

Chautauqua Lake Property Owners (CLPOA)
PO Box 399
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September 19, 2024

Roy Jacobson, Jr.
New York State Department of Environmental Conservation
Fish & Wildlife Department, Freshwater Wetlands Program
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925 Broadway
Albany, New York 12233-4756

Mr. Jacobson,

It was good to meet and talk with you in Albany last Thursday. I hope we have more such opportunities in the future.

The Chautauqua Lake Property Owners Association, Inc. is a non-profit organization supporting the interests of property and business owners and lake users in and near to Chautauqua Lake.

Enclosed you will find the CLPOA's written comments pertaining to the NYSDEC's proposed regulations in support of Amendments to the Freshwater Wetlands Act 6 NYCRR Part 664. These written comments supplement those made in person at the September 12, 2024 hearing in Albany.

I hope to see you and your team in Mayville on October 29, 2024.

Please call if you have questions.



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Emailed to WetlandRegulatoryComments@dec.ny.gov on September 19, 2024

USPS mailed to Roy Jacobson at the address above on September 19, 2024

**Chautauqua Lake Property Owners Association (CLPOA) Written
Comments to NYSDEC on Amendments to the Freshwater Wetlands Act
6 NYCRR Part 664**

September 19, 2024

As presented at the September 12, 2024, NYSDEC Public Hearing in Albany...

The Chautauqua Lake Property Owners Association is a non-profit corporation focused on the research, development, and sharing of information of interest to Chautauqua Lake property and business owners and lake users.

The NYSDEC must have struggled writing regulations for the diversity of land and water across the State. Unfortunately, the NYSDEC has not proposed reasonable regulations for Chautauqua Lake, a large navigable lake in southwestern New York.

We formally request the NYSDEC defer enforcement of the regulations until reasonable plans for lakes can, with fair and equitable public input, be ready.

Incomplete NYSDEC regulatory action has caused two years of uncertainty and anxiety among residents. Some residents have been warned of coming regulation as wetlands while at the same time, others in wealthy enclaves have been assured of no impact. Both were while regulations were incomplete and "informational" maps were unavailable. The NYSDEC has not evaluated all impacts of its regulations nor supported its Mission to "enhance the health, safety and welfare of the people of the state and their overall economic and social well-being".

All areas in Chautauqua Lake and “adjacent areas” will be Class I with the most severe restrictions with no minimum wetland size. 100’ and more land and water adjacent, including private property, will also be regulated.

This is water and land with over 150 years of development and hundreds of millions of dollars of investment. It generates over 25% of Chautauqua County property tax. As restrictions decrease property values, property and school tax revenue will decrease, and tax rates for all in the County will increase.

Regulations will further limit weed and algae management, already constrained by NYSDEC Region 9 practices, accelerating the Lake’s deterioration. Tourism and lake use will suffer decreasing sales tax revenue.

Thousands signed petitions and sent letters of opposition. Towns and villages on the Lake and the Chautauqua County Executive have formally opposed the regulations. State Senator George Borrello, with Assemblyman Andy Goodell, proposed legislation exempting lakes such as Chautauqua. All stress Chautauqua Lake is a “lake”, not a “marsh, swamp, slough, bog, or flat”, as in the NYSDEC wetlands definition.

The NYSDEC now acknowledges the need for a Region 9 general wetlands permit and state-wide “lake specific regulations”. But that development has not begun and results will not be available by January 1, 2025.

It’s time to “take a breather” and allow time for these improvements. We formally request the NYSDEC defer enforcement of the regulations until those plans for lakes can, with fair and equitable public input, be ready.

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More specifically...

1. It's obvious the NYSDEC struggled writing wetlands regulations appropriate for the diversity of land and water across the State. As a result, the NYSDEC has proposed unreasonable regulations for Chautauqua Lake, a large navigable lake in southwestern New York. "One Size (of Regulation) Doesn't Fit All" and the NYSDEC's "Cart is Before the Horse". The NYSDEC must defer enforcement of the regulations until reasonable plans for lakes can, with fair and equitable public input, be ready.
2. Legislation proposed by Senator Borrello and Assemblyman Andy Goodell, the Chautauqua Lake General Permit planned by Region 9, and the "yet-to-be-finalized regulations" for "in and near a lake" (NYSDEC Webinar Q/As August 14, 2024), will not be completed or in effect until mid to late 2025 at best. These efforts at relaxation of the proposed regulations cannot be developed and negotiated with the "Damocles Sword" of January 1, 2025, enforcement hanging over the heads of those impacted by the regulations. "Informational Maps" will not be ready until after the public hearings and comment period, likely less than a month before January 1, 2025, implementation and during the holiday season. NYSDEC must defer enforcement of the regulations until those activities, with fair and equitable public input, are ready to be implemented.
3. NYSDEC's Mission is "To conserve, improve and protect New York's natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being." Regarding Chautauqua Lake, the NYSDEC and NYSDEC Region 9 have failed to meet the expectations provided for in its Mission and have contributed to the deterioration of the Lake and what would be its designation as "wetlands" under the proposed regulations.
 - a. Lake water level, critical to limit submerged aquatic vegetation growth, a major determinant in wetlands designation, is ineffectively managed using a 75 year old Warner Dam Operating Manual. This

