Socy. of the Plastics Indus., Inc. v. County of Suffolk, 77 N.Y.2d 761, 570 N.Y.S.2d 778, 573 N.E.2d 1034 (1991), Court Opinion

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New York Court of Appeals

The Society of the Plastics Industry, Inc., et al., Respondents,
v.
County of Suffolk et al., Appellants.

Argued February 8, 1991.

Decided May 9, 1991.

Society of Plastics Indus. v County of Suffolk, 154 AD2d 179, reversed.**[**779]**

[*1035]** E. Thomas Boyle, County Attorney (Caroline Levy of counsel), for appellants.**[*763]**

Bernard S. Meyer, Jeffrey G. Stark, Jerome H. Heckman, John S. Eldred and Ralph A. Simmons for respondents.

KAYE, J.

The Suffolk County Legislature, as part of an effort to **[*764]** protect the environment, in 1988 adopted the Plastics Law, banning the use of certain plastics products by retail food establishments. This is an action by representatives of the plastics industry — a nationwide trade organization and one local member — to overturn that law.

While plaintiffs advanced several alternative grounds for nullifying the law, only one remains: that the County Legislature, as lead agency, failed to conduct an adequate environmental review before passing the law. We conclude that these plaintiffs lack standing to use the State Environmental Quality Review Act (SEQRA; *ECL art 8*) to that end.

I.

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Socy. of the Plastics Indus., Inc. v. County of Suffolk, 77 N.Y.2d 761, 570 N.Y.S.2d 778, 573 N.E.2d 1034 (1991), Court Opinion

The Suffolk County Plastics Law is best understood by reference to certain background facts. As the State Legislature found in 1983, "the land burial and disposal of domestic, municipal and industrial solid waste poses a significant threat to the quality of groundwater and therefore the quality of drinking water in the counties of Nassau and Suffolk. This threat is particularly dangerous since the potable water supply for the counties is derived from a sole source aquifer." (L 1983, ch 299.)

Codified as ECL 27-0704, the State law sought to prevent contamination of the aquifer by prohibiting new or expanded landfills in Nassau and Suffolk Counties, and by phasing out existing landfills, strictly limiting their operation after 1990. We sustained that law against constitutional challenge in *Matter of Town of Islip v Cuomo* (64 NY2d 50). Subsequently, the State Legislature has taken additional steps to safeguard the aquifer, noting that "the disposal of solid waste, both raw and treated, is a responsibility facing all towns and cities in the counties of Nassau and Suffolk." (L 1985, chs 358, 359; *see also*, L 1986, ch 840.)

In furtherance of its responsibility, the Suffolk County Legislature has enacted several measures. In 1985, for instance, the County added a new article to its Sanitary Code prohibiting the storage or discharge of toxic or hazardous materials into or over water supply sensitive areas. The County also acted to ensure selection of an environmentally suitable site for a regional ash disposal facility (Weinberg, 1985 Supplementary Practice Commentary, McKinney's Cons Laws of NY, Book 17½, ECL 27-0704, 1991 Cum Ann Pocket Part, at 154). Additionally, in March 1988, the **[**780] [***1036]** County Legislature **[*765]** adopted Local Law No. 10-1988 — known as the Plastics Law — prohibiting the use of certain plastics products by retail food establishments, in an effort to reduce nonbiodegradable materials in the solid waste stream and facilitate a comprehensive recycling program.

Where, as here, the County Legislature acts as the lead agency under SEQRA, the Suffolk County Code requires it to submit an environmental assessment form (EAF) for review to the Council on Environmental Quality (CEQ), which then must make a recommendation as to the need for an environmental impact statement (EIS). In October 1987, after receiving the EAF on the proposed Plastics Law, the CEQ recommended issuance of a negative declaration, finding that the action had no significant environmental impact.

Beginning September 1987, and continuing for a period of six months, the County Legislature conducted eight public hearings concerning the proposed law; the Environment and Energy Committee additionally met twice to consider it. Witnesses observed that these public discussions were larger and better attended than ever before. Among the more than 70 witnesses who testified, the several environmental groups that appeared before the Legislature uniformly supported the law. Plaintiff Society of the Plastics Industry, Inc. (SPI) and others voiced their opposition to it. SPI, in particular, urged that the Plastics Law should be defeated because fast-food packaging was a miniscule portion of solid waste and the bill would therefore effect no significant benefit to the environment; it further urged that paper food wrappers themselves posed dangers to the environment. Fear was expressed by a representative of the poly bag industry that bills such as the Plastics Law could proliferate nationwide.

On March 29, 1988, the County Legislature adopted the law, including a determination that it would not have a significant adverse impact on the environment and directing the Council on Environmental Quality to circulate a

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SEQRA notice of determination of nonsignificance; thus, no EIS was necessary. The bill was signed into law on April 29, 1988.

Substance of the Plastics Law

Section 1 of the Plastics Law restates the County Legislature's findings that discarded packaging constituted the largest single category of waste within the County, and that discarded nonbiodegradable packaging and plastics (particularly **[*766]** polystyrene and polyvinyl chloride) were a fundamental cause of municipal waste disposal problems, rapidly filling landfill space and introducing toxic byproducts if incinerated. The Legislature also found that plastic bags used by retail establishments selling food constituted the largest single retail source of plastic bags in the waste stream, and were an impediment to recycling because they are neither recyclable nor compostable. Section 1 further recites the finding that there were readily available plastic or paper product substitutes for most of the polystyrene and polyvinyl chloride retail food packaging in use in the County.

The heart of the Plastics Law is section 3, prohibiting retail food establishments in Suffolk County from selling or conveying food "directly to ultimate consumers within the County of Suffolk unless such food is placed, wrapped, or packed in biodegradable packaging at the conclusion of a sales transaction for the purchase of such food, which takes place on the premises of such a retail food establishment at or near a sales counter or equivalent customer purchasing station but prior to removal of such food from the premises of such retail food establishment." The law further prohibits retail food establishments within the County from providing customers with utensils or containers composed of polystyrene or polyvinyl chloride.

Section 8 of the Plastics Law embodies the Legislature's determination that the law would not have a significant adverse impact on the environment within the meaning of ECL 8-0109 (2). Instead, the section sets forth anticipated beneficial environmental impacts — that the law would encourage recycling of solid waste products, **[**781] [***1037]** provide enhanced protection of groundwater quality, slow down rapid filling of landfill space, simplify the chemical composition of solid waste and thereby reduce the environmental hazards and toxicity associated with solid waste incineration, and reduce the cumulative impact of litter.

Plaintiffs' Challenge

In July 1988, several representatives of the plastics industry commenced this action in Supreme Court to invalidate the Plastics Law on five separate grounds: noncompliance with various SEQRA and comparable Suffolk County environmental law requirements; preemption of the local law by State law; violation of the Equal Protection and Due Process **[*767]** Clauses of the State and Federal Constitutions; and undue burden on interstate commerce. Plaintiffs' standing to challenge the Plastics Law on all grounds other than SEQRA is unquestioned.

The essence of plaintiffs' SEQRA challenge is that the County Legislature, as lead agency, failed in its administrative responsibility to address the areas of environmental concern that had been identified and prepare an EIS, or at least provide a reasoned elaboration for its determination that the law posed no

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significant environmental impacts. The record reveals no challenge to the County's environmental review process other than plaintiffs' complaint.

Plaintiff SPI is a nationwide nonprofit trade organization of more than 2,000 members, with offices in Washington, D.C., representing all segments of the plastics industry; at least eight unspecified member companies are in Suffolk County. The only Suffolk County member identified in the complaint is plaintiff Lawrence Wittman & Co., Inc. Wittman produces a variety of plastic products, none directly affected by the Plastics Law. Two other trade organizations and two out-of-State plastics manufacturers selling products in Suffolk County were also named plaintiffs. Only SPI and Wittman, in a joint submission, have participated in the litigation.

