

WELCOME TO “SEQR 101”

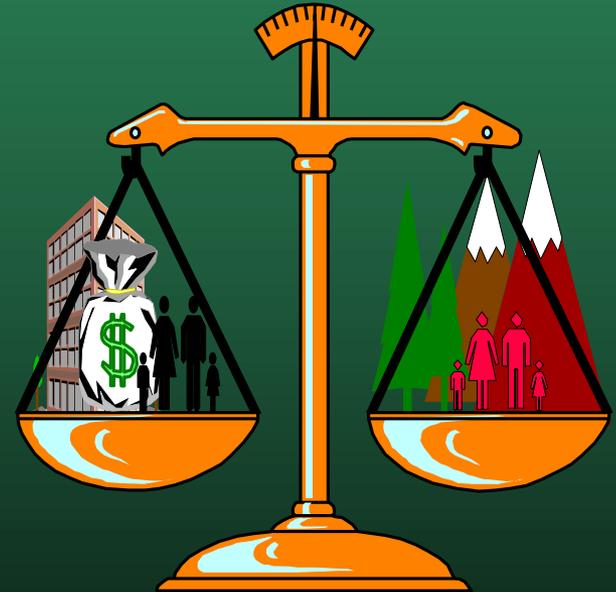
What, When, and a
Start on How



What Is “SEQR”?

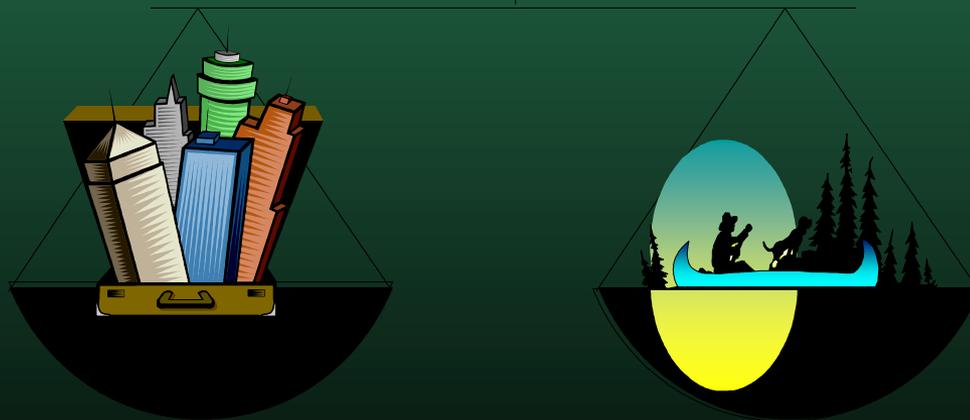
New York State Environmental Quality Review Act

- 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”)



Purpose of SEQR

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



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



What is An “Agency”?

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

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



Involved, Interested and Lead Agencies

Who are they? What are they?

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



Agency is the Decision-Maker

- **Must have independent, statutory decision-making authority**
- **May rely on staff or consultants for expert advice or administration of process**
- **May not delegate decisions or conclusions**



What Is An “Action”?

When an Agency:

- Sponsors, undertakes or approves projects or physical activities
- Conducts planning or policy-making that may commit the agency to a future course of action
- Adopts rules, regulations or procedures
- Combinations of the above



How SEQR Works

- 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 *



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 An Agency Undertakes a Project:

SEQR should be started at the earliest stages of project planning

- Site selection is part of “action” when government is sponsor
- Bond resolution also part of action
- Exemption in regulations for preliminary studies
- Don't wait for final site plans



For example - new public or municipal facilities like schools, offices, roads, parks



When Agencies Fund or Approve a Project:

As an “Involved” Agency, SEQR Begins When an Application is Received

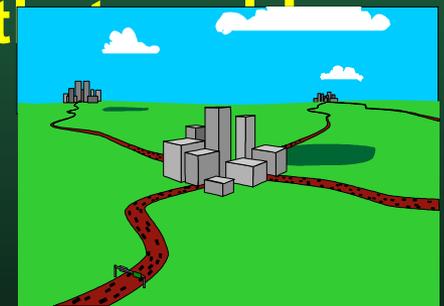
- Review of and decisions on wetlands or other state and local permits for site work
- Review and decisions on state or local highway access applications
- Review and approval of applications for state grants and loans



SEQR for Planning and Policy-Making

Agencies “Involved” If Decisions May Commit Them to Future Actions

- Comprehensive or program plans
 - SEQR applies to the planning, not only to individual resulting projects
- Also applies to formally-adopted policies that affect the environment
 - Not new personnel rules or operating hours for public facilities
- Local laws and ordinances
- Analyze before adopting



Agencies may not Act ...



