

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : CV 97-2154  
 : **GERSHON, J.**  
 : **GOLD, M.J.**  
 :  
 Plaintiff, :  
 :  
 -and- :  
 :  
 STATE OF NEW YORK *et ano*, : **AFFIDAVIT**  
 : (Karen Argenti)  
 :  
 Plaintiff-Intervenors, :  
 :  
 - against - :  
 :  
 CITY OF NEW YORK *et ano*, :  
 :  
 Defendants, :  
 :  
 -and- :  
 :  
 CROTON WATERSHED CLEAN WATER :  
 COALITION, INC.; *et al*, :  
 :  
-----X

Karen Argenti being duly sworn, deposes and says:

1. My name is Karen Argenti. From 1971 to 1981, I lived with my parents who own a home within 200 feet of the proposed location of the filtration plant in Jerome Park Reservoir. In 1985, I purchased a home on the same block within 200 feet of the Jerome Park Reservoir in the Bronx. I am a graduate of Herbert Lehman College, located on the other side and within 100 feet of the Jerome Park Reservoir.

2. For my entire adult life I have worked with my community in various volunteer and professional capacities. For more than twenty years, I worked as a volunteer for many community organizations. From 1977 to 1990, I was a member of Bronx Community Board 7, and chairperson from 1981 to 1987. In this role, I was intimately involved in all activities of the Board.

3. For more than twenty years, I have worked in government, having received a Masters of Public Administration (MPA) from John Jay College of Criminal Justice. In

the late 1970's, I worked at Herbert Lehman College in the History Department in Carmen Hall, overlooking Jerome Park Reservoir. Later, I was Special Assistant to New York City Council President Carol Bellamy and Director of the Community Liaison Unit. From May 1990 to December 1992, I was Chief of Staff to Senator Jeff Korman, a New York State Senator representing parts of the North Bronx, including the Jerome Park Reservoir community.

*The filtration decision.*

4.. There has always been talk and plans to filter the Croton water supply, beginning as early as 1917. Mainly, it was an idle dream of bureaucrats interested in large scale construction projects. However, in 1984, Community Board 7 was notified of an application for Special Permit for the construction of Demonstration Water Treatment Plant (Demo Plant) and related water main work at the Jerome Park Reservoir. The location of this project was at 3055 Goulden Avenue, on Harris Park Annex, Goulden (parkland along Avenue, north of Bedford Park Boulevard).

4. Community Board members were concerned with the major impact of this project – the traffic implications associated with construction of new water lines. In the years that followed there were tremendous amounts of construction on the streets along the eastern side of Jerome Park Reservoir. At the same time, Community Board 7 did receive the Notice of Completion of the Final Environmental Impact Statement (FEIS) for that project.

5. Later on, construction began of another project - a Dividing Wall within the Reservoir, which was de-watered for this purpose. I was first aware of plans to construct a filtration plant (and not the Demo Plant) in the Reservoir, when the construction project displaced the rodent population. Mothers reported that rats approached babies in carriages at Fort Independence Park (which is adjacent to Jerome Park Reservoir). This caused community leaders, including my mother, to visit the construction trailer. In this informal manner – conversations at the trailer – the community leaders discovered the City's plans to build the filtration plant in Jerome Park Reservoir.

6. Although the 1984 FEIS lists Community Board 7 as a contact, the first time I saw the Generic EIS was in May of 1990 at a DEP briefing meeting about the Croton Water Treatment Plant. After DEP unveiled its plan to build a 300 MGD (Million Gallons per Day) filtration plant at Jerome Park Reservoir, the community was outraged

and organized the Friends of Jerome Park Reservoir (Friends). I was a founding member of the “Friends.”

7. The Friends of Jerome Park Reservoir requested DEP seek a regional solution to water quality issues of the Croton water supply including alternatives to filtration. They began a petition drive and gathered support of elected officials and other community organizations. In a July 1991 letter, DEP Commissioner Albert Appleton asked the “Friends” to cease organizing and give DEP a chance to speak to Westchester County about a regional solution. (See Exhibit A, annexed, p. 3) Appleton asked for a year to work with decision makers in Westchester County. The “Friends” agreed and commenced a moratorium on protesting.