Both sides sought summary judgment. In support of standing, plaintiff SPI submitted the affidavit of its president, expressing the industry's concern about the potential adverse environmental consequences of the Plastics Law. As he stated, SPI "is dedicated to the protection of the environmental interests of its members, and the collective membership of SPI has a strong commitment to the manufacture and sale of plastics products in an environmentally sound manner." He identified as potential adverse consequences of the Plastics Law that, because of the increased weight and bulk of paper substitutes, SPI's member companies in Suffolk County would suffer an increase in the difficulty and cost of waste disposal; more trucking traffic, causing damage to Suffolk County roads and additional air and noise pollution; groundwater contamination affecting water used for drinking and manufacturing processes; and increased air and water pollution resulting from the production of paper substitutes. Moreover, SPI alleged that the reduced energy content of the paper substitutes would lead to depletion of fossil fuel reserves and increased incineration and energy costs.**[*768]**

An affidavit was also submitted by the president of Wittman alleging that it would suffer an increase in the amount of solid waste produced and disposed of in Suffolk County; increased trucking traffic necessitated by the greater volume of solid waste; increased atmospheric pollutants, water-borne waste and energy consumption due to the manufacture of paper substitutes in Suffolk County and New York State generally; and increased toxic and hazardous leachate seeping into the aquifer.

While Supreme Court dismissed all of plaintiffs' other claims as nonmeritorious, it sustained the SEQRA challenge, holding that SPI and Wittman, having "alleged possible serious environmental injuries which will consequentially result in serious economic injuries," had standing to maintain that claim. Projecting that a denial of standing here would necessarily "deny standing to all for-profit corporations which wish to challenge SEQRA determinations," **[**782] [***1038]** Supreme Court concluded that it would not "unsuit the plaintiffs by finding that they lack standing on this issue of vital public concern." On the merits, the court held that the Legislature had violated SEQRA by failing to take a "hard look" at the environmental effects of the Plastics Law, and it stayed implementation of the law pending preparation of an EIS.

Without specifically addressing the question of standing, the Appellate Division affirmed the trial court's holdings, except that in place of the stay it nullified the Plastics Law for noncompliance with SEQRA. The court agreed that in light of the asserted environmental harms an EIS was necessary, and it concluded further that no "reasoned elaboration" had been given for rejecting plaintiffs' showing of adverse impacts. We thereafter granted the County's motion for leave to appeal, and now reverse and dismiss the remaining claim on standing

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grounds.

II.

We begin our analysis by underscoring that, unlike the proceedings in the trial court, this appeal does not challenge the actual substance of the Plastics Law. Plaintiffs' various attacks on the substance of the law — such as vagueness and violation of equal protection — were considered and rejected by the trial court, and no appeal has been taken from those determinations. Rather, plaintiffs' sole remaining objection is directed to the procedure by which that law was adopted. **[*769]** Plaintiffs contest the adequacy of the steps taken by the Suffolk County Legislature in discharging its responsibility to take a "hard look" at the environmental impact of the proposed law, contending that adverse impacts were shown and the EIS process therefore had to be set in motion (ECL 8-0111 [6]; 6 NYCRR 617.2 [v]; *see generally*, *6 NYCRR 617.6)*.

Whether a person seeking relief is a proper party to request an adjudication is an aspect of justiciability which, when challenged, must be considered at the outset of any litigation (*Matter of Dairylea Coop. v Walkley*, 38 NY2d 6, 9). Standing is a threshold determination, resting in part on policy considerations, that a person should be allowed access to the courts to adjudicate the merits of a particular dispute that satisfies the other justiciability criteria (*see*, Comment, *Standing of Third Parties to Challenge Administrative Agency Actions*, 76 Cal L Rev 1061, 1067-1068 [1988]; *see also*, *Warth v Seldin*, 422 US 490, 498). That an issue may be one of "vital public concern" does not entitle a party to standing. Courts surely do provide a forum for airing issues of vital public concern, but so do public hearings and publicly elected legislatures, both of which have functioned here. By contrast to those forums, a litigant must establish its standing in order to seek judicial review.

Thus the first question we confront — ultimately dispositive here — is whether these plaintiffs are proper persons to challenge the administrative action of the Suffolk County Legislature under SEQRA. The burden of establishing standing to raise that claim is on the party seeking review.

The question of standing to challenge particular governmental action may, of course, be answered by the statute at issue, which may identify the class of persons entitled to seek review (*see, e.g.*, State Finance Law art 7-A declaring that "any citizen-taxpayer should have and hereafter does have a right to seek the remedies provided for herein" [State Finance Law § 123]). We therefore first look to SEQRA for resolution of the issue before us.

The administrative action challenged by plaintiff — the lead agency's environmental review — is SEQRA's core (*see*, *Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 414-416). When an EIS is required, SEQRA sets in motion a detailed process, beginning with a draft EIS and continuing through to a final EIS and written findings that the requirements of SEQRA have been met. The process **[***1039]** itself **[**783]** can be a **[*770]** lengthy one. At each step there is provision for filing and distribution, public comment periods and public hearings. The substantive component of SEQRA goes beyond its Federal counterpart, the National Environmental Protection Act (NEPA), in its direction that an agency must choose the alternatives that reduce adverse environmental effects (*see*, ECL 8-0109; *see also*, 6 NYCRR 617.6; Weinberg, Practice Commentary, McKinney's Cons Law of NY, Book 17½, ECL C8-0109:1, at 73).

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While highly particular in setting out the various requirements, SEQRA contains no provision regarding judicial review. In contrast, other states' environmental statutes explicitly grant standing to "any person" or "any citizen" to enforce its provisions (*see, e.g.*, *Cal Coastal Act § 30803*; *see also*, Fletcher, *The Structure of Standing*, *98 Yale LJ 221, 259 [1988]*). Had the Legislature intended that every person or every citizen have the right to sue to compel SEQRA compliance — thus assuring above all else that the EIS process would be scrupulously followed, irrespective of the source of the challenge — it could easily have so provided; it did not.

A "citizen suits" bill, once included in the proposed legislation, did not appear in the final version (*see*, 1975 New York Legislative Record and Index, Senate Introductory Record, at S 353 [Bill S 3618]; *see also*, Mem of New York State Bar Assn, May 29, 1975). This bill, which several times failed to gain legislative approval, would have added an article 10 to the Environmental Conservation Law granting "standing to any person * * * to institute an action for conservation and protection of the air, water and other environmental resources of the state," whether that person was aggrieved or not *(see*, Senate Debate, 1975 Legis Session, at 10152; *see also* , 1975 New York Legislative Record and Index, *op. cit.)*.

Originally providing virtually unlimited access to the courts for concerned citizens, several "safeguards" were later added to the "citizen suits" bill — including a requirement that the party bringing the action post a $500 bond and submit an affidavit of a "technically qualified person" indicating the grounds for the suit. Those amendments were a response to concerns that the bill would open the floodgates to litigation (*see*, Senate Debate, *op. cit.*, at 10173). Sponsors of the measure attempted to portray it as one that would allow concerned citizens, with no prospect of personal financial gain, to maintain litigation benefiting all the people of the State (*see* ***[*771]*** , Senate Debate, at 10166), while the opposition characterized the bill as encouraging "use of environmental protection machinery as a delaying, obstructive tactic" (*see*, Senate Debate, at 10224).

By rejecting the proposed open door policy, the Legislature made clear that some limitation on standing to challenge administrative action was appropriate. The unanswered question is what that limitation should be.

In the years preceding the adoption of SEQRA, substantial concern was expressed as to the cost of implementation, increased State intrusion on local affairs, and potential delay of crucial municipal projects on spurious environmental grounds (*see*, Stevenson, *Early Legislative Attempts at Requiring Environmental Assessment and SEQRA's Legislative History*, *46 Alb L Rev 1114, 1120 [1982]*). One County Executive warned, for example, that unless "parameters are built into the legislation, all government actions would be easy targets for Court cases, effectively allowing anyone who is opposed to a proposed action for any reason, environmental or not, to limit our ability to act." (Letter from Alfred B. Del Bello, Westchester County Executive, to Governor Carey, dated July 2, 1975, Bill Jacket, L 1975, ch 612; *see also*, Mem of Power Auth of NY, dated July 1, 1975 [experience with NEPA proves that power to block action by challenging sufficiency of environmental review is often exercised by private pressure groups acting through the courts].)

