

**STATE OF NEW YORK
SUPREME COURT COUNTY OF WARREN**

**In the Matter of an Application of
THE LAKE GEORGE ASSOCIATION,
THE LAKE GEORGE WATERKEEPER,
THE TOWN OF HAGUE, AND HELENA G. RICE,**

Petitioners,

VERIFIED PETITION

-against-

Index No.:

**THE NYS ADIRONDACK PARK AGENCY,
THE LAKE GEORGE PARK COMMISSION, AND
THE NYS DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,**

Respondents,

**For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.**

**Petitioners The Lake George Association, the Lake George Waterkeeper, The Town of
Hague, and Helena G. Rice by their attorneys, FitzGerald Morris Baker Firth, PC,
respectfully allege:**

- 1. This Petition is brought pursuant to CPLR Article 78 for judicial review of a
failure of the NYS Adirondack Park Agency (“APA or “Agency”) to comply
with substantive and procedural requirements of its enabling laws and
companion regulations; to wit, the Adirondack Park Agency Act (Executive
Law, Article 27), New York’s Freshwater Wetland Act (ECL, Article 24), and
the Agency’s officially promulgated regulations at 9NYCRR Parts 572 and
578 (Subtitle Q). In summary, in what appears to be behind the scenes
decision-making, the Respondents orchestrated a rushed process to approve**

the use of a herbicide in Lake George despite an outpouring of technical and scientific opposition, procedural errors and a substantial departure from the regulatory requirements of the enabling statutes for the involved agencies including in this case an on-going 3+ decade long non-chemical management of the subject invasive species as a viable, reasonable alternative so aptly raised numerous times in the public comment processes.

2. Relief is sought pursuant to CPLR 7803(3) on the grounds that the actions, or lack thereof, of the NYS Adirondack Park Agency were made in violation of the APA Act and its companion regulations and must be annulled. Relief is also sought on the grounds that respondent APA was in violation of lawful procedure, erroneously applied the law, was arbitrary and capricious, abused its discretion, and on other grounds set forth below.

I. VENUE

3. Venue is placed in Warren County pursuant to CPLR 506 as the real property subject of this action is located in that county; and all of Lake George and its surroundings environs are in the Adirondack Park wherein Respondent APA's enabling powers are limited to.

II. PARTIES

4. Petitioner, The Lake George Association ("the LGA"), which maintains an office at 2199A Route 9, Lake George, New York, is a not-for-profit corporation organized under the laws of the State of New York having as its principal purpose: "world-class science and freshwater research, public and private partnerships, community education, public policy advocacy and direct

investments in protection programs and activities to deliver unsurpassed level of care” for the protection of Lake George. As such, the LGA has the responsibility on behalf of its supporters to not only use science and research to guide solutions to safeguard Lake George and its basin, but also to assure the proper implementation of State laws, rules and regulations protecting this highly valuable resource and watershed. The LGA, founded in 1885 as the first lake conservation organization in the country, has nearly 3,700 individual supporting members, nearly all of whom reside or own property in the Lake George basin and participate in the recreational activities offered in that region and many utilize Lake George as a drinking water supply. Many of the LGA’s members are residents and landowners in the Towns of Hague, Putnam and Dresden.

5. Petitioner, the Lake George Waterkeeper (the “Waterkeeper”), also maintains an office at 2199A Rte 9, Lake George, New York, and is a program granted to the Lake George Association which has as its mission statement: “to defend the natural resources of Lake George and its basin for the common good of the community and the watershed.” This has been interpreted to include such activities as to protect and maintain the environmental health and aesthetic value of Lake George and its basin, to respond to citizens’ concerns, identify problems which affect Lake George, assure the proper implementation and enforcement of state and local laws, rules and regulations, assure the proper implementation and enforcement of state regulatory programs, and otherwise

- work to preserve the lake and its watershed. The Lake George Waterkeeper is Christopher Navitsky PE, a licensed professional engineer in New York State.
6. The Lake George Waterkeeper Program is a licensed program first granted to The FUND for Lake George by the Waterkeeper Alliance on June 12, 2002. On July 1, 2021, The FUND for Lake George merged with the Lake George Association. Waterkeeper Alliance is a global environmental movement uniting more than 200 Waterkeeper organizations around the world and focusing citizen advocacy on the issues that affect our waterways, from pollution to climate change to land use. Waterkeeper organizations combine firsthand knowledge of their waterways with an unwavering commitment to the rights of their communities and the rule of law.
7. Petitioner Town of Hague is a municipal corporation located in the County of Warren organized and established pursuant to the laws of the State of New York with a principal office located at 9793 Graphite Mountain Road, Hague, NY 12836. The Town Board's Resolution opposing approval of these two Applications for aquatic herbicide treatment in Lake George is attached as **EXHIBIT A**.
8. Petitioner Helena G. Rice is a winter resident of Tucson, Arizona, residing at 4634 N. Covey Lane. In the summer months, she resides at her family property located at 5235 Bluff Head Road, Huletts Landing, NY 12841. She has been a summer resident at this location for her entire life. Her summer residence is immediately adjacent to the proposed ProcellaCOR treatment area which was misleadingly called "Sheep Meadow Bay" by Respondents in public notices and other application materials. Her summer residence has three water intakes in the treatment area, 2200 feet of shoreline

on Lake George including a beach used by children, all immediately adjacent to the treatment area. Water used from the water intakes is utilized by her and her family for irrigation of gardens and potable purposes, among other uses.

9. Respondent NYS Adirondack Park Agency is an agency of the State of New York created pursuant to APA Act §803 (Executive Law Article 27). The APA approved the two Project Applications that this proceeding seeks to have annulled.
10. Respondent Lake George Park Commission (“LGPC”) is the applicant before the APA that was granted Permit approvals by the APA for the one- time, experimental application of the herbicide ProcellaCOR into Lake George at Sheep Meadow Bay and Blairs Bay both in the Town of Hague, Warren County (APA Project No. 2022-0003 and APA Project No. 2022-0004, respectively) for the intended purpose of eradicating Eurasian water milfoil. These two permit approvals are the crux of this litigation.
11. Respondent New York State Department of Environmental Conservation (“DEC” or “Department”) is an agency of the State of New York created pursuant to Environmental Conservation Law (“ECL”) Article 3. Its principal offices are located in the City and County of Albany, New York. The commissioner of DEC or his designee sits as a voting ex officio member of the APA Board. (see APA Act §803)

III. FACTS

12. The LGPC simultaneously filed two applications with the NYS Adirondack Park Agency (“APA” or “Agency”) on January 10, 2022 seeking two permits for the following activities:

“... the application of the aquatic herbicide ProcellaCOR EC ... in Sheep Meadow Bay for purposes of controlling Eurasian watermilfoil. In total, the permittee will apply up to 4.78 gallons of ProcellaCOR EC within a 3.6 – acre area in Sheep Meadow Bay; ...” (see Draft APA Permit 2022-0003 under “Project Description” attached hereto as **EXHIBIT B**).

and

“... the application of the aquatic herbicide ProcellaCOR EC ... in Blairs Bay for purposes of controlling Eurasian watermilfoil. In total, the permittee will apply up to 4.2 gallons of ProcellaCOR EC within a 4 – acre area in Blairs Bay; ...” (see Draft APA Permit 2022-0004 under “Project Description” attached hereto as **EXHIBIT C**).

