STATE OF NEW YORK
SUPREME COURT: COUNTY OF ULSTER

In the Matter of the Application of

CITY OF AUBURN, TOWN OF OWASCO, OWASCO WATERSHED LAKE ASSOCIATION, INC.

Petitioners-Plaintiffs,

For a Judgment Under Article 78 of the Civil Practice Law and Rules,

DECISION, ORDER AND JUDGMENT
Index No. 900966-25

-against-

JAMES V. MCDONALD, in his capacity as the Commissioner of the New York State Department of Health, NEW YORK STATE DEPARTMENT OF HEALTH, RICHARD A. BALL, in his capacity as the Commissioner of the New York State Department of Agriculture and Markets, and NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS,

Respondents-Defendants.

(Supreme Court, Ulster County, Special Term)

APPEARANCES:

EARTHJUSTICE
Michael Youhanna
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Savona, J.:

By petition filed on or about November 22, 2024, Petitioners seek a judgment against Respondents pursuant to CPLR sections 3001, 7803(1), 7803(3) and 7806 "adjudging and

declaring that DOH's decision to deny the City of Auburn and Town of Owasco's WRR rulemaking request was arbitrary and capricious…[and] annulling, voiding, and vacating DOH's denial of the City of Auburn and the Town of Owasco's WRR rulemaking request." Months of mutual adjournment requests followed the initial filing. Ultimately, an Answer was filed as well as a Motion to Dismiss.

The matter has a lengthy history. A petition was originally filed on or about January 5, 2024 and decided by this Court on May 6, 2025. The instant petition and the January 2024 petition are factually intertwined. It is important to understand the history in order to perform a comprehensive legal analysis of the questions presently before the Court. The following facts are not in dispute:

1) Petitioner, City of Auburn, is "one of two suppliers of water sourcing and distributing public water from Owasco Lake to 45,000 residents of Cayuga County." (Petition at paragraph 11). Petitioner, Town of Owasco is "one of two suppliers of water sourcing and distributing public water supply from Owasco Lake to 5,000 residents of Cayuga County." (Petition at paragraph 12). Petitioner, Owasco Watershed Lake Association ("OWLA") is a "non-profit founded in 1988 and dedicated to the protection and restoration of Owasco Lake." (Petition at paragraph 13).
2) The State is possessed with the authority, pursuant to PHL §§ 201(1)(l) to "supervise and regulate the sanitary aspects of water supplies…and control the pollution of waters of the state." In order to fulfill this duty, the New York State Department of Health ("DOH") is authorized, pursuant to PHL § 1100 to "make rules and regulations for the protection from contamination of any or all public supplies of potable waters…and their sources within the state."

3) The regulations promulgated by DOH to protect the State's water supplies from contamination are known as Watershed Rules and Regulations. (WRRs). The WRRs that "apply to Owasco Lake and its tributaries, which is a source of the public water supply for both the City of Auburn and the Town of Owasco, Cayuga County, New York, and to all watercourses tributary thereto or which may ultimately discharge into said lake" were developed in 1984 and are set forth at 10 NYCRR §104.1. These WRRs address both pollution from a single, identifiable source such as a drain pipe, and pollution originating from a diffuse and widespread area, such as fertilizer runoff from farms.

4) The 1984 WRRs contain language regulating "agricultural-associated animal waste" and the runoff of same, as well as language regulating the spread of manure and the storage of chloride salt within a certain distance from the lake or watercourse.

5) The 1984 WRRs empowered the Mayor and council of the City of Auburn and the town board of the Town of Owasco to ascertain compliance with the WRRs, to notify any persons deemed to be in violation of said WRRs, and to "promptly notify the State Commissioner of Health" of any uncorrected violations. The WRRs also required the local governments to "report to the State Commissioner of Health in writing annually, prior to the 30th of January, the results of the regular inspections made during the preceding year. The report shall state the number of inspections which were made, the number of violations found, the number of notices served, the number of violations abated and the general condition of the watershed at the time of the last inspection."