8. Without any notice to the Friends, the following events occurred:

a) In November 1991, the N.Y.C. DEP issued a report entitled: New York City's Long Range Water Quality, Watershed Protection and Filtration Avoidance Program, (Department of Environmental Protection, November 30, 1991). I have reviewed portions of this report, which identifies problems with the Croton Watershed. It concluded that although the Croton Watershed met all the filtration avoidance criteria, the City had decided to filter the Croton water supply.

b) The New York City Municipal Water Finance Authority ("Authority") offered the Croton Water Treatment Plant bonds for sale -- a prerequisite of the Stipulation along with its listing in the Ten-Year Capital Improvement Plan.

c) In April 1992, the City prepared a contract with Metcalf & Eddy and Hazen & Sawyer to design the Croton Water Treatment Plant - HED-543 - the First milestone of the Stipulation for \$45 million. This contract is for Engineering Design Services for the Preparation of Complete Contract Drawings, Specifications and Estimates of Construction Costs, and All Associated Work for the Construction of the Croton Water Treatment Plant at Jerome Park Reservoir. Among other things, this includes preparation of the EIS, the Value Engineering Review, and assistance in bidding, initial operations and startup of construction.

d) In June 1992, the DEP met with the Jerome Park Reservoir community to discuss the project. However, DEP did not advise the community about the contract signed with Metcalf & Eddy and Hazen & Sawyer, until a year later.

e) On October 30, 1992, a stipulation providing for filtration of the Croton water supply was signed by the New York State Department of Health (DOH) and New York City Department of Environmental Protection Commissioner Albert Appleton. That stipulation appears as an Exhibit to the EPA's complaint and specifically identifies the Jerome Park Reservoir in at least eight locations: p. 2, paras. 4 and 5; p 3. para 1; p. 4, paras. 1, 3, 4, 5 and 6.

f) On January 13, 1993, the EPA determined that the Croton should be filtered based primarily on the basis of the stipulation.

g) On that same day, an internal memorandum of the EPA, indicated that the NYS DOH would be denied regulatory primacy under the Safe Drinking Water Act (SDWA) because its application for primacy did not “describe how the State will provide for public hearing on its filtration and avoidance determinations as required by § 1412(b)(7)(C)(ii) of the Safe Drinking Water Act...” (See Exhibit B, annexed, p. 1)

9. Neither the Friends of Jerome Park nor any other community organization were informed that Commissioner Appleton signed the Stipulation to build the Croton Water Treatment Plant in Jerome Park Reservoir in October 1992. The first time I saw the Stipulation agreement was in late 1993 when the DEP convened a Scoping Hearing on the project.

10. At the time the stipulation was signed in 1992, I was then working for Senator Korman. In this role, I was responsible for office operations, including handling mail. Senator Korman's office never received notice of the Signing of the Croton Stipulation, despite the fact that he was on the record against this project, that some of his constituents drank Croton water regularly, and that the plant was sited in his district.

11. In January 1993, I became Chief of Staff for City Council Member Lucy Cruz, a New York City Council Member representing areas of the Southeast Bronx, including constituents who regularly drink Croton Water. I was responsible for the office operations, including handling mail. Council Member Cruz's office never received notice of the United States Environmental Protection Agency determination on the Croton Stipulation, although the Catskill/Delaware interim determination -- a much larger document was received.

*DEP's plan for environmental catastrophe.*

12. In December 1993, the DEP held a public scoping meeting and unveiled a filtration plant complex that had escalated in size and scope to a 40 acre, 450 MGD industrial facility. In March 1994, when DEP formed the Jerome Park Reservoir Citizens Advisory Committee (CAC), I became a member. As a member of the CAC, I learned about New York City's water system and the apparent degradation of the Croton watershed. DEP personnel and its consultants -- the Joint Venture of Metcalf & Eddy of New York, Inc. and Hazen & Sawyer, P.C., tutored the Jerome Park Reservoir Citizens Advisory Committee, provided instructional material and pertinent reports.