13. Both applications were determined to be jurisdictional with the APA due to the proposed application of a herbicide in wetlands, a regulated wetland activity governed by Agency regulations at 9NYCRR Part 578.
14. Both Sheep Meadow Bay and Blairs Bay are located in Lake George, Town of Hague, Warren County.
15. Sheep Meadow Bay is a deep-water marsh wetland with a value rating of “3”. (see EXHIBIT B under “Project Site”).
16. Blairs Bay is a deep-water marsh with a value rating of “1”. (see EXHIBIT C under “Project Site”).
17. A value rating of “1” is the most protective rating available to wetlands given their unique wetland characteristics. In this case, Blairs Bay contains a recognized New

York State “threatened” plant species. (see Agency regulations at 9NYCRR §§578.4 through 578.6).

18. The Agency deemed both of the Applications as “complete” on March 3, 2022.

19. The Agency defines “applications completion” in its regulations as follows:

“The issuance of a notice of application completion shall mean that an application is in an approved form and is complete for the purpose of commencing review of the application. During the course of review, reasonable additional information may be required in order to enable the agency to make the findings and determinations required by the Adirondack Park Agency Act or these regulations.” (See 9NYCRR §572.8(d) under “Notice of application completion and advisory comments”)

20. This determination of completion of both Applications was noticed for public comments also on March 3, 2022.

21. This Public comment period for both Applications ended on March 31, 2022.

22. Petitioners Lake George Association (LGA) and the Lake George Waterkeeper jointly filed a 15- page comment letter concerning these two Applications on March 31, 2022. This comment letter starts off with the following position statement:

“The Lake George Association (‘LGA’) and the Lake George Waterkeeper (‘Waterkeeper’) have significant environmental and ecological concerns regarding the two proposed Applications submitted by the Lake George Park Commission to apply the aquatic herbicide ProcellaCOR™ EC in the two bays identified above. We understand the importance of invasive species management as we have been partners with the Lake George Park Commission (‘Commission’) for over 35 years working to control EWM and have spent over \$1.1 million since 2013 on this effort. However, these projects seek to **introduce a radical and high risk change in the current management approach, thereby setting a dangerous precedent for the future ecology of Lake George and possibly many other high quality and uniquely regulated waterbodies in the Adirondacks.**” (emphasis added)

“Consequently, the LGA and the Waterkeeper cannot support the use of ProcellaCOR, be it for testing purposes or otherwise, or any other aquatic herbicides in Lake George, until there are peer reviewed scientific studies demonstrating that ProcellaCOR’s effect upon the ecology of Lake George is negligible or nonexistent. As we will document herein, there are too many potential negative short- and long-term impacts and uncertainties surrounding

these Applications for herbicide use; uncertainties that can cause harm to this exceptional natural resource. Therefore these two Applications must be denied or, in the alternative, tabled indefinitely for time to provide adequate additional information intended to lead to a fully informed final Decision by the Adirondack Park Agency ('APA'). Obviously, the LGPC as Applicant, can always withdraw its Applications and work with other interested parties to establish a Long Term EWM Management Plan that is both safe and highly effective." (see 3/31/22 Comment Letter by the LGA and Lake George Waterkeeper attached hereto as **EXHIBIT D**).

23. Upon information and belief, the Agency received 325 comment letters; 300 in opposition to approval of these two Applications and 22 in support of approval - - overall, some 92% opposed to project approval. Upon information and belief, of the 22 comment letters in support of approval, seven (7) were from other Lake Associations, many of which, if not all, are at the pre-application stage and likely moving toward submission of a proposal for ProcellaCOR use for approval by Respondent APA.
24. Upon information and belief, all of these public comments were purportedly posted on the Agency's website for public review on or about April 1, 2022.
25. However, on April 6, 2022, Petitioners LGA and the Lake George Waterkeeper learned from Agency staff that their joint comment letter was inadvertently not posted with the other submissions. (Indeed, this same mishap apparently also occurred to another significant comment contributor and apparently happened to numerous other comments.) [see Affidavit of Navitsky at ¶ 7 and EXHIBIT 1 to that Affidavit]
26. Petitioner LGA's Council of Business Advisors also filed a comment letter to the Application Completion Notice by the March 31, 2022, deadline. (see **EXHIBIT E**,

- attached) Upon information and belief, Agency staff never posted this Comment Letter anywhere on the Agency's website with the other public comments.
27. In reviewing the Agency's public deliberations for approval of these two applications on April 14, 2022, which occurred as a remote meeting [see (http://nysapa.granicus.com/ViewPublisher.php?view_id=2), for a full display of these proceedings], staff stated that apparently a "SNAFU" had occurred "again" and some comments mistakenly went to "junk mail".
28. At the Agency deliberations of both these Applications on April 14, 2022, staff told the Board members that the Agency had received "176 comment letters ... 134 against (generated by LGA campaign) ... 24 others against and 18 in support." (see, <https://apa.ny.gov/Mailing/2022/04/Regulatory/P2022-0003-0004-Presentation.pdf>, Slide 102.
29. In reality, when the final tally was made after the so-called "SNAFU" was corrected, the actual number of comment letters, upon information and belief, were the 325 as set forth in paragraph no. 22 of this Petition, supra. These final numbers were reported by APA staff **after** the Agency had already voted to approve both applications.
30. At an undisclosed time somewhere on or after April 1, 2022, Agency staff asked the LGPC, as Applicant, to respond to the public comments. Since the correct number of public comments was not corrected until after April 14, 2022, the LGPC did not have all of the public comments available to it to make an informed response.

31. Upon information and belief, APA staff provided no written responses of their own to these public comments either for the benefit of Agency members as the decision-makers or those members of the general public who demonstrated interest.
32. The LGPC did in fact respond in writing to these public comments by memorandum dated April 6, 2022. (see **EXHIBIT F**, attached)
33. These LGPC April 6, 2022 responses are highly selective in the choosing of comments to respond to and, as one could only reasonably suspect, are completely biased toward application approval.
34. In furtherance of this bias, consider a portion of the LGPC's opening remarks to its April 6, 2022 "Response to Public Comments – ProcCellorCOR":

“The Commission is the New York State agency charged with the long-term protection of Lake George and its users, including invasive species management and prevention. This agency has managed Eurasian watermilfoil for more than three decades, always seeking to identify and implement the best practices and technology available, working in partnership with the NYS DEC and NYS Adirondack Park Agency.

