

The State Environmental Quality Review Act (SEQRA)



What is SEQRA?

- Article 8 of the NYS Environmental Conservation Law
- Carried out through Part 617 of the New York Codes of Rules and Regulations
- Became law on August 1, 1975



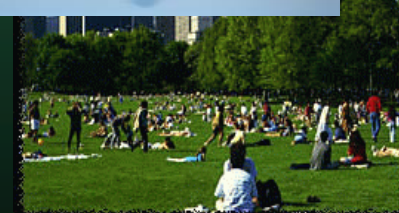
Purpose of SEQRA

- Incorporate consideration of “**environmental factors**” into an agency’s decision making process at the earliest possible time



“Environmental Factors”

- SEQRA Defines “Environment” Broadly
 - Land, Air, Water
 - Flora, Fauna
 - Noise,
 - Minerals, Historic, Archeological Features
 - Community Character
 - Agricultural Resources
 - Aesthetic Resources



What Does SEQRA Say?

- “No agency involved in an “action” may undertake, fund or approve the “action” until it has complied with the provisions of SEQRA”
- What is an “Agency” as defined here?
 - A public body- elected and appointed
 - Includes state departments, local boards, districts, governing bodies and public authorities



Specific Examples of Agencies

- County Legislatures
- Planning Boards
- Zoning Boards of Appeal
- School Boards
- Industrial Development Agencies
- City Councils
- Town Boards



What is an “Action?”

- Undertaking
- Funding or
- Approving a discretionary action or decision
- May include a combination of actions
- Examples:
 - A town constructing a new town hall (directly undertaking an action)
 - A state agency funding a local housing project (funding)
 - A planning board approving a subdivision



Non-Discretionary Actions

- Not subject to SEQRA
- No decision process involved
- Example: issuing a fishing license
- Issuing a building permit



How Do you “Start SEQRA?”

- Initiating agency or first agency to receive an application is responsible for initiating SEQRA
- 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



How Do You Classify an Action?

- Three types of Actions Under SEQRA
 - Type II
 - Type I
 - Unlisted



Type II

- Not subject to SEQRA
- List available in Part 617 to help determine if “action” is a Type II
- Classification as Type II concludes SEQRA
- Examples:
 - 1, 2 or 3-family homes on approved lots
 - Issuance of an area variance
 - Most maintenance or repair to buildings



Type I

- More likely to have adverse impacts on environment
- More likely to require an environmental impact statement (EIS)
- List available in 617 NYCRR
- Must continue with SEQRA process



Type I

- Examples of Type I Actions:
 - Purchase, sale or transfer of more than 100 acres by state or local agency
 - New zoning ordinance or comprehensive plan
 - In a municipality of 150,000 persons or less, a non-residential facility with more than 100,000 square feet of gross floor area



Unlisted Actions

- Not on Type 1 or Type 2 lists; fall below Type 1 threshold
- Require that SEQRA continue
- Largest category of actions subject to SEQRA
- Actions range from minor use variances to complex construction activities



Unlisted Actions

- Examples of Unlisted Actions:
 - Parking for less than 1000 cars
 - New non-residential use of 10 acres or less
 - In a municipality of less than 150,000, construction of less than 250 housing units to be connected to community sewer and water systems
 - In a municipality of less than 150,000, construction of a facility with less than 100,000 square feet



Type I Versus Unlisted Actions

- Type I Actions
 - Must “**coordinate**” with other involved agencies
 - Single review done for project
 - Must use the full/ long environmental assessment form (EAF)
- Unlisted Actions
 - Initiating agency chooses whether to coordinate; not required
 - Each agency can conduct its own SEQRA review
 - Agency may allow short EAF or require full/long EAF



Lead, Involved and Interested Agencies

- **Involved Agency** -public body which undertakes, funds or approves proposed action
- **Lead Agency** - involved agency which coordinates the SEQRA review
 - responsible for determining whether an environmental impact statement will be required.
- **Interested Agency** -public body not undertaking, funding or approving the proposed action
 - wishes to participate in the process because of its expertise or specific concerns
 - Sierra Club, Audubon, Conservation Advisory Council etc.



