

Wading Into NY Wetland Regs' 2025 Changes And Challenges

By **Noah Shaw, Sarah Main and Elza Bouhassira** (November 12, 2025)

Over the last year, the New York state wetlands permitting and statutory regime has been flooded with activity as the impacts of the 2022 statutory amendments ripple outward.

The 2022 changes were amendments to New York State Environmental Conservation Law, Article 24, the Freshwater Wetlands Act, expanding the authority of New York State Department of Environmental Conservation to regulate wetlands.

On Jan. 1, NYSDEC's new wetlands regulations came into effect at Title 6 of the New York Codes, Rules and Regulations, Part 664. In April, four lawsuits were filed challenging the 2022 changes and the regulations.

In mid-July, NYSDEC issued the Solar Photovoltaic Projects General Permit GP-0-25-004, which incorporates the new regulations and facilitates the construction of solar projects with a nameplate generating capacity of no more than 25 megawatts within or near state-regulated freshwater wetlands, regulated adjacent areas and protected waterbodies.[1]

In late September, Republican state legislators filed four amicus curiae briefs in the lawsuits challenging the statutory and regulatory changes.[2]

Taken together, these events reflect a potentially tidal shift in New York state wetlands rules, though the exact direction of the current remains unclear, pending the litigation.

If the litigation entirely or partially rolls back the 2025 regulations, fewer properties could require Article 24 authorization. This means the general permit could see less use. On the other hand, if the regulations are upheld, qualifying solar projects may find the general permit to be a powerful tool that simplifies their permitting process.

April: Four Lawsuits Filed

The four cases were brought by local governments, trade groups, nonprofits and individuals. One was filed on April 18 in Chautauqua County; the others were filed April 30 in Albany County. They are Chautauqua Lake Property Owners Association v. State of New York, Business Council of New York State v. NYSDEC, Chautauqua Lake Partnership Inc. v. NYSDEC and Village of Kiryas Joel v. NYSDEC.[3]

The April 30 cases target the 2025 regulations; the April 18 case brought by the Chautauqua Lake Property Owners Association challenges both the regulations and the 2022 amendments.

Generally, the petitioners argue that landowners face increased uncertainty, new regulatory



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burdens and a restriction of property rights. They argue that residential uses would be subject to a complex regulatory process and that commercial and industrial projects will slow, harming municipal tax bases.

More specifically in *Village v. NYSDEC* and *Business Council v. NYSDEC*, the petitioners claim that the rules impede the governor's affordable housing mandate by reducing developable land. In *Chautauqua Lake Partnership v. NYSDEC* and *Chautauqua Property Owners v. New York*, the petitioners state that the new regulations grant NYSDEC authority over water bodies and adjacent lands that do not match the traditional concept of a wetland. They argue that:

- There would be duplication of required permits, creating new burdens for landowners;
- Lakefront properties would be regulated for improvements like driveway modifications, decreasing property values;
- Recreational and tourist activities would be limited, harming local economies; and
- Routine activities like invasive species control would be restricted, affecting lake health.

July: Solar Photovoltaic Projects General Permit Issued

The general permit allows certain construction activities for solar projects with a nameplate generating capacity of no more than 25 megawatts under a defined set of conditions, in lieu of project-specific individual Article 24 or 15 permits.[4]

The general permit underwent revisions by NYSDEC in response to public comments. According to NYSDEC, the final general permit balances the state's renewable energy goals with its obligation to ensure environmental resource protection.[5]

What the General Permit Covers

The general permit became effective this July 15 and will expire July 14, 2030. It authorizes five specific activities related to the construction and operation of solar projects 25 MW or less.

Authorized Activity 1

The permit authorizes construction of temporary and permanent access roads and associated vegetation clearing, subject to certain conditions. For example, construction of access roads in wetland-adjacent areas must be minimized to the maximum extent practicable.

Authorized Activity 2

The permit allows construction of power interconnections and collection lines, subject to requirements to minimize impacts to freshwater wetlands to the maximum extent practicable by locating all lines within or immediately adjacent to permanent access roads.

Authorized Activity 3

This authorizes construction of solar infrastructure on existing paved areas, parking lots and other structures in adjacent areas.

Authorized Activity 4

This allows vegetation clearing, ground disturbance and installation activities in freshwater wetlands that are under active agricultural use and in adjacent areas necessary for solar facility construction.

Authorized Activity 5

This authorizes freshwater wetland mitigation activities to offset any unavoidable impacts associated with Authorized Activity 1 (construction of temporary and permanent access roads).

The general permit also requires plans for wetland mitigation, vegetation enhancement, decommissioning and site restoration, stormwater management, and species protection.

What the Solar General Permit Does Not Cover

The general permit does not apply to solar projects on certain lands, such as those within Indian Nations, under the jurisdiction of the Adirondack Park Agency or regulated by the Coastal Erosion Hazard Areas Law.

The general permit is also inapplicable to solar projects located within vernal pools or their adjacent areas, nutrient-poor wetlands or their adjacent areas, and sites undergoing remediation under an environmental remediation program pursuant to Title 6 of the New York Codes, Rules and Regulations, Section 375.

The permit also excludes activities that would have adverse historic, archeological or cultural impacts; activities requiring an individual permit from the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act; and activities that require a permit for the incidental taking of endangered or threatened species pursuant to Title 6 of the New York Codes, Rules and Regulations, Section 182.

While the general permit aims to maintain protections for wetlands and waterbodies, NYSDEC can still require individual permits for projects that do not qualify for the general permit or if site-specific concerns arise.

September: Four Amicus Briefs Filed

The four amicus briefs were filed in the above-referenced lawsuits by nine Republican members of the New York State Assembly and one Republican state senator. The briefs are largely identical.

The briefs argue that NYSDEC's regulatory interpretation of the 2022 statutory amendments unlawfully extends wetlands jurisdiction beyond the statute. The petitioners urge the court to annul the new wetlands regulations at Part 664. They focus in particular on how the regulations expand into waters not traditionally considered wetlands based on unusual importance factors that amici argue only apply to wetlands below 12.4 acres.

Looking Ahead: Implications of the General Permit and the Litigation

The general permit allows developers of qualifying projects, as discussed above, to follow the general permit's standards and conditions rather than obtaining an individual permit.[6] The general permit is meant to reduce case-by-case review and enable more predictable project timelines, but NYSDEC must ultimately agree on the extent of their jurisdiction over the proposed activity and affected waterbody.

During the public comment period, developers and industry groups expressed concern that the new regulations could stall solar development in the state. NYSDEC revised the draft general permit to incorporate feedback. Notably, the general permit now incorporates some of the substantive standards proposed by the industry, but does not, for example, adopt wetland mitigation standards required by the Office of Renewable Energy Siting, or ORES, as some commenters had suggested.[7]

For 20 to 25 MW projects that opt into the Article VIII permitting process, it is uncertain whether applicants can take advantage of the general permit as a means of complying with Article 15 and 24 of the Environmental Conservation Law. NYSDEC proposed that the draft general permit would not apply to solar projects regulated under Public Service Law Article VIII nor the prior Executive Law 94-C; however, such express exclusionary language does not appear in the final general permit.

As an Article VIII siting permit incorporates permit standards and conditions to comply with the Environmental Conservation Law's Articles 15 and 24, Article VIII opt-in applicants will likely need to continue complying with ORES' wetland mitigation requirements unless and until ORES adopts regulations that align their wetland standards for opt-in projects with those of the general permit. Thus, the time-saving benefits of the general permit may primarily benefit solar projects of 25 MW and less that are permitted locally and require NYSDEC permits, rather than those projects that opt into ORES' streamlined permitting process.

The general permit could be affected by the litigation. Generally, if the court accepts the petitioners' arguments in the litigation, NYSDEC's Article 24 reach would narrow. The extent of that narrowing could vary greatly.

If the courts accept the petitioners' arguments to their fullest extent in *Chautauqua Property Owners v. New York* and set aside the statutory amendments and regulations, there could be dramatic changes to the wetlands legal regime, as the modifications made over the last three years would no longer be in effect.

Any rulings curtailing NYSDEC's authority in a more limited fashion, whether that would be a full or partial rollback of the 2025 regulations, could reduce the number of sites needing Article 24 authorization, and thus the practical relevance of the general permit could shrink.

Rulings upholding NYSDEC's approach would make the general permit an increasingly useful streamlined permitting scheme for qualifying solar projects.

Whether the statutory amendments, new regulations and the general permit continue as they are turns on the pending cases. In the meantime, community and distributed solar developers should consider the general permit standards early on in their design process to determine whether avoidance or minimization allows coverage under the general permit.

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[1] New York State Department Of Environmental Conservation, General Permit GP-0-25-004, available at <https://dec.ny.gov/sites/default/files/2025-07/sppgp025004.pdf>.

[2] Jonathan Whittaker, GOP Lawmakers File Wetlands Lawsuit Brief, The Post-Journal (Sept. 27, 2025), <https://www.post-journal.com/news/top-stories/2025/09/gop-lawmakers-file-wetlands-lawsuit-brief/>.

[3] Chautauqua Lake Property Owners Association Inc. v. State of New York, Index No. 903982-25 (Sup. Ct. Albany Cnty.) (filed April 18, 2025); Business Council of NYS Inc. v. NYSDEC, Index No. 904423-25 (Sup. Ct. Albany Cnty.) (filed April 30, 2025); Chautauqua Lake Partnership Inc. v. NYSDEC, Index No. EK12025000628 (Sup. Ct. Chautauqua Cnty.) (filed April 30, 2025); Village of Kiryas Joel v. NYSDEC, Index No. 904424-25 (Sup. Ct. Albany Cnty.) (filed April 30, 2025).

[4] New York State Department Of Environmental Conservation, Solar Photovoltaic Projects General Permit, GP-0-25-004, <https://dec.ny.gov/regulatory/permits-licenses/general-permits/solar-photovoltaic-projects-general-permit-gp-0-25-004> (last accessed Nov. 5, 2025).

[5] New York State Department Of Environmental Conservation, DEC Releases Draft General Permits for Certain Activities in Wetland Areas (Feb. 5, 2025), <https://dec.ny.gov/news/press-releases/2025/2/dec-releases-draft-general-permits-for-certain-activities-in-wetland-areas>.

[6] New York State Department Of Environmental Conservation, DEC Finalizes Regulations to Protect Freshwater Wetlands (Dec. 31, 2024), <https://dec.ny.gov/news/press-releases/2024/12/dec-finalizes-regulations-to-protect-freshwater-wetlands>.

[7] New York State Department Of Environmental Conservation, Response to Comments Solar Photovoltaic Projects (Less than 25 MW) General Permit GP-0-25-004 (July 15, 2024), https://dec.ny.gov/sites/default/files/2025-07/sppgp025004_respcomments.pdf.