The Commission has determined that it is in the best interest of Lake George to evaluate this new tool in the control of the invasive species Eurasian watermilfoil. The demonstration project in front of the Adirondack Park Agency represents a reasonable entry into the utilization of the low- impact, high-efficacy aquatic herbicide known as ProcellaCOR EC. Given the great success of the Minerva Lake treatment in Essex County in year 2020 (and many others), this herbicide shows great promise towards the Commission's three-decade battle against this invasive species. The NYS DEC has already granted permits for this Lake George demonstration project, and it is the Commission's hope that the Adirondack Park Agency also views this project favorably.”
35. Upon information and belief, the two draft APA permits (EXHIBITS B & C), one for each Bay where the herbicide treatment was to take place, were posted for public review on or about April 6, 2022, as well.

36. Upon information and belief, these two draft Permits prepared by APA staff recommending approval of both Applications were posted either the same day or within apparently a mere 24 hours after receiving Respondent LGPC's 11 page so-called "Response to Public Comments – ProcellaCOR".
37. Upon information and belief, the opportunity for additional public comments was established by APA staff sometime on or after receipt of Respondent LGPC's April 6, 2022 "Responses to Public Comment – ProcellaCOR".
38. This additional comment period had a cutoff date for submission of noon on April 13, 2022, or the day before Agency members were scheduled to entertain both applications for a final decision on permit issuance, i.e., April 14, 2022.
39. Petitioners LGA and the Lake George Waterkeeper did in fact jointly file comments on April 13, 2022 which were intended to "supplement (*their*) 3/31/22 public filing in response to the Completed Application notice." (see Petitioners LGA and the Lake George Waterkeeper's supplemental comment letter attached as **EXHIBIT G**)
40. The opening paragraph of this April 13, 2022 joint comment letter by Petitioners the LGA and the Lake George Waterkeeper addressed to the APA Chairman and Board members stated in pertinent part:

"... The objective of this submission is to bring to the attention of this Board procedural irregularities, legal issues and scientific responses to existing issues which still remain unsatisfactorily responded to by staff (or their representatives) or ignored. All of these responses, which we have done our best to keep abbreviated in volume, are intended to assist Board members in making inquiries to your staff as to why these Applications warrant conditioned approval at this time in light of programmatic and legal criteria to the contrary. For your convenience, we have highlighted all questions which we feel should be answered as part of final Decision-making for these two Applications." (see EXHIBIT G at page 1)

41. Petitioners LGA and the Lake George Waterkeeper ended their April 13, 2022

comment letter with the following statement:

“Again, in our opinion, Agency members only choices here have been articulated in our 3/31/22 comment letter under “IV. Conclusion” at pages 14 and 15. Approval of either draft Permit at this time is unacceptable. In order to deny these Permits, the Agency must convene an adjudicatory hearing (where an issues conference can pinpoint and limit what issues need to be explored) OR invoke 9NYCRR 572.8(d) [see *also* APA Act §809.2.b] to procure more information from the Applicant (although this option could have limitations due to regulatory timing requirements).”

“There is another option. We suggest this option in the spirit of compromise and a hearty offer of assistance to the LGPC who has been a colleague to us in our efforts to maintain and promote a healthy and unique natural resource. The option: the Applicant withdraws both applications for further study and research.” (see EXHIBIT G at page 11)

42. As further evidence of the rushed nature of this process and the fact that decision-making was a *fait accompli*, during this so-called APA public review process, Respondent LGPC, as Applicant, posted and circulated a “Request for Proposals” for aquatic herbicide applicators dated March 2, 2022.
43. This March 2, 2022 “Request for Proposals” was issued 2 days before the two Applications were deemed “complete” by the Agency.
44. This March 2, 2022 “Request for Proposals” by the LGPC states in relevant part:

“All necessary herbicide treatment permits from the NYS Department of Environment Conservation and the NYS Adirondack Park Agency have been received by the Commission and will be made available to the selected contractors.” (emphasis added)

The APA members voted to approve the project on April 14, 2022, some 43 days after this representation was made by Respondent LGPC. THE SCIENCE

45. Upon information and belief, Respondent LGPC, as the APA Applicant, used a professional applicator and Certified Lake Manager, i.e. SOLitude Lake Management, as its “agent” for these two Application submissions. (see Exhibit F,

second page under “Responses to Comments: Lake George Association/Waterkeeper”)

46. Petitioners LGA and the Lake George Waterkeeper provided public comments on the following scientific subject matter arguing that the current Applications lacked adequate information to make a fully informed decision regarding introduction of ProcellaCOR EC into the waters of Lake George, and, more specifically, Sheep Meadow and Blairs Bay:

- a) The circulation and hydrodynamics of Lake George will result in the wide-spread distribution of the herbicide well beyond the cited dilution zone in the current Applications.
- b) The ProcellaCOR label specifically limits the application of the product to slow-moving/quiescent waters with little or no continuous outflow. The modeling that was submitted by Respondents LGA and the Lake George Waterkeeper demonstrates that Lake George waters are not slow-moving and there is a continuous outflow at the north end of Lake George which is near to the proposed treatment areas. This amounts to a violation of the label restrictions in the use of this product in these two Bays located in Lake George. Subsequent to this modeling and the issuance of the permits challenged in this special proceeding, actual water velocity measurements have been taken in the treatment areas to verify this modeling. (see Navitsky Affidavit ¶¶ 12 & 13)
- c) Because of the verified flow rates in Lake George, the effectiveness of the proposed use of ProcellaCOR in Lake George will be greatly reduced by the strong currents and hydrodynamics of Lake George and is not a sensible management choice, especially considering the still unknown risks of this herbicide.
- d) The degradation of ProcellaCOR can potentially be very slow and what it degrades into remains longer than the primary compound and may be as toxic. This will result in the chemical being in the environment and non-target areas a much longer period of time than proposed.
- e) There are health concerns with the proposed use of ProcellaCOR, which are not readily identified or analyzed in these Application submissions.
- f) Herbicide treatment of Eurasian watermilfoil will result in significant nutrient loading from decomposing plants, especially phosphorus, that will cause algae growth and increase the potential for Harmful Algae Blooms.