The legislative history that is available suggests that concern over improper use of "citizen suits" as a delaying tactic may have led to defeat of the bill *(see*, Senate **[**784] [***1040]** Debate, *op. cit.)*. In rejecting standing for "any person," however, the Legislature did not provide any alternative standard. Thus, as in other areas, the legislative history of SEQRA "is not definitive and probably will not be heavily relied upon by the courts in interpreting the many unanswered questions." (Stevenson, *op. cit.*, at 1127.)

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In the absence of an answer in the statute, we turn to the case law on standing.

III.

With the growth of litigation to enforce public values, such as protection of the environment, the subject of standing has become a troublesome one for the courts. The Federal courts especially, have struggled in public interest cases to define **[*772]** who is a proper party to seek judicial review. Despite hundreds of Supreme Court opinions and dozens of commentaries dealing with standing, no mechanical rules of general applicability have emerged (*see, e.g.*, *Valley Forge Coll. v Americans United*, 454 US 464, 475; Fletcher, *The Structure of Standing*, *98 Yale LJ 221 [1988]*; 4 Davis, Administrative Law *§ 24:1* [2d ed]). While there has been far less difficulty in the State law, to the extent that we have common doctrines (*see, e.g.*, *Matter of Dairylea Coop. v Walkley*, 38 NY2d 6, 9, *supra*), we also have common problems.

The standing requirement in Federal actions has been grounded in the Federal constitutional requirement of a case or controversy (US Const, art III, § 2, cl 1; *see, e.g.*, *Allen v Wright*, 468 US 737, 750-752, *reh denied*468 US 1250; *Valley Forge Coll. v Americans United*, 454 US, at 471-474, *supra*), a requirement that has no analogue in the State Constitution. However, the principle that only proper parties will be allowed to maintain claims is an ancient one, long predating the Federal Constitution (*see, e.g.*, Note, *"More than an Intuition, Less than a Theory": Toward a Coherent Doctrine of Standing*, *86 Colum L Rev 564, 570 [1986]*; Berger, *Standing to Sue in Public Actions: Is it a Constitutional Requirement?*, *78 Yale LJ 816 [1969]*). Under the common law, there is little doubt that a "court has no inherent power to right a wrong unless thereby the civil, property or personal rights of the plaintiff in the action or the petitioner in the proceeding are affected." (*Schieffelin v Komfort*, 212 NY 520, 530; *see also*, *Roosevelt v Draper*, 23 NY 318, 323; *Doolittle v Supervisors of Broome County*, 18 NY 155.)

Whether derived from the Federal Constitution or the common law, the core requirement that a court can act only when the rights of the party requesting relief are affected, has been variously refashioned over the years. Once a "legal interests" test requiring a litigant to allege injury to a legal interest derived from common or statutory law (*see, e.g.*, *Tennessee Power Co. v Tennessee Val. Auth.*, 306 US 118, 137-138), "injury in fact" has become the touchstone during recent decades (*Data Processing Serv. Orgs. v Camp*, 397 US 150, 152-153; *Matter of Dairylea Coop. v Walkley*, 38 NY2d 6, 9, *supra*). The existence of an injury in fact — an actual legal stake in the matter being adjudicated — ensures that the party seeking review has some concrete interest in prosecuting the action which casts the dispute "in a form traditionally capable of judicial resolution." (*Schlesinger v Reservists to Stop the War*, 418 US 208, 220-221.) **[*773]** The requirement of injury in fact for standing purposes is closely aligned with our policy not to render advisory opinions (*see*, *Cuomo v Long Is. Light. Co.*, 71 NY2d 349, 354).

Injury in fact thus serves to define the proper role of the judiciary, and is based on "sound reasons, grounded not only in theory but in the judicial experience of centuries, here and elsewhere, for believing that the hard, confining, and yet enlarging context **[**785] [***1041]** of a real controversy leads to sounder and more enduring judgments." (Bickel, The Least Dangerous Branch, at 115 [1962].)

To this essential principle of standing, the courts have added rules of self-restraint, or prudential limitations: a

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general prohibition on one litigant raising the legal rights of another; a ban on adjudication of generalized grievances more appropriately addressed by the representative branches; and the requirement that the interest or injury asserted fall within the zone of interests protected by the statute invoked (*see*, *Allen v Wright*, 468 US, at 751, *supra*). It is the last of these limitations, adopted at both State and Federal levels, that has evolved into the crucial test for standing in the administrative context and is most pertinent to the appeal now before us (*see* , *Matter of Dairylea Coop. v Walkley*, 38 NY2d 6, 9, *supra*; *see also*, *Clarke v Securities Indus. Assn.*, 479 US 388; *cf.*, *Greer v Illinois Hous. Dev. Auth.*, 122 Ill 2d 462, 524 NE2d 561 [Illinois refusing to adopt zone of interests test]).

The zone of interests test, tying the in-fact injury asserted to the governmental act challenged, circumscribes the universe of persons who may challenge administrative action. Simply stated, a party must show that the in-fact injury of which it complains (its aggrievement, or the adverse effect upon it) falls within the "zone of interests," or concerns, sought to be promoted or protected by the statutory provision under which the agency has acted (*Lujan v National Wildlife Fedn.*, 497 US ___, ___, 110 S Ct 3177, 3186; *see also*, *Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency*, 76 NY2d 428, 433).

At the Federal level, the zone of interests limitation may be traced to the Administrative Procedure Act, which provides access to judicial review to any person "adversely affected or aggrieved * * * within the meaning of a relevant statute." (5 USC § 702.) The requirement that the injury suffered be **[*774]** within the zone of interests sought to be protected by the statute serves to filter out cases in which a person's "interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that [the drafters] intended to permit the suit." (*Clarke v Securities Indus. Assn.*, 479 US, at 399, *supra*.)

In State law as well, the requirement that a petitioner's injury fall within the concerns the Legislature sought to advance or protect by the statute assures that groups whose interests are only marginally related to, or even inconsistent with, the purposes of the statute cannot use the courts to further their own purposes at the expense of the statutory purposes. This is particularly meaningful in SEQRA litigation, where challenges unrelated to environmental concerns can generate interminable delay and interference with crucial governmental projects. We have recognized the danger of allowing special interest groups or pressure groups, motivated by economic self-interests, to misuse SEQRA for such purposes (*see*, *Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency*, supra; *see also*, *Matter of Sun-Brite Car Wash v Board of Zoning & Appeals*, 69 NY2d 406, 413, *rearg denied sub nom.Allen Avionics v Universal Broadcasting,*70 NY2d 694).

One further established principle in the law of standing bears note.

In land use matters especially, we have long imposed the limitation that the plaintiff, for standing purposes, must show that it would suffer direct harm, injury that is in some way different from that of the public at large (*see, e.g.*, *Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency*, 76 NY2d 428, *supra*; *Matter of Sun-Brite Car Wash v Board of Zoning & Appeals*, 69 NY2d, at 413, *supra*; *Little Joseph Realty v Town of Babylon*, 41 NY2d 738, 741-742**[***1042]** ; ***[**786]*** *Cord Meyer Dev. Co. v Bell Bay Drugs*, 20 NY2d 211, 216, *rearg denied* 20 NY2d 970; *Empire City Subway Co. v Broadway & Seventh Ave. R. R. Co.*, 87 Hun 279, 283, *affd*159 NY 555; *see also*, *Warth v Seldin*, 422 US, at 499, *supra*). This requirement applies whether the challenge to governmental action is based on a SEQRA violation (*Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency*,

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supra; *Matter of Har Enters. v Town of Brookhaven*, 74 NY2d 524, 528-529), or other grounds.

The doctrine grew out of a recognition that, while directly impacting particular sites, governmental action affecting land use in another sense may aggrieve a much broader community. **[*775]** The location of a gas station may, for example, directly affect its immediate neighbors but indirectly affect traffic patterns, noise levels, air quality and aesthetics throughout a wide area. The concept of a plaintiff's aggrievement, generally necessary to secure judicial review, was therefore refined and restricted by the courts in such matters to require that plaintiffs have a direct interest in the administrative action being challenged, different in kind or degree from that of the public at large (*see, e.g.*, 2 Anderson, New York Zoning Law & Practice *§ 26.06* [3d ed]).[1]

These same principles of standing apply whether the party seeking relief is one person or, as in the present case, an association of persons.

