

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D13720  
W/hu

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Argued - January 2, 2007

HOWARD MILLER, J.P.  
ROBERT A. SPOLZINO  
DAVID S. RITTER  
MARK C. DILLON, JJ.

2005-07541

DECISION & ORDER

In the Matter of John M. Loeffler, appellant,  
v New York State Department of Environmental  
Conservation, et al., respondents.

(Index No. 16772/02)

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Hamburger, Maxson, Yaffe, Wishod, Knauer & Rothberg, LLP, Melville, N.Y.  
(Richard Hamburger and Jason Hsi of counsel), for appellant.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michelle Aronowitz and  
Daniel J. Chepaitis of counsel), for respondents.

In a proceeding pursuant to CPLR article 78 to compel the New York State Department of Environmental Conservation to remove the petitioner's real property from the Final Freshwater Wetlands Map for Suffolk County, the petitioner appeals from a judgment of the Supreme Court, Suffolk County (Baisley, J.), dated May 6, 2005, which, upon an order of the same court dated September 16, 2004, (1) granting the cross motion of the New York State Department of Environmental Conservation and Erin M. Crotty, Commissioner of the New York State Department of Environmental Conservation, for leave to settle a judgment upon a decision of the same court dated December 24, 2002, determining to dismiss the petition as time-barred and (2) denying the petitioner's motion for leave to amend the petition, dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

February 6, 2007

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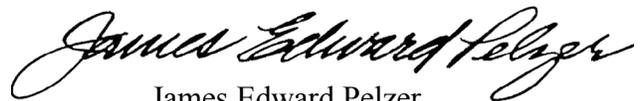
MATTER OF LOEFFLER v NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By decision dated December 24, 2002, the Supreme Court determined to grant that branch of the motion of the New York State Department of Environmental Conservation and Erin M. Crotty, Commissioner of the New York State Department of Environmental Conservation (hereinafter together NYSDEC), which was to dismiss the proceeding as time-barred. Although NYSDEC did not establish good cause excusing its failure to settle a judgment within 60 days of the decision (*see* 22 NYCRR §202.48[a]), the Supreme Court providently exercised its discretion in granting NYSDEC's motion for leave to settle a judgment upon the decision dated December 24, 2002, determining to dismiss the proceeding as time-barred, and in denying the petitioner's motion for leave to amend the petition, since doing so brought repose to the proceedings and preserved judicial resources (*see Delahanty v DeGuire*, 280 AD2d 638, 639; *Matter of Argento v New York State Div. of Hous. & Community Renewal*, 269 AD2d 443, 444; *Crawford v Simmons*, 226 AD2d 667; *Russo v City of New York*, 206 AD2d 355, 356; *see also Zaretsky v Ok Hui Kim*, 17 AD3d 455, 456; *Meany v Supermarkets Gen. Corp.*, 239 AD2d 393, 394).

In light of our determination, we do not reach the petitioner's remaining contentions.

MILLER, J.P., SPOLZINO, RITTER and DILLON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court