

Environmental Conservation Law Article 8
6 NYCRR Part 617

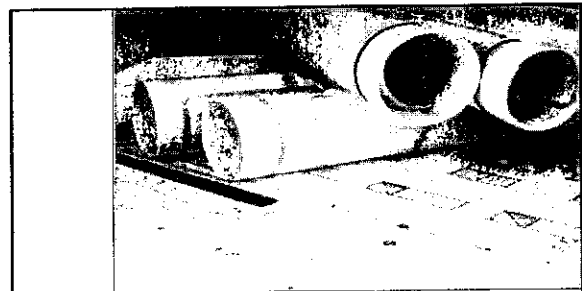
**NEW YORK STATE
ENVIRONMENTAL QUALITY
REVIEW ACT (SEQRA)**

New York State Department of State


	Introduction
Erin Thomas Trish Burke	

Statutory authority	
	<ul style="list-style-type: none"> <input type="checkbox"/> Environmental Conservation Law <ul style="list-style-type: none"> <input type="checkbox"/> Article 8, Title 6 NYCRR, Part 617 <input type="checkbox"/> Discretionary actions made by state and local agencies subject to review <input type="checkbox"/> Coordination between stakeholders is encouraged and required in some cases <input type="checkbox"/> Process ensures mitigation of adverse impacts <input type="checkbox"/> State court system is only enforcement mechanism

no SEQR "police"
- public can file an Article 78



Basic purpose	Part 617.1 (c)
Incorporate consideration of environmental factors into an agency's decision making process at earliest possible time	




What are "environmental factors?"

- community resources and economics of downtown now included

Environment

Resources or characteristics affected by action

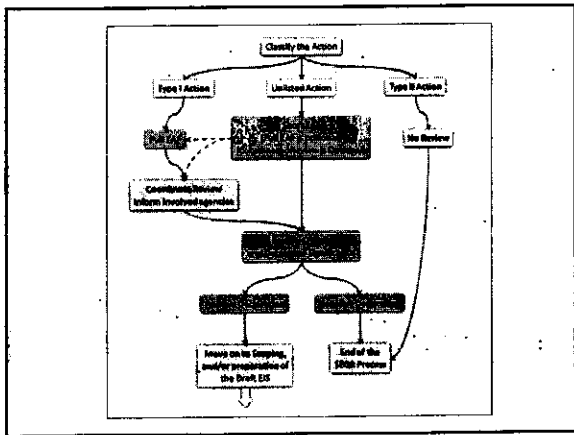
<ul style="list-style-type: none"> <input type="checkbox"/> Land <input type="checkbox"/> Air <input type="checkbox"/> Water <input type="checkbox"/> Minerals <input type="checkbox"/> Flora <input type="checkbox"/> Fauna <input type="checkbox"/> Noise 		<ul style="list-style-type: none"> <input type="checkbox"/> Resources of agricultural, archeological, historic or aesthetic significance <input type="checkbox"/> Existing patterns of population concentration distribution or growth <input type="checkbox"/> Existing community or neighborhood character <input type="checkbox"/> Human health
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- during and after construction
 - air includes wind patterns and odor
 - be aware of county health plans
 - pathways and active health areas

How SEQRA works

- Agency proposes action or receives application
- Action classified*
- Lead agency established
- Significance of action determined*
- Environmental Impact Statement (EIS), if needed
- Findings and agency decision*

*SEQRA process can conclude at any of these points



new flow chart

	Actions

What are "actions?"

All are subject to SEQRA consideration

- Undertaking, funding or approving projects or physical activities (discretionary actions)
- Planning & policy making activities
- Adopting rules, regulations & procedures
- Any combination above

SEQRA not just for construction
 - includes planning actions

Classification of actions

One of three classifications

- Type II* 6 NYCRR Part 617.5
- Type I 6 NYCRR Part 617.4
- Unlisted 6 NYCRR Part 617.2 (ak)

*DEC recommends making a note to file

NYCRR a.k.a. "hicker"

- each section lists of examples
in packet (last few pages)

Type II actions

- Pre-determined not to have significant adverse impact on environment
- Area variances for one, two, or three family residences
- Construction of commercial structure ≤ 4,000 SF gross floor area and consistent with zoning
- Official ministerial acts involving no discretion
- Classification concludes SEQRA
- Normal agency processes resume

