

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 8  
6274 East Avon-Lima Road, Avon, NY 14414-9516  
P: (585) 226-5400 | F: (585) 226-2830  
www.dec.ny.gov

November 18, 2022

Re: Responsiveness Summary  
DEC# 8-1802-00045/00026  
Batavia Power Plant, Seneca Power Partners  
163 Cedar St  
Town of Batavia, Genesee County

Dear Interested Individual,

Thank you for the comments you provided during the extended public notice periods of the above-referenced permit application, for Batavia Power Plant located at 163 Cedar St in the town of Batavia (the Facility). The following is a responsiveness summary to comments received within multiple comment letters to the Water Withdrawal Permit Application for Seneca Power Partners (NYSDEC # 8-1802-00045/00026 / WWA # 12,622) to add Well D at the Batavia Well Field as a new permanent source of water supply.

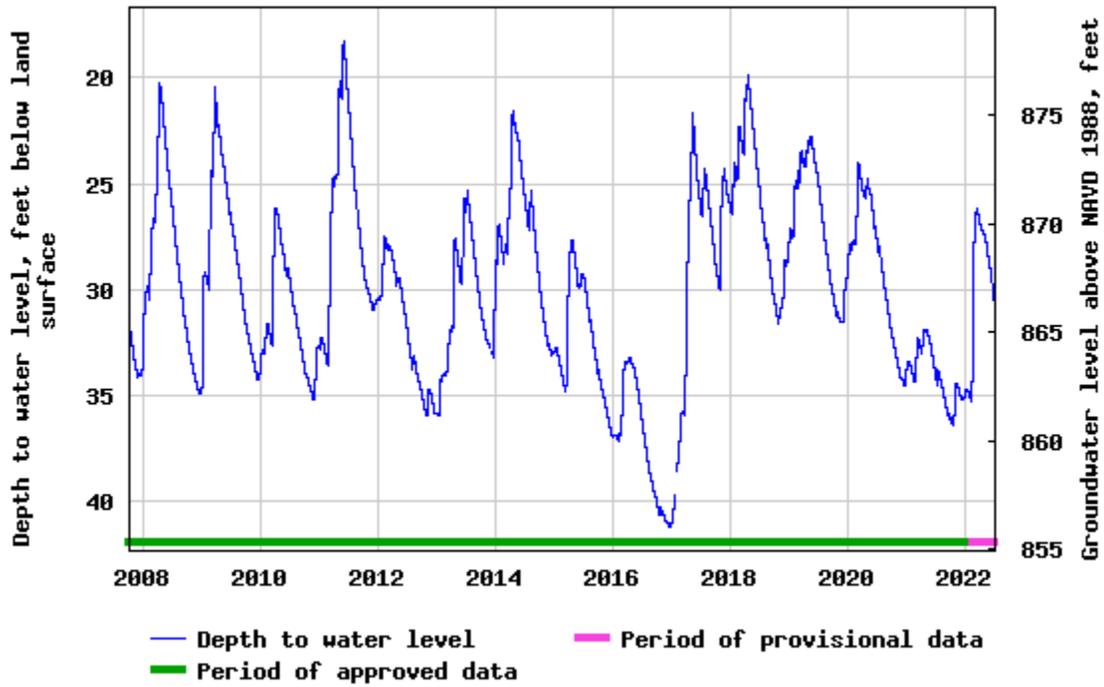
**Comment #1:** From the *July 6, 2022 Opposition Letter from the Town of Batavia, Comment #2* The modeling used and cited in the application's Engineering Reports, utilized a seasonal low water level average of 861 to 876 (year 2003 to 2014). During the 2015 to 2017 period, the seasonal low water level average was 855 to 861(attached). This significantly lower seasonal average trend continues to exacerbate the overuse of the aquifer.