Manual does not take advantage of new hydrologic modelling techniques, weather data gathering and prediction technology, nor potential engineering solutions to control hydraulic limitations. The resulting unnecessary proliferation of weeds contributes to the deterioration of the Lake and would support designation as “wetlands” under the proposed regulations.

- b. Herbicide application has been the only effective method to reduce invasive weeds in Chautauqua Lake. NYSDEC Region 9 abandoned its herbicide-based invasive weed management program in 1959 and severely limited treated acreage by a third party through 1992 when herbicide treatments ended. Region 9 allowed one very small 40-acre treatment in 2002 then refused to grant further permits until a Supplemental Environmental Impact Statement for Herbicide Use in Chautauqua Lake (SEIS) was completed. This was a requirement which the NYSDEC placed on no other lake in New York State. A total of 24 of the 25 years between 1992 and 2017 passed without herbicide treatments. That allowed uncontrolled proliferation of invasive Eurasian Water Milfoil and Curly Leaf Pondweed contributed to the deterioration of the Lake and would support designation as “wetlands” under the proposed regulations.
- c. The NYSDEC-required SEIS was completed with private funding by a citizens group under Town of Ellery leadership in 2018 at a cost of \$250,000. EPA and NYSDEC-approved herbicides have been used since. These have been proven effective with no significant negative environmental impact by several third-party studies. However, NYSDEC Region 9 treatment permit timing, areal extent, and other limitations have not allowed these treatments to be part of an effective overall invasive weed management program. The resulting unnecessary proliferation of weeds contributes to the deterioration of the Lake and would support its designation as “wetlands” under the proposed regulations.

- d. It is well documented that weed harvesting fails to recover a significant percentage of the weeds it cuts. Even after a formal November 2, 2018, written request by an attorney representing the Chautauqua Lake Partnership, the NYSDEC refused to enforce the New York State Invasive Species Act and its prohibition of invasive species (Eurasian Water Milfoil and Curly Leaf Pondweed) propagation. Uncontrolled and unregulated harvesting has spread Eurasian Water Milfoil since harvesting began in the Lake in 1952. The resulting unnecessary proliferation of weeds contributes to the deterioration of the Lake and would support its designation as "wetlands" under the proposed regulations.
 - e. Region 9 arbitrarily and without clear regulatory authority introduced over 40 "Fish Habitat Areas" in Chautauqua Lake beginning in 2018 and specifically excluded herbicide treatment of invasive weeds in those Areas. These Areas have been expanded by Region 9 in the following years and now prohibit herbicide use in areas offshore ~50 % of the Towns of Ellery, Ellicott, Busti, and North Harmony. This represents over 75% of the Chautauqua Lake shoreline. The resulting unnecessary proliferation of weeds contributes to the deterioration of the Lake and would support its designation as "wetlands" under the proposed regulations.
 - f. In 2013 and likely in previous years as well, Region 9 introduced protected fish species (e. g., paddlefish) into Chautauqua Lake. The existence of protected species is one of the several criteria used in classification of a regulated wetlands increasing the severity of associated restrictions. As a result, NYSDEC Region 9 has directly caused a heightened wetlands classification under the proposed regulations with its higher degree and severity of restrictions.
4. Region 9 has provided "assurances" of no wetland designation to the Chautauqua Institution, a large wealthy gated community, prior to finalization of the proposed regulations and "Informational Map" completion, without formal onsite evaluation, and without an opportunity

for public input. At the same time, Burtis Bay property owners with much smaller lakefront lots and more modest homes, have been told their offshore would likely be designated as wetlands. Such preferential treatment is clearly inconsistent with NYSDEC's environmental justice goal included in its Mission Statement.

