        | Canton (T)         | St. Lawrence    | 51346 GPD                            | 75000 GPD   |
| 1170 | Colton Water District                      | Colton (T)         | St. Lawrence    | 48000 GPD                            | 98000 GPD   |
| 1171 | Hermon, Vg                                 | Russell (T)        | St. Lawrence    | 100000 GPD                           | 100000 GPD  |
| 1172 | St. Lawrence/FDR Power Project             | Massena (T)        | St. Lawrence    | 79278 MGD                            | 108686 MGD  |
| 1173 | River Breeze Farm                          | Waddington (T)     | St. Lawrence    | 62567 GPD                            | 108866 GPD  |
| 1174 | Mapleview Dairy                            | Madrid (T)         | St. Lawrence    | 105794 GPD                           | 114166 GPD  |
| 1175 | St. Lawrence University                    | Canton (T)         | St. Lawrence    | 62462 GPD                            | 116949 GPD  |
| 1176 | Star Lake Water District                   | Fine (T)           | St. Lawrence    | 82520 GPD                            | 148900 GPD  |
| 1177 | Piercefield Water District                 | Piercefield (T)    | St. Lawrence    | 14367 GPD                            | 169920 GPD  |
| 1178 | Heuvelton, Vg                              | Oswegatchie (T)    | St. Lawrence    | 118000 GPD                           | 215000 GPD  |
| 1179 | North Country Dairy, LLC                   | Lawrence (T)       | St. Lawrence    | 389550 GPD                           | 787600 GPD  |
| 1180 | Potsdam, Vg                                | Potsdam (T)        | St. Lawrence    | 1048400 GPD                          | 1673000 GPD |
| 1181 | AG Energy (Ogdensburg Energy)              | Ogdensburg (C)     | St. Lawrence    |                                      |             |
| 1182 | Hanson Aggregates - Kanona Sand & Gravel   | Bath (T)           | Steuben         | 0 GPD                                | 0 GPD       |
| 1183 | Syracuse - Gang Mills                      | Erwin (T)          | Steuben         | 0 GPD                                | 0 GPD       |
| 1184 | Savona, Vg                                 | Bath (T)           | Steuben         | 0.0345 MGD                           | 0.225 MGD   |
| 1185 | Corning, Tn - Gibson Water District        | Corning (T)        | Steuben         | 0.032 MGD                            | 0.262 MGD   |
| 1186 | Painted Post, Vg                           | Erwin (T)          | Steuben         | 0.18 MGD                             | 0.619 MGD   |
| 1187 | Canisteo, Vg                               | Canisteo (T)       | Steuben         | 0.37 MGD                             | 0.983 MGD   |
| 1188 | Kraft Foods Global - Campbell              | Campbell (T)       | Steuben         | 0.742 MGD                            | 1.1 MGD     |
| 1189 | Erwin, Tn                                  | Campbell (T)       | Steuben         | 0.865 MGD                            | 1.411 MGD   |
| 1190 | Bath, Vg                                   | Bath (T)           | Steuben         | 0.946 MGD                            | 2.05 MGD    |
| 1191 | Corning Inc                                | Corning (C)        | Steuben         | 1.35 MGD                             | 2.36 MGD    |
| 1192 | Bath Fish Hatchery                         | Urbana (T)         | Steuben         | 2.13 MGD                             | 2.56 MGD    |
| 1193 | Hanson Aggregates - Bath Sand & Gravel     | Bath (T)           | Steuben         | 1750 GPD                             | 9306 GPD    |
| 1194 | Dolomite Products - Blades Bath            | Bath (T)           | Steuben         | 8000 GPD                             | 25480 GPD   |
| 1195 | Damin Farm, LLC                            | Prattsburg (T)     | Steuben         | 40242 GPD                            | 46060 GPD   |
| 1196 | Mehlenbacher Farms Inc                     | Wayland (T)        | Steuben         | 19452 GPD                            | 63333 GPD   |
| 1197 | Campbell, Tn                               | Campbell (T)       | Steuben         | 17758.68 GPD                         | 66134 GPD   |
| 1198 | North Cohocton Water District              | Cohocton (T)       | Steuben         | 29000 GPD                            | 76000 GPD   |
| 1199 | Cohocton, Vg                               | Cohocton (T)       | Steuben         | 70877 GPD                            | 80000 GPD   |
| 1200 | Arkport, Vg                                | Hornellsville (T)  | Steuben         | 95340 GPD                            | 100000 GPD  |

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| #    | FACILITY NAME                      | FACILITY TOWN/CITY | FACILITY COUNTY | Ave_Day_W_Units_Ave_Max_Day_Units_Max |
|------|------------------------------------|--------------------|-----------------|---------------------------------------|
| 1201 | Avoca, Vg                          | Avoca (T)          | Steuben         | 61669 GPD 115000 GPD                  |
| 1202 | Bath Veterans Administration       | Bath (T)           | Steuben         | 153903 GPD 203000 GPD                 |
| 1203 | Inergy Midstream                   | Bath (T)           | Steuben         | 107800 GPD 203900 GPD                 |
| 1204 | Prattsburgh Water District         | Prattsburgh (T)    | Steuben         | 52438 GPD 250000 GPD                  |
| 1205 | HP Hood                            | Hornellsville (T)  | Steuben         | 171520 GPD 343000 GPD                 |
| 1206 | Wayland, Vg                        | Wayland (T)        | Steuben         | 350000 GPD 350000 GPD                 |
| 1207 | Hammondsport Water                 | Urbana (T)         | Steuben         | 109372 GPD 444800 GPD                 |
| 1208 | Corning Country Club               | Corning (T)        | Steuben         | 31402 GPD 492000 GPD                  |
| 1209 | Corning Inc - Sullivan Park        | Erwin (T)          | Steuben         | 242523 GPD 689000 GPD                 |
| 1210 | Hoeffner Farms - Hornell           | Fremont (T)        | Steuben         | 594000 GPD 1188000                    |
| 1211 | Corning, City                      | Corning (C)        | Steuben         | 1312660 GPD 1437000 GPD               |
| 1212 | Elam Materials                     | Cohocton (T)       | Steuben         | 930596 GPD 1440134 GPD                |
| 1213 | World Kitchen - Pressware Plant    | Corning (C)        | Steuben         | 1654248 GPD 2912136 GPD               |
| 1214 | Dolomite Products - Blades Howard  | Howard (T)         | Steuben         | 873000 GPD 3600000 GPD                |
| 1215 | Hornell, City                      | Fremont (T)        | Steuben         | 2358143 GPD 3806280 GPD               |
| 1216 | Mahany, R&G                        | Dansville (T)      | Steuben         | 1162170 GPD 6062400 GPD               |
| 1217 | Joseph Meyer & Sons                | Fremont (T)        | Steuben         |                                       |
| 1218 | Corwith Farms                      | Southampton (T)    | Suffolk         | 0 GPD 0 GPD                           |
| 1219 | Jane Kulesa                        | Riverhead (T)      | Suffolk         | 0 GPD 0 GPD                           |
| 1220 | Walker McCall, LLC                 | Southold (T)       | Suffolk         | 0 GPM 0 GPM                           |
| 1221 | Plum Island Animal Disease Center  | Southold (T)       | Suffolk         | 58156 GPD 0.183 MGD                   |
| 1222 | Edmund Densieski                   | Southampton (T)    | Suffolk         | 0.3 MGD 1.5 MGD                       |
| 1223 | Ed Zilnicki Farm                   | Riverhead (T)      | Suffolk         | 1.4 MGD 1.9 MGD                       |
| 1224 | Coram Materials Corp               | Brookhaven (T)     | Suffolk         | 2.16 MGD 2.16 MGD                     |
| 1225 | Walter Zilnicki                    | Riverhead (T)      | Suffolk         | 1.25 MGD 2.3 MGD                      |
| 1226 | Martin Sidor Farms Inc             | Southold (T)       | Suffolk         | 6.72 MGD 6.72 MGD                     |
| 1227 | DeLea Sod Farms - MP               | Huntington (T)     | Suffolk         | 4680000 GPD 7 MGD                     |
| 1228 | Dankowski Farms                    | East Hampton (T)   | Suffolk         | 1260 GPM 1260 GPM                     |
| 1229 | Colonial Springs Farms             | Babylon (T)        | Suffolk         | 4000 GPD 5000 GPD                     |
| 1230 | Pellegrini Vineyards               | Southold (T)       | Suffolk         | 212 GPD 6575 GPD                      |
| 1231 | Sommer Nurseries                   | Southampton (T)    | Suffolk         | 12000 GPD 15000 GPD                   |
| 1232 | Reilly Vineyards, LLC              | Southold (T)       | Suffolk         | 45000 GPD 45000 GPD                   |
| 1233 | Van De Wetering Greenhouses Inc    | Riverhead (T)      | Suffolk         | 39840 GPD 65203 GPD                   |
| 1234 | Emma's Garden Growers              | Southold (T)       | Suffolk         | 15708 GPD 80000 GPD                   |
| 1235 | Frederick Malik Farm               | Brookhaven (T)     | Suffolk         | 40500 GPD 81000 GPD                   |
| 1236 | Martha Clara Vineyards Inc         | Riverhead (T)      | Suffolk         | 517 GPD 108000 GPD                    |
| 1237 | Deer Run Farms                     | Brookhaven (T)     | Suffolk         | 30000 GPD 110000 GPD                  |
| 1238 | May's Farm                         | Riverhead (T)      | Suffolk         | 9000 GPD 110000 GPD                   |
| 1239 | Three Ponds Farm                   | Southampton (T)    | Suffolk         | 37859 GPD 112500 GPD                  |
| 1240 | Schlecht Nursery                   | Brookhaven (T)     | Suffolk         | 59587 GPD 118800 GPD                  |
| 1241 | John Tuthill                       | Southold (T)       | Suffolk         |                                       |
| 1242 | Golden Earthworm Organic Farm      | Riverhead (T)      | Suffolk         | 108000 GPD 144000 GPD                 |
| 1243 | John Condzella                     | Riverhead (T)      | Suffolk         | 1627 GPD 150000 GPD                   |
| 1244 | Wowak Farms                        | Riverhead (T)      | Suffolk         | 50000 GPD 150000 GPD                  |
| 1245 | Calverton Links                    | Riverhead (T)      | Suffolk         | 90500 GPD 156666 GPD                  |
| 1246 | Borella's Farm                     | Smithtown (T)      | Suffolk         | 90000 GPD 180000 GPD                  |
| 1247 | Ed Ruland & Son                    | Southold (T)       | Suffolk         | 152308 GPD 180000 GPD                 |
| 1248 | Schmitt Farms - Roanoke Ave        | Riverhead (T)      | Suffolk         | 92476 GPD 190000 GPD                  |
| 1249 | Hamlet Willow Creek Country Club   | Brookhaven (T)     | Suffolk         | 105000 GPD 200000 GPD                 |
| 1250 | F & W Schmitts Farm                | Huntington (T)     | Suffolk         | 19726 GPD 240000 GPD                  |
| 1251 | F & W Schmitts Farm - Yaphank      | Brookhaven (T)     | Suffolk         | 19726 GPD 240000 GPD                  |
| 1252 | Kozak Farms                        | Riverhead (T)      | Suffolk         | 168580 GPD 240000 GPD                 |
| 1253 | Satur Farms                        | Southold (T)       | Suffolk         | 90000 GPD 240000 GPD                  |
| 1254 | Elak Farm                          | Southold (T)       | Suffolk         | 180000 GPD 250000 GPD                 |
| 1255 | Country Gardens Nursery            | Southampton (T)    | Suffolk         | 28246 GPD 254400 GPD                  |
| 1256 | Meyers Farm                        | Riverhead (T)      | Suffolk         | 25890 GPD 270000 GPD                  |
| 1257 | Ty Lloyd Farm                      | Riverhead (T)      | Suffolk         | 140000 GPD 280000 GPD                 |
| 1258 | Perennial Charm Nursery            | Southampton (T)    | Suffolk         | 141666 GPD 288000 GPD                 |
| 1259 | Michael McKay Farms                | Riverhead (T)      | Suffolk         | 200000 GPD 300000 GPD                 |
| 1260 | Sep Farms - Southold               | Southold (T)       | Suffolk         | 142909 GPD 310000 GPD                 |
| 1261 | Ivy Acres Inc                      | Riverhead (T)      | Suffolk         | 143940 GPD 315900 GPD                 |
| 1262 | W Polak Farms                      | Riverhead (T)      | Suffolk         | 220000 GPD 327000 GPD                 |
| 1263 | Sep Farms - East Marion            | Southold (T)       | Suffolk         | 28953 GPD 336000 GPD                  |
| 1264 | St. George's Golf and Country Club | Brookhaven (T)     | Suffolk         | 104138 GPD 355750 GPD                 |
| 1265 | Gajeski Produce                    | Riverhead (T)      | Suffolk         | 35000 GPD 360000 GPD                  |
| 1266 | Wm Wickham Farm                    | Southold (T)       | Suffolk         | 79500 GPD 360000 GPD                  |
| 1267 | Southword Ho Country Club          | Islip (T)          | Suffolk         | 75477 GPD 388000 GPD                  |
| 1268 | Bruno Farms                        | Brookhaven (T)     | Suffolk         | 300000 GPD 400000 GPD                 |
| 1269 | Timber Point Golf Course           | Islip (T)          | Suffolk         | 100000 GPD 400000 GPD                 |
| 1270 | Peat & Son Nursery                 | Southampton (T)    | Suffolk         | 92780 GPD 420000 GPD                  |
| 1271 | Schmitts Farm - Manor Lane         | Riverhead (T)      | Suffolk         | 1150 GPD 420000 GPD                   |
| 1272 | MKZ Farms                          | Riverhead (T)      | Suffolk         | 26281 GPD 432000 GPD                  |
| 1273 | Briermere Farms                    | Riverhead (T)      | Suffolk         | 373714 GPD 450000 GPD                 |
| 1274 | Davis Peach Farm North Orchard LLC | Riverhead (T)      | Suffolk         | 300000 GPD 450000 GPD                 |
| 1275 | Shade Tree Nursery                 | Riverhead (T)      | Suffolk         | 45084 GPD 450000 GPD                  |
| 1276 | Fred Terry Farms                   | Southold (T)       | Suffolk         | 8575 GPD 480000 GPD                   |
| 1277 | Stonebridge Golf & Country Club    | Smithtown (T)      | Suffolk         | 360000 GPD 480000 GPD                 |
| 1278 | Wickham's Fruit Farm LLC           | Southold (T)       | Suffolk         | 30800 GPD 500000 GPD                  |
| 1279 | Kurt Weiss Greenhouses             | Brookhaven (T)     | Suffolk         | 171000 GPD 516666 GPD                 |
| 1280 | Half Hollow Nursery                | Riverhead (T)      | Suffolk         | 317000 GPD 675000 GPD                 |

