

WELCOME!!



SEQR: Guiding the Process

2009

NYS DEC
Division of Environmental Permits



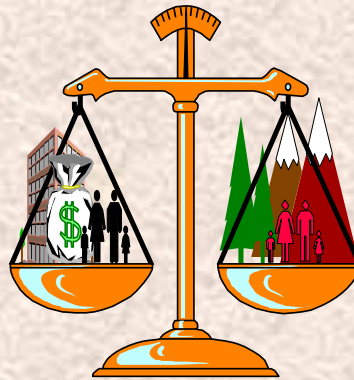
-Welcome to SEQR: Guiding the Process, an introduction to the fundamentals of applying The New York State Environmental Quality Review Act to state and local government decisions.

-We hope that this introduction will provide a foundation for using SEQR day to day, and serve as background for additional, in-person training.

What Is “SEQR”?

New York State Environmental Quality Review Act

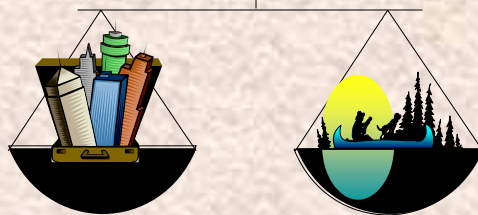
- Statute is Article 8 of NYS Environmental Conservation Law
 - Ch. 43, Consolidated Laws of NYS
- Regulations are Part 617 of Title 6 of the New York Codes, Rules and Regulations
 - (“6 NYCRR”)



- SEQR is a New York statute that became law on August 1 1975.
- The text of SEQR is found in Article 8 of the New York Environmental Conservation Law.
- SEQR directs the Commissioner of the New York State Department of Conservation to develop regulations to guide NYS and local government agencies in their implementation of the statute.
- The SEQR regulations thus provide a guideline for local officials to ensure compliance with SEQR.
- The regulations are found in Part 617 of the New York Code of Rules and Regulations [6 N.Y.C.R.R. Part 617]
- The SEQR regulations are posted online at:
<http://www.dec.ny.gov/regs/4490.html>

Purpose of SEQR

Incorporate the consideration of environmental factors into an agency's decision making process at the earliest possible time



- SEQR was intended to fundamentally change government decision making by requiring that environmental values be integrated within the planning and approval processes.
- SEQR is not a separate permit, but is instead an additional layer of review which is triggered when a state or local agency must make a discretionary decision.
- SEQR is a component of the larger review and decision, not the primary act.
- Must be completed before final decision can be issued.
- Does not have any specific enforcing body.
- The SEQR statute directs mitigation, but also directs that there be balance.
- SEQR scales do not represent the scales of justice, but the balance among economic, social and environmental considerations.
- See 6 NYCRR 617.1(d),

What Are “Environmental Factors”?

SEQR Defines Environment Broadly

- Resources or characteristics that could be affected by an action, including:
 - Land, air, water, minerals
 - Flora, fauna
 - Noise
 - Features of historic or aesthetic significance
 - Population patterns
 - Community character



-The SEQR statute defines the term ‘Environment’ broadly [see ECL 8-0105.6].

-Environment does not just pertain to natural resources, but also includes how people use, and relate to, their surroundings

-The SEQR regulations [see 617.2(1)] define Environment as:

“...the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.”

What is An “Agency”?

- **Examples:**
- **State Agencies**
- **County Legislatures**
- **Town or Village Boards**
- **City Councils**
- **Planning Boards**
- **Zoning Boards of Appeal**
- **Industrial Development Agencies**
- **School Boards**

A public body
which has
jurisdiction by law
to fund, approve or
directly undertake
an “action”



-The SEQR statute also defines “agency” broadly, and explicitly includes state departments, boards, public authorities, as well as local boards, districts, and governing bodies [see 8-0105, and 617.2(c)].

-”Jurisdiction by Law” means that an agency’s underlying authority has been granted by NYS statute, local law or ordinance.

-Because NYS is a “home rule” state, local agencies making local land use decisions are responsible for the majority of SEQR transactions.

-Other local government agencies include, but are not limited to, school boards, fire districts, independent library boards, and special purpose districts.

-No agency can delegate its SEQR responsibility. While it is acceptable for advisory boards to provide input in support of SEQR reviews and determinations, the agency with the discretionary decision making authority is the only one responsible for the final decisions.

-State agencies are subject to SEQR, however, there are some limited statutory exceptions, including specific decisions made by the Adirondack Park Agency, the Public Service Commission, and a few other state entities [see SEQR Handbook: <http://www.dec.ny.gov/permits/6473.html>].

-Federal agencies are not subject to SEQR. They are subject to the federal environmental review process, under the National Environmental Policy Act (NEPA).

How SEQR Works

Overview

- ▶ Agency Proposes Action or Receives Application
- ▶ Action Classified *
- ▶ Lead Agency Established
- ▶ Significance of Action Determined *
- ▶ Environmental Impact Statement, If Needed
- ▶ Findings and Agency Decision *

SEQR Process Can Conclude At Any of These Points *



-SEQR is “triggered” if an agency has a discretionary decision to approve, fund, or directly undertake an action that might have an effect on the environment.

-Once SEQR is triggered, a sequential review process unfolds. Depending upon the complexity of a project, that review may be brief, or extensive

-To determine whether SEQR applies to an action, the action must be classified as Type I, Type II, or Unlisted. A Type II classification completes SEQR.

-For Type I and many Unlisted actions, a lead agency will administer the SEQR review.

-The lead agency will determine whether the potential impacts of the proposed action require further study via an Environmental Impact Statement (EIS). If no EIS is required, the SEQR process concludes with issuance of Negative Declaration (Neg Dec) by the lead agency.

-If an EIS is required, the SEQR process must continue through acceptance of draft and final EISs by the lead agency, followed by issuance of SEQR Findings by each agency which must make a decision regarding the action. Findings are a rationale for the agency’s decisions and also certify that the action as approved will avoid or minimize adverse environmental impacts to the maximum extent practicable.

-When an EIS is required, SEQR concludes with the issuance of Findings.

- Once SEQR has been concluded, agencies may then make their final decisions based upon their underlying jurisdictions.

What Is An “Action”?

- SEQR “Actions” Occur When an Agency makes a discretionary decision which may have impact(s) on the environment
 - “Discretionary” means ability to say “yes”, “no”, or “only if”
- Actions can include:
 - “Direct actions” where agency is sponsor - -
 - Physical construction;
 - Planning and policy-making; or
 - Adopting rules, regulations or procedures;
 - Granting approvals or funding; or
 - Combinations of the above.



-Discretionary means that the decision maker will have choices that will determine whether, or how, an action may be undertaken. Examples include zoning change, site plan approval, variances, special use permits and many grants of funding.

