

Natural Resources Defense Council • Sierra Club Atlantic Chapter
Citizens Campaign for the Environment • Environmental Advocates of New York
Burroughs Audubon Nature Club • Church Women United in New York State
Community Watersheds Clean Water Coalition
Citizens' Alliance for a Pristine Perinton • Empire State Consumer Project
Flying Squirrel Community Space Collective • Frack Free Genesee
Genesee Valley Audubon Society • Manitou Lake Coalition
Neighbors United for the Finger Lakes • Northern Catskills Audubon Society
R-CAUSE (Rochesterians Concerned About Unsafe Shale-gas Extraction)
Rochester Raging Grannies • Sierra Club Rochester Regional Group

March 28, 2014

Scott Sheeley
NYS DEC Region 8 Headquarters
6274 E Avon-Lima Rd
Avon, NY 14414
via email: r8dep@gw.dec.state.ny.us

**Re: Eastman Business Park – Application for Water Withdrawal Permit
(Application ID: 8-2699-00126/00005)**

Dear Mr. Sheeley:

On behalf of Natural Resources Defense Council (and its 37,000 members in New York), Sierra Club Atlantic Chapter (and its 38,000 members), Citizens Campaign for the Environment (and its 80,000 members), Environmental Advocates of New York (representing an advocates network of more than 30,000 individuals), Burroughs Audubon Nature Club, Church Women United in New York State, Citizens' Alliance for a Pristine Perinton, Community Watersheds Clean Water Coalition, Empire Sate Consumer Project, Flying Squirrel Community Space Collective, Frack Free Genesee, Genesee Valley Audubon Society (and its 1,700 members), Manitou Lake Coalition (and its 50 members), Neighbors United for the Finger Lakes, Northern Catskills Audubon Society (and its 401 members), R-CAUSE (Rochesterians Concerned About Unsafe Shale-gas Extraction), Rochester Raging Grannies, and Sierra Club Rochester Regional Group (and its 2,200 members) (collectively, the "Commenters"), please accept the following comments on the above-referenced permit application, which DEC has noticed for public comment, with a comment deadline of March 28, 2014.¹

RED-Rochester, LLC's water withdrawal application for the Eastman Business Park is the first application by an industrial facility, other than a power plant, for an "initial permit"

¹ http://www.dec.ny.gov/enb/20140226_reg4.html

under DEC's new water withdrawal permitting regulations (6 NYCRR Part 601), which took effect in April 2013. The facility currently houses a wide range of manufacturing companies including bio-fuels, bio-chemicals, fuel cells, batteries, photovoltaic, medical materials, and other materials science products.² It has plans to add new manufacturing firms. RED-Rochester operates the facility's on-site utility system, which "provides electricity, steam, chilled water, compressed air, industrial water, sewer services, nitrogen, natural gas and potable water to the Park's more than 40 owners and tenants."³

The proposed permit is for a massive withdrawal of 54 million gallons per day (MGD). To put this volume of water in context, if the facility were a public water supply system, it would rank as one of the five largest in the state, as measured by peak daily withdrawals. There appears to be only one other manufacturing facility in the state with an equal or larger magnitude of water withdrawal – the Wheelabrator Westchester plant in Peekskill, along the Hudson River, which reports a maximum daily withdrawal of 54 MGD.⁴

Efficient water use at this facility is important both for the environment and the economy, for several reasons. First, Eastman Business Park has been recognized by local and state leaders, including Governor Cuomo, as an important regional employer and engine for future regional economic growth. The viability of new and expanded business at the facility depends on the availability of a reliable supply of water for operation of the business park's on-site utilities and for individual companies' industrial production processes. The application indicates that Eastman Business Park anticipates a peak daily water demand, when anticipated new manufacturing companies begin operation, equivalent to current capacity of 54 MGD. Ensuring an adequate and reliable supply for this planned growth requires efficient use of available capacity. Moreover, improved water use efficiency can create the opportunity for even greater production – and, therefore, greater economic output and employment – than currently planned.

