

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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In the Matter of the Petition of the

SIERRA CLUB, and HUDSON RIVER  
FISHERMEN'S ASSOCIATION, NEW JERSEY  
CHAPTER, INC.,

Index No. 2949-2014

Hon. Robert J. McDonald

Petitioners,

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

**VERIFIED ANSWER**

- against -

JOSEPH MARTENS, COMMISSIONER,  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION,

Respondent,

TC RAVENSWOOD LLC,

Necessary Party.

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Respondent Joseph Martens, Commissioner of the New York State Department of Environmental Conservation ("Respondent" or "DEC"), by its attorney, the New York Office of the Attorney General, for its verified answer to the verified petition, dated February 18, 2014 (the "Petition") and submitted by Sierra Club and Hudson River Fishermen's Association, New Jersey Chapter, Inc. (collectively "Petitioners"), avers as set forth below:

1. Paragraph 1 of the Petition is a statement of the relief sought by Petitioners and requires no response. To the extent an answer is required, the allegations are denied.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Petition. To the extent any legal conclusion is set forth in paragraph 2, it is denied.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Petition. To the extent any legal conclusion is set forth in paragraph 3, it is denied.

4. Admits the allegations in paragraph 4 of the Petition, except denies that Respondent's Region 2 Office is the office administering the Ravenswood Generating Station ("Ravenswood") permit application and avers that Respondent's central office in Albany administered the Ravenswood Initial permit application.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Petition, except admits that TC Ravenswood LLC is a necessary party in this matter.

6. Denies the allegations set forth in paragraph 6 of the Petition.

7. Admits the allegations set forth in paragraph 7 of the Petition, except denies knowledge or information sufficient to form a belief as to the truth of the allegation utilizing the undefined phrase "New York Harbor," and affirmatively contends that Ravenswood applied for a permit to withdraw up to approximately 1.534 billion gallons of water per day from the East River.

8. As to the allegations set forth in paragraph 8 of the Petition, admits that DEC published notices to the public in the Environmental Notice Bulletin on August 7, 2013

and August 28, 2013; admits that petitioner Sierra Club submitted comments in response; admits that DEC responded to public comments on November 15, 2013; but denies the remainder of the allegations.

9. As to the allegations set forth in paragraph 9 of the Petition, respectfully refers the Court to the State Environmental Quality Review Act (“SEQRA”) and its accompanying regulations as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

10. Denies the allegations set forth in paragraph 10 of the Petition.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the Petition.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of the Petition.

13. As to the allegations set forth in paragraph 13 of the Petition, admits that the engineer’s report attached to the Ravenswood application contains the quoted statement, but denies the remainder of the allegations.

14. As to the allegations set forth in paragraph 14 of the Petition, admits that the engineer’s report attached to the Ravenswood application contains the quoted statement.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 of the Petition.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 16 of the Petition.

17. As to the allegations set forth in paragraph 17 of the Petition, admits that DEC denied the Indian Point nuclear power plant a Clean Water Act section 401 water quality certificate in 2010, but denies the remainder of the allegations.

18. As to the allegations set forth in paragraph 18 of the Petition, admits that the East River is part of the Hudson-Raritan Estuary System, except denies knowledge or information sufficient to form a belief as to the truth of the allegation utilizing the undefined phrase “Hudson River watershed.”

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of the Petition.

20. As to the allegations set forth in paragraph 20 of the Petition, admits that Ravenswood’s operations rely on a once through cooling system, but denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 of the Petition.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 22 of the Petition.

23. Denies the allegations in paragraph 23 of the Petition and respectfully refers the Court to the referenced regulation as the best evidence and most complete statement of its contents.

24. As to the allegations set forth in paragraph 24 of the Petition, respectfully refers the Court to the referenced regulation as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 25 of the Petition, particularly with respect to the Petitioners' use of the undefined phrase "New York Harbor."

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26 of the Petition.

27. Admits the allegations set forth in paragraph 27 of the Petition.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 28 of the Petition, particularly with respect to Petitioners' use of the undefined phrase "coastal area."

29. As to the allegations set forth in paragraph 29 of the Petition, respectfully refers the Court to the referenced regulation as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

30. As to the allegations set forth in paragraph 30 of the Petition, respectfully refers the Court to the referenced statute and regulations as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

31. As to the allegations set forth in paragraph 31 of the Petition, respectfully refers the Court to the referenced statute and regulations as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith. Affirmatively avers that pursuant to 19 N.Y.C.R.R. § 600.2(b), only “type I or unlisted actions as defined in SEQR (6 NYCRR 617.2), which are undertaken by State agencies” are subject to 19 N.Y.C.R.R. § 600.4.