13. From the DEP's proposed EIS, we quickly discerned the scope of an environmental catastrophe that was planned for our community.

14. Our community is densely populated with 50,000 residents, 25,000 students, and at least as many employees of the schools, hospitals and other regional institutions within a ½ mile radius. No buffer exists between the reservoir and the surrounding schools and residences.

15. Currently, there is no possibility for an evacuation plan from a potential chlorine gas accident, and no possibility exists to develop an evacuation plan for other chemical storage due to the high population density. The trucking of hazardous chemicals through residential streets and past schools is a further safety risk. The proposed five-story process facility is adjacent to an active recreation area -- Fort Independence Park. Sun, light, and open space will be blocked forever and mature trees may not survive. Many residents fear the negative health affects of electromagnetic fields, escaping ozone, noise, and vibrations. The asthma rate in this area is already one of the highest in the City.

16. Five to seven years of construction will destroy the stability of this diversified working-class community. The learning environment of more than a generation of students -- 80% of which are from minority populations, will be severely disrupted. A proposed access road for heavy construction vehicles is across the street from a grammar school, and will endanger childrens' lives. Construction at this site will be very difficult and expensive because the site is so small and there is a grossly inadequate area for construction staging. Residential streets are unable to withstand the truck weight and volume.

17. The site is too small for expansion should future regulations so require. Noise, air and dirt pollution will reach dangerously high levels for five to seven years. DEP's 1994-5 Jerome Park Reservoir PDEIS (Preliminary Draft EIS) identified the magnitude and duration of this project in the presentation of the following construction vehicle counts.

18. Normal construction activity would generate 36 truck trips in the AM peak hour (from 7 to 8 am) and four in the PM peak (3:30 to 4:30 pm). Based upon construction planning data, peak construction activity for the year 2000 would generate 214 truck trips (two way, in and out) between 7:00 a.m. to 2:00 p.m. -- 90 % would be concrete, 17% would occur between 7 and 8 a.m.

19. Moreover, there will be at least 26,500 concrete delivery (3 axle), 48 round trips per day for average, and 100 round trips per day for peak for a little more than two years; and 11,200 earth/rock transport (3 axle), 30 round trips per day for average, and 45 round trips per day for peak for a year and one half. Trucks will be routed to the site via two access locations: across from the PS 95 grammar school, and across from DeWitt Clinton High School and Bronx High School of Science.

*What the EPA has yet to publish.*

20. As a Jerome Park Reservoir Citizens Advisory Committee member, we learned that there was no study to demonstrate how filtration would solve the problems of the Croton water supply. We learned that the water that leaves the Croton Gatehouse is of better quality than when it reaches Jerome Park and distributed to consumers. Obviously, the water is degraded within the Croton Aqueduct indicating the aqueduct is in need of cleaning and maintenance.

21. As a Jerome Park Reservoir Citizens Advisory Committee member, we learned of another project slated for the Croton Water Supply. For more than twenty-five years, the DEP planned to pressurize the Croton Aqueduct, which is currently under Phase II review. I have reviewed Phase I Preliminary Report: A Detailed Investigation to Determine the Work Required to Pressurize and Restore the New Croton Aqueduct, Contract CRO-196, dated August 1994 by Harza Associates of New York & Parsons Brinckeroff Quade and Douglas, Inc. This project would enable the full use of the Croton's safe yield. The report stated "the analysis indicates that the presence of slime on the walls of the tunnel reduce the potential capacity of the aqueduct significantly (from 60 to 120 MGDs). Therefore, some method of slime control is advisable." Generally, the City uses between 150 and 180 MGD's from the Croton aqueduct, which only partially fills the aqueduct. If they increase the flow of water in the aqueduct, the slime left adhering to the walls during the lower demand degrades the water enroute to Jerome Park Reservoir. Under pressure the water could fill the entire aqueduct eliminating the development of slime as well as provide protection against infiltration of contaminants from outside the aqueduct walls. The Pressurization of the New Croton Aqueduct Project is listed in New York City's FY95 Adopted Capital Budget and the Ten-Year Capital Strategy, under the Croton Water Treatment Plant at Jerome Park Reservoir (CEQR 93DEP013), and totals \$908 million.

