



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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TO: Superintendent of Schools
District Superintendents

FROM: Carl T. Thurnau, P.E. 
Coordinator

SUBJECT: State Environmental Quality Review (SEQR) Changes

As you know, Commissioner's Regulation 155.9, entitled "Environmental Quality Review," was amended effective November 15, 2000.

The change removed language requiring the Department to automatically act as lead agency for all public school construction projects. School districts will now assume the role of lead agency for the environmental review of their projects.

Attached please find a guideline for district implementation of SEQR and associated changes in the Facility Planning review process. Also attached are an updated Facilities Planning Preliminary Approval Guideline, New Project Scope form (formerly Project Description form), current Department of Environmental Conservation (DEC) SEQR Regulations (Section 6NYCRR 617), a DEC publication entitled "The SEQR Cookbook," and a new form from the State Historic Preservation Office appropriate for initiating contact with that office.

Effective September 1, the State Education Department will no longer automatically act as the lead agency for public school construction projects.

Districts are encouraged to review the enclosed information and be prepared to assume the lead agency role. Staff in Facilities Planning are available to answer questions and training is available from DEC and the Department of State on the SERQ process.

Attachments

**NEW YORK STATE
EDUCATION DEPARTMENT**

**Guidelines for
School District Implementation of the
State Environmental Quality Review (SEQR)
and
Associated Changes in the SED Building Permit Process**

August 2001

NEW YORK STATE EDUCATION DEPARTMENT

Guidelines for School District Implementation of the State Environmental Quality Review Act (SEQR) and Associated Changes in the SED Building Permit Process

History

The State Environmental Quality Review Act (SEQR) was enacted in 1975. It was modeled after the National Environmental Policy Act (NEPA), and was designed to include consideration for environmental impacts resulting from public projects and the mitigation of those impacts to the extent practicable. SEQR is set out in Environmental Conservation Law, Article 8 and corresponding regulations at 6 NYCRR 617.

Regulation 6 NYCRR 617 outlines the SEQR process and is applicable to all State, regional and local agencies within New York State, including all political subdivisions, districts, departments, authorities, boards, commissions, and public benefit corporations. The purpose of SEQR is to include consideration of environmental factors into public agency decision-making processes, including undertaking, funding, or approving a project. As illustrated in Section 617.1(c) of the regulations, the goal of SEQR is accomplished by requiring “that all public agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an Environmental Impact Statement.”

The current SEQR regulations amended June 26, 2000, and effective July 12, 2000, implement a key legislative finding contained in Environmental Conservation Law, Section 8-0103: “It is the intent of the legislature that the protection and enhancement of the environmental, human and community resources shall be given appropriate weight with social and economic considerations in public policy. Social, economic and environmental factors shall be considered together in reaching decisions on proposed activities.” It is evident from this statement that it is not the intent of SEQR that environmental factors be the sole consideration

in decision-making, nor it is required that the action or alternative resulting in the least environmental impact be selected. Rather, environmental impacts are one consideration of many factors, which are weighed in reaching a decision on a particular action.

From the enactment of SEQR and the resulting Commissioner of Education Regulation 8 NYCRR 155.9 (formerly Section 155.5), the Office of Facilities Planning has acted in the coordination role of “Lead Agency” for the SEQR process for all public school capital construction projects in New York State outside of New York City. A lead agency is defined in 6 NYCRR 617.2(u) as “an involved 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.”

Effective November 15, 2000, Section 155.9 was changed removing language which required the State Education Department (SED) to be the lead agency for environmental reviews. Local Boards of Education may now assume this role in their capacity as a public decision-making body. It is the Department’s belief that local authorities are better equipped to take the required “hard look” at environmental impacts associated with a project. It is most appropriate for those entities closest to the project to make judgments regarding environmental impacts and proposed mitigation measures. For this reason and others, the regulations were amended to place this coordination responsibility closest to the project at the community level in the hands of the Board of Education. This will allow increased community involvement in decisions that affect the local community and its environment.

Section 6 NYCRR 617.2(s) defines an involved agency as “an agency that has jurisdiction by law to fund, approve or directly undertake an action.” Because the SED provides funding or Building Permits, or both, they will be an involved agency on every public school project.

Permit from SED, and funding is generally provided by two public agencies (SED and the Board of Education), all public school capital projects will be subject to SEQR.

Work involving maintenance or repair of existing facilities does not require Building Permits, receives no State funding and is not subject to SEQR. Typical examples of maintenance would include roof patching, replacing pumps, repairing piping leaks, patching parking lots, etc.

Step 2: Classify the Action

Actions can be classified into one of three categories:

(a) **Type II Actions**

Type II Actions are actions that have no significant environmental impact and require no further review under SEQR. Many school district projects fall into this category under Section 617.5 – Type II Actions. This section of the DEC regulation contains a list of various types of projects that by definition do not create environmental impacts and therefore require no further action under SEQRA. Specifically, Section 617.5(c)(8) states: “routine activities of educational institutions, including expansion of existing facilities by less than 10,000 square feet of gross floor area and school closings, but not changes in use related to such closings.” Therefore, all renovations to, or expansions of existing facilities by less than 10,000 square feet are determined by regulation to have no significant environmental impact and can be properly classified as Type II Actions, requiring no further action under SEQR. While they may be properly classified as Type II, there are still situations where Type II renovations could impact other permitting agencies or historic resources. For this reason, SED will require evidence of correspondence with those agencies and the State Historic Preservation Office on all projects prior to the processing of a Building Permit.