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| #    | FACILITY NAME                               | FACILITY TOWN/CITY | FACILITY COUNTY | Ave_Day_W_Units_Ave_Max_Day_Units_Max |              |
|------|---|--------------------|-----------------|---------------------------------------|--------------|
| 1281 | Fedun Farms                                 | Riverhead (T)      | Suffolk         | 20000 GPD                             | 684000 GPD   |
| 1282 | Romanski Farms                              | Riverhead (T)      | Suffolk         | 65205 GPD                             | 700000 GPD   |
| 1283 | Sujecks Farms                               | Riverhead (T)      | Suffolk         | 400000 GPD                            | 892000 GPD   |
| 1284 | Anderson Farms                              | Riverhead (T)      | Suffolk         | 325000 GPD                            | 900000 GPD   |
| 1285 | Wind Acres Farm                             | Riverhead (T)      | Suffolk         | 176000 GPD                            | 900000 GPD   |
| 1286 | DeLea Sod Farm - Scorells                   | Huntington (T)     | Suffolk         | 720000 GPD                            | 960000 GPD   |
| 1287 | Woodbourne Nursery                          | Huntington (T)     | Suffolk         | 840000 GPD                            | 1008000 GPD  |
| 1288 | Greenlawn Sod Farms                         | Riverhead (T)      | Suffolk         | 4500 GPD                              | 1150000 GPD  |
| 1289 | Richard M. Flynn                            | Brookhaven (T)     | Suffolk         | 889750 GPD                            | 1257100 GPD  |
| 1290 | Karpinski Farms                             | Riverhead (T)      | Suffolk         | 648000 GPD                            | 1296000 GPD  |
| 1291 | John Hartmann & Sons                        | Riverhead (T)      | Suffolk         | 251112 GPD                            | 1368000 GPD  |
| 1292 | Frank McBride & Sons                        | Southold (T)       | Suffolk         | 960000 GPD                            | 1440000 GPD  |
| 1293 | Hodun Farm                                  | Riverhead (T)      | Suffolk         | 1104000 GPD                           | 1440000 GPD  |
| 1294 | Lewin Farm                                  | Riverhead (T)      | Suffolk         | 750000 GPD                            | 1440000 GPD  |
| 1295 | Harbes Farm                                 | Southold (T)       | Suffolk         | 407934 GPD                            | 1632000 GPD  |
| 1296 | Zilnicki Farms                              | Riverhead (T)      | Suffolk         | 1800000 GPD                           | 1800000 GPD  |
| 1297 | North Fork Nursery                          | Riverhead (T)      | Suffolk         | 631233 GPD                            | 1980000 GPD  |
| 1298 | John Kujawski & Sons                        | Riverhead (T)      | Suffolk         | 328000 GPD                            | 2400000 GPD  |
| 1299 | East Coast Nurseries                        | Riverhead (T)      | Suffolk         | 290012 GPD                            | 4270000 GPD  |
| 1300 | DeLea Sod Farms - Aquabogue                 | Huntington (T)     | Suffolk         | 3708000 GPD                           | 4940000 GPD  |
| 1301 | DeLea Sod Farms - Cal                       | Huntington (T)     | Suffolk         | 3888000 GPD                           | 5100000 GPD  |
| 1302 | Roanoke Sand & Gravel                       | Brookhaven (T)     | Suffolk         | 4307245 GPD                           | 24843450 GPD |
| 1303 | Fosters Farm                                | Southampton (T)    | Suffolk         |                                       |              |
| 1304 | Indian Island Golf Course                   | Riverhead (T)      | Suffolk         |                                       |              |
| 1305 | Jacob Rottkamp & Son                        | Riverhead (T)      | Suffolk         | 1.6 MGD                               |              |
| 1306 | Laurel Links Country Club                   | Southold (T)       | Suffolk         |                                       |              |
| 1307 | Mill Road Farms                             | Riverhead (T)      | Suffolk         | 250000 GPD                            |              |
| 1308 | Pattys Berries & Bunches                    | Southold (T)       | Suffolk         |                                       |              |
| 1309 | Round Swamp Farm                            | East Hampton (T)   | Suffolk         | 40000 GPD                             |              |
| 1310 | West Sayville                               | Islip (T)          | Suffolk         |                                       |              |
| 1311 | Roscoe-Rockland Water District              | Rockland (T)       | Sullivan        | 0.092 MGD                             | 0.207 MGD    |
| 1312 | Woodbourne Correctional Facility            | Fallsburg (T)      | Sullivan        | 0.185 MGD                             | 0.268 MGD    |
| 1313 | Woodridge, Vg                               | Fallsburg (T)      | Sullivan        | 0.323 MGD                             | 0.407 MGD    |
| 1314 | Livingston Manor Water                      | Rockland (T)       | Sullivan        | 0.389 MGD                             | 0.679 MGD    |
| 1315 | Fallsburg-WHO-LS-SF                         | Fallsburg (T)      | Sullivan        | 1.404 MGD                             | 3.335 MGD    |
| 1316 | New York City DEP                           | Neversink (T)      | Sullivan        | 1078 MGD                              | 1418 MGD     |
| 1317 | Catskill State Fish Hatchery                | Rockland (T)       | Sullivan        | 2640 GPM                              | 3000 GPM     |
| 1318 | SH Water Company (Sackett Lake Estates)     | Thompson (T)       | Sullivan        | 3425 GPD                              | 4903 GPD     |
| 1319 | Camp Ohr Shalom                             | Fallsburg (T)      | Sullivan        | 12000 GPD                             | 12000 GPD    |
| 1320 | Spring Glen Water Co                        | Mamakating (T)     | Sullivan        | 9000 GPD                              | 13500 GPD    |
| 1321 | Cold Spring Water District                  | Thompson (T)       | Sullivan        | 13582 GPD                             | 40800 GPD    |
| 1322 | Kinnebrook Mobile Home Park                 | Thompson (T)       | Sullivan        | 54183 GPD                             | 82600 GPD    |
| 1323 | Tetz & Sons - Mongaup                       | Thompson (T)       | Sullivan        | 97700 GPD                             | 136000 GPD   |
| 1324 | Kiamasha Artesian Spring Water              | Thompson (T)       | Sullivan        | 112500 GPD                            | 136645 GPD   |
| 1325 | Crystal Water Supply Co                     | Thompson (T)       | Sullivan        | 86310 GPD                             | 199300 GPD   |
| 1326 | Mountaindale Water District                 | Fallsburg (T)      | Sullivan        | 51740 GPD                             | 213000 GPD   |
| 1327 | White Sulphur Springs Water District        | Liberty (T)        | Sullivan        | 43000 GPD                             | 218000 GPD   |
| 1328 | Narrowsburg Water District                  | Tusten (T)         | Sullivan        | 74681 GPD                             | 229200 GPD   |
| 1329 | Davos / Riverside Water System              | Fallsburg (T)      | Sullivan        | 65329 GPD                             | 244000 GPD   |
| 1330 | Lochmor Golf Course                         | Fallsburg (T)      | Sullivan        | 21278 GPD                             | 250000 GPD   |
| 1331 | Callicoon Water Company                     | Delaware (T)       | Sullivan        | 137764 GPD                            | 298000 GPD   |
| 1332 | Grossinger Country Club                     | Liberty (T)        | Sullivan        | 17615 GPD                             | 300000 GPD   |
| 1333 | Tarry Brae Golf Course (South Fallsburgh)   | Fallsburg (T)      | Sullivan        | 27610 GPD                             | 300000 GPD   |
| 1334 | Wurtsboro, Vg                               | Mamakating (T)     | Sullivan        | 204198 GPD                            | 480800 GPD   |
| 1335 | Stevensville Water District                 | Liberty (T)        | Sullivan        | 285000 GPD                            | 788000 GPD   |
| 1336 | Liberty, Vg                                 | Liberty (T)        | Sullivan        | 667000 GPD                            | 789000 GPD   |
| 1337 | Emerald Green Louise Marie Water Co         | Thompson (T)       | Sullivan        | 434613 GPD                            | 951399 GPD   |
| 1338 | Callanan - Cochection Site                  | Cochection (T)     | Sullivan        | 102438 GPD                            | 1602000 GPD  |
| 1339 | Callanan - Bridgeville Site                 | Thompson (T)       | Sullivan        | 589953 GPD                            | 3170376 GPD  |
| 1340 | JD Water Company Inc                        | Bethel (T)         | Sullivan        |                                       |              |
| 1341 | Jeffersonville, Vg                          | Callicoon (T)      | Sullivan        |                                       |              |
| 1342 | Nichols, Tn                                 | Nichols (T)        | Tioga           | 4987 GPD                              | 0.05 MGD     |
| 1343 | Owego, Tn Water District #1                 | Owego (T)          | Tioga           | 0.048 MGD                             | 0.165 MGD    |
| 1344 | Owego, Tn Water District #5 (RT 38)         | Owego (T)          | Tioga           | 0.049 MGD                             | 0.187 MGD    |
| 1345 | Marshland Links                             | Owego (T)          | Tioga           | 0.18 MGD                              | 0.21 MGD     |
| 1346 | Owego, Tn Water District #2                 | Owego (T)          | Tioga           | 0.196 MGD                             | 0.363 MGD    |
| 1347 | Owego, Tn Water District #4                 | Owego (T)          | Tioga           | 0.154 MGD                             | 0.368 MGD    |
| 1348 | Owego, Tn Water District #3                 | Owego (T)          | Tioga           | 0.104 MGD                             | 0.424 MGD    |
| 1349 | Former IBM - Owego                          | Owego (T)          | Tioga           | 0.421 MGD                             | 0.653 MGD    |
| 1350 | Waverly, Vg                                 | Barton (T)         | Tioga           |                                       | 1.1 MGD      |
| 1351 | United Water Nichols/Owego                  | Nichols (T)        | Tioga           | 1.371 MGD                             | 2.123 MGD    |
| 1352 | AA Dairy                                    | Candor (T)         | Tioga           | 38500 GPD                             | 41800 GPD    |
| 1353 | Candor, Vg                                  | Candor (T)         | Tioga           | 107022 GPD                            | 161000 GPD   |
| 1354 | Newark Valley, Vg                           | Newark Valley (T)  | Tioga           | 110924 GPD                            | 324633 GPD   |
| 1355 | Owego, Tn                                   | Owego (T)          | Tioga           |                                       |              |
| 1356 | Cornell University - Chilled Water Plant 1  | Ithaca (C)         | Tompkins        | 0                                     | 0            |
| 1357 | Cargill Salt - Cayuga Mine                  | Lansing (T)        | Tompkins        | 0.203 MGD                             | 0.397 MGD    |
| 1358 | Cornell Research Ponds                      | Dryden (T)         | Tompkins        | 1 MGD                                 | 1 MGD        |
| 1359 | Cornell University - Water Filtration Plant | Ithaca (T)         | Tompkins        | 1.514 MGD                             | 2.692 MGD    |
| 1360 | Southern Cayuga Lake Intermunicipal Water   | Lansing (T)        | Tompkins        | 2.814 MGD                             | 4.89 MGD     |

Water Withdrawal Registrations 2012, <http://nywateraction.org/withdrawals/2012waterregis.xlsx>

| #    | FACILITY NAME                                | FACILITY TOWN/CITY | FACILITY COUNTY | Ave_Day_W_Units_Ave_Max_Day_Units_Max |             |
|------|--|--------------------|-----------------|---------------------------------------|-------------|
| 1361 | Ithaca, City                                 | Ithaca (T)         | Tompkins        | 3.96 MGD                              | 5.64 MGD    |
| 1362 | Cornell University - Heat Exchange Facility  | Ithaca (T)         | Tompkins        | 19 MGD                                | 45 MGD      |
| 1363 | AES Cayuga (Cayuga Operating Company)        | Lansing (T)        | Tompkins        | 214.12 MGD                            | 243.36 MGD  |
| 1364 | Carey Farm                                   | Groton (T)         | Tompkins        | 7500 GPD                              | 10000 GPD   |
| 1365 | Cedar View Golf Course                       | Lansing (T)        | Tompkins        | 368 GPD                               | 24000 GPD   |
| 1366 | Hardie Farms                                 | Lansing (T)        | Tompkins        | 50066 GPD                             | 61000 GPD   |
| 1367 | Saunders - Ithaca Concrete                   | Dryden (T)         | Tompkins        | 20042 GPD                             | 144000 GPD  |
| 1368 | Cornell University - Ag. Research Facilities | Ithaca (C)         | Tompkins        | 30821 GPD                             | 146319 GPD  |
| 1369 | Newfield, Tn                                 | Newfield (T)       | Tompkins        | 137099 GPD                            | 285020 GPD  |
| 1370 | Dryden, Vg                                   | Dryden (T)         | Tompkins        | 213000 GPD                            | 410000 GPD  |
| 1371 | Groton, Vg                                   | Groton (T)         | Tompkins        | 293000 GPD                            | 585000 GPD  |
| 1372 | Gill Corn Farms                              | Hurley (T)         | Ulster          | 0                                     | 0           |
| 1373 | Robert Davenport & Sons                      | Marbletown (T)     | Ulster          | 0 GPD                                 | 0 GPD       |
| 1374 | Tilcon - Cedar Cliff Quarry                  | Marlborough (T)    | Ulster          | 0 GPD                                 | 0 GPD       |
| 1375 | WH Walker & Son                              | Lloyd (T)          | Ulster          | 0 GPD                                 | 0 GPD       |
| 1376 | TechCity (IBM Kingston)                      | Ulster (T)         | Ulster          | 0.071 MGD                             | 0.112 MGD   |
| 1377 | Wallkill (Watchtower Farms I)                | Shawangunk (T)     | Ulster          | 0.123 MGD                             | 0.187 MGD   |
| 1378 | Rosendale, Tn                                | Rosendale (T)      | Ulster          | 0.125 MGD                             | 0.195 MGD   |
| 1379 | Watchtower Farms                             | Shawangunk (T)     | Ulster          | 0.0095 MGD                            | 0.239 MGD   |
| 1380 | Wallkill Correctional Facility               | Shawangunk (T)     | Ulster          | 0.02 MGD                              | 0.46 MGD    |
| 1381 | Ellenville, Vg                               | Wawarsing (T)      | Ulster          | 0.82 MGD                              | 0.91 MGD    |
| 1382 | Highland Water District                      | Lloyd (T)          | Ulster          | 0.547 MGD                             | 2.66 MGD    |
| 1383 | Northeast Solite Corp                        | Saugerties (T)     | Ulster          | 1.5 MGD                               | 3.7 MGD     |
| 1384 | Kingston City Water District                 | Woodstock (T)      | Ulster          | 4.5 MGD                               | 4.9 MGD     |
| 1385 | Eastern Correctional Facility                | Wawarsing (T)      | Ulster          | 380 GPM                               | 571 GPM     |
| 1386 | Minard & Sons                                | Plattekill (T)     | Ulster          |                                       | 2200 GPD    |
| 1387 | Pioneer Fruit Farms                          | Marlborough (T)    | Ulster          | 5000 GPD                              | 8000 GPD    |
| 1388 | Pioneer Water Bottling Co                    | Marlborough (T)    | Ulster          | 12000 GPD                             | 15000 GPD   |
| 1389 | Shawangunk Bulk Spring Water                 | Shawangunk (T)     | Ulster          | 3337 GPD                              | 18000       |
| 1390 | Mohonk Golf Course                           | New Paltz (T)      | Ulster          | 21600 GPD                             | 21600 GPD   |
| 1391 | Lais Farm                                    | Marlborough (T)    | Ulster          | 21600 GPD                             | 43200 GPD   |
| 1392 | Highland Residential Center                  | Lloyd (T)          | Ulster          | 34100 GPD                             | 45500 GPD   |
| 1393 | Frank Tantillo & Son                         | Gardiner (T)       | Ulster          | 30000 GPD                             | 50000 GPD   |
| 1394 | Dressel Farms, LLC                           | New Paltz (T)      | Ulster          | 1933 GPD                              | 50400 GPD   |
| 1395 | Halcyon Park Water District                  | Ulster (T)         | Ulster          | 26000 GPD                             | 62000 GPD   |
| 1396 | Hudson Valley Resort                         | Rochester (T)      | Ulster          | 60000 GPD                             | 120000 GPD  |
| 1397 | Pine Hill Water Co                           | Shandaken (T)      | Ulster          | 122400 GPD                            | 122400 GPD  |
| 1398 | Davenport Farms                              | Marbletown (T)     | Ulster          | 24000 GPD                             | 132000 GPD  |
| 1399 | Kerhonkson Water District                    | Wawarsing (T)      | Ulster          | 59808 GPD                             | 156000 GPD  |
| 1400 | Wiltwyck Golf Club                           | Ulster (T)         | Ulster          | 22417 GPD                             | 184000 GPD  |
| 1401 | Rolling Meadows Water Corp (Hurley Water     | Hurley (T)         | Ulster          | 167214 GPD                            | 200000 GPD  |
| 1402 | Saunderskill Farm                            | Rochester (T)      | Ulster          | 100000 GPD                            | 200000 GPD  |
| 1403 | Napanoch Water District                      | Wawarsing (T)      | Ulster          | 99899 GPD                             | 223000 GPD  |
| 1404 | Truncali Farms                               | Marlborough (T)    | Ulster          | 240000 GPD                            | 240000 GPD  |
| 1405 | Troncillito Brother's Inc.                   | Marlborough (T)    | Ulster          | 34076 GPD                             | 250000 GPD  |
| 1406 | Pavero Cold Storage                          | Lloyd (T)          | Ulster          | 120000 GPD                            | 350000 GPD  |
| 1407 | Mombaccus Excavating - Amanda Dr             | Rochester (T)      | Ulster          | 207000 GPD                            | 360000 GPD  |
| 1408 | Mombaccus Excavating Inc                     | Rochester (T)      | Ulster          | 207000 GPD                            | 360000 GPD  |
| 1409 | Shawangunk, Tn (Wallkill Water District)     | Shawangunk (T)     | Ulster          | 147050 GPD                            | 399400 GPD  |
| 1410 | Minard Farms                                 | Lloyd (T)          | Ulster          | 35000 GPD                             | 432000 GPD  |
| 1411 | Port Ewen Water District                     | Esopus (T)         | Ulster          | 310000 GPD                            | 450000 GPD  |
| 1412 | Taliaferro Farms                             | New Paltz (T)      | Ulster          | 348750 GPD                            | 465000 GPD  |
| 1413 | Craneville - Eastern Quarry                  | Kingston (T)       | Ulster          | 504000 GPD                            | 504000 GPD  |
| 1414 | Woodstock, Tn                                | Woodstock (T)      | Ulster          | 137000 GPD                            | 517000 GPD  |
| 1415 | Wilckow Orchards LLC                         | Lloyd (T)          | Ulster          | 22027 GPD                             | 600000 GPD  |
| 1416 | Hepworth Farm                                | Marlborough (T)    | Ulster          | 295833 GPD                            | 806452 GPD  |
| 1417 | Ulster Water District, Tn                    | Ulster (T)         | Ulster          | 770000 GPD                            | 1363000 GPD |
| 1418 | New Paltz, Vg                                | New Paltz (T)      | Ulster          | 773451 GPD                            | 1471000 GPD |
| 1419 | Fino Farms                                   | Marlborough (T)    | Ulster          | 132876 GPD                            | 1586000 GPD |
| 1420 | Saugerties, Vg                               | Saugerties (T)     | Ulster          | 961870 GPD                            | 1659000 GPD |
| 1421 | Greiner Bros Farms Inc                       | Marlborough (T)    | Ulster          | 192812 GPD                            | 2343892 GPD |
| 1422 | Callanan - East Kingston Site                | Ulster (T)         | Ulster          | 1144159 GPD                           | 3401391 GPD |
| 1423 | Callanan - Port Ewen Quarry                  | Esopus (T)         | Ulster          | 249773 GPD                            | 3515400 GPD |
| 1424 | A Zimmerman & Son                            | Lloyd (T)          | Ulster          |                                       |             |
| 1425 | Hudson Valley Water Co                       | Hurley (T)         | Ulster          | 56168 GPD                             |             |
| 1426 | J Anzalone Orchards                          | Lloyd (T)          | Ulster          |                                       |             |
| 1427 | Jaway Farms                                  | Rochester (T)      | Ulster          |                                       |             |
| 1428 | M G Hurd and Sons                            | Lloyd (T)          | Ulster          | 59660 GPD                             |             |
| 1429 | Stone Dock Golf Course                       | Marbletown (T)     | Ulster          |                                       |             |
| 1430 | International Paper - Corinth                | Lake Luzerne (T)   | Warren          | 0 MGD                                 | 0 MGD       |
| 1431 | Peckham Materials - Chestertown              | Chester (T)        | Warren          | 0.528 MGD                             | 0.528 MGD   |
| 1432 | Indeck - Corinth Energy Center               | Lake Luzerne (T)   | Warren          | 0.658 MGD                             | 1.091 MGD   |
| 1433 | Lake George, Vg                              | Lake George (T)    | Warren          | 0.72 MGD                              | 1.4 MGD     |
| 1434 | Jointa Galusha, LLC - Glens Falls Quarry     | Glens Falls (C)    | Warren          | 0.834 MGD                             | 1.44 MGD    |
| 1435 | Glens Falls, City                            | Queensbury (T)     | Warren          | 2.7 MGD                               | 3.4 MGD     |
| 1436 | Queensbury Water District                    | Queensbury (T)     | Warren          | 5.209 MGD                             | 12.13 MGD   |
| 1437 | Gore Mountain - PWS                          | Johnsburg (T)      | Warren          | 2.35 MGD                              | 19.79 GPM   |
| 1438 | Gore Mountain - Snow                         | Johnsburg (T)      | Warren          | 4.54 MGD                              | 5000 GPM    |
| 1439 | Shore Colony Water District                  | Queensbury (T)     | Warren          | 4364 GPD                              | 18400 GPD   |
| 1440 | Finch Paper LLC                              | Glens Falls (C)    | Warren          | 19604 GPM                             | 27810 GPM   |



