

TABLE II: NEW YORK COURT OF APPEALS SEQRA DECISIONS

Year	Name of Case	Primary Issue	Winner			Split Panel?
			Envtl. π	Applicant π	Gov't Δ	
1981	Harlem Valley United Coalition, Inc. v. Hall, 430 N.E.2d 909 (N.Y. 1981).	Negative declaration upheld: Agency must, and did, “consider substantial disadvantages peculiar to a particular location.”			X	No
1982	Niagara Recycling, Inc. v. Town Bd., 443 N.Y.S.2d 961, aff’d, 438 N.E.2d 1142 (N.Y. 1982).	No EIS needed for “general legislation . . . which neither implements nor authorizes any project or program.”			X	No
	Tri-County Taxpayers Ass’n v. Town Bd., 432 N.E.2d 592 (N.Y. 1982).	EIS needed on a referendum to establish and finance a proposed sewer district.	X			Yes: 4/3
1983	Bd. of Visitors–Marcy Psychiatric Ctr. v. Coughlin, 453 N.E.2d 1085 (N.Y. 1983).	Emergency action exempt from EIS requirement.			X	No

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	Webster Assocs. v. Town of Webster, 451 N.E.2d 189 (N.Y. 1983).	Alternatives to a proposed project need not be included in an EIS when the agency and the affected public are very familiar with them.			X <sup>a</sup>	No
	Devitt v. Heimbach, 447 N.E.2d 59 (N.Y. 1983).	An agency is required to have an EIS or a negative declaration before deciding on a project.	X			No
1984	Sun Beach Real Estate Dev. Corp. v. Anderson, 469 N.Y.S.2d 964, aff'd, 468 N.E.2d 296 (N.Y. 1984).	N.Y. Town Law's 45-day time limit for planning board to approve a project application was tolled while planning board waited for DEIS.			X	No
	Programming & Sys. v. N.Y. State Urban Dev. Corp., 460 N.E.2d 1347 (N.Y. 1984).	Timing of SEQRA review: EIS must be prepared and available to the public before any significant authorization is granted for a specific proposal.			X	No

<sup>a</sup> The government defendants won the battle but lost the war. The Town of Webster was victorious on the SEQRA issues but lost the appeal on other grounds. See *Town of Webster*, 451 N.E.2d at 189, 193.

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1985	Filmways Communications of Syracuse, Inc. v. Douglas, 484 N.Y.S.2d 738, aff'd, 482 N.E.2d 1225 (N.Y. 1985).	Building permits exempt: Ministerial acts involving no discretion are not "actions" subject to SEQRA review.			X	No
	Inland Vale Farm Co. v. Stergianopoulos 481 N.E.2d 547 (N.Y. 1985).	EIS required where planning board determined that a proposed project could adversely affect nearby water supply.	X			No
1986	Jackson v. N.Y. State Urban Dev. Corp., 494 N.E.2d 429 (N.Y. 1986).	Standard of review for SEQRA will be either "arbitrary and capricious" or "abuse of discretion."			X	No
	Chinese Staff & Workers Ass'n. v. City of N.Y., 502 N.E.2d 176 (N.Y. 1986).	Socio-economic impacts are covered by SEQRA and, if present, must be included in an EIS.	X			Yes: 5/2

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	Pizzuti v. Metro. Transit Auth., 494 N.E.2d 1385 (N.Y. 1986).	SEQRA and EDPL <sup>c</sup> : Compliance with SEQRA is not subject to judicial review in a condemnation proceeding under the EDPL. <sup>d</sup>			X	No
1987	Save the Pine Bush, Inc. v. City of Albany, 512 N.E.2d 526 (N.Y. 1987).	Cumulative impacts of other pending projects must be considered under SEQRA review.	X			No
	Pius v. Bletsch, 519 N.E.2d 306 (N.Y. 1987).	Building permits not always exempt: Where officials w/approval power have discretionary authority, those actions are not ministerial and are subject to SEQRA.			X	No
1988	Coca-Cola Bottling Co. of N.Y., Inc. v. Bd. of Estimate, 532 N.E.2d 1261 (N.Y. 1988).	Lead agency status: The agency responsible for the final project decision must be the entity that performs the SEQRA analysis.	X			No

<sup>c</sup> N.Y. Em. Dom. Proc. Law § 201 (1979).

