

## NYS DEC SEQR (SEQRA) Amendment – Public Comments Due May 19, 2017

### Survey of Information – Posted at FMCE.org (Act Now page)

- **Public Comment deadline Fri 5/19/2017 @ 5:00pm. Email comments to:** SEQRA617@dec.ny.gov

### Proposed SEQR Amendments – Goal: to streamline the process: <http://www.dec.ny.gov/permits/83389.html>

- **Fact Sheet:** [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/seqr2017factsht.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqr2017factsht.pdf)
- **Slideshow:** [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/seqr2017ppt.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqr2017ppt.pdf)
- **Proposed changes underlined:**  
[http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/drft617exptrm.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/drft617exptrm.pdf)
- **Scope of changes:** [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/617finalscope.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/617finalscope.pdf)
- **Current SEQR Rules: DEC's short & sweet overview of SEQR process for citizens:**  
[http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/seqrcitizen.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrcitizen.pdf)
- **See EAF flow chart:** <http://www.dec.ny.gov/permits/90125.html>

**SEQRA: 1975-8 State Environmental Quality Review Act. Public input** is a vital & required part of SEQR enforcement.

**SEQR Purpose:** According to <http://www.dec.ny.gov/permits/6208.html>: SEQR requires all state and local government agencies to balance the environmental impacts with social and economic factors when deciding to approve or undertake an "Action". If an action is determined not to have significant adverse environmental impacts, a determination of nonsignificance (**Negative Declaration**) is prepared. If an action is determined to have potentially significant adverse environmental impacts, an "**Environmental Impact Statement**" (**EIS**) is required. The SEQR process uses the EIS to examine ways to **avoid or reduce adverse environmental impacts** related to a proposed action. This includes an analysis of all reasonable alternatives to the action. The SEQR "decision making process" encourages communication among government agencies, project sponsors and the general public.

**SEQR Type I Action:** *is more likely to have a significant adverse impact on the environment than other actions.*

**Current Rules:** Type I actions automatically require a **Full (not short)**

**Environmental Assessment Form (FEAF) (or a draft detailed Environmental Impact Statement (EIS)) AND a written determination of significance** of the anticipated adverse environmental impact (either **negative declaration** – not adverse, or **positive declaration** – adverse impact). Examples:

- nonresidential projects physically altering 10 or more acres of land
- zoning changes affecting 25 or more acres, etc.

**SEQR Type II Action:** *has been defined on a statewide basis as never having a significant adverse impact on the environment, and therefore never requiring an EIS under SEQR. No EAF, no EIS, no documentation, no opportunity for public scrutiny. Current Examples:*

- rebuilding or replacement of facilities, in kind, on the same site • minor structures, such as garages, barns or home swimming pools...
- expansions of existing educational facilities by less than 10,000 square feet
- maintenance and repair activities • emergency actions, etc.

**SEQR Unlisted Action:** *does not meet the Type I thresholds but may still require an EIS. Requires a Short EAF (SEAF) & determination of significance. Current Examples:*

- nonresidential projects physically altering less than 10 acres of land
- adoption of regulations, ordinances, local laws and resolutions that may affect the environment, etc.

**Neg Dec:** If a **Type I** or an **Unlisted Action** gets a **negative declaration** of adverse impact, then the SEQR review is over.

**Pos Dec:** If a **Type I** or an **Unlisted Action** gets a **positive declaration** of adverse impact, then the project lead agency must usually submit a draft Environmental Impact Statement (EIS), a minimum 30-day **public comment** period on the draft EIS, an **optional Scoping document** with **public input** on what are the significant environmental impacts to consider, and an **optional public hearing**.

