Riverkeeper 2019 Legislative Memorandum

Support - A.7971/S.7548 (O'Donnell/Kavanagh) - Support

Riverkeeper strongly support the passage of A.7971/S.7548, reversing the "special harm" standing requirements imposed by the NY Court of Appeals that require plaintiff's filing an action under the State Environmental Quality Review Act (SEQRA) allege a potential injury greater than that to the public at large.

SEQRA, is modeled after the federal statute the National Environmental Protection Act (NEPA). SEQRA requires that all state and local government agencies consider environmental impacts equally with social and economic factors during discretionary decision making. Additionally, this requires agencies while considering any action that will have significant adverse environmental impacts must find either a determination of nonsignificance or an "Environmental Impact Statement" (EIS) is required. EIS's examine ways to avoid or reduce the environmental impacts of a proposed action.

Currently, SEQRA contains no provision regarding judicial review. Therefore, the responsibility of enforcing SEQRA falls on citizens or organizations under Article 78 of the New York Civil Practice Laws and Rules. In absence of a SEQRA provision addressing judicial review the New York Court of Appeals has interpreted overly restrictive standing requirements. The court's decision in the case *Society of Plastics Indus. V. County of Suffolk,* has made the ability to uphold SEQRA claims nearly impossible.[1] The decision requires that a plaintiff prove (1) that they would suffer a direct harm from a proposed action, and (2) that the injury is in some way different from that of the public at large.

The special harm requirements have made for problematic and arbitrary decisions where a plaintiff within 500 feet of a challenged action was considered close enough to constitute a direct harm[2] but a plaintff 600 feet away from an action was not[3]. The *Society of Plastics* standing requirements have created arbitrary decisions such as these limiting the ability of affected citizens to bring claims.

The court's justification for this interpretation was concern of frivolous litigation that would cause "interminable delay and crucial interference with governmental projects".[4] A number of states have similar environmental review statutes modeled after NEPA without overly restrictive standing requirements like New York. These states have not seen an increase in frivolous litigation.

Passing A.1971 would remove these overly restrictive standing requirements and restore SEQRA standing to the traditional rule in which a plaintiff has standing if they can show a reasonable environmental injury caused by a proposed action.

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[1] *Society of Plastics Indus. V. County of Suffolk*, 77 NY2d 761
[2] *McCrath v. Town Bd. of N. Greenbush*, 678 N.Y.S.2d 834, 836 (3d Dep't App. Div. 1998)
[3] *Buerger v. Town of Grafton*, 652 N.Y.S. 2d 880, 881-82 (3d Dep't App. Div. 1997)
[4] *Society of Plastics at 774*

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