5. Wetlands designation will significantly limit necessary weed, algae, and other needed Lake management accelerating lake deterioration to the detriment of shoreline property owners, commercial establishments, tourists, and lake users. Herbicide treatment, Chautauqua Lake's only effective weed reduction method, would now require both Wetlands and Herbicide permits from Region 9 in what's certain to be a complex and time-consuming process requiring intense cooperation between two distinct Region 9 departments with conflicting objectives as well as effective coordination with several others departments. Further limitations on herbicide use and permitting delays are a certainty.
6. The Chautauqua Lake shoreline and nearshore land area is heavily developed with private homes, camps, and commercial establishments. It's clear the proposed wetlands regulations were not designed for nor are they appropriate for a 13,000-acre navigable Lake with 150+ years of shoreline development and hundreds of millions of dollars of private and public investment. It's not appropriate to treat undeveloped and highly developed areas the same under the proposed regulations.
7. Although shoreline and near-Lake properties comprise only 1% of the County's land area, they generate over 25% of total Chautauqua County property tax revenue. If these properties are designated wetlands or adjacent regulated areas, property values, assessments, and tax revenue will decrease and County-wide property tax rates will increase for all in Chautauqua County. School taxes will follow property taxes with an increase in tax rates for all in lakeside districts. Sales tax revenue will also decrease as tourism, a mainstay of the Chautauqua County economy, suffers.

8. NYSDEC has interpreted, stress "interpreted", the proposed regulations such that significant portions of Chautauqua Lake would meet the definition of Freshwater Wetlands. Like all lakes, Chautauqua Lake includes a littoral zone where the submerged aquatic vegetation identified in the Freshwater Wetland definition grows. In Chautauqua Lake, that littoral zone comprises 4,100 acres, 33% of the lake's area. Vegetation characteristics including extent, native or invasive, and desirability are ignored in the proposed Freshwater Wetland definition and criteria. As proposed regulations are currently written, the entirety of the Lake's littoral zone as well as other deeper water areas could be regulated as wetlands with a minimum of 100' and unspecified maximum regulated adjacent area extending onshore. Using the classification process in the proposed regulations, all Chautauqua Lake wetlands and regulated adjacent areas would be Class I, the most restricted, and meet the criteria as Wetlands of Unusual Importance, with no lower size threshold. Allowed activities on Class I wetlands "must be the only practicable alternative" and "acceptable only in the most unusual circumstances". Permits and, potentially a State Environment Quality Review and Environmental Impact Assessment, will be required with associated cost and delay to the property owner. This will severely restrict what can be done with the property and reduce its utility and value.. This amounts to government "taking" of the property without compensation.
9. The complex web of 15-20 proposed and existing wetlands-related regulations and other NYSDEC publications makes it nearly impossible to understand the impact of the proposed regulations. This discourages understanding, confidence, and effective public opposition. As has been seen in the past, the current Region 9 management will likely take advantage of this complexity and enforce the regulations more aggressively than other NYSDEC Regions. This would make timely, consistent, and equitable enforcement by the NYSDEC unlikely, creates a high potential for selective enforcement and the litigation that follows.

10. The NYSDEC did no cost-benefit or other comparative evaluation of the positive and negative impacts of the proposed wetlands regulations. The Regulatory Impact Statement and its Summary is incomplete with no mention of the numerous public, economic, social, recreational, health, and other negative impacts of the regulations. Given the significant development in and around Chautauqua Lake and its important recreational and other use, these negative impacts and costs are certain to be significant. These impacts must be fully evaluated, documented and shared and discussed in a public forum consistent with required rulemaking procedures before implementation of the regulations can proceed.
11. Wetlands are a breeding ground for mosquitos and other nuisance and disease-bearing insects. The proposed regulations as communicated will significantly increase these wetlands areas and their insect populations. At the same time, the proposed regulations will prohibit the use and storage of insecticides in the wetlands and adjacent regulated areas without permits and, potentially, a State Environmental Quality Review and an Environmental Impact Assessment. With its proposed regulations, the NYSDEC would be creating a public health hazard with mosquito and other insect-borne diseases (West Nile Virus, Eastern Equine Encephalitis, Meningitis, Zika Virus, Dengue Fever, etc.) on Chautauqua Lake and surrounding areas of the County.
12. There is strong local opposition to the proposed regulations. Thousands have signed petitions, testified at public hearings, and sent letters of opposition. Eight of the nine Towns and Villages on the Lake and the Chautauqua County Executive have formally opposed the regulations. State Senator George Borrello, with Assemblyman Andy Goodell, proposed legislation exempting lakes such as Chautauqua. Over 25 articles and editorials in the Jamestown Post Journal have helped inform the public and recommended a delay in enforcement. All stress Chautauqua Lake is a "lake", not a "marsh, swamp, slough, bog, or flat", as in the NYSDEC wetlands definition, and the proposed regulations' devastating impacts.

Jim Wehrfritz, President
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