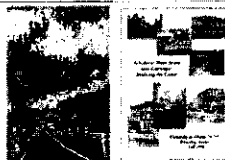


- Even if a Type II - make a note in the file to show you have considered the impacts

See NYCRR Part 617.5

Type I actions

- Carry presumption of significant adverse impact on environment
- More likely to be issued positive declaration & require preparation of EIS
- Requires that SEQRA continue until its conclusion



Ex Adoption of comprehensive plan or major changes in zoning reg's

See NYCRR Part 617.4

Unlisted actions	
<input type="checkbox"/>	Not found on either Type I or Type II list
<input type="checkbox"/> Physical disturbances of ≤ 10 acres (commercial) <input type="checkbox"/> Use variance needing no other approvals	
<input type="checkbox"/>	Governing board may supplement Type I or Type II lists with otherwise Unlisted actions
<input type="checkbox"/>	No agency bound by action on another's Type II list
<input type="checkbox"/>	Requires SEQRA continue to conclusion

See NYCRR Part 617.2 (ak)


	Agencies

What are SEQRA "agencies?"	
<input type="checkbox"/>	Agency: state or local public body
<input type="checkbox"/> Involved agency: public body which has jurisdiction by law to fund, approve or directly undertake action	
<input type="checkbox"/> Interested agency: public body which does not have jurisdiction over project, but wishes to participate in process because of its expertise or specific concern	
<input type="checkbox"/> Lead agency: the involved agency responsible for determining whether EIS will be required, and for its preparation and filing, if required	

Interested Agency only an advisory role w/ no more weight than an individual of the public

Possible SEQRA agencies	
<p>Involved</p> <ul style="list-style-type: none"> <input type="checkbox"/> Planning board <input type="checkbox"/> Zoning board of appeals <input type="checkbox"/> Town board, city council, village board of trustees <input type="checkbox"/> School board <input type="checkbox"/> Industrial development agency & Local development corporation <input type="checkbox"/> State agency 	<p>Interested</p> <ul style="list-style-type: none"> <input type="checkbox"/> State or local agencies acting in advisory roles <input type="checkbox"/> County planning board or regional agency GML §239-m review <input type="checkbox"/> Environmental management or conservation advisory councils <p>Not classified as SEQRA agencies:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Federal departments or agencies <input type="checkbox"/> Private entities

Federal or Private entities can not be SEQRA agencies

Establishing lead agency	
<p>Involved Agency</p> <ul style="list-style-type: none"> <input type="checkbox"/> If only one: <ul style="list-style-type: none"> <input type="checkbox"/> lead agency by design <input type="checkbox"/> If more than one: <ul style="list-style-type: none"> <input type="checkbox"/> lead agency is selected by consensus (coordinated) <input type="checkbox"/> no lead agency (uncoordinated) 	

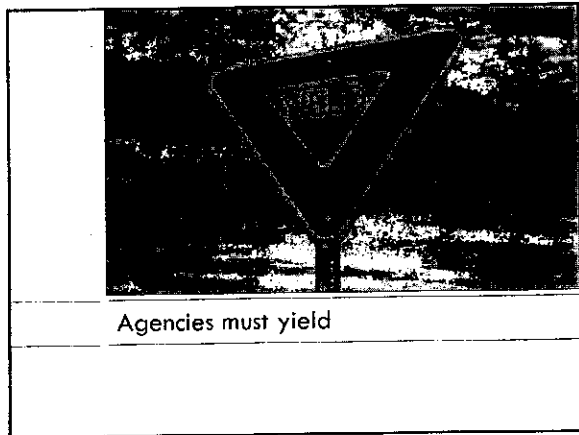
NYSDEC can decide conflicts but would rather it be settled locally

Establishing lead agency	
<ul style="list-style-type: none"> <input type="checkbox"/> Agency to propose action, or first receive application must contact all involved agencies <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <ul style="list-style-type: none"> <input type="checkbox"/> Distribute EAF Part 1 & application <input type="checkbox"/> Inform that lead agency must be established </div> <input type="checkbox"/> Lead agency must be established within 30 days <input type="checkbox"/> Once established, lead agency must make determination of significance within 20 days <ul style="list-style-type: none"> <input type="checkbox"/> GML §239-m review need not be concluded prior (full statement: EAF Part 1 & all materials submitted) 	

The "days" are considered calendar days. Not working days.

