

STATE OF NEW YORK
BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT

At a session of the New York State
Board on Electric Generation Siting
and the Environment held in the
City of Albany on December 21, 1998

BOARD MEMBERS PRESENT:

Maureen O. Helmer, Chairman
New York State Public Service Commission

Peter Bergen, Alternate for
John P. Cahill, Commissioner
New York State Department of
Environmental Conservation

John K. Hawley, Alternate for
Dennis Whalen, Executive Deputy
Commissioner
New York State Department of Health

Gregory A. Caito, Alternate for
Charles D. Gargano, Commissioner
Empire State Development

CASE 97-F-0809 - In the Matter of the Rules and Regulations of
the Board on Electric Generation Siting and the
Environment, Contained in 16 NYCRR -- Addition
of a New Chapter X, Subchapter A, to Implement
Article X of the Public Service Law.

MEMORANDUM AND RESOLUTION
ADOPTING PARTS 1002 AND 1003 OF THE
ARTICLE X REGULATIONS

(Issued and Effective December 24, 1998)

BY THE BOARD:

INTRODUCTION

On February 24, 1998, we issued for comment a Notice of
Proposed Rulemaking proposing Parts 1002 and 1003 of Subchapter A
of Chapter X of 16 NYCRR. The addition is required to implement
Article X of the Public Service Law (PSL), enacted July 24, 1992.
Article X supersedes Article VIII of the PSL, which had applied
to applications filed on or before December 31, 1988.

A description and analysis of the comments are provided
herein. The rules we are adopting, set forth in the attached

resolution, incorporate a number of editorial changes advocated by the agencies designated to implement the regulations.

No comments were received on Part 1002; one party, Rochester Gas and Electric Corporation, commented on Part 1003.

DISCUSSION AND ANALYSIS OF COMMENTS

Part 1002 - State Pollutant Permit Requirements and Procedures

Proposed Part 1002 was designed to reflect the delegation of authority from the U.S. Environmental Protection Agency (EPA) to the Board for the federal Clean Water Act NPDES program (the State's SPDES program), by memoranda of agreement in 1975 with respect to the handling of permits affecting major electric generating facilities. The MOU contained language that we believe provides for updating to reflect the fact that Article X of the Public Service Law has replaced Article VIII.^{1/} Part 1002 was also proposed so the Board could accept delegation from EPA of similar Federal authority regarding the handling of permits under the Federal Clean Air Act (CAA) and Resource Conservation and Recovery Act (RCRA). At this time, the Department of Environmental Conservation (DEC) has received delegation from EPA regarding the handling of permits for all sources under the CAA and RCRA. While the Board (with DEC's full support) has sought delegation of Federal authority regarding permitting of major electric generating facilities under Title IV of the CAA and under the RCRA, EPA has not yet agreed to make such delegation.

In view of the fact that no comments were filed on proposed Part 1002 and given the need to provide now for the appropriate exercise of the State's authority regarding the review of applications to construct and operate major electric generating facilities, we will authorize DEC, pursuant to PSL Section 172(1), to issue permits (after review in accordance with already-established procedures) pursuant to its delegation agreements with EPA.

^{1/} We are seeking explicit confirmation from EPA on this matter.

We will adopt proposed Section 1002.1 (regarding action under the CWA) with a minor change concerning its effective date. We will not adopt proposed Sections 1002.2 and 1002.3 (regarding action pursuant to the CAA and RCRA), but will reserve a place so appropriate sections can be added to Part 1002 at the time EPA renders its final decision on our request for delegation. Finally, we will adopt proposed Section 1002.4 (regarding permit renewal) with additional language to clarify that, after renewal authority passes to DEC (as contemplated in PSL Section 161 and in proposed section 1002.4), requests for modification of such permits shall be made to DEC in accordance with its applicable regulations.

Part 1003.3 (h) - Notice of a Minor Change

Rochester Gas and Electric Corporation questions the need to provide notice of a minor change (i.e., a change with no discernible potential for increased adverse environmental impact) to the Secretary, DPS staff, and DEC. It suggests the standard for notice be changed "to reflect real, practical concerns".

The definition of a minor change reflects an appropriately low level of impact and hence allows the certificate holder to proceed without filing, service, and review by other parties. A change with the potential for significant impacts must undergo a more rigorous and formal approval process. The only action a "minor change" initiates is service on the Siting Board (via the Secretary) and the two agencies (DPS and DEC) responsible for administering and enforcing compliance with the certificate. The required notice provides a means of maintaining up-to-date records of compliance requirements and would be essential to a periodic compliance review. Therefore, the proposed rule will be adopted.

STATE ENVIRONMENTAL QUALITY REVIEW

The adoption of Rules of Procedure (including filing requirements applicable to applications for authority) is specified as a Type II action (that is an action previously

determined not to have a significant adverse environmental impact) in 16 NYCRR Section 7.2(a)(1), which we adopted in 16 NYCRR Section 1001. The regulations we now adopt will not change the applicable substantive law and the decision making process they implement will insure that the adverse environmental impacts of proposed facilities will be carefully considered.

CONCLUSION

Having considered the comments received concerning the proposed addition of Parts 1002 and 1003 of the Article X regulations, we will adopt the revisions as shown in the attached resolution.

By the New York State Board on
Electric Generation Siting and
the Environment - Case 97-F-0809,

(SIGNED)

DEBRA RENNER
Acting Secretary to the Board

STATE OF NEW YORK
BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT

RESOLUTION BY THE BOARD

Statutory Authority

Public Service Law Sections 161, 164(1)(g), (6)(b), 165(5),
State Administrative Procedure Act 306(2)(4)

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Environment, Contained in 16 NYCRR -- Addition
of a new Chapter X, Subchapter A, to Implement
Article X of the Public Service Law.