**Overt Segmentation:** splitting a project into smaller projects or phases not considering the whole impact and is not allowed. <http://www.dec.ny.gov/permits/45577.html>

**NYS DEC ENB (Environmental Notice Bulletin):** Where project declarations & comment periods are posted every Wednesday. Tips:

- See our area, Region 8. <http://www.dec.ny.gov/enb/enb.html>
- FAQ/Sign-up for weekly email: <http://www.dec.ny.gov/enb/4886.html>

### **SEQR Amendments – Survey of Comments, Analysis & Concerns**

**SEQR is being amended**, for the first time in many years... some probably for the better, but some aspects may make it harder for citizens to have input on the impact of projects in their communities. NYS SEQR is the citizens' main legal/regulatory line of input and defense against development projects that would harm the environment or community. **Citizen input is NOT OPTIONAL. Citizens are the SEQR POLICE: responsible to enforce the regulations.**

#### **Amendments providing MORE protection for the environment & public health:**

- The proposed changes should trigger more Type I reviews by **reducing some thresholds** (like # parking spaces and # housing units) for defining the 11 categories of Type I Actions
- **Requiring Scoping Documents for all EIS**
- **Climate change must be considered in EISs.**

#### **Amendments providing LESS protection for the environment & public health:**

- There are **17 additional categories for Type II** (totaling 54 Type II, see pg 15-20 of the underlined draft) New “loopholes”? Many more actions & projects with no Short or Long Environmental Assessment Form, no Environmental Impact Study, no Scoping, no SEQR review, no written public documentation, and no public input other than possible local requirement for public hearing.
- Limiting EIS only to what Scoping contains *even if* significant impacts are identified later when broad public awareness is feasible.

#### **Continuing concerns:**

- Limited opportunity for public scrutiny due to few EISs
- Expensive litigation for citizens
- Approved EISs do not expire, impacting other potential projects even if the approved project is not built.
- Mitigation of adverse environmental impact should be redesigning the action for less impact, not money paid to local agencies.
- Development proposals which adversely impact to the environment take extensive time and resources to research and review by tax-payer funded government agencies and citizens needing to litigate to protect environment & public health.

**DEC: Don't Weaken SEQR:** <http://thealt.com/2017/04/11/divide-dec-dont-weaken-seqr/>

- With the federal government reducing forty years of environmental protections, this is a bad time for DEC to increase the types of projects by 17 to 54 actions on the Type II list.
- Amendments may be motivated by 20 years of budget cuts and major loss of staff at DEC.
- The DEC's stated goal to "to try and encourage environmentally compatible development." could possibly be outside of the rulemaking authority of the DEC.

#### Why developers will like these changes to NY's environmental regulations:

<http://www.bizjournals.com/albany/news/2017/01/26/why-developers-will-like-these-changes-to-nys.html>

- Helpful for developers: more Type II = exempt from SEQR Review: "previously disturbed site in the municipal center" "green infrastructure upgrades or retrofits"
- Limit Scoping period to 60 days. Limit time for government agencies to review EIS.
- These are still impediments:
- The lack of **enforceable** timelines for municipalities to follow when reviewing projects,
- The inconsistency of how the rules are enforced at the local level.
- **Analysis by Art Giacalone:** <https://withallduerespectblog.com/2017/03/05/proposed-seqr-regulations-developers-and-seqr-adverse-agencies-win-the-environment-and-public-lose/> Increasing Type II actions means the amendments "substantially decrease the information available to the public – as well as to the government decision-makers – to determine a proposed project's potential impacts on the environment. It also eliminates a government agency and project sponsor's **obligation to systematically consider alternatives and mitigation measures.**"
- Despite the fact that a careful, written analysis of possible environmental impacts is the purpose of SEQR... As noted in the DGEIS, "**only about 200 EISs are prepared on a yearly basis for tens of thousands of actions** that are presumably the subject of a negative declaration." ... Rather, we have a toothless regulatory framework that will continue a situation where government agencies and project sponsors have "an incentive to cut corners and then cure defects only after protracted litigation, all at the ultimate expense of the environment." [See King v. Saratoga County Bd. of Supervisors]
- By adding "exceeds 25 percent of any threshold established", proposed rule dilutes protections for historic sites.
- "acquisition of less than one hundred acres of land for parkland" a Type II action exempt from SEQR review, whether the land is to be used for active or passive recreational activities, and whether or not all or a portion of the land is a significant wildlife habitat or possesses sensitive environmental features.
- Proposed Type II "reuse of a commercial or residential structure where the activity is consistent with the current zoning law or ordinance" could exempt changes with significant impact to traffic, noise, local character, etc.