In the area of associational or organizational standing, the applicable principles are embodied in three requirements (*see*, *Matter of Dental Socy. v Carey*, 61 NY2d 330). *First*, if an association or organization is the petitioner, the key determination to be made is whether one or more of its members would have standing to sue; standing cannot be achieved merely by multiplying the persons a group purports to represent. *Second*, an association must demonstrate that the interests it asserts are germane to its purposes so as to satisfy the court that it is an appropriate representative of those interests. *Third*, it must be evident that neither the asserted claim nor the appropriate relief requires the participation of the individual members. These requirements ensure that the requisite injury is established and that the organization is the proper party to seek redress for that injury.

We next apply these principles to the facts at hand.

IV.

Factually, this case presents a variation from the more **[*776]** common scenario of associations dedicated to environmental preservation seeking to represent the interests of persons threatened with environmental harm (*see, e.g.*, *Save a Valuable Envt. v City of Bothell*, 89 Wash 2d 862, 576 P2d 401; *Sierra Club v Morton*, 405 US 727). In such instances, in-fact injury within the zone of interest of environmental statutes has been established by proof that agency action will directly harm association members in their use and enjoyment of the affected natural resources (*see, e.g.*, *United States v Students Challenging Regulatory Agency Procedures* , 412 US 669, 687**[***1043]**). **[**787]** Here, by contrast, the parties seeking relief under SEQRA are a nationwide association of plastics interests and for-profit member corporations in the business of making and selling plastics products, entities whose economic interests are not served by bans on plastics products.

Plainly, the lead plaintiff, SPI — the association of plastics interests — does not have standing to challenge the Suffolk County Legislature's SEQRA compliance because it has not demonstrated that the interests it asserts in this litigation are germane to its purposes.

SPI purports to seek the protection and promotion of its members' environmental interests, meaning the effect

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of the continuing manufacture of plastics products on the environment. In SPI's own words, "the collective membership of SPI has a strong commitment to the manufacture and sale of plastics products in an environmentally sound manner." But here, SPI is asserting members' rights themselves to be free of any adverse effects a local law might have on their own immediate environment. Such claims would be personal to SPI's members, and have no relation to the industry-wide purposes represented by the association. Protecting member companies from local conditions, such as the quality of their air and traffic congestion on their roads, cannot be said to be germane to the purposes of this nationwide trade organization (*see*, *Matter of Dental Socy. v Carey*, 61 NY2d, at 333, *supra*).

Plaintiffs' standing therefore depends wholly on Wittman — the only named party with a presence in Suffolk County.

Few facts are known as to Wittman. It does not appear at all in the sizeable record of documents and testimony submitted by scores of citizens and groups during the County Legislature's hearings on the Plastics Law. Wittman has alleged that it has an office in Copiague, Suffolk County, and employees, and it manufactures fiberglass products. The question, **[*777]** therefore, is whether, by tendering a corporate address in Suffolk County, Wittman has established its standing to challenge the County Legislature's issuance of a negative declaration. We conclude that, based on the tenuous assertion of harm it would suffer, Wittman has failed to qualify for standing to maintain this particular claim.

The purposes of SEQRA, as stated by the Legislature, are to encourage productive and enjoyable harmony with our environment; "to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state." (ECL 8-0101.) Under the general heading "Legislative findings and declaration," SEQRA sets out, among its overriding principles and objectives, the "maintenance of a quality environment for the people of this state" (ECL 8-0103 [1]), and it provides that every citizen "has a responsibility to contribute to the preservation and enhancement of the quality of the environment." (ECL 8-0103 [2].)

Clearly, the zone of interests, or concerns, of SEQRA encompasses the impact of agency action on the relationship between the citizens of this State and their environment. Only those who can demonstrate legally cognizable injury to that relationship can challenge administrative action under SEQRA. Though couched as environmental harms, plaintiff's assertions of injury by and large amount to nothing more than allegations of added expense it might have to bear if plastics products were banned and paper products substituted. In this category, for example, are allegations that the Plastics Law, by adding to the County's solid waste stream, will increase disposal, truck traffic, energy and incineration costs. Assertions that increased paper manufacturing throughout New York State threaten it with added energy consumption, atmospheric pollutants and water-borne wastes are not only largely economic but also ephemeral allegations of harm threatening plaintiff.

That plaintiff raises economic concerns of course does not foreclose its standing **[**788] [***1044]** also to raise environmental injury (*see*, *Matter of Niagara Recycling v Town Bd.*, 83 AD2d 335, 341[Hancock, Jr., J.], *affd*56 NY2d 859). However, economic injury does not confer standing to sue under SEQRA. Economic injury is not by itself within SEQRA's zone of interests **[*778]** (*see*, *Matter of Mobil Oil Corp. v Syracuse Indus. Dev.*

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Agency, 76 NY2d 428, 433-434, *supra*).

In the end, the various allegations of plaintiff's threatened environmental harm come down to these: that the greater volume and weight of paper substitutes in Suffolk County will increase trucking traffic to and from disposal sites, with attendant noise, congestion and emissions; and that paper substitutes will increase waste in landfills, with attendant effects including possible hazardous leachate seeping into the aquifer.

We conclude that this plaintiff — having failed to allege any threat of cognizable injury it would suffer, different in kind or degree from the public at large — lacks standing to maintain this SEQRA challenge.

Here, the need for special injury within the zone of interests of the statute being challenged is fully consonant with traditional standing concepts (*see, e.g.*, *Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency*, 76 NY2d 428, *supra*). A plaintiff threatened with such a concrete injury plainly has the requisite incentive to press the matter. It is not seeking an advisory opinion, and it is not misusing the statute to delay or defeat governmental action and thereby advance ends outside the legislative purview. With particular respect to SEQRA, an assertion of special environmental harm evidences that the named plaintiff "has a significant interest in having the mandates of SEQRA enforced." (*Matter of Har Enters. v Town of Brookhaven*, supra, at 529.)

Although the challenged administrative action does not concern zoning, its impact falls on particular sites, centering not on the points of sale of plastics products but on the points of disposal. As set forth in section 1 of the Plastics Law, the intent of the Legislature was to reduce landfills by altering the composition of Suffolk County's solid waste. Harmful effects allegedly flowing from the increased volume of solid waste in the landfills and their adjacent areas necessarily increase as distances from the landfills decrease.[2] Similarly, **[*779]** any alleged harmful effects of increases in trucking traffic to and from the landfills would necessarily fall directly on those near such traffic. To the extent that manufacture of paper substitutes threatens environmental harm, again it would be residents close to those facilities that would directly suffer the alleged harms.

In sum, the threatened environmental impacts of this particular law are such that certain Suffolk County residents *can* show a special or differentiating harm, providing a large pool of potential plaintiffs whose interests satisfy the policy goals of SEQRA and of the standing doctrine, with no compromise of the courts' commitment to the enforcement of SEQRA. This is not a case where to deny standing to this plaintiff would be to insulate governmental action from scrutiny (*see*, *Matter of Har Enters. v Town of Brookhaven*, supra, at 529). Thus, we need not and do not reach the issue whether, in instances where solely general harm would result from a proposed action, a plaintiff would have standing to raise a SEQRA challenge based on potential injury to the community at large. Plaintiff itself makes no such claim.**[**789] [***1045]**

We note that the result in this case is consistent with the policy of protecting the welfare of the community by limiting judicial review of remedial legislation when such challenges are made by pressure groups seeking to delay or defeat action in order to further their own economic interests (*see*, *Matter of Sun-Brite Car Wash v Board of Zoning & Appeals*, 69 NY2d 406, *supra*; *see also*, *Churchill Truck Lines v United States*, 533 F2d 411, 416 [8th Cir]). While there is much to be said for permitting judicial review of SEQRA claims at the request of every citizen, it is equally true that allowing *"everyone* to seek review could work against the welfare of the community by proliferating litigation, especially at the instance of special interest groups, and by unduly

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delaying final dispositions." (*Matter of Sun-Brite Car Wash v Board of Zoning & Appeals*, 69 NY2d, at 413, *supra*.) Citizens have an interest in efficient governmental action as well as an interest in adequate environmental review.[3] The established requirement of direct injury in cases such as the one before us strikes the proper balance, under SEQRA, between both public interests.