22. As a Jerome Park Reservoir Citizens Advisory Committee member, we learned that Westchester County municipalities and water purveyors who use Croton water are under a consent order to filter the water. Some Westchester users have switched from the Croton system to the Catskill/Delaware (Cat/Del) water system placing additional stress on the City's Cat/Del System.

*Conflicts of interest*

23. While I'm certain that they have impeccable reputations and ethics, the Joint Venture of Metcalf & Eddy and Hazen & Sawyer has been hired by governmental agencies with sharply conflicting interests.

24. If the water quality were more reliable, many towns in Westchester could take water off the Croton or use it as a redundant water source supply. However, many of these towns have already hired a consultant firm to begin design of a filtration plant. Hazen & Sawyer are conducting this work for the joint towns of Cortlandt and Yorktown (for their Cat/Del supply). Hazen & Sawyer are also consultants for the New Castle Water Treatment Plant (for their Cat/Del supply).

25. In addition, the Joint Venture of Hazen & Sawyer and Camp Dresser & McKee are the consultant team hired by DEP to supply the engineering services for the Catskill and Delaware Water Treatment (Capital Project No. WM-30, Contract No. CAT- 137). They are preparing the siting and conceptual design for the Water Treatment Plant in Westchester County at the preferred site in Eastview, N.Y.

26. The Joint Venture of Metcalf & Eddy and Hazen & Sawyer as advisors to the NYC DEP have recommended filtration of the Croton water for more than twenty-five years. How can they represent our interests in preparing an adequate EIS for the alternatives to filtration and the no-action scenario? They have past and future interests in building a plant.

*The City relents.*

27. As a Jerome Park Reservoir Citizens Advisory Committee member, I believed the November 1995 Memorandum of Understanding (MOU) for the Catskill/Delaware could have some protections for the Croton. Both Deputy Mayor Peter Power's Press Release announcing the suspension of the Croton EIS in December 1995, and the January 1996 letter from Commission Marilyn Gelber trying to establish the Croton Working Group, mentioned that the Watershed MOA will benefit the Croton.

28. As a Jerome Park Reservoir Citizens Advisory Committee member, we requested that the City amend the Stipulation and remove the name of Jerome Park Reservoir from those papers. In December 1996, I attended a meeting of the Bronx Water Alliance (coalition of Bronx community groups) at EPA offices in Manhattan.



EPA officials informed the group that the Stipulation was being revised and will be signed shortly after the Watershed Agreement was approved. EPA would not share the revised Stipulation with the public. Jim Covey at NYS Department of Health was called and stated that he could not share the revised stipulation with the public. Erik Axelson of DEP stated the same response. Our elected officials wrote letters and received similar responses from all three governmental agencies.

29. In November 1995, New York City's Office of Management and Budget (OMB) convened a Value Engineering Review of the Croton Water Treatment Plant process for filtration. The VER Report was extremely critical of the process chosen by DEP and its consultants stating that an ozone-BAC-DE process has not been used on any municipal water supply. Pilot studies currently being conducted at the Croton Gatehouse and the results of these studies should be available by the end of 1997, including results on the ability to remove cryptosporidium.

30. In April 1997, New York City Department of Environmental Protection (DEP) formed the Croton Joint Citizens Advisory Committee, which joined citizen members from Westchester County and New York City. In multiple documents provided to brief attendees about the Croton Water Supply System, the DEP Deputy Director of Drinking Water Quality Planning, Michael Principe presented detailed graphs and a written summary of four points:

“The Croton meets all federal and state health-based drinking water quality standards.

The Croton meets current SWTR filtration avoidance criteria -- watershed control program compliance undetermined.