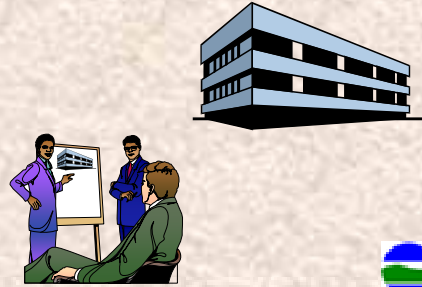
-Non-discretionary decision are sometimes known as “ministerial” decisions since they are based on facts, with outcomes prescribed by law or regulation without the use of judgment. Routine building permits are typically ministerial decisions.

-Actions may include:

1. Physical Actions that may affect the environment by changing the use, appearance, or condition of any natural resources or structures, whether those actions are directly undertaken by an agency, involve funding, or require approvals.
2. Planning or Policy making activities that may affect the environment and commit the agency to a definite course of future decisions, such as adoption or significant amendment of Comprehensive Plans.
3. Adoption of rules, regulations and procedures, including local laws, codes, ordinances, executive orders, and resolutions, that may affect the environment.
4. Or, any combination of the above, such as approval of a site plan where a zoning variance or change is also required.

Direct Action vs. Approve or Fund

- Approve or Fund = React to Another's Ideas
- Direct Actions: Agency responsibilities start "upstream", early in planning
- Direct Actions may include:
 - Site Selection
 - Bond resolution etc.
- ▶ Exemption in regulations
- ▶ for preliminary studies



-To approve or fund is the most typical SEQR situation for local municipalities and the state. Agencies cannot issue permits or approvals, authorize financial support, or provide financial support without SEQR being completed.

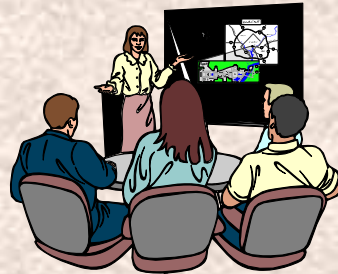
-Direct actions are actions sponsored by the involved agency. The sponsoring agency must complete SEQR before proceeding to site selection, bond resolution, contracting, or site preparation.

-Site selection, which includes choosing or deciding on a location, triggers SEQR only when a government agency is the project sponsor. However, conducting preliminary studies of potential sites does not necessarily trigger SEQR. Such preliminary studies include property surveys, soils samples, test wells, or temporary installation of environmental monitoring equipment, and are included within several items on the Type II list.

When Is the “Earliest Possible Time”?

Start SEQR:

- Early enough to affect all
- decisions which could impact
- the environment,
 - location as well as design;
- But far enough into planning
- that the range of available
- choices can be defined



-When reviewing, the earliest possible time is generally when one receives the application! Therefore, in the regulatory arena, the trigger to initiate SEQR is generally the first time any involved agency sees the project.

-On the other hand, where an agency is the sponsor, the SEQR review should begin early in the planning phase so that issues and concerns may be identified and plans changed more readily.

-If there is more than one agency involved, the SEQR review should start either when the first involved agency receives a request for approval or funding, or begins to plan a direct action.

How Do You “Start SEQR”?

- Initiating agency or first agency to receive an application is responsible for initiating SEQR
- That first agency must “classify” the action.
- First involved agency must also identify other state or local agencies who may have one or more jurisdictions over the project, for example:
 - Highway access
 - Natural resource-based permits
 - Local land use approvals



-SEQR begins when an agency initiates a direct action or when it receives an application for review.

- The first agency to receive the application must preliminarily classify the action as Type I, Type II, or Unlisted. This does not necessarily mean that the receiving agency will become the Lead Agency.

-Identification of other Involved Agencies is required for Type I actions and all coordinated reviews.

-Tips for identifying other potentially involved agencies:

Use EAF list of approvals required.

Create standardized lists of recurring co-approvals that can be used as a check list for each application.

-The regulations state that every **reasonable** effort must be made to identify other involved agencies.

What Is “Classifying” the Action?

Look at the “Whole Action”

- **Must consider all components, phases or aspects**
- **of a proposal**
- **Examples:**
 - **Projects to be undertaken in phases**
 - **Highways, subdivisions,**
 - **and many mines**
 - **Projects requiring siting decisions**
 - **followed by final site design**
 - **Determining location as well as**
 - **design of new group residences**



-All known phases of a project, as well as all jurisdictions, should be considered when classifying the action, even if the proposal involves activities over a number of years. For example, a project may include multiple jurisdictions such as a zoning change, extension of sewer service, subdivision approval, and the building of a new road. Also, large projects, such as subdivisions, roads or mines, may be designed to be undertaken in multiple phases over a number of years. The “whole action” includes all jurisdictions and phases.

-If the application and supporting materials are not clear as to possible future phases or other jurisdictions, the initiating agency should request additional information from the project sponsor.

-Dividing the environmental review process into different activities or stages, and then treating them as independent or unrelated activities, is known as segmentation. Segmenting the review process is generally unacceptable and may leave the lead agency open to legal challenge.

-Classifying the action is important because it determines the level of initial environmental review that the project will receive, which could consist of:

No further review;

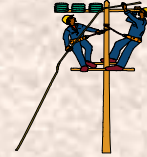
Full (Long Form) EAF or Short EAF; and

To coordinate or not to coordinate with other agencies.

Classifying Actions

Type II

- Have been determined categorically to
- not require preparation of EIS's.
- Examples:
 - Most maintenance or repair
 - including upgrading buildings to meet building and
 - fire codes
 - 1, 2 or 3-family homes on approved lots
 - New non-residential uses under 4,000 square feet
 - Requiring no zoning change or use variance
 - Purchase or sale of supplies or equipment
 - Land transactions not covered
- A Type II classification concludes SEQR



-It is easier to understand classification by backing in from the least significant class of actions, the Type II list [see 617.5]. The statewide Type II list includes actions which the SEQR statute excludes or exempts from review as well as classes of activities that have been designated by regulation.

-These are actions which categorically do not require EISs. Any impacts of these actions listed as Type II can be managed by attaching conditions based on the agency's underlying authority. For example, set backs from highways or wetlands may be specified under site plan review.

-Anything listed as Type II in the regulations requires no further processing under SEQR. No procedural requirements, environmental assessments, or determinations, are required.

-One should keep records for one's own protection. A brief note to the file will suffice as long as it states that the project was considered under SEQR, that it met the requirements for a Type II, and includes the specific item number from 617.5.

-An agency can create its own Type II list. However, an agency's Type II list must be no less protective of the environment than the existing statewide Type II list in 617.5, and cannot include items from the statewide Type I list in 617.4.