(see, EXHIBIT D, pages 2 to 8)

47. Upon information and belief, other than what was provided by Applicant LGPC, none of these five (5) subject matters received any additional direct, substantive responses from anyone at the APA, both staff and Board members alike.
48. One set of public comments submitted by the 3/31/22 deadline was by Carol D. Collins, Ph.D. Dr. Collins is a limnologist and “developer of complex hydrodynamic models for Lake George and lakes worldwide ... *[she has]* led efforts for macrophyte management since the 80’s in Lake George and secured funding as Chair of The FUND for Lake George. (see Dr. Collins full set of comments attached as **EXHIBIT H**)
49. Dr. Collins begins her comments with the following overviews:
- a) “In reviewing the application, I find that the use of ProcellaCOR in Lake George is likely to have highly significant adverse impacts on the plant and animal communities, fisheries, water quality and drinking water. **The application is premature, rushed, absent of critical information, misleading and incomplete.** Given these problems, it is not possible at present to fully evaluate the impact ProcellaCor will have on the Lake George ecosystem. I strongly urge the Adirondack Park Agency to table this application and take the time to fully investigate the impacts of this toxin. Trials of this herbicide should not be conducted in the waters of Lake George that so many rely upon for drinking water, fishing and recreation until more information is available.” (emphasis added; see EXHIBIT H at page 1).
 - b) “The impacts of ProcellaCor on Lake George ecosystem cannot be scientifically evaluated given the following:
 - Limited APA application requirements,
 - Limited peer-reviewed toxicity testing, especially for native Lake George plants and animals,
 - Limited scope of impact analysis and disregard of native Lake George plants and animals,
 - Macrophyte survey methodology,

- Conflicts with USEPA label, including lake hydrodynamics and circulation,
 - Reliance on non-quantitative field trial observations,
 - Lack of monitoring data for algae, cyanobacteria, benthic invertebrates and zooplankton and impacts from the toxin, ProcellaCor.” (Id.)
- c) “It is highly recommended that the Lake George Park Commission involve the Lake George scientific community in all future efforts to identify research and monitoring needs. Additional toxicity studies for plants and animals native and important to the Lake George ecosystem need to be conducted in a laboratory setting prior to any *in situ* trials. Further, ProcellaCOR will likely have impacts on plants and animals found in Lake George (see below).” (Id. at page 2)
- d) “The treatment of Lake George waters with the toxin ProcellaCOR represents a major and pivotal alteration and deviation from New York State’s protection and management of this **Class AA Special waterbody** and Article § 43-010. (*sic. ECL 43-0101*) **I expect that the Adirondack Park Agency (APA) will draw upon all available resources to expertly respond to all questions and comments raised at this time in order to preserve Lake George’s Class AA Special Status.** It is incumbent the APA consider all ramifications of this application and bearing on future applications of ProcellaCOR in Lake George and the Adirondack Park. The minimum application requirements requested by the Agency precludes a full scientific evaluation of the impacts of ProcellaCOR.” (emphasis added; Id.)

50. Dr. Collins closes her 9-page comment letter with the following:

“Future Needs:

1. Need for a robust plant survey extending beyond the area to be treated
2. Need for a quantifiable plant survey technique conducted on several occasions throughout the growing season
3. Need for monitoring studies of phytoplankton, zooplankton, benthic invertebrates within and surrounding the treatment area
4. Need for nutrient concentrations and loadings
5. Need for sediment samples (organic content)
6. Need to document how this application fits into the current and long-term macrophyte management plans
7. Need to conduct toxicology tests on native plants and animals” (Id at page 9)

51. Dr. Collins concluded her comment letter with 18 listed scientific references in support of her criticisms of the inadequacies of the two Applications subject of these Proceedings. (Id. at pages 9-11)
52. Notably, in the staff presentation to the APA commissioners at the April 14, 2022, meeting, Dr. Collins comments were not mentioned. In fact, none of the scientific issues raised by Dr Collins, the LGA or the Waterkeeper were given any significant treatment, which is not surprising given that over one third of the comments in opposition to the project had not even been posted to the APA website.
53. The four (4) Agency members who objected to the approval of these two Applications at the Agency's April 14, 2022 monthly meeting, either referred to or alluded to one or more of these inadequately addressed scientific issues as the basis for their vote. (see, http://nysapa.granicus.com/ViewPublisher.php?view_id=2) at approximately 3:35 to 4:48)
54. Upon information and belief, during these April 14, 2022 deliberations the fact that Lake George is designated Class AA Special waters never was mentioned, let alone considered.

THE NYS DEC HERBICIDE TREATMENT APPROVAL

55. In Respondent LGPC's 4/6/22 "Response to Public Comments – ProcellaCOR", there are multiple responses to the effect that "ProcellaCOR ... is a NYS Labeled and Registered aquatic herbicide, ..."; "the subject treatments on Lake George have been reviewed and approved by NYS DEC ...". "The Commission relies on published science and approvals from the expert review authorities at ... New York DEC ..."; and "ProcellaCOR is a registered and approved aquatic herbicide in NYS following

- many years of review and approvals by the NYS DEC ...". (see EXHIBIT F at paragraphs numbered 5, 8, 11 and 28, for example)
56. The six (6) APA members who voted in favor of approving the Applications at the Agency's April 14, 2022 monthly meeting relied on the issuance of NYS DEC permits for the use of ProcellaCOR in these two Bays as one significant justification for approval. (see, for example <https://apa.ny.gov/Mailing/2022/04/Regulatory/P2022-0003-0004-Presentation.pdf>, Slide 21.
57. Unlike many jurisdictional projects in the Adirondack Park requiring permit approvals from both the APA and DEC wherein a so-called "coordinated review" is conducted between the two agencies, in the case of the "Use of Chemicals For the Control or Elimination of Aquatic Vegetation" (see 6NYCRR Part 327), the review and approval processes takes place separate and apart from the APA without coordinated review since the criteria for project approval are significantly different between the two enabling statutes and companion regulations. (see 6NYCRR §327.7 in comparison to 9NYCRR 578.10) As for but one example of this, the NYS DEC registration and approval process does not take into consideration the value rating system for wetlands as set forth in APA regulations at 9NYCRR §§578.4 through 578.6.

ERRORS IN THE APA's PUBLIC NOTICE OF APPLICATION COMPLETION

58. The APA's Notice of Application Completion is required to be sent to adjoining landowners pursuant to 9NYCRR 572.8 (A copy of this Notice sent to adjoining landowners for both Bays is attached as **EXHIBIT I**).