Finally, we subscribe wholeheartedly to the dissent's call for **[*780]** clarity and accuracy. In the immediate case, it should be clear that despite unprecedented public response to legislative hearings on the Plastics Law — including the unanimous endorsement of the Environmental Defense Fund, the National Resource Defense Council, the Long Island Sierra Club, the Long Island Citizens Campaign (whose stated purpose is protection of the Long Island drinking water), the New York Public Interest Research Group, Defenders of Wildlife, indeed every environmentalist who appeared, none of whom noted a threat to the aquifer — only the plastics industry, a private interest group, has sought to overturn a law adopted as a step toward protecting the environment, on the assertion that environmental review was inadequate. Even the Long Island Association Environment Committee, quoted in the dissent, lodged no such challenge.

The Environmental Defense Fund — asserting its particular interest and involvement in plans for the protection of Long Island groundwater — and the Natural Resource Defense Council additionally both appeared before the trial court as *amici* in support of the Plastics Law presenting — with defendants — evidence of the environmental threats offered by the plastics products and environmental benefits posed by the Plastics Law. Were it appropriate to consider the merits here — which it is not — the few paragraphs in the dissent regarding adverse effects of the Plastics Law could be multiplied many times over, by the statements and submissions of the environmentalists as to the beneficial effects of the bill, viewed as a first step toward resolving the County's garbage crisis. The plastics industry brought this to a halt.

But characterizations as to which position champions the environment in the immediate case are of lesser concern than accurate portrayal and perception of the rule that governs this and future cases. As is apparent even in the dissent, no new standing requirement is fashioned by the majority. Our real difference lies in whether the Plastics Law could in any sense be deemed geographically centered in its aim and effect, or indiscriminate; if the former, we all agree that special harm has long been required (dissenting opn, at 787-788). We conclude that the challenged action here is more akin to localized than indiscriminate action.

While the dissent would limit the first category to zoning laws, the better approach is to look to the aim and impact of the action, whether in the form of a zoning ordinance, a local **[*781]** law or other government action. Here, the challenged action is aimed at reducing solid waste entering the County landfills and the alleged environmental impact is on those areas and associated **[**790] [***1046]** sites. We explicitly do not reach the question of standing to challenge actions that apply indiscriminately to everyone, whether a local law permitting all residents to throw their garbage in the streets (dissenting opn, at 789), or any other action.

Accordingly, the order of the Appellate Division should be reversed, with costs, and the defendants' motion to dismiss the first cause of action granted.

HANCOCK, JR., J. (dissenting).

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A county resident may not bring a challenge on environmental grounds to a county local law which produces undifferentiated area-wide environmental effects unless it can show that it suffers a "special injury" which is different in kind or degree from that suffered by the community at large; thus, an assertion of environmental harm potentially available to every resident is insufficient to confer standing (majority opn, at 778). This is the new rule the majority has established in holding that Lawrence Wittman & Co., a Suffolk County (County) resident and employer,[1] lacks standing to contest the validity of the Suffolk County Plastics Law upon the ground that that law was passed in violation of SEQRA. As the majority applies it in this case to dismiss plaintiff Wittman's complaint, the standing rule establishes criteria so restrictive as to present a virtual bar to SEQRA challenges to legislative actions having such area-wide environmental effects.

The majority suggests (majority opn, at 779) that this standing rule is not to be universally applied and that there may be circumstances where a resident would be permitted to contest "actions that apply indiscriminately to everyone" (*id., at 781*). If this is so, the opinion offers no coherent reason for why the rule should be invoked in these circumstances when it might not be invoked in other circumstances. Because it provides no satisfactory directions for when the rule should be applied, the majority writing, in my view, invites ad hoc and unguided implementation by the lower courts. However it may be construed, the court's holding in dismissing this lawsuit imposes substantially heightened standing requirements for **[*782]** SEQRA challenges to area-wide legislation. Such requirements are contrary to the spirit and purpose of SEQRA and, in my opinion, to the generally liberalized standing rules for challenging governmental action which our Court has adopted in recent years. For these and other reasons to be explained more fully, I respectfully dissent and vote to affirm.

I

There must be no confusion on one fundamental point. What is challenged in this lawsuit is the validity of legislation, the Plastics Law — a local law passed by the Suffolk County Legislature and having effect throughout the County. This local law is the "action" which assertedly will have a significant effect on the environment mandating the preparation of an EIS by the County (*see*, ECL 8-0109 [2]).[2] And it is this local law which plaintiffs seek to nullify because the dictates of SEQRA were not complied with.

The Plastics Law — the testimony before the Legislature showed — could have several serious environmental consequences including an *increase* rather than a decrease in the volume and weight of solid waste produced in the County and a consequent need for *more* rather than fewer landfills, an *increase* in the number of trucks required to traverse County roads to transport this additional solid waste, an *increase* in the amount of atmospheric pollutants **[**791] [***1047]** and water-borne waste produced in the County, and an *increase* in the leachate of chemicals such as dioxins and PCBs from the disintegration of the required biodegradable bags and containers with the resultant risk of seepage into the Magothy aquifer, Long Island's sole source of drinking water.

Plaintiffs were by no means the only parties presenting testimony raising major environmental questions concerning the proposed Plastics Law. For example, the testimony of The Long Island Association Environment Committee included this:

> "Clearly, the intent is that these non-biodegradable plastics would be replaced by biodegradable

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> paper products which would then be recycled, thus lessening the amount of materials which go into the municipal landfill. The ironic nature of this **[*783]** scenario is that recyclers do not want to have anything to do with paper which has been in contact with food or humans, such as would be the case with straws, cups or wrappings. Due to environmental concerns, recyclers only want `clean' paper, which is either office paper or newspapers. Thus, the possibility exists that if these new paper wrappings cannot be recycled, as we all hope they could be, they will then have to find their place in the landfills of Long Island. Unfortunately, being a biodegradable product, the paper wrappings would slowly disintegrate, which unfortunately releases all of its chemicals into the landfill, causing a leachate run-off and contaminating the landfill and other nearby areas. The non-biodegradable plastic wrapping which it is replacing does not disintegrate, thus allowing no chemicals to be released into the landfill at anytime." (Record on appeal, at 778-779.)

Let there be no mistake. These are not matters of merely localized concern to a few specific areas but matters presenting environmental problems of substantial concern to the entire County. Yet, the County Legislature, in effect, ignored these problems in issuing what was unquestionably a groundless negative declaration.[3]

Plaintiffs cited these important County-wide environmental problems in their successful efforts in the lower courts to set aside the Legislature's action because of its disregard of SEQRA's protective mandates. Supreme Court found that the County had failed to take the required "hard look" before deciding to dispense with an EIS and issuing its negative declaration. That court noted that "almost all of the testimony adduced at the hearing held by the Legislature indicated **[*784]** that the proposed law would have some significant environmental * * * effects". And it specifically detailed the facts supporting its conclusion that the County ignored SEQRA in issuing the negative declaration, including (1) that the environmental assessment form (EAF) "was prepared in a rushed, haphazard manner over a period of time of only a few days without taking into account available evidence adduced at the hearings held by the Suffolk County Legislature", (2) that the EAF "was prepared by a partisan proponent of the proposed law who carefully deleted critical portions of the EAF originally drafted by a County planner", (3) that this altered EAF was considered by the County Council on Environmental Quality (CEQ) for, at most, a few hours before it recommended that a negative declaration be issued and (4) that no evidence existed in the record that any CEQ member (other than the bill's proponent) was present at the public hearings (*Society of Plastics Indus. v County of Suffolk* ***[**792]*** , Sup Ct, Suffolk County, May 24, 1989, Cannavo, J., at 14-19). **[***1048]** As Justice Cannavo noted, the County planner's draft EAF indicated that "the liquid wastes, toxic chemicals, and atmospheric emissions generated as a result of the * * * Plastics Law were *unknown*, and the effects on both surface and groundwater were *unknown"* (opn by Cannavo, J., at 4 [emphasis added]). But by "whiting out" and "inking over" these portions of the planner's draft EAF, the bill's partisan proponent submitted an EAF which concluded that *"no liquid industrial wastes or toxic chemicals would be emitted"* (*id., at 5* [emphasis added]).