6) Pursuant to PHL §§1101-1103, the "person, officer, board or commission having the management and control of the potable water supply of any municipality..." has the power to conduct investigations to ascertain compliance with the Owasco WRRs, demand compliance with the WRRs, and the DOH thereafter has the authority to enforce compliance with the WRRs.

7) In 2000, the "Agricultural Environmental Management Act" was passed (Agriculture and Markets Law, Article 11-a) (hereinafter "the Act"). The Legislative findings and declarations set forth within the Act discuss concerns over water quality, and the impact that agricultural production has on water quality. The Act specifically mentions the manure management practices of farms, and the impact of same on water quality. The Legislative findings and declarations state that: "[i]n order to accomplish environmental protection and improvement while maintaining viable agricultural operations in New York State, it is declared to be in the best interest of the state to establish a voluntary, incentive-based program of agricultural and environmental management...The goals and objectives of this voluntary program are to: document farmers' stewardship of the land; enhance environmental stewardship through the adoption of best management practices that are consistent with individual farm resources; provide assistance to *enable farmers to comply with federal, state and local environmental regulations*; and reduce farmers' exposure to environmental liability." (Agr. & M., Art. 11-A)(emphasis added).

8) The Act created an Agricultural Environmental Management Program (hereinafter "AEM") designed to allow farmers to voluntarily follow a plan developed by a "certified AEM planner", designed to "abate and control agricultural nonpoint source

water pollution, air pollution and other adverse environmental impacts from farm operations through the implementation of best management practices, in a way which maintains the viability of the farm operation." (Agr. & M. §150(3)).

9) In 2017, the City of Auburn, the Town of Owasco and Cayuga County each passed resolutions to commence a public process through which to examine and update the 1984 WRRs.

10) The 1984 WRRs contain language requiring a minimum distance of 250 linear feet between "agricultural-associated animal waste" and the lake or watercourse. Those WRRs also specify that the area beyond 250 linear feet "shall be maintained in such manner that surface runoff will not carry agricultural-associated animal waste directly into the lake or watercourse." The 1984 WRRs mandated that "manure shall not be field-spread within 75 feet of the lake or watercourse unless it is plowed underground on the same day it is spread."

11) In 2018, the Department of Environmental Conservation ("DEC") issued a one hundred and fifteen page document entitled "Harmful Algal Bloom Action Plan Owasco Lake" (hereinafter "the HABs Plan"). That report states that "New York recognized the threat HABs pose to our drinking water, outdoor recreation, fish and animals, and human health." The report further states that "[t]here were 84 confirmed HABs occurrences in [Owasco] lake from 2013 through 2017, including 55 confirmed HABs with high toxins. HABs resulted in 61 lost beach days between 2014 and 2017."

12) The HABs Action Plan identified two of the "primary controllable factors that contribute to HABs in Owasco Lake" as "[n]onpoint source sediment and nutrient

inputs from the contributing watershed (e.g. agricultural lands, forest, ditches and streambank erosion)" and "[s]tormwater runoff and failing septic systems from developed areas." (at pg. 72).

13) The HABs Action Plan listed working with farmers in various ways designed to reduce nutrient pollution in "subwatersheds through all counties that drain to Owasco Lake" as a short-term priority project to "begin as soon as possible" (at pgs. 74-75).

14) In December of 2020 the Town and the City made a formal request to the DOH to propose new WRRs pertaining to Owasco Lake. This request was made pursuant to procedures set forth in a DOH Environmental Health Manual. In connection with this request, the Town and City submitted to the DOH a draft of proposed new WRRs (the "local WRRs"). This draft contained a lengthy and comprehensive "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*..." (emphasis in original). The local WRRs also required the installation and maintenance of "vegetated buffers" and established rules about manure stacking, waste storage, feed storage areas, wastewater, manure application, and livestock access to the lake and watercourses.