59. In examining this Public Notice, it states under “Project Sponsor, Location and Description” the following: “The Agency received an application ... for a project proposed by the **Lake George Park Commission** in the Town of **Hague, Warren County** in **Sheep Meadow Bay, Lake George** in an area designated as **Under Water** on the Adirondack Park Land Use and Development Plan Map.” (emphasis added, see EXHIBIT I) This same language appears in the Public Notice of Application Completion for Blairs Bay.
60. Upon information and belief, there is no such designation as “Under Water” on the Adirondack Park Land Use and Development Plan Map.
61. In addition, while the subject aquatic wetlands for both Bays are geographically located in the Town of Hague, Warren County, the landowners adjoining Sheep Meadow Bay are in the Town of Dresden, Washington County and the landowners adjoining Blairs Bay are in the Town of Putnam, Washington County, which is not stated anywhere in either Public Notice of Application Completion. Upon information and belief, as a result of these errors, notice was not properly given to adjoining landowners and was given in a manner that caused public confusion. (see Rice Affidavit, ¶¶ 5 through 9)

THE APA DRAFT PERMITS

62. Neither draft APA Permit 2022-0003 (Sheep Meadow Bay) nor Permit 2022-0004 (Blairs Bay) indicate anywhere that Lake George is rated Class AA – Special waters pursuant to NYS DEC’s Water Quality Standards Program governing surface and groundwater classifications.

63. Class AA - Special waters is the highest rating in NYS's classification program determining said waters as being "best used as a source of water supply for drinking, culinary or food processing purposes; primary and secondary contact recreation; and fishing. The waters shall be suitable for fish, shellfish and wildlife propagation and survival." (see 6NYCRR ¶ 701.3)
64. Upon information and belief, the public was not aware of this Class AA Special Waters classification either through the Public Notice of Application Completion for either Bay or their respective draft APA Permits.
65. In addition, both draft APA Permits state at the top of page 1: "This permit does not have to be recorded in the County's Clerk Office."
66. Historically, all APA Permits get recorded in each County Clerk's Office within the Adirondack Park where the affected property is located in an established APA section of the Grantor – Grantee indices.
67. This failure to have to record APA Permits 2022-0003 & 2022-0004 in the County Clerk's office was a comment made by Petitioners LGA and the Lake George Waterkeeper which, upon information and belief, was ignored by both APA staff and APA Board members. (see Exhibit G, at (i), page 3)
68. The wetland being addressed in draft APA Permit 2022-0003 (Sheep Meadow Bay) has a value rating of "3". The Agency members at their April 14, 2022 monthly meeting in their 6 to 4 approval of this draft Permit adopted, among other things, the following "Conclusion of Law":

"The Agency has considered all statutory criteria for project approval set forth in the Freshwater Wetlands Act and 9 NYCRR Part 578. The Agency hereby finds that the project authorized as conditioned herein: ...

c. will result in the minimum possible degradation or destruction of any

part of the wetland or its associated values;
d. is the only alternative which reasonably can accomplish the applicant's objectives; ..."

69. Six of the APA members at this April 14, 2022 monthly meeting summarily approved these two Conclusions of Law, which were two of the most controverted issues brought up in the Public Comment period.
70. The wetlands being addressed in draft APA Permit 2022-0004 (Blairs Bay) has a value rating of "1". The Agency members at their April 14, 2022 monthly meeting in their 6 to 4 approval of this draft Permit necessarily disregarded the following "Conclusions of Law" in order to allow this toxic chemical to be applied to a wetland with a value rating of "1":
- "will result in the minimum possible degradation or destruction of any part of the wetland or its associated value";
 - "is the only alternative which reasonably can accomplish the applicant's objectives"; and
 - "will, weighing the benefits of the activity against its cost and the wetland values lost, provide a net social and economic gain to the community."
71. Upon information and belief, six of the APA members at the April 14, 2022 monthly meeting disregarded these "Conclusions of Law" as they might apply to the ProcettaCOR treatment into the value rated "1" wetland on Blairs Bay without discussion and despite these conclusions being aggressively controverted in the Public Comment period. This is contrary to the purposes and intent behind New York State's Freshwater wetland value rating system and, more importantly, to the highest wetland rating in that system.

THE NYS DEC's ROLE INVOLVING RESPONDENTS APA AND LGPC

72. In the 6 to 4 approval by the Agency members on April 14, 2022 of both draft Permits, the designee from the NYS DEC voted approval.
73. Of the eleven member Agency Board, two are the Commissioners of State agencies and the third is the Secretary of State. The other eight (8) members are private citizens. Each of the three ex officio State members are legally allowed to select a designee in his/her place. In the case before this Court, NYS DEC Commissioner Basil Seggos appointed the DEC Region 5 Director as his designee.
74. At the time, the April 14, 2022 vote was made by the APA Board there was one vacancy on the Board (see APA Act §803); upon information and belief, that situation continues to exist today.
75. Petitioners LGA and The Lake George Waterkeeper in their joint April 13, 2022 comment letter made the following inquiry:
- “Regardless of how this Board chooses to differentiate its regulatory responsibilities from that of DEC with regard to these two Applications, the additional question that needs to be answered is: **Given the Department’s earlier review of, and decision on these two Applications, should the Department recuse itself from any voting on the current Applications before the APA?**” (emphasis added; see EXHIBIT G at top of page 8).**
76. Upon information and belief, this inquiry went without recognition or response in the Agency Board’s April 14, 2022 deliberations and final vote.
77. The final APA Board vote on April 14, 2022 resulted in a 6 to 4 approval of both Permits. The NYS DEC cast one of the six votes in favor.
78. In addition, Respondent Lake George Park Commission met on Tuesday, April 26, 2022 (12 days later) to accept the sole proposal by SOLitude Lake Management, LGPC’s “agent” in its two Applications filed with the APA, to treat both Sheep

Meadow and Blairs Bay in Lake George. In adopting its Resolution on this matter on April 26, 2022, one of the “WHEREAS” clauses reads:

“WHEREAS the Commission has worked directly with the NYSDEC, the Adirondack Park Agency (APA) and SOLitude Lake Management to advance concepts for two demonstration treatment sites in Lake George over the past year, and both NYS DEC and NYS APA have authorized the Commission to undertake these treatments, and ...”
(emphasis added; see EXHIBIT J attached)

This statement is fraught with collusion among all three Respondents resulting in the farce that was perpetrated on the general public in both Respondent APA’s public project review process and its final decision-making.

79. Upon information and belief, the NYS DEC designee recused the Department from voting on these matters on the advice of its General Counsel. This designee read the following statement into the record of this 4/26/22 LGPC public proceeding:

“On the advice of DEC Counsel, I need to recuse from voting on this matter due to the conflict of interest with DEC serving as both the regulator and applicant for these projects. DEC has already issued a pesticide project registration for ProcellaCOR and issued two aquatic vegetation control permits for these projects. The APA Board including the DEC's designee also voted to issue wetland permits to the Commission. Again, my recusal is based on the dual role and has nothing to do with the substance of it.”