In its unanimous agreement with Supreme Court's conclusion that the County failed to take the required "hard look", the Appellate Division adverted to "the broad range of potential environmental harms which the plaintiffs asserted would result from the implementation of the Plastics Law" (154 AD2d 179, 182). Today, however, the majority reverses the lower courts and reinstates this unfounded negative declaration. It does so not because of any disagreement with the lower courts on the merits of the issue of SEQRA compliance. Instead, the majority reverses because it concludes that plaintiffs have not shown that they are proper parties to maintain

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this SEQRA challenge. In short, the majority says, plaintiffs **[*785]** lack standing and should never have been permitted to take the case to court.[4] It is with this holding that I take issue.

II

In New York courts the now-established test for standing in cases of SEQRA challenges is the liberal two-part test that has been adopted as the general rule for standing in other contexts (*see*, *Matter of Dairylea Coop. v Walkley*, 38 NY2d 6, 9; *Matter of Douglaston Civic Assn. v Galvin*, 36 NY2d 1, 6). Under this accepted rule, all that an objector "needs to `show [is] that the [challenged] action will in fact have a harmful effect on the petitioner and that the interest asserted is arguably within the zone of interest to be protected by the statute.' ([*Matter of Dairylea*, supra], at 9.)" (*Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency*, 76 NY2d 428, 433 [Wachtler, Ch. J.]; *see, e.g.*, *Matter of Har Enters. v Town of Brookhaven*, 74 NY2d 524, 529; *Matter of Industrial Liaison Comm. v Williams*, 131 AD2d 205, 209, *affd* 72 NY2d 137; *Matter of Niagara Recycling v Town Bd.*, 83 AD2d 335, 341, *affd* 56 NY2d 859.) If this existing rule were applied, plaintiffs, without a doubt, would be within the zone of interest to be protected and thus have standing. So the lower courts have held in this case (*see*, *Society of Plastics Indus. v County of Suffolk*, 154 AD2d 179, *supra*). After all, plaintiffs, like the other residents of Suffolk County, would certainly be affected by an increase in leachate seeping into the aquifer, the greater intensity of air pollution, more trucks hauling garbage and solid wastes on County highways and an over-all increase in the weight and volume of solid wastes produced in the County.

The majority, nevertheless, dismisses plaintiffs' suit for lack of standing by adopting a new standing rule, one that is far more restrictive than has heretofore **[***1049]** been employed by our **[*786]** courts in SEQRA **[**793]** challenges or other contexts. Under this rule, as the majority explains it: "this plaintiff — having failed to allege any threat of cognizable injury it would suffer, different in kind or degree from the public at large — lacks standing to maintain this SEQRA challenge." (Majority opn, at 778.)

Under the new standard, someone who alleges environmental damage from an action which applies generally to an entire area and indiscriminately affects everyone in the area is precluded from judicial review. Because such environmental damage is by its very nature undifferentiated and shared by all, the objector cannot show special damage that is different from that of the public at large. The rule, as it is employed here, can thus present a virtual impasse to judicial review.

The majority's imposition of this extra standing requirement marks a decided change in the course of the Court's carefully developed jurisprudence in interpreting and implementing SEQRA since its enactment 15 years ago. It denotes an apparent lessening in what has been recognized as this Court's "powerful commitment to the goal of SEQRA" (Weinberg, 1988 Practice Commentaries, McKinney's Cons Laws of NY, Book 17½, ECL C8-0109:4, 1991 Cum Ann Pocket Part, at 27).[5] As I believe will be demonstrated, the majority's rationale for it does not withstand critical analysis. Moreover, because it can operate to shield cases of clearly insufficient SEQRA compliance from judicial review — as it does here — the new "special damage" rule does not serve the public interest **[*787]** or further the important policies embraced by the Legislature in its enactment of SEQRA.

Finally, the majority's decision to erect this additional barrier to standing is at odds with the more open-handed

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approach to standing assumed by New York courts in recent years and our recognition that the "fundamental tenet of our system of remedies is that when a government agency seeks to act in a manner adversely affecting a party, judicial review of that action may be had (see Jaffe, Judicial Control of Administrative Action, p 336; Davis, Unreviewable Administrative Action, *15 FRD 411*)." (*Matter of Dairylea Coop. v Walkley*, 38 NY2d 6, 10, *supra*; *see*, id., at 9-12.)

III

Our New York courts have without hesitation employed in SEQRA challenges the liberal two-part test that has been adopted as the general rule for standing in other contexts (*see*, *Matter of Dairylea Coop. v Walkley*, supra, at 9; *Matter of Douglaston Civic Assn. v Galvin*, 36 NY2d 1, 6, *supra*; *see*, Madden, *Case Law Developments Under New York's State Environmental Quality Review Act*, 56 NYS BJ 16, 17 [Apr. **[**794] [***1050]** 1984]).[6] Consistent with "the broadening rules of standing in related fields" (*Matter of Douglaston Civic Assn. v Galvin*, supra, at 6), in SEQRA cases our courts have consistently held that the fact that a party may have economic reasons for its challenge will not defeat its standing so long as it alleges that it will suffer an environmental injury (*see, e.g.*, *Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency*, supra, at 433; *Matter of Niagara Recycling v Town Bd.*, supra, at 341; *Webster Assocs. v Town of Webster*, 112 Misc 2d 396, 402, *affd*85 AD2d 882, *revd on other grounds*59 NY2d 220; *Bliek v Town of Webster*, 104 Misc 2d 852, 858-859).

The *sine qua non* of SEQRA standing under our in-fact injury and "zone of interest" rule is that the objector must allege some environmental harm. It is obvious that the rule operates differently in cases of localized, site-specific actions **[*788]** such as a proposed office complex or sports stadium than in cases where the action has a generalized application over a wide area as do many local laws. When the proposal in question is geographically centered — e.g., construction of a shopping center (*see*, *Matter of Mobil Oil Co. v Syracuse Indus. Dev. Agency*, supra) or a zone change (*see*, *Matter of Har Enters. v Town of Brookhaven*, supra) — the adverse effect, if any, is not dispersed. It is not felt indiscriminately by all residents in the County. The intensity of the environmental impact obviously depends on proximity to the site of the action and varies inversely with the distance from it. Because any resident of the larger community, even one situated miles from a proposed localized action, could allege, at least in theory, an anticipated environmental injury from such localized action, some realistic fixing of the outer limits in determining who has suffered injury in fact is essential. Thus, in cases of this type, it is entirely logical and reasonable to require that a party make some showing of "special damage, different in kind and degree from the community [at large]" (*Matter of Sun-Brite Car Wash v Board of Zoning & Appeals*, 69 NY2d 406, 413 [cited in *Matter of Har Enters. v Town of Brookhaven*, 74 NY2d, at 528, *supra*]) as a condition for establishing standing to bring a SEQRA challenge.

By contrast, where the challenged action is not geographically centered but is one which has general application over a wide area — such as a local law which may have an effect throughout a town or a county — the impact of that action is not localized, but diffuse. The adverse environmental consequence, if any, is borne alike by the residents of the geographical area in which the local law applies. Since the effect on the residents is general and *undifferentiated*, it would be anomalous to require that a particular resident demonstrate special harm that is *differentiated* in nature or degree from the harm suffered by any other resident. Yet, this is just the

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requirement that the majority rule imposes on plaintiffs here.

What the majority has done is add the "special harm" requirement for standing in the site-specific cases to the requirement for standing which would, under the usual rule, be applied in the nonsite specific general harm cases. Clearly, where the extent of the environmental injury diminishes with increased distance from the proposed action, the "special harm" requirement makes sense and works. Where, however, the alleged injury is essentially the same over a wide area, the rule does not work. For if a resident's environmental damage **[*789]** is essentially the same as that of the neighbors, the resident can hardly show injury "different in kind or degree from the **[**795]** **[***1051]** public at large" (majority opn, at 778).

