

Updated SEQRA Regulations Became Effective January 1, 2019

On January 1, 2019, revised regulations implementing the State Environmental Quality Review Act (SEQRA) took effect. The New York State Department of Environmental Conservation (DEC) adopted these updated regulations on June 27, 2018—the first comprehensive revision to the regulations since 1995.

These regulations modify several facets of the existing SEQRA process. For example, the revised regulations changed how certain projects and actions will be classified under SEQRA, make scoping of environmental impact statements (EIS) mandatory in most cases, and add procedures for preparing EISs. Going forward, project applicants and the agencies responsible for conducting SEQRA reviews will need to be sure their processes follow these new requirements.

Classifying the Action: Type I, Type II, or Unlisted

SEQRA applies to all state and local agencies in New York, including school districts, special boards and authorities, whenever they make a discretionary decision to undertake, fund, or approve an action that may affect the environment. The law mandates that agencies consider the potential environmental impacts of their actions prior to making a final determination.

One of the early steps in the SEQRA process requires an agency to classify the action as Type I, Type II, or Unlisted, which will affect the nature and extent of the SEQRA review required.

Type I and Type II categories are expressly enumerated in the SEQRA regulations; an action that does not meet any of those listed categories is classified as Unlisted. Type I actions are subject to the most stringent procedural requirements and a presumption that an EIS will be needed. In contrast, Type II actions are not subject to any SEQRA review because DEC has determined they do not have a significant impact on the environment (or they are otherwise precluded from review under SEQRA).

The updated regulations that took effect on January 1, 2019 changed several of the listed categories for Type I and Type II actions. As a result, some actions will be subject to more extensive SEQRA requirements, while other actions will become exempt from SEQRA entirely. In particular, the updated regulations reduced several of the numeric thresholds for actions to qualify as Type I. For example, under the previous regulations, a project to construct new residential units in a municipality with less than 150,000 people qualified as Type I if it involved 250 units connected to public water and sewer systems. Under the revised regulations, this type of project will qualify as Type I if it has only 200 units.

The updated regulations contain new Type II categories as well, including:

- retrofitting structures to incorporate green infrastructure practices;
- installing telecommunication cables in existing highway or utility rights of way utilizing trenchless burial or aerial placement on existing poles;
- installation of solar energy arrays on certain sites; and
- certain actions involving reuse of residential or commercial structures.

DEC also revised several existing Type II actions. For example, the Type II action listed for upgrades to buildings to meet fire code standards was expanded to also cover building upgrades completed to meet energy code standards.

Project applicants and reviewing agencies should be cognizant of these changes when SEQRA considerations first come into play.

Mandatory Scoping

Scoping is the process that occurs following the issuance of a positive declaration to identify which environmental issues and impacts will need to be studied and addressed in the draft EIS. Under the prior SEQRA regulations, scoping could be initiated at the discretion of the project sponsor or the lead agency reviewing the project. Under the revised regulations, scoping is now mandatory for all EISs (except supplemental EISs, for which scoping remains discretionary). This change was focused on encouraging preparation of concise EISs targeted only at studying, avoiding, or reducing potentially significant adverse environmental impacts. Given the complexities involved in scoping, time will tell whether this new requirement in fact improves the process or results in additional delays in SEQRA reviews.

Preparation and Content of The EIS

Several changes were made to the requirements concerning EISs. For example, the 2018 amendments more precisely define the acceptance procedures for draft EISs. The updated regulations define what it means for a draft EIS to be “adequate” for public review and direct how the agency must determine the adequacy of a resubmitted draft EIS that it previously deemed deficient. DEC also added a new requirement that all draft and final scopes and all draft and final EISs must be published on a publicly available website; draft and final scopes must also be noticed in DEC’s Environmental Notice Bulletin. The updated regulations additionally make the consideration of climate change impacts a part of the SEQRA process. Furthermore, upon request, lead agencies conducting the SEQRA reviews must provide applicants with copies of invoices for consultants utilized to prepare or review an EIS.

If you have questions about how the updated SEQRA regulations may impact your project or your responsibilities as a reviewing agency, please contact:

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