#### Sierra Club Atlantic Chapter Comments s(submitted to DEC by Roger Downs, Conservation Director) :

- **Sierra Club Atlantic Chapter** Recommends "no action" – do not adopt the proposed SEQRA amendments.
- "While thousands of development proposals sail through the process annually with little controversy or hardship it is this **minority of delayed bad proposals** that seems to be behind the effort to "streamline" the State Environmental Quality Review Act (SEQRA) and **subvert public participation in protecting the environment.**"
- "We support the Department's decision to **make scoping mandatory** for all EISs but we **cannot let** that early information gathering process **constrain the acceptance of important issues later** in the environmental review... If indeed all the relevant review topics for an EIS must be identified during scoping, then the lead agency must be given the discretion to **allow for longer scoping periods than 60 days** to ensure all essential information is allowed to come forward in a comfortable timeframe."
- Regarding the additions to Type II... "the Sierra Club still has **concerns** with the philosophy that we can incentivize good projects by **giving them exemptions from environmental reviews.**" (paraphrased: It's

still better to use the SEQRA tools to evaluate even green projects.)

- Regarding new TYPE II list as 19, 20, 21, and 22: “Negating the possibility of an environmental review for relatively large developments in an undefined **“municipal center of a city”** can lead to unmitigated issues of traffic, toxic exposure, noise, public health concerns and community character.”
- “We support the **changes in thresholds to the type I list** as a means to capture more problematic developments in both housing and the expansion of parking lots. We appreciate the **consideration of climate change** in the fulfillment of EISs.”

**SEQR ranks high on Senate regulatory problem list** <https://www.empirecenter.org/publications/seqr-ranks-high-on-senate-regulatory-problem-list/>

- The State Environmental Quality Review (SEQR) process was repeatedly identified as an obstacle to economic growth by NYS Senate Majority and a Empire Center report (“Streamlining SEQR”)

**2010 Hudson Valley Catskill Regional SEQR Dialog:** <http://www.scenichudson.org/sites/default/files/u2/SEQR-draft-report-and-recommendations-feb-2010.pdf>

- Get back to original intent.
- Early dialog
- Dispute mediation

**2017 April 18 –See below for lots of ideas discussed at Q&A and the Public Hearing:**

- With global climate change and cutbacks in Federal environmental protection, now is the time to **strengthen SEQR** environmental protection, not cut it back.
- Keep the focus on allowing science and local knowledge objectively identifying whether a project, large or small, may have adverse environmental impact.
- **Do adopt the required Scoping on all EISs** and Supplemental EISs (with some attendees asking for Scoping to be optional on Supplemental EISs at the discretion of the lead agency for very finite corrections to not create disincentive for calling for a Supplemental EIS). Clarify that **the lead agency** will determine if the new information is significant, if it requires a supplemental EIS.
- **Do adopt the reduced thresholds** (# parking spaces and # housing units) **proposed for Type I actions** because they are more realistic and scientifically-based thresholds than the 1978 values.
- **Do ensure** that DEC has enough funding and staff to review the SEQR actions.
- **Do empower citizens** with documentation and opportunities for input in the SEQR process by ensuring more actions have public documentation (such as a Short EAF and data used for determination of significance). Citizen input to SEQR is not optional. Citizens are the SEQR Police, responsible for ensuring they are enforced.
- **Do empower community input and reduce confusion** to all by keeping the SEQR Scoping and SEQR EIS together on the DEC ENB site, and also require the project sponsor to maintain publically on a website **all SEQR documentation for no less than one year** after all project construction and post-construction studies are complete.
- **Do empower community input and reduce confusion** by requiring the project sponsor to start a new EIS if they change the name of the project or the name of the business during the process.
- **Do approved EISs expire? No.** Not unless the circumstances/environment have materially changed. Would it help to **reduce community uncertainty & property value impacts** by establishing an expiration date on an approved EIS for an action that has not proceeded in several years? (ex: a large power generation site has been approved but 20-30 years later it’s still open rural land next to neighborhoods with property values and other projects suppressed by that unused approved action).
- What’s the impact of the new 25% threshold of historic properties/sites rule? First start with the Cultural Resource Information System (NY-CRIS) website which is most up to date. Then contact the Office of Parks and Recreation • **Do clarify** the definitions of **“previously disturbed”** and **“municipal center”** and that

specific definition will apply only to Type II Sections 19, etc.