Second, as described in detail below, the facility's water use presents a number of potential adverse environmental impacts, which could be reduced by maximizing the efficiency of water systems on-site and/or through other feasible means consistent with full and profitable operation of the business park.

Third, the precedential value of this permit application makes it particularly important that DEC rigorously apply to this application the standards set forth in the agency's own regulations. Nothing less is needed to ensure the protection of the state's water resources and the integrity of DEC's new permitting regime, which was established pursuant to landmark water withdrawal legislation that Governor Cuomo signed in August 2011.

² <http://www.eastmanbusinesspark.com/industries>

³ <http://www.recycled-energy.com/newsroom/press-releases/eastman-kodak-company-and-red-finalize-deal-to-transition-eastman-busi>

⁴ <http://gis.ny.gov/gisdata/inventories/details.cfm?DSID=1265> (accessed August 2013). The referenced web-link allows displays water withdrawal data for one facility at a time. The only publicly-available source compiling data from all registered withdrawals appears to be at <http://www.dec.ny.gov/maps/withdrawalslink.kmz>. Statements in this letter regarding how Eastman Business Park ranks in comparison to water users statewide is based on analysis of the latter dataset, as of the files DEC had posted online in August 2013. Note that, in those files, the most recent reported data for some facilities was several years old.

The new state legislation was enacted, in large part, to implement the requirements of the Great Lakes-St. Lawrence River Basin Water Resources Compact (“Compact”).⁵ Among other things, the Compact requires New York to “promote environmentally sound and economically feasible water conservation measures,” including “[p]romoting the efficiency of use and reducing losses and waste of water,” even among *existing* water users in the Great Lakes basin.⁶ As the first major water withdrawal permit application within the Great Lakes Basin since the new permitting law took effect, DEC’s handling of this application presents a test of the state’s commitment under the Compact.

Based on our review of the public notice and application materials, it is clear that DEC cannot lawfully approve the permit application without further review and analysis.

The public notice states, summarily, “[n]o changes in the current operation are proposed.” Yet, the application materials provide insufficient data or analysis to determine what permit conditions are required, including conditions that may require changes in current operations.

In order for this application to proceed lawfully, all potential adverse environmental impacts of increased water withdrawals must be identified; DEC must impose permit terms that avoid or mitigate those adverse impacts; and DEC must impose any further permit conditions needed to ensure that Eastman Business Park implements all “environmentally sounds and economically feasible” water conservation measures. In this letter, we identify a number of potential adverse impacts and water conservation measures that have not been adequately addressed. Accordingly, we also identify additional analyses DEC should require of the applicant and requirements that DEC should impose in the permit.

We also note with particular concern that other major water users in the Rochester area and the Lake Ontario watershed, including the Ginna Nuclear Power Plant, 20 miles east of Rochester, will be subject to the same water withdrawal permitting process as Eastman Business Park. We urge DEC to make clear to all current and future applicants that all legal requirements for water conservation and environmental protection will be taken seriously.

Our detailed comments follow below:

⁵ A.5318A-2011, codified at ECL § 15-1501, *et seq.*

⁶ See Compact § 4.2 (available at http://www.glsregionalbody.org/Docs/Agreements/Great_Lakes-St_Lawrence_River_Basin_Water_Resources_Compact.pdf). Further, state law applies key elements of the Compact’s “decision-making standard” for regulated withdrawals to all permits issued throughout the state, whether for new or existing withdrawals. This includes the Compact’s requirement that withdrawals must “incorporate environmentally sounds and economically feasible water conservation measures” and “result in no significant individual or cumulative adverse impacts to the quantity or quality of” the waters and water-dependent resources in the source watershed. See Compact § 4.11 (available at http://www.glsregionalbody.org/Docs/Agreements/Great_Lakes-St_Lawrence_River_Basin_Water_Resources_Compact.pdf). Therefore, even if RED-Rochester’s application is not directly subject to the Compact’s decision-making standard for regulated withdrawals, because it does not request an increase as compared to existing capacity, DEC’s application of the law’s permitting standards will set a precedent in regard to New York’s implementation of the Compact’s decision-making standard.