Planning Board



**Local Legislative
Body**



**Zoning Board
of Appeals**

... Before complying with SEQRA



“Classifying“ the Action

Look at the “Whole Action”

- Consider all components, phases or aspects of a proposal
- Examples:
 - Projects to be undertaken in phases
 - Sequenced new construction plus conversions of old facilities
 - Projects requiring siting decisions followed by final site design
 - Determining location as well as design of new residential facilities



Classifying Actions

Type 2

- Most maintenance or repair including upgrading buildings to meet building and fire codes
- Purchase or sale of equipment
- New non-residential uses under 4,000 sq.ft.
- Routine educational activities, including expansion under 10,000 sq.ft. or school closing, but not new use following closing
- Statutory exemption

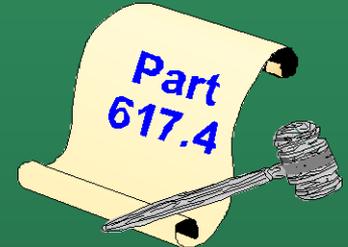
A Type 2 classification concludes SEQR



Classifying Actions

Type 1

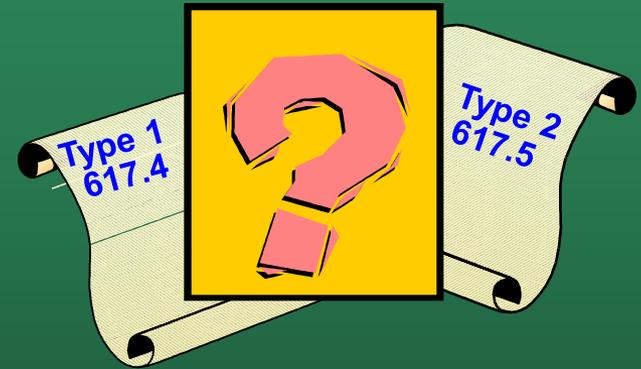
Carry the presumption that they may have a significant adverse impact on the environment, and more likely to require the preparation of an Environmental Impact Statement (EIS)



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
 - Other activities not specifically listed in either 617.4 or 617.5
- Require that SEQR continue



Why Classification Matters

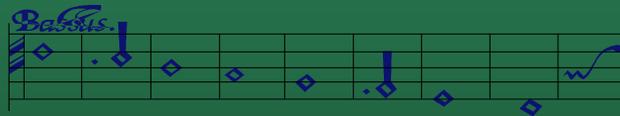
Sets Basic Review Requirements

- **Type 1 Actions:**
 - Must “coordinate” with other “involved agencies”
 - Must use Full EAF (Environmental Assessment Form)
- **Unlisted Actions:**
 - May choose whether to coordinate
 - May use Full or Short EAF
- **Type 2 Actions**
 - No further review required



What is Coordinated Review?

Establishes a “Lead Agency” to Conduct a Single, Integrated Environmental Review of Proposed Actions



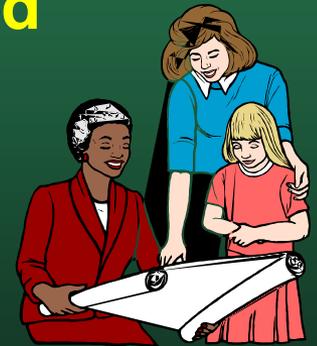
- Lead Agency is responsible for the conduct and administration of the SEQR review process
- Must have its own decision-making authority
- May not delegate to an advisory body



Coordinated Review: How?

Start by Establishing Lead Agency

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



Uncoordinated Review

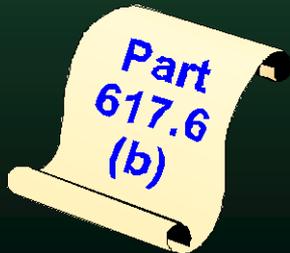
Unlisted Actions Only

- Each agency acts independently
 - Do separate environmental reviews
- Allowed under 617 but individual agency rules or policy may require otherwise
- 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 superseded