80. While the DEC designee was a different person at the APA April 14, 2022, meeting than the individual who attended the LGPC April 26, 2022 meeting, both are employed in the Region 5 regional office of DEC and both were legitimate designees as approved by the Department’s Commissioner. The same basis for recusal of the Department from the LGPC vote on the project contract existed at the time of the APA vote on the proposed permit applications, “as the DEC was both a regulator and an applicant at the time that the project was approved by the APA”.

81. In order for a permit application to be approved by APA members, there must be a majority vote of the 11-member Board or, put otherwise, 6 votes in favor as long as a quorum is present.
82. Had the DEC designee recused himself from the APA vote on draft APA Permits 2022-0003 and 2022-0004, as queried by Petitioners LGA and the Lake George Waterkeeper, and as subsequently took place at the LGPC's April 26, 2022, meeting on this same subject matter, both project proposals before the APA would have been denied for a failure to carry a majority vote of the Board.

AS AND FOR A FIRST CAUSE OF ACTION

83. Petitioners' repeat and reallege every allegation in paragraphs 1 through 82 above with the same force and effect as though set forth at length below.
84. Upon the close of public comments to the Notice of Complete Application, Respondent APA allegedly posted all of these comments for public review and ultimately to be reviewed by the Agency Board members in order to render a final decision on the Applications.
85. Through some inexplicable mistake, all of these comments did not get noticed at the same time after the March 31, 2022 end date for comments. One such late posting were the joint comments by Petitioners LGA and the Lake George Waterkeeper.
86. Respondent APA made no effort to correct this error by re-posting all comments at the same time as one package to establish a uniform period of time for public comment and the potential for further responses.
87. In addition, all evidence points to the fact that approximately 149 public comments were not even identified and factored into Respondent APA's final decision to

approve both Applications on April 14, 2022. (see ¶¶ 26, 27 & 28 supra.) As a result, the APA Board members, along with the interested public, were deprived of the opportunity to review all public comments.

88. Respondents APA's failure to uniformly notice all public comments as one package for public review, APA staff's failure to inform the Agency Board members of the accurate number of public comments actually received, and APA staff's failure to accurately summarize the substance of the comments in opposition to the applications were made in violation of lawful procedure, arbitrary and capricious, an abuse of discretion, and affected by an error of law.
89. Accordingly, Respondent APA failed to perform a duty enjoined upon it by law and its decision to approve both Applications by Respondent LGPC to test treat Sheep Meadow Bay and Blairs Bay in Lake George with the aquatic herbicide ProcellaCOR must be annulled.

AS AND FOR A SECOND CAUSE OF ACTION

90. Petitioners repeat and realleged every allegation in paragraphs 1 through 89 above with the same force and affect as through set forth at length below.
91. Respondent APA distributed formal Notices of Application Completion for both projects (Sheep Meadow Bay and Blairs Bay) to adjoining landowners to both Bays on or about March 3, 2022 (see Exhibit I).
92. While the lands under water to be affected by the two Project proposals are geographically within the Town of Hague, Warren County which town is located on the west side of Lake George, the adjoining landowners who received this Notice for

Sheep Meadow Bay reside in the Town of Dresden, Washington County on the east side of Lake George AND the adjoining landowners who received this Notice for Blairs Bay reside in the Town of Putnam, Washington County also on the east side of Lake George.

93. This Notice put together and distributed by Respondent APA failed to advise the adjoining landowners that the chemical treatment area proposed in this Notice actually adjoined their Town and County. Upon information and belief, a number of residents who own shoreline that adjoins the treatment area and residents in close proximity to these treatment areas withdraw water from Lake George for drinking water purposes.
94. Consequently, Respondent APA distributed a formal Notice of Application Completion for both Bay areas that was defective in presenting necessary information to adjoining landowners regarding the potential for adverse impacts from an activity adjoining their shorelines which are in different towns and in a different county than what was stated in this Notice. (see Rice Affidavit, ¶¶ 5 through 9)
95. Respondent APA's failure to provide adequate and necessary information to the adjoining landowners of both project sites (Sheep Meadow Bay and Blairs Bay) through its publication of both Notices of Complete Application was made in violation of lawful procedure, arbitrary and capricious, and was affected by an error of law.
96. Accordingly, Respondent APA failed to perform a duty enjoined upon it by law and its decision to approve both Applications by Respondent LGPC to test treat Sheep

Meadow Bay and Blairs Bay in Lake George with the aquatic herbicide ProcellaCOR must be annulled.

AS AND FOR A THIRD CAUSE OF ACTION

97. Petitioners repeat and reallege every allegation in paragraphs 1 through 96 above with the same force and effect as though set forth at length below.
98. APA staff advised its Board members at their April 14, 2022 monthly meeting in which a determination on these two Project Applications was on the agenda that with regard to Public Comment: “Notable Against: Adirondack Council, Lake George Association/Waterkeeper (Joint Letter), Protect the Adirondacks!” (see, <https://apa.ny.gov/Mailing/2022/04/Regulatory/P2022-0003-0004-Presentation.pdf>, Slide 103)
99. Noticeably, Dr. Collins eight pages of scientific comment and nearly two pages of references all of which was against approval of these two chemical treatment proposals were apparently ignored in this presentation. (see Dr. Collins comments at EXHIBIT H; see also ¶¶ 47 through 51, supra.)
100. There is no evidence in these APA proceedings on both Project Applications that APA staff directly provided **any** written responses to the March 31, 2022, public comments that were in opposition to these two proposals.
101. The only evidence of responses to these March 31, 2022, public comments is by Respondent LGPC, the Applicant seeking Permit approvals, apparently at the request of APA staff.
102. Among the legal criteria a project proposal must meet in order to be approved by Respondent APA is the following in pertinent part:

“The project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park” (see APA Act at §809.10.e)

103. This language appears nowhere in either the draft Permits (see EXHIBITS B & C) or the documented approximately 2 hours and 15 minutes deliberations on both Project Applications by the APA Board members on April 14, 2022.
- (see, http://nysapa.granicus.com/ViewPublisher.php?view_id=2) at approximately 3:35 to 4:48)
104. Respondent APA solicited a second set of public comments intended to react to Respondent LGPC’s April 6, 2022 “Response to Public Comments – ProcellaCOR”. (see EXHIBIT F)
105. The deadline for this second set of public comments was April 13, 2022, just one day before Respondent APA met at its monthly meeting to deliberate and vote on these two Applications.
106. The timeframe allegedly available for introduction of ProcellaCOR into Lake George in the wetland beds targeted for treatment is May 17, 2022 to June 30, 2022 as specifically referenced in NYC DEC’s March 10, 2022 approvals for both Bays. (EXHIBIT K attached)
107. Under this timeframe for treatment, Respondent APA could have further comprehensively deliberated these Applications and the significant amount of written public comments against chemical treatment in Lake George, which was evident from both the March 31, 2022 submissions and the April 13, 2022 submissions, at either or both its May and June monthly meetings. Clearly, the two Applications did not have to be decided at the April 14, 2022 monthly meeting.

