



**ATLANTIC STATES  
LEGAL FOUNDATION, INC.**

July 29, 1992

Mr. Peter A. Lent  
Senior Environmental Analyst  
Division of Regulatory Affairs  
New York State Department of Environmental Conservation  
6274 East Avon-Lima Road  
Avon, New York 14414

Dear Mr. Lent:

Re: KODAK'S SPDES PERMIT RENEWAL  
DEC Application No. 8-2614-00205/00137-0

REQUEST FOR EXTENSION OF COMMENT PERIOD

As you may know, the Atlantic States Legal Foundation ("ASLF") is a not-for-profit membership organization with members in Rochester and throughout New York State. ASLF has recently received a copy of the draft SPDES renewal permit for Kodak Park, and is concerned that the interests of its members will be adversely affected if the permit is issued to Kodak without radical revision.

I am writing to you to request that the DEC extend the comment period on the draft permit,

- (1) until at least September 16, 1992, and
- (2) until at least thirty days after
  - (i) the DEC and Kodak have reached an agreement concerning Kodak's anticipated inability to comply, at the time of issuance of the permit, with all of the proposed permit terms, conditions and limitations,
  - (ii) that agreement has been drafted into a proposed Order of Consent, and
  - (iii) the public in general, and ASLF in particular, has been given at least thirty days to review and make comments on the proposed Order of Consent.

In making this request, I would observe that Kodak submitted its SPDES permit renewal application in May 1989. There followed a period of more than three years during which the DEC carried out a detailed review of Kodak's discharges of pollutants under its 1984 SPDES permit, and extensive negotiations took place between the DEC and Kodak concerning the terms of the new permit.

The resulting draft permit and its accompanying fact sheet are complex documents warranting serious, thorough and detailed review and comment. To undertake such a task in the time allotted by the DEC - just over one month - is a tall order. Extension of the period by thirty days would provide those interested with a more reasonable period of time in which to review the draft permit and fact sheet and prepare well-considered comments, and would have very little impact on the overall time taken to process Kodak's application (already more than three years).

The Notice of Complete Application for the Kodak Park SPDES renewal permit indicates that Kodak will not be able to comply with all of the proposed permit conditions and limitations at the time of SPDES permit issuance. There is no indication in the draft permit, the fact sheet or the Notice of Complete Application as to which permit conditions and limitations Kodak will be unable to comply with, the extent to which Kodak's pollutant discharges may be affected by non-compliance, and for how long the DEC and Kodak expect that Kodak will remain in non-compliance. The DEC proposes that Kodak's anticipated non-compliance will be covered by an Order of Consent to be executed at some time prior to issuance of the permit. Apparently the DEC is not planning to allow for public comment on the proposed Order of Consent. This would be completely unacceptable to ASLF. We would consider any such Order of Consent to be an integral part of the SPDES renewal permit, since it would effectively modify the terms of the permit and issuance of the permit would be dependent upon its execution.

NY-ECL 17-0813 and 6 NYCRR 754.3 provide that SPDES permits may contain compliance schedules, under certain conditions. The stated purpose of such compliance schedules is "to achieve compliance by the permittee with applicable effluent standards and limitations, water quality standards, and other applicable requirements". 6 NYCRR 754.3(a). The rules laid down in 6 NYCRR 754.3 place certain restraints on the way in which compliance schedules may be written.

It is not clear to ASLF why the DEC has chosen to cover Kodak's expected non-compliance by an agreed Order of Consent, rather than to incorporate a compliance schedule into the permit itself, in the way anticipated by the Environmental Conservation Law and the New York Code of Rules and Regulations. As indicated above, ASLF would consider any such Order of Consent to be an integral part of the SPDES renewal permit; we would also expect it to conform to the requirements of NY-ECL 17-0813 and 6 NYCRR 754.3.

Since the proposed Order of Consent must be considered to be an integral part of the SPDES renewal permit, it should be made available for public comment pursuant to NY-ECL 17-0805.

Please consider this letter to be part of the record on which issuance of a SPDES renewal permit to Kodak will be based. I would appreciate a prompt response. Please send your reply to the address given below. Thank you for your consideration.

Sincerely,



EDWARD COOPER  
Staff Attorney

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(716) 652-9591

cc: A. Eaton, DEC Division of Water - Albany  
T. Marriott, DEC Kodak Projects - Avon  
T. C. Jorling, DEC Commissioner  
K. Eng, USEPA Region II, Director, Permit Administration  
R. Caspe, USEPA Region II, Director, Water Management  
C. Tebbutt, Allen, Lippes and Shonn