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| #    | FACILITY NAME                             | FACILITY TOWN/CITY | FACILITY COUNTY | Ave_Day_WUnits_Ave_Max_Day_WUnits_Max |             |
|------|---|--------------------|-----------------|---------------------------------------|-------------|
| 1441 | Arcady Bay Association                    | Hague (T)          | Warren          | 9300 GPD                              | 33600 GPD   |
| 1442 | Double H Ranch                            | Lake Luzerne (T)   | Warren          | 31500 GPD                             | 40000 GPD   |
| 1443 | Diamond Point Water District              | Lake George (T)    | Warren          | 37440 GPD                             | 66050 GPD   |
| 1444 | Silver Bay Association                    | Hague (T)          | Warren          | 30000 GPD                             | 119000 GPD  |
| 1445 | Word of Life Ranch / Bible Institute      | Chester (T)        | Warren          | 27828 GPD                             | 119600 GPD  |
| 1446 | Pottersville Water District               | Chester (T)        | Warren          | 30000 GPD                             | 132000 GPD  |
| 1447 | Chestertown Water District                | Chester (T)        | Warren          | 80000 GPD                             | 305000 GPD  |
| 1448 | Glens Falls Country Club                  | Queensbury (T)     | Warren          | 45353 GPD                             | 310000 GPD  |
| 1449 | North Creek Water District                | Johnsburg (T)      | Warren          | 153032 GPD                            | 397500 GPD  |
| 1450 | Bolton Landing, City                      | Bolton (T)         | Warren          | 198127 GPD                            | 550834 GPD  |
| 1451 | Lake Luzerne Water District               | Lake Luzerne (T)   | Warren          | 341000 GPD                            | 595000 GPD  |
| 1452 | Warrensburg Water District                | Warrensburg (T)    | Warren          | 414532 GPD                            | 978000 GPD  |
| 1453 | Hollingsworth & Vose Co - Greenwich Faci  | Easton (T)         | Washington      | 0.261 MGD                             | 0.66 MGD    |
| 1454 | Great Meadow Correctional Facility        | Whitehall (T)      | Washington      | 0.431 MGD                             | 0.69 MGD    |
| 1455 | Jointa Galusha, LLC - Hartford Quarry     | Hartford (T)       | Washington      | 45000 GPD                             | 0.864 MGD   |
| 1456 | Granville, Vg                             | Granville (T)      | Washington      | 0.56 MGD                              | 0.889 MGD   |
| 1457 | Peckham Materials - Hudson Falls          | Kingsbury (T)      | Washington      | 1.02 MGD                              | 1.02 MGD    |
| 1458 | Willard Mountain                          | Easton (T)         | Washington      | 0.576 MGD                             | 1.152 MGD   |
| 1459 | Hollingsworth & Vose Co - Easton Facility | Easton (T)         | Washington      | 2.91 MGD                              | 3.59 MGD    |
| 1460 | Irving Tissue, Inc                        | Fort Edward (T)    | Washington      | 3.012 MGD                             | 5.28 MGD    |
| 1461 | Wheelabrator Hudson Falls LLC             | Kingsbury (T)      | Washington      | 23.496 MGD                            | 25.79 MGD   |
| 1462 | Cornerest Farm                            | Hebron (T)         | Washington      | 643 GPD                               | 731 GPD     |
| 1463 | Brookside Farm                            | Argyle (T)         | Washington      | 800 GPD                               | 1000 GPD    |
| 1464 | Fullerton Farm                            | Argyle (T)         | Washington      | 3880 GPD                              | 4100 GPD    |
| 1465 | Happenchance Farm                         | White Creek (T)    | Washington      | 500 GPD                               | 6000 GPD    |
| 1466 | Moses Farm                                | White Creek (T)    | Washington      | 17840 GPD                             | 21000 GPD   |
| 1467 | Tiashoke Farm, LLC                        | Cambridge (T)      | Washington      | 28894 GPD                             | 62645 GPD   |
| 1468 | Ideal Dairy Farms Inc                     | Kingsbury (T)      | Washington      | 52250 GPD                             | 66500 GPD   |
| 1469 | Pleasant Valley Farm - Argyle             | Argyle (T)         | Washington      | 4785 GPD                              | 87200 GPD   |
| 1470 | Windy Hills Golf Course                   | Easton (T)         | Washington      |                                       | 94000 GPD   |
| 1471 | Walker Farms - Fort Ann                   | Fort Ann (T)       | Washington      | 97500 GPD                             | 113000 GPD  |
| 1472 | Allenwaite Farms, Inc                     | Easton (T)         | Washington      | 102687 GPD                            | 117480 GPD  |
| 1473 | Woody Hill Farms                          | Salem (T)          | Washington      | 115916 GPD                            | 123053 GPD  |
| 1474 | Salem, Vg                                 | Salem (T)          | Washington      | 39651 GPD                             | 137040      |
| 1475 | B J Farms                                 | Easton (T)         | Washington      | 123556 GPD                            | 139355 GPD  |
| 1476 | GE - Hudson Falls                         | Kingsbury (T)      | Washington      | 121830 GPD                            | 182465 GPD  |
| 1477 | Jointa Galusha, LLC - Pattens Mills       | Fort Ann (T)       | Washington      | 15964 GPD                             | 227770 GPD  |
| 1478 | Greenwich, Vg                             | Easton (T)         | Washington      | 150000 GPD                            | 303000 GPD  |
| 1479 | Fort Ann, Vg                              | Fort Ann (T)       | Washington      | 93604 GPD                             | 487000 GPD  |
| 1480 | Hand Melon Farm LLC                       | Easton (T)         | Washington      | 300000 GPD                            | 500000 GPD  |
| 1481 | Whitehall, Vg                             | Dresden (T)        | Washington      | 625000 GPD                            | 795000 GPD  |
| 1482 | Gardenworks Farm                          | Salem (T)          | Washington      |                                       |             |
| 1483 | Polevalley Players Club                   | Hartford (T)       | Washington      |                                       |             |
| 1484 | Sheldon Farms                             | Salem (T)          | Washington      |                                       |             |
| 1485 | Slack Hollow Farm                         | Argyle (T)         | Washington      | 3000 GPD                              |             |
| 1486 | Mizkan Americas, Inc                      | Sodus (T)          | Wayne           | 0.124 MGD                             | 0.179 MGD   |
| 1487 | Rose-North Rose Water District            | Rose (T)           | Wayne           | 0.292 MGD                             | 0.705 MGD   |
| 1488 | Lyons, Vg                                 | Lyons (T)          | Wayne           |                                       | 0.802 MGD   |
| 1489 | Mason Farms                               | Williamson (T)     | Wayne           | 15000 GPD                             | 1 MGD       |
| 1490 | Hanson Aggregates - Butler Quarry         | Butler (T)         | Wayne           | 0.4 MGD                               | 1.28 MGD    |
| 1491 | Ontario Benefit Area #1                   | Ontario (T)        | Wayne           | 1.955 MGD                             | 3.396 MGD   |
| 1492 | Williamson, Tn                            | Williamson (T)     | Wayne           | 1.55 MGD                              | 3.41 MGD    |
| 1493 | RE Ginna Nuclear Power Plant              | Ontario (T)        | Wayne           | 427 MGD                               | 511 MGD     |
| 1494 | Bri-ton Farms                             | Huron (T)          | Wayne           | 1120 GPD                              | 5000 GPD    |
| 1495 | Wayne County Eggs                         | Wolcott (T)        | Wayne           | 50233 GPD                             | 57484 GPD   |
| 1496 | Fleischmann's Vinegar Co                  | Rose (T)           | Wayne           | 35613 GPD                             | 60000 GPD   |
| 1497 | KS Dathyn Farms                           | Sodus (T)          | Wayne           | 15000 GPD                             | 100000 GPD  |
| 1498 | Orbaker's Fruit Farm                      | Williamson (T)     | Wayne           | 5995 GPD                              | 111907 GPD  |
| 1499 | Abe Dathyn Farms                          | Sodus (T)          | Wayne           | 4390 GPD                              | 120000 GPD  |
| 1500 | Savannah Water District #1                | Savannah (T)       | Wayne           | 49953 GPD                             | 141000 GPD  |
| 1501 | Brookwoods Country Club                   | Ontario (T)        | Wayne           | 27000 GPD                             | 150000 GPD  |
| 1502 | Merrell Farms, LLC                        | Butler (T)         | Wayne           | 152875 GPD                            | 166359 GPD  |
| 1503 | Blue Heron Hills Country Club             | Walworth (T)       | Wayne           | 57884 GPD                             | 200000 GPD  |
| 1504 | Cahoon Farms Inc                          | Huron (T)          | Wayne           | 142723 GPD                            | 210083 GPD  |
| 1505 | Belle Terre Farm                          | Sodus (T)          | Wayne           | 15780 GPD                             | 216000 GPD  |
| 1506 | Clyde, Vg                                 | Galen (T)          | Wayne           | 205000 GPD                            | 324000 GPD  |
| 1507 | Wayne Hills Country Club                  | Galen (T)          | Wayne           | 131922 GPD                            | 350000 GPD  |
| 1508 | Johnson Potato Farm                       | Williamson (T)     | Wayne           |                                       | 432000 GPD  |
| 1509 | Wolcott, Vg                               | Wolcott (T)        | Wayne           | 214000 GPD                            | 707000 GPD  |
| 1510 | Brantling Ski Slopes                      | Arcadia (T)        | Wayne           | 75269 GPD                             | 727272 GPD  |
| 1511 | Sodus Bay Heights Golf Club               | Sodus (T)          | Wayne           | 42155 GPD                             | 859000 GPD  |
| 1512 | Dolomite Products - Cleason Palmer        | Palmyra (T)        | Wayne           | 768000 GPD                            | 2304000 GPD |
| 1513 | Dolomite Products - Greystone Golf Club   | Walworth (T)       | Wayne           | 0.087 MGD                             |             |
| 1514 | Dolomite Products - Walworth Quarry       | Walworth (T)       | Wayne           | 0.493 MGD                             |             |
| 1515 | White Plains, City                        | White Plains (C)   | Westchester     | 0 GPD                                 | 0 GPD       |
| 1516 | Camp Smith, NY Army National Guard        | Cortlandt (T)      | Westchester     | 0.0201391 MGD                         | 0.0929 MGD  |
| 1517 | IBM Somers                                | Somers (T)         | Westchester     | 0.027 MGD                             | 0.151 MGD   |
| 1518 | Metropolis Country Club                   | Greenburgh (T)     | Westchester     | 39029 GPD                             | 0.224 MGD   |
| 1519 | St. Andrew's Golf Club                    | Greenburgh (T)     | Westchester     | 39785 GPD                             | 0.28 MGD    |
| 1520 | Bedford Hills Correctional Facility       | Bedford (T)        | Westchester     | 0.3 MGD                               | 0.334 MGD   |

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|------|--|--------------------|-----------------|-----------------|-----------------------|
| 1521 | North Castle Water District #2               | North Castle (T)   | Westchester     | 0.137 MGD       | 0.35 MGD              |
| 1522 | Scarsdale Golf Club                          | Greenburgh (T)     | Westchester     | 0.045 MGD       | 0.4 MGD               |
| 1523 | Bedford Golf and Tennis Club                 | Bedford (T)        | Westchester     | 33410 GPD       | 0.5 MGD               |
| 1524 | Heritage Waterworks                          | Somers (T)         | Westchester     | 0.348 MGD       | 0.56 MGD              |
| 1525 | North Castle Water District #4               | North Castle (T)   | Westchester     | 0.334 MGD       | 0.673 MGD             |
| 1526 | Bedford Consolidated Improvement District    | Bedford (T)        | Westchester     | 0.65 MGD        | 1.33 MGD              |
| 1527 | Winged Foot Golf Club                        | Mamaroneck (T)     | Westchester     | 116219 GPD      | 4.12 MGD              |
| 1528 | Ossining, Vg                                 | Ossining (T)       | Westchester     | 3.2 MGD         | 4.2 MGD               |
| 1529 | Peekskill, City                              | Peekskill (C)      | Westchester     | 4.197 MGD       | 5.61 MGD              |
| 1530 | American Sugar Refining Inc.                 | Yonkers (C)        | Westchester     | 7.5 MGD         | 12.3 MGD              |
| 1531 | Wheelabrator Westchester                     | Peekskill (C)      | Westchester     | 46 MGD          | 49 MGD                |
| 1532 | Indian Point 2&3 LLCs                        | Cortlandt (T)      | Westchester     | 2024 MGD        | 2489 MGD              |
| 1533 | Cale Farms Water Works                       | Somers             | Westchester     | 9300 GPD        | 21700 GPD             |
| 1534 | Century Country Club                         | Harrison (T)       | Westchester     | 48806 GPD       | 70280 GPD             |
| 1535 | Amawalk - Shenorock Water District           | Somers (T)         | Westchester     | GPD             | 74100 GPD             |
| 1536 | Michelle Estates                             | Lewisboro (T)      | Westchester     | 40791 GPD       | 106700 GPD            |
| 1537 | Salem Golf Club                              | North Salem (T)    | Westchester     | 11989 GPD       | 120000 GPD            |
| 1538 | Leewood Golf Club                            | Eastchester (T)    | Westchester     | 40046 GPD       | 128000 GPD            |
| 1539 | Pound Ridge Golf Club                        | Pound Ridge (T)    | Westchester     | 115500 GPD      | 135000 GPD            |
| 1540 | Westchester Hills Golf Club                  | White Plains (C)   | Westchester     | 47321 GPD       | 160000 GPD            |
| 1541 | Greenbriar/Somerdel Water Works              | Somers (T)         | Westchester     | 47500 GPD       | 160300 GPD            |
| 1542 | Lake Isle Country Club (Town of Eastchester) | Eastchester (T)    | Westchester     | 50015 GPD       | 200000 GPD            |
| 1543 | Sleepy Hollow Country Club                   | Ossining (T)       | Westchester     | 85749 GPD       | 200000 GPD            |
| 1544 | Brynwood Golf & Country Club                 | North Castle (T)   | Westchester     | 50500 GPD       | 206000 GPD            |
| 1545 | Apawamis Club                                | Rye (C)            | Westchester     | 21000 GPD       | 250000 GPD            |
| 1546 | Willow Ridge Country Club                    | Harrison (T)       | Westchester     | 58125 GPD       | 250000 GPD            |
| 1547 | Mount Kisco Country Club                     | Mount Kisco (T)    | Westchester     | 137574 GPD      | 258320 GPD            |
| 1548 | Hollow Brook Golf Club                       | Cortlandt (T)      | Westchester     | 35930 GPD       | 260000 GPD            |
| 1549 | Elmwood Country Club                         | Greenburgh (T)     | Westchester     | 147787 GPD      | 270000 GPD            |
| 1550 | Hudson National Golf Club                    | Cortlandt (T)      | Westchester     | 100000 GPD      | 280000 GPD            |
| 1551 | Fenway Golf Club                             | Scarsdale (T)      | Westchester     | 39203 GPD       | 290000 GPD            |
| 1552 | Sunningdale Country Club                     | Greenburgh (T)     | Westchester     | 30000 GPD       | 300000 GPD            |
| 1553 | Blind Brook Club                             | Rye (T)            | Westchester     | 26027 GPD       | 320000 GPD            |
| 1554 | Doral Arrowwood                              | Rye (T)            | Westchester     | 34560 GPD       | 321718 GPD            |
| 1555 | Rockrimmon Country Club                      | Pound Ridge (T)    | Westchester     | 81550 GPD       | 340000 GPD            |
| 1556 | Pelham Country Club                          | Pelham (T)         | Westchester     | 14383 GPD       | 350000 GPD            |
| 1557 | Quaker Ridge Golf Club                       | Scarsdale (T)      | Westchester     | 44107 GPD       | 350000 GPD            |
| 1558 | Siwanoy Country Club                         | Eastchester (T)    | Westchester     | 44429 GPD       | 355000 GPD            |
| 1559 | Purchase Golf Club                           | Purchase           | Westchester     | 100000 GPD      | 400000 GPD            |
| 1560 | Waccabuc Country Club                        | Lewisboro (T)      | Westchester     | 99421 GPD       | 422341 GPD            |
| 1561 | Trump National Golf Club Westchester         | Ossining (T)       | Westchester     | 131940 GPD      | 433525 GPD            |
| 1562 | Anglebrook Golf Club                         | Somers (T)         | Westchester     | 145958 GPD      | 450000 GPD            |
| 1563 | Brae Burn Country Club                       | Harrison (T)       | Westchester     | 55479 GPD       | 450000 GPD            |
| 1564 | Glen Arbor Golf Club                         | Bedford (T)        | Westchester     | 243646 GPD      | 466290 GPD            |
| 1565 | Westchester Country Club                     | Harrison (T)       | Westchester     | 390000 GPD      | 500000 GPD            |
| 1566 | Mount Kisco, Vg                              | Bedford (T)        | Westchester     | 1360370 GPD     | 1563000 GPD           |
| 1567 | Old Oaks Country Club                        | Harrison (T)       | Westchester     | 19566 GPD       |                       |
| 1568 | Somers Point Country Club                    | Somers (T)         | Westchester     | 97777 GPD       |                       |
| 1569 | Arcade, Vg                                   | Arcade (T)         | Wyoming         | 0.54 MGD        | 0.6 MGD               |
| 1570 | Mount Morris, Vg                             | Perry (T)          | Wyoming         | 0.53 MGD        | 1 MGD                 |
| 1571 | Dale Brine Field                             | Middlebury (T)     | Wyoming         | 0.776 MGD       | 1.674 MGD             |
| 1572 | Morton Salt, Inc                             | Gainesville (T)    | Wyoming         | 9.84 MGD        | 10.28 MGD             |
| 1573 | Texas Brine Co                               | Middlebury (T)     | Wyoming         | 105 GPM         | 120 GPM               |
| 1574 | True Farms                                   | Perry (T)          | Wyoming         | 34800 GPD       | 40300 GPD             |
| 1575 | Swiss Valley Farms                           | Warsaw (T)         | Wyoming         |                 | 50000 GPD             |
| 1576 | North Java Water District                    | Java (T)           | Wyoming         | 34633 GPD       | 70522 GPD             |
| 1577 | Southview Farm LP                            | Castile (T)        | Wyoming         | 78000 GPD       | 90000 GPD             |
| 1578 | Van Slyke's Dairy Farm                       | Pike (T)           | Wyoming         | 60000 GPD       | 100000 GPD            |
| 1579 | Pike, Tn                                     | Pike (T)           | Wyoming         | 38340 GPD       | 112757 GPD            |
| 1580 | Table Rock Farm                              | Castile (T)        | Wyoming         | 46180 GPD       | 114240 GPD            |
| 1581 | Synergy, LLC                                 | Covington (T)      | Wyoming         | 108000 GPD      | 151500 GPD            |
| 1582 | Indeck - Silver Springs Energy Center        | Gainesville (T)    | Wyoming         | 3792 GPD        | 185000 GPD            |
| 1583 | Silver Springs, Vg                           | Gainesville (T)    | Wyoming         | 94000 GPD       | 219000 GPD            |
| 1584 | Silver Lake Country Club                     | Castile (T)        | Wyoming         | 22685 GPD       | 432000 GPD            |
| 1585 | Akron, Vg                                    | Bennington (T)     | Wyoming         | 411465 GPD      | 646000 GPD            |
| 1586 | Warsaw, Vg                                   | Gainesville (T)    | Wyoming         | 350000 GPD      | 850000 GPD            |
| 1587 | Attica Water Plant                           | Attica (T)         | Wyoming         | 933000 GPD      | 1168000 GPD           |
| 1588 | McCormick Farms, Inc                         | Wethersfield (T)   | Wyoming         | 2387389 GPD     | 2387389 GPD           |
| 1589 | Ayers & Gillette LLC                         | Pike (T)           | Wyoming         | 0.135 MGD       |                       |
| 1590 | Broughton Farm                               | Gainesville (T)    | Wyoming         | 93340 GPD       |                       |
| 1591 | Gardeau Creast Farms                         | Castile (T)        | Wyoming         | 47139 GPD       | GPD                   |
| 1592 | Perry, Vg                                    | Castile (T)        | Wyoming         |                 |                       |
| 1593 | RL Jeffries & Sons Inc                       | Covington (T)      | Wyoming         |                 |                       |
| 1594 | Ferro Electronic Materials                   | Torrey (T)         | Yates           | 71963 GPD       | 121528 GPD            |
| 1595 | Dundee, Vg                                   | Starkey (T)        | Yates           | 191000 GPD      | 407000 GPD            |
| 1596 | Torrey Farms of Potter Inc.                  | Potter (T)         | Yates           | 1152000 GPD     | 1152000 GPD           |
| 1597 | Penn Yan, Vg                                 | Jerusalem (T)      | Yates           | 857941 GPD      | 1813000 GPD           |
| 1598 | AES Greenridge LLC                           | Torrey (T)         | Yates           | 64634881 GPD    | 64634881 GPD          |
| 1599 | Lakeside Country Club                        | Milo (T)           | Yates           | 227309 GPD      |                       |

