

At a Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District, at the Cortland County Courthouse, in the City of Cortland, New York, on the 24th day of March, 2023.

PRESENT: HON. MARK G. MASLER
Justice Presiding.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF TOMPKINS

In the Matter of the Application of

SENECA LAKE GUARDIAN,

Plaintiff-Petitioner,

against

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION and COUNTY LINE MRF, LLC,

Defendants-Respondents.

DECISION, ORDER, AND JUDGMENT

Index No. EF2022-0533
RJI No. 2022-0458-M

APPEARANCES:

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CI2023-08054

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MARK G. MASLER, J.S.C.

Plaintiff-petitioner Seneca Lake Guardian (petitioner) is a domestic not-for-profit corporation organized for the purpose of “preserving and protecting the health of the Finger Lakes, its residents and visitors, its rural community character, and its agricultural and tourist related businesses” (NY St Cts Elec Filing [NYSCEF] Doc No. 6, Taylor aff ¶ 2). Petitioner commenced this combined CPLR article 78 proceeding and action for declaratory judgment on October 13, 2022, seeking to challenge the issuance of a solid waste management permit by defendant-respondent New York State Department of Environmental Conservation (DEC) to defendant-respondent County Line MRF, LLC (County Line) in June 2022 (collectively the respondents). The DEC permit specifically authorizes County Line to build and operate a solid waste materials recovery facility in the Town of Cayuta, Schuyler County (the recovery facility), accept up to 500 tons of solid waste per day for sorting and processing, sell recovered recyclable materials, and dispose of all remaining solid waste at a facility authorized by the DEC to receive such waste. As relevant herein, the recovery facility is expected to produce approximately 80 gallons of liquid waste per day (the wastewater), which the permit requires be collected onsite and transported to a wastewater treatment facility (*see* NYSCEF Doc Nos. 5, 11 at 24). The permit application indicated that the wastewater would be taken to “Tompkins County Water Treatment” (*see* NYSCEF Doc No. 11 at 24), which is located in Ithaca, New York and discharges into the southern end of Cayuga Lake.¹ Petitioner contends that, in issuing the permit, the DEC failed to take steps necessary to ensure that the wastewater will not introduce

¹ The parties agree that the facility referred to in the application as Tompkins County Water Treatment is actually the Ithaca Area Wastewater Treatment Facility. The court takes judicial notice that it is located on the east side of the Cayuga Inlet in the City of Ithaca, and that it discharges treated wastewater into the southern end of Cayuga Lake.

per- and polyfluoroalkyl substances (PFAS) into Cayuga Lake. Before answering, respondents each moved to dismiss the petition on the ground that petitioner lacks standing (*see* CPLR 3211 [a] [3]; 7804 [f]).

Standing is a threshold requirement for a petitioner seeking to challenge governmental action (*see New York State Assn. of Nurse Anesthetists v Novello*, 2 NY3d 207, 211 [2004]).

“For an organization to have standing to bring a CPLR article 78 proceeding challenging administrative decision making, it must show that one or more of its members would have standing to sue, 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 and that neither the asserted claim nor the appropriate relief requires the participation of the individual members” (*Matter of Clean Water Advocates of N.Y., Inc. v New York State Dept. of Env'tl. Conservation*, 103 AD3d 1006, 1007 [2013] [internal quotation marks, brackets, ellipses, and citations omitted], *lv denied* 21 NY3d 862 [2013]).

Thus, to establish standing petitioner must show that at least one of its members “will suffer direct harm, injury that is in some way different from that of the public at large” (*id.* [internal quotation marks and citations omitted]). Moreover, “the injury must be more than conjectural” and “may not depend upon speculation about what might occur in the future, but must consist of cognizable harm, meaning that a petitioner *has been or will be* injured” (*Matter of Brennan Ctr. for Justice at NYU Sch. of Law v New York State Bd. of Elections*, 159 AD3d 1299, 1300-1301 [2018] [internal quotation marks, brackets, and citations omitted], *lv denied* 32 NY3d 912 [2019]; *accord Matter of Long Is. Pure Water, Ltd. v New York State Dept. of Health*, 209 AD3d 1128, 1130 [2022]). Respondents contend that petitioner has failed to meet this burden because the harm alleged is too speculative to demonstrate a specific injury-in-fact.