A simple hypothetical may put the question in focus. Suppose a town passes a local law permitting all of the residents to throw their garbage in the streets. Everyone in the town could allege environmental harm from the deleterious consequences but the same harm would be shared by all. Would no one have standing to challenge the town's SEQRA compliance? Under the majority's standing rule, it seems so. A question comes immediately to mind. Would the SEQRA challenges have been dismissed on standing grounds if the new rule had been applied in *Matter of Industrial Liaison Comm. v Williams* (supra [SEQRA challenge to State-wide promulgation of water quality regulations by Department of Environmental Conservation (DEC)]) or in *Matter of Save the Pine Bush v City of Albany* (70 NY2d 193 [challenge to proposed zone changes because of potential environmental effect on Albany's pine barrens]) or in *Matter of Niagara Recycling v Town Bd.* (supra [challenge to local law for licensing and regulating solid and industrial waste facilities within the town])?

Moreover, the application of a strict "special harm" rule in this context[7] is certainly novel. As the Court has noted, the "special harm" rule is simply an "injury in-fact" rule applied in situations where the objector is not directly a party to the challenged action (*see*, *Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency*, supra, at 433, quoting *Matter of Sun-Brite Car Wash v Board of Zoning & Appeals*, supra, at 413). Where the challenged action directly involves the objector's own land (*see*, *Matter of Har Enters. v Town of Brookhaven*, 74 NY2d, at 528, *supra*) or the property of an adjoining landowner (*see*, *Matter of Sun-Brite Car Wash v Board of Zoning & Appeals*, supra), the law presumes injury in fact without the necessity of demonstrating special damage. The case law demonstrates **[*790]** how the "special harm" rule can be applied to permit a person to be considered aggrieved by an action to which it was not a party (*see*, *Matter of Douglaston Civic Assn. v Galvin*, supra) and to permit a member of the public to enforce zoning laws against another person (*Little Joseph Realty v Town of Babylon*, 41 NY2d 738, 741-742; *Cord Meyer Dev. Co. v Bell Bay Drugs*, 20 NY2d 211, 216-217).

Never before has a party *directly affected* by challenged action been required to demonstrate "special harm" different in kind from the "public in general" (*see*, *Matter of Niagara Recycling v Town Bd.*, supra, at 341 [owners of commercial facilities located in town have standing to challenge local law regulating the siting and operation of waste disposal and management facilities]; *Matter of Industrial Liaison Comm. v Williams*, 131 AD2d 205, *affd* 72 NY2d 137, *supra* [association of industrial dischargers has standing to challenge DEC's promulgation of ambient water quality standards on SEQRA grounds]). Here, plaintiffs have brought a SEQRA challenge seeking to invalidate a *local law* which *directly applies to them as residents of the County*. They have alleged in-fact injuries and their claimed injuries are environmental — falling within the zone-of-interests of SEQRA. Nothing **[***1052]** more, to date, has ever been required to **[**796]** establish standing. Nothing more

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should be required.[8]

IV

The reasons the majority advances to support its restrictive rule do not help its argument. First, the majority cites the Legislature's repeated rejection of a "citizen's suits" bill which, in effect, would have abolished standing as a requirement by permitting any person to bring an action on environmental grounds "whether that person was aggrieved or not" (majority opn, at 770). It is unclear why the Legislature's **[*791]** refusal to do away with any standing requirement for SEQRA challenges somehow suggests that it would favor the stringent standing rule the majority has adopted here (*id., at 770-771*).

Second, the majority suggests that — despite such obvious area-wide concerns as seepage of leachate into the aquifer, increased air pollution and greater volume and weight of solid waste — the case really involves mainly localized environmental problems relating to the specific sites of the County's 12 landfills (majority opn, at 778-779, and n 2). On this assumption, it seems to suggest that the case should come within the site-specific decisions where the environmental effect obviously depends on distance from the action and the "special injury" requirement is relevant.

But nothing in the record supports the majority's assumption. The Plastics Law is not simply a regulation of landfills (majority opn, at 778-779).[9] The Plastics Law establishes a set of comprehensive regulations for all of the residents of Suffolk County which assertedly will produce, as the Appellate Division noted, a "broad range of potential environmental harms" (154 AD2d, at 182). The prospects of contamination of the County's drinking water, increased air pollution and a greater production of solid waste certainly pose the threat of serious environmental harm to every resident. It is not clear whether the majority would grant SEQRA standing based, for example, on the threat of pollution to the Magothy aquifer to someone living near a landfill and deny standing for someone having the same complaint but living some distance away. If this is its position, the majority does not explain why this should be so.

Finally — although the relevance is far from clear — the majority opinion alludes to "misus[e of] the statute to delay or defeat governmental action and thereby advance ends outside the legislative purview" (majority opn, at 778) and stresses the danger of allowing challenges by "pressure groups, motivated **[*792]** by economic self-interests, to misuse SEQRA for such purposes" (*id., at 774*; ***[***1053]*** *see also*, reference to SEQRA challenges "made by pressure **[**797]** groups seeking to delay or defeat action in order to further their own economic interests", *id., at 779*; *and see*, quoted language from *Matter of Sun-Brite Car Wash v Board of Zoning & Appeals*, majority opn, at 779). If there is some unintended implication from these comments that plaintiffs have not proceeded in good faith, the record must be set straight. There is no evidence of plaintiffs' lack of good faith. No such charge is made. Indeed, plaintiff Wittman & Co. does not produce any of the banned plastic products and alleges no economic injury resulting from the challenged law. It alleges only environmental harm.

The majority also depicts plaintiffs as "for-profit member corporations [engaged] in the business of making and selling plastics products, entities whose economic interests are not served by bans on plastics products." (Majority opn, at 776.) Again, the relevance is not apparent. The issue here is whether plaintiffs have alleged

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an environmental injury that brings them within the zone of interest to be protected (*see*, *Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency*, supra, at 433). Irrespective of whether the law's challengers might be plastics manufacturers or basket weavers, they could be affected in the same way by the area-wide environmental harm which will allegedly result from the Plastics Law. Of course, it does not matter for standing purposes that plaintiffs may also suffer economic injuries in addition to environmental harm. This is well settled (*see*, *Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency*, supra, at 433, and cases there cited).

V

There remains the question: what is the precise rule under which the majority has dismissed on standing grounds plaintiffs' substantial claims of environmental harm resulting from an action pertaining to the entire County? Is the rule that for persons to have SEQRA standing they must *invariably show* special damage that is "different in kind or degree from the public at large" (majority opn, at 778) even if, as I submit is true here, the damage complained of is countywide and undifferentiated? If that is the rule, it poses a logical paradox. A person's environmental injury cannot be both the same as that of the neighbors and yet different from that of the **[*793]** community at large. In the hypothetical case of the local law permitting residents to throw garbage in the streets, *no one* could have standing for *everyone* would have essentially the same complaint.

Does the majority's "special injury" rule operate differently — as the majority suggests it might (majority opn, at 779) — when the environmental harm suffered by a resident is not 100% general and diffused but consists in some part of harm that is site-specific and localized? If this is so, the question is why, if residents have entirely legitimate claims of general and diffused harm from an area-wide action, should they be barred from bringing a lawsuit because there may be other incidental localized effects from which they cannot show special injury?

Does the application of the rule depend in some way on the identity of the objector rather than on whether the injury objected to is within the zone of interest? Scattered comments in the majority writing (*e.g.*, referring to plaintiffs as "for-profit member corporations in the business of making and selling plastics products" [majority opn, at 776] and to "pressure groups seeking to delay or defeat action in order to further their own economic interests" [*id., at 779*]) suggest that perhaps this is so: that a "pure plaintiff" with no incidental economic interests might have standing even for environmental injury which is not different in kind or degree from the community at large. Again, if such factors are **[***1054]** significant, the majority does not explain why access to the courts should be foreclosed **[**798]** to parties which have legitimate environmental claims because they also have economic motives or possess other characteristics which do not affect the nature or degree of their environmental harm.