**AFFIDAVIT OF GILBERT HAWKINS IN OPPOSITION TO RESPONDENTS' ANSWERS  
AND IN SUPPORT OF THE VERIFIED PETITION, DATED SEPTEMBER 5, 2019 [A- 1090 -  
A- 1096]**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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In the Matter of the Application of

SIERRA CLUB and HUDSON RIVER FISHERMEN'S  
ASSOCIATION, NEW JERSEY CHAPTER INC.

Petitioners,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules,

—against—

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, BASIL SEGGOS,  
COMMISSIONER, and HELIX RAVENSWOOD LLC,

Respondents.

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**AFFIDAVIT OF  
GILBERT HAWKINS**

Index No. 2402/19

Hon. Ulysses B. Leverett

State of New Jersey    )  
Bergen County         )       ss.:

Gilbert Hawkins, being duly sworn, deposes and says:

1.       I am a resident of Leonia, a borough of Bergen County, New Jersey. My home at 123 Knapp Terrace is about 1.5 miles from the western shore of the Hudson River and about 0.5 miles from Overpeck Creek, a tributary of the Hudson.

2.       I currently serve as Past President/Director of Access and Environment of the Hudson River Fishermen's Association, New Jersey Chapter, Inc. (hereinafter "HRFA" or the "Association"), a Petitioner in the above-captioned proceeding. I make this affidavit in support the Verified Petition and Petitioners' Reply Memorandum of Law.

3.       HRFA has its mailing address at P. O. Box 421, Cresskill, New Jersey, holds Executive Board meetings at River Edge Knights of Columbus at Kinderkamack Road, River Edge, New Jersey, and holds general membership meetings at Elk's Club Lodge #1506 in

Ridgefield Park, New Jersey, and occasionally at the Palisades Center Mall in West Nyack, New York.

4. HRFA has been incorporated as a non-profit organization since 1988 and represents approximately 325 recreational fishermen who make active use of the New York Bight and the surrounding water system and are concerned with the present and future state of these fisheries. HRFA is the largest fishing group on the Hudson River and represents fishermen along the total length of the river. Most members of HRFA live in New York and New Jersey.

5. HRFA's mission is to encourage the responsible use of aquatic resources and protection of habitat in the Hudson River watershed. The Association assists where possible in efforts to abate pollution and promote sport fishing and the management of that recreation.

6. HRFA members fish in the East River, the Hudson River Harbor Estuary and the Hudson River and are adversely affected by the actions complained of in this petition. Their ability to fish in these waters is adversely affected by the project complained of herein.

7. HRFA was founded in 1966 when a group of fishermen in Garrison, New York decided they had had enough of the industrial abuse of the Hudson River. The pollutants of the industrial revolution had brought the majestic Hudson River to her knees. The Association used the laws of the land to bring the Hudson River back to life, bringing lawsuits and regulatory proceedings to challenge the harms being done to the River and its watershed. The New York chapter of the Association changed its name to Riverkeeper in 1986.

8. I have been a member of HRFA since 1994. I have served as Environmental Director and as a member of the Board of Directors of HRFA from 1996 to the present.

9. I am a member of the Community Advisory Group for the Hudson River PCBs Superfund Site which encompasses a nearly 200-mile stretch of the Hudson River in eastern New

York State from Hudson Falls, New York to the Battery in New York City, and I am a member of the Stakeholders' Advisory Working Groups for the Tappan Zee Bridge/I-287 Corridor Project.

10. I am a member of the Sierra Club. I have been a member of the Club since 2005. I am active in the Club's Hudson-Meadowlands New Jersey Group, and have served as member of the Executive Committee of the Group since 2005.

11. The East River is a significant component of the Hudson River watershed and the watershed of the New York Bight. It is one of the main fish migration routes between the Atlantic Ocean and both the Hudson River and Long Island Sound. Some of the fish migrating through the East River include sturgeon, shad, herring, blue fish, and striped bass.

12. Because the East River is constantly filled with moving water, it is a very attractive location for fish. There are two tides a day in the East River, which means that there are strong currents in the river four time a day—the incoming and outcoming flows for each tide. Millions of fish are riding on these flows in the migratory seasons.

13. Due to my association with HRFA and active participation in the activities of the organization, I am familiar with the activities of our members. HRFA has a general membership meeting once a month in Ridgefield Park, New Jersey or West Nyack, New York. The membership meetings are attended by approximately 75 to 100 members. I attend every meeting. At each meeting, members give reports on the fishing conditions in New York harbor. The reports at the meetings often relate to fishing on East River. At each meeting we have a lecture or guest who gives us tips and instructions of how to fish local waterways often including the East River.

14. During the fall and spring migration seasons—generally September to November and March to May—our members are fishing in the New York harbor estuary every day. Based on my experience fishing in the harbor and on the fishing reports given each month at our meetings, I estimate that three to six members will be out in their boats on the East River each day during the migration season.

15. I go out fishing in the New York harbor estuary whenever I can. Lately, that has been about once a month.

16. Power plant fish kills have been a concern of HRFA for many years. Among the many accomplishments of HRFA are stopping the mass slaughter of striped bass by the first Indian Point nuclear power plant, and exposing cover-ups of the fish kills. HRFA also participated in an administrative challenge to the fish kills caused by the once-through cooling system at the Danskammer power plant on the Hudson River that was decided in 2006.

17. In 2013, HRFA joined with the Sierra Club in challenging the first water withdrawal permit issued in New York State by Respondent New York State Department of Environmental Conservation (“Respondent DEC”) to a non-public user after the enactment of new amendments to New York’s water withdrawal permitting law. The permit we challenged was the permit issued to TransCanada to withdraw up to 1,527,840,000 gallons of water per day from the East River for operation of its Ravenswood Generating Station. This is the largest water withdrawal permit Respondent DEC has issued to date. Our appeal to the Appellate Division Second Department of two unfavorable decisions by the Queens County Supreme Court was decided in our favor in 2018. The court invalidated the 2013 Ravenswood Permit on the ground that Respondent DEC does have discretion under the water withdrawal law in setting the

terms and conditions of water withdrawal permits issued to existing users and therefore determined that the issuance of the 2013 permit was not exempt from SEQRA review.

18. I am aware of the huge, continuing fish kills caused by the once-through cooling system at the Ravenswood Generating Station and the other thermal electric generating stations in the harbor estuary and I am concerned that these fish kills are having a negative impact on our catches and on the health of the fish populations in the Hudson River watershed. We see declines of some types of fish in the harbor estuary. I am concerned that Ravenswood's once-through cooling system is contributing to these declines.

19. The members of HRFA are sport fishermen and are taking fish with lines and bait. We do not fish for shad, which are taken by net. Of course, sturgeon are protected and no one is fishing for sturgeon. We rarely encounter sturgeon or shad. We are concerned about the decline of these species in the Hudson River watershed and the New York harbor estuary and are concerned that the Ravenswood once-through cooling system on the East River, a major migration route for these fish, may be a contributing to their decline.

20. Weakfish have traditionally been one of the key species fished by our members, but in the last eleven years weakfish have virtually disappeared from the harbor. I have observed this myself and other members have reported this at our monthly HRFA meetings.

21. A photograph taken in 2005 of myself and my son with a catch of weakfish taken from the New York harbor estuary is attached as **Exhibit A**. We have not seen weakfish like this in the harbor for eleven years.

22. I recently reviewed a report dated August 2006 on Ravenswood Generating Station Impingement Survival Monitoring Studies, covering March 2005– February 2006, prepared for KeySpan Corporation by ASA Analysis & Communication, Inc., and a Final Report

dated October 2007 on Ravenswood Generating Station Impingement Survival Monitoring Studies covering June 2006 – February 2007, also prepared for KeySpan Corporation by ASA Analysis & Communication, Inc. These reports are attached hereto as **Exhibits B** and **C**.

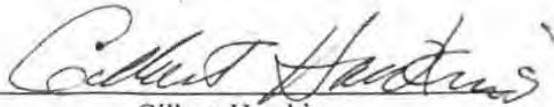
23. In reviewing these reports, I was struck by the high weakfish egg kills caused by Ravenswood Generating Station and documented in these reports.

24. I am concerned that the destruction of weakfish eggs by impingement and entrainment as a result of Ravenswood's cooling water intake system has contributed to the decline of weakfish in the harbor.

25. Respondent DEC's actions in reissuing the Ravenswood water withdrawal permit and issuing a negative declaration for the impacts of the plant's once-through cooling system without examining alternatives such as closed-cycle cooling or considering the cumulative impacts of the withdrawals and its failure to require the preparation of an environmental impact statement for one of the State's largest water withdrawals deprived HRFA and our members of an adequate airing of the issues involved and of an accurate assessment of the environmental impacts on the harbor estuary, including the impacts on the weakfish population.

26. As long as DEC maintains its pattern and practice of non-compliance with SEQRA and the water resources law in issuing water withdrawal permits, HRFA and its members are profoundly hindered in our ability to protect the water resources of the Hudson River watershed and harbor estuary on behalf of our members and the public.



  
Gilbert Hawkins

Subscribed and sworn to before me  
This 3<sup>rd</sup> day of September 2019

37  
Notary Public

LIONEL SAM  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
MY COMMISSION EXPIRES SEPT. 16, 2019



A-1097

EXHIBIT A — PHOTOGRAPH OF GILBERT HAWKINS AND HIS SON WITH A CATCH OF WEAKFISH FROM THE NEW YORK HARBOR ESTUARY IN 2005



**EXHIBIT B —SELECTED PAGES FROM RAVENSWOOD GENERATING STATION  
IMPINGEMENT SURVIVAL MONITORING STUDIES, COVERING MARCH 2005–  
FEBRUARY 2006, PREPARED FOR KEYSpan CORPORATION BY  
ASA ANALYSIS & COMMUNICATION, INC., AUGUST 2006 [A- 1098 - A- 1108]**

*Color*  

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Ravenswood Entrainment and Impingement Monitoring Mar 2005 – Feb 2006

**RAVENSWOOD POWER STATION  
ENTRAINMENT AND IMPINGEMENT MONITORING  
MARCH 2005 –FEBRUARY 2006**

Prepared for:

KeySpan Corporation  
Environmental Engineering Department  
175 East Old Country Road  
Hicksville, NY 11801

Prepared by:

ASA Analysis & Communication, Inc.  
90 East Main Street  
Washingtonville, New York 10992

August 2006

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## REPORT SUMMARY

An entrainment and impingement monitoring program was conducted at the Ravenswood Power Station (“Ravenswood” or “Station”) from 2 March 2005 through 21 February 2006 to fulfill a State Pollution Discharge Elimination Permit (SPDES) requirement to conduct a one-year study to estimate the numbers of fish and selected invertebrates entrained and impinged at Ravenswood.

Ravenswood Power Station is a steam-electric generating facility that is owned and operated by KeySpan-Ravenswood, Inc. (“KeySpan”). The Station is located in Long Island City, Queens County, New York and is situated along the east bank of the lower East River. Ravenswood consists of three oil-fired, steam-electric generating units which utilize a non-contact, once-through cooling water system. The operating units, Units 10, 20, and 30, have a combined nominal rated capacity of 1,742 MWe and a design flow of 964,000 gpm (5,255,000 m<sup>3</sup>/day). Cooling water is withdrawn from the East River into a protected embayment and to the intake structures. The intake structures are screened by wooden debris skimmers and conventional vertical traveling screens incorporating screen panels of 3/8-inch square opening vertical mesh.

Entrainment monitoring for the early life stages of fish and shellfish was conducted at Ravenswood weekly from 8 March through 30 September 2005, and then once every two weeks through 21 February 2006. One entrainment collection each for fish and shellfish was made during each 6-hour interval over the 24-hour sampling period resulting in 4 entrainment collections for fish and 4 entrainment collections for shellfish on each sampling date. Cooling water was pumped from the combined discharge canal at Ravenswood using a gasoline-powered pump with a pipe extending to mid-depth in the canal. Each entrainment collection for fish consisted of at least 100 m<sup>3</sup> of water and sampling typically lasted 2 hours. Entrainment samples for shellfish were collected concurrently with samples for fish and generally consisted of 7-8 m<sup>3</sup> of water.

Special entrainment studies were also conducted to examine the depth distribution and diel variation of the early life stages of fish entrained at Ravenswood. These entrainment samples were collected from surface, mid-, and bottom depths immediately in front of the center of the Unit 20 intake on a total of ten survey days, scheduled during peak seasonal periods of entrainment. One entrainment collection was made during each 3-hour interval over the 24-hour sampling period resulting in 8 entrainment collections from each of the three depths for a total of 24 samples per day on each sampling date.

For all entrainment sampling, water was pumped from the sampling location to a circular tank equipped with a 75-cm diameter plankton net with 335-μm mesh netting for the fish entrainment collections. For the shellfish entrainment collections, a fraction of the exit water from the circular tank was subsequently filtered through a 60-μm mesh net suspended in a similar barrel sampler. At the completion of each collection, the tanks were drained and the nets were carefully washed to concentrate all materials collected into the collection cups. Samples were placed in glass jars, preserved, stained, labeled, and transported to the laboratory for processing.

Impingement monitoring was conducted weekly at Ravenswood throughout the study period from 2 March 2005 through 21 February 2006. Samples consisted of all materials washed off

the intake traveling screens and collected in a 5/16-inch mesh collection basket at the screen wash water debris sump for Units 10, 20, and 30. All impinged fish and selected invertebrates were removed and identified to taxon (typically species) and age group. The total count and weight of each taxon and age group were recorded. A random sub-sample of up to 50 individuals collected from each taxon and age group were measured to the nearest millimeter and their condition recorded. A separate study of collection efficiency utilizing releases of test fish was also conducted.

Twenty-seven distinct taxonomic groups of fish were collected in entrainment sampling at Ravenswood, and 21 of these were identified to species. Post yolk-sac larvae were the most commonly entrained life stage (56 percent), followed by eggs (31 percent). Five taxa (grubby, Gobiidae, bay anchovy, fourbeard rockling, and unidentified Clupeiformes) comprised about two-thirds of the total entrainment catch. No overall patterns were discernable in the entrainment depth distribution and diel variation studies for commonly entrained species and all species combined.

Fifty-two distinct species of fish were collected in impingement sampling. Yearling and older fish made up the majority (56 percent) of impinged fish, and contributed 83 percent by weight. The top three species (blueback herring, alewife, and bay anchovy) accounted for about 45 percent of the total number impinged. Blue crab dominated targeted macroinvertebrate counts, with 98 percent of the total. Initial impingement survival varied widely by species (0 to 100 percent), and averaged 5.1 percent for all young of year fish and 21 percent for yearling and older fish. Diel variation studies showed that collections of yearling and older fish were greatest in the late evening hours. Most of the young of year fish were collected in the early morning hours. Impingement collection was consistently lowest during the mid-day.

Direct losses from entrainment and impingement at the Ravenswood intake were estimated for all species based on their sample densities and actual plant flows during the study period. Total entrainment was estimated to be 149,722,760 individuals for the year, and total impingement was 25,842 individuals. Estimates of annual losses for each species were also made utilizing full design flow at the Station.



### 3 MATERIALS AND METHODS

Entrainment and impingement monitoring at the Ravenswood Power Station began 2 March 2005 and ran through 21 February 2006. In general, sampling was conducted over one 24-hour period each week. Sampling protocols adhered to carefully defined Standard Operating Procedures (SOPs) (ASA 2005). The following provides a brief overview of each monitoring program.

#### 3.1 ENTRAINMENT MONITORING

Entrainment monitoring for the early life stages of fish and shellfish was conducted at Ravenswood weekly from 8 March through 25 October 2005, and then once every two weeks through 21 February 2006. One entrainment collection each for fish and shellfish was made during each 6-hour interval over the 24-hour sampling period resulting in 4 entrainment collections for fish and 4 entrainment collections for shellfish on each sampling date. A total of 160 entrainment samples for fish and 149 entrainment samples for shellfish from Ravenswood were successfully collected (Table 3-1). Shellfish samples were not collected in early March because the sampling equipment was on backorder. Entrainment monitoring and shellfish samples were not collected for four weeks in early April and early to mid-May due to a malfunction in the discharge sampling pipe.