32. As to the allegations set forth in paragraph 32 of the Petition, admits that on November 15, 2013, DEC issued its response to public comments on its tentative determination to issue an Initial water withdrawal permit to Ravenswood, respectfully refers the Court to the referenced DEC response as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

33. Denies the allegations set forth in paragraph 33 of the Petition.

34. As to the allegations set forth in paragraph 34 of the Petition, admits that the Water Resources Protection Act of 2011 (“WRPA”) was signed into law by Governor Cuomo on August 15, 2011 with the support of many of New York’s largest environmental and conservation organizations, respectfully refers the Court to the

referenced statute as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

35. Denies the allegations set forth in paragraph 35 of the Petition, and respectfully refers the Court to the referenced statute as the best evidence and most complete statement of its contents.

36. Denies the allegations set forth in paragraph 36 of the Petition.

37. Admits the allegations set forth in paragraph 37 of the Petition.

38. As to the allegations set forth in paragraph 38 of the Petition, respectfully refers the Court to the referenced regulations as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 39 of the Petition.

40. Denies the allegations set forth in paragraph 40 of the Petition.

41. As to the allegations set forth in paragraph 41 of the Petition, respectfully refers the Court to the referenced regulation as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

42. Denies the allegations set forth in paragraph 42 of the Petition, and respectfully refers the Court to the referenced regulation as the best evidence and most complete statement of its contents.

43. As to the allegations set forth in paragraph 43 of the Petition, respectfully refers the Court to the referenced regulations as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

44. As to the allegations set forth in paragraph 44 of the Petition, respectfully refers the Court to the referenced regulation as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

45. As to the allegations set forth in paragraph 45 of the Petition, admits that the Ravenswood initial permit application does not consider closed-cycle cooling, but affirmatively asserts that no such consideration is required.

46. As to the allegations set forth in paragraph 46 of the Petition, respectfully refers the Court to the referenced regulations as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

47. As to the allegations set forth in paragraph 47 of the Petition, respectfully refers the Court to the referenced Water Conservation Program Form as the best evidence



and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

48. As to the allegations set forth in paragraph 48 of the Petition, respectfully refers the Court to the referenced regulations as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

49. As to the allegations set forth in paragraph 49 of the Petition, respectfully refers the Court to the referenced regulations as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

50. Denies the allegations set forth in paragraph 50 of the Petition, and respectfully refers the Court to the referenced regulation as the best evidence and most complete statement of its contents.

51. As to the allegations set forth in paragraph 51 of the Petition, respectfully refers the Court to the referenced statute as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

52. As to the allegations set forth in paragraph 52 of the Petition, respectfully refers the Court to the referenced statute as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

53. As to the allegations set forth in paragraph 53 of the Petition, respectfully refers the Court to the referenced statute as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

54. As to the allegations set forth in paragraph 54 of the Petition, respectfully refers the Court to the referenced statute as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

55. In response to paragraph 55 of the Petition, repeats and realleges paragraphs 1 through 54 of this Verified Answer as though fully set forth in this paragraph.

56. Denies the allegations set forth in Paragraph 56 of the Petition.

57. Denies the allegations set forth in Paragraph 57 of the Petition.

58. As to the allegations set forth in paragraph 58 of the Petition, refers the Court to the referenced regulation as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

59. As to the allegations set forth in paragraph 59 of the Petition, refers the Court to the referenced regulation as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

60. As to the allegations set forth in paragraph 60 of the Petition, refers the Court to the referenced regulation as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

61. As to the allegations set forth in paragraph 61 of the Petition, refers the Court to the referenced regulation as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

62. As to the allegations set forth in paragraph 62 of the Petition, refers the Court to the referenced regulation as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

63. Denies the allegations set forth in paragraph 63 of the Petition.

64. In response to paragraph 64 of the Petition, repeats and realleges paragraphs 1 through 63 of this Verified Answer as though fully set forth in this paragraph.

65. The allegations set forth in paragraph 65 of the Petition state a legal conclusion for which no response is required, to the extent that a response is required, they are denied.

66. As to the allegations set forth in paragraph 66 of the Petition, respectfully refers the Court to the referenced regulation as the best evidence and most complete

statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

67. Denies the allegations set forth in paragraph 67 of the Petition.

68. As to the allegations set forth in paragraph 68 of the Petition, respectfully refers the Court to the referenced regulation as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

69. As to the allegations set forth in paragraph 69 of the Petition, respectfully refers the Court to the referenced regulation as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

70. Admits the allegations set forth in paragraph 70 of the Petition.

71. The allegations set forth in paragraph 71 of the Petition state a legal conclusion for which no response is required, to the extent that a response is required, they are denied.