<sup>d</sup> This decision was reversed by 1991 legislation. *See* E. Thirteenth St. Cmty. Ass'n v. N.Y. State Urban Dev. Corp., 641 N.E.2d 1368, 1372 (N.Y. 1994).

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	NYPIRG v. Town of Islip, 520 N.E.2d 517 (N.Y. 1988).	Consent decrees are exempt from SEQRA compliance when they are an exercise of department's prosecutorial discretion.			X	Yes: 4/2/1
	E.F.S. Ventures Corp. v. Foster, 520 N.E.2d 1345 (N.Y. 1988).	Agencies are not estopped from reviewing an entire development even though construction according to an approved plan occurred prior to a finding of SEQRA violations.			X <sup>e</sup>	No
	Indus. Liaison Comm. v. Williams, 527 N.E.2d 274 (N.Y. 1988).	The lead agency must only address those non-speculative impacts that can reasonably be anticipated as a consequence of the proposed action.			X	No
1989	Vill. of Westbury v. Dep't of Transp., 549 N.E.2d 1175 (N.Y. 1989).	Segmentation: Two projects that are dependent on each other, complementary, or otherwise unified must be considered together and their cumulative impacts assessed.	X			No

<sup>e</sup> The agency won on the SEQRA issue but lost the appeal; as the agency's actions were otherwise held to be arbitrary and capricious. See *E.F.S. Ventures*, 520 N.E.2d at 1353.

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	Har Enters. v. Town of Brookhaven, 548 N.E.2d 1289 (N.Y. 1989).	Standing: Owner of property subject to a zoning change is presumptively adversely affected by violation of SEQRA. <sup>f</sup>			X	No
1990	Mobil Oil Corp. v. Syracuse Indus. Dev. Agency, 559 N.E.2d 641 (N.Y. 1990).	Standing: Owner with no close relationship with subject property must plead special damages for standing to challenge a SEQRA decision.			X	No
	Akpan v. Koch, 554 N.E.2d 53 (N.Y. 1990).	Standard of Review: Great deference given to agency conclusions.			X	No
1991	Soc'y of the Plastics Indus., Inc. v. County of Suffolk, 573 N.E.2d 1034 (N.Y. 1991).	Standing: Challenger must establish different injury than that suffered by public-at-large.			X	Yes: 4/3
	Sutton Area Cmty. v. Bd. of Estimate, 578 N.E.2d 436 (N.Y. 1991).	"Hard Look": Board was informed of all pertinent environmental issues and considered them, thus constituting a "hard look."			X	No

<sup>f</sup> The presumption may, however, be rebutted by a showing that owner has no close nexus with the property. See Mobil Oil Corp. v. Syracuse Indus. Dev. Agency, 559 N.E.2d 641, 645 (N.Y. 1990).

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	Citizens for an Orderly Energy Policy, Inc. v. Cuomo, 582 N.E.2d 568 (N.Y. 1991).	Legislative exemption: An agency complying with a “legislative mandate” that leaves no room for discretion is performing a ministerial function and is exempt from SEQRA.			X	Yes: 4/3
	Long Island Pine Barrens Soc’y, Inc. v. Planning Bd., 585 N.E.2d 778 (N.Y. 1991).	When SEQRA review has been completed at a preliminary approval stage, a SEQRA challenge that waits for final project approval is not timely.			X	No
	Town of Dryden v. Tompkins County Bd. of Representatives, 580 N.E.2d 402 (N.Y. 1991).	Alternatives: Agency must only consider a reasonable range of alternatives; the “rule of reason” must apply.			X	No
	Village of Hudson Falls v. NYSDEC, 557 N.Y.S.2d 702, aff’d, 575 N.E.2d 394 (N.Y. 1991).	Permit renewal: Absent any change in conditions or violations of a permit, its renewal may not be challenged on SEQRA grounds.			X	No
	Haggerty v. Planning Bd., 587 N.E.2d 287 (N.Y. 1991).	Statute of limitations: For a SEQRA challenge, under certain circumstances this may be as short as thirty (30) days.			X	No