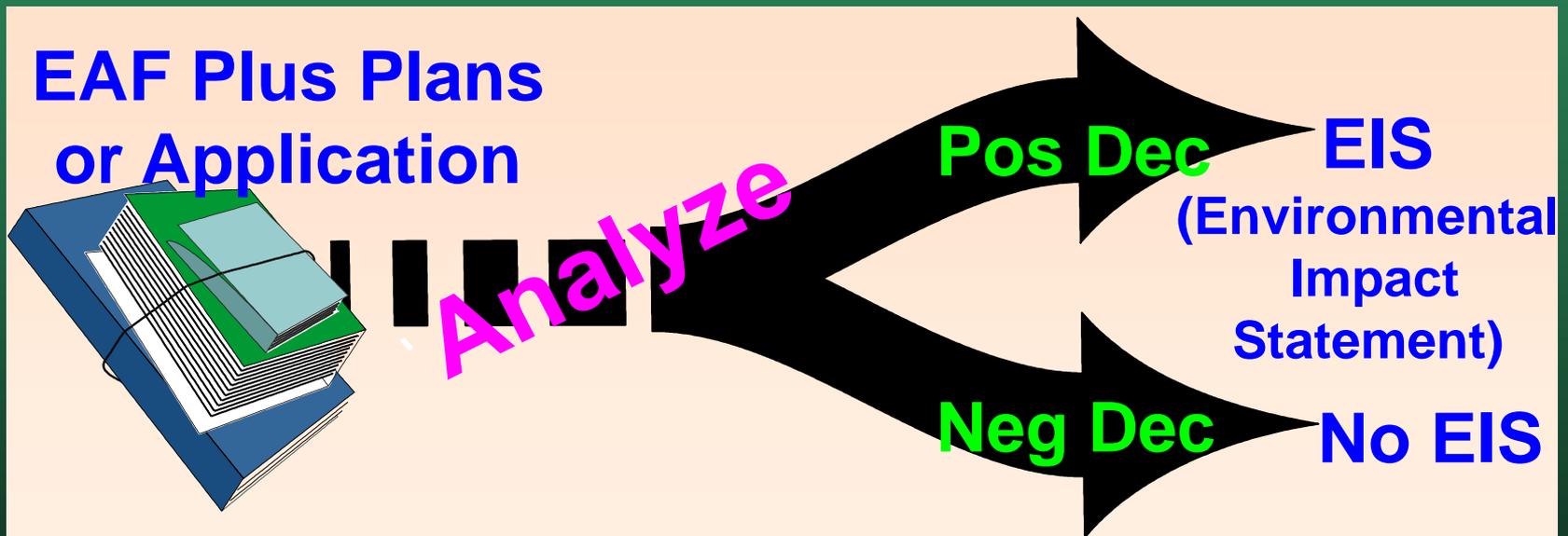
Lead Agency

- If only one agency has jurisdiction, then it is the Lead Agency
- If more than one agency has jurisdiction, a Lead Agency is selected from among them by consensus



Lead Agency Determines “Significance”

Sets Path of Environmental Review



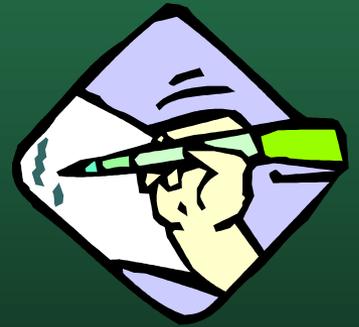
Lead Agency should determine significance within 20 days of being established.



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



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
- published sources
- other agencies
- local resources



Part 2: What Is Affected?

Systematic Analysis by Category to Identify Potential Impacts

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



Part 2: How Big an Effect?

Determine Magnitude of Impacts

- Lead Agency must show 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 is not always significant impact
- Be reasonable
 - Use Part 2 examples as a guide



*Review
Project as
proposed
by the
project
sponsor*



Part 3: Weighing Impacts

Evaluate potential impacts

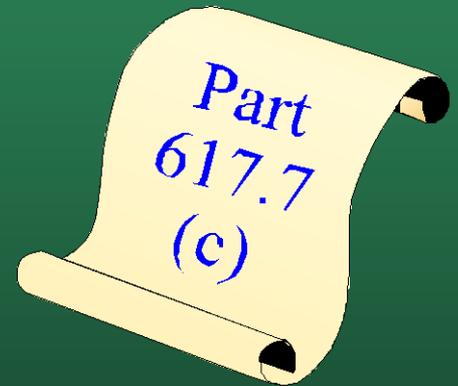
- One or more potentially large impacts identified in Part 2
- Describe impacts identified in Part 2
 - Include design features which avoid or reduce potential impacts
- Decide if any of the impacts identified as “potentially large” are important



Determining Significance

What You Are Looking For

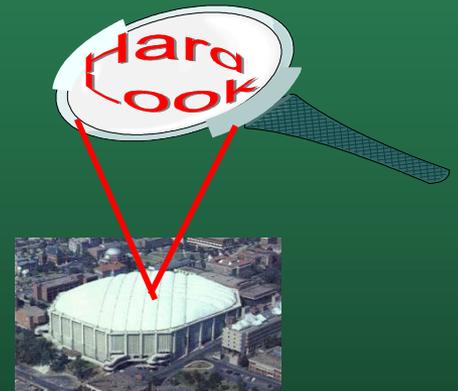
- Impairment of “Community Character”
- Adverse changes to the environment
- Reduction of wildlife habitat
- Hazard to human health
- Substantial change in the use of land
- Creating a conflict with adopted community plans or goals