1. Before reaching a decision on the permit application, DEC must complete a proper SEQRA review and coastal zone consistency review.

DEC regulations expressly provide that an initial permit “includes all terms and conditions of a water withdrawal permit, including environmentally sound and economically feasible water conservation measures to promote the efficient use of supplies.”⁷ To comply with this provision, DEC must determine, *inter alia*, what measures constitute the “environmentally sound and economically feasible” water conservation measures for the activities covered by an initial permit application, and must include provisions in the permit requiring implementation of such measures.

Further, state law provides a definition of “environmentally sound and economically feasible water conservation measures” to guide this analysis. Specifically, a permit must ensure implementation of:

those measures, methods, technologies or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use or diversion that:

- (1) are environmentally sound;
- (2) reflect best practices applicable to the water use sector;
- (3) are technically feasible and available;
- (4) are economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs; and
- (5) consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts and other appropriate factors.⁸

These provisions make it unmistakably clear that the issuance of an initial permit is not a mere “ministerial action” – which ordinarily would be exempt from SEQRA review as a Type II action.⁹ DEC regulations define a ministerial action as one that is “performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the act...”¹⁰ While the state’s water withdrawal permitting law does provide that DEC “shall” issue an initial permit to an eligible applicant, the law is equally clear, as reflected in the provisions cited above, that such permit must include, *inter alia*, terms

⁷ 6 NYCRR § 601.7(e). All water withdrawal permits must ensure implementation of a water conservation program that “incorporate[s] environmentally sound and economically feasible water conservation measures.” ECL § 15-1503(f). The applicant is required to submit a proposed water conservation program to DEC for review, so that the permit can be conditioned on implementing the elements of an approved program. The burden is on the applicant to demonstrate that its water conservation program meets the legal standard. 6 NYCRR § 601.10(f), (k)(4); *id.* § 601.11(c)(7).

⁸ ECL § 15-1502(9); 6 NYCRR § 601.2(g).

⁹ 6 NYCRR § 617.5(c)(19). As discussed further in note 13, below, even if DEC’s processing of this permit application were somehow considered “ministerial” – or otherwise fell into one of the categories typically treated as “Type II” – the application would not be eligible for treatment as a Type II action, in light of the size of the water withdrawal at issue.

¹⁰ 6 NYCRR § 617.2(w) (emphasis added).

and conditions specifying the water conservation measures that the permittee must implement.¹¹ Therefore, DEC must exercise its judgment to determine which water conservation measures, precisely, are required in the context of any given permit, pursuant to the criteria set forth above. Such an exercise of judgment, by definition, is not ministerial in nature.

Since the proposed permit is not a ministerial action, DEC's determination in the public notice that the permit "is not subject to SEQR because it is a Type II action" is incorrect.¹² The permit cannot proceed until DEC has completed the necessary SEQRA review.

Due to the size of the Eastman Business Park's water withdrawal, the permit application is, in fact, a "Type I" action. DEC's SEQRA regulations specifically provide that "a project or action that would use ground or surface water in excess of 2,000,000 gallons per day" is a Type I action.¹³ As a Type I action, the application is "likely" to require the preparation of a full Environmental Impact Statement (EIS).¹⁴ Before proceeding with the application, DEC must make a determination of significance and, if the activity "may include the potential for at least one significant adverse environmental impact," require preparation of an EIS.¹⁵

We note that the application materials do not reference any potential adverse impacts related either to impingement and entrainment of aquatic life in Lake Ontario or thermal discharges to the Genesee River. (See further discussion in point #3 below.) The application also does not address the potential for converting to closed-cycle cooling to reduce these impacts, or using other measures to reduce impingement and entrainment. (See further discussion in point #2 below.) Therefore, the requirement to evaluate the merits of this application under SEQRA is important both as a precedential matter, with regard to DEC's implementation of the "initial permit" program under the state water withdrawal law, and as a practical matter with regard to protecting the water resources at issue in this application.