**Response #1:** NYSDEC acknowledges that the numerical groundwater modeling (*Cedar Street Wellfield Expansion Impact Assessment Model* prepared by Leggette, Brashears & Graham, Inc.) cited in the Engineer's Report prepared by C&S Engineers Inc. for Seneca Power Partners' Water Withdrawal Permit Application, and included as an appendix to the application package, did not capture the drought period from 2015 to 2017 in calculating the average seasonal low water level. However, groundwater level data from USGS gauging stations 190 and 217 over the period from October 2007 through July 2022 do not show that the drought experienced from 2015 to 2017 is indicative of a long-term declining trend in aquifer storage but rather a discrete event around which water levels recovered to statistically normal conditions. The following graphs illustrate this observation.

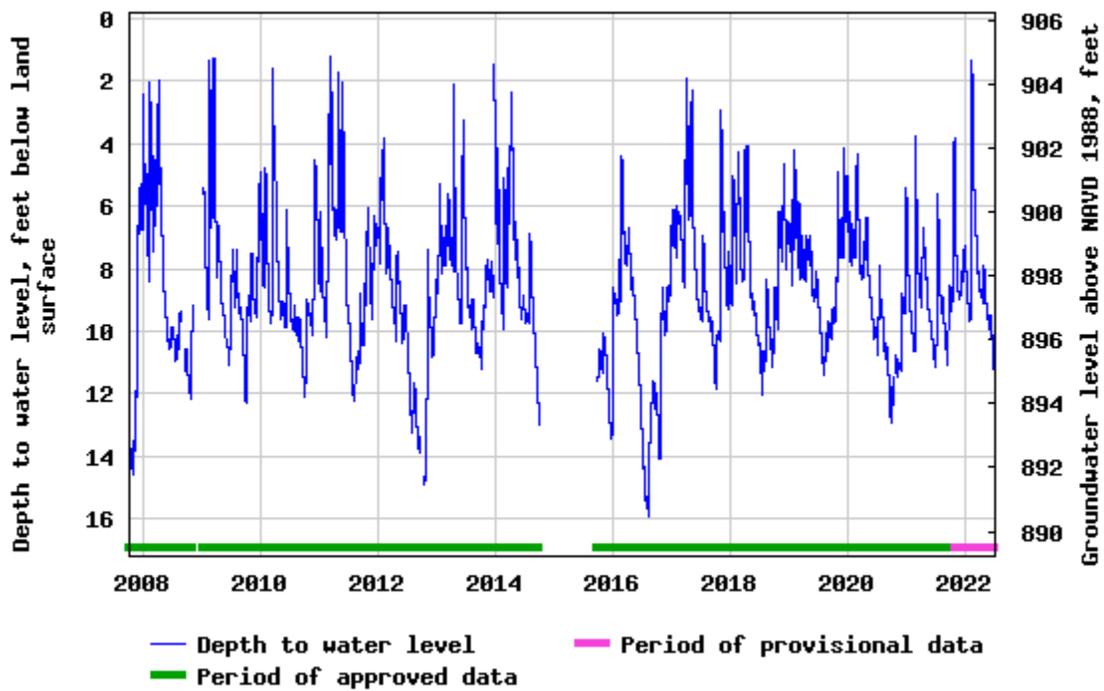


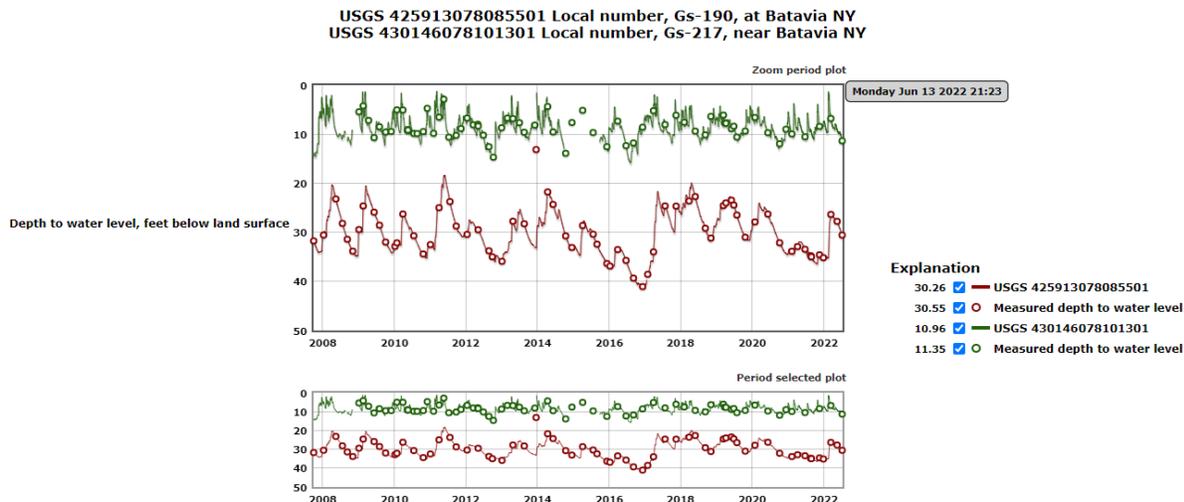
Department of  
Environmental  
Conservation

