

# New York Court Tosses Property Owners' Little National Environmental Policy Act (NEPA) Challenge to New York State's Failure To Complete Hydraulic Fracturing Environmental Impact Statement (EIS) For Lack of Standing

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A trial court in Albany, New York has landed another blow against **high-volume hydraulic fracturing ("HVHF")** in New York by tossing two lawsuits brought by property owners and a bankrupt operator challenging New York's failure to complete its environmental review of high-volume hydraulic fracturing in a timely manner. This comes a little more than a week after New York's highest court upheld the right of local governments to use land use laws to restrict or ban HVHF within their jurisdiction.

The industry and property owner challenge was brought pursuant to **New York's Little NEPA**, known as the **New York State Environmental Quality Review Act, or SEQRA**. Citing a well-established line of case law, the court found that the petitioners lack standing to bring the action because they did not allege an injury that fell within the "zone of interest" of SEQRA. Specifically, the court held that challenges under SEQRA had to allege an injury that was environmental, and not solely economic in nature. Here, the industry and property owners clearly alleged economic and not environmental injury. While the court observed that application of the rule in this instance might very well lead to the State's inaction to remain unchallenged, the court found that it was constrained by applicable case law.

At first blush it would appear that this decision would provide government agencies wide (and judicially unreviewable) latitude to delay action on a permit application or other request for governmental action subject to an environmental review under SEQRA. However, there are instances in the SEQRA case law where courts have found an unreasonable delay in completion of the SEQRA review process improper. The somewhat anomalous result in these HVHF challenges may be explained by the pleading strategy of the petitioners in this specific case, which sought relief solely for alleged violations of New York's environmental review statute. Had petitioners consisted solely of persons or entities that applied for drilling permits and who pleaded their challenge as an alleged failure to timely process a permit under the State's Oil, Gas and Solution Mining Law the result, at least as to standing, would likely have been different.

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