

February 24, 2020

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

Title: An act to amend the environmental conservation law, in relation to enacting the Environmental Access to Justice Act.

Purpose of Bill: The bill amends the State Environmental Quality Review Act (SEQRA) to reverse a requirement imposed by the Court of Appeals that to have standing to bring an action under SEQRA the plaintiff must allege a potential injury greater than that to the public at large.

Statement of Support: In adopting the State Environmental Quality Review Act (SEQRA) the NYS Legislature intended for all state and local government agencies to conduct their affairs with consideration of the natural environment. While the Department of Environmental Conservation (DEC) is charged with issuing regulations regarding the SEQRA process, the DEC has no authority to review the implementation of SEQRA by other agencies. In other words, there are no "SEQRA Police."

The responsibility of enforcing SEQRA falls squarely on citizens or groups under Article 78 of the New York State Civil Practice Law and Rules. Unfortunately, restrictive standing requirements have stifled the public's ability to uphold the integrity of SEQRA as reasonable complaints are thrown out on standing technicalities before the merits of the case can be heard. The primary barrier to environmental lawsuits (*Society of Plastics Indus. V. County of Suffolk*, 77 NY2d 761,) has unnecessarily barred many potential litigants from the courts since 1991 and should be vacated.

The Plastics decision requires that for a plaintiff to have standing to raise an environmental issue under SEQRA, the plaintiff must suffer 1) a direct environmental injury, which is 2) different than that to the public as a whole. Traditionally, this has been established by showing that the plaintiff resides within a few hundred feet of the injury, and thus would suffer direct harm in a more forceful way than to the public as a whole. The Plastics decision, as interpreted by the courts, makes it nearly impossible for any plaintiff to gain standing where 1) there is no direct injury to any human – only to wild species or to natural resources 2) no human has a residence near the potential injury or 3) where the injury is so broad (like in the case of air pollution) that the

uniqueness of the injury cannot be demonstrated by an individual. In fact, the perverse nature of the Plastics decision holds that the more severe the environmental injury the less likely there will be a viable litigant to bring forth a suit in the public interest.

Other states do not place such restrictions on standing, and have not experienced any measurable increase in frivolous environmental lawsuits. A.7971/S.7548 will restore the traditional rule that a person has standing if he or she can show significant use and enjoyment of natural resources, or can demonstrate a reasonable environmental injury.

**On behalf of New York State's environment, Sierra Club Atlantic Chapter
Strongly Urges Your Support of A.7971/S.7548**