Sampling was conducted using a pumped entrainment sampler. Cooling water was pumped from the combined discharge canal at Ravenswood using a gasoline-powered pump with a pipe extending to mid-depth in the canal. Each entrainment collection for fish consisted of at least 100 m<sup>3</sup> of water and sampling typically lasted 2 hours. Entrainment samples for shellfish were collected concurrently with samples for fish and generally consisted of 7-8 m<sup>3</sup> of water.

Special studies were also conducted to examine the depth distribution and diel variation of the early life stages of fish entrained at Ravenswood. These entrainment samples were collected from surface, mid-, and bottom depths immediately in front of the center of the Unit 20 intake on a total of ten survey days, scheduled during peak seasonal periods of entrainment. One entrainment collection was made during each 3-hour interval over the 24-hour sampling period resulting in 8 entrainment collections from each of the three depths for a total of 24 samples per day on each sampling date. For this special study, a total of 241 entrainment samples for depth distribution and diel variation from Ravenswood were successfully collected (Table 3-1).

For all entrainment sampling, water was pumped from the sampling location to a circular tank equipped with a 75-cm diameter plankton net with 335- $\mu$ m mesh netting for the fish entrainment collections. For the shellfish entrainment collections, a fraction of the exit water from the circular tank was subsequently filtered through a 60- $\mu$ m mesh net suspended in a similar barrel sampler. At the completion of each collection, the tanks were drained and the nets were carefully washed to concentrate all materials collected into the collection cups. After a thorough wash-down, the collected materials (plankton and detritus) were removed from the cups, placed in glass jars, and preserved with 10 percent Formalin containing Rose Bengal dye. Each jar was then carefully labeled and transported to the laboratory for subsequent processing.

In the laboratory, the shellfish samples were archived and will not be processed unless or until appropriate and meaningful analytical protocols are developed. From the fish samples, all fish eggs, larvae and juveniles were carefully sorted from sample detritus and invertebrates. When numbers of ichthyoplankters was high, samples were randomly split using a Motota plankton-splitter and a sufficient number of splits were analyzed such that a minimum of 200 fish eggs and/or 200 fish larvae/juveniles had been sorted. For ichthyoplankters except winter flounder larvae, all specimens removed from each sample were identified to the lowest practical taxon and separated into the following life stages:

**Egg** – The embryonic developmental stages from spawning to hatching.

**Yolk-sac larvae** – The transition stage from hatching through the development of a complete, functional digestive system (regardless of the degree of yolk and/or oil globule retention).

**Post yolk-sac larvae** – The transition stage from development of a complete, functional digestive system to transformation to juvenile form (regardless of the degree of yolk and/or oil globule retention), including the leptocephalus stage of eels.

**Juvenile** – The stage following completion of a full complement of fin rays up to 12 months of age.

Winter flounder larvae were further classified into the following four stages for comparability to other winter flounder monitoring being conducted in Long Island Sound:

**Stage 1** – from hatching until the yolk-sac is fully absorbed

**Stage 2** – from the end of Stage 1 until the fin rays begin to develop and flexion of the notochord begins

**Stage 3** – from the end of Stage 2 until the left eye migrates past the midline of the head during transformation, and

**Stage 4** – from the end of Stage 3 to metamorphosis to a juvenile.

In addition, a random sample of up to 50 winter flounder larvae was measured to the nearest 0.1 mm (TL). For the other entrained larval species, length measurements to the nearest 0.1 mm (TL) were taken from up to 30 individuals per species per life stage.

The results of this laboratory processing including counts and lengths were recorded on project-specific data sheets. All laboratory processing was subject to a statistically-based quality control process based on a continuous sampling plan (derived from military-standard MIL-STD 1235B) that guarantees an Average Outgoing Quality Level (AOQL) of 90 percent or more. That is, samples selected based on the continuous sampling plan are re-inspected to assure that more than 90 percent of organisms have been removed during sorting and that an accuracy of at least 90 percent is achieved in identifying, assigning a life stage, or counting any species. Samples not achieving these acceptance limits are rejected and reprocessed.

### 3.2 IMPINGEMENT MONITORING

Impingement monitoring was conducted weekly from 2 March 2005 through 21 February 2006 at Ravenswood. During most weeks through October, one impingement collection was made during each 6-hour interval over the 24-hour sampling period, resulting in 4 impingement collections on each sampling date. Once per month for the other weeks, the sampling interval was shortened to 2 hours for a total of 12 impingement collections on the sampling date. From November through February, 12 samples were collected per sampling date. Samples consisted of all materials washed off the intake traveling screens and collected in a collection basket at the screen wash water debris sump for Units 10, 20, and 30 at Ravenswood. Over the study period, a total of 392 impingement samples from Ravenswood were successfully collected (Table 3-1).

A collection basket consisting of 5/16-inch mesh was placed in the debris sumps at the intakes of each unit at the start of each sampling event to intercept all screen wash water from the continuously washed screens. At the completion of each 6-hour or 2-hour impingement collection, the impinged materials were then extracted from each collection basket. All fish and selected invertebrates (blue crab, rock crab, American lobster, mantis shrimp, long-finned squid, and Japanese shore crab) were removed and identified to taxon (typically species) and age group (young of year or yearling and older). The total count and weight of each taxon and age group were recorded on project-specific data sheets. In addition, a random sample of up to 50 individuals collected from each sample, each fish taxon as well as blue crab and American lobster, and each age/length group were measured to the nearest millimeter and their condition (live, stunned, dead) was recorded.

In addition to the regularly scheduled impingement monitoring, a study to evaluate the collection efficiency of impingement was conducted on 22 March, 19 April, 19 July, and 15 November 2005 at Ravenswood using frozen white perch and goldfish. Test fish were release into the intake forebay between the trash racks and traveling screens of in-service units. The results of this direct-release study are included in Appendix A.



**Table 3-1 Number of Samples Collected in Entrainment and Impingement Monitoring at Ravenswood Power Station, March 2005 – February, 2006**

| Date       | Entrainment Monitoring Samples | Entrainment Shellfish Samples | Entrainment Depth/Diel Samples | Impingement Monitoring Samples |
|------------|--------------------------------|-------------------------------|--------------------------------|--------------------------------|
| 3/2/2005   | 0 <sup>1</sup>                 | 0 <sup>2</sup>                | NS <sup>3</sup>                | 4                              |
| 3/8/2005   | 4                              | 0                             | NS                             | 4                              |
| 3/15/2005  | 4                              | 0                             | NS                             | 4                              |
| 3/22/2005  | 4                              | 4                             | NS                             | 4                              |
| 3/29/2005  | 4                              | 4                             | NS                             | 4                              |
| 4/5/2005   | 0 <sup>4</sup>                 | 0 <sup>4</sup>                | NS                             | 4                              |
| 4/12/2005  | 4                              | 3                             | NS                             | 4                              |
| 4/18/2005  | 4                              | 4                             | NS                             | 4                              |
| 4/26/2005  | 4                              | 4                             | NS                             | 4                              |
| 5/3/2005   | 0 <sup>4</sup>                 | 0 <sup>4</sup>                | 4                              | 4                              |
| 5/10/2005  | 0 <sup>4</sup>                 | 0 <sup>4</sup>                | 21                             | 4                              |
| 5/17/2005  | 0 <sup>4</sup>                 | 0 <sup>4</sup>                | 24                             | 4                              |
| 5/24/2005  | 4                              | 4                             | 24                             | 4                              |
| 5/31/2005  | 4                              | 4                             | NS                             | 12                             |
| 6/7/2005   | 4                              | 4                             | 24                             | 4                              |
| 6/14/2005  | 4                              | 4                             | NS                             | 4                              |
| 6/21/2005  | 4                              | 4                             | 24                             | 4                              |
| 6/28/2005  | 4                              | 4                             | NS                             | 12                             |
| 7/5/2005   | 4                              | 4                             | 24                             | 4                              |
| 7/12/2005  | 4                              | 4                             | NS                             | 4                              |
| 7/19/2005  | 4                              | 4                             | 24                             | 4                              |
| 7/26/2005  | 4                              | 4                             | NS                             | 12                             |
| 8/2/2005   | 4                              | 3                             | 24                             | 4                              |
| 8/9/2005   | 4                              | 4                             | NS                             | 12                             |
| 8/16/2005  | 4                              | 4                             | 24                             | 4                              |
| 8/23/2005  | 4                              | 4                             | NS                             | 4                              |
| 8/30/2005  | 4                              | 4                             | 24                             | 4                              |
| 9/6/2005   | 4                              | 4                             | NS                             | 12                             |
| 9/13/2005  | 4                              | 4                             | NS                             | 4                              |
| 9/20/2005  | 4                              | 4                             | NS                             | 4                              |
| 9/27/2005  | 4                              | 4                             | NS                             | 4                              |
| 10/4/2005  | 4                              | 3                             | NS                             | 4                              |
| 10/11/2005 | 4                              | 4                             | NS                             | 12                             |
| 10/18/2005 | 4                              | 4                             | NS                             | 4                              |
| 10/25/2005 | 4                              | 4                             | NS                             | 4                              |
| 11/1/2005  | 4                              | 4                             | NS                             | 12                             |
| 11/8/2005  | NS                             | NS                            | NS                             | 12                             |
| 11/15/2005 | 4                              | 4                             | NS                             | 12                             |
| 11/22/2005 | NS                             | NS                            | NS                             | 12                             |
| 11/29/2005 | 4                              | 4                             | NS                             | 12                             |
| 12/6/2005  | NS                             | NS                            | NS                             | 12                             |

Table 3-1 Continued

| Date       | Entrainment<br>Monitoring<br>Samples | Entrainment<br>Shellfish<br>Samples | Entrainment<br>Depth/Diel<br>Samples | Impingement<br>Monitoring<br>Samples |
|------------|--------------------------------------|-------------------------------------|--------------------------------------|--------------------------------------|
| 12/13/2005 | 4                                    | 4                                   | NS                                   | 12                                   |
| 12/20/2005 | NS                                   | NS                                  | NS                                   | 12                                   |
| 12/26/2005 | 4                                    | 4                                   | NS                                   | NS                                   |
| 12/27/2005 | NS                                   | NS                                  | NS                                   | 12                                   |
| 1/3/2006   | NS                                   | NS                                  | NS                                   | 12                                   |
| 1/10/2006  | 4                                    | 4                                   | NS                                   | 12                                   |
| 1/17/2006  | NS                                   | NS                                  | NS                                   | 12                                   |
| 1/24/2006  | 4                                    | 4                                   | NS                                   | 12                                   |
| 1/31/2006  | NS                                   | NS                                  | NS                                   | 12                                   |
| 2/7/2006   | 4                                    | 4                                   | NS                                   | 12                                   |
| 2/14/2006  | NS                                   | NS                                  | NS                                   | 12                                   |
| 2/21/2006  | 4                                    | 4                                   | NS                                   | 12                                   |
| Total      | 160                                  | 149                                 | 241                                  | 392                                  |

<sup>1</sup> No entrainment samples were collected due to delay in initial start-up.

<sup>2</sup> No entrainment shellfish samples were collected due to equipment backorder.

<sup>3</sup> NS = no samples scheduled.

<sup>4</sup> Samples missed due to malfunction of discharge sampling pipe.

**Table 5-1 Estimated Annual Direct Losses from Entrainment and Impingement at Ravenswood Power Station Using Actual Flow (3/2/2005 – 2/21/2006)**

| Taxon                | Direct Losses |                 |                      |                 |                           |                 |                  | All Impinged Life Stages |
|----------------------|---------------|-----------------|----------------------|-----------------|---------------------------|-----------------|------------------|--------------------------|
|                      | Eggs          | Yolk-sac Larvae | Post Yolk-sac Larvae | Juvenile (Ent.) | All Entrained Life Stages | Juvenile (Imp.) | Yearling & Older |                          |
| Alewife              | -             | -               | -                    | -               | 0                         | 2,277           | 651              | 2,928                    |
| American eel         | 0             | 0               | 0                    | 329,559         | 329,559                   | 9               | 15               | 24                       |
| American shad        | -             | -               | -                    | -               | 0                         | 19              | 22               | 41                       |
| Atlantic croaker     | 0             | 0               | 2,281,339            | 159,888         | 2,441,227                 | 95              | 1,589            | 1,684                    |
| Atlantic cutlassfish | -             | -               | -                    | -               | 0                         | 0               | 10               | 10                       |
| Atlantic herring     | 0             | 0               | 43,003               | 0               | 43,003                    | 88              | 7                | 95                       |
| Atlantic menhaden    | 22,476,098    | 290,458         | 4,894,584            | 0               | 27,661,140                | 899             | 234              | 1,133                    |
| Atlantic moonfish    | -             | -               | -                    | -               | 0                         | 32              | 0                | 32                       |
| Atlantic seashell    | -             | -               | -                    | -               | 0                         | 0               | 9                | 9                        |
| Atlantic silverside  | -             | -               | -                    | -               | 0                         | 270             | 486              | 756                      |
| Atlantic tomcod      | 0             | 0               | 1,471,836            | 280,333         | 1,752,169                 | 110             | 0                | 110                      |
| Bay anchovy          | 11,431,363    | 10,717          | 22,497,943           | 222,211         | 34,162,234                | 129             | 3,370            | 3,499                    |
| Black sea bass       | -             | -               | -                    | -               | 0                         | 14              | 34               | 48                       |
| Blueback herring     | -             | -               | -                    | -               | 0                         | 4,168           | 1,467            | 5,635                    |
| Bluefish             | -             | -               | -                    | -               | 0                         | 5               | 0                | 5                        |
| Bluegill             | -             | -               | -                    | -               | 0                         | 7               | 0                | 7                        |
| Butterfish           | -             | -               | -                    | -               | 0                         | 220             | 141              | 361                      |
| Clupeiformes         | 0             | 0               | 9,407,902            | 0               | 9,407,902                 | -               | -                | 0                        |
| Cod family           | 2,652,092     | 0               | 0                    | 0               | 2,652,092                 | -               | -                | 0                        |
| Conger eel           | -             | -               | -                    | -               | 0                         | 0               | 93               | 93                       |
| Cunner               | 0             | 0               | 254,059              | 46,951          | 301,010                   | 23              | 697              | 720                      |
| Feather blenny       | 0             | 12,628          | 20,095               | 0               | 32,723                    | -               | -                | 0                        |
| Fourbeard rockling   | 8,743,187     | 0               | 0                    | 0               | 8,743,187                 | -               | -                | 0                        |
| Fourspot flounder    | 12,221        | 10,621          | 2,576                | 0               | 25,418                    | 0               | 15               | 15                       |
| Gizzard shad         | 0             | 0               | 0                    | 12,285          | 12,285                    | 0               | 39               | 39                       |
| Goby family          | 10,712        | 0               | 18,392,887           | 273,909         | 18,677,508                | -               | -                | 0                        |
| Goldfish             | -             | -               | -                    | -               | 0                         | 0               | 6                | 6                        |
| Grubby               | 0             | 266,853         | 8,812,825            | 0               | 9,079,678                 | 7               | 292              | 299                      |
| Gulf Stream flounder | -             | -               | -                    | -               | 0                         | 21              | 1,432            | 1,453                    |

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LOSS ESTIMATES

Table 5-1 Continued

| Taxon                  | Direct Losses |                 |                      |                 |                           |                 |                  |                          |
|------------------------|---------------|-----------------|----------------------|-----------------|---------------------------|-----------------|------------------|--------------------------|
|                        | Eggs          | Yolk-sac Larvae | Post Yolk-sac Larvae | Juvenile (Ent.) | All Entrained Life Stages | Juvenile (Imp.) | Yearling & Older | All Impinged Life Stages |
| Herring family         | 0             | 0               | 1,625,791            | 0               | 1,625,791                 | -               | -                | 0                        |
| Hogchoker              | 0             | 0               | 9,642                | 0               | 9,642                     | -               | -                | 0                        |
| Lined seahorse         | -             | -               | -                    | -               | 0                         | 0               | 40               | 40                       |
| Little skate           | -             | -               | -                    | -               | 0                         | 0               | 5                | 5                        |
| Lookdown               | -             | -               | -                    | -               | 0                         | 7               | 17               | 24                       |
| Northern pipefish      | 0             | 0               | 1,006,402            | 193,198         | 1,199,600                 | 14              | 365              | 379                      |
| Northern puffer        | -             | -               | -                    | -               | 0                         | 53              | 9                | 62                       |
| Northern scarobin      | -             | -               | -                    | -               | 0                         | 7               | 33               | 40                       |
| Northern stargazer     | -             | -               | -                    | -               | 0                         | 5               | 29               | 34                       |
| Oyster toadfish        | 0             | 0               | 0                    | 234,710         | 234,710                   | 471             | 426              | 897                      |
| Prionotus species      | 3,136,731     | 0               | 0                    | 0               | 3,136,731                 | -               | -                | 0                        |
| Red hake               | -             | -               | -                    | -               | 0                         | 0               | 200              | 200                      |
| Rock gunnel            | 0             | 0               | 549,765              | 0               | 549,765                   | 0               | 81               | 81                       |
| Scrawled cowfish       | -             | -               | -                    | -               | 0                         | 0               | 5                | 5                        |
| Scup                   | -             | -               | -                    | -               | 0                         | 283             | 152              | 435                      |
| Seaboard goby          | -             | -               | -                    | -               | 0                         | 0               | 7                | 7                        |
| Silver hake            | -             | -               | -                    | -               | 0                         | 243             | 289              | 532                      |
| Smallmouth flounder    | 0             | 0               | 87,766               | 0               | 87,766                    | 0               | 11               | 11                       |
| Spiny dogfish          | -             | -               | -                    | -               | 0                         | 0               | 27               | 27                       |
| Spotted hake           | -             | -               | -                    | -               | 0                         | 0               | 244              | 244                      |
| Striped bass           | 0             | 0               | 89,992               | 0               | 89,992                    | 196             | 698              | 894                      |
| Striped burrfish       | -             | -               | -                    | -               | 0                         | 0               | 12               | 12                       |
| Striped cusk-eel       | -             | -               | -                    | -               | 0                         | 0               | 33               | 33                       |
| Striped scarobin       | -             | -               | -                    | -               | 0                         | 154             | 65               | 219                      |
| Summer flounder        | 0             | 0               | 159,888              | 0               | 159,888                   | 0               | 22               | 22                       |
| Tautog                 | 40,950        | 0               | 595,183              | 209,167         | 845,300                   | 0               | 64               | 64                       |
| Threespine stickleback | -             | -               | -                    | -               | 0                         | 0               | 689              | 689                      |
| Weakfish               | 9,861,948     | 0               | 741,037              | 0               | 10,602,985                | 502             | 16               | 518                      |
| White perch            | -             | -               | -                    | -               | 0                         | 0               | 137              | 137                      |
| Windowpane             | 3,903,396     | 10,396          | 164,564              | 0               | 4,078,356                 | 14              | 101              | 115                      |

