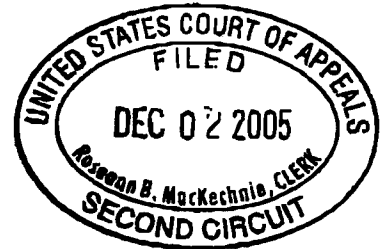


**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 2nd day of December, two thousand and five,

BEFORE: Honorable John M. Walker, Jr.,
Chief Judge;
Honorable James L. Oakes,
Honorable Dennis Jacobs,
Circuit Judges.



Docket Nos: 03-7203-cv(L), 03-7253-cv(XAP)

CATSKILL MOUNTAINS CHAPTER OF TROUT UNLIMITED, INC., THEODORE GORDON FYLFISHERS, INC., CATSKILL-DELAWARE NATURAL WATER ALLIANCE, INC., FEDERATED SPORTSMEN'S CLUBS OF ULSTER COUNTY, INC. and RIVERKEEPER, INC.,

Plaintiffs-Appellees-Cross-Appellants,

v.

CITY OF NEW YORK and NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Defendants-Third-Party-Plaintiffs-Appellants-Cross-Appellees,

JOEL A. MIELE, SR., Commissioner of Department of Environmental Protection,
Defendant-Appellant-Cross-Appellee,

v.

STATE OF NEW YORK, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION and ERIN M. CROTTY, Commissioner of the New York State Department of Environmental Conservation,

Third-Party-Defendants-Appellees.

The Court directs the parties to address, in letters submitted to the Clerk's Office not to exceed five (5) single-spaced pages due December 16, 2005, the following question:

Catskill Mountains Chapter of Trout Unlimited v. City of New York
Docket Nos: 03-7203-cv(L), 03-7253-cv(XAP)

“Section 302(b)(2)(A) of the Clean Water Act authorizes the issuance of an NPDES permit that allows higher effluent limitations than would otherwise be required if the permit applicant demonstrates that ‘there is no reasonable relationship between the economic and social costs and the benefits to be obtained . . . from achieving such limitations.’ 33 U.S.C. § 1312(b)(2)(A). At oral argument on November 21, 2005, the City of New York argued that this provision does not render the NPDES permit system flexible enough to allow the State of New York to issue a permit for the Shandaken Tunnel discharge.

Does 33 U.S.C. § 1312(b)(2)(A) and its state analog, 6 N.Y.C.C.R.R. § 702.17, allow the State of New York the flexibility to issue an NPDES (or SPDES) permit that modifies the effluent limitations that would otherwise apply to the Shandaken Tunnel discharge? If so, is this flexibility sufficient to allow the City of New York to obtain a permit to continue to use the Shandaken Tunnel to transport drinking water to New York City and the surrounding area?”

FOR THE COURT:


ROSEANN B. MacKECHNIE
CLERK OF COURT

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3 pages