At a session of the Board on Electric Generation Siting
and the Environment held in the City of Albany on December 21,
1998, the Board, by a unanimous vote of its members present,
R E S O L V E D:

1. That the provisions of Section 202(1) of the State
Administrative Procedure Act and Section 101-a(2) of the
Executive Law having been complied with, Title 16 of the official
compilation of Codes, Rules, and Regulations of the State of New
York is amended, effective upon publication of a Notice of
Adoption in the State Register, by the addition of new Parts 1002
and 1003 of Subchapter A of Chapter X of 16 NYCRR to read as
shown on the following four pages.

PART 1002

STATE POLLUTANT PERMIT REQUIREMENTS AND PROCEDURES

(Statutory authority: Public Service Law, §§ 161, 164(7))

Sec.

- 1002.1 State pollutant discharge elimination system program
- 1002.2 [Reserved]
- 1002.3 [Reserved]
- 1002.4 Renewal of State Pollutant Permits Following Commercial Operation

Section 1002.1 State pollutant discharge elimination system program.

This Part shall take effect upon the receipt by the Chairman of a statement from the U.S. Environmental Protection Agency that the Board has delegation of the permit program under the Federal Clean Water Act involving major electric generating facilities reviewed pursuant to PSL Article X or upon publication of a notice of adoption in the State Register, which ever is later. The provisions of 6 NYCRR Parts 750 through 757 that are in effect on the date of adoption of this Part shall apply in connection with each certification proceeding under PSL Article X.

- 1002.2 [Reserved]
- 1002.3 [Reserved]
- 1002.4 Renewal of State Pollutant Permits Following Commercial Operation.

(a) After the date of commencement of commercial operation of a facility with respect to which a certificate was granted, a certificate holder intending to continue to exercise authority granted by a wastewater discharge permit, issued with respect to such facility, beyond its expiration date, shall submit to DEC its application for renewal of such permit at least 180 days before its expiration (for action by DEC in accordance with its regulations) and serve a copy on the Commission.

(b) Request for modification for permits renewed by DEC shall be submitted to DEC, with a copy served on the Commission.

PART 1003
COMPLIANCE FILINGS

(Statutory authority: Public Service Law, § 168(2))

Sec.

1003.1	Purpose
1003.2	Definitions
1003.3	General procedures
1003.4	General requirements
1003.5	Reporting

Section 1003.1 Purpose. This Part establishes procedures and requirements for assuring that the applicant will comply with the terms, conditions, limitations, or modifications of the construction and operation of the facility authorized in the certificate.

1003.2 Definitions.

(a) Applicant includes a certificate holder.

(b) Compliance filing is a document prepared by the applicant which describes how the applicant will comply with the terms, conditions, limitations and modifications of the construction and operation of the facility contained in the certificate granted by the Board and may, at the applicant's option, consist of phased submissions.

1003.3 General procedures.

(a) Either before or after a certificate has been granted, the applicant shall submit a compliance filing to the Board or to the Commission (if the Board's jurisdiction has ceased).

(b) The applicant, upon its acceptance of a certificate in accordance with Section 1000.14 of this subchapter, may commence construction of the facility in accordance with all applicable approved compliance filings and certificate conditions, unless the Board otherwise specifies, considering the need to assure compliance with a specific term or condition contained in the certificate.

(c) The applicant shall file seven copies of its compliance filing with the existing Board or the Commission (as the case may be) and serve five copies on DPS staff, five copies on the DEC project manager and one copy on each party specified in the certificate.

(d) Any party receiving such documents may file comments within 15 days of service.

(e) The compliance filing will be effective thirty days after its filing unless the existing Board or the Commission (as the case may be) disapproves the compliance filing on the ground that it does not reasonably assure compliance with the certificate, or extends the deadline with the applicant's consent.

(f) A request for a change in a compliance filing that the permanent Board determines to be a request for an amendment of the certificate shall be reviewed as provided in Section 1000.15 of this Subchapter, unless such request is withdrawn or modified so as not to constitute a request for an amendment.

(g) A request for a change in a compliance filing (other than a minor change as specified in subdivision [h] of this section), shall be filed, served and reviewed as provided in subdivisions (c), (d), and (e) of this section.

(h) Notice of a minor change (i.e., a change which has no discernable potential for increased adverse environmental impact) to the compliance filing shall be provided to the Secretary, DPS staff and the DEC project manager.

1003.4 General Requirements.

The compliance filing shall contain:

(a) a description of how the applicant will comply with the requirements of the certificate; and

(b) final site plans, building plans and plans for required off site facilities including disposal areas.

1003.5 Reporting.

(a) The Board may require the applicant to file reports on compliance. Seven copies of such reports shall be filed with the Board or the Commission after the Board's jurisdiction has ceased; five copies shall be served on the staff of the Department, five copies on the DEC project manager (one on the appropriate regional office and four on the central office) and one copy on any other party specified in the certificate.

(b) The site and all construction records shall be open to inspection by the Chairman or the representative(s) of the Chairman during normal working hours. Information requested by the Chairman or the representative(s) of the Chairman, shall be provided in a timely fashion and, in all cases, at least 10 days prior to the initiation of any activity with regard to which the information is requested.

If any activity on which information is requested has already been initiated, such information shall be provided within three business days.

2. That the Secretary to the Board is directed to file a copy of this Resolution with the Secretary of State.