Classifying Actions

Type 1

- More likely to have significant adverse impact on environment, so
- more likely to require EIS
 - Not an automatic EIS requirement
- Examples:
 - Large residential facilities
 - In context of existing community size
 - In or “substantially contiguous to” Historic Register listed or eligible sites, or parks
 - Affecting agricultural districts
 - Purchase, sale or other transfer of more than 100 acres
 - by a state or local agency
- Require that SEQR continue



-In contrast to Type II actions, Type I actions [617.4] are more likely than other classes of activities to require the preparation of an EIS. This does not mean that all Type I actions must receive an EIS, but that, instead, the need for an EIS must be individually determined based on a Full Environmental Assessment Form (EAF) plus coordination with all other agencies having jurisdiction over the project.

-Many of the Type I items are based on numeric thresholds, for example, parking for 1000 vehicles, alteration of more than 10 acres, or specific sizes of residential developments compared to existing community size and availability of public water and waste water treatment.

-Some physical locations may also trigger a Type I classification, such as proximity to a state or federal historic site, publicly owned parkland, open space, or national natural landmark; or wholly or partially within an Agricultural District.

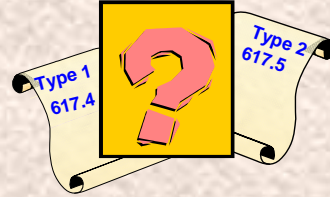
-Agencies may create additional, local Type I items, provided that a local Type I list is no less protective of the environment than the statewide list, and that items from the statewide Type II list cannot be locally listed as Type 1. An individual agency's designation of an action as Type 1 requires that all involved agencies coordinate their SEQR review.

-Classification of an action as Type I means that the SEQR process must continue, including preparation of the Full EAF, coordination among all state and local agencies with jurisdiction over the project, and establishment of a lead agency. The lead agency will then determine whether an EIS must be prepared.

Classifying Actions

Unlisted

- Fall between the two “listed”
- categories
- Examples:
 - New 20-unit apartment building
 - New non-residential use of 10 acres or less
 - Parking for less than 1,000 cars
 - Sale, purchase, lease or other transfer of fewer
 - than 100 acres of land by government entity
 - Other activities not specifically listed in either 617.4 or 617.5
- Require that SEQR continue.



-Unlisted actions are any proposals or actions not specifically included on either the statewide Type I or Type II lists.

-This is the largest category of actions subject to SEQR review. Specific items are not listed since it is impossible to identify in advance every potential project or decision which an agency may need to consider.

-Unlisted actions include a wide range of activities ranging from minor zoning variances to complex construction activities. Thus, while 10 acres or more of physical disturbance is classified as Type I, new physical disturbances ranging from 9.9 acres to as small as 0.1 acres are all Unlisted actions.

-Each individual agency may proceed with its own uncoordinated SEQR review of an unlisted action. However, if any other agency with jurisdiction over the project decides that an EIS must be required, uncoordinated review must cease and coordinated review initiated.

-The SEQR regulations allow an agency to choose to apply the Type I initial review process to any unlisted action. Therefore, it is reasonable to treat any large or complex project that has been classified as Unlisted, as a Type I.

Why Classification Matters

Sets Basic Review Requirements

- **Type 1 Actions:**
 - Must “coordinate” with other “involved agencies”
 - Must use Full EAF (Environmental Assessment Form)
- **Unlisted Actions:**
 - Initiating agency chooses whether
 - to coordinate
 - Agency may allow Short EAF or require
 - Full EAF
- **Type 2 Actions**
 - No further review required



-Classification matters because an agency needs to know if it should coordinate, which forms to use, and what level of environmental review is appropriate.

-Uncoordinated reviews can save time because each agency may act immediately as lead agency. Each agency’s determination of significance will thus be based only on the application and related information received from the project sponsor, including a Full or short EAF. Any agency with jurisdiction over an unlisted action may require preparation of a Full EAF.

-Coordinated reviews are based on input from all agencies who have jurisdiction over a project or decision, and a single determination of significance is made by the SEQR lead agency.

Lead, Involved and Interested Agencies

What Are They?

- **An Involved Agency is a public body which is directly undertaking the proposed action, OR has jurisdiction by law to fund or approve it.**
- **An Interested Agency is a public body which does not have jurisdiction over the project but wishes to participate in the process because of its expertise or specific concern(s).**
- **The Lead Agency is the involved agency which is responsible for determining whether an EIS will be required, and if so, for its preparation and filing.**



-The SEQR regulations define an “involved agency” as one “that has jurisdiction by law to fund, approve or directly undertake an action” [see 617.2(s)].

-”Interested agency” means “an agency that lacks the jurisdiction to fund, approve or directly undertake an action but wishes to participate in the review process because of its specific expertise or concern about the proposed action” [See 617.2(t)].

-An interested agency has the same ability to participate in the review process as a member of the public.

- “Lead agency” is defined as the agency “principally responsible for undertaking, funding or approving an action, and therefore responsible for determining whether an environmental impact statement is required in connection with the action, and for the preparation and filing of the statement if one is required” [see 617.2(u)].

Uncoordinated Review

Unlisted Actions Only

- Allowed under 617 but individual agency rules or
- policy may require otherwise
- Each agency acts independently
 - Does separate environmental review.
- If any agency finds that a project may
- have significant adverse environmental
- impacts, uncoordinated review ends:
 - Must coordinate for Lead Agency
 - Other uncoordinated environmental
 - reviews superceded



-The agency that first receives the application may conduct an uncoordinated review and proceed as if it were the only involved agency

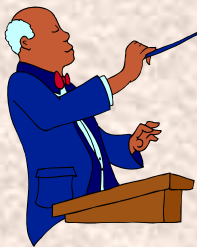
-It can act as the only agency unless it determines that the environmental impact of the project may be significant. It must then coordinate with all the other involved agencies.

-Whether to coordinate, or to not coordinate, is a judgment call. If uncoordinated, each agency will review the project independently.

-If any involved agency identifies a significant adverse impact requiring the preparation of an EIS during an uncoordinated review, uncoordinated review ends and that agency must initiate coordinated review. All involved agencies which have not yet issued their decisions within their underlying jurisdictions, must wait until the final EIS is completed to issue SEQR Findings and their final decisions. Any agency which has already issued its final decision has no remaining discretionary authority over the project, and so would no longer be an involved agency.

What is “Coordinated Review”?

A Single, Integrated Environmental Review of a Proposed Action



- “Lead Agency” is responsible for the
- conduct and administration of the
- SEQR review process.
- Must have its own decision- making
- authority.
- May not delegate to an advisory body.