Table 5-1 Continued

| Taxon           | Direct Losses |                 |                      |                 |                           |                 |                  |                          |
|-----------------|---------------|-----------------|----------------------|-----------------|---------------------------|-----------------|------------------|--------------------------|
|                 | Eggs          | Yolk-sac Larvae | Post Yolk-sac Larvae | Juvenile (Ent.) | All Entrained Life Stages | Juvenile (Imp.) | Yearling & Older | All Impinged Life Stages |
| Winter flounder | 268,475       | 0               | 3,597,907            | 10,338          | 3,876,720                 | 379             | 735              | 1,114                    |
| Wrasse family   | 7,904,379     | 0               | 0                    | 0               | 7,904,379                 | -               | -                | 0                        |
| All Taxa        | 70,441,552    | 601,673         | 76,706,986           | 1,972,549       | 149,722,760               | 10,721          | 15,121           | 25,842                   |

**EXHIBIT C — FINAL REPORT ON RAVENSWOOD GENERATING STATION  
IMPINGEMENT  
SURVIVAL MONITORING STUDIES COVERING JUNE 2006 – FEBRUARY 2007,  
PREPARED FOR KEYSpan CORPORATION BY ASA ANALYSIS & COMMUNICATION,  
INC.,  
OCTOBER 2007 [A- 1109 - A- 1122]**

**Ravenswood Generating Station  
Impingement Survival Monitoring Studies  
June 2006 – February 2007  
Final Report**

Prepared for:

KeySpan Corporation  
Environmental Engineering Department  
175 East Old Country Road  
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October 2007

## **Introduction**

The operation of cooling water intake structures is regulated under Section 316(b) of the Clean Water Act. This section requires “that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available (BTA) for minimizing adverse environmental impact” (AEI). Operation of these cooling water intake structures is permitted under the National Pollutant Discharge Elimination System (NPDES) administered by the US Environmental Protection Agency (USEPA). In New York, the responsibility for the day-to-day operation of NPDES has been delegated to the New York State Department of Environmental Conservation (NYSDEC), and the requirement for BTA is administered pursuant to regulations set forth at 6 NYCRR 704.5.

As part of meeting NPDES permit requirements, KeySpan Energy conducted a detailed evaluation of BTA compliance alternatives for Ravenswood to meet NYSDEC mandated entrainment and impingement reduction requirements (ASA 2005). The compliance evaluations were conducted for Ravenswood using impingement survival rate information available from the literature together with best professional judgment on the application of those data to Ravenswood. Based on the results of this evaluation, a combination of variable-speed cooling water pumping and continuous operation of the traveling screens were selected as BTA for Ravenswood.

This report provides estimates of the survival rate of selected species of fish impinged at the Ravenswood Generating Station based on a site-specific study conducted in 2006 and 2007. The purpose of this study was to provide more reliable estimates of impingement mortality at Ravenswood.

## **Methods**

Ravenswood Power Station is a steam-electric generating facility that is owned and operated by KeySpan. The Station is located in Long Island City, Queens County, New York and is situated along the east bank of the lower East River, directly across from Roosevelt Island. The East River is actually a 16-mile long tidal strait that separates Long Island from Manhattan Island and connects Long Island Sound to the northeast with upper New York Harbor to the south.

Ravenswood consists of three oil- and gas-fired, steam-electric generating units which utilize a non-contact, once-through cooling water system. The operating units, Units 10, 20, and 30, have a combined nominal rated capacity of 1,742 MWe and a design flow of 964,000 gpm (5,255,000 m<sup>3</sup>/day). Cooling water is withdrawn from the East River into a protected embayment and to the intake structures, which are recessed 60 ft inside the bulkhead line. The intake structures are screened by wooden debris skimmers and conventional vertical traveling screens incorporating screen panels of 3/8-inch square opening vertical mesh.

For this study, impingement collection baskets at Ravenswood were modified to insure the all fish impinged were retained in adequate water to minimize holding stress and a holding facility was constructed to evaluate potential post-impingement mortality. The collection system consisted of an aluminum frame attached over the end of the fish return

lines. A soft net with ¼ inch mesh that was 8 feet deep with a 5 gallon pail with no drain holes attached to the cod-end was hung from the bottom of this frame. Prior to each collection, the device was lowered into place with a davit and tied into place with tag lines. The cod end was always below the surface of the water. At the end of each collection period, the tag lines were released and the device was hoisted to the deck level. The davit was then rotated over the deck and the net lowered down over the pail. The pail was decanted into plastic pans and the fish were transferred to the holding facility.

Sampling was generally conducted weekly unless plant operations or lack of fish precluded collections. On each sampling date, intake traveling screens were continuously operated. All fish were collected from the unit being sampled over an hourly or shorter interval during an eight hour period from about 6:00 pm to 2:00 am. This period was selected as it was expected to be the diel period of highest impingement rates. All fish were removed from the modified collection baskets and classified into one of three initial mortality categories: live, stunned, or dead. All live and stunned fish were then placed in holding containers which were then placed in one of two 350-gal water troughs supplied with a continuous flow of water from the East River near the Ravenswood intake.

All specimens retained were maintained in separate holding containers by collection interval and multiple containers were used to minimize the potential for predation. All retained fish were checked at the completion of 24 and 48 hours after collection to determine condition (live, stunned<sup>1</sup>, and dead) and all dead fish were removed at each check. All dead fish and all fish remaining at the end of the test period were identified to species, counted, and measured. In addition, water quality parameters (water temperature, salinity, dissolved oxygen, and ammonia) were monitored at each check to ensure adequate holding conditions.

## Results and Discussion

The original study design called for weekly impingement survival sampling during March, April, November and December 2006 and during January and February 2007. In addition, sampling was to be conducted every other week during May – October 2006. As a result of unit outages, both planned and unplanned, survival sampling could not be initiated until June 2006. As a result, impingement survival sampling was conducted on 25 dates from 12 June 2006 through 27 February 2007 (Table 1). Over this period, water temperatures ranged from near freezing (0.3 C) to more than 25 C. At the same time, dissolved oxygen ranged from 5.3 mg/l in September to more than 11 mg/l during late January and February. On all dates, dissolved oxygen concentrations were sufficiently high so as to not adversely affect impingement survival. Conductivity was generally lower in later winter and spring as a result of higher freshwater flows from the Hudson River.

A total of 545 fish spanning 35 species were collected during the course of this study (Table 2). One individual was not identifiable to species. Most of those collected were relatively small (<150 mmTL) and likely less than one year old. Survival results for all

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<sup>1</sup> For the purposes of calculating impingement survival at each time interval, any fish classified as stunned at that time were included with those dead. However, in some cases, these stunned fish recovered resulting in higher estimates of survival in subsequent time periods.



species are presented in Table A-1. Twenty-eight of the species collected consisted of a total of less than 20 individuals. Data for these species is considered insufficient for reliable estimates of impingement survival.

Three species, black seabass, oyster toadfish, and winter flounder, were collected in relatively large numbers ( $>60$ ), sufficient to permit detailed analysis of their rates of impingement survival. Together, these three species accounted for slightly more than 53 percent of the total catch in this study. Black seabass collected ranged in length from 48 to 214 mm (TL) however all but two were less than 150 mm and likely less than 1 year old (Figure 1). All were collected during the colder period of the year, beginning in early November and extending through early February. Overall initial survival was 79.0 (71.9 – 84.6)<sup>2</sup> percent and 78.3 (71.2 – 84.1)<sup>2</sup> percent after both 24 and 48 hours (Table 3). These results indicate little delayed mortality as a result of impingement stresses for this species. Estimates of impingement survival were lower for individuals collected in November (48-hr rate = 50 percent) when water temperatures averaged 12 – 14 C than for those collected when water temperatures were colder (48-hr rate = 89.4 percent).

Oyster toadfish collected ranged in length from 36 to 253 mm (TL). However, most (84 percent) were less than 150 mm and likely less than 1 year old (Figure 1). This species was collected through the study period although they were most abundant in early November and early December. Overall initial survival was 85.3 (75.0 – 91.8)<sup>2</sup> percent, 89.7 (80.2 – 94.9)<sup>2</sup> percent after 24 and 88.2 (78.4 – 93.9)<sup>2</sup> percent after 48 hours (Table 3). As with black seabass, these results indicate little to no delayed mortality as a result of impingement stresses for oyster toadfish. Estimated 48-hr impingement survival was 100 percent for summer (Jun – Aug), 76.7 percent for fall (Sep – Nov) and 96.3 percent for winter (Dec – Jan).

Winter flounder collected ranged in length from 40 to 290 mm (TL). However, most (72 percent) were less than 150 mm and likely less than 1 year old (Figure 1). The rest were likely a mixture and one- and two-year old individuals. This species was collected in summer (Jun – Aug) and in winter (Dec – Feb). Overall initial survival was 90.8 (81.3 – 95.6)<sup>2</sup> percent and 89.2 (79.4 – 94.6)<sup>2</sup> percent after both 24 and 48 hours (Table 3). As with the other two abundant species, these results indicate little delayed mortality as a result of impingement stresses for winter flounder. Estimated 48-hr impingement survival was 71.4 percent for summer (Jun – Aug) and 97.7 percent for winter (Dec – Feb).

In addition to the three more numerous species discuss above, sufficient numbers (20 – 26) of four other species (Atlantic silverside, blueback herring, bay anchovy, and butterfish) were collected to justify calculation of annual estimates of impingement survival, albeit with greater uncertainty than for the more abundant species. Overall annual estimates of impingement survival are presented on Table 3. Length frequency distributions for these four species are displayed on Figure 2.

Estimated impingement survival for Atlantic silverside exhibit some decline from 69.2 (49.8 – 83.5)<sup>2</sup> percent based on initial observation to 57.7 (38.8 – 74.5)<sup>2</sup> percent after 48

<sup>2</sup> 95 percent exact confidence interval using Bayesian methods  
([http://www.causascientia.org/math\\_stat/ProportionCI.html](http://www.causascientia.org/math_stat/ProportionCI.html))

hours. However, given the width of the confidence bounds such a decline might not be statistically significant. Only for blueback herring was there strong evidence for delayed mortality resulting from impingement. For this species, impingement survival declined from 53.8(35.3 – 71.3)<sup>2</sup> percent based on initial observation to 34.6 (19.4 – 54.0)<sup>2</sup> percent after 48 hours. Since this species would be expected to be sensitive to the stresses of handling and holding as well as impingement, mortality following initial collection is likely the result of the combination of impingement and testing stresses. To the extent that handling and holding cause mortality, the 48-hr survival observed is a conservative (i.e., underestimate) of the impingement survival potential for this species at Ravenswood. Bay anchovy and butterfish exhibited very high sensitivity to impingement, with a 95% confidence interval for extended survival of 0.1 - 16.1 percent.

Based on the results of this study, the following estimates of percent impingement survival were selected as most appropriate for Ravenswood based on results from 48-hour post impingement observations:

| Species             | Ravenswood Impingement Survival | 95 Percent Confidence Bounds <sup>2</sup> | Original Estimate for the FAP Alternative Evaluation <sup>3</sup> |
|---------------------|---------------------------------|---|---|
| Black seabass       | 78.3                            | 71.2 – 84.1                               | 50.0  |
| Oyster toadfish     | 88.2                            | 78.4 – 93.9                               | 82.1  |
| Winter flounder     | 89.2                            | 79.4 – 94.6                               | 41.3  |
| Atlantic silverside | 57.7                            | 38.8 – 74.5                               | 50.5  |
| Blueback herring    | 34.6                            | 19.4 – 54.0                               | 14.8  |
| Bay anchovy         | 0.0                             | 0.1-16.1                                  | 0.4   |
| Butterfish          | 0.0                             | 0.1-16.1                                  | 17.6  |

Of these seven species, estimates of impingement survival for three of the species, oyster toadfish, Atlantic silverside, and bay anchovy, were comparable to those used in the original intake alternatives assessment at Ravenswood. For three other species, black seabass, winter flounder, and blueback herring, the site-specific estimates of impingement survival from the current study were substantially higher than those used in the original assessment. Only for one species, butterfish, was the current site-specific estimate lower than that used in the original alternatives assessment.

<sup>3</sup> For continuously-operated conventional traveling screens (ASA 2005).

The seven species for which sufficient numbers of individuals were collected in this study to allow estimation of impingement survival accounted for 46.4 percent of all fish collected in the most recent impingement monitoring studies conducted at Ravenswood in 2005 and 2006 (ASA 2006). This percentage, coupled with the fact that impingement survival estimates from the current study were equal to or higher than those used in the original intake alternatives assessment, suggest that the actual reductions in impingement mortality at Ravenswood may be higher than those estimated earlier.

## Literature Cited

ASA 2005. Evaluation of the Fish Protection Benefits of Cooling Water Intake System Alternatives at the Ravenswood Generating Station Phase 2 Report (Revised February 2005 to Include Additional Information Requested by the NYSDEC in Letter Dated 17 November 2004). Prepared for KeySpan Energy.

ASA 2006. Ravenswood Power Station. Entrainment and Impingement Monitoring March 2005 –February 2006. Prepared for KeySpan Energy.

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Ravenswood Impingement Survival Monitoring Jun 2006 – Feb 2007

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**Table 1 - Dates of impingement survival collections and coincident water quality measurements at the Ravenswood Generating Station, 2006 - 2007.**

| Sample Date | Mean Water Temperature (C)     | Mean Dissolved Oxygen (mg/l) | Mean Conductivity (µS/cm) |
|-------------|--------------------------------|------------------------------|---------------------------|
| 6/12/2006   | 17.7                           | 7.9                          | 30,210                    |
| 6/19/2006   | 18.1                           | 7.7                          | 29,900                    |
| 6/26/2006   | 19.3                           | 7.8                          | 30,520                    |
| 7/3/2006    | 21.4                           | 7.7                          | 27,380                    |
| 7/17/2006   | 23.4                           | 7.2                          | 35,410                    |
| 7/31/2006   | 25.5                           | 6.8                          | 32,910                    |
| 8/21/2006   | 23.2                           | 6.2                          | 37,300                    |
| 8/28/2006   | 21.6                           | 6.1                          | 36,600                    |
| 9/12/2006   | 20.7                           | 5.3                          | 35,710                    |
| 10/16/2006  | 17.7                           | 5.9                          | 34,040                    |
| 11/6/2006   | 12.4                           | 8.1                          | 31,767                    |
| 11/13/2006  | 14.2                           | 8.3                          | 31,450                    |
| 11/27/2006  | 12.2                           | 9.8                          | 31,500                    |
| 12/4/2006   | 10.4                           | 9.4                          | 33,615                    |
| 12/11/2006  | 8.8                            | 8.7                          | 32,730                    |
| 12/26/2006  | 8.0                            | 9.5                          | 33,860                    |
| 1/1/2007    | 8.7                            | 9.3                          | 34,075                    |
| 1/8/2007    | -----Meter out of service----- |                              |                           |
| 1/15/2007   | 9.4                            | 9.9                          | 35,085                    |
| 1/22/2007   | 5.1                            | 10.0                         | 34,260                    |
| 1/29/2007   | 5.0                            | 11.1                         | 35,080                    |
| 2/5/2007    | 0.6                            | 11.1                         | 33,850                    |
| 2/12/2007   | 2.2                            | 10.1                         | 34,795                    |
| 2/20/2007   | 0.3                            | 11.2                         | 20,520                    |
| 2/27/2007   | 2.0                            | 11.3                         | 30,135                    |

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Ravenswood Impingement Survival Monitoring Jun 2006 – Feb 2007

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**Table 2 – Numbers and length ranges of fish collected in impingement survival monitoring at the Ravenswood Generating Station, 2006 - 2007.**

| <b>Common name</b>     | <b>Number Collected</b> | <b>Length Range (TL mm)</b> |
|------------------------|-------------------------|-----------------------------|
| Black sea bass         | 157                     | 48 – 214                    |
| Oyster toadfish        | 68                      | 36 - 253                    |
| Winter flounder        | 65                      | 40 - 290                    |
| Atlantic silverside    | 26                      | 89 - 119                    |
| Blueback herring       | 26                      | 65 - 119                    |
| Bay anchovy            | 20                      | 59 - 101                    |
| Butterfish             | 20                      | 28 - 51                     |
| Atlantic menhaden      | 16                      | 35 - 112                    |
| Grubby                 | 16                      | 50 - 122                    |
| Gulf Stream flounder   | 14                      | 49 - 83                     |
| Scup                   | 14                      | 33 - 69                     |
| Cunner                 | 10                      | 63 - 170                    |
| Red hake               | 10                      | 54 - 223                    |
| Alewife                | 9                       | 66 - 100                    |
| Feather blenny         | 8                       | 54 - 83                     |
| Silver hake            | 8                       | 66 - 98                     |
| Smallmouth flounder    | 8                       | 45 - 65                     |
| Northern searobin      | 6                       | 49 - 125                    |
| Spotted hake           | 6                       | 77 - 101                    |
| Threespine stickleback | 6                       | 56 - 66                     |
| Northern pipefish      | 5                       | 134 - 197                   |
| Spotfin butterflyfish  | 4                       | 40 - 50                     |
| Striped searobin       | 4                       | 31 - 89                     |
| Lined seahorse         | 3                       | 75 - 98                     |
| Conger eel             | 2                       | 272 - 291                   |
| Naked goby             | 2                       | 46 - 58                     |
| Rock gunnel            | 2                       | 119 - 128                   |
| Striped bass           | 2                       | 87 - 88                     |
| American sand lance    | 1                       | 113 - 113                   |
| Atlantic moonfish      | 1                       | 75 - 75                     |
| Bluefish               | 1                       | 55 - 55                     |
| Gizzard shad           | 1                       | 131 - 131                   |
| Seaboard goby          | 1                       | 50 - 50                     |
| Unidentifiable         | 1                       | 447 - 447                   |
| White perch            | 1                       | 139 - 139                   |
| Windowpane             | 1                       | 44 - 44                     |
| Total                  | 545                     |                             |