15) The parties participated jointly in a number of workshops/workgroups to discuss the local WRRs. The parties were ultimately unable to reach an agreement with respect to the issue of language designed to address nutrient management.

16) In September of 2022, a one hundred page "Owasco Lake Watershed Nine Element Plan for Phosphorus Reduction" (hereinafter "the Nine Element Plan") was prepared for Cayuga County Department of Planning and Economic Development. The Nine

Element Plan states that it was "prepared with funding provided by the New York State Department of State under Title 11 of the Environmental Protection Fund.

17) The Nine Element Plan states that the "overarching goal" of the Plan was to "[r]estore and protect the viability of Owasco Lake as a drinking water source, economic resource, recreational asset, and healthy aquatic ecosystem." (at pg. 32).

18) The Nine Element Plan states that "[a]gricultural lands (pasture/hay and cultivated crops) collectively cover more than half of Owasco Lake's watershed area and are significant contributors of phosphorus." (at pg. 40).

19) The Nine Element Plan recommended, as an item with "High" priority, that the Owasco Lake Watershed Rules and Regulations be updated. (at pg. 67).

20) In a press release dated September 9, 2022, the DEC Commissioner and the Department of State (DOS) Secretary of State "announced the joint approval of the Owasco Lake Watershed Nine Element Plan for Phosphorous Reduction to advance efforts to restore and protect the water quality of Owasco Lake and its watershed." Secretary of State Robert J. Rodriguez commented that "[c]lean water is the main ingredient in the recipe for healthy, sustainable communities and ecosystems." He commented further that the Nine Element Plan "creates a clear blueprint for improved water quality and public health that will guide communities in the Owasco Lake are as they protect and restore this most precious natural asset."

21) Workgroups continued between the parties and in June of 2023, counsel for the DOH opined at a state-local meeting that "any authority held by DOH to promulgate agricultural management regulations such as those being proposed by the Owasco Parties had been stripped by the more recently enacted provisions of Article 11-a in

the Agriculture and Markets Law, which enacted the Agricultural Environmental Management Program." (Memorandum of Law in Support of the State's Motion to Dismiss at pg. 6).

22) During a workgroup in July of 2023, DOH presented their proposed WRRs. The "Nutrient Management" section in the State's "Proposed Revisions to the 1984 Owasco Lake Watershed Rules and Regulations" said simply that "Non-CAFO farms are actively encouraged to participate in the AEM program (AML 11-A), locally led by the Soil and /Water Conservation District and further guided by state approved clean water plans as applicable....Other observations of concern by Owasco Lake Watershed Inspection and Protection Division personnel shall be referred to the local Soil and Water Conservation District to assess and address through participation in AEM." (A CAFO is a Concentrated Animal Feeding Operation, where agricultural meat, dairy or egg producing animals are kept and raised in confinement rather than being permitted to graze or eat in pastures or fields.)

23) The DOH's draft WRRs did not contain the language from the 1984 WRRs mandating a specific distance between the lake or watercourse and agricultural-associated animal waste, nor do they contain the 1984 language pertaining to the spread of manure. The DOH's draft WRRs did not contain the language from the 1984 WRRs mandating the maintenance of land in a manner designed to prevent surface runoff that would carry agricultural-associated animal waste directly into the lake or watercourse.

24) In response to the DOH's position that Article 11-a had stripped the DOH of their authority to promulgate certain agricultural management regulations, Senator Rachel

May sent a letter to the State, asking questions concerning the DOH's position with respect to the WRRs. One of the questions asked was: "During public meetings, the NYSDOH indicated that regulations couldn't address pollution sources already covered by other laws. For instance, they argued that since the Agricultural Environmental Management Agency is mentioned in Ag and Markets Law, the Owasco Rules and Regulations cannot include farming requirements. Similarly, they stated that regulations on sediment and stormwater are unnecessary due to existing Environmental Conservation Law. The Skaneateles Rules and Regulations contain substantial farming and sediment erosion/stormwater requirements. Why can regulations address these aspects in one context but not another, and how does the law prohibit the inclusion of certain pollution sources in Owasco's regulations?"