108. Consequently, in its haste to approve these two Projects at its April 14, 2022 monthly meeting, Respondent APA's deliberations and vote of approval were significantly lacking in any comparative analyses between scientific public comment and the self-serving submission of information by Respondent LGPC, as Applicant. This complete rush to a final decision including disassembling a long-standing public project review process can only be substantiated by the collusive language presented by Respondent LGPC in its April 26, 2022, Resolution. (see Exhibit J and ¶¶ 80, supra.)
109. Respondent APA's failure to recognize and weigh contrasting position as to scientific issues many of which speak to the potential for significant adverse impacts from the use of this aquatic herbicide in Lake George was in violation of lawful procedure, arbitrary and capricious, an abuse of discretion, and was affected by an error of law.
110. Accordingly, Respondent APA failed to perform a duty enjoined upon it by law and its decision to approve both Applications by Respondent LGPC to test treat Sheep Meadow Bay and Blairs Bay in Lake George with the aquatic herbicide ProcellaCOR must be annulled.

AS AND FOR A FOURTH CAUSE OF ACTION

111. Petitioners repeat and reallege every allegation in paragraphs 1 through 110 above with the same force and affect as though set forth at length below.
112. Both of the draft Permits dated March 10, 2022, by Respondent APA contain the language: "This permit does not have to be recorded in the County Clerk's office"; which entry was approved by Respondent APA Board members at their April 14, 2022 monthly meeting.

113. Respondent APA's failure to record these two approved Permits as required by law (see APA §809.7.c) was in violation of lawful procedure, arbitrary and capricious, an abuse of discretion, and affected by an error of law.
114. Accordingly, Respondent APA failed to perform a duty enjoined upon it by law and its decision to approve both Applications by Respondent LGPC to test treat Sheep Meadow Bay and Blairs Bay in Lake George with the aquatic herbicide ProcellaCOR must be annulled.

AS AND FOR A FIFTH CAUSE OF ACTION

115. Petitioners repeat and reallege every allegation in paragraphs 1 through 114 above with the same force and affect as though set forth at length below.
116. Petitioners LGA and The Lake George Waterkeeper and the Respondents herein have all acknowledged through the APA review process for these two Applications that the current DASH (diver asserted suction harvesting) management program is a success. (see, for example EXHIBIT D at bottom of page 11 and top of page 12)
117. Respondent APA in its April 14, 2022, deliberations did not consider this DASH management program, or even recognize it, as a reasonable, existing, on-going alternative to these two chemical herbicide treatments being proposed by Respondent LGPC.
118. Respondent APA's failure to recognize the DASH management programs as a viable alternative to the chemical herbicide treatment proposals, especially in light of the professional scientific public comments opposing the use of ProcellaCOR in Lake George, was in violation of lawful procedure, arbitrary and capricious, an abuse of discretion and was affected by an error of law.

119. Accordingly, Respondent APA failed to perform a duty enjoined upon it by law and its decision to approve both Applications by Respondent LGPC to test treat Sheep Meadow Bay and Blair Bay in Lake George with the aquatic herbicide ProcellaCOR must be annulled.

AS AND FOR A SIXTH CAUSE OF ACTION

120. Petitioners repeat and reallege every allegation in paragraphs 1 through 119 above with the same force and affect as though set forth at length below.
121. The APA Act at §809.6.c states in pertinent part: “At any time during the review of an application for a permit ... the agency may request additional information from the project sponsor or permit holder with regard to any matter contained in the application or request when such additional information is necessary for the agency to make any findings or determinations required by law. ... Failure by the project sponsor or permit holder to provide such information may be grounds for denial by the agency of the application or request.” (see also APA regulations at 9NYCRR 572.8 (d) and EXHIBIT D, page 1 second paragraph)
122. The procedures employed by Respondent APA in the review of these two Applications generated extensive public comments sent to Respondent APA by both the March 31, 2022, deadline and then again by April 13, 2022, deadline in opposition to the approval of these two Applications based upon, among other things, the significant lack of information needed to fully assess potential impacts from this aquatic herbicide in Lake George. (see EXHIBITS D, G & H, as but three examples of comments highlighting the need for additional project information)

123. Despite this professional scientific outcry for additional information before any informed decision could be made with regard to the introduction of ProcellaCOR into the waters of Lake George, a NYS designated Class AA Special Waters, not one request for even the minimal of additional information was made by Respondent APA through both its staff and the six (6) members who voted in favor of Project approval for both Bays.
124. Respondent APA's blatant failure to seek additional information in the wake of professional scientific public comments expounding on the need for specific additional informational covering numerous concerns with chemical herbicide introduction into the waters of Lake George was in violation of lawful procedure, arbitrary and capricious, an abuse of discretion and affected by an error of law.
125. Accordingly, Respondent APA failed to perform a duty enjoined upon it by law and its decision to approve both Applications by Respondent LGPC to treat Sheep Meadow Bay and Blairs Bay in Lake George with the aquatic herbicide ProcellaCOR must be annulled.

AS AND FOR A SEVENTH CAUSE OF ACTION

126. Petitioners repeat and reallege every allegation in paragraphs 1 through 125 above with the same force and affect as though set forth at length below.
127. The NYS DEC is a member of the Adirondack Park Agency (see APA Act §803) and has a similar voting membership on the LGPC.
128. The NYS DEC, sitting as a voting member of the APA at its April 14, 2022 monthly meeting, voted in favor of approval of both LGPC Applications for the test treatment

with the aquatic herbicide ProcellaCOR in Sheep Meadow Bay and Blairs Bay which are both in Lake George.

129. The NYS DEC, sitting as a voting member of the LGPC at its April 26, 2022, meeting on the same subject matter, recused itself on the advice of legal counsel. (see ¶78, supra.)
130. These two positions by the NYS DEC are in conflict with each other.
131. Without knowing how the April 14, 2022, vote would turn out, Petitioners LGA and the Lake George Waterkeeper raised the question of DEC recusal in their April 13, 2022, comment letter and basing such recusal on the Department's prior approval of both of these same proposed activities. (see EXHIBIT G, top of page 8)
132. Respondent APA's failure to broach the subject of recusal by NYS DEC at its April 14, 2022, monthly meeting given the fact that the Department had already issued permits for the proposed treatment activities was a violation of lawful procedure, arbitrary and capricious, an abuse of discretion, and affected by an error of law.
133. Respondent APA requires a majority vote of its eleven-member Board to approve a permit proposal. Therefore, under the circumstances here each of the LGPC Applications required 6 votes for approval.
134. Accordingly, Respondent APA failed to perform a duty enjoined upon it by law and its 6 to 4 decision of approval to test treat Sheep Meadow Bay and Blairs Bay in Lake George with the aquatic herbicide ProcellaCOR must be annulled since under the law a majority of the Board could not have cast the same vote.