239 review - applicant only fills out part 1 of EAF

	Review



Complete application	
	<ul style="list-style-type: none"> <input type="checkbox"/> Local submission requirements have been satisfied for Type I or Unlisted action, and: <ul style="list-style-type: none"> <input type="checkbox"/> Negative declaration (or CND) has been issued; or <input type="checkbox"/> Positive declaration <ul style="list-style-type: none"> <input type="checkbox"/> Draft EIS has been accepted as satisfactory <input type="checkbox"/> § NYCRR Part 617.3(c) <input type="checkbox"/> Once complete, hearing must be held within 62 days <ul style="list-style-type: none"> <input type="checkbox"/> Subdivision, special use permit, site plan

Part 617.3(c) defines what is a complete application

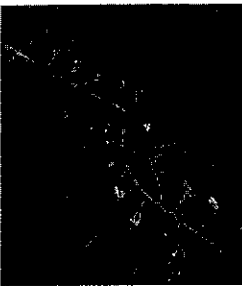
* 62 calendar days of when the application was completed, not when it hits your desk

Literal compliance

- Satisfaction of procedural requirements
- Integration with other reviews where appropriate once application is complete
 - Draft EIS public hearing §17.3 (c)
- Some elements of P&Z review may be similar, but are not to be substituted for or represented as being equivalent to SEQRA's requirements
 - Separate & distinct processes

SEQRA hearings are not required
but should be held w/ any other
public hearing as required by law

Subdivision – directly incorporated



- Incorporate process directly into preliminary & final plat approvals
 - Town Law §276
 - Village Law §7-728
 - General City Law §32
- Process differs if:
 - Planning board acts or does not act as lead agency
 - EIS required or not

-only land use tool where
statute integrates SEQRA into it

-must include in preliminary and
final plat approval

Substantive compliance

- Consider and evaluate all potential impacts
- Take a "hard look"
 - H.O.M.E.S. v NYS UDC (1979)
- Record written reasons why impact(s):
 - May be significant; or
 - Will not be significant



CARRIER DOME

-NYS UDC did not include traffic
impacts. Issued neg dec but was
reversed - made them issue pos. dec

Avoid segmentation

"Whole action": all components, phases, or aspects of proposal must be considered

- Rezoning for specific project
- Phased projects
- Commercial or industrial parks
- Some subdivisions
- Sale of property
- Road and highway projects



must include all phases of
a project in entirety

* Two ways to avoid this (able to segment)

① make note at P.H. all plans considered cumulatively

② require pos. dec. and consider a full build out using current zoning

Environmental Assessment Form

Short EAF

- Unlisted Actions at lead agency's discretion
- 4 pages in length
 - Previously 2

Full "Long" EAF

- Unlisted Actions at lead agency's discretion
- Mandatory for Type I Actions
- 25 pages in length
 - Previously 21

- forms available online - can save and complete at another time

Both full and short forms

- Part 1: Project information
 - Project sponsor
- Part 2: Impacts and their magnitude
 - Lead Agency
- Part 3: Evaluation of moderate to large impacts identified in part 2
 - Lead Agency
 - Determination of Significance

Applicant only fills out part one
Lead Agency fills out the rest

EAF revision update

- NEW forms effective 10/7/2013
- Considers additional areas of environmental concern
 - 1978 (full) & 1987 (short)
- No longer a visual assessment form
- Statement of significance in Part 3
- Online "workbooks" with detailed guidance and instruction
- Geographic Information Systems (GIS) Mapper
- www.dec.ny.gov/permits/70293.html

mapper automatically fills in some
answers based on taxmap#
-includes archeology and wetlands

Uncoordinated review

Unlisted actions only

- No lead agency
- Each agency acts independently and issues individual determinations of significance
- If any one agency issues a positive declaration:
 - All involved agencies must coordinate
 - Any negative declarations issued by other agencies are superseded
 - Exception: other agency already made final decision
- 6 NYCRR Part 617.6 (b) (4)

