

Regulating Water Withdrawals in New York: The Water Resources Protection Act

New York's Water Resources Protection Act was adopted in 2011 to regulate many withdrawals of water from surface waterbodies and groundwater sources for water uses that were not previously subject to state water withdrawal regulations, including electric power plants that use large quantities of water for cooling systems and most other commercial and industrial uses. Pre-existing agricultural water uses that were registered or reported to the state on or before the law went into effect are exempt from most requirements under this law. Water withdrawals for potable water supply systems were already subject to a permitting requirement for water withdrawals and this requirement remains in effect under the new law with some modifications.

Overview

Water withdrawals from reservoirs, wells, rivers and streams can have a significant effect on how much water remains in streams and other waterbodies to support fish and other wildlife, sustain ecosystems, and maintain recreational and aesthetic values for fishing, swimming and other activities. Water that remains in waterbodies for these environmental and recreational uses is often described as in-stream flow. Water withdrawals for public water supplies have been regulated in NY for many years, but until 2011, withdrawals for commercial and industrial uses, power plant cooling, agriculture and many other uses were not regulated at all. The Water Resources Protection Act (WRPA) and the regulations adopted based on this law now govern many of these uses by requiring a water withdrawal permit administered by the NY State Department of Environmental Conservation (NYSDEC).

Highlights:

- The New York State Water Resources Planning Council was established by Title 29 of Article 15 in the state's Environmental Conservation Law (ECL) in 1984. For the first time, this law established the role of the NYSDEC as the primary agency responsible for comprehensive management of the state's water resources. The NY State Statewide Water Resources Management Strategy adopted by the state based on the 1984 law recommended adoption of a water withdrawal permitting program. It also called for steps to gather data on water withdrawals and on significant diversions of water between major drainage basins. The WRPA adopted in 2011 was based in part on this statewide strategy and policy, and it became effective on February 15, 2012.
- The 2011 WRPA amended parts of the state's ECL, which is administered by the NYSDEC. In keeping with the overall framework of the state's water laws, Article 15, Title 15 of the ECL is intended to support appropriate allocation of a limited resource among competing users. It states NYSDEC "shall make a reasonable effort to meet the needs of the applicant, with due regard to the actual or prospective needs, interests and rights of others that may be affected by the project" (ECL §15-1503(4)).
- A phased application schedule was established for initial water withdrawal permittees, with the first deadline on June 1, 2013 applying to the largest water users (use of at least 100 million gallons per day (GPD)). Initial applications were required from progressively smaller users beginning in February, 2014 and extending to February 2017 for the smallest users for withdrawals between 100,000-500,000 GPD. During this phased implementation period for the new regulations, the other category of permit applications is for a "new permit." A permit would be necessary for any new withdrawal and for any existing, permitted withdrawal that is proposing to increase the water withdrawal or undertake certain other new activities. After this implementation period, all initial and new permits will then be subject to periodic review and renewal requirements in the regulations.

Activities Subject to Permit Requirements and Criteria for Permit Review:

Under the law in the ECL, Article 15, Title 15 requires a permit for activities including:

- withdrawal from an existing or new source
- increased withdrawal from permitted source
- taking of land
- construction of water works
- extension of a water supply system
- provision of water to other states
- significant change in permitted use

The criteria for permit review by NYS DEC are listed in the law as follows:

ECL §15-1503(2) -- determinations required during the permit review process:

- a. Have other sources been considered
- b. Is the quantity of supply adequate
- c. Is the project just and equitable to all affected municipalities
- d. Is there a water conservation program
- e. Can the need be lessened through conservation
- f. Is it limited to reasonable quantities
- g. Will it have no adverse impacts on quantity or quality
- h. Is it environmentally sound and economically feasible
- i. Is it consistent with regional agreements

Exemptions

Water withdrawals for certain uses, or in certain watersheds in New York, are exempt from most requirements under the WRPA. Agricultural users that were registered or their annual water usage reported to DEC by February 15, 2012 are exempt from most requirements for pre-existing withdrawals, but these withdrawals must be reported annually to DEC. The law also exempts uses for firefighting and other public emergencies, withdrawals by hydropower facilities operating under a valid Federal Energy Regulating Commission license, withdrawals from the New York State Canal System that are used by the New York State Canal Corporation for purposes authorized by law, and certain Long Island wells regulated by another pre-existing law. In certain watersheds in the state, water withdrawals are already regulated by several regional commissions. These commissions include the Delaware River Basin Commission and the Susquehanna River Basin Commission, formed in 1961 and 1970, respectively, and the newer Great Lakes-St. Lawrence River Basin Water Resources Council formed in 2008. To avoid duplication with the regulatory frameworks that were already established by these interstate agencies, New York exempted water withdrawals in those watersheds from the new law.

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