

## PART 606

### Review of Apportionment

(Statutory Authority: Environmental Conservation Law, §§ 15-2109(1) and 15-2121(5))

Section 606.126 Apportionment Purpose. Pursuant to statute, the board of the Hudson River-Black River Regulating District must prepare an estimate of the cost of the reservoirs operated by the regulating district and then apportion such cost, less the amount which may be chargeable to the state, among the public corporations and parcels of real estate benefitted, in proportion to the amount of benefit which will inure to each such public corporation or parcel of real estate by reason of such reservoir. The regulating district board shall certify such apportionment to the department of environmental conservation for approval. Upon department approval, the apportionment shall be served and filed as required by statute.

Section 606.127 Apportionment date. The regulating district shall by resolution determine the apportionment date. The value, condition and ownership of parcels of real estate benefitted by the operation of the reservoir shall be determined as of the apportionment date. Unless directed to modify the apportionment by the department, the regulating district may not unilaterally modify the apportionment until after the conclusion of the apportionment grievance hearing.

Section 606.128 Publication of the Apportionment. Upon approval of the department, the regulating district board shall place a notice in the regulating district's official newspapers detailing when and where the apportionment roll and the data upon which it is based will be available for review. The notice shall specify:

- 1) The apportionment date;
- 2) The address and telephone number for the regulating district office at which aggrieved persons may make an appointment with regulating district staff to review the apportionment;
- 3) The address and telephone number for the regulating district office at which formal complaints may be filed;
- 4) The last date for the filing of formal complaints;

- 5) The date upon which aggrieved parties must notify the board regarding the basis for the complaint and approximate time required to present written and/or oral testimony in support of the complaint, and;
- 6) The date, time and place for the apportionment grievance hearing at which the regulating district board shall hear formal complaints.

Section 606.129 Apportionment Grievance Hearing. Following department approval, service and filing, the regulating district board shall, upon not less than 45 days notice, conduct a public hearing at which all public corporations and owners of parcels of real property interested in or aggrieved by the apportionment shall be afforded an opportunity to present documentary and/or oral testimony contesting such apportionment.

Section 606.130 Notice to Board of Intent to Seek Modification. Following the board's publication of notice that it will conduct a public hearing, and at least seven days prior to the commencement of that public hearing, any public corporation or person deeming themselves to have been aggrieved shall notify the Board in writing regarding the basis for the requested modification to the apportionment. The aggrieved party's written complaint shall provide an estimate of the time necessary to present evidence at the apportionment grievance hearing and must be received by the board, at the address indicated on or before the date and time indicated in the board's published notice. The Board shall cause to be published on its website a copy of each such written complaint.

Section 606.131 Complaint Procedure. The complaint should include statements, records and other relevant information to support the requested apportionment modification. The aggrieved party may appear at the apportionment grievance hearing in person to present oral and written testimony, and may appear with or without an attorney or other representative. Authorization for appearances by counsel or other representation must be put in writing and bear a date within the same calendar year in which the complaint is filed. A quorum of the regulating district board will preside at the apportionment grievance hearing. The Board may require an aggrieved party to submit additional evidence and, should the party willfully refuse to submit such evidence, or should the aggrieved party refuse to answer any material

question, the aggrieved party will not be entitled to an apportionment modification or subsequent judicial review.

**Section 606.132 Conduct of Apportionment Grievance Hearing.** There is a presumption that the apportionment determined by the regulating district and approved by the department is correct. The burden to prove otherwise, by substantial evidence, lies with the public corporation or owner of a parcel of real property interested in or aggrieved by the apportionment. Only the current apportionment may be aggrieved. A separate complaint must be filed for each parcel or public corporation.

**Section 606.133 Modification of Apportionment following Apportionment Grievance Hearing.** If, after examining documentary evidence and hearing testimony, the regulating district board shall modify such apportionment, the revised apportionment shall not become effective until approved by the department of environmental conservation and a copy thereof is served and filed in the same manner as upon the completion of the same in the first instance at which time the apportionment shall be final and conclusive. If the regulating district board adopts a resolution approving the apportionment without modification, the apportionment shall be final and conclusive.

**Section 606.134 Judicial Review.** Parties dissatisfied with the final apportionment determination may elect to challenge such apportionment pursuant to Article 78 of the New York Civil Practice Law and Rules.