¹¹ This is true even though DEC must issue an initial permit authorizing a withdrawal up to the maximum capacity the applicant reported to DEC on or before Feb. 15, 2012, as per ECL § 15-1501(9) and 6 NYCRR § 601.7(d). The statute is clear that initial permits are "subject to appropriate terms and conditions as required under this article," ECL § 15-1501(9) (emphasis added), and, as explained above, DEC's rules expressly state that "all terms and conditions" of water withdrawal permit, including those related to water conservation requirements, apply equally to initial permits. 6 NYCRR § 601.7(e). As a result, while the initial permit for Eastman Business Park must specify a maximum authorized withdrawal of 54 MGD, it must also condition the authorization to withdraw any water from Lake Ontario on the implementation of environmentally sound and economically feasible water conservation measures to be specified by DEC in the permit, even if – indeed, especially if – the effect of such measures is to maintain withdrawals at a level below the maximum capacity of the system.

¹² Although the public notice does not state the basis on which DEC deemed this application to be a Type II action, in all similar permits to date, we understand that DEC has based its Type II determination on the same rationale DEC provided for the interim permit application for the Ravenswood Generating Stations in New York City – *i.e.*, that the issuance of "initial permits" is a "ministerial" action. We assume that is also DEC's rationale here.

¹³ 6 N.Y.C.R.R. § 617.4(b)(6)(ii). In addition, DEC's SEQRA regulations provide that, to be categorized as Type II, an action must "must . . . (2) not be a Type I action as defined in section 617.4 of this Part." 6 NYCRR § 617.5(b). Thus, wholly apart from the fact that issuance of initial permits is never a "ministerial action," issuance of an initial permit for a withdrawal the size of Eastman Business Park's withdrawal cannot be considered a Type II action exempt from SEQRA review, since it is expressly defined as a Type I action.

¹⁴ 6 NYCRR § 617.4(a).

¹⁵ *Id.* § 617.7(a)(1).

DEC must also comply with coastal zone consistency requirements before proceeding with the application. The public notice of the permit application states: “This project is located in a Coastal Management area and is subject to the Waterfront Revitalization and Coastal Resources Act.” The permit application materials, however, do not appear to include any coastal zone consistency analysis. DEC must ensure that the permit is consistent with the Rochester Local Waterfront Revitalization Program (“LWRP”).¹⁶ Water withdrawal permits issued by the DEC are explicitly included in the list of actions that require review under the Rochester LWRP.¹⁷ Finally, DEC must make its coastal zone review publicly available for comment, as part of its SEQRA documentation, before acting on this application.¹⁸

2. The permit must specify, and require implementation of, all “environmentally sound and economically feasible” water conservation measures.

As explained in point #1, above, all water withdrawal permits – including “initial permits” – must require the implementation of a water conservation program that includes all “environmentally sound and economically feasible water conservation measures,” as that term is defined by law. In order to satisfy this requirement, DEC must address the following issues:

a. The permit must specifically identify and require continued operation and maintenance of all existing and planned water conservation measures.

As per DEC regulations, the maximum withdrawal volume proposed to be authorized in the permit is simply the maximum capacity of the system.¹⁹ The application materials identify a range of laudable water conservation measures that the facility is currently implementing, or plans to implement. The permit should clearly identify all of these existing and planned measures and should expressly require their continued operation and maintenance – or, if this should become infeasible due to changed circumstances during the life of the permit, the implementation of alternative practices that are no less effective at reducing water demand.

¹⁶ Exec. L. § 916.1; *see also* 19 NYCRR § 600.4 (providing that, if an action is in the coastal zone, “the State agency shall follow the review procedures set forth in this Part, including the completion of a coastal assessment form (CAF) in a form prescribed by the Secretary”).