-Coordinated review enables a single integrated environmental review of a proposed action, addressing all concerns identified across the jurisdictions of all involved agencies, as well as any general environmental concerns which agencies or the public may identify. Only one agency serves as the lead agency in managing the SEQR environmental review of a project.

-Once selected as lead agency, that responsibility lasts until the SEQR process is completed.

-To be eligible to serve as lead agency, an agency must have some direct underlying jurisdiction for the project. While advisory boards may contribute substance to the environmental review, they are not eligible to serve as lead agency.

-A lead agency may not assign or delegate its review responsibilities to another entity.

Coordinated Review: How?

Start by Establishing Lead Agency

- Agency which proposes a project or first receives an application must:
 - Identify all “potentially involved” agencies;
 - Advise each agency by mail that SEQR Lead
 - Agency must be established; and
 - Include EAF Part I plus supporting maps and other
 - related materials in notice to those agencies.
- Involved agencies should establish
- Lead Agency within 30 days of notice.
- Lead Agency established by consensus.



-To initiate a coordinated review, the agency that first receives the application, and makes an initial determination that the project is subject to SEQR, must transmit a copy of the application and Part 1 of the EAF to all involved agencies. For a direct action, the sponsoring agency must initiate coordination.

-The agency must also notify the involved agencies that they must agree upon a lead agency within 30 days from the date that the EAF was submitted.

-When involved agencies respond to the coordination letter, they should indicate any preference as to which agency should serve as lead, and should preliminarily identify any environmental concerns raised by the proposed action.

Practical Tip:

What Makes a Good Coordination Package?

- Identify “potentially involved” agencies
 - Actually likely to have jurisdiction
 - Not “everybody, just in case”
- Maps!!!
- Not only the EAF Part 1
 - Include added description if EAF is terse
 - Need to know precise location to determine many jurisdictions, like:
 - DEC wetlands or stream disturbance permits
 - Zoning variances
 - Plus plans or sketches of proposal

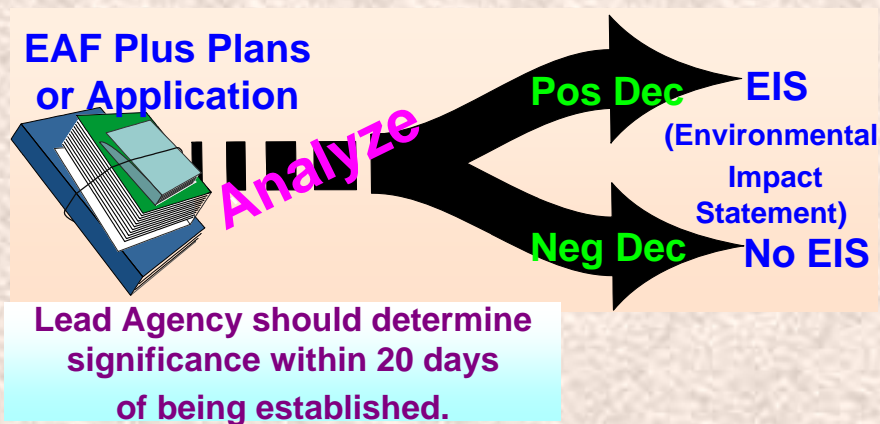


-A good coordination package will include enough information to allow involved agencies to prepare an informed response, but does not necessarily need to include all application materials which the initiating agency has received.

-Part 1 of the EAF must be included. It should be accompanied by at least a general location map, any summary application materials which provide a more thorough description of the proposed action than the EAF alone, and copies of plan or sketch pages sufficient to characterize the full extent of the proposed action.

Lead Agency Determines “Significance”

Sets Path of Environmental Review



-Lead agency is a powerful role because it determines the course and extent of the environmental review, therefore, any involved agency which has identified significant environmental concerns related to a proposed action, may well wish to serve as lead.

-The lead agency is responsible for reviewing the EAF and making the “determination of significance” regarding the potential environmental impacts of the proposed project. That determination of significance is the decision whether to require an EIS to further explore potential impacts of the proposed action as well as options to avoid or mitigate the impacts .

-There are specific criteria which must be used to determine significance [see 617.7(c)]. In evaluating the proposed action relative to these criteria, the lead agency should use the EAF, all application materials received to date, and any input received from other involved agencies.

-If the proposed project may have a significant adverse effect on the environment based on any one or more of those criteria, the lead agency must require that an EIS be prepared, by issuing a “positive declaration”

-If the lead agency determines that the project will not have a significant effect on the environment, a “negative declaration” is issued.

-Challenges to negative declarations are common. It is important that in the negative declaration the lead agency must show that the relevant areas of environmental concern were identified and that these areas were thoroughly analyzed. The reasons why the environmental concerns were considered insignificant must be documented in the negative declaration.

Review Starts With the “EAF” (Environmental Assessment Form)

Project, Site and Impact Descriptions

- Part 1:
 - Site and Project Descriptions
 - Prepared by Project Sponsor
- Part 2:
 - Potential Project Impacts and Magnitudes
 - Prepared by Lead Agency
- Part 3:
 - Importance of Impacts Identified in Part 2
 - Prepared by Lead Agency



-Under SEQR, the determination of significance begins with the EAF in front of you. The lead agency should ensure that the project sponsor has submitted the correct version of the EAF. Remember, the lead agency classifies the action, **NOT** the project sponsor.

-There are two versions of the EAF available for use:

Long (Full) Form: Several pages in length, organized by environmental features and factors. Must always be used for Type I actions and, at the discretion of the lead agency, may also be used for unlisted actions. Use of the Full EAF is recommended for projects where the short form will not provide sufficient information.

Short Form: A two page form designed for use with small, unlisted actions.

-Both the full and short EAF are composed of the same three parts.

-The lead agency can require that supplemental information be added to the EAF if that information is needed in order to make a determination of significance.

-The EAF plus any such additional information, combined with the application materials submitted to the lead agency, should all be considered in identifying and evaluating potential project impacts.

Evaluate the EAF Part 1

Find and Use Additional Sources:

- all project designs, studies, maps, applications or other documents available to date;
- resource and reference maps
 - like wetlands, stream classifications,
 - agricultural districts, flood hazard,
 - archaeological or historic sites;
- published sources
 - like soil surveys, traffic plans, or local histories;
- other agencies
 - DOT/local highways; Parks, Recreation & Historic Preservation; DEC
- local resources
 - like town or county planners or historians.



-Part 1 asks the sponsor to provide three main classes of information: Site description, project description, and zoning and planning information. The Part 1 questions help the sponsor create a word picture of the project and its setting.

-It is the responsibility of the applicant to provide accurate, complete and comprehensible information when completing Part 1. Project sponsors may need to support some responses by providing the lead agency with additional information.