25) The DOH's response to Senator May's "Question 3" opined that: AML Article 11-a created a "clear statutory preclusion on Title 10 agricultural management provisions…" The response also stated that: "DOH has reviewed AML Article 11-a in detail and determined DOH lacks delegated legislative authority to promulgate regulations of the kind proposed by the City and Town that would attempt to effectively amend the statutory requirements of AML 11-a."

26) By email dated September 15, 2023, the State transmitted a revised set of draft WRRs, and indicated in the email that "The State plans to keep the Nutrient Management provision in the proposed regulations as written and presented during the 7/31 meeting."

27) The September 15, 2023 email from Ashley Inserillo at the DOH also stated that: "DOH will update the group once the package is ready to submit for Department of

State for public comment." Pursuant to the State Administrative Procedure Act (SAPA), the DOH is required to publish proposed WRRs in the New York State Register for a period of public comment. After publication in the Register and the exhaustion of the public comment period, the DOH has the ability to adopt the new WRRs.

28) In December of 2023, the Petitioner-Plaintiffs filed a petition seeking a declaratory ruling from the DOH, asking the DOH to further elaborate their legal reasoning. The DOH denied this request.

29) On or about January 5, 2024, a petition was filed (Index No. 904609-24) seeking a judgment "[a]djudging 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."

30) By letter dated July 22, 2024 to City of Auburn Mayor Giannettino and Town of Owasco Supervisor Wager, DOH stated that no new WRRs would be forthcoming. According to the DOH: "[f]ollowing internal evaluation of the existing regulations, the Department has determined that amendments are not necessary to ensure potable water quality for the foreseeable future. Instead, the Bureau will continue assisting the City, Town, New York State Department of Environmental Conservation and Department of Agriculture & Markets with the other critical efforts to protect Owasco Lake against the damaging effects of climate change."

31) By Decision issued on or about May 6, 2025 (Index No. 904609-24), this Court found that DOH's determination that it lacks legal authority to promulgate watershed rules

and regulations to control agricultural nutrient pollution as a result of the enactment of AML Article 11-a was an error of law and was made arbitrarily and capriciously.

By "hybrid Petition and Complaint" filed on or about November 22, 2024, Petitioners challenge DOH's decision to end the process to update the Owasco Lake Watershed Rules and Regulations as arbitrary and capricious, contrary to law, and ruinous to Owasco Lake's water quality. (Verified Petition and Complaint at paragraph 10). Petitioners seek a judgment against Respondents pursuant to CPLR sections 3001, 7803(1), 7803(3) and 7806 "adjudging and declaring that DOH's decision to deny the City of Auburn and Town of Owasco's WRR rulemaking request was arbitrary and capricious…[and] annulling, voiding, and vacating DOH's denial of the City of Auburn and the Town of Owasco's WRR rulemaking request."

Motion to Dismiss

By motion filed on or about February 28, 2025, the Respondents seek to dismiss the petition pursuant to CPLR 3211(a)(7), for failure to state a cause of action, and because DOH's administrative decision was reasonable and in accordance with law. "On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*see, CPLR 3026*). We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory….Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." Leon v. Martinez 84 N.Y.2d 83, 87-88 (1994).

Pursuant to the "Green Amendment", "[e]very person shall have a right to clean air and water, and a healthful environment." (NY Constitution, Art. 1, §19). "[T]o establish a violation of the *Green Amendment*, a party must show, based on established science, that a government

action will significantly contribute to unclean air, unclean water, or an unhealthful environment.'" East Side Parkways Coalition v. New York State Dept. of Transp., 228 N.Y.S.3d 891, 899 (N.Y. Sup. Ct, Erie Cty. [2025]) (quoting the Respondent, Dept. of Transportation's Memorandum of Law).