AS AND FOR AN EIGHTH CAUSE OF ACTION

135. Petitioners repeat and reallege every allegation in paragraphs 1 through 134 above with the same force and affect as though set forth at length below.

136. Petitioners LGA and The Lake George Waterkeeper in their efforts through the March 31, 2022 and April 13, 2022 comment periods sought to have Respondent APA conduct an adjudicatory hearing to at least establish an objective record on the disputed issues involved with these two chemical herbicide treatment Applications, and also predicated under the following criteria for “Determining to Conduct a Public Hearing” pursuant to APA regulations at 9NYCRR 580.2(a):

- “the degree of public interest in the project, as evidenced by communications from the general public officials or private organizations:”
- “The possibility that the project can only be approved if major modifications are made or substantial conditions are imposed:”

and

- “the possibility that information presented at a public hearing would be of assistance to the agency in its review:”

These three criteria not only were ignored by Respondent APA in its April 14, 2022 deliberations, but they were not even mentioned; nor, for that matter, was any consideration or conversation had with regard to the need for an adjudicatory hearing.

137. In reviewing these criteria for “Determining to conduct a public hearing, Petitioners LGA and The Lake George Waterkeeper also recommended the applicability of 2 other criteria out of the 8 to the two LGPC Applications regarding chemical treatment of submerged wetlands:

- “the size and/or complexity of the project, whether measured by cost, area, effect upon municipalities, or uniqueness of resources likely to be affected;”
- and

- “the presence of significant issues relating to the criteria for approval of the project;”

(see EXHIBIT D at page 15)

138. Petitioners LGA and the Lake George Waterkeeper compared the shortcomings of the review process conducted by Respondent APA for these two Permits Applications, essentially using Respondent LGPC’s 4/6/22 “Response to Public Comments – ProcellaCOR” memorandum by its Executive Director David Wick, to the basic requirements of an adjudicatory hearing and offered the following:

“4/6/22 Wick Response

Adjudicatory Hearing

- | | |
|--|--|
| <p>1. Unsworn statements by unknown contributors</p> | <ul style="list-style-type: none"> • Bona fide experts whose qualification must be in writing – all testimony under oath and subject to cross examination |
| <p>2. Applicant is a mandatory party as is APA staff</p> | <ul style="list-style-type: none"> • Parties in opposition must qualify before an Administrative Law Judge (ALJ) by showing an interest in the matter (here, the three environmental organizations in opposition along with Dr. Collins would likely qualify at the very least) |
| <p>3. Information is handled by APA staff in whatever arbitrary and subjective manner they choose.</p> | <ul style="list-style-type: none"> • Printed Record compiled by a professional ALJ including post-hearing Briefs; Agency members can be given an objective, advisory recommendation by the ALJ upon request.” (see EXHIBIT G at pages 4 and 5) |

139. All of these arguments in support of the need to conduct a public hearing on these two Applications were also driven by the fact that toxic chemical herbicides for

whatever reason, upon information and belief, have never been introduced into Lake George.

140. The way the APA chose to push this project through to rushed decision-making that disregards clear and unequivocal regulatory requirements stands in marked contrast to the way the same agency handled a request to apply another herbicide in Lake George to control milfoil. In that context, the agency held many weeks of adjudicatory hearings involving experts who testified about many of the same issues that were raised in opposition to the use of ProcellaCOR in Lake George. Ultimately, after approximately a 2-year process, the APA on January 10, 2003, denied that permit application based upon a finding that there were too many unresolved issues to warrant experimentation in Lake George along with the existence of viable non-chemical alternatives. This denial was made by the APA notwithstanding the fact that the proposed herbicide in that application was registered by both the United States Environmental Protection Agency and the DEC which was tantamount to the same justification that has been offered by the LGPC and the APA for approval of the use of ProcellaCOR. in Lake George.
141. Respondent APA's failure to evaluate and consider the benefits of an adjudicatory hearing in light of the significant objections to approval of these two Applications from a formidable body of scientific knowledge and experience was a violation of lawful procedure, arbitrary and capricious, an abuse of discretion, and affected by an error in law.
142. Accordingly, Respondent APA failed to perform a duty enjoined upon it by law and its decision to approve both Applications by Respondent LGPC to test treat Sheep

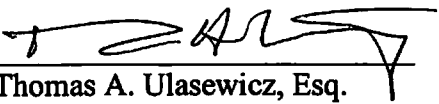
Meadow Bay and Blairs Bay in Lake George with the aquatic herbicide ProcellaCOR must be annulled.

WHEREFORE, Petitioners are entitled to judgment:

- A. Annulling the APA's April 14, 2022, Permits approving the introduction of the herbicide ProcellaCOR into Sheep Meadow Bay and Blairs Bay both in Lake George as applied for by the LGPC;
- B. Granting Petitioners the cost and disbursements of this proceeding ,including counsel fees and legal expenses, as may be just and proper and
- C. Granting such further and different relief as to the Court may seem just and proper.

Dated: May 12, 2022
Glens Falls, New York

FITZGERALD MORRIS BAKER FIRTH, PC
Attorneys for Petitioners

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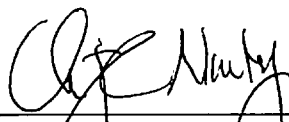
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VERIFICATION

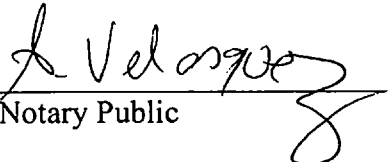
STATE OF NEW YORK)
) ss.:
COUNTY OF WARREN)

Christopher Navitsky, being duly sworn, deposes and says: That, as the Lake George Waterkeeper of the Lake George Association, I am a Petitioner in the within proceeding; that I have read and know the contents of the foregoing Petition; that the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, I believe them to be true.



Christopher Navitsky, PE
Lake George Waterkeeper

Sworn to before me this 12th
day of May, 2022



Notary Public

ANA M. VELASQUEZ
Notary Public, State of New York
No. 01VE6092507
Qualified in Saratoga County
Commission Expires May 19, 2023