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Ravenswood Impingement Survival Monitoring Jun 2006 – Feb 2007

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**Table 3 – Estimates of initial and extended impingement survival for the seven most abundant species collected in impingement survival monitoring at the Ravenswood Generating Station, 2006 - 2007.**

| Common Name         | Time Period | N   | Initial Observation |           | After 24 Hours |           | After 48 Hours |           |
|---------------------|-------------|-----|---------------------|-----------|----------------|-----------|----------------|-----------|
|                     |             |     | S                   | 95% CI    | S              | 95% CI    | S              | 95% CI    |
| Black seabass       | Nov.        | 44  | 52.3                | 37.9-66.3 | 50.0           | 35.8-64.2 | 50.0           | 35.8-64.2 |
|                     | Dec – Feb   | 113 | 89.4                | 82.3-93.8 | 89.4           | 82.3-93.8 | 89.4           | 82.3-93.8 |
|                     | Overall     | 157 | 79.0                | 71.9-84.6 | 78.3           | 71.2-84.1 | 78.3           | 71.2-84.1 |
| Oyster toadfish     | Jun – Aug   | 11  | 100.0               | 73.5-99.8 | 100.0          | 73.5-99.8 | 100.0          | 73.5-99.8 |
|                     | Sep – Nov   | 30  | 70.0                | 52.0-83.3 | 80.0           | 62.5-90.4 | 76.7           | 58.9-88.1 |
|                     | Dec – Jan   | 27  | 96.3                | 81.7-99.1 | 96.3           | 81.7-99.1 | 96.3           | 81.7-99.1 |
|                     | Overall     | 68  | 85.3                | 75.0-91.8 | 89.7           | 80.2-94.9 | 88.2           | 78.4-93.9 |
| Winter flounder     | Jun – Aug   | 21  | 76.2                | 54.6-89.3 | 71.4           | 49.8-86.1 | 71.4           | 49.8-86.1 |
|                     | Dec – Feb   | 44  | 97.7                | 88.3-99.5 | 97.7           | 88.3-99.5 | 97.7           | 88.3-99.5 |
|                     | Overall     | 65  | 90.8                | 81.3-95.6 | 89.2           | 79.4-94.6 | 89.2           | 79.4-94.6 |
| Atlantic silverside | Overall     | 26  | 69.2                | 49.8-83.5 | 61.5           | 42.4-77.6 | 57.7           | 38.8-74.5 |
| Blueback herring    | Overall     | 26  | 53.8                | 35.3-71.3 | 38.5           | 22.4-57.6 | 34.6           | 19.4-54.0 |
| Bay anchovy         | Overall     | 20  | 5.0                 | 1.1-23.8  | 0.00           | 0.1-16.1  | 0.00           | 0.1-16.1  |
| Butterfish          | Overall     | 20  | 0.00                | 0.1-16.1  | 0.00           | 0.1-16.1  | 0.00           | 0.1-16.1  |

Figure 1 Length frequency distribution for the three most abundant species collected in impingement survival sampling at Ravenswood, Jun 2006 - Feb 2007.

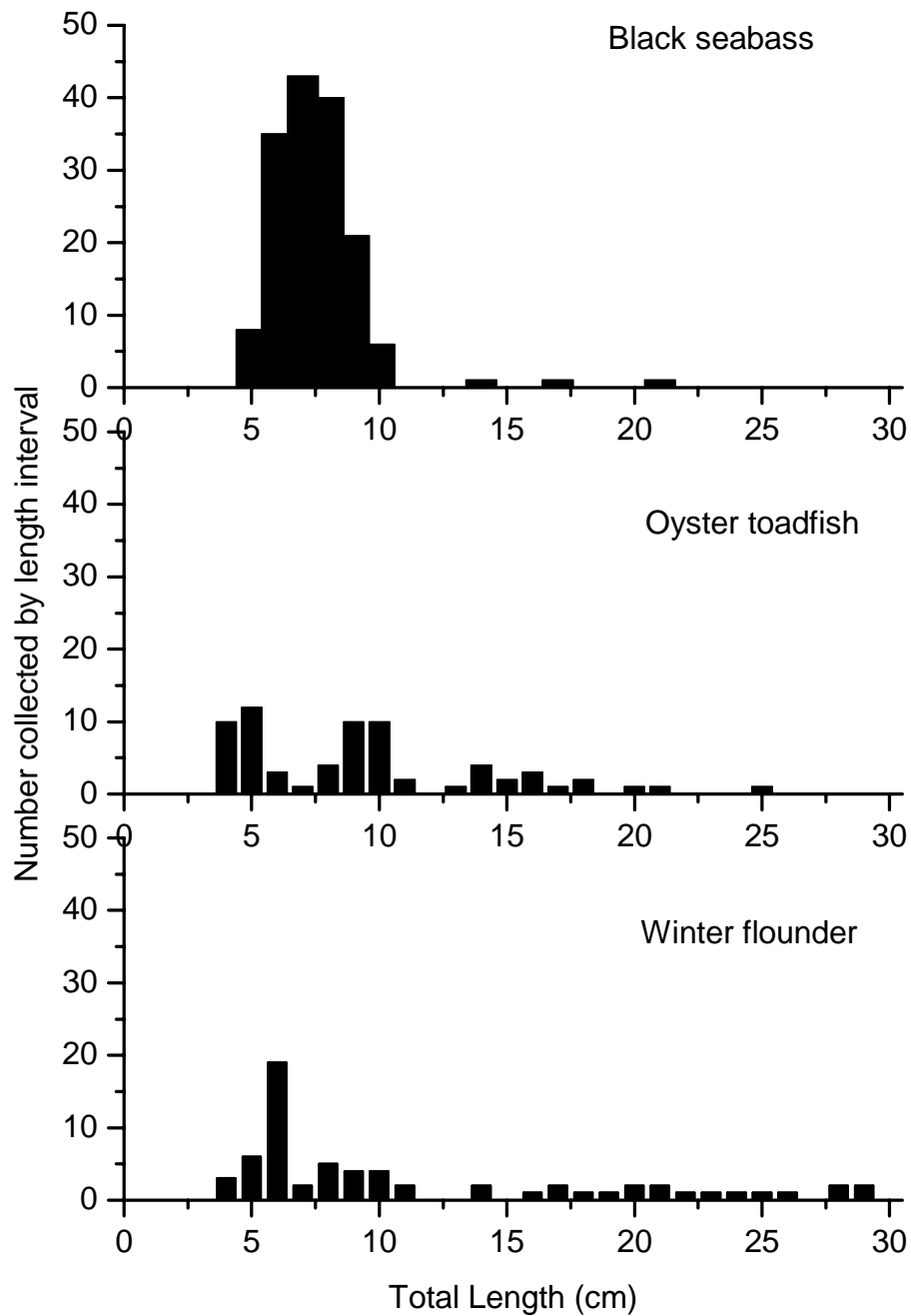
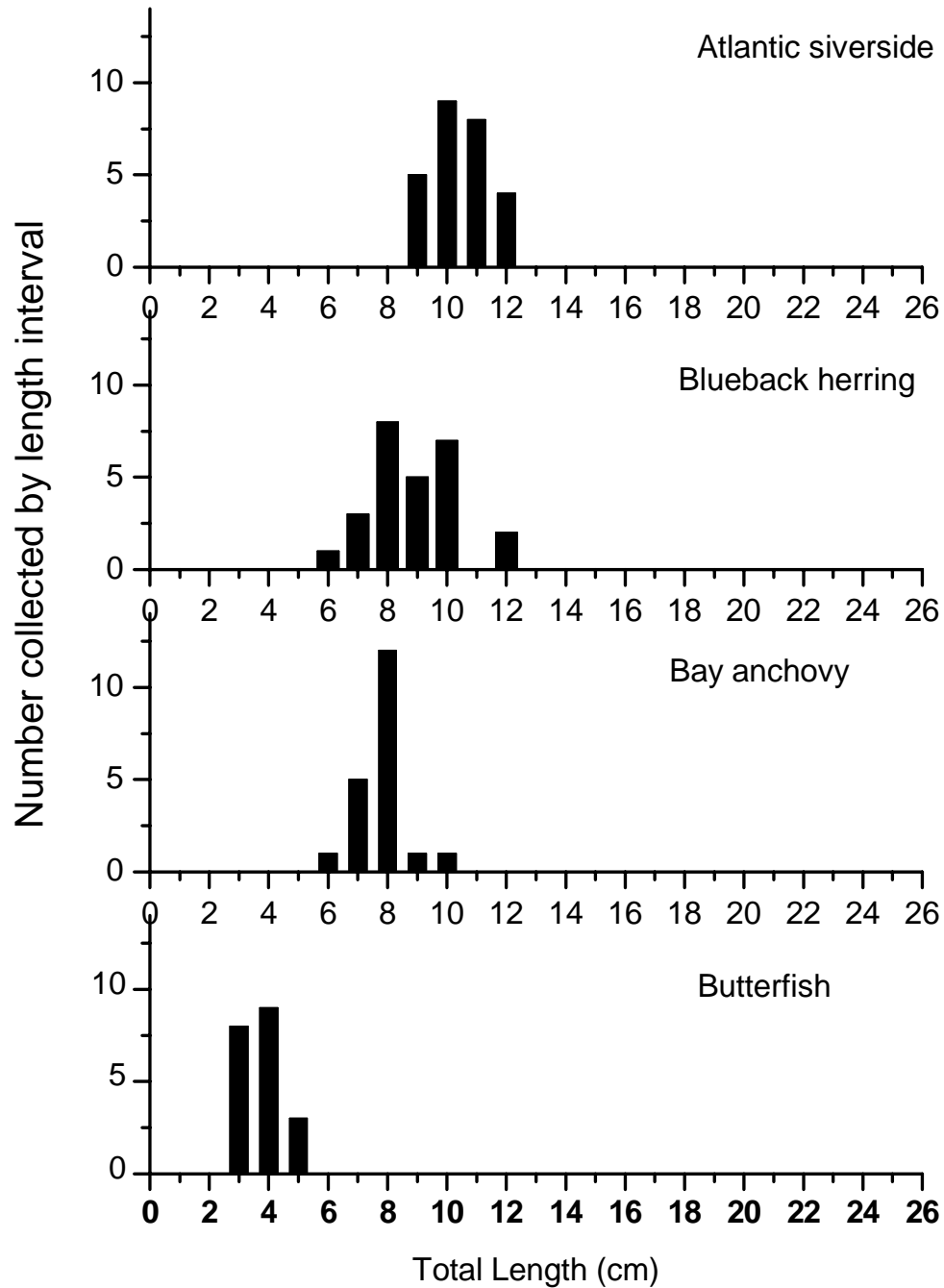




Figure 2 Length frequency distribution for the next four most abundant species collected in impingement survival sampling at Ravenswood, Jun 2006 - Feb 2007.



## **Appendix A**

## Ravenswood Impingement Survival Monitoring Jun 2006 – Feb 2007

Table A-1 – Results of impingement survival monitoring at the Ravenswood Generating Station, 2006 - 2007.

| Common name            | Number Collected | Initial Observation |      |      | After 24 Hours |      |      | After 48 Hours |      |      |
|------------------------|------------------|---------------------|------|------|----------------|------|------|----------------|------|------|
|                        |                  | Live                | Stun | Dead | Live           | Stun | Dead | Live           | Stun | Dead |
| Black sea bass         | 157              | 124                 | 0    | 33   | 123            | 0    | 34   | 123            | 0    | 34   |
| Oyster toadfish        | 68               | 58                  | 3    | 7    | 61             | 0    | 7    | 60             | 0    | 8    |
| Winter flounder        | 65               | 59                  | 1    | 5    | 58             | 0    | 7    | 58             | 0    | 7    |
| Atlantic silverside    | 26               | 18                  | 0    | 8    | 16             | 0    | 9    | 15             | 0    | 10   |
| Blueback herring       | 26               | 14                  | 0    | 12   | 10             | 0    | 16   | 9              | 0    | 17   |
| Bay anchovy            | 20               | 1                   | 0    | 19   | 0              | 0    | 20   | 0              | 0    | 20   |
| Butterfish             | 20               | 0                   | 1    | 19   | 0              | 0    | 20   | 0              | 0    | 20   |
| Atlantic menhaden      | 16               | 5                   | 0    | 11   | 1              | 0    | 15   | 1              | 0    | 15   |
| Grubby                 | 16               | 12                  | 0    | 4    | 12             | 0    | 4    | 12             | 0    | 4    |
| Gulf Stream flounder   | 14               | 6                   | 0    | 8    | 4              | 0    | 10   | 2              | 0    | 12   |
| Scup                   | 14               | 0                   | 0    | 14   | 0              | 0    | 14   | 0              | 0    | 14   |
| Cunner                 | 10               | 10                  | 0    | 0    | 10             | 0    | 0    | 10             | 0    | 0    |
| Red hake               | 10               | 5                   | 0    | 5    | 5              | 0    | 5    | 5              | 0    | 5    |
| Alewife                | 9                | 7                   | 0    | 2    | 7              | 0    | 2    | 5              | 0    | 4    |
| Feather blenny         | 8                | 5                   | 0    | 3    | 5              | 0    | 3    | 3              | 0    | 5    |
| Silver hake            | 8                | 5                   | 0    | 3    | 5              | 0    | 3    | 5              | 0    | 3    |
| Smallmouth flounder    | 8                | 0                   | 0    | 8    | 0              | 0    | 8    | 0              | 0    | 8    |
| Northern searobin      | 6                | 4                   | 0    | 2    | 4              | 0    | 2    | 4              | 0    | 2    |
| Spotted hake           | 6                | 3                   | 0    | 3    | 3              | 0    | 3    | 3              | 0    | 3    |
| Threespine stickleback | 6                | 6                   | 0    | 0    | 6              | 0    | 0    | 6              | 0    | 0    |
| Northern pipefish      | 5                | 1                   | 0    | 4    | 1              | 0    | 4    | 1              | 0    | 4    |
| Spotfin butterflyfish  | 4                | 3                   | 0    | 1    | 3              | 0    | 1    | 3              | 0    | 1    |
| Striped searobin       | 4                | 2                   | 0    | 2    | 2              | 0    | 2    | 2              | 0    | 2    |
| Lined seahorse         | 3                | 3                   | 0    | 0    | 3              | 0    | 0    | 3              | 0    | 0    |
| Conger eel             | 2                | 2                   | 0    | 0    | 2              | 0    | 0    | 2              | 0    | 0    |
| Naked goby             | 2                | 0                   | 0    | 2    | 0              | 0    | 2    | 0              | 0    | 2    |
| Rock gunnel            | 2                | 2                   | 0    | 0    | 2              | 0    | 0    | 2              | 0    | 0    |
| Striped bass           | 2                | 2                   | 0    | 0    | 0              | 0    | 2    | 0              | 0    | 2    |
| American sand lance    | 1                | 0                   | 0    | 1    | 0              | 0    | 1    | 0              | 0    | 1    |
| Atlantic moonfish      | 1                | 0                   | 0    | 1    | 0              | 0    | 1    | 0              | 0    | 1    |
| Bluefish               | 1                | 0                   | 0    | 1    | 0              | 0    | 1    | 0              | 0    | 1    |
| Gizzard shad           | 1                | 0                   | 0    | 1    | 0              | 0    | 1    | 0              | 0    | 1    |
| Seaboard goby          | 1                | 0                   | 0    | 1    | 0              | 0    | 1    | 0              | 0    | 1    |
| Unidentifiable         | 1                | 1                   | 0    | 0    | 1              | 0    | 0    | 1              | 0    | 0    |
| White perch            | 1                | 0                   | 0    | 1    | 0              | 0    | 1    | 0              | 0    | 1    |
| Windowpane             | 1                | 1                   | 0    | 0    | 1              | 0    | 0    | 1              | 0    | 0    |

**AFFIRMATION OF RACHEL TREICHLER, ESQ. IN SUPPORT OF THE  
VERIFIED PETITION, DATED SEPTEMBER 5, 2019 [A- 1123 - A- 1125]**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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In the Matter of the Application of

SIERRA CLUB and HUDSON RIVER FISHERMEN'S  
ASSOCIATION, NEW JERSEY CHAPTER INC.

Petitioners,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules,

–against–

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, BASIL SEGGOS,  
COMMISSIONER, and HELIX RAVENSWOOD LLC,

Respondents.

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**AFFIRMATION OF  
RACHEL TREICHLER**

Index No. 2402/19

Hon. Ulysses B. Leverett

I, Rachel Treichler, an attorney admitted to the practice of law before the courts of the State of  
New York, affirm the following to be true under the penalties of perjury pursuant to CPLR 2106:

1. I am an attorney for the Petitioners herein. As such, I am fully familiar with the  
facts and circumstances of this proceeding.
2. I make this affirmation in support of the Verified Petition and Petitioners Reply  
Memorandum of Law.
3. On October 3, 2018, I reviewed the notice that Respondent DEC published that  
day in Respondent DEC's Environmental Notice Bulletin ("ENB") stating that it had received an  
application it had received for an initial water withdrawal permit from Respondent Helix  
Ravenswood LLC. The notice stated that the "Project is a Type I action and will not have a  
significant effect on the environment. A coordinated review with other agencies was performed

and a Negative Declaration is on file.” The notice stated that public comments on “this project” were due on October 18, 2018. Copies of this ENB notice are provided in the Administrative Record (“AR”) at 397-398 and 401-402.

4. On October 4, 2018, I emailed the email address listed in the notice and requested a copy of the proposed permit and the negative declaration. Copies of this email are included in the administrative record at 397-398 and 401-402.

5. After I sent this email, also on October 4, 2018, I called to follow-up and spoke with Kent P. Sanders, Deputy Chief Permit Administrator, Division of Environmental Permits at Respondent DEC. Mr. Sanders told me that no draft permit had been prepared because Respondent DEC planned to reissue the same permit it had previously issued and suggested that I review that permit. I understood Mr. Sanders to be telling me that Respondent DEC planned to reissue the same permit that had been invalidated by the Second Department in *Sierra Club v. Martens*, 158 A.D.3d 169 (2nd Dep’t 2018). After we spoke, Mr. Sanders emailed me a copy of the negative declaration and confirmed that “[a]s we discussed the Department is not proposing changes to the previously issued permit.” A copy of Mr. Sanders’s emailed response with the negative declaration is included in the administrative record at 397-398.

