

**CWCWC**  
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January 18<sup>th</sup>, 2012

Attn: Robert Simson  
[rjsimson@gw.dec.state.ny.us](mailto:rjsimson@gw.dec.state.ny.us)

NYSDEC  
Division of Water  
625 Broadway  
Albany NY 12233-3500

Re: Comments on Proposed Amendments to 6 NYCRR Parts 601 and 621

Dear Mr. Simson,

The Croton Watershed Clean Water Coalition, Inc. (*CWCWC*), is a not-for profit, 501(c) (3) coalition of over 50 groups throughout NYC, Westchester and Putnam Counties. Founded in 1998, we are dedicated to the protection of all NYS waters from the effects of contamination by whatever sources of pollution, and to the preservation of this vitally important resource.

Sincerely,

Marian H. Rose, Ph.D.  
Director, *CWCWC*

An important recent element that has been introduced regarding water withdrawals in NYS is the possibility of high volume horizontal hydrofracturing (HVHF) for natural gas (methane). This method of extracting methane (“fracking”) from wells thousands of feet below the surface requires large quantities of water from a variety of sources such as streams, ponds, lakes, reservoirs and aquifers.

Each fracked well requires anywhere from 2 million to 8 million gallons of water. If HVHF were permitted, thousands of wells could be drilled, and each well could be fracked several times. Billions of gallons of water would be used.

A critical difference between HVHF and other large users is that HVHF entails the consumptive use of water. In many cases, rather than have to deal with the disposal of millions of gallons of water highly contaminated with salts, heavy metals and dangerous levels of radioactivity, the company will choose to leave up to 80% underground. There are no facilities in NYS that are able to deal with this type of waste. In other cases, the company might choose to export the radioactive waste to decontamination facilities in other states. Whatever the method of choice, the water is forever lost. NYS will be sacrificing billions of gallons of this precious, vital resource.

We note that in the case of other consumptive uses, such as the transfer of water from one basin to another, the water is still usable in the basin to which it is transferred.

For these reasons, among others, CWCWC feels that the proposed regulations for water withdrawal, in particular the permitting regulations, need clarification and strengthening. Regulations pertaining to consumptive use, in particular where water is irretrievably lost, should be more restrictive than for other cases.

We start by repeating some of the pertinent definitions.

## **Part 601: Water Withdrawal Permitting, Reporting and Registration**

### **§ 601.2 Definitions**

**(h) ‘Facility’ means any or all of the physical components (*emphasis added*) of a water withdrawal system.**

**(k) ‘Person’ means any..., *public or private corporation,... industry, or any other legal entity whatsoever (emphasis added)***

**(s) ‘Water withdrawal system’ means any facility, works, equipment or infrastructure operated or maintained for the provision or withdrawal of water including, but not limited to, collection, pumping, treatment, *transportation (emphasis added)*, transmission, *storage (emphasis added)*, and distribution facilities and works.**

**(u) ‘Works’ means any or all of the physical components of a water withdrawal system...**

### **§ 601.6 Water Withdrawal Permit**

**Except to the extent that is otherwise explicitly stated in this Part, no person may take any of the following actions without having first obtained a water withdrawal permit:**

**(c) operate or maintain any water withdrawal system with a capacity equal to or greater than the threshold volume.**

We note that the water used for HVHF at a drilling pad, is carried to the pad and assembled by hundreds of trucks that each, individually, supply a portion of the total water that is needed. Clearly, this assembly of trucks constitutes a “water withdrawal system” that has a “capacity equal to or greater than the threshold volume” (100,000gpd).

On the other hand, each truck can only withdraw and carry a volume of water that is far below the threshold volume.

There has been concern that this will enable each truck to withdraw water from whatever source without having to obtain a permit. If this were indeed the case, it would be in blatant disregard for the intent of the permit that clearly regards the whole fleet as a “water withdrawal system”.

In *CWCWC*'s opinion, each water-withdrawing truck should require a permit.

However there is still ambiguity regarding this issue, and we ask that the Department clarify the exact interpretation of the proposed regulation.

We note that the same trucks that collect fresh water from various sources are the same that carry fracking's contaminated wastes to their various destinations. These trucks should be thoroughly cleansed and decontaminated prior to being permitted to extract water from clean, uncontaminated sources. A detailed cleansing procedure should be included in the regulations.