The Croton Water Supply is a biologically productive (eutrophic) system that experiences water quality problems annually, which result in numerous consumer

complaints. However, the Croton Water Supply does not appear to exhibit a trend of water quality degradation over time.

The Croton Water Supply will not meet the proposed Stage I Disinfection Byproducts (DBPs) Standards for HAAs and Stage II Disinfection Byproducts Standards for THMs, as well as the ESWTR requirements for DBPs.”

31. DEP reported to the Croton Joint CAC on July 16, 1997 that the process of Ozone and Diatomaceous Earth (DE) originally proposed for the Croton Water Treatment Plant, and pilot tested between 1989 and 1992 at the Demonstration Plant at Jerome Park Reservoir, would not have met the future EPA regulations to be promulgated as a result of the Safe Drinking Water Act. At that point, neither filtered nor raw Croton water quality would have met the new anticipated federal standards. So, another process was recommended: biologically activated carbon (BAC), and a combination of ozonation and BAC has been pilot tested on unchlorinated water at the Croton Lake Gate House. Results show that this process is capable of "consistently attaining Stage 2 requirements.”

32. The New York City Department of Environmental Protection and consultants are using old studies and old technologies. They are not looking at the problem and trying to solve it. They are not protecting the water at the source, or requiring remediation for development. They are following a 27 year old Metcalf & Eddy and Hazen & Sawyer study and not allowing for new science, technology or ecology.

33. In the document Preserving New York Drinking Water Quality: A Matter of Public Health, not Finance prepared under the auspices of the City Club of New York, by Edward L. Gershey, Ph.D., New York Academy of Medicine and the Rockefeller University; Sidney Horenstein, American Museum of Natural History; and David C. Locke, Ph.D., The New York Academy of Science and Queens College, CUNY -- Executive Summary, September 21, 1995, the case against filtration is clearly presented. "The risks to public health through even one time failure or poor operations are inherent in filtration. The presence of increasing amounts of pollutants and pathogens in a water supply place increasing burdens and consequences of failure on any filtration system." (p. 6) "By their very nature filters increase the concentration of materials being removed. The few incidents involving cryptosporidium recently linked to municipal water supplies have all taken place in systems that use filtration. The elevated concentrations in the treated water increase the magnitude of exposure and far exceed the risk of infection presented by the original source waters." (p. 3) This report is critical of the agency

participation, stating: "It is striking that the NYSDOH has no comprehensive watershed protection policy." (p. 5)

*Environmental racism*

34. Based upon my own knowledge and experience acquired in the course of this controversy, it is obvious that the Croton water supply serves predominately non-white consumers. Perhaps it was not always so, but it is now. In Westchester County, as noted above, predominately white suburbs are increasingly demanding Catskill-Delaware water and shunning the Croton, aggravating the disparate impact of the distribution of the New York City Water Supply.

35. There is one particularly strange impact. Coop City was constructed in the early 1970's. It is the world's largest housing cooperative.

36. There are five sections in Coop City. It's clear that when it was first occupied, black applicants were steered for Section V and for several years that was the only predominately non-white section. According to information I received recently from the DEP, it is also the only section serviced by Croton water.

37. Makes one think, doesn't it?

*Development projects*

38. While the EPA, the State and City talk a good game on watershed protection, the fact is that the a development boom is sweeping the once sacrosanct watershed – and that the governmental agencies are doing their best to stifle public inquiry into the facts.

39. In January 1997, many community and environmental groups from New York City, the Bronx, Westchester and Putnam Counties joined together and formed the Croton Watershed Clean Water Coalition (CWCWC). I am a founding member of the CWCWC, and a member of the Board of Directors as Secretary.

40. The CWCWC's mission is to maintain, protect and improve the waters of the Croton watershed through regional action. In June 1997, I was present when Dr. Marian Rose hand delivered a letter to William Stasiuk, currently the Deputy Commissioner of New York City Department of Environmental Protection Bureau of Water Supply, Quality and Protection. The letter requested a meeting with the appropriate members of DEP staff to review current projects before the Department of Environmental Protection (DEP) of concern to CWCWC.

