

Regulatory Impact Statement
For
Hudson River – Black River Regulating District
Permit System at Great Sacandaga Lake

Title 6, Park 606 of the Official Compilation of Codes, Rules and Regulations of
the State of New York

October 11, 2007

1. Statutory Authority

The Hudson River – Black River Regulating District (“the District”) is a public corporation created pursuant to Environmental Conservation Law (ECL) Article 15, Title 21. ECL Section 15-2103 declares, “...*river regulating districts may be created...*” pursuant to ECL Title 21 of Article 15 “...*to construct, maintain and operate reservoirs within such districts...*” ECL section 15-2105 sets forth direction and criteria for the organization of the boards of river regulating districts and pursuant to ECL section 15-2109(1), “*The board shall have the power to make all necessary rules and regulations which shall be effective when approved by the department.*”

2. Legislative Objective

The District was created to regulate the flow of the Hudson River and Black River, primarily for the purposes of flood control and augmentation of low flows. One of the reservoirs operated by the District is the Great Sacandaga Lake, formerly the Sacandaga Reservoir. After the creation of the reservoir, nearby

property owners requested access to the reservoir over these lands of the State of New York. Under an Access Permit System, the District makes segments of the shoreline owned by New York State available for private use. The District issues annual commercial and non-commercial permits to neighboring landowners that permit the landowners to use designated sections of the Reservoir area.

The current Rules and Regulations governing the use, operation and maintenance of the Great Sacandaga Lake, 6 NYCRR Part 606, were approved on July 13, 1992 by the New York State Department of Environmental Conservation (NYSDEC), adopted October 19, 1992 by Resolution of the Board of the Hudson River-Black River Regulating District, and became effective January 27, 1993.

The proposed rule revisions are consistent with the current rules and regulations previously approved by the NYSDEC to administer the Access Permit System.

3. Needs and Benefits

Needs:

The Proposed Rules are required to allow for the efficient administration of the Access Permit System given the complexity of the process and the requirements to effectively and fairly implement and enforce the rules. Saratoga

Associates, Landscape Architects, Architects, Engineers and Planners, P.C. were retained by the District to revise the Access Permit System Rules. As part of that process, all available historical documentation produced at the District pertaining to the establishment and administration of the Permit System was analyzed, including, but not limited to, resolutions, internal policy letters, memorandums and directives. The purpose of this analysis was to identify any practices of the District related to the Permit System that were not specifically detailed in the existing rules and therefore should be included to improve the efficiency, predictability, understanding and fairness of the administration of the Permit System. An example of a clarification includes the application process for both obtaining an Access Permit as well as a Work Permit. The existing rules do not discuss the application process or what is specifically required to apply for an Access or Work Permit.

In addition, the current rule revision process is serving to update the fees associated with administering the Permit System. The current Permit System fees have been challenged in recent litigation brought against the District. The District is in the process of determining the full cost associated with administration of the Access Permit System and enforcement of the rules, including, but not limited to, costs associated with determining the eligibility of applicants, reviewing property deeds, surveying and staking the Permit Area, creating and maintaining a drawing of each Permit Area, creating and maintaining maps of the permit areas and eligibility area, furnishing and erecting

signs on the Permit Area, Permit Area maintenance, management of encroachment issues, and management of work order requests and work permits.

Benefits:

These Proposed Rules will improve the efficiency, predictability, understanding and fairness of the administration of the Permit System for the benefit of current and future access permit holders as well as the District itself.

4. Costs

Cost to Regulated Parties

As stated above, one reason for the Proposed Rules was to develop a cost methodology to ensure the Permit System will pay for itself. The regulated parties do not pay the costs of reservoir operations such as erosion control, shoreline stabilization or dam operations, maintenance and repairs. Therefore, as part of the analysis of the existing rules, the cost of the administration of the Permit System and enforcing the rules was conducted and will continue until 2009. This cost analysis is critical to determine the “true” costs of administering the Permit System and enforcement so that current and future access permit holders will be charged fees that will cover the costs of administering the Permit System and enforcement. The analysis of the Permit System costs will not be fully completed until 2009.