NOTE: Districts must be cautioned that Type II determinations for projects involving additions under 10,000 square feet would no longer be valid if final design changes result in a project over 10,000 sq. ft., as it no longer qualifies under 617.5(c)(8). Under such a scenario,

Completion of SEQR Before Referendum

One of the most fundamental criteria of SEQR is outlined under Section 6 NYCRR 617.3(a) – General Rules, which states: “No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR.” Therefore, SEQR must be completed prior to the project being authorized by the voters. SED further recommends that the Board of Education wait for completion of the SEQR process prior to setting a voter authorization date.

SEORA Overview

While the SEORA process as a whole is fairly complex, it can be broken down into simple components, which are identified as follows. These steps are discussed in greater detail in the following pages.

SEQR Process

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| Step 1 | Identify if a Project or “Action” is Subject to SEQR |
| 2 | Classify the Action |
| 3 | Complete Environmental Assessment Forms |
| 4 | Coordinate Review if Applicable |
| 5 | Determine Significance |
| 6 | Scoping and Preparation of Draft Environmental Impact Statement |
| 7 | Public Comment (Public Hearing if Appropriate) |
| 8 | Environmental Impact Statement and SEQR Findings Statement |

Step 1: **Identify if a Project or “Action” is Subject to SEQR**

An action is defined in Section 6 NYCRR 617.2(b) as “projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance, or condition of any natural resource or structure.” An action is subject to SEQR if any State or local agency has the authority to issue a discretionary permit, license or other type of approval for the action. The action will also be subject to SEQR if any agency funds or directly undertakes a project. Since all public school capital construction projects require a Building

the voter authorization for such a project would be invalid as the district failed to comply with SEQR prior to the vote. As such, SED will not issue a Building Permit for the subject project until SEQRA is properly complied with and the project is properly reauthorized by the voters.

(b) **Type I Actions**

Type I actions are more likely to have a significant impact on the environment than other actions and will require further review under SEQR. They may require the preparation of a Draft Environmental Impact Statement (DEIS) and a Final Environmental Impact Statement (FEIS).

Section 6 NYCRR 617.4 contains thresholds which must be met or exceeded to qualify a project as Type I. In addition, SED in its previous role as automatic lead agency for every project used additional thresholds such as 50,000 square foot expansions or 50 percent increases in existing building size. Districts are no longer subject to SED SEQR thresholds and are subject only to the requirements contained in Section 6 NYCRR 617.4 for determination of Type I actions.

- (c) **Unlisted Actions** -- Actions or projects that do not meet or exceed the threshold designations for Type I actions and are not addressed in the Type II Section 617.5 lists. For example, a school district proposed a 15,000 sq. ft. addition to an existing facility of 100,000 sq. ft. This project is larger than the Type II threshold of 10,000 sq. ft. under Section 617.5(c)(8) but smaller than the Type I thresholds. Unlisted actions may require the preparation of a DEIS after an analysis of the significance of the project's potential impacts.

Step 3: Complete Environmental Assessment Forms (Unlisted and Type I Actions Only)

The Environmental Assessment Form (EAF) provides additional information regarding the project to all concerned parties. The EAF categorizes areas of potential impact for further review and analysis if deemed necessary.

It is strongly recommended that school districts adopt the DEC's full EAF in order to ensure that the most recent forms are used for a particular project. SED forms have been discontinued and will not be updated in the future. School districts acting as lead agencies are responsible for using the most accurate and up-to-date information available. The forms are available on the DEC website at <http://www.dec.state.ny.us>.

All Type I actions will require that a full EAF be completed per Section 617.20, Appendix A. Short form EAF's may be completed for unlisted actions if appropriate. Section 617.20, Appendix C contains the short form EAF. If the lead agency has determined that the preparation of a DEIS is necessary, the requirement for an EAF may be waived.

Step 4: Coordinate Review

- (a) Type I – A coordinated review is required for all Type I actions. School districts must follow procedures established in 6 NYCRR 617.6 – Initial Review of Actions and Establishing Lead Agency in order to establish themselves as lead agency and make appropriate decisions regarding the process, including the decision to coordinate the project with other involved and interested agencies, and the decisions regarding significance of the potential impacts associated with the project. A coordinated review is simply the selection of the lead agency from the various involved agencies and the dissemination of all completed documentation to all parties for review and consideration.

As discussed later in this document, SED will require evidence of coordination with appropriate involved or interested agencies on every project prior to acceptance of final plans and specifications required for the issuance of a Building Permit.