Uncoordinated Review

- Only permitted for Unlisted Actions
- Agency that receives application makes decision to coordinate or not coordinate
- Each agency then acts independently
- Each conducts a separate environmental review



Uncoordinated Review- Problems

- If one agency finds an environmental impact, all agencies must begin coordinating the review
 - Other uncoordinated environmental reviews are superseded
- Agencies often don't communicate well with uncoordinated reviews
- Lack of sharing of information and resources



Coordinated Review

- Required for all Type 1 Actions
- Also used for many Unlisted Actions
- Lead Agency responsible for conducting and coordinating SEQRA process



Coordinated Review

- Establish Lead Agency
 - Identify all potentially involved agencies
 - Advise them via mail-- lead agency must/will be established
 - Include Part I of Environmental Assessment Form (EAF)
 - Include supporting maps and other related materials
 - Must establish lead agency within 30 days
 - Chosen by consensus of all involved agencies



Lead Agency

- Involved agency with the most interest, involvement and concern about the proposed action
- Responsible for reviewing environmental assessment form (EAF)
- Responsible for determining if an environmental impact statement must be prepared
- Must determine significance within 20 days of being named “lead agency”



Environmental Assessment Form (EAF) Key to SEQRA Review

- Three parts to EAF
 - Part 1
 - Site and Project Descriptions
 - Project Sponsor/Applicant Completes
 - Part 2
 - Potential Impacts and Magnitudes
 - Lead Agency Completes
 - Part 3 (may be optional)
 - Importance of Impacts Identified in Part 2
 - Lead Agency Completes, if necessary



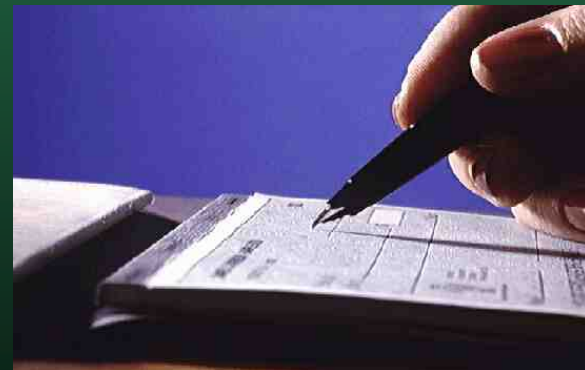
Environmental Assessment Form

- Two Types-Short and Full/Long Environmental Assessment Forms (EAF)
- **Type I Actions**- must complete full EAF
- **Unlisted Actions**- may use short form, but lead agency can require applicant to use full/long form
- Both have Parts 1, 2, and 3
- Lead agency can require supplemental information to EAF if needed to make determination of significance



Part I of EAF

- Applicant must provide accurate, complete information for Part 1
 - May need to provide supporting information to verify answers provided
- Lead agency responsible for reviewing EAF and verifying accuracy of info with materials submitted for project
 - Should flag any problem
 - Identify missing information
 - Request revisions if necessary



Part 2 of EAF-What's Affected?

- Lead Agency identifies what resources will be impacted (by category) by proposed action
- Categories: Land, Water, Air, Plant and Animals, Agricultural Land, Aesthetics, Historic and Archeological, Open Space and Recreation, Critical Environmental Areas, Transportation, Energy, Noise and Odor, Public Health, Growth and Community Character



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Part 2 of EAF- How Big an Impact?

- Lead agency estimates size and extent of impacts per category
- “Yes” if any impact possible
- “Maybe” should be treated as “Yes”
- Compare elements of proposed action to examples and threshold given in EAF



Part 3 of EAF-Weighing Impacts

- Only completed if one or more **potentially large impacts** identified in Part 2
- Describe design features which avoid or reduce impacts
- Decide if impacts identified as large are important
 - Probability, duration, reversibility?
- Part 3 is a tool which helps lead agency articulate its environmental determination of significance
- Good idea to complete Part 3 even if only small to moderate impacts identified



Determination of Significance

- In writing by the Lead Agency
- Must identify all relevant impacts
- Must look at whole action-even those separated by time or distance (no segmentation)
- Must take a “hard look” at all potential impacts
- Must explain why impact may or will not be significant



Determination of Significance

- Must provide “Reasoned Elaboration”
 - Be explicit
 - Is potential impact likely, significant, or neither
 - Describe mitigation included in project plans
 - Name sources you rely on to reach conclusions
 - Explain how cited sources support your conclusions



Three Types of Determinations

- **Negative Declaration**
 - Action will have no significant adverse environmental impact
 - Ends SEQRA process
- **Positive Declaration**
 - Action has potential to cause or result in at least one significant adverse environmental impact
 - Environmental Impact Statement must be prepared



Three Types of Determinations

- **Conditioned Negative Declaration**
 - Only used with Unlisted Actions, not Type I Actions
 - A full EAF must have been prepared
 - A coordinated review must have been completed
 - Conditions are imposed that eliminate or reduce significant adverse impact(s) to a non-significant level



Negative Declaration-Details

- Lead agency must demonstrative that:
 - No likely impacts were identified
 - No identified impacts are significant or
 - Identified significant impacts were mitigated
- Written determination must include reasons behind conclusions



Positive Declaration-Details

- Courts have used “low threshold” concept for need to prepare an EIS
- Not one positive declaration has been rescinded by courts in over 27 years; many negative declarations have been struck down, though.
- Must note as to whether or not scoping will be conducted to solicit public and other agency input for the EIS.



