

The “Short Form”: NYPF’s Cheat Sheet on the New SEQR Amendments

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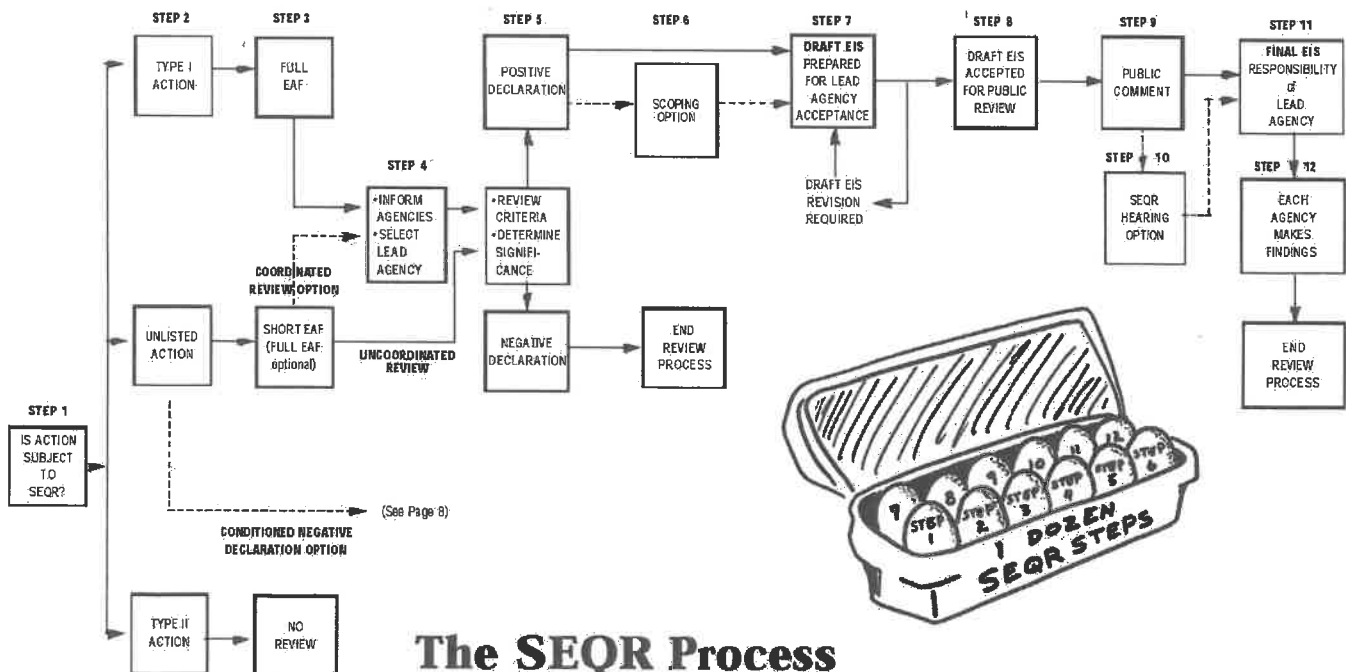
New regulations to the State Environmental Quality Review Act (SEQRA) went into effect on January 1. These changes to SEQR are the first major updates in two decades. Members of planning and zoning boards should review these changes as they will affect all decisions subject to SEQR. NYS Department of Environmental Conservation (DEC) Commissioner Basil Seggos states, “these updates to SEQR will streamline the environmental review process and encourage sustainable development and renewable energy development without sacrificing SEQR’s integrity or the environmental protections it affords.”

The most significant changes are: i). Addition of over ten categories of actions to the Type II list, which are not subject to further environmental review; ii). Adjustments to thresholds for Type I actions, which are more likely to have significant environmental impacts; and iii). Modifications to requirements for preparation, content, and approval of an Environmental Impact Statement (EIS), including a). Making scoping of the draft EIS mandatory, and b). Requiring consideration of the impacts from climate change in the EIS.

The amendments are summarized below, but please see the Findings Statement and Final Express Terms on the DEC website for the exact language of these changes. Also, check the DEC website for the updated forms and guides. The flow diagram from DEC’s SEQR Cookbook is included with this article to help visualize the points of the process that these changes affect.