-The lead agency is responsible for reviewing the EAF, which includes verifying congruity between the project application and the information provided by the sponsor in Part 1 of the EAF. The lead agency should review all Part 1 responses, flag any problems, identify missing information, inform the project sponsor, and request revisions.

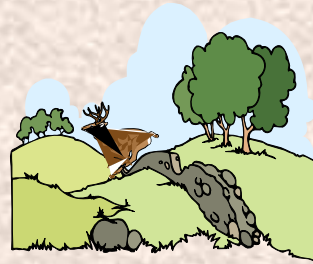
-Additional information may be provided voluntarily by the applicant, or requested by the lead agency. The purpose of the additional information is to support and expand upon the subject matter identified in the EAF and to ultimately make a Determination of Significance.

-Part 1 should be checked against any resources that you have at your disposal, including internet resources like the NYS Office of Parks, Recreation and Historic Preservation's web based Geographic Information System (GIS), County GIS web sites, and DEC's Environmental Resource Mapper [see <http://www.dec.ny.gov/animals/38801.html>].

Part 2: What Is Affected?

Systematic Analysis by Category to Identify Potential Impacts

- ▶ Land ▶ Water ▶ Air ▶ Plants & Animals
- ▶ Agricultural Land ▶ Aesthetics
- ▶ Historic & Archaeologic
- ▶ Open Space & Recreation
- ▶ Critical Environmental Areas
- ▶ Transportation ▶ Energy
- ▶ Noise & Odor ▶ Public Health
- ▶ Growth & Community Character



-Part 2 walks the lead agency through a systematic analysis of potential impacts by posing a series of questions regarding multiple environmental categories or resources. The lead agency should identify the potential for any aspect or component of the proposed project to impact each resource or category. At this stage, all the lead agency is being asked to do is identify the potential for adverse impacts to occur. The lead agency must conduct the impact identification for each category in Part 2.

-For example, in the **Aesthetics** category, Part 2 essentially asks

1. Is the project different from existing uses?
2. Are any project components visible from aesthetic resources?
3. Would project eliminate or diminish existing scenic views?

-To respond to these three questions, the lead agency should consider both aesthetic and visual impacts; note whether the potential impacts would affect the public in general or be limited to a small number of private citizens; and identify any mitigation of potential impacts included in the project design.

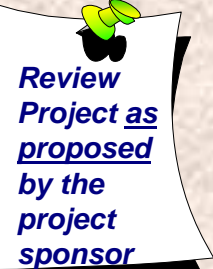
-Visual impacts relate to visibility, including scale, perspective and contrast; while Aesthetic impacts are the potential detrimental effects on the perceived beauty of a place or structure, and so implicitly include an assignment of value .

-To lend support to the assignment of value, local agencies should designate views and sites of aesthetic value during basic planning processes, so that the same standard of reference will apply to all projects that come under review in that locality. [For comparison, DEC has done this for visual resources of state and federal importance, see DEC program policy ‘Assessing and Mitigating Visual Impacts’
http://www.dec.ny.gov/docs/permits_ej_operations_pdf/visual2000.pdf].

Part 2: How Big an Effect?

Assess Magnitude of Impacts

- Lead Agency must show its assessment
- Identify potential impacts of proposed action
 - “Yes” if any impact possible
 - “Maybe” should be treated as “Yes”
- Compare elements of proposed action to examples and thresholds
 - Size only: small-to-moderate v. large
 - Large impact will not always be significant impact
- Be reasonable
 - Use Part 2 examples as a guide



*Review
Project as
proposed
by the
project
sponsor*



-Based upon the information in Part 1, the application, and any relevant additional sources, the lead agency must first identify potential adverse impacts, and then estimate their likely size and extent.

-Remember that at this stage, the lead agency is being asked only to identify likely impacts and generally estimate their probable magnitude. The assessment of importance will be done in Part 3.

-A large impact will not always be a significant impact. "Large" relates to spatial extent, and should not be literally equated to meaning significant. That said, however, larger potential impacts will generally warrant a more in-depth assessment of significance factors.

-Where a project design includes mitigating measures for one or more potential impacts, the lead agency should consider those measures in evaluating likelihood of occurrence and magnitude of potential impacts.

-For example, where a competent stormwater management plan is included in the project design, the lead agency may reasonably conclude that the probability of large erosion impacts has been minimized.

Part 3: Weighing Impacts

Evaluate potential impacts to determine significance

- Lead Agency must complete Part 3 if one or more
- potentially large impacts are identified in Part 2
- Should complete Part 3 if any impacts are identified
- Describe impacts identified in Part 2;
 - Include design features which avoid
 - or reduce potential impacts;
- Decide if any of the impacts identified
- as “potentially large” are important:
 - Probability, duration, reversibility?
 - Broader effects? Local consistency?



- The Part 3 is essentially the organizational tool which will help the lead agency articulate its Determination of Significance, that is, the decision whether or not to require an EIS.

-Significance is weighed using two key elements:

Magnitude: relates to more quantitative factors such as size, extent, or severity of a potential impact.

Importance: relates to the valuation of those impacts, and should be based on factors including the likelihood of the impact actually occurring, probable duration of impacts, the nature and quality of the resources likely to be affected, the potential for the action to affect resources beyond the project site, and the consistency of the proposal with any existing local or regional land use plans and implementing ordinances.

-The lead agency should assess any mitigating measures already incorporated into the project design, including their probable effectiveness.

-The SEQR regulations require that Part 3 be completed if one or more potentially large impacts were identified during the Part 2 impact identification step; it is good practice to complete Part 3 even if only small to moderate impacts were identified.

-In completing Part 3, the lead agency should describe all potential impacts, being as specific as possible given the level of information available at this stage of assessment. The lead agency must include its assessments of all anticipated adverse impacts, including a description that links specific project elements with the identified potential adverse impacts.

Determinations of Significance

Must Be In Writing

- Review the “Whole Action”
- Identify all relevant impacts
- Analyze / Take a “Hard Look” *
- Provide “reasoned elaboration”:
 - explain why impact may,
 - or will not be, significant



— * *H.O.M.E.S. v NYS Urban Development Corporation*
69AD 2d 222, 418 NYS 2d 287
(4th Dept., 1979)



- One of the first cases concerning SEQR led to a statement of a standard for review which has been repeatedly upheld by the courts, and is now echoed in the SEQR regulations:

The lead agency must demonstrate that it has examined all phases, aspects, components or elements of a proposed action or program, even when some of those elements are separated by time or distance, to satisfy the requirement to assess the "**whole action**";

The lead agency must identify **ALL** relevant areas of environmental concern, regardless of whether those areas or resources are within the immediate jurisdiction of the lead agency;

The lead agency must systematically assess, or "**take a hard look**", at every potential impact; and

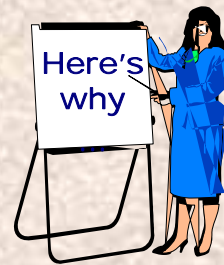
The lead agency must articulate, in writing, not only its conclusions as to the significance of possible impacts, but also the process by which it reached those conclusions, that is, make a "**reasoned elaboration.**"

- While these tests were originally applied only to decisions not to require an EIS (negative declarations), courts now routinely apply these standards to EIS requirements (positive declarations) as well.