The Petitioners' concern about HABs is not speculative. The parties agree that HABs create serious health risks in drinking water, and to anyone recreating in water contaminated by HABs. The parties also agree that agricultural nutrient pollution is a primary contributor to the formation of HABs. Years of scientific studies indicate clearly that Owasco Lake is in crisis due to HABs and that a plan needs to be put into place to remedy this situation. Without such a plan, the constitutional right to clean water for those residents whose drinking water is sourced from Owasco will be violated, as will the rights of those who choose to fish, swim, boat and otherwise recreate in Owasco Lake.

The question of whether DOH's determination that the existing WRRs are sufficient and whether their refusal to engage in the process to update the existing WRRs is an action that will significantly contribute to unclean air, unclean water, or an unhealthful environment is a triable issue of fact. The scientific evidence submitted by the Respondents does not, as a matter of law, establish a defense to the asserted claims. Therefore, the motion to dismiss is DENIED.

Decision on the Merits

An agency determination is actionable pursuant to CPLR Article 78 only if and when that determination is final. "Administrative actions as a rule are not final unless and until they impose an obligation, deny a right or fix some legal relationship as a consummation of the administrative process. To determine if agency action is final, therefore, consideration must be given to the completeness of the administrative action and a pragmatic evaluation must be made of whether

the decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury." Essex County v. Zagata, 91 N.Y.2d 447, 453 (1988) (internal citations intentionally omitted). "A challenged determination is final and binding when it 'has its impact' upon the petitioner who is thereby aggrieved." Edmead v. McGuire, 67 N.Y.2d 714, 716 (1986) (quoting *Mundy v. Nassau County Civ. Serv. Comm., 44 NY2d 353, 357*).

The Respondents assert that their decision to discontinue the rulemaking process was not a final agency determination. According to the Respondents, the Petitioners have no power or authority with respect to the question of whether a WRR needs to be amended. "A determination of whether a rulemaking is necessary or advisable is subject to DOH's discretion and DOH is free to consider, but ultimately decide against, amending its regulations." (DOH's Memorandum of Law at pg. 13).

In support of their argument, the Respondents offer Long Island Lighting Co. v. New York State Dep't of Environmental Conservation, which held that the respondent agency was "under no legal obligation to initiate a rule change simply at the request of a regulated party" 145 A.D.2d 70 (3rd Dept., 1989). However, the Petitioner in *Long Island Lighting Co.* was an electric generating facility seeking permission to use fuel beyond certain sulfur content levels. Said electric generating facility was seeking an exception to a rule, presumably in an effort to reduce costs to the facility. Here, the Petitioners are fighting, as elected officials on behalf of their constituents, to ensure the constitutional right of New Yorkers to clean drinking water, and a healthful environment.

Petitioners rely heavily on the "Environmental Health Manual" as a roadmap for the process to be followed when a local supplier of water desires a change to existing WRRs. The relevant pages of that manual, referred to at times as "PWS 100", are dated May 27, 1994 and

there is a notation that the manual is "currently under revision (4/1/2008)"). Respondents state that the Environmental Health Manual was first issued in 1984 and reissued in 1994, and "set forth a process for water suppliers and local health departments to propose rules and regulations to protect public water sources for review and adoption by DOH." (DOH's Memorandum of Law at pg. 7).

According to the Respondents, PWS 100 was formally rescinded on December 13, 2024, after the Respondents determined that PWS 100 was "inconsistent" with the State Administrative Procedure Act ("SAPA"), "particularly after Article 2 of SAPA was amended in 1984 and again in 1986 to clarify procedural requirements that agencies must follow to promulgate regulations." (Sacks affirmation at paragraph 17). Interestingly, the Respondents acknowledge that PWS 100 was "reissued" in 1994, eight years after the SAPA amendment that the Respondent now claims rendered the guidance document unlawful. Also interestingly, the Petitioners have been relying, in part, on PWS 100 for several years during the pendency of these proceedings, but the Respondents did not rescind the document as "inconsistent" with SAPA until the end of 2024.