72. As to the allegations set forth in paragraph 72 of the Petition, respectfully refers the Court to the referenced regulation as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

73. As to the allegations set forth in paragraph 73 of the Petition, respectfully refers the Court to the referenced regulations as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

74. The allegations set forth in paragraph 74 of the Petition state a legal conclusion for which no response is required, to the extent that a response is required, they are denied.

75. The allegations set forth in paragraph 75 of the Petition state a legal conclusion for which no response is required, to the extent that a response is required, they are denied.

76. Denies the allegations set forth in paragraph 76 of the Petition.

77. The allegations set forth in paragraph 77 of the Petition state a legal conclusion for which no response is required, to the extent that a response is required, they are denied.

78. The allegations set forth in paragraph 78 of the Petition state a legal conclusion for which no response is required, to the extent that a response is required, they are denied.

79. In response to paragraph 79 of the Petition, repeats and realleges paragraphs 1 through 78 of this Verified Answer as though fully set forth in this paragraph.

80. The allegations set forth in paragraph 80 of the Petition state a legal conclusion for which no response is required, to the extent that a response is required, they are denied.

81. In response to paragraph 81 of the Petition, repeats and realleges paragraphs 1 through 80 of this Verified Answer as though fully set forth in this paragraph.

82. The allegations set forth in paragraph 82 of the Petition state a legal conclusion for which no response is required, to the extent that a response is required, they are denied.

83. In response to paragraph 83 of the Petition, repeats and realleges paragraphs 1 through 82 of this Verified Answer as though fully set forth in this paragraph.

84. The allegations set forth in paragraph 84 of the Petition state a legal conclusion for which no response is required, to the extent that a response is required, they are denied.

85. The allegations set forth in paragraph 85 of the Petition state a legal conclusion for which no response is required, to the extent that a response is required, they are denied.

86. The allegations set forth in paragraph 86 of the Petition state a legal conclusion for which no response is required, to the extent that a response is required, they are denied.

**STATEMENT OF MATERIAL FACTS**

87. The statement of material facts is contained in the affidavits of Kent P. Sanders and Roy A. Jacobson, Jr., sworn to April 24, 2014, and submitted herewith.

**AFFIRMATIVE DEFENSE**

88. The DEC's determinations challenged in this proceeding are reasonable and rational and are fully consistent with law, as is more fully set forth in the agency's memorandum of law submitted herewith.

89. Respondent refers to the Memorandum of Law attached in support of this Verified Answer and incorporates in this Verified Answer any other affirmative defenses listed therein.

90. Respondent will rely on any and all additional defenses that become available or appear during this action and specifically reserves the right to amend this Answer for the purpose of asserting additional defenses.

91. WHEREFORE, Respondent respectfully requests judgment against petitioners as follows:

(a) dismissing and denying the claims in the Verified Petition against Respondent in their entirety;

(b) and for such other and further relief as this Court deems appropriate.

Dated: New York, New York  
April 24, 2014

Respectfully submitted,

**ERIC T. SCHNEIDERMAN**  
Attorney General of the State of New York  
Attorney for Respondent

A handwritten signature in cursive script, reading "Laura Heslin", is written over a horizontal line.

By: Laura Heslin  
Assistant Attorney General  
Office of the New York State Attorney General  
120 Broadway, 26th Floor  
New York, New York 10271  
(212) 416-6091

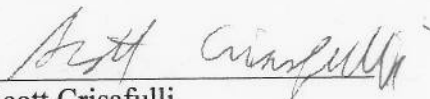


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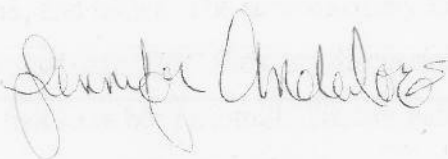
**SCOTT CRISAFULLI**, being duly sworn, deposes and says:

I am Associate Counsel in the Office of General Counsel of the New York State Department of Environmental Conservation. I have reviewed the annexed Verified Answer and know its contents. The Verified Answer is true to my knowledge, information, and belief. The sources of my knowledge, information and belief are my personal knowledge, DEC files, my discussions with DEC technical and legal staff, affidavits that have been submitted in this action, and relevant provisions of the New York Environmental Conservation Law, the Waterfront Revitalization and Coastal Resources Act, and the applicable regulations.

Dated: April 24, 2014

  
\_\_\_\_\_  
Scott Crisafulli

Sworn to before me this 24th day of April, 2014.

Notary: 

**JENNIFER ANDALORO**  
Notary Public, State of New York  
No. 02AN6098246  
Qualified in Suffolk County  
Commission Expires January 14, 2016