Type II Actions: Expansion of the number of actions not subject to further environmental review. Type II actions are those that have been determined to not have significant adverse impacts on the environment. The intent of these additions to the Type II list is to streamline SEQR review and provide incentives for green infrastructure, renewable energy, and smart growth projects. The new additions to the Type II list include:

- Building upgrades to meet energy codes;
- Green infrastructure upgrades and retrofits;
- Installation of telecommunication cables;
- Installation of solar arrays in various locations that are already developed or disturbed, including closed landfills, brownfield sites, wastewater treatment facilities, sites zoned for industrial use,



Credit: NYS Department of Environmental Conservation

parking lots and garages, and existing structures not listed on (or eligible for) the State Register of Historic Places;

- Lot line adjustments;
- Reuse of residential or commercial structures;
- Recommendations of county or regional planning boards;
- Acquisition and dedication of park and conservation easements;
- Transfer of land for one, two, and three family housing;
- Sale of land by public auction; and
- Anaerobic digesters operating at publicly owned landfills.

Type I Actions: Adjustments to thresholds for actions likely to have environmental impacts. Some Type I actions have thresholds, which must be met or exceeded to be classified as Type I, requiring the full Environmental Assessment Form (EAF) to be prepared. Actions falling below the threshold are "Unlisted" actions, which only require the Short EAF to be submitted. The amendments modify and add some thresholds, including:

- Lowering the threshold for construction of new residential units by 20-50% depending on the size of the community. The new thresholds are:
 - 200 units (previously 250 units) for municipalities with 150,000 residents or less,
 - 500 units (previously 1,000 units) for municipalities with 150,000 to one million residents, and
 - 1,000 units (previously 2,500 units) for municipalities with more than one million residents.
- Adding a threshold for parking spaces in smaller communities. The new threshold is:
 - Parking for 500 vehicles in municipalities with 150,000 residents or less (previously 1,000 vehicles for all community types).
- Creating a threshold for actions in or adjacent to currently listed historic resources, and adding eligible sites as a Type I action with this same threshold. Specifically, the new thresholds are:
 - Exceeding 25% of any Type I threshold for actions within or contiguous to sites or buildings listed on the State Register of Historic Places (previously there was no threshold for listed sites), and

- Eligible for listing on the State Register of Historic Places (previously eligible sites were unlisted with no threshold).

Environmental Impact Statement (EIS): Changes to Preparation, Content, and Approval Process. When lead agencies determine that actions will likely have significant adverse impacts to the environment, known as a positive declaration, SEQR requires that an EIS is prepared and reviewed by involved agencies and the public. The amendments include several additions and clarifications to the EIS process, including:

- Making scoping mandatory for all EISs, except for supplemental EISs. Subsequently, lead agencies must now:
 - Provide a draft scope to all involved agencies and the public,
 - Require an EAF for all Type I and Unlisted Actions, and
 - Require that eligible late comments received after the scope be included in the draft EIS or its appendix.
- Simplifying the review of draft EISs by:
 - Specifying that a draft EIS is adequate for public review if it: a). meets the requirements of the final written scope, and b). provides the public and involved agencies the information necessary for their review, and
 - Determining that the adequacy of resubmitted draft EISs is based solely on the written list of deficiencies provided by the lead agency
- Adding consideration of climate change to the EIS. Specifically, an EIS must now include:
 - Measures to avoid or reduce both an action's environmental impacts and vulnerability from the effects of climate change such as sea level rise and flooding.

Putting the Amendments into Practice

While DEC sets the regulations for SEQR, the interpretation of these regulations lies in the hands of the local boards charged with discretionary decision-making powers. These amendments are sure to raise questions as to the interpretation of the new Type II actions, Type I thresholds, and requirements for EISs. Please keep us posted on what questions, challenges, and insights are emerging as you begin applying these changes to your SEQR reviews. We can help answer questions and share insights from other communities. Alternatively, you can contact DEC directly with questions by contacting Jim Eldred via email at SEORA617@dec.ny.gov or phone at (518) 402-9167.