Agricultural Nutrient Pollution/State of New York Supreme Court (County of Albany) Addresses Whether Department of Health Can Promulgate Watershed Rules



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The State of New York Supreme Court/County of Albany ("Court") addressed in a May 6th Order whether the New York State Department of Health ("DOH") has the authority to issue Watershed Rules and Regulations ("Rules") to address agricultural nutrient pollution. *See City of Auburn, et al., v. New York State Department of Health, et al.*, Index No. 094609-24.

The City of Auburn, Town of Owasco, and Owasco Watershed Lake Association, Inc. (collectively, "Petitioners") sought relief from the Court:

…Adjudging and declaring that DOH's determination that it lacks legal authority to promulgate watershed rules and regulations to control agricultural nutrient pollution was affected by errors of law, arbitrary and capricious, and/or an abuse of discretion.

The City of Auburn and Town of Owasco utilize Owasco Lake's water for delivery to Cayuga County residents. The City and Town had requested that DOH revise the Rules to propose new rules pertaining to Owasco Lake. They are stated to have submitted to DOH a draft of proposed new Rules which contained a "nutrient management" section.

The nutrient management section obligated operators of certain farms with seven or more acres of land to "have and comply with a current farm management plan. Other requirements would also be imposed.

DOH had argued that any authority it held to promulgate agricultural management regulations had been stripped by more recently enacted provisions in the Agriculture and Markets Law. The amendment to the law created a program for farmers to ask for state assistance in managing environmental impacts. This subsequent enactment was argued by DOH to have eliminated its authority to protect drinking water sources from agricultural pollution.

The Court held that the subsequently enacted statute is intended to supplement existing laws as opposed to replacing them. It held that it makes:

…no sense that…the Legislature would determine to abolish the ability of the State to mandate rules and regulations designed to address this area of serious concern, and replace it with a program that is voluntary in nature…

As a result, the Court decided that DOH retains the power to protect sources of drinking water from agricultural pollution.

A copy of the Order can be downloaded here.