Determinations of Significance

Be Explicit in Your “Reasoned Elaboration”

- State whether you find each potential impact likely, significant, or neither;
- Describe mitigation included in the project plans;
- Name sources you rely on to reach your conclusions;
- Explain how cited sources support your conclusions.



-When preparing reasoned elaborations, you are explaining why you made a particular decision.

-The information and **reasoning** in a determination of significance should be presented in a logical, comprehensive, understandable manner. A legally sufficient determination of significance implies that a lead agency has in its possession, and can demonstrate that it has considered at least the following:

The entire action.

The environmental assessment form (EAF) .

Any other information provided by the applicant, including the underlying application.

The criteria for determining significance found in 617.7(c).

Any input from involved and interested agencies, interested organizations or other groups of people and the general public.

-Where there has been a field visit by staff, or members of any involved agency, the lead agency should include any notes from that visit in the information that it considers for the Determination of Significance.

Determination of Significance

Positive Declaration

- Lead agency determines that
- the action has the potential
- to cause or result in:
 - at least one
 - significant
 - adverse environmental impact.
- “Low threshold” for requiring an environmental
- impact statement.



-A Positive Declaration, or "Pos Dec", is a determination by the lead agency that an action may result in one or more significant environmental impacts and so will require the preparation of an EIS to explore means to avoid or minimize likely impacts. EIS preparation and review must be completed before any involved agency issues a final decision regarding the action. The Positive Declaration starts the EIS process.

-Courts have used the “low threshold” concept to reinforce the need to prepare an EIS even if only one potentially significant adverse impact has been identified.

-A Positive Declaration must contain:

A statement that it is a Positive Declaration for purposes of Article 8 of the Environmental Conservation Law

The name and address of the lead agency

The name, address and telephone number of a contact person representing the lead agency who can provide further information

The SEQR classification of the project (action)

A brief and precise description of the nature, extent and location of the action

A brief description of potential significant environmental impacts that led to issuance of the positive declaration

A statement as to whether or not scoping will be conducted to solicit public, and other agency, input as to the necessary contents of the EIS.

Determination of Significance

Negative Declaration

- Lead agency must conclude that
- project as proposed will have
- no significant adverse environmental
- impacts, because:
 - no likely impacts were identified; or
 - no identified impacts are significant; or
 - identified significant impacts
 - are mitigated.
- Written determination must include
- reasons behind conclusions.



-A Negative Declaration or "Neg Dec", is a determination by the lead agency that an action will not result in any significant adverse environmental impacts, and so no EIS is necessary.

-For a negative declaration issued by a lead agency to satisfy the “**hard look**” test, the lead agency must demonstrate that one of three conclusions applies. Most typically, a lead agency can conclude that mitigation measures included within project plans are sufficient to ensure that the potential adverse impacts will be minimized. In other cases, a lead agency may identify potential impacts but determine that none are significant. Rarely, an action will be proposed that would cause no adverse impacts. In all three cases, a negative declaration appropriately concludes SEQ. R.

-A Negative Declaration must contain:

A statement that it is a Negative Declaration for purposes of Article 8 of the Environmental Conservation Law

The name and address of the lead agency

The name, address and telephone number of a contact person representing the lead agency who can provide further information



The SEQ. R. classification for the action

A brief and precise description of the nature, extent and location of the action

A brief statement of the reasoning that supports the determination

After the Determination of Significance

Two Possible Pathways

- After a negative declaration, SEQR has been completed.
 - Planning, design or review continue under fundamental agency mandates.
 - Agency may issue final decision with or after neg dec.
- 
- After a positive declaration, SEQR review continues.
 - Next step is defining content of the EIS.
 - Integrates with underlying jurisdiction when draft EIS is accepted.
 - Leads to findings in support of decision.
- 

-A Neg Dec means the lead agency has concluded its SEQR review. Following issuance of the Neg Dec, the lead agency, and all involved agencies, will resume review of the proposed action based on their underlying jurisdictions. No further SEQR review or process are required.

-A Pos Dec means that the SEQR review must continue with preparation of an EIS. The lead agency may use the formal scoping process to ensure that issues of relevance will be discussed in the EIS. Scoping allows public and other agency input as to the necessary contents of the EIS. After a Pos Dec, SEQR will not be concluded until the lead agency accepts the Final EIS and each involved agency issues its own findings.

-A lead agency may re-examine a Neg Dec at anytime prior to its final decision to approve, fund, or directly undertake an action, if it determines that a significant environmental impact may result from project modifications; from a change in circumstances other than those which were previously addressed; or based on relevant new information which was not previously available. The project sponsor and all involved agencies must be notified when a lead agency intends to reconsider a prior Neg Dec.

-The lead agency may amend or rescind the original Neg Dec to address the changes. If the Neg Dec is rescinded, the lead agency must require preparation of an EIS by issuing a Pos Dec.

Scoping the Draft EIS

Optional but recommended

- ▶ Focus on significant issues
- ▶ Identify necessary information
- ▶ Identify alternatives or mitigation to minimize impacts
- ▶ Enable other agency and public input



-Scoping allows for public comment on the proposed topics to be covered by the EIS, and may additionally allow the lead and involved agencies to reach consensus on studies or methods to be used. Scoping creates a formal outline for the draft EIS.

-The purpose of scoping is to focus the EIS on the most relevant issues and potential impacts, including means to avoid or minimize those impacts; the lead agency may thereby ensure that the draft EIS will be a concise, accurate and complete document adequate for public review.

-Scoping is optional (although recommended), and may be initiated by the applicant, or required by the lead agency.

-If formal scoping will occur, there must be an opportunity for public participation in the EIS development process. No specific outreach or participation method is specified, so the lead agency has considerable flexibility in developing a participation method appropriate for the nature and location of the project.

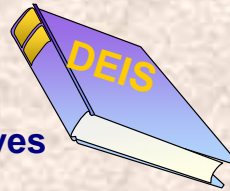
-The lead agency is ultimately responsible for determining which issues and concerns are actually relevant, substantive potential impacts which should be included in the final written scope. The final scope becomes the standard which sponsor, lead agency and involved or interested entities should use in determining adequacy of a submitted EIS.