Scoping the DEIS

- Not mandatory, but encouraged
- Creates a formal outline for DEIS
- Focuses on significant issues; eliminates non-significant issues
- Identifies necessary information
- Identifies alternatives
- Identifies mitigation measures
- Provides opportunity for other agency and public input or mitigation to minimize impacts



Scoping the DEIS

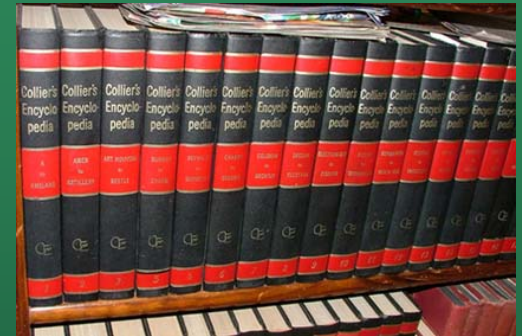
- If scoping is used, must be an opportunity for public participation
- Lead agency is ultimately responsible for determining issues to be included in the scope
- 60 days for completion of scoping
- Negotiation of extensions is common



DEIS Content

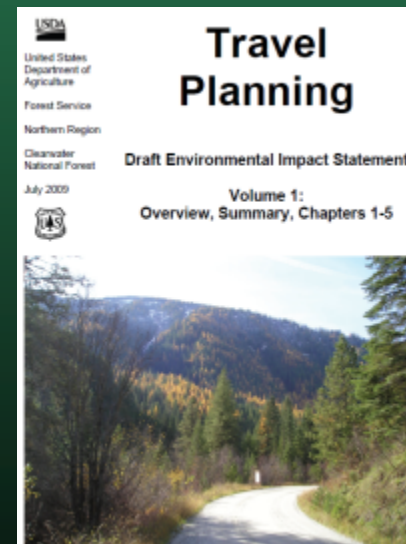
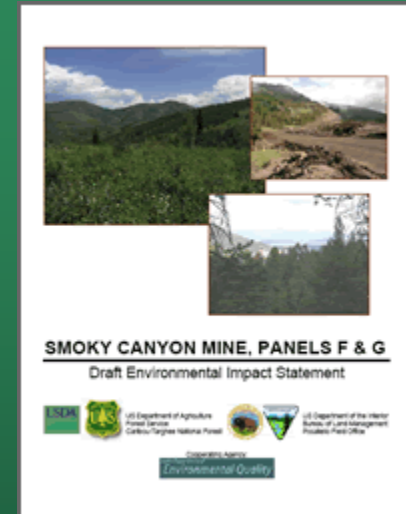
Analytic, not Encyclopedic

- Describe the Action
- Define the Location
- Describe the Setting
- Evaluate potential significant adverse impacts
- Identify potential mitigation measures
- Discuss reasonable alternatives
 - Must include the “no action” alternative



Preparing the DEIS

- DEIS usually prepared by applicant/sponsor and submitted to lead agency
- Lead agency must review to determine if DEIS is “adequate”
 - May be returned to sponsor/applicant for revision
 - Must provide specific written comments or suggested changes- give direction
- Lead agency has 45 days for review; 30 if resubmission
- All DEIS must be posted on the web and remain there until FEIS is accepted



Public Comment on DEIS

- Notice of Completion of DEIS
 - Must be on public web site, filed with all required agencies and published in Environmental Notice Bulletin
- Public Hearing is optional under SEQRA
 - Minimum of 14 days notice of hearing
 - Should run concurrently with other hearings required for the action