### **§ 601.3 Applicability**

The change from requiring a permit for 5 service connections to 100,000 gpd will cause a severe reduction in the environmental review of large developments. Where the prior regulations required a public water supply permit (and therefore potential hearings) when a neighborhood's groundwater might be impacted by a new housing development, the new regulations do not. This shifts the burden from the State to localities that do not have the resources or expertise to examine groundwater impact issues under SEQRA.

See: <http://www.dec.ny.gov/hearings/11087.html>), where the property values and livelihood of an entire community were saved because of DEC's oversight made possible by the existing regulations.

We strongly recommend that the requirement for a permit for 5 service connections be maintained where applicable, together with a lower threshold of 50,000 gpd.

### **§ 601.5 Annual Reporting**

**(a) The annual report...shall include all information requested by the Department including but not limited to the following:**

**(5) the actual estimated monthly and annual volumes and rates of water lost or consumptively used from the withdrawal...**

Rather than merely mentioning consumptive withdrawal, the Department must confront this serious problem and prepare a plan that limits consumptive withdrawal, predicated on precautionary standards that have been recommended by the Department's hydrogeologists and other experts.

**§ 601.11 Action on Permit Applications**

It appears from the permit application procedure that the Department has the sole authority to "grant or deny a permit, or grant a permit with conditions." This is unacceptable.

Any municipality whose water resources could be affected by a proposed water withdrawal(s), consumptive or otherwise, must have the right to call for a full SEQR review of the proposal, with a mandatory public hearing. Approval of the Town Board should be obtained. If other withdrawals within the same municipality are being proposed, a cumulative impact statement should be required.

**§ 601.12 General Provisions of a Water Withdrawal Permit**

**(k) The filing of a request by the permittee for a permit modification, termination, transfer, or a modification of planned changes or anticipated noncompliance, does not stay any permit condition.**

This gives the permittee far too much leeway to change the conditions of the permit. The Department should have the authority to cancel the permit rather than have to rely for cancellation on a renewed SEQR review (SEIS) and possibly additional regulatory review under the Uniform Procedures Act.

**(n) The issuance of a water withdrawal permit by the Department and the receipt thereof by the permittee does not supersede, revoke or rescind an order on consent or modification thereof or any of the terms, conditions or requirements contained in such order or modification thereof unless specifically intended by said order or a modified order.**

The Department may continue granting the permit for water withdrawal even though the permittee is under a consent order for some malfeasance. The affected municipality should be allowed authority to rescind the permit.

**§ 601.16 Denial, Suspension or Revocation of Permits**

**(a) The Department may deny an application for a water withdrawal permit if the Department determines that:**

[Add (7)] At least 50% of the water for withdrawal will be irreversibly lost to consumptive use in the basin within which it has been extracted, or lost to consumptive use within a basin to which it has been transferred.

### **§ 601.18 Registration of Interbasin Diversions; Prohibitions**

**(a) No person shall cause an interbasin diversion, or increase the volume of an interbasin diversion, which results in a diversion of water or wastewater in excess of an average of 1,000,000 gallons per day...**

It is not clearly stated how the “average” is to be determined – over a week, a month, a year?

### **General Comments**

Agricultural usage being excepted, the Department should prohibit the removal of any water from primary or principal aquifers; AA-S and AA streams; any DEC-regulated wetlands; any streams, lakes, aquifers or wetlands within NY State Forests or Special Wildlife Preserves.

Prior to removing water from an aquifer shared with other wells, private or publicly-owned, the applicant should be required to conduct standard pumping tests during the dry season.

Prior to issuing any permits, the Department should work together with the three main River Basin Commissions, i.e., the Delaware, the Susquehanna and the Great Lakes /St Lawrence, to establish a uniformity of rules and regulations among these basins in NYS. In so doing, *CWCWC* cannot urge too strongly that the strictest rules be adopted.

NYS still has uniquely high quality water resources that supply us with healthy drinking water, plentiful irrigation for our food supply, and unlimited opportunities for recreation and tourism.

We simply ask that the Department do its duty and put safeguarding of our water, the most vital need for us and for future generations, before any other consideration.