41. I coordinated preparation of the report by collecting projects of common knowledge to Westchester County residents active in the CWCWC. The report was entitled Report in Progress on 36 Proposed Projects which may threaten the Croton Watershed and have a deleterious effect on drinking water. The letter also requested a review of a list of all applications and all correspondence pertaining to these applications, currently before the DEP. The CWCWC's interest concerns requests for applications or information, listing and review of completed and filed applications, and any decisions or appeals thereof. This information should include the Municipality, Project Name, Type of Project, Brief Description, SEQRA Review, Public Hearing Date, the Close of Comment Period, whether it is in a 60-day travel time or phosphorous restricted basin. The CWCWC expressed interest in monitoring these applications, and specifically we requested a monthly publication of all new projects before DEP.

42. On July 17, 1997 seven CWCWC members (including myself and Dr. Marian Rose) attended a meeting I arranged with Commissioner Stasiuk at the DEP offices in Valhalla, NY. We met with Mr. Ed Polese. He was not prepared to show us the project files or any other information, and instead stated we needed to make a Freedom of Information Law (FOIL) request for each of the 36 projects. Outraged at the lack of agency candor, we requested the database file of all projects, and the basis for this decision. Mr. Polese then left the room and returned with files on three of the 36 projects -- Hoyts Cinema, MBIA, and Swiss RE. We examined these files for several hours, promising to return to examine the other projects.

43. Hoyts Cinema, on Route 6 and Starr Ridge Road in the Putnam County town of Southeast, is a proposal for a 12-screen, 2004-seat, 668 parking space complex with 1+

acre building and more than 8 acres of pavement. The lot will be cleared (in some places, to a depth of 20 feet and the developer has agreed to leave 5 (five) trees on this 11.77 acre lot. The site is across Route 6 (within 400 feet) of East Branch Reservoir and borders NYC Watershed property on its eastern boundary. The Town of Southeast has approved this project.

44. MBIA is an insurance company expansion planned for the Westchester town of North Castle, and included a zoning ordinance text and map amendment to permit expansion of existing 150,000 square feet facility on King Street by 775,000 square feet.

45. Swiss RE, another insurance company, broken ground this spring in the Westchester town of North Castle, known as KINGSWOOD/SWISS RE. Phase I will be modification of previously approved development, 360,000 square feet office site, followed by Phase II-- additional office space up to 720,000 square feet. The Contractor is Turner Construction Company. North Castle has encouraged and approved this project.

46. Both North Castle projects (MBIA and Swiss RE) are next to another project (which was not available to examination) Route 120 that will be expanded to accommodate additional traffic caused by these expansions and others including IBM. The Expansion of Route 120 near the Kensico Reservoir is awaiting an Environmental Impact Statement by the New York State Department of Transportation (DOT) due August 1997. DEP is participating in this review. According to June 1996 correspondence from the two commissioners, DEP is requiring that DOT hold monthly briefings on this project. The Kensico is the terminal reservoir of the Catskill/Delaware systems and located in the Croton Watershed basin.

47. These development projects are the otherside of the environmental justice coin. While the government tolerates dangerous, unhealthy development in the watershed, the City prepares to sink beneath the heavy weight of unnecessary debt.

#### *Collusion*

48. At a February 28, 1997 lecture at the New York Law School Breakfast Discussion on the Watershed Agreement, the speaker, Robert Kennedy Jr. said the following in response to a question concerning the Croton Filtration Plant:

"There is a side agreement in our Agreement that requires both the State and Federal government to actively prosecute New York City if New

York City fails to go forward with the filtration plant within the next couple of months."

49. The claim that the decision to file this suit was a "ministerial" decision is just plain nonsense. It was a negotiated decision between the State and the EPA. None dare call it collusion.

Dated: Bronx, New York  
July 21, 1997

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KAREN ARGENTI

Sworn to before me this 21st  
of July, 1997.

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JOHN C. KLOTZ  
Notary Public, State of New York  
No. 02KL5048350  
Qualified in Bronx County  
Commission Expires August 21, 1997