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1992	Long Island Pine Barrens Soc'y, Inc. v. Planning Bd., 606 N.E.2d 1373 (N.Y. 1992).	Cumulative impacts: A mere "policy" that affects a certain region, as opposed to a "project" in an insufficiently unifying ground to trigger cumulative review.			X	No
	WEOK Broad. Corp. v. Planning Bd., 592 N.E.2d 778 (N.Y. 1992).	"Negative aesthetic impact considerations . . . unsupported by substantial evidence may not serve as a basis for denying approval."		X		No
	Neville v. Koch, 593 N.E.2d 256 (N.Y. 1992).	Satisfies "hard look" for an agency to examine hypothetical "worst case scenarios."			X	No
1993	Inc. Vill. of Atlantic Beach v. Gavalas, 615 N.E.2d 608 (N.Y. 1993).	A building inspector's decision to grant or deny an application may be ministerial and thus exempt from SEQRA.			X	No
	Niagara Mohawk Power Corp. v. NYSDEC, 624 N.E.2d 146 (N.Y. 1993).	Federal preemption: State water quality programs not in compliance with Federal Clean Water Act are preempted.		X		No

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1994	E. Thirteenth St. Cmty. Ass'n v. N.Y. State Urban Dev. Corp., 641 N.E.2d 1368 (N.Y. 1994).	EDPL standing: Condemnation proceeding under EDPL may not be challenged under SEQRA.			X	U
1995	Chem. Specialties Mfrs. Ass'n v. Jorling 649 N.E.2d 1145 (N.Y. 1995).	Court's role in reviewing agency action is not to substitute its judgment for the agency, but merely to see if the agency's actions were reasonable.			X	Yes: 5/2
1996	Gernatt Asphalt Prods., Inc. v. Town of Sardinia 664 N.E.2d 1226 (N.Y. 1996).	Negative declaration upheld, even where Town Board prepared EIS forms with the intent of adopting the proposed project.			X	No
	King v. Saratoga Co. Bd. of Supervisors, 675 N.E.2d 1185 (N.Y. 1996).	Despite a SEQRA violation by and agency's undertaking an action prior to filing an EIS, no de novo environmental review was required.			X	No
	Young v. Bd. of Trs., 675 N.E.2d 464 (N.Y. 1996).	Statute of limitations begins to run on an action by an agency when it commits itself to "a definite course of future decision."			X	No

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1997	Merson v. McNally, 688 N.E.2d 479 (N.Y. 1997).	Changes made to a project proposal during the EAF process are not impermissible conditional negative declarations.			X	No
	Kahn v. Pasnik, 687 N.E.2d 402 (N.Y. 1997).	Negative declaration annulled when the planning board did not take the requisite "hard look."	X			U
1998	None					U
1999	Bonnie Briar Syndicate, Inc. v. Town of Mamaroneck, 721 N.E.2d 971 (N.Y. 1999).	Information in an EIS may be used to show a "close causal nexus" between an action and a legitimate objective, thus annulling a takings claim.			X	U
2000	Soho Alliance v. N.Y. City Bd. of Standards and App., 741 N.E.2d 106 (N.Y. 2000).	Agency was found to have taken the requisite "hard look" when it "sought input from several interested agencies" and performed environmental soil and water tests.			X	U