-The regulations allow 60 days for the completion of scoping [see 617.8(f)], however, it is common practice for lead agencies and sponsors to negotiate extensions.

DEIS Content

Analytic, NOT Encyclopedic

- Describe the Action
- Define Location
- Describe the Setting
- Evaluate Potentially Significant Adverse Environmental Impacts
- Identify Potential
- Mitigation Measures
- Discuss Reasonable Alternatives



-In developing or reviewing a draft EIS, remember that the fundamental purpose of the draft EIS is to identify alternatives or mitigation measures to avoid or minimize some or all of the potential adverse environmental impacts.

-To support the analysis of alternatives and mitigation, the draft EIS must:

Identify the significant environmental conditions and resources which may be affected by the project;

Assess relevant environmental impacts of the project, or any of its components, on those environmental conditions and resources; and

Eliminate or de-emphasize irrelevant or insignificant impacts or issues.

-Reasonable alternatives for avoiding specific impacts, and further possible measures for mitigating additional potential impacts, must be discussed in the context of the specific impacts to which they are addressed.

-Discussions of location, setting and other background information, need only be of sufficient detail to support the impacts, alternatives and mitigation analyses.

-Extensive data sets, if relevant, should be summarized in the main body of the draft EIS, with the full sets included as appendices.

Draft EIS

Lead Agency “Accepts” After Review

- DEIS often prepared by sponsor and submitted to
- lead agency
- Lead agency must review to determine if DEIS is
- “adequate”
 - Standard is sufficient to start public review
 - May be returned to sponsor for revision
 - Must provide specific written comments or suggested changes
 - Lead agency has 45 days for review
 - 30 days if resubmission
- When circulated to involved agencies, needs full
- cover page with contacts and dates



-In NYS, it is typical practice for the project sponsor to prepare and submit the draft EIS to the lead agency. The lead agency must then decide whether the scope and content of the submitted draft EIS are adequate for the purposes of commencing public review.

-The key word is “adequate” because draft EISs are rarely perfect documents. As long as the draft EIS meets the standards in the regulations [see 617.9(b)], conforms to the final written scope (if any), and does not contain any major inaccuracies, the lead agency should accept the draft EIS and initiate the public comment period.

-The purpose of the public comment period for the draft EIS is to give the public, as well as all involved and interested agencies, an opportunity to comment on the impact analyses in the DEIS as well as any proposed alternatives and mitigation measures.

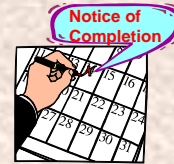
-If the lead agency determines that the DEIS is inadequate, it must provide the applicant with notice of deficiencies in writing.

-At any time during the process, the lead agency may require a supplemental EIS to address the specific adverse environmental impacts not addressed in the draft or in the final EIS.

Public Comment on DEIS

Required Element of SEQR

- **Minimum is 30 day public comment period after filing**
- **Notice of Completion of DEIS**
- **Hearing is optional under SEQR:**
 - **May run concurrently with any other**
 - **required hearing on the same project;**
 - **Minimum of 14 days**
 - **advance notice of hearing;**
 - **Must start no less than 15 and no more than 60 days after Notice of Completion of DEIS.**
- **SEQR public comment period must continue at least**
- **10 days after hearing closes.**



-The lead agency must prepare, file and publish a “notice of completion” of the draft EIS. The notice of completion must contain a statement that the document completed is a draft EIS and must state where the copies can be found. A copy must also be made available on a publicly accessible web site [see Chapter 641 of NYS Laws of 2005].

-The notice of completion must be filed with all required agencies and individuals as listed in 617.12, and notice of completion must be published in the Environmental Notice Bulletin (ENB).

-SEQR does not require a public hearing but allows the lead agency to decide whether to include a public hearing as part of the public comment period.

-The decision to hold a public hearing should be based upon:

The degree of interest shown by the public or involved agencies

Whether substantive or significant adverse environmental effects have been identified

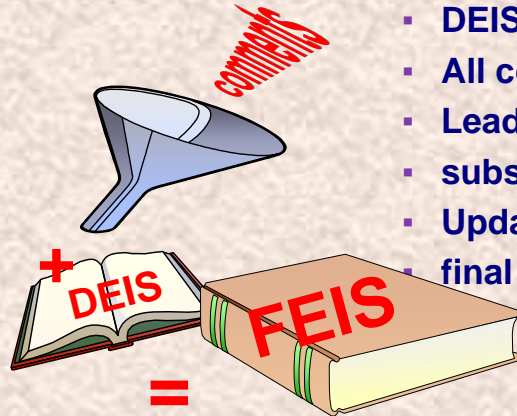
The adequacy of mitigation measures and alternatives proposed

The extent to which a public hearing can aid the agency decision-making processes.

-When a public hearing is required by the lead agency’s underlying jurisdiction, SEQR encourages consolidation so that one hearing may serve for both SEQR and the underlying jurisdiction. Where a consolidated hearing is held, the notice period and comment period after hearing must be long enough to meet SEQR and other statutory rules.

FEIS: Lead Agency Product

Lead Agency Responsible for Accuracy and Adequacy



- DEIS and any revisions
- All comments received
- Lead agency responses to all substantive comments
- Update cover page to show final acceptance date



-The final EIS will be prepared following conclusion of the public comment period on the draft EIS. The final EIS consists of :

The draft EIS, including any revisions or supplements;

Copies of, or summary of, all comments received; and

The lead agency's response to all substantive comments

-The lead agency decides which comments on a draft EIS must be responded to. Substantive comments are those which relate to impacts, mitigation and alternatives, and the final EIS must contain the lead agency's responses to them. The lead agency does not need to respond to comments which only express support of, or opposition to, a proposed project, although those comments must be included in the final EIS.

-The lead agency is responsible for the adequacy and accuracy of all responses in the final EIS, even when the project sponsor has drafted some, or all, of those responses.

-When a lead agency has received a large number of comments on a draft EIS, it is acceptable to summarize the contents in the body of the final EIS as long as all comments are included as an appendix. Also, where multiple commenters raise essentially the same issue, the lead agency may reply to all in a single response.

FEIS Preparation

Lead Agency is responsible.

- For projects where lead agency is reviewing an
- application, FEIS should be completed:
 - within 45 days after a public hearing; OR
 - within 60 days after the DEIS Notice of
 - Completion if there is no public hearing.
- Lead agency must file Notice of Completion
- of FEIS:
 - Starts a 10-day “consideration” period.
 - Not an additional round of public comment
- All involved agencies must wait for end of 10 days
- to make findings and decisions.



-In practice, the period to prepare the final EIS must often be extended, which requires consent of the applicant.