¹⁷ Rochester LWRP Section VI, p. 6, available at http://docs.dos.ny.gov/communitieswaterfronts/LWRP/Rochester_C/Amendment%201/Final/RochesterSVI.pdf. The full LWRP is available at *See* <http://www.cityofrochester.gov/article.aspx?id=8589951677>; and http://docs.dos.ny.gov/communitieswaterfronts/LWRP/Rochester_C/Index.html.

¹⁸ 19 NYCRR § 600.4 (“The CAF shall be completed prior to the agency’s determination of significance pursuant to SEQRA (6 NYCRR Part 617) so that it can then supplement other information used by State agencies in making determinations of significance pursuant to such Part 617.”); *see also* 6 NYCRR § 617.6(a)(5) (SEQRA regulations providing that “[i]f the action is either Type I or Unlisted and is in the coastal area, the provisions of 19 NYCRR Part 600 also apply”).

¹⁹ 6 NYCRR § 601.7(d). *See also* ECL § 15-1501(9).

b. The permit must specifically identify, and require implementation of, any additional measures DEC finds to be environmentally sound and economically feasible, based on further evaluation by the applicant.

State law places the burden on the applicant to demonstrate, to DEC's satisfaction, that its proposed water conservation program includes all "environmentally sound and economically feasible conservation measures."²⁰ Similarly, DEC regulations provide that a water withdrawal permit application must include "an analysis of increased water conservation measures as a means to reduce or eliminate the need for the proposed source,"²¹ and must include a "project justification" demonstrating, among other things:

- (2) why increased water conservation or efficiency measures cannot negate or reduce the need for the proposed water withdrawals;
- (3) why the proposed water withdrawal quantity is reasonable for the proposed use; [and]
- (4) why the proposed water conservation measures are environmentally sound and economically feasible[.]²²

Beyond the water conservation measures already in place, or which the applicant has stated its intent to implement, the application provides no analysis of other potential water-saving measures, nor of the reasons RED-Rochester has not proposed to adopt them. In fact, the application expressly omits the required "project justification" section.²³

At a minimum, before DEC issues a permit, the applicant should be required to evaluate the following water-saving alternatives, which are not addressed in the application:

- Closed-cycle cooling: Cooling water accounts for approximately one-third of the facility's current metered usage. A closed-cycle cooling system for the facility's on-site power plant would use much less water. (It would also reduce impingement and entrainment of aquatic life at the intake structures, and would reduce discharges of thermal pollution to the Genesee River. See point #3 below.)²⁴

²⁰ *Supra* note 5.

²¹ 6 NYCRR § 601.10(e)(3).

²² 6 NYCRR § 601.10(k)(2)-(4).

²³ The applicant's response to line 10 on Form WW-1, which identifies the "Required Exhibits" for every water withdrawal application, asserts incorrectly that the required "project justification" is "Not Applicable."

²⁴ The application makes no mention of a separate permit for the cooling water system under 6 NYCRR § 704.5 and Section 316(b) of the Clean Water Act, although we assume the facility is subject to such permitting requirements and already holds such a permit. We note, however, that any past, present, or future proceeding with regard to such other permit will not determine whether closed-cycle cooling is necessary to meet the requirements of the state *water withdrawal permitting* law, which applies a different legal standard to determine the required water conservation measures. If DEC determines under Clean Water Act section 316(b) and 6 NYCRR § 704.5 that closed-cycle cooling is required, the question as to the water withdrawal permitting law would be, effectively, moot. But in the absence of such a determination, DEC is obliged, in connection with the instant permit application, to determine whether closed-cycle cooling represents an "environmentally sound and economically feasible water conservation measure," as that term is defined by law.

