

To the Chautauqua County Legislature  
Wednesday, April 23, 2025  
Second Privilege of the Floor - Wetlands

FINAL

Good evening.

I'm Jim Wehrfritz from the Town of Ellery and President of the Chautauqua Lake Property Owners Association, Inc., the CLPOA.

I ask all to please pay close attention to what I have to say tonight. We're at a critical point in Chautauqua Lake, the surrounding County, and across the State relative to the DEC's new wetlands regulations.

The harm from the flawed new wetlands regulations, their overly aggressive interpretation, the lack of comprehensive impact evaluation, and the DEC's obvious lack of preparation, is already being felt after only 3-1/2 months. Ask the municipalities dealing with what the DEC has called "their moral obligation" relative to building permits. Ask hundreds of lakeshore property owners who now have wetlands and adjacent regulated areas with onerous restrictions along their shorelines.

After watching the DEC aggressively move forward through 2024 and into 2025 without seriously considering public and elected representatives' concerns, and the DEC and Governor ignoring pleas to delay implementation, it is, unfortunately, time for litigation.

Last Friday, April 18, 2025, the CLPOA, the Town of Ellery, the Builders Exchange of the Southern Tier, and the Bemus Point Business Association filed a petition with the State of New York Supreme Court in the County of Albany against the State of New York and the New York State Department of Environmental Conservation. The petition seeks annulment of the 2022

amendment to the 1975 Freshwater Wetlands Act and the subsequent wetlands regulations developed and implemented by the DEC this year.

Although the County Executive and Legislature have failed to join our four organizations in this litigation, we hope you will strongly and publicly support our lawsuit in word and in deed. Your constituents are getting abused by the State and DEC and need you to act on their behalf.

Our petition cites noncompliance with the New York State Administrative Procedures Act, deprivation of due process provided for in the New York State and United States Constitutions, arbitrary, capricious, and irrational amendments to the Freshwater Wetlands Act and 6 NYCRR Part 664 wetlands regulations, improper delegation of the NYSDEC's regulatory responsibilities, and violation of the New York State Municipal Home Rule Law.

In his introduction to the petition our legal counsel said,

"The timing (of the amendment and regulations) could not be more revealing. Just as the nation's highest court underscored the constitutional dangers of vague and boundless environmental regulation, New York chose to double down – empowering its environmental agency with the very kind of unfettered discretion the Court explicitly warned against.

Where the Supreme Court drew a hard constitutional line to protect landowners from capricious enforcement, New York blurred every line it could find. The DEC's regime now rests not on fixed definitions or clearly drawn jurisdictional maps, but on presumption, abstraction, and limitless agency discretion. In short, while (the Supreme Court's Sackett ruling) reaffirms that there are constitutional boundaries to environmental authority, New York's response has been to sidestep them entirely."

Additional information on the petition and next steps in the process will be presented at **“Wetlands” Public Meeting #9**, Saturday, April 26, 2025, 9:30 am – 11:00 am, at The Lawson Center, 73 Lakeside Drive, Bemus Point, NY. We hope that several of you will attend to get a more complete story.

Thank you.