-must start over if turns into a
coordinated review

Coordinated review

One integrated environmental review

- Lead agency administratively responsible for conducting review process until its completion
- Other involved agencies may assist lead by providing information and comments
- Lead Agency responsibility cannot be delegated
- 6 NYCRR Part 617.6 (b) (3)

Board w/ most jurisdiction should be
the lead agency

-DEC has set precedent of cases where
disagreement over lead agency occurs

-cannot delegate to sub-committee

	Determination of Significance

Determining significance Part 617.7

- new construction includes green energy consideration

Does building block neighboring solar panel

Criteria	
	<ul style="list-style-type: none"> <input type="checkbox"/> Adverse changes to the environment <input type="checkbox"/> Reduction of wildlife habitat <input type="checkbox"/> Hazard to human health; <input type="checkbox"/> Substantial change in the use of land <input type="checkbox"/> Creating a conflict with adopted community plans or goals <input type="checkbox"/> Impairment of "community character"

-not an all inclusive list

-all projects should be in accordance with comprehensive plan

Evaluate impacts in context

Magnitude	Duration	Likelihood
Moderate (localized)	Short-term	Unlikely to occur
Large (severe)	Medium-term	Possibly will occur
	Long-term	Probably will occur
	Irreversible	

workbook helps w/ subjective terms

magnitude of impact may vary by person

Context

Magnitude, duration & likelihood



- project on right has bigger environmental impact project on left already in an urban center

- domino effect for conversion of land

Course of action

Will the action have a potential significant adverse environmental impact?

YES

- Positive Declaration
- EIS required

NO

- Negative Declaration
- EIS not required
- Process concludes

Negative declaration

- Analysis of adverse environmental impacts concludes:
 - No likely impacts identified; or
 - None identified are significant; or
 - Identified significant impacts are mitigated
- Written determination must include reasons behind conclusions.
- Incorporate into any subsequent legal notices
- 6 NYCRR Part 617.7 (a) (2)

Conditioned negative declaration

- Criteria for CND determination
 - Only for Unlisted actions
 - Full EAF required
 - Coordinated review required
- May be issued if imposed conditions will mitigate or avoid significant impacts
- Publish notice in Environmental Notice Bulletin and provide at least 30 days for public comment
- Must be rescinded and reissued as positive declaration if substantive comments identify that mitigation may not be accomplished

- not meant to skirt a positive dec.

Env. Not. Board is an online resource

provided by NYSDEC. Updated weekly

Information must be provided by Wednesday.

After the negative declaration

- Each agency returns to underlying procedures
 - Planning board or zoning board of appeals:** site plans; subdivisions; variances; special use permits
 - Local legislative body:** adoption/revision to zoning or comprehensive plan; funding or bonding
 - State or other local agencies:** permits; grants, loans or bonds; construction; regulations
- May be amended or rescinded prior to final decision if substantive changes proposed; new information discovered; changes in circumstances

Positive declaration

- Intended for lead agency to apply low threshold
- Action has potential to cause or result in at least one significant adverse environmental impact
- Environmental Impact Statement required
- If no coordination, one agency's positive declaration supersedes another's negative declaration
- 6 NYCRR Part 617.7 (a) (1)

Environmental Impact Statement

Environmental Impact Statement (EIS)

- Disclosure document, the process by which:
 - Provides a means for agencies, project sponsors & public to systematically consider significant adverse environmental impacts, alternatives & mitigation
 - Facilitates the weighing of social, economic & environmental factors early in planning & decision-making process
- 6 NYCRR Part 617.2(n)

"Disclosure Document"

Generic EIS

- Broader & more general than site/project specific EIS
- Should discuss logic & rationale for choices/options
- May include assessment of specific impacts
- May be conceptually based in some cases
- May identify important natural resources, existing & projected cultural features, patterns & character
- May discuss constraints & consequences of hypothetical scenarios that could occur

6 NYCRR Part 617.10

www.dec.ny.gov/permits/56701.html

not for site specific projects

[Ex] Statewide review - not gas drilling

Preparation of draft EIS (DEIS)