- Additional reuse of cooling water: The application states that cooling water is reused “in the power plant as boiler feedwater.”²⁵ It does not state whether all cooling water is reused in this way; presumably, cooling water needs exceed boiler feedwater needs, such that not all cooling water can be reused in this way. The applicant should be required to evaluate additional opportunities to reuse cooling water, such as for industrial process water (after treatment, if necessary).
- Other measures to reduce water demand for industrial processes: The applicant should be required to evaluate all relevant measures identified in DEC’s draft *Survey of Methods for Implementing and Documenting Water Conservation in New York* (“Draft Survey”).²⁶ As NRDC pointed out in comment on the Draft Survey, other, more comprehensive resources also exist to guide the assessment of industrial water conservation and efficiency measures. For example, the applicant should also be required to consider all applicable measures identified in the California Department of Water Resource’s draft CII Taskforce Report.²⁷ That report not only identifies water-saving measures, but also provides information on how to determine whether a particular measure is cost-effective at a particular facility.

These evaluations must address measures that can be implemented directly by RED-Rochester in its utility operations, as well as by utility’s customers at Eastman Business Park. Although RED-Rochester is the permittee, it has the authority to place conditions on its sale of water to customers, and DEC has the responsibility to include such conditions in the permit, where they represent “environmentally sound and economically feasible” water conservation measures.

In connection with the evaluations described above, DEC must also require the applicant to determine the avoided costs associated with measures that would reduce water use. These avoided costs may include, for example, operational savings due to reduced energy demand for pumping, as well as other industrial production efficiencies that may go hand-in-hand with more efficient water use in manufacturing processes.²⁸

Following the applicant’s submission of these additional analyses, DEC must independently evaluate them and determine which measures are environmentally sound and economically feasible. The permit must specifically identify such measures and require their implementation.

²⁵ Water Conservation Program Form (Application “Item 10”), Part IV.

²⁶ This draft document was noticed for public comment on Oct. 23, 2013. See http://www.dec.ny.gov/enb/20131023_not0.html. It is available online at http://www.dec.ny.gov/docs/water_pdf/waterconnonddf.pdf.

²⁷ The report is available at http://www.dwr.water.ca.gov/wateruseefficiency/sb7/docs/Volume_II-CII_TF_Report_9-25-2013_final_draft.pdf. Relevant sections include, but are not limited to, those describing water-saving measures for “thermodynamic processes” (pp. 268-96), photovoltaic manufacturing (pp. 231-32), and biotechnology (pp. 744-45); capture and reuse of rainwater for, among other things, biotechnology manufacturing (p. 245).

²⁸ See 6 NYCRR § 601.2(g)(4) (providing that determination of economic feasibility of conservation measures must include “consider[ation of] direct and avoided economic and environmental costs” (emphasis added)).

c. The permit must include specific requirements for system leak detection and repair, including use of a standardized method for annual water loss audits.

The application reports a 25% rate of unaccounted-for water, including 10% leakage and 15% meter under-registration.²⁹ It does not explain how these numbers were derived; round numbers such as 10% and 15% seem likely to be very rough estimates. Although the Water Conservation Program Form included in the application states (at Part IV) that the facility performs annual water audits, the form also requires submission of the most recent audit report and it does not appear that RED-Rochester included that report in its application. Thus, it is impossible to determine what methodology the applicant used to determine its estimate rates of leakage and meter under-registration. DEC should require RED-Rochester to supplement the application with that report.

DEC's regulations provide that, for all permits, the environmentally sound and economically feasible water conservation measures "must include source and customer metering; frequent water system auditing; [and] system leak detection and repair..."³⁰ DEC must implement these requirements through specific permit requirements, including, but not limited to, the applicant's existing and planned efforts.

For example, beyond the applicant's existing water conservation program, the permit should require annual water audits using a methodology substantially comparable to that set forth in American Water Works Association (AWWA) Manual M-36, *Water Audits and Loss Control Programs*. This would include not only a leak detection protocol, but also an assessment of the accuracy of all input and service meters, which is essential for quantifying the extent of undetected leaks. The permit should also require the permittee to establish and implement protocols to "fix every detectable leak as soon as possible," as per the "Best Management Practices" listed on DEC's Water Conservation Program Form (Part V).