Satisfactory answers to these questions do not appear, at least for me, and, I suspect, might not appear for the guidance of persons who, like plaintiffs, may have interests which are both economic and environmental. But whatever the precise formulation, the new standing rule will undeniably make review of a municipality's compliance with SEQRA more difficult. SEQRA was enacted as remedial legislation to further the significant public interest in preserving the environment with the idea that the law's enforcement would, at least in part, depend on actions brought by interested citizens. Creating an additional standing barrier to such actions undercuts this concept. It also seems contrary to the policy stated in **[*794]** our decisions that the standing

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requirements should be relaxed, not tightened, to the end that controversies should be decided on the merits (*see*, *Matter of Douglaston Civic Assn. v Galvin*, 36 NY2d, at 6, *supra*; *see also*, *Matter of Dairylea Coop. v Walkley*, supra, at 10-11). Ironically, by disposing of this case on standing grounds without addressing the merits, the majority leaves intact a governmental action which may present significant area-wide environmental problems, an action which was taken in blatant disregard of the environmental protections which SEQRA affords.

For the foregoing reasons, I dissent and would affirm the order of the Appellate Division.

Chief Judge WACHTLER and Judges ALEXANDER and BELLACOSA concur with Judge KAYE; Judge HANCOCK, JR., dissents and votes to affirm in a separate opinion in which Judges SIMONS and TITONE concur.

Order reversed, etc.

*fn*1. The dissent is simply wrong in its assertions that special harm has never before been required in a SEQRA challenge to administrative action. Most pointedly, the dissent would rewrite this Court's unanimous decision of barely a year ago, *Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency* (76 NY2d 428), a SEQRA challenge to administrative action in which we made clear — following immediately upon our discussion of the requirement of "special damages" (meaning injury that is different in kind and degree from the community generally) — that Mobil had to "demonstrate that it has suffered special injury before it can be accorded standing to challenge SIDA's review of the project." (76 NY2d, at 433.) Mobil, moreover, hardly involved a small, localized activity. The challenged action there concerned funding for a 50-acre development in downtown Syracuse.

*fn*2. The dissent's quotation from testimony of the Long Island Association Environment Committee — a business group — illustrates the point well. As the Committee wrote: paper wrappings release "`all of [their] chemicals into the landfill, causing a leachate run-off and contaminating the landfill and other nearby areas. The non-biodegradable plastic wrapping which it is replacing does not disintegrate, thus allowing no chemicals to be released into the landfill at anytime.'" The landfills are plainly the focus of the quotation. (Dissenting opn, at 783.)

*fn*3. As the Supreme Court observed in another connection, citizens dissatisfied with legislative action also "need not overlook the availability of the normal democratic process." (*Warth v Seldin*, 422 US 490, 508, n 18.)

DISSENTING OPINION FOOTNOTES

*fn*1. Because I believe that Wittman clearly has standing, I find it unnecessary to address the further issue of whether the Society of Plastics has standing (*see*, *infra*, at 785, n 4).

*fn*2. (*See*, 6 NYCRR 617.2 [b] [3] [definition of "action" specifically includes local laws]; *Matter of Niagara Recycling v Town Bd.*, 83 AD2d 335, 340[Hancock, Jr., J.], *affd*56 NY2d 859.)

*fn*3. The majority goes to some length to imply that the Plastics Law is environmentally sound (majority opn, at 780), while at the same time emphasizing that the merits of the legislation are irrelevant to its standing analysis (*id., at 780*). Suffice it to say, that any implication that there are not two tenable sides to the issue is clearly at odds with the Appellate Division's unanimous agreement with Supreme Court that "the record supports the conclusion that the Plastics Law, once it becomes effective, may *have a serious impact*

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*on * * * the ecology"*. (Emphasis added.) Nowhere does the majority take issue with this conclusion or with the lower courts' ultimate holding (with which I agree) that the law was passed in outright disregard of SEQRA and that these environmental effects required the preparation of an EIS.

*fn*4. In its original answer, the County did not raise the issue of plaintiffs' standing to contest its SEQRA compliance. Supreme Court, however, permitted the County to amend its answer to include this defense and then dismissed the issue noting that plaintiffs "may suffer environmental as well as economic injury if an ill-conceived solid waste disposal plan affects the water supply of Long Island" and holding that plaintiffs Lawrence Wittman & Co., a local business and employer and resident of Copiague, Suffolk County, and the Society of Plastics, which has some Suffolk County residents as members, "alleged environmental injury, and they have standing to challenge the SEQRA determination of the County." Although the standing question was raised in the Appellate Division, that court summarily disposed of it without comment in its affirmance of Supreme Court.

*fn*5. This Court's adherence to the compelling public policies underlying SEQRA (*see*, Weinberg, 1988 Practice Commentaries, McKinney's Cons Laws of NY, Book 17½, ECL C8-0109:4, 1991 Cum Ann Pocket Part, at 27) has been demonstrated repeatedly (*see, e.g.*, *Chinese Staff & Workers Assn. v City of New York*, 68 NY2d 359 [Court halted construction of high-rise development for noncompliance with SEQRA]; *Matter of Tri-County Taxpayers Assn. v Town Bd.*, 55 NY2d 41 [Court nullified resolutions pertaining to sewer district because of SEQRA violation]; Weinberg, 1987 Survey of New York Law: Environmental Law, 39 Syracuse L Rev 279, 283-286). The Court has given expression to this commitment in its rule that the mandates of SEQRA require strict or literal compliance (*see*, *Matter of Har Enters. v Town of Brookhaven*, 74 NY2d 524, 528-529; *Matter of Coca-Cola Bottling Co. v Board of Estimate*, 72 NY2d 674, 679-680; *Matter of Save the Pine Bush v City of Albany*, 70 NY2d 193, 206-207; *Matter of Niagara Recycling v Town Bd.*, 83 AD2d 335, 340[Hancock, Jr., J.], *affd*56 NY2d 859; *see also*, *Matter of Rye Town/King Civic Assn. v Town of Rye*, 82 AD2d 474, 482, *appeal dismissed*56 NY2d 985). This same commitment is reflected in standing decisions involving SEQRA challenges.

*fn*6. The author writes (56 NYS BJ, at 17): "The New York courts grant broad but not unlimited standing to parties to raise SEQRA issues. New York's courts generally have a liberal view on standing based upon the `zone of interest' test. The courts have almost uniformly found that citizens groups, and potentially effected neighbors have standing to challenge SEQRA determinations of state or local agencies." (*See cases cited* id., at 17, n 16.)

*fn*7. The position of the dissent, of course, is *not* that New York courts have never before applied a "special harm" requirement to "a SEQRA challenge to administrative action" (majority opn, at 775, n 1) or that the "special harm" rule should be limited only "to zoning laws" (*id., at 780*). This "special harm" rule has been and should be applied where the action challenged is localized or geographically centered. We maintain that no New York court has ever before applied a "special harm" requirement to a challenge on SEQRA grounds to a local law of area-wide effect by a resident directly affected by that law. The majority has cited no such case.

*fn*8. The majority states that "the dissent would rewrite this Court's unanimous decision of barely a year ago, *Matter of Mobil Oil Corp.* " (majority opn, at 775, n 1). But this is plainly not so. The position of the dissent and the rule it urges here is entirely consistent with *Mobil*. The simple holding in *Mobil* was this: "To qualify for standing to raise a SEQRA challenge, a party must demonstrate that it will suffer injury that is environmental and not solely economic in nature [citations omitted] * * * Mobil has not alleged that it will suffer any specific environmental harm. * * * Mobil therefore *lacks standing to challenge* the adequacy of SIDA's review of the Carousel Center project." (76 NY2d, at 433 [emphasis added].) Here, of course, unlike *Mobil Oil Corp.*, plaintiffs have alleged environmental harm and satisfy the above requirement.

*fn*9. Indeed, the majority opinion itself earlier describes "[t]he heart of the Plastics Law [a]s section 3, prohibiting *retail food establishments* in Suffolk County from selling or conveying food * * * `unless * * * placed * * * in biodegradable packaging'" (*id., at 766*) and notes that the law was directed towards "encourag[ing] recycling of solid waste products, provid[ing] enhanced protection of

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groundwater quality, slow[ing] down rapid filling of landfill space, simplify[ing] the chemical composition of solid waste and thereby reduc[ing] the environmental hazards and toxicity associated with solid waste incineration, and reduc[ing] the cumulative impact of litter." *(Id.)*

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