- Initial statement circulated for review & comment
- Prepared by project sponsor or delegated to lead agency
- However, lead agency is responsible for determining adequacy of DEIS for public review within 45 days
 - 30 day period for re-submission of a DEIS
- Lead agency may charge fees to applicant in order to recover actual costs of **either preparation or review of DEIS/FEIS, but not both**
- 6 NYCRR Parts 617.9 & 617.13

Scoping the DEIS

- Focus DEIS on significant issues
- Identify what information is needed
- Eliminate non-significant issues
- Identify alternatives
- Identify mitigation measures
- Provide opportunity for other agency and public input

6 NYCRR Part 617.8

- currently optional but some legislation possible to alter this and make it required

- "brainstorming session"

Draft EIS (DEIS) content

- Describe action
- Define location & setting
- Evaluate potential significant adverse impacts
- Identify potential mitigation
- Discuss reasonable alternatives
- Analyze "no action" alternative

6 NYCRR Part 617.9 (b)

"no action" option should be considered
- "no traffic, but no jobs"
- used to balance impacts

Public hearings

- Optional under SEQRA
- Should be held concurrently with any other required hearing on same project
- Public notice at least 14 days prior to hearing
- Hearing must start between 15 and 60 days after Notice of completion w/hearing published
- Public comment period continues for at least 10 days after close of hearing
- 6 NYCRR Part 617.9 (4)

Final EIS (FEIS) content

- Revised Draft EIS
- Supplements, if applicable
- All comments received
- Lead agency's responses to substantive comments

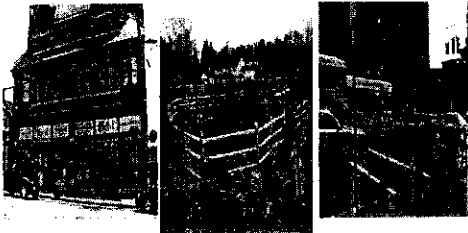
6 NYCRR Part 617.9 (b) (8)

- supplements could include maps, etc.

Preparation of FEIS

- Lead agency responsible for completion within:
 - 45 days after public hearing, or;
 - 60 days after DEIS notice of completion if no public hearing
- Notice of completion begins 10+ day period for involved agencies and public to consider FEIS
- Lead agency may issue written findings afterwards
- Notice of Completion of Draft/Final EIS

Decision, Filing and Publication



Conditions

Part 617.3 (b)

Authority to impose substantive conditions that are practicable & reasonably related to impacts identified in EIS or in conjunction with CND

Two places

① within EIS

② conditioned neg. dec

Decision-making and findings

- Findings must:
 - Consider information in FEIS
 - Balance environmental factors
 - Provide rationale for decisions
 - Certify rules have been followed
 - Certify chosen alternative mitigates adverse environmental impacts to extent possible
- Findings & final decision may be made concurrently
- SEQR Findings Form

- is a findings form

- must explain why you gave the decision

Filing

What gets "filed"

- Type I: negative and positive declaration
- Unlisted: CND and positive declaration
- Environmental Impact Statement
- EIS Notice of completion
- Notice of hearing
- Findings

Who gets a copy

- Involved agencies
- Applicant
- Individuals upon request
- Chief Executive Officer

Additional filing may be applicable
NYS DEC: EIS only
NYS DOS: EIS only in coastal areas

Filing means "provide a copy"

- definition only applies to SEQE

Environmental notice bulletin (ENB)

- Official online publication
 - Type I: negative and positive declaration
 - Unlisted: CND and positive declaration
 - Notice of completion of EIS
- Published weekly: 6 PM Wednesday submission deadline for publishing following Wednesday
- Submit ENB Notice Publication Form by email or mail:
 - enb@cw.dec.state.ny.us
 - ENB, NYS DEC, 625 Broadway, 4th Floor, Albany, NY 12233

Contacting the NYSDOS

(518) 473-3355 Training Unit

(518) 474-6740 Legal Department

(800) 367-8488 Toll Free

Email: localgov@dos.ny.gov

Website: www.dos.ny.gov

www.dos.ny.gov/lg/

www.dos.ny.gov/LG/seqr.html

Contacting the NYSDEC



(518) 402-9167 Division of
Environmental Permits

Email: depprmt@gw.dec.state.ny.us

Website: www.dec.ny.gov

www.dec.ny.gov/permits/357.html
