SEQRA Standing Cases Overview and Timeline

Pre-1991 Society of Plastics Decision

- Standing not much of an issue, except when the plaintiff was pursuing purely economic and not environmental interests.

Society of Plastics Industry v. County of Suffolk (Society of Plastics) (1991)

- Suffolk County banned the use of certain plastic products by restaurants.
    - Challenged by Plastics Industry including a company in Suffolk County.
- The NY Court of Appeals held the plaintiff had no standing because it failed "to allege any threat of cognizable injury it would suffer, different in kind or degree from the public at large." This was coined the "special harm" requirement.[1]
    - NEPA and none of the other 15 state equivalents of NEPA require this "special harm" for standing.[2]
- New standing analysis now requires Plaintiff: (1) 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.

Post- Society of Plastics decision

- **Schulz v. Warren County Board of Supervisors (1994)**
    - Plaintiffs challenged a project that would cause degradation of water quality in Lake George that they used for recreational purposes, and drinking water. They were denied standing.
    - Harm did not constitute an individual injury greater than that to the public at large.

- Prior to *Plastics* when standing was raised in SEQRA cases, 68 percent were allowed to proceed. This fell to 48% after the *Plastics* decision.[3]
- Courts began looking at plaintiff's proximity to the challenged project as a way of testing whether their injury was different from injury to the public at large.

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[1] *Society of Plastics Industry v. County of Suffolk (Society of Plastics)* 77 NY2d 761, 570 NYS2d 778 (1991)

[2] Joan Leary Matthews, "Unlocking the Courthouse Doors: Removal of the 'Special Harm' Standing Requirement Under SEQRA," 65 Albany L. Rev. 421 (2001).

[3] https://climate.law.columbia.edu/sites/default/files/content/docs/Michael%20Gerrard/Gerrard-2009-11-Court-of-Appeals-Expands-SEQRA-Standing.pdf

- Plaintiff's over 500 feet from the challenged project were denied standing. And Plaintiff's whose distance from the challenged project was 500 feet or less was granted standing.[4]

- **Buerger v. Town of Grafton (1997)**
  - Owner of property within 600 feet of the proposed subdivision's access road failed to allege specific concerns required for standing to raise a challenge to SEQRA review; owner's concerns, including flood damage, forest habitat degradation, and water pollution were general concerns shared by all residents of the area.

- **Bolton v. Town of Bristol Planning Board (2007)**
  - Nearby resident, who lived one mile and on the opposite side of lake from residential development overlooking lake that developer sought to expand, did not show that, as a result of proposed expansion, he would suffer environmental impact that was in some way different from that of public at large. Plaintiff therefore lacked standing to challenge proposed residential development.

Save the Pine Bush, Inc v. Common Council of City of Albany (2009) (Save the Pine Bush)

- *Save The Pine Bush* was the first case to loosen the special harm standing requirement since the *Society of Plastics* decision.
- Plaintiffs lived 1/2 mile away from the proposed action but NY Court of Appeals held that the *Society of Plastics* decision: "does not hold, or suggest, that residence close to a challenged project is an indispensable element of standing in every environmental case."
  - Therefore, although the plaintiffs were not in close proximity to the challenged action (less than 500 feet): "It is clear in context that they allege repeated, not rare or isolated use. This meets the Society of Plastics test by showing that the threatened harm of which petitioners complain will affect them differently from 'the public at large.'"[5]
- *Save the Pine Bush* did not overrule *Society of Plastics* but instead directed courts to look beyond mere distance when it comes to standing.

Post- Save the Pine Bush decision

- **Peconic Baykeeper, Inc. v. Suffolk Cnty. Legislature, (2003)** [6]
  - Plaintiffs repeated use and enjoyment of a project area at issue was enough to reach standing requirements.
- **Harris v. Town Board of Town of Riverhead (2010)**[7]

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[4] Michael B. Gerrard, "Standing Under SEQRA: Progeny of 'Society of the Plastics Industry'," NYLJ, Nov. 22, 2002, 3:1.

[5] *Save the Pine Bush, Inc v. Common Council of City of Albany.* N.Y.3d 297. October 2009

[6] *Peconic Baykeeper, Inc. v. Suffolk Cnty. Legislature*, 2003 N.Y. Slip Op. 30224 (N.Y. Sup. Ct. 2003)

[7] 73 A.D.3d 922, 905 N.Y.S.2d 598 (2d Dep't 2010).

- This decision showed the courts have not completely thrown out the proximity to injury analysis that was used post *Society of Plastics* decision.
- In this case, the court held: "proximity to the project site is not dispositive in establishing actual injury," but nonetheless petitioners must "show that they will suffer a direct injury different from that suffered by the public at large."

Sierra Club v. Village of Painted Post (2015) (Painted Post) [8]

- Plaintiffs in this case challenged a resolution authorizing the sale and export of excess water from the municipal water supply and permitting construction of a water transloading facility. The petitioner alleged that the water transloading facility was less than a block from his residence and he would be adversely affected by significant rail traffic and increased noise and air pollution caused by the project. This petitioner was the only individual from the village granted standing.
- The Court found that "the number of people who are affected by the challenged action is not dispositive of standing" and declared that "the harm that is alleged must be specific to the individuals who allege it, and must be 'different in kind or degree from the public at large,' but it need not be unique."
    - They held that the petitioner in this case had standing because, rather than alleging an indirect effect from the increased train noise, he alleged "particularized harm that may also be inflicted upon others in the community."
- Therefore, the court in *Painted Post*, acknowledged the "overly restrictive" standing analysis being applied by the lower courts due to the *Society of Plastics* decision. The court loosened the standing requirements but did not directly overrule *Society of Plastics* and confirmed that in order to have standing "the harm that is alleged must be specific to the individuals who allege it, and must be 'different in kind or degree from the public at large,' but it need not be unique."
    - Therefore, in order to have standing it is still required that a plaintiff's injury be different from an injury to the public at large.
- Outcome: For communities facing environmental and public health threats this standing requirement often denies access to a review of fair proceedings when there is probable injury to a number of people or a large number of people. This is exactly the type of situation where the public wants judicial review of SEQRA determinations given the potential impacts to greater numbers of people.

[8] Sierra Club v. Village of Painted Post. 26 N.Y.3d 301 (Nov. 19 2015)