-As with the draft EIS, when the final EIS is completed, a notice of completion must be prepared, filed and published.

-Under the SEQR regulations, there is no public comment period and no hearing required on the final EIS.

-Following issuance of the final EIS, all involved agencies must wait at least 10 days before each involved agency makes its Findings and final decision on the action.

Using the FEIS

Shape Agency Decisions

- **Following acceptance of FEIS, lead and each**
- **involved agency must issue own findings and**
- **decision(s)**
 - “Findings” are rationale for each agency’s
 - decision, within its specific jurisdiction(s)
 - Comprehensive, reasoned conclusions
 - using information from the FEIS
- **Each agency must certify that selected alternative,**
- **or mitigation measures, avoids or minimizes**
- **adverse environmental impacts**
- **“to the maximum extent practicable”**
 - Link information in FEIS to limitations or
 - conditions to be included in agency decision



-Part of the power of SEQR is the authority to simultaneously review a range of issues so that each decision making agency is aware of the potential effects of its jurisdictional decisions on the full range of environmental factors.

-After the final EIS is accepted, each involved agency must explain how the information revealed in the final EIS affects its final decision within its underlying jurisdiction, specifically explaining how that final decision, including any conditions, avoids or minimizes impacts. If the agency concludes that some impacts will not be fully avoided or mitigated, the agency must explain how it balanced those unmitigated adverse environmental impacts against economic, social, or public needs.

-SEQR Findings are the articulation of the agencies’ balancing and final decisions. Each involved agency must make its own “findings”

-Each agency’s SEQR findings must specifically:

Cite information from the final EIS on which it relied;

Explain its balancing of environmental with other factors;

Provide its rationale for its final decisions;

Certify that all SEQR’s rules have been followed; and finally,

Certify that the alternative chosen, including any conditions attached to an approval, avoids or minimizes adverse environmental impacts to the maximum extent practicable, and incorporates practicable mitigative measures

-“Practicable” will be a judgment made by each involved agency, and will be affected by the design and context of an individual project

Filing & Notice

Rules Vary by Project and Decision

- File with involved agencies, applicant, CEO of municipality, and individuals who request copies *IF*:
 - Type 1 Negative Declaration;
 - Notice of Completion of Draft or
 - Final EIS;
 - Notices of Hearing (if any);
 - Findings.
- Also publish in “ENB” *IF*:
 - Type 1 Negative Declaration;
 - EIS Acceptance or SEQR Hearing Notice
- Retain in lead agency files *IF*:
 - Unlisted Negative Declaration

As of 2/26/06:
ALL EIS's to be
posted on
"publicly-
accessible"
website(s), unless
"impracticable"



-See 617.12 for the general filing rules.

-The ENB is published weekly at: <http://www.dec.ny.gov/enb/enb.html>.

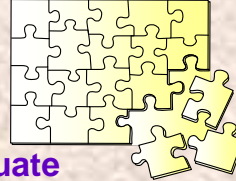
-While filing and distribution are not required for negative declarations on unlisted actions, as a matter of good practice, copies may be provided to other involved agencies.

-Chapter 641 of the NYS Laws of 2005 requires that all draft and final EISs be posted on a publicly accessible web site unless impracticable. Where a lead agency does not have the capacity to host the EIS itself, the sponsor's consultant, or the sponsor, may post the EIS. As long as the public may freely access the site where the EIS is posted, and the postings meet time frames in the law, the lead agency will have complied with chapter 641.

Compliance with SEQR

Oversight by Citizens and Courts

- No oversight or enforcing entity named in the statute, so SEQR is enforced through the courts
- Significant factors in SEQR challenges:
 - Standing of litigants
 - Statute of limitations
 - Timing of challenges
- Some court standards:
 - “Substantive”: lead agency must evaluate
 - all potential impacts of a proposed action
 - “Literal”: lead agency must follow SEQR’s
 - procedural requirements
 - Should integrate SEQR with other reviews
 - May not substitute them for SEQR standards



-The Legislature chose to not designate any agency or entity to be the overseer of SEQR implementation by state and local agencies. Therefore, SEQR is “self-enforcing”; that is, each agency of government is responsible to see that it meets its own obligations to comply.

-The DEC is responsible for developing and updating the state-wide SEQR regulations, however, it was given no oversight authority over other agencies’ administration of SEQR.

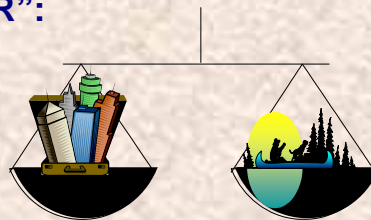
-If an agency makes an improper decision or allows a project that is subject to SEQR to start without a proper environmental review, citizens or groups who can demonstrate that they may be harmed by this failure may take legal action against the agency under Article 78 of the New York State Civil Practice Law and Rules. Project approvals may be rescinded by a court and a new review required under SEQR.

-New York State’s court system has consistently ruled in favor of strong compliance with the provisions of SEQR.

A Few Practitioners' Tips

Think "Back to Basics"

- **Involve the public early**
 - **provide thorough and accurate information**
- **Establish and maintain communication**
- **links with all parties:**
 - **sponsors, other agencies, and the public**
- **Remember why we "do SEQR":**
 - **to balance environmental**
 - **with other values in**
 - **decision-making**
- **Prepare documents to guide**
- **and support agencies' decisions**



-Remember that SEQR is not a separate permit, but is, instead, an additional level of review in support of some underlying decision. Therefore, all processes under SEQR should be conducted in the context of what ever final decision will be required, ideally helping shape an approvable project with few, if any, remaining adverse environmental impacts.

-In passing SEQR, the legislature intended to open government decision making to public scrutiny.

-These two principles should guide every lead agency as it makes choices in applying SEQR's requirements to any particular proposal.

For More Information

- NYS Department of Environmental Conservation - Division of Environmental Permits
625 Broadway
Albany, NY
12233- 1750
- (518) 402-9167
- <http://www.dec.ny.gov/permits/357.html>
- NYS Department of State
Division of Local Gov't
One Commerce Plaza
99 Washington Ave.
Suite 1015
Albany, N Y 12231
- (518) 473-3355
- (518) 474-6740 (Legal)
- <http://www.dos.state.ny.us/lgss/index.htm>

Fall 2008

NYS DEC
Division of Environmental Permits



-DEC provides publications, forms, interpretations, and other SEQR-related information on its web site. Staff are also available to informally respond to occasional questions concerning application of SEQR's requirements to specific cases.

-NYS DOS local government services staff have expertise in the various local government jurisdictions to which SEQR applies, and can assist in responding to questions where local jurisdiction and practice are at issue.