3. DEC must ensure that there has been sufficient analysis of the potential adverse impacts of the proposed water withdrawal and impose any necessary permit conditions to avoid those impacts.

The application provides no meaningful analysis of the potential adverse environmental impacts of the proposed water withdrawal. We note that the application seeks authorization for a peak daily withdrawal that is 180% more than the facility's current maximum daily withdrawal and almost 500% more than current average daily withdrawal.³¹ Therefore, impacts must be evaluated in regard to the requested amount, not existing operations.

In regard to potential adverse impacts, that application provides only the conclusory statement that the applicant "does not anticipate any significant individual or cumulative adverse impact."³² The only supporting evidence provided seems to be that that the volume of the withdrawal will be miniscule as compared to the volume of Lake Ontario and that the facility has

²⁹ Application, Item 10 (Water Conservation Program Form), Part IV.

³⁰ 6 NYCRR § 601.10(f).

³¹ See Application, Exhibit 5.

³² See Application, Item 9 (Engineering Report), p. 6.

previously operated at the full capacity of 54 MGD. While these are accurate statements, they do not come close to identifying or evaluating the potential adverse effects of the proposed withdrawal.

Most glaringly, the application fails even to mention the potential adverse effects of impingement and entrainment of aquatic life in the Lake Ontario intake structures, or the potential adverse effects of thermal discharges on aquatic habitat in the Genesee River. Such impacts must be considered not only from Eastman Business Park, individually, but also cumulatively with other factors adversely affecting the same fish populations, including but not limited to other industrial operations that cause impingement and entrainment of hundreds of millions of fish eggs, larvae, and adults in Lake Ontario.³³

In sum, without further data and analysis, the applicant cannot meet its burden to demonstrate that “the proposed withdrawal will result in no significant individual or cumulative adverse environmental impacts.”³⁴ Likewise, without such data and analysis, DEC cannot make the determinations it is required to make, under 6 NYCRR § 601.11(c), including whether “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, including aquatic life[.]”

DEC must require the applicant to provide the necessary data and analysis to determine whether Eastman Business Park’s withdrawals may result in significant individual or cumulative adverse impacts in Lake Ontario or the Genesee River. If DEC determines that such adverse impacts may occur, it must include further conditions in the permit sufficient to avoid such impacts.

* * * * *

In closing, we again emphasize our support for Eastman Business Park’s opportunities to create regional economic growth and increased employment in the Rochester area. We urge DEC to ensure that the business park maximizes its water use efficiency, in order to provide a secure foundation for that economic growth and employment, as well as to protect our precious water resources and aquatic habitat.

³³ For example, many other power plants withdraw cooling water from Lake Ontario annually. *See. e.g.*, <http://www.gracelinks.org/maps/homepage/post/423> (compiling data on impingement and entrainment from all power plants along Lake Ontario). Additionally, “[e]cosystems in the Great Lakes face many other stresses, including pollution and destructive invasive species. This makes mortality from once-through intake structures more potentially detrimental to native species than it would be in healthy ecosystems. Since so many fish and other aquatic creatures are killed, their populations become smaller, weaker, and more vulnerable to collapse.” *Giant Fish Blenders: How Power Plants Kill Fish and Damage Our Waterways (and What Can Be Done to Stop Them)*, Sierra Club (July 2011), p. 8, available at <http://www.sierraclub.org/pressroom/media/2011/2011-08-fish-blenders.pdf>.

³⁴ 6 NYCRR § 601.10(k)(6)-(7). *See also id.* § 601.10(e)(11) (requiring that applications must include “information on rainfall, stream flows and classifications,...other upstream water withdrawals, safe yield analyses or passby flow calculations....”).

Thank you for your consideration of these comments. Please contact the undersigned with any questions.

Sincerely,



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