6. Subsequently, on November 13, 2018, after the comment period on the permit application had been extended to November 17, 2018 (AR 471), I emailed Mr. Sanders and asked him if Respondent DEC had made the determinations required by ECL 15-1503.2 for the Helix-Ravenswood permit. If so, I asked him to send me a copy of those determinations. I also asked for a copy of the notice of complete application. A copy of my email is attached as

**Exhibit A.**

7. In response, Mr. Sanders emailed me a notice of complete application dated September 25, 2018, and a short document captioned Project Justification Review Checklist Supplement. The Project Justification Review Checklist Supplement he emailed to me is contained in the administrative record at page 591. A copy of Mr. Sanders' email in response with the attachments is attached as **Exhibit B**.

Dated: September 5, 2019  
Hammondsport, New York



---

RACHEL TREICHLER

**EXHIBIT A — EMAIL FROM RACHEL TREICHLER TO DEC, NOVEMBER 13, 2018**  
**[A- 1126 - A- 1127]**

Request for Notice of Complete Application and Determinations Re: Ra...

**Subject:** Request for Notice of Complete Application and Determinations Re: Ravenswood Generating Station  
**From:** Rachel Treichler <treichlerlaw@frontiernet.net>  
**Date:** 11/13/2018, 9:15 AM  
**To:** "Sanders, Kent P (DEC)" <kent.sanders@dec.ny.gov>

Dear Mr. Sanders,

Another request. Would you send me notice sent to Helix Generation LLC that its water withdrawal permit application was complete?

Also, did DEC make the determinations required by ECL 15-1503.2 for the Helix-Ravenswood permit? If so, would you send me a copy of those determinations?

Many thanks!

Rachel

Law Office of Rachel Treichler  
7988 Van Amburg Road  
Hammondsport, NY 14840  
607-569-2114  
<http://treichlerlawoffice.com>

On 11/9/2018 9:36 AM, Rachel Treichler wrote:

Thank you very much!

Rachel

On 11/8/2018 2:12 PM, Sanders, Kent P (DEC) wrote:

Dear Ms. Treichler,  
Please find attached a copy of the CAF and an earlier email exchange with NYC Planning Department regarding LWRP review.  
NYC LWRP review is similar to NYSDOS's for permitting actions without Federal involvement.  
See Section D of the Form, Submission Requirements.

Sincerely,  
Kent P. Sanders

---

**From:** Rachel Treichler [<mailto:treichlerlaw@frontiernet.net>]  
**Sent:** Thursday, November 08, 2018 11:14 AM  
**To:** Sanders, Kent P (DEC) <[kent.sanders@dec.ny.gov](mailto:kent.sanders@dec.ny.gov)>  
**Subject:** Request for Copy of Coastal Assessment Form (CAF) Re: Ravenswood Generating Station

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Dear Mr. Sanders,

Request for Notice of Complete Application and Determinations Re: Ra...

I would like to request a copy of the coastal assessment form (CAF) that DEC submitted to the New York City Department of City Planning notifying NYC that DEC was proposing a Type I action to issue a water withdrawal permit to Ravenswood. I understand that this form would have been submitted to NYC before the negative declaration was issued. See 19 NYCRR 600.4.

Thank you!

Rachel

Law Office of Rachel Treichler  
7988 Van Amburg Road  
Hammondsport, NY 14840  
607-569-2114  
<http://treichlerlawoffice.com>

On 10/11/2018 4:17 PM, Sanders, Kent P (DEC) wrote:

Dear Ms. Treichler,  
The Department will be granting a 30 day extension to the Public comment period. A notice should be in next week's ENB.  
Sincerely,

Kent P. Sanders

Deputy Chief Permit Administrator  
Div. of Environ. Permits – NYSDEC  
625 Broadway, Albany

---

**From:** Rachel Treichler [<mailto:treichlerlaw@frontiernet.net>]  
**Sent:** Thursday, October 11, 2018 11:45 AM  
**To:** Sanders, Kent P (DEC) <[kent.sanders@dec.ny.gov](mailto:kent.sanders@dec.ny.gov)>  
**Subject:** Re: FW: Ravenswood Generating Station

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Thank you!

Rachel

On 10/11/2018 11:27 AM, Sanders, Kent P (DEC) wrote:

Dear Ms. Treichler,  
Please find attached the Ravenswood Water Withdrawal Reports for 2014, 2015, 2017.

Sincerely,  
Kent P. Sanders



**EXHIBIT B — EMAIL RESPONSE FROM DEC, NOVEMBER 13, 2018 [A- 1128 - A- 1133]**

RE: Request for Notice of Complete Application and Determinations Re...

**Subject:** RE: Request for Notice of Complete Application and Determinations Re: Ravenswood Generating Station  
**From:** "Sanders, Kent P (DEC)" <kent.sanders@dec.ny.gov>  
**Date:** 11/13/2018, 10:44 AM  
**To:** Rachel Treichler <treichlerlaw@frontiernet.net>

Dear Ms. Treichler,  
Attached please find the requested information.  
Sincerely,  
Kent P. Sanders

---

**From:** Rachel Treichler [mailto:treichlerlaw@frontiernet.net]  
**Sent:** Tuesday, November 13, 2018 9:15 AM  
**To:** Sanders, Kent P (DEC) <kent.sanders@dec.ny.gov>  
**Subject:** Request for Notice of Complete Application and Determinations Re: Ravenswood Generating Station

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Dear Mr. Sanders,

Another request. Would you send me notice sent to Helix Generation LLC that its water withdrawal permit application was complete?

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NYC LWRP review is similar to NYSDOS's for permitting actions without Federal involvement.  
See Section D of the Form, Submission Requirements.

Sincerely,

RE: Request for Notice of Complete Application and Determinations Re...

Kent P. Sanders

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Thank you!

Rachel

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Sincerely,

Kent P. Sanders

Deputy Chief Permit Administrator  
Div. of Environ. Permits – NYSDEC  
625 Broadway, Albany

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**Sent:** Thursday, October 11, 2018 11:45 AM  
**To:** Sanders, Kent P (DEC) <[kent.sanders@dec.ny.gov](mailto:kent.sanders@dec.ny.gov)>  
**Subject:** Re: FW: Ravenswood Generating Station

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RE: Request for Notice of Complete Application and Determinations Re...

Thank you!

Rachel

On 10/11/2018 11:27 AM, Sanders, Kent P (DEC) wrote:

Dear Ms. Treichler,  
Please find attached the Ravenswood Water Withdrawal  
Reports for 2014, 2015,2017.

Sincerely,  
Kent P. Sanders

|                                     |         |
|-------------------------------------|---------|
| Attachments:                        |         |
| Ravenswood 2018 Complete Notice.pdf | 56.4 KB |
| Ravenswood DOW Review Checklist.pdf | 386 KB  |

**THIS IS NOT A PERMIT**

---



**New York State Department of Environmental Conservation  
Notice of Complete Application**

*Date:* 09/25/2018

*Applicant:* HELIX RAVENSWOOD LLC  
38-54 VERNON BLVD  
LONG ISLAND CITY, NY 11101

*Facility:* RAVENSWOOD GENERATING STATION  
38-54 VERNON BLVD  
QUEENS, NY 11101

*Application ID:* 2-6304-00024/00056

*Permits(s) Applied for:* 1 - Article 15 Title 15 Water Withdrawal Non-public

*Project is located:* in QUEENS COUNTY

*Project Description:*

The applicant has applied for an initial water withdrawal permit to the above-referenced applicant authorizing the continued withdrawal of water up to approximately 1.5 billion gallons per day from the East River, for use as cooling water for electrical power production.

No physical disturbance to the site or construction activities are proposed. No changes in operations at the facility are proposed.

*Availability of Application Documents:*

Filed application documents, and Department draft permits where applicable, are available for inspection during normal business hours at the address of the contact person. To ensure timely service at the time of inspection, it is recommended that an appointment be made with the contact person.

*State Environmental Quality Review (SEQR) Determination*

Project is a Type I action and will not have a significant effect on the environment. A coordinated review with other involved agencies was performed and a Negative Declaration is on file.

*SEQR Lead Agency* NYS Department of Environmental Conservation

*State Historic Preservation Act (SHPA) Determination*

The proposed activity is not subject to review in accordance with SHPA. The application type is exempt and/or the project involves the continuation of an existing operational activity.

*Coastal Management*

This project is located in a Coastal Management area and is subject to the Waterfront Revitalization and Coastal Resources Act.

*DEC Commissioner Policy 29, Environmental Justice and Permitting (CP-29)*

It has been determined that the proposed action is not subject to CP-29.

*Availability For Public Comment*

Comments on this project must be submitted in writing to the Contact Person no later than 10/18/2018 or 15 days after the publication date of this notice, whichever is later.

*Contact Person*

KENT P SANDERS  
NYSDEC  
625 Broadway  
Albany, NY 12233  
(518) 402-9178

---

**CC List for Complete Notice**

Chief Executive Officer

TANJA GRZESKOWITZ  
ENB

Ravenswood

## Project Justification Review Checklist Supplement

The Project Justification requirements can be found in both 601.10 (k) and ECL 15-1503.2 a-h

601.10 (k)(1) Why project was selected from the evaluated alternatives [15-1503.2(a)] P

601.10 (k)(2) Why increased Water conservation or efficiency measures cannot negate the need for the proposed project [15-1503.2(d)] P They have upgraded the pumps to handle conservation

601.10 (k)(3) Why the proposed water withdrawal quantity is reasonable for the proposed use [15-1503.2(e)] P

601.10 (k)(4) Why the proposed water conservation measures are environmentally sound and economically feasible [15-1503.2(g)] P

601.10 (k)(5) Whether the supply is adequate [15-1503.2(b)] P

601.10 (k)(6) Whether the proposed project is just and equitable to other municipalities and their inhabitants in regards to present and future needs for sources of potable water [15-1503.2(c)] AP

601.10 (k)(7) Whether the proposed withdrawal will result in no significant individual or cumulative adverse environmental impacts [15-1503.2(f)] P (BTA)

601.10 (k)(8) Whether the proposed withdrawal will be consistent with all applicable laws [15-1503.2(h)] P

SUPPLEMENTAL AFFIDAVIT OF ERIK T. SCHMITT, DATED SEPTEMBER 10, 2019  
[A- 1134 - A- 1138]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----x  
In the Matter of the Application of

SIERRA CLUB, and HUDSON RIVER  
FISHERMEN'S ASSOCIATION, NEW JERSEY  
CHAPTER, INC.,

Index No. 2402/2019

Petitioners,

For Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules,

Supplemental Affidavit  
of Erik T. Schmitt

-against-

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, BASIL  
SEGGOS, COMMISSIONER OF THE NEW  
YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, and  
HELIX-RAVENSWOOD LLC,

Respondents.  
-----x

**SUPPLEMENTAL AFFIDAVIT OF ERIK T. SCHMITT  
IN RESPONSE TO MATTERS RAISED FOR THE FIRST TIME ON REPLY**

State of New York     )  
                                  ) ss.:  
County of Albany     )

Erik T. Schmitt, being duly sworn, deposes and says:

1. I am currently employed as a Professional Engineer by the New York State Department of Environmental Conservation ("DEC") at DEC's Central Office in Albany, New York. I make this supplemental affidavit in support the Verified Answer of DEC and its Commissioner, Basil Seggos, and in opposition to the Verified Petition. Specifically, this supplemental affidavit is made to respond to assertions made by Petitioners for the first time in their Reply papers regarding the timing of certain of DEC's actions in issuing the water

withdrawal permit that is at issue in this lawsuit.

2. It is part of my current job duties as a Professional Engineer for DEC's Bureau of Water Resource Management to regulate water withdrawal systems throughout New York State, including water withdrawals by the Ravenswood Generating Station ("facility").

My job duties include the review of applications for water withdrawal permits and determining whether these applications satisfy the requirements of ECL Article 15, Title 15 ("Water Resources Protection Act") and DEC's implementing regulations at 6 NYCRR Part 601 ("Part 601 regulations"). Additional details on my educational background and professional qualifications and experience are set forth in paragraphs 2 through 5 of my initial affidavit in this matter.

3. I am familiar with the facts and circumstances associated with the applications that have been filed with DEC for a water withdrawal permit for the Ravenswood facility. This supplemental affidavit is based on my personal knowledge, my review of DEC records and files, and my discussions with DEC staff.

4. My initial affidavit, sworn to on August 12, 2019, was offered in response to Petitioners' assertions that DEC failed to make the determinations required by Environmental Conservation Law § 15-1503(2) ("Section 1503(2)") in issuing the water withdrawal permit to Respondent Helix Ravenswood, LLC that is at issue in this lawsuit. My affidavit explained, with reference to the administrative record, how DEC made those determinations and identified the record documents that supported the determinations. (Schmitt Affidavit at ¶¶ 20-27.)

5. Petitioners now, for the first time in their Reply papers, assert that DEC did not make the determinations required by Section 15-1503(2) in what Petitioners assert is the time period required by Section 15-1503(2). Petitioners read into Section 15-1503(2) a requirement that



DEC must make the determinations prior to the time at which DEC seeks public comment. (Petitioners Reply Memorandum at pp. 11-16.) There is no such requirement in Section 15-1503(2) nor is any such requirement to be found in any other applicable provision of the ECL. This supplemental affidavit is offered in response to these new assertions, and to explain DEC's process and procedure in discharging its responsibilities under Section 15-1503 (2).

6. The plain language of Section 1503 requires only that DEC make the determinations prior to the issuance of the permit. DEC fully satisfied this requirement, as explained in the Response to Comments (AR 532-533), and in paragraph 30 of my prior affidavit, sworn to on August 12, 2019.

7. Consistent with its procedures and policy (as explained in my prior affidavit), on October 3, 2018 DEC made available for public review and comment on Ravenswood's application for the water withdrawal permit and its supporting documentation. On October 4, 2018, Rachel Treichler, one of the attorneys for Petitioners, contacted DEC and requested a copy of the proposed draft water withdrawal permit, if one was available, and the negative declaration referenced in the public notice document (AR 395-398). Although DEC's regulations did not call for DEC to generate or release for public comment a proposed draft permit, Kent P. Sanders, (now retired but then DEC's Deputy Chief Permit Administrator), nevertheless responded to Ms. Treichler's request by informing her that could she could look to the text of the 2013 permit which was under consideration by DEC as the text for the 2018 permit. Mr. Sanders also provided Ms. Treichler with the negative declaration. At that time DEC staff, including myself, had evaluated the factors identified in Section 15-1503(2) (a)-(h), tentatively concluded that those factors supported the adoption of the text of the 2013 permit but we were awaiting consideration of the public comments before making the final determinations required by Section

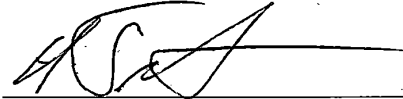
1503. Those determinations were subsequently made and were released to the public in the Response to Comments that was issued concurrently with the final water withdrawal permit. (AR 532-533.)

8. As reflected by the administrative record citations in my initial affidavit at paragraphs 20-27, all of the materials on which DEC relied in making the determinations were available to DEC at the time when DEC opened the public comment period in October 2018. However, DEC made only tentative determinations at that time because it was accepting public comments on its proposed permit decision and it intended to take any comments received into consideration before making a final decision to either issue or decline to issue an initial water withdrawal permit for the Ravenswood Generating Station.

9. As stated in DEC's Memorandum of Law at page 21, DEC does not have a standard form or checklist to record the determinations under Section 1503(2). In addition, DEC's regulation governing public notice and comment on permit applications for a non-delegated permit such as a water withdrawal permit, sets forth the specific items that DEC must put out for comment but does not include a proposed draft permit nor does it include proposed determinations under Section 1503(2). See, 6 NYCRR § 621.7(a) and (b)(1) – (6). DEC provided all of the information required to be provided for public comment and Petitioners do not allege otherwise.

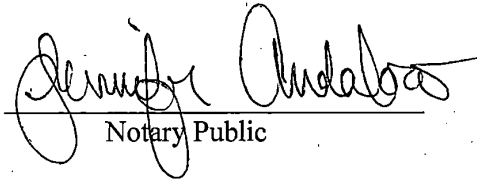
10. For the reasons stated herein, to the best of my knowledge and belief, the initial water withdrawal permit that DEC issued on February 20, 2019 to Helix Ravenswood, LLC complies with applicable law, and is in no way arbitrary or capricious, or in contravention of law.

I swear under penalty of perjury that the foregoing is true and accurate to the best of my knowledge.



Erik T. Schmitt

Subscribed and sworn to before me  
this 10<sup>th</sup> day of September, 2019

  
Notary Public

JENNIFER ANDALORO  
Notary Public, State of New York  
No. 02AN6098246  
Qualified in Albany County  
Commission Expires January 14, 2020

**A-1139**

**CERTIFICATION PURSUANT TO CPLR § 2105**

I, Richard J. Lippes, a member of the firm of Lippes & Lippes, attorneys for the Petitioners-Appellants, hereby certify pursuant to Section 2105 of the CPLR that the foregoing papers constituting the Appendix have been personally compared by me with the original Record filed herein and have been found to be true and accurate copies of said originals, which are now on file in the office of the Clerk of the County of Queens, and are being transferred by subpoena for the purposes of this case.

Dated: October 9, 2020

A handwritten signature in blue ink, appearing to be 'RJL', is written above a horizontal line.

Attorney for Petitioners-Appellants

STATE OF NEW YORK     )  
                                      )  
COUNTY OF NEW YORK    )

ss.:

**AFFIDAVIT OF SERVICE  
BY MAIL**

I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

**On October 13, 2020**

deponent served the within: **Appendix**

**upon:**

**Barclay Damon LLP**  
*Attorneys for Respondent-Respondent Helix Ravenswood LLC*  
**80 State Street**  
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*Attorneys for Respondent-Respondent New York State Department*  
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**28 Liberty Street, 19<sup>th</sup> Floor**  
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the address(es) designated by said attorney(s) for that purpose by depositing **1** true copy(ies) of same, in a postpaid properly addressed wrapper in a Post Office Mail Depository, under the exclusive custody and care of the United States Postal Service, within the State of New York.

**Sworn to before me on October 13, 2020**

**MARIA MAISONET**  
Notary Public State of New York  
No. 01MA6204360  
Qualified in Queens County  
Commission Expires Apr. 20, 2021

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**Job# 296704**