Determination 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)*



Determination 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



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



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
 - no identified impacts are significant
 - Identified significant impacts are mitigated
- Written determination must include reasons behind conclusions



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

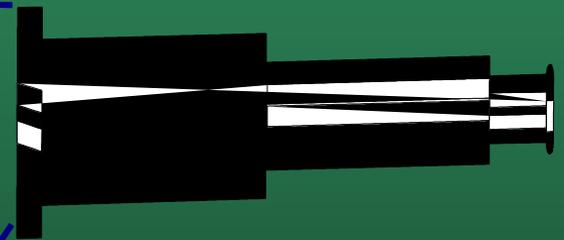
- After a positive declaration, SEQR review continues
- Next step is defining content of the EIS
- Integrates with standard process when draft EIS is accepted
- Leads to findings in support of decision



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



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



Draft EIS

Lead Agency “Accepts” After Review

- DEIS often prepared and submitted by sponsor
- Lead agency reviews to determine if DEIS is “adequate”
 - 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



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



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



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
- Notice of Completion of FEIS starts a 10-day public “consideration” period
- No involved agencies can issue findings and final decisions until those 10 days have run



After the FEIS

Linking the EIS to Agency Decisions

- Lead Agency must file Notice of Completion of Final EIS
- No sooner than 10 days after that notice, lead and every other involved agency must each issue their own findings and decisions
 - “Findings” are rationale for each agency’s decision
 - Comprehensive, reasoned elaboration based on EIS
 - Must certify that selected alternative, or mitigation measures, avoid or minimize adverse environmental impacts



Agency Final Decisions After SEQR

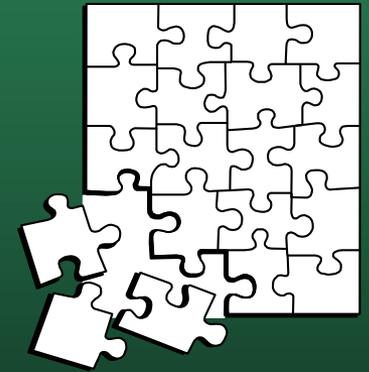
- **SEQR Findings after an FEIS may be made concurrently with final decision on project**
- **Negative Declaration may be made concurrently with final decision on project**
- **No enforcing entity named in the statute, so SEQR is enforced through the courts**
- **Significant factors in SEQR challenges:**
 - Standing of litigants**
 - Statute of limitations**
 - Timing of challenges**



Complying with SEQR

Compliance Must Be “Substantive” and “Literal”

- **“Substantive”**: agency must evaluate all potential impacts of a proposed action
 - Not just those within its own jurisdiction
- **“Literal”**: agency must follow SEQR’s procedural requirements
 - Appropriate to integrate SEQR with other reviews
 - But other reviews may not be substituted for or be represented as equivalent to SEQR’s requirements



Filing & Notice

Rules Vary by Project and Decision

- File with involved agencies, applicant, CEO of municipality, and individuals who request copies

For:

- Type 1 Negative Declaration
- Notice of Completion of Draft or Final EIS
- Notices of Hearing (if any)
- Findings
- Also publish in “ENB”:
 - Type 1 Negative Declaration;
 - EIS Acceptance or SEQR Hearing Notice
- Retain in lead agency files:
 - Unlisted Negative Declaration

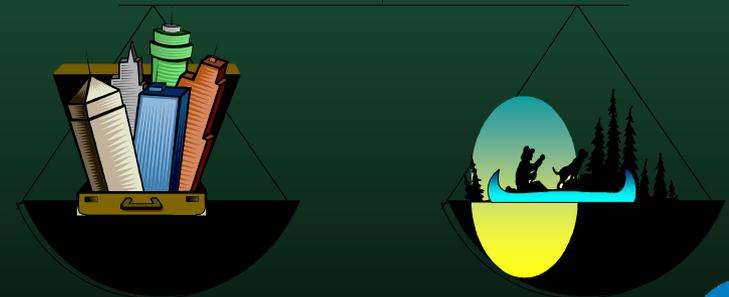
As of 2/26/06:
ALL EIS's to be posted on “publicly-accessible” website(s), unless “impracticable”



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



For More Information

NYS Department of Environmental Conservation

Division of Environmental Permits

625 Broadway Albany, NY 12233- 1750

(518) 402-9167

www.dec.state.ny.us/website/dcs/seqr/index.html

NYS Department of State

41 State Street

Albany, New York 12231

(518) 474-6740 (Counsel's Office)

**(518) 473-3355 (Division of Local Government
Services)**

www.dos.state.ny.us/lgss/index.htm