USGS 425913078085501 Local number, Gs-190, at Batavia NY



USGS 438146078181301 Local number, Gs-217, near Batavia NY





In accordance with ECL 15-1503.2(f), NYSDEC is granted the statutory authority in making its decision to grant a Water Withdrawal permit, to determine that the proposed withdrawal will be implemented in a manner to ensure it will result in no significant individual or cumulative adverse impacts on the quantity or quality of the water source and water dependent natural resources. Additionally, per 6 NYCRR Part 601.10(k)(7), in reviewing a Water Withdrawal permit application NYSDEC staff are empowered to determine whether or not a proposed withdrawal will result in no significant individual or cumulative adverse environmental impacts.

Based on staff review which included but was not limited to the application materials, public comments and further information received during the public notice and comment period, and including water use data for the facility as provided by the applicant, the highest use on record for the years 2001-2021 was approximately 22,000,000 gallons for the entire year in 2012. This would equate to approximately 60,274 GPD. The permitted maximum withdrawal of water as permitted by this permit takes into account the highest use recorded in the facility's past 20 years of water use and adds approximately 20% to reflect an operational buffer. Additionally, the maximum annual withdrawal limit is protective of the Tonawanda Creek Primary Aquifer at the Batavia Wellfield that serves as a shared resource between the City of Batavia, O-AT-KA Milk Products, and Seneca Power Partners. This will minimize the risk of withdrawals from this aquifer exceeding its conservative theoretical capacity.

**Comment #2:** *From the July 6, 2022 Opposition Letter from the Town of Batavia, Comment #3*  
A topic that has not been considered in any of the reports that we have seen nor the current application, is the collateral environmental impacts. Since 1980 I have witnessed and also been advised by others, the impacts of excess demands on the aquifer downstream or down gradient, mostly East and North of the City Wellfield. The County Park on Cedar Street, Seven Springs Country Club, The Rochester Zen Center Retreat at Chapin Mill, Horseshoe Lake and Genesee County Fish and Game Protective Association (Godfrey's Pond) all depend on the water supply from this aquifer to maintain the wetlands, ponds, lakes, and headwaters of Bigelow Creek in a manner consistent with the past several centuries. There have been several temporary reductions and stoppages in the flow of spring water over the past forty years that coincide with extraordinary demands on the aquifer. When we had the most recent episodes, those properties were seriously and negatively impacted by the lack of running water. The increased demand by all permitted users of the aquifer as a result of drought, abnormal recharge events, and the lack of water in the Tonawanda Creek caused untold numbers of plants, fish, birds, amphibians, and invertebrates to be negatively impacted by the degraded water quality, algae blooms, and high temperature differential. Past dewatering efforts to facilitate construction have been observed to have a negative impact on the properties downstream and those were only temporary. My apprehension

*is this: the well testing and monitoring may be accurate in that snapshot in time that the testing takes place, but as we all know, our experience with the projections and models does not adequately address what happens to tens of thousands of acres of land down gradient when the levels in aquifer are reduced below certain levels.*

**Response #2:** NYSDEC Division of Water staff generally agree that discrete constant-rate aquifer pumping tests cannot account for broad, basin-scale impacts from individual well withdrawals. In fact, aquifer pumping tests are more focused in scope and aren't designed to investigate impacts at these scales. In the case of the Tonawanda Creek Primary Aquifer, additional hydrogeologic investigations have been conducted and are available to reference in assessing the cumulative impacts from water withdrawals at larger scales.