Cost to Agency

The development of the Proposed Rules has cost the District approximately \$160,000. This amount includes contract costs paid to consultants to evaluate the current access Permit System.

The Proposed Rules are not expected to result in additional costs for implementation beyond what the District currently incurs for administration, outreach, education, monitoring Permit Holder's compliance with rules and enforcing the rules. The rules are actually expected to increase the efficiency of administration and enforcement. If rules are clear and better understood, compliance is more cost effective than enforcement.

Cost to Local Governments

There will be no costs to local governments for the implementation and continuation of the Proposed Rules due to the fact that local governments will continue to be exempt from the need to pay fees for the utilization of access areas. In addition, the District will be solely responsible for administering and enforcing the rules, with the municipalities having no responsibility for administration. It is important to note that the District pays approximately \$2.3 million in property taxes annually to the municipalities and other taxing jurisdictions around Great Sacandaga Lake.

5. Local Government Mandates

This rule making will not impose any program, service, duty or responsibility upon counties, cities, towns, villages, school districts, fire districts or other special districts.

6. Paperwork

As currently required, under the Proposed Rules, eligible landowners shall have the ability to voluntarily apply for an Access Permit of any type, a work permit, or to be placed on the Waiting List for any designated Access Permit Area as required by Sections 606.6 and 606.8 of the Proposed Rules.

Applications for Access Permits and Renewals: Shall include, but not be limited to, the following information: all names of the Owners of Record, identification of the Eligible Property, and two mailing addresses to which the District may send official notices. For new access permits and access permit renewals, each Owner of Record shall sign and certify the application under penalty of perjury whereby it is certified, ii) that all information supplied therein is true and accurate, and iii) that each Owner of Record understands and agrees to adhere to the rules of the Access Permit System.

Applications for Work Permits: As is the current process, the applicant shall be required to submit a detailed plan that describes dimensions, materials to be used, construction methods, proposed timetables, location of modifications and

other relevant information. The District may request additional information from the applicant as deemed necessary to determine an action on the application.

7. Duplication

No rules or other legal requirements of either the State or federal government exist at the present time which duplicate, overlay or conflict with the Proposed Rules. Many of the Proposed Rules actually comply with those of existing agencies. Due to the fact that other regulatory agencies such as the Adirondack Park Agency, New York State Department of Environmental Conservation, and the New York State Department of Health have jurisdiction over the region, permits from each agency may be required for a specific action occurring on State lands subject to an Access Permit.

8. Alternatives

The first alternative is the “null alternative” or the “do nothing” alternative. It was quickly determined that the Permit System Rules require revisions and the District could not continue to effectively manage the Access Permit System without the Proposed Rules in place.

The process for updating the rules resulted in multiple drafts. The first Draft was prepared and subject to analysis by the general public. Multiple public meetings were held on the revised drafts to obtain optimum public feedback. The District has met with several stakeholders including the Great Sacandaga

Lake Association, the Supervisors of the towns bordering the Lake and other local and regional officials to discuss this issue. An Advisory Committee was established to conduct additional reviews and provide recommendations. The current Proposed Rules reflect significant input by the general public and Advisory Committee. To date, the rules are currently in their fourth version, all of which have been subject to public review.

9. Federal Standards

The federal government has set no standards for the same or similar subject areas addressed by the Proposed Rules. It is important to mention that the Federal Energy Regulatory Commission (FERC) license requires the District to notify FERC during a rule making process. FERC has issued a letter to the District stating that the Proposed Rules will not affect or represent a change in reservoir operations and does not affect the existing FERC license.

10. Compliance Schedule

Upon the effective date of the Proposed Rules, all regulated parties shall be required to comply with the Proposed Rules. This rule making process is unique, as NYSDEC is required to provide the final approval of any rule revision made by the District.

Permit holders will not be required to comply with the revised Permit System fees until 2010, the current estimated date for compliance as the Permit System fees have been frozen until 2010.