Petitioner asserts that (1) the wastewater generated by the recovery facility is likely to contain PFAS; (2) County Line intends to dispose of the wastewater at the Ithaca Area Wastewater Treatment Facility, which is neither equipped to process nor authorized to discharge

PFAS; and (3) Cayuga Lake will be contaminated by PFAS remaining in the treated wastewater when it is discharged from the Ithaca Area Wastewater Treatment Facility. Petitioner identifies three of its members that it asserts would have standing to sue because they reside near Cayuga Lake; obtain their drinking water from Cayuga Lake; use Cayuga Lake for recreational purposes, such as swimming, paddleboarding, kayaking, and fishing; and that such uses would be impaired by the presence of PFAS in the lake water.²

Notably, petitioner concedes that it cannot provide evidence showing the presence of PFAS in the wastewater produced by County Line, because the recovery facility is not yet operating (*see* NYSCEF Doc No. 4, petitioner's mem in support, n 1). Nor has petitioner established that wastewater produced by County Line will be accepted by the Ithaca Area Wastewater Treatment Facility, or that if it does, PFAS will be discharged into Cayuga Lake. Accordingly, the harm alleged by petitioner is too speculative to confer standing.³

Finally, even if it is assumed that PFAS will be released into Cayuga Lake as a result of wastewater produced at the recovery facility, the type of harm that would allegedly be suffered by petitioner's members is not sufficient to confer standing. It is well-settled that allegations

² Of these three, one member owns real property adjoining the lake and obtains drinking water directly from it via beach wells; the other two members receive municipal water from the Southern Cayuga Lake Intermunicipal Water Commission, known as Bolton Point.

³ The speculative nature of the alleged harm is further apparent from the modest discharges attributable to the recovery facility – of 80 gallons per day – and the distance at which the members are located from Ithaca Wastewater Treatment Facility discharge point near the southern end of Cayuga Lake. The court takes judicial notice that the Bolton Point municipal water source is located approximately four miles north of the southern end of Cayuga Lake, and the other locations that were specifically identified – Myers Park, North Point, Long Point State Park, and the home of Mitchell Lavine – are located more than five miles from the southern end of Cayuga Lake. There was no proof that any PFAS that may be included in the modest average daily discharges attributable to the recovery facility could travel such distances in detectable quantities.

that a person’s use of a public body of water as a source of potable water and for recreational purposes will be impaired “are merely generalized claims of harm no different in kind or degree from the public at large, which are insufficient for standing purposes” (*Matter of Schulz v Warren County Bd. of Supervisors*, 206 AD2d 672, 674 [1994] [citation omitted], *lv denied* 85 NY2d 805 [1995]; accord *Matter of Clean Water Advocates of N.Y., Inc. v New York State Dept. of Env’tl. Conservation*, 103 AD3d at 1008-1009).

Based upon the foregoing, respondents’ motions are granted and the petition is hereby dismissed.

This decision constitutes the order and judgment of the court. The filing of this decision, order, and judgment, or transmittal of copies hereof, by the court shall not constitute notice of entry (*see* CPLR 5513).

Dated: April 19, 2023
Cortland, New York

ENTER



Digitally signed by Hon.
Mark G. Masler
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O=Sixth Judicial District,
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HON. MARK G. MASLER
Supreme Court Justice

The following documents filed with the Clerk of the County of Tompkins via New York State Courts Electronic Filing System were considered on these motions (*see* CPLR 2219 [a]):

Document Numbers 1-3; 5-21; 24; 35; 38-41; 44; 46.