The *Cedar Street Wellfield Impact Assessment Model* prepared by Leggette, Brashears, & Graham, Inc. used data collected between 2003 and 2014 to project the impacts on groundwater storage and discharge resulting from the operation of the wells installed at the Batavia Wellfield. It should be noted that this model did not account for well D, which had not yet been installed, and that the surface water flow impact at Seven Springs Pond was derived from a single discharge measurement collected on May 28, 2014. This assessment concluded that a projected pumping rate of 700 gpm for Well C, equivalent to a withdrawal of 1.08 MGD would not adversely impact the Tonawanda Creek Primary Aquifer. Projected flow reduction at the Seven Springs Pond was calculated to be 8.9% under one (1) year of continuous pumping of the wellfield (including Well C) and 28.6% under twenty (20) years of continuous pumping.

NYSDEC Division of Water staff have not received any formal reports documenting flow related impacts within the Tonawanda Valley Primary Aquifer discharge area resulting from the operation of the existing wells at the Batavia Well Field. Based on staff review which included but was not limited to the application materials, public comments and further information received during the public notice and comment period, and including water use data for the facility as provided by the applicant, the highest use on record for the years 2001-2021 was approximately 22,000,000 gallons for the entire year in 2012. This would equate to approximately 60,274 GPD. The permitted maximum withdrawal of water as permitted by this permit takes into account the highest use recorded in the facility's past 20 years of water use and adds approximately 20% to reflect an operational buffer. Additionally, the maximum annual withdrawal limit is protective of the Tonawanda Creek Primary Aquifer at the Batavia Wellfield that serves as a shared resource between the City of Batavia, O-AT-KA Milk Products, and Seneca Power Partners. This will minimize the risk of withdrawals from this aquifer exceeding its' conservative theoretical capacity.

**Comment #3:** From the July 6, 2022 Letter of Opposition from City Attorney (George S. Van Nest) *Last paragraph, Page 2 (Comment)*  
*Pursuant to Part 601.11(c)(1), in granting a permit the DEC must determine that "the proposed water withdrawal takes proper consideration of other sources of water supply that are or may become available." As indicated by the letter from the City Manager dated July 6, 2022 and Oatka memo, there is approximately 1 MGD of non-contact water that Oatka discharges that is available for re-use by Seneca. Oatka's plant is within a hundred yards of the Seneca power plant. All that is required is for Seneca to make arrangements and connection to the water source. There is no indication that Seneca has considered any other sources of water, let alone this quantity of water available directly adjacent to the power plant.*

**Response #3:** The option for the applicant (Seneca Power Partners) to enter into an arrangement to re-use non-contact water discharged from the Oatka Milk facility was not listed as an option in the November 2021 Engineer's Report included with the new Water Withdrawal permit application. Subsequently, the engineers for the application provided information in an August 2022 call that they had considered the potential for re-using the discharge water from the O-At-Ka plant early in the review process. The option was determined to be not possible because the O-At-Ka discharge water is too hot for the Batavia Power plant's cooling use.

**Comment #4:** From the July 6, 2022 Letter of Opposition from City Attorney (George S. Van Nest) *First paragraph, Page 3 (Comment)*  
*Part 601.11(c)(3) requires DEC to determine that "the proposed project is just and equitable to all affected municipalities and their inhabitants with regard to their present and future needs for sources of potable water supply." As reflected above, Seneca's attempt to obtain a water permit to convert Well D to private use and avoid payment for municipal water is neither just or equitable to the City and adjoining municipalities. Particularly when Seneca currently has outstanding tax liens that have not been duly paid to the City. The City wellfield is highly utilized with both public and private wells, including the existing City Wells A and B, proposed Well C, and adjoining Oatka wells 1, 2, and 3. There are current permitted withdraws of up to 1.8 MGD and 2.17 MGD, respectively.*

**Response #4:** Review of the simultaneous pumping test on Wells C and D conducted on July 15 2021 through July 19 2021 indicated that this proposed project would have negligible impacts on the municipality, adjoining municipalities, and their inhabitants. This pumping test was commissioned by both the City of Batavia and Seneca Power Partners. Under our program regulations, the Department cannot comment on outstanding tax liens or legal issues between Batavia and Seneca Power Partners as that does not pertain to the proposed withdrawal itself and is outside the scope of the pending application.

