Court Annuls New York State's Wetlands Regulations

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The Supreme Court in Albany County, New York, ruled on April 8 that the New York State Department of Environmental Conservation (NYSDEC) did not adequately review its new wetlands regulations as required by the State Environmental Quality Review Act (SEQRA). Consequently, the court annulled the regulations in their entirety. As a result, property owners and developers face significant uncertainty concerning the future regulatory landscape pertaining to wetlands.

The decision consolidated four different Article 78/declaratory judgment proceedings which challenged legislative amendments (the "2022 Amendments") to the state's Freshwater Wetlands Act (the "Act"), and its implementing regulations promulgated by NYSDEC and known as the new Part 664 regulations (the "Regulations"), which took effect on January 1, 2025.

Issues

The consolidated cases collectively asserted a number of arguments by which petitioners sought to invalidate both the 2022 Amendments and the Regulations.

Petitioners asserted that the 2022 Amendments and the Regulations violated home rule principles, violated due process rights of landowners, were unconstitutionally vague, and in certain respects constituted an improper delegation of authority to NYSDEC. They also asserted that the Regulations were adopted in violation of the State Administrative Procedure Act, were arbitrary and capricious, and improperly delegated regulatory authority to private actors. Ultimately, however, it was the argument that the Regulations were not adopted in compliance with SEQRA which the Albany County Supreme Court found persuasive.

Background

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Prior to the 2022 Amendments, the Act regulated wetlands with a minimum area of 12.4 acres and smaller wetlands deemed of "unusual local importance," but required that they be mapped and that the final map be adopted following notice and an opportunity to be heard. The 2022 Amendments moved away from the former jurisdictional mapping system and instead established a definition-based system. Thus, NYSDEC's wetland maps were rendered merely informational rather than regulatory, and the 2022 Amendments implemented a regulatory system based on a rebuttable presumption that wetlands — whether or not mapped — which meet the statutory definition of "freshwater wetland" are subject to regulation and permit requirements. The 2022 Amendments — which did not change the definition of "freshwater wetland" — also established 11 categories of wetlands which, irrespective of size, were deemed to be of "unusual importance." Opinion at 3-5.

Adoption of the Regulations

NYSDEC enacted the Regulations to implement these statutory changes. It conducted extensive public outreach and solicited comments from stakeholder groups and the regulated community as the Regulations were developed. NYSDEC received over 2,600 responses to its written draft regulations, which it addressed in the formal notice of proposed rulemaking — resulting in more than 4,900 public comments. In response, NYSDEC further revised the proposed Regulations prior to publishing the final rule in the State Register. Notwithstanding these efforts, the Albany County Supreme Court concluded that NYSDEC did not satisfy SEQRA's substantive review requirements.

SEQRA

SEQRA was adopted in 1975 and is modeled on the National Environmental Policy Act. It requires agencies to take a "hard look" at any action they propose or approve which "may affect the environment and commit the agency to a definite course of future decisions." 6 NYCRR § 617.2[b][2]. Here, NYSDEC classified adoption of the Regulations as an "Unlisted" action (less likely to have a significant environmental impact), rather than a "Type 1" action

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(more likely to have a significant environmental impact). It utilized a Short Environmental Assessment Form and conducted essentially no analysis of impacts, relying instead on the premise that preserving more wetlands would be better for the environment. It then issued a Negative Declaration to complete the SEQRA process and document its conclusion that adoption of the Regulations would have little or no adverse environmental impact. As the court noted, NYSDEC's "analysis rests entirely on the narrow premise that expanded wetland protection is inherently beneficial to wetlands, and there is no indication that [NYS]DEC considered anything other than that objective" in reaching its determination. Opinion at 34.

Regulations Annulled Due to Noncompliance

The Albany County Supreme Court found that NYSDEC "exercised substantial judgment and discretion in implementing significant aspects of the 2022 Amendments" through the new Regulations, yet it did not engage in an analysis and take the required "hard look" at potential significant adverse environmental impacts. Id. at 29, 39. For example:

- The Regulations establish a 100-foot buffer zone adjacent to all regulated wetlands in all instances, even though the Act provides for regulation only where activities in the buffer area "impinge upon or otherwise substantially affect the wetlands." Environmental Conservation Law 24-0710[2].
- NYSDEC did not analyze whether the expanded wetland area encompassed by the Regulations, including substantial buffers, might cause urban sprawl or result in growth-inducing impacts.
- NYSDEC classified all wetlands in urban areas as Class II for which permits may issue "'only if it is determined that the proposed activity satisfies a pressing economic or social need that clearly outweighs the loss of or detriment to the benefit(s) of the Class II wetland.'" Opinion at 29-30. Yet the 2022 Amendments merely require regulation of wetlands "located within or adjacent to an urban area" but do not require "a blanket Class II designation on all urban wetlands without regard to individual characteristics." Id. at 30.

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The court did not rule on whether the regulatory adoption was an "Unlisted" action or a "Type 1" action under SEQRA; instead, it focused on the lack of thorough analysis and lack of a "reasoned elaboration as to how the imposition of new environmental regulations governing millions of acres of wetlands across the State…would have no potential for significant adverse impacts to the environment." Id. It also did not rule on whether an environmental impact statement was required.

Key Takeaways

The Regulations ushered in a major change in the way wetlands are treated in New York State. They reduced — in some cases significantly reduced — the development potential of land across the state. Their annulment casts wetlands regulation into a state of uncertainty, given that the 2022 Amendments — the statute on which the Regulations are based — was upheld. It remains to be seen whether NYSDEC will appeal the annulment, whether it will seek to re-adopt the same or substantially similar regulations following a compliant and more comprehensive SEQRA review, and what position it will take concerning wetlands permitting and enforcement in the near term.

Shortly after the decision, NYSDEC posted on its website a notice informing the regulated community that it is "currently conducting a comprehensive evaluation of the decision and its potential implications on the State's permitting program." While that review continues, NYSDEC "will evaluate freshwater wetland permit applications and jurisdictional determinations on a case-by-case basis."

If you are seeking to develop property in New York which is or may be impacted by wetlands, please contact the author to discuss navigating this evolving situation.

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Consolidated Cases

- *Chautauqua Lake Property Owners Ass'n. v. State of New York* , Index No. 903982-25
- *Business Council of New York State v. New York State Department of Environmental Conservation*, Index No. 904423-25
- *Village of Kiryas Joel v. New York State Department of Environmental Conservation*, Index No. 904424-25
- *Chautauqua Lake Partnership v. New York State Department of Environmental Conservation*, Index No. 905313-25

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