- (b) Unlisted actions do not automatically require a coordinated review with involved or interested agencies. This may result in an unnecessarily complicated process as each involved agency must conduct its own environmental review. It is recommended that a school district, acting as lead agency, undertake a

coordinated review for unlisted actions to eliminate the necessity of each involved agency coordinating its own environmental review. Under a coordinated review all other involved agencies are bound by the decisions made by the lead agency and cannot require the preparation of a DEIS if the lead agency does not deem a DEIS appropriate for the action.

Step 5: Determine Significance – Type I and Unlisted Actions

Once the school district has been appropriately declared lead agency, it may make a determination of significance per Section 617.7(b) regarding the potential impacts resulting from the proposed project. If the lead agency determines that enough information has been gathered through completion of the EAF, that agency may evaluate the information and determine whether the proposal contains significant environmental impacts. If it does not, a Negative Declaration can be issued in accordance with Section 6 NYCRR 617.7. If the lead agency determines that the impacts are significant or that additional information is required to reach a decision, a Positive Declaration will be issued necessitating the completion of a DEIS. In determining environmental significance of a Type I or Unlisted Action, the lead agency must reach one of two conclusions:

- a) The project **will not** result in any significant adverse environmental impacts. This is defined as a Negative Declaration under 6 NYCRR 617.2(y). In this situation, the lead agency will issue a written Negative Declaration including the rationale for reaching this conclusion with explanation. The agency must show that it took a hard look at the potential impacts and must provide a reasoned elaboration of its determination. A Negative Declaration concludes the SEQRA process.
- b) The project **may** have a potentially significant adverse impact on the environment. In this case, a Positive Declaration is issued by the lead agency and a DEIS is prepared, and a Final Environmental Impact Statement (FEIS) may be required.

The regulations in New York State offer a low threshold by which to evaluate potential significance. Negative Declarations are only appropriate where it is clear that an action **will not** adversely impact the environment. Further environmental investigation must be performed through the preparation of a DEIS if there is any possibility that the project **may** affect the environment. A FEIS may need to be prepared after the DEIS comment period.

Step 6: Scoping and Preparation of a DEIS

Scoping is a process which is used to identify areas of potential impact or issues which should be addressed in the DEIS. While scoping is not required, it can be extremely valuable to focus the DEIS on potentially significant adverse environmental impacts and eliminate non-significant issues. This process can also be used to create a unique opportunity for public involvement in the process so that those issues of greatest concern to the community can be clearly addressed in the documentation. An example of one method to accomplish this would be the holding of public hearings by the lead agency to collect information from involved, and interested agencies as well as the general public regarding the potentially significant impacts and community concerns resulting from the proposed project. This information could then be used to allow the applicant to specifically target concerns raised in the hearings and narrow the scope of the DEIS to those issues.

All DEIS's must contain the specific information set forth in Section 617.9(b). Such information includes, but is not limited to, project description, purpose, public needs and benefits, description of environmental settings of areas to be affected, appropriate maps of the site, evaluations of potentially significant adverse impacts and a discussion of potential mitigation measures. Such potential impacts may range from increased traffic, noise, encroachment of streams and wetlands, impacts to historic resources or impacts to significant plant and animal species. The applicant is required to retain the appropriate professional architects, engineers, and environmental consultants to perform the necessary studies and evaluations in order to fully describe the potential impacts and design appropriate mitigation measures as required. It is also critical to include complete discussion of all alternatives considered, as well as why those alternatives were not selected over the proposed project. This evaluation must include an evaluation of the "No Action" alternative. School districts may

continue to use the SED format at this time. However, it is suggested that the latest version of 6 NYCRR 617 be reviewed (amended June 26, 2000, effective July 12, 2000) prior to developing any documentation.

When the lead agency has reviewed and accepted a DEIS as complete and adequate for public review and comment, it issues a Notice of Completion and publishes such notice in accordance with DEC requirements, along with the dates for a minimum 30-day public comment period. The DEIS is also distributed by the lead agency to all involved and interested agencies.

Step 7: Public Comment and Public Hearings

The public must be able to participate in the SEQR process and must receive a minimum of thirty (30) days from the date the Notice of Completion of the DEIS is published to comment in writing on the proposed action. SED also strongly urges school districts to publish the details of the comment period (times, dates, addresses, etc.) in a newspaper or papers of local circulation in the district in order to invite the public's participation. Many school construction projects will affect the community and district for decades and SED believes there will be greater support for the project if the public believes it has been involved in designing the final product.

Public hearings are not required but do provide valuable input from concerned citizens regarding potential impacts resulting from the projects, as well as providing additional opportunity for public participation in the process. If public hearings are held, a notice regarding same must be published in the local newspaper at least 14 days prior to the hearing as per Section 617.12(c)(2). Remember that SEQR was enacted specifically to consider environmental concerns arising from projects funded with and/or approved by public agencies and public participation is important to the success of these types of projects.

Step 8: Final Environmental Impact Statement (FEIS) and SEQR Findings Statement

At the close of the public comment period, the lead agency must review all public comment received as well as transcripts from any public hearings. All significant public comment received during the comment period must be addressed during the preparation of the FEIS. The lead agency is responsible for the adequacy and accuracy of the FEIS. The FEIS consists of the DEIS, