

# Sand and Gravel Mine Expansion/Zoning Law: New York Appellate Court Addresses Preemption Issue (CORRECTION/ADDITION)



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Ms. Maureen Wren, Director of Media Relations of the New York State Department of Environmental Conservation (“NYS DEC”) noted a needed correction and addition to this post.

Ms. Wren stated the post should have indicated that the New York Appellate Division 3d Department, as opposed to the Court of Appeals, issued the May 27th Decision. Further, she noted that a stay was put in place by the State of New York filing its intention to appeal. Finally, Ms. Wren provided a full statement that was issued by NYS DEC which reads as follows:

New York State has filed a notice of intent to appeal the recent Third Department court decision to ensure DEC has the clarify needed to carry out and enforce the state’s stringent mineral resources laws and regulations. The filing of the notice of intent to appeal stays and suspends the Third Department decision and remedy until the appeal is resolved. The stay currently remains in place. DEC will continue our aggressive oversight and monitoring of the facility to ensure the ongoing protection of water quality and the environment.

The New York Court of Appeals (“Court”) in a May 27th Decision addressed issues associated with the application of a Town’s zoning law to the expansion of a sand and gravel mine. See *In the Matter of Town of Southampton, et al. v. New York State Department of Environmental Conservation, et al.*, 2021 NY Slip Op 03351.

The question addressed was whether the New York Mine Land Reclamation Law (“Reclamation Law”) preempted a local zoning law.

The Decision arose out of the Sand Land Corporation (“SLC”) application to the New York State Department of Environmental Conservation (“DEC”) for a permit modification of its sand and gravel mine (“Mine”). The permit modification sought a vertical and horizontal expansion involving 4.9 acres.

DEC and SLC subsequently settled certain administrative proceedings. DEC agreed to issue a renewal permit for an expanded life of the Mine boundaries and process the permit modification application. The renewal permit with the modification was issued in 2019.

The Court in considering whether DEC violated the Reclamation Law noted that the agency has broad authority to regulate the mining industry. Further, it noted that the New York Legislature:

. . . sought to achieve these purposes through "the adoption of standard and uniform restrictions and regulations to replace the existing patchwork system of local ordinances."

Such uniformity is stated to have been accomplished through an express supersession clause, which provides:

. . . that the Mined Land Reclamation Law shall supersede all "local laws relating to the extractive mining industry."

Nevertheless, the Court stated that the Reclamation Law does not supersede all local laws. It noted that prior judicial decisions had clarified the applicability of this clause and differentiated between:

. . . local laws pertaining to the actual operation and process of mining, which were subject to the clause, and other local laws, which fell outside its preemptive orbit.

The Court further decided that such an interpretation would drastically curtail a Town's power to adopt zoning regulations granted by state law. In addition, it noted that the statute was limited to Long Island because of that geographic area's dependency on the source aquifer for drinking water.

A copy of the Decision can be downloaded [here](#).