

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

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In the Matter of the Application of  
PATRICK J. NELLIGAN,

Petitioner,

-against-

DR. MICHAEL CALDWELL, COMMISSIONER,  
DUTCHESS COUNTY DEPARTMENT OF HEALTH,  
and JANET REAGON, SUPERVISOR, TOWN  
OF AMENIA TOWN BOARD,

Respondents.

DECISION  
AND ORDER

Index No. 3233/06

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**PAGONES, J.D., A.J.S.C.**

Respondents Reagon and Town of Amenia move to dismiss the instant Article 78 petition. Respondents Dutchess County and Caldwell move for the same relief.

The instant petition seeks an order and judgment compelling the Dutchess County Commissioner of Health to rescind a well permit issued to the Amenia town board on or about September 29, 2005.

CPLR §217(1) provides that:

"a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner."

The determination of the Commissioner herein was final and binding on September 29, 2005 when he issued the well permit for well 4A at 38 Lavalley Road in the Town of Amenia. The petitioner

did bring a separate administrative appeal against the New York State Department of Environmental Conservation before the Freshwater Wetlands Appeal Board, but that proceeding involved the DEC's issuance of a freshwater wetlands permit involving the same well that is the subject of the instant petition. I find that the instant proceeding is time barred as it was instituted more than four months after the final determination of the Dutchess County Commissioner of Health.

Therefore, it is ordered that the respondents' respective motions are granted and the instant proceeding is dismissed.

The Court read and considered the following documents upon these applications:

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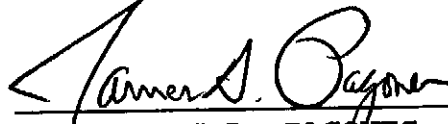
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The foregoing constitutes the decision and order of the  
Court.

Dated: Poughkeepsie, New York  
November 1, 2006

ENTER



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103106 decision&order

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<sup>1</sup>Although there is no provision in the CPLR for sur-reply submissions, the court has considered petitioner's sur-reply in the interest of justice.