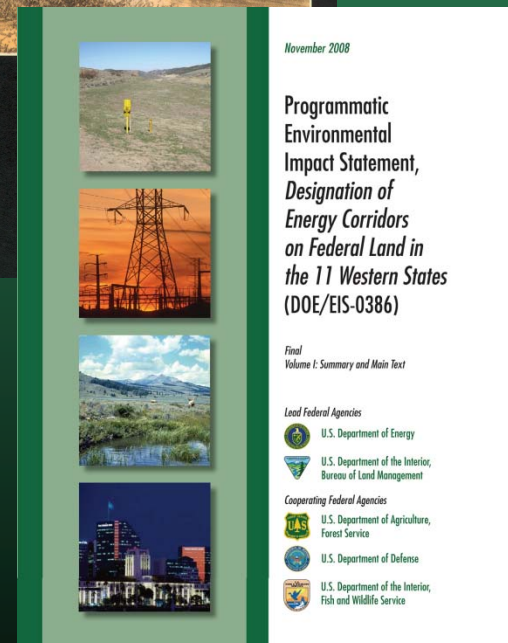
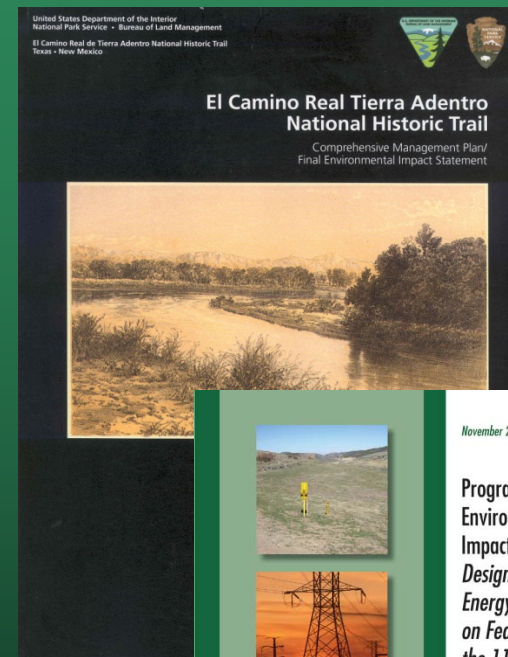
Public Comment on DEIS

- Hold Hearing if:
 - Substantial interest shown by the public or involved agencies
 - Significant adverse environmental effects have been identified
 - Concerns or questions regarding adequacy of mitigation measures and alternatives proposed
 - Public hearing can aid the agency decision making process



Final Environmental Impact Statement (FEIS)

- Prepared after close of comment period on DEIS
- Consists of :
 - Draft EIS, including revisions or supplements
 - Summary or copies of comments received
 - Lead agency's response to substantive comments
- Lead agency responsible for accuracy and adequacy of all responses in the FEIS, even though project sponsor may prepare such



Final Environmental Impact Statement (FEIS)

- Must be completed:
 - Within 45 days after a public hearing OR
 - Within 60 days after the DEIS “Notice of Completion” if no public hearing
- Lead agency must file “Notice of Completion” of FEIS
- All FEIS must be posted on the web and remain there for a year after all permits/approvals made
- Starts a 10 day “consideration” period
 - Not an additional round of public comment



Findings

- Made by lead and all involved agencies after FEIS is accepted
- Reasoned conclusion using information from the FEIS
- Serves as rationale for each agency's decision on the FEIS
- Certifies proposed action is one that avoids or minimizes environmental impacts



After Findings

- SEQRA process concludes
- Underlying permits and approvals can be made
 - Funding released for project
 - Special permits or variances issued
 - Zoning amendment approved
 - Law passed by local municipality etc.



SEQRA Tips

- Start SEQRA process early
- Establish good communication with all parties, including the public
- You can charge applicant for review of a DEIS
 - Charge should be in your schedule of fees
- SEQRA gives lead agencies authority to ask for more information from applicant
 - Full EAF, not short EAF
 - Correct information that's missing/wrong in Part I of EAF
 - Additional information if DEIS is incomplete



SEQRA Resources on the DEC Website

- General SEQRA Information
<http://www.dec.ny.gov/permits/357.html>
- Stepping Through SEQRA- Sequential Information on SEQRA
<http://www.dec.ny.gov/permits/6189.html>
- SEQRA Handbook (Updated)
<http://www.dec.ny.gov/permits/6188.html>
- SEQRA Forms - <http://www.dec.ny.gov/permits/6191.html>
- Other SEQRA Publications
<http://www.dec.ny.gov/permits/26860.html>
- Draft Model Short and Full Environmental Assessment Forms-
proposed <http://www.dec.ny.gov/permits/70393.html>



For More Information

- NYS Department of Environmental Conservation,
Division of Environmental Permits
625 Broadway, Albany, NY
12233
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, NY 12231
518-473-3355
518-474-6740 (Legal)
<http://www.dos.state.ny.us/lgss/index.htm>



For More Information

- **NYS DEC, Region 7 Offices**

615 Erie Blvd. W

Syracuse, NY 13204

315-426-7403 Public Outreach & Education

315-426- 7438 Environmental Permits

<http://www.dec.ny.gov/about/615.html>

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