Separate and apart from PWS 100, Petitioner asserts that Public Health Law 1101-1103 argues that "DOH must cooperate with local authorities when implementing WRRs." (Petition at paragraph 23). Petitioner asserts that the DOH created the manual "[l]ikely to fulfil the Legislature's intent that WRRs would be implemented through a process of state-and-local collaboration…" (Petition at paragraph 24). It is clear, looking at the totality of available information, that local water suppliers are supposed to work collaboratively with DOH to ensure safe drinking water for the residents of New York State.

Public Health Law sections 1100 through 1103 details an effort where DOH, *in conjunction with "the authorities in charge of the water supply"* (emphasis added), creates rules

and regulations to protect potable water sources from contamination. Sections 1100 through 1103 clearly create a relationship where the local suppliers and DOH are meant to work together to protect this resource that Secretary of State Rodriguez so eloquently described as a "main ingredient in the recipe for health, sustainable communities and ecosystems" and a "most precious natural asset."

While it is true that DOH has ultimate rulemaking authority, the legislature never intended such authority to be wielded in a dictatory fashion. The joint effort laid out in Sections 1100 through 1103, as well as the recent passage and creation of things such as the "Green Amendment" and the "Drinking Water Source Protection Program"[1] evidence that DOH must work together with municipalities, rather than dismissively disregarding their concerns.

DOH's abrupt about-face, after years of collaboration, and refusal to amend WRR's that are decades-old and that have been identified as in need of updating by State-funded studies, is absolutely a final agency determination. DOH's determination, which is contrary to the scientific evidence, renders powerless municipalities tasked with protecting their constituents from known environmental hazards. This Court will not be complicit in the silencing of municipalities fighting zealously to protect the potability of the drinking water of residents of New York State. DOH's determination is a final agency determination and is subject to review pursuant to Article 78.

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[1] The "Drinking Water Source Protection Program", enacted in 2019, is described by the DEC as "a locally led, state-supported program that empowers municipalities to take action to improve and protect their public water sources and surrounding environment."

"[I]t is settled that in a proceeding seeking judicial review of administrative action, the court may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the decision or whether it is arbitrary and capricious. Moreover, where...the judgment of the agency involves factual evaluations in the area of the agency's expertise and is supported by the record, such judgment must be accorded great weight and judicial deference." Flacke v. Onondoga Landfill Systems, Inc., 69 N.Y.2d 355, 363 [1987]. Here, however, the Court is not being asked to substitute judgement for an agency because, in fact, the agency and the Petitioners agree on the science.

The science submitted and relied on by both sides clearly indicates that HABs are negatively impacting the recreational safety of Owasco Lake and negatively impacting the potability of the drinking water that is sourced from Owasco Lake. The assertion of the agency that the current WRRs are sufficient, is not supported by the record. The Respondents acknowledge the HAB crisis and the impact that nutrient pollution has on HABs. Following extensive and exhaustive research designed to address the HAB crisis, the Respondents spent years in consultation with the local water providers until the Respondents abruptly decided that the existing WRRs are sufficient, even though they have proven to be insufficient.

The Respondents assert that "more than $221.9 million has been allotted to drinking water and water quality improvement projects, including funding to examine factors that trigger HABs and reduce the frequency of algal blooms, in Owasco Lake and the Eastern Finger Lakes generally." (Lang Affirmation at paragraph 28). The Court believes this statement. However, it is a statement that actually weakens, rather than supports, the Respondents' argument. That money

has been spent to research a real problem, that is happening right now. Some of that money has been spent on studies that reveal that the current WRRs are wholly insufficient.