- **Do clarify that local coastal development plans** take precedence over the “municipal center” exemption for coastal cities like Buffalo and Niagara Falls (OPR) who are ready to determine if your specific property has anything archeologically significant.
- **Do strengthen SEQR prohibition on segmentation of projects that impact the same area** which is circumvented by submitting projects under different ownership.
- **Don’t adopt the new Type II exemptions** because they are too broad, too vague and **reduce opportunity for public input** at the local level and reduce actions with EAF documentation
- **Don’t adopt the new Type II exemptions** that aim to **incentivize** certain types of development (including green infrastructure, sustainability, broadband) because SEQR is designed to identify adverse environmental impact, not legally designed to incentivize, and future litigation over these incentives could weaken SEQR. Also green infrastructure is not always without adverse impact (5 MW solar is ~ 5 acres in size) and should be evaluated by the local community.
- Don’t adopt the new Type II exemptions that **incentivize power & utility infrastructure** because this is the purview of PSC (Public Service Commission) and conflicts with un-finalized REV (Reformed Energy Vision) are not yet known. Only adopt the new **Type II exemptions with very specific added verbiage** such as “only residential subdivisions”, improvements “only to single-family residential properties that conform to all local codes” to clarify, limit and avoid conflict with local regulations.
- To avoid conflicts with local goals and vagueness of purpose, only adopt the new Type II exemptions referencing parkland acquisition with added verbiage “**in compliance with existing municipal comprehensive plan and recreation plan**”
- Clarify that **development of parkland** over x acres will still require an EAF even if acquisition/dedication of that **parkland** was exempted as a Type II action. Note the development of parkland for preservation/trails is very different impact from a dog park or municipal marina. • Can the SEQR Type II exemption for acquisition of parkland be expanded to include purchase of Conservation Easement and Development Rights?
- Ensure SEQR is effective as an Environmental Shield, not an Environmental Sword.
- **Don’t reduce opportunities for public scrutiny and local insights** on actions that affect the community.
- Striving for an efficient process is good, but **Is 60 days enough** for Scoping for all the **involved and affected agencies and adjacent communities** to be informed, research, and decide when those boards often meet only 1-2 times per month .
- **Don’t differentiate between Major and Minor subdivisions** in SEQR rules to avoid complication with the lookback rule when a future lot subdivision creates a 5<sup>th</sup> lot on the original property, and neighbors appreciate the opportunity for a public hearing on both big and small subdividing.
- **Don’t exempt ten acres or less of subdivision as Type II** because this doesn’t guarantee no significant adverse impact on the community especially if there are significant natural resources a community wants to preserve, or if this was an industrial subdivision.
- If **Broadband or fiberoptic** installation in an existing right-of-way can be exempted from SEQR assessment (because it’s a NYS priority right now), could water or sewer or electric utilities be argued to get the same exemption?
- Can/should SEQR protect agricultural land? Clarify true agricultural use – does that mean parking, buildings, automation?
- Clarify that the Community’s Site Plan Review Board regulations take precedence if more strict than SEQR restrictions, and this will allow community to protect their special natural resources, aesthetics, views, etc.
- Recognize that the burden & cost of SEQR enforcement is on citizens, since the local, state and federal agencies that do most of the project analysis and public hearings are funded by tax payers, and when an adverse impact is not properly considered, it is citizens that must pay for **Article 78** litigation, which fails 9 of 10 times usually because **Proof of Standing** blocks the citizens bringing the case to the detriment of the

environment & community.

- Do require that **Mitigation** of adverse environmental impact should be redesigning the action for less impact, not money paid to local agencies.

SEE NEXT PAGE **NYS DEC SEQR (SEQRA) Amendment – Public Comments Due May 19, 2017**

----- Write & Submit Your Letter: -----

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**To:** SEQRA617@dec.ny.gov

James J. Eldred

Environmental Analyst

NYS DEC - Division of Environmental Permits

625 Broadway

Albany, NY 12233-1750

**Subject:** PROPOSED AMENDMENTS TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQR)

Dear Mr. James J. Eldred:

*Your comments. All comments are read and input on each topic is tallied.*

*Tip: List each topic that is important to you in a separate paragraph or numbered item. If possible, reference the pertinent section in the SEQR document:*

*[http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/drft617exptrm.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/drft617exptrm.pdf)*

Respectfully,

<your name and address>