

Plaintiff alleges that it is a duly formed water works corporation, which is defined as a "corporation organized to supply water by mains or pipes to any of the cities, towns or villages in this state, and the inhabitants thereof." Transportation Corporations Law § 40. A water works corporation is formed under the Transportation Corporations Law by delivering to the department of state for filing an appropriate certificate of incorporation. Transportation Corporations Law § 3(b)(3); Bus. Corp. Law §§ 401-409. The certificate must state the cities, towns and villages to be supplied with water, and that the consent of the authorities of such cities, towns and villages required by this chapter has been obtained and annexed thereto. Transportation Corporations Law § 3(b)(3).

Once duly formed, a water works corporation falls under the jurisdiction of both the public service commission and the Department of Environmental Conservation. Public Service Law § 5; Environmental Conservation Law, art. 15. Article 15 of the Environmental Conservation Law grants the DEC broad authority under a detailed and comprehensive scheme [*6]for the protection of the water resources of the State of New York. The legislative findings of the article include, inter alia, that the "sovereign power to regulate and control the water resources of this state ever since its establishment has been and now is vested exclusively in the State of New York, except to the extent of any delegation of power to the United States"; that adequate and suitable water for all uses "is essential to the health, safety and welfare of the people and economic growth and prosperity of the state"; that the DEC is to continue the work of undertaking "comprehensive planning for the protection, conservation and development of the water resources of the state"; and that it 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." Environmental Conservation Law § 15-0103(1), (3), (12) & (13); see also Environmental Conservation Law § 15-0107(4) (broadly defining "waters" to include, inter alia, wells).

Under article 15, a water works company, prior to providing potable water, or extending the territory in which one is providing water, must obtain a permit from the DEC. Environmental Conservation Law § 15-1503. The application must be on the prescribed forms and "shall contain all information requested by the department relative to the withdrawal, use and discharge of water, including:

- a. with respect to a public water supply system, proof of adequate authorization for the proposed project;
- b. such exhibits as may be necessary clearly to indicate the scope of the proposed project;
- c. a map of any lands to be acquired;
- d. project plans;
- e. a statement of the need for and the reasons why the proposed source or sources of supply were selected among the alternative sources which are or may become available and the adequacy of the supply selected; and
- f. a description of the applicant's proposed near term and long range water conservation program that incorporates environmentally sound and economically feasible water conservation measures, including implementation and enforcement procedures, effectiveness to date and any planned modifications for the future. ECL § 15-1503(1). If the proposed project provides for the use of water for potable purposes, the application must also include adequate proof of the character and purity of the water supply to be acquired or used and the proposed method of treatment.

ECL § 15-1503(1)(e); 6 NYCRR §§ 601.1- 608.1.

In determining whether to grant or deny a permit, or to grant a permit with conditions, the DEC "shall determine whether:

- 1) the proposed water withdrawal takes proper consideration of other sources of supply that are or may become available;
- 2) the quantity of supply will be adequate for the proposed use; [*7]
- 3) 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;
- 4) 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;
- 5) the proposed water withdrawal is limited to quantities that are considered reasonable for the purposes for which the water use is proposed;

6) 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;

7) the proposed water withdrawal will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures; and h. 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.

ECL § 15-1503(2) (emphasis added).

Pursuant to the relevant regulations, the DEC must also determine, inter alia, that the proposed project is justified by the public necessity; that all work and construction connected with the project will be proper and safe; and that there will be proper protection and treatment of the water supply and watershed. 6 NYCRR 601.6.