**Comment #5:** From the July 6, 2022 Letter of Opposition from City Attorney (George S. Van Nest) *Second and third paragraphs, Page 3 (Comment)*  
*Seneca's request for a permit to withdraw up to 715,600 GPD from Well D is also not historically supported or reasonable based on plant operations. Based on a review of the City's recent water records for the plant, the plant uses an average of 9,513 GPD. Over the last several years, Seneca has used the following total amount of water: 1,059,000 (2022), 4,355,000 (2021), 2,108,000 (2020) and 3,954,000 (2019). Over four years this averages 7,860 GPD. Consequently, there is no historic reference that suggests that Seneca needs or will use 715,600 GPD as requested in the permit. The Seneca permit application acknowledges that "[a]lthough the facility only operates sporadically at this time, this application is to withdraw water from Well D continuously 24/7, as needed in the future." Section 1, p. 1.*

*In the event that DEC were to grant the water withdrawal permit, Part 601.11(c)(5) requires that "the proposed water withdrawal is limited to quantities that are considered reasonable for the purposes for which the water use is proposed." Based on the historic operations of the power plant, there is no reasonable basis to support a permit of 715,600 GPD. While the City opposes the permit approval, if granted at all it should be limited to a more reasonable and appropriate level.*

**Response #5:** NYSDEC (The Department) acknowledges the section of the Part 601 regulations cited. In making the permit decision, the Department has established a maximum authorized withdrawal based on the actual usage needs of the applicant. The present permit authorizing the use of Well D as a permanent source of water supply will reflect the actual demand of the facility, and not necessarily the overall capacity of the well.

The applicant has stated that the historic daily average water used by the Facility may not be a consistent indicator of the Facility's use or needs, noting that the Facility can be called into service by either the New York Independent System Operator or by the owner of the interconnecting transmission lines, National Grid. Whether the Facility will be called into service or not is unknown to the Facility operations staff until ~24 hours prior. The Facility must remain available for dispatch by the NYISO or National Grid. This does not, however, mean the unit will be called on to operate. It is virtually impossible to estimate the number of run hours per day for Seneca. Occasionally, the facility has to operate at maximum capacity for periods of time that are difficult to predict and account for. The permitted withdrawal quantity has to account for this uncertainty. The results of the aquifer test on Well D support the permitted maximum instantaneous withdrawal. Furthermore, based on review including that of the past 20 years of water use data for the facility as provided by the applicant, the highest use on record was approximately 22,000,000 for the entire year in 2012. This would equate to approximately 60,274 GPD. Accordingly, the Department has set a reasonable permitted maximum withdrawal that takes into account the maximum historical use plus an operational buffer.

**Comment #6:** From the July 6, 2022 Letter of Opposition from City Attorney (George S. Van Nest) *Second through fifth paragraphs, Page 4 (Comment)*

*Pursuant to Part 601.16(a)(2), the DEC may deny a water permit when "the water withdrawal will exceed or cause to be exceeded the safe yield or sustainable supply of the water source." Along with the permit application, Seneca submitted a Hydrogeologic Report by CPL dated September 2021. Under the Aquifer Yield Assessment on p. 18, CPL concluded that:*

*Alliance Energy's Well D proposed maximum permitted water withdrawal of .72 mgd would be considered an increase in the aquifer's safe yield. With this well's proposed permitted yield the total permitted capacity of the Batavia Wellfield aquifer would exceed the theoretical modeling maximum yield estimate of 6.0 MGD by approximately 400,000 GPD or 7% (Emphasis added).*