The "funding to examine factors that trigger HABs and reduce the frequency of algal blooms, in Owasco Lake and the Eastern Finger Lakes generally" has revealed, without question, that nutrient runoff from farms is one of the primary sources of harmful HABs. In spite of the existing WRRs containing language to address the issue of nutrient pollution, the incidence of HABs continues to increase. Scientific research, endorsed and adopted by both parties, points to a clear need to update WRRs that have proven to be insufficient.

This Court is genuinely confused about why the DOH is donning proverbial blinders and refusing to acknowledge a fact that their own science proves. Their behavior is, frankly, the definition of arbitrary and capricious. The Respondents attempt to paint a picture that the Petitioners are being unreasonable in attempting to force DOH to adopt their proposed amendments. This is an unsuccessful, blame-shifting mischaracterization.

The Petitioners are not upset about the DOH's refusal to promulgate the amendments they proposed. Rather, they are upset at the DOH's decision, after years of research, meetings and proposals, to promulgate ANY new WRRs at all. The Petitioner is not insisting that DOH adopt all of their proposed WRRs. They are asking that some amendments to the existing WRRs be made in order to address HAB's which negatively impact the Petitioner's responsibility and ability to provide safe drinking water to their constituents. The Petitioners are reasonably and rationally asking the DOH to confirm their acknowledgment that nutrient pollution contributes to HABs and to come up with new WRRs that attempt to remediate this issue as the existing ones have not proven to be sufficient in this regard.

Rather than engaging in a power struggle with results that endanger New York's residents, this Court questions why DOH doesn't simply work with the Petitioners to draft new WRRs that outline the remediation efforts DOH asserts they are already engaging in, after dedicating hundreds of millions of dollars to such an important cause. If the Respondents truly believe that all is well with respect to the potability and recreational function of Owasco Lake's water for the present and the foreseeable future, then why make such sweeping proclamations about the importance the State has placed upon fixing the problem?

The Respondents address water treatment measures, but do not address proactive measures to protect the water from becoming so polluted that it requires higher and higher levels of chemical treatment prior to being deemed potable. Some level of onus must be placed upon the agricultural cultivators whose current practices are resulting in unhealthy levels of nutrient pollution entering the waterways.

This Court hereby finds that DOH's determination, as set forth in their July 22, 2024 letter that "amendments [to the existing WRRs] are not necessary to ensure potable water quality for the foreseeable future" was a final agency determination in that it was a definitive position that inflicted actual harm upon the Petitioners. The Petitioners were stripped of any ability to protect their residents from a scientifically established threat. DOH's determination was contrary to all relevant science, all State-funded studies, and was made arbitrarily and capriciously.

DOH is hereby directed to work collaboratively with the Petitioners to draft updated WRRs that address the very real problem of nutrient pollution caused by agricultural practices.

SO ORDERED AND ADJUDGED
ENTER.

Dated: July 1, 2025
Kingston, New York

Keri E Savona

Hon. Keri E. Savona
Acting Supreme Court Justice

Papers Considered:

1. Verified Petition and Complaint dated November 22, 2024
2. Memorandum of Law dated November 22, 2024
3. Affirmation of Michael Youhana, Esq. dated November 22, 2024 with accompanying exhibits A through AK
4. Verified Answer dated February 18, 2025
5. Memorandum of Law in Support of Cross-Motion to Dismiss and Verified Answer in Opposition to the Petition-Complaint dated February 18, 2025
6. Affirmation of David Lang dated February 18, 2025
7. Affirmation of William Sacks dated February 18, 2025 with accompanying exhibits 1 through 3
8. Certified Transcript of the Administrative Record
9. Petitioners' Reply Memorandum dated March 25, 2025
10. Affirmation of Michael Youhana dated March 25, 2025 with accompanying exhibits I through IV
11. DOH's Reply Memorandum of Law dated April 15, 2025