*In the same section, CPL notes that the City's "Water Withdrawal Permit allows a maximum rate of 3.6 MGD from its two public water supply wells, Oatka's current water withdrawal permit allows for 2.1 MGD from its three wells. Combined, the Batavia Wellfield has permitted withdrawals of 5.7 MGD."*

*The City has significant concerns about additional use of the aquifer by Seneca when there are already heavy withdrawals for City and Oatka water use and alternative sources exist.*

**Response #6:** The simultaneous 24-hour constant-rate pumping test conducted at Well C and at Well D at the Batavia Well Field in July 2021 was planned and coordinated between NYSDEC, Seneca Power Partners, the City of Batavia, and CPL, which acted as a hydrogeologic consultant for both the City and Seneca Power Partners. The results of the simultaneous pumping test demonstrated that both Well C and Well D could sustain respective pumping rates of 525 gpm (756,000 gpd) and 497 gpm (715,680 gpd).

The numerical modeling study (*Cedar Street Wellfield Impact Assessment Model* prepared by Leggette, Brashears, & Graham, Inc) cited in the Engineer's Report and included as an appendix to the Water Withdrawal Permit Application indicates that the theoretical maximum yield of 6.0

MGD for the Tonawanda Creek Primary Aquifer is a conservative estimate that assumes no recharge occurs to the aquifer. The cited section of the *Hydrogeologic Report For The Batavia Wellfield – Additional Well Installations* prepared by CPL continues as follows: “However, given the conservative nature of the safe yield, the impact to the aquifer is not considered to be significant impact to the Batavia Wellfield aquifer. The safe yield assumes no recharge for 180 days. Western New York has not experienced a period of no precipitation for that length in recorded history. Additionally, aquifer recharge is experienced relatively quickly as a result of any precipitation events, as was experienced during this testing.”

In making the permit decision, NYSDEC staff has established a maximum authorized withdrawal based on the actual usage needs of the applicant. The DEC water withdrawal permit authorizing the use of Well D as a permanent source of water supply reflects the actual demand of the facility, and not necessarily the overall capacity of the well. Based on review including water use data for the facility as provided by the applicant, the highest use on record for the years 2001-2021 was approximately 22,000,000 gallons for the entire year in 2012. This would equate to approximately 60,274 GPD. The permitted maximum withdrawal takes into account the highest use recorded in the facility’s past 20 years of water use and adds approximately 20% to reflect an operational buffer. The maximum annual withdrawal limit is protective of the Tonawanda Creek Primary Aquifer at the Batavia Wellfield that serves as a shared resource between the City of Batavia, O-AT-KA Milk Products, and Seneca Power Partners, minimizing the risk of withdrawals from this aquifer exceeding its’ conservative theoretical capacity.

**Comment #7: Municipal Bills**

*The comments received stated current status of the Facility’s municipal taxes and municipal service bills, as well as questions regarding ownership of the lands, wells, or other elements of the application.*

**Response #7:** Municipal taxes and/or bills are outside the scope of the Department’s review for a water withdrawal permit for this Facility. Please note that in the permit, the Department explicitly includes a NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS, where Item C states the following: The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of way that may be required to carry out the activities that are authorized by this permit.

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Hopefully, this information is helpful to your understanding of the DEC review of this permit application. DEC believes that the issues raised in your comment letter have been addressed during the permit application review and therefore, DEC has issued the Water Withdrawal permit for this project. I have enclosed a copy of the permit for your information.

Any compliance issues related to the topics addressed above may be reported to the Division of Water in Region 8 at: 6274 Avon-Lima Rd, Avon, NY 14414; Phone: 585-226-5450.

As ever, we value and appreciate public comments and thank you for your involvement in the permitting process. If you have any questions about this letter, please call me at (585)226-5391 during office hours or email anytime at [guillermo.saar@dec.ny.gov](mailto:guillermo.saar@dec.ny.gov).

Sincerely,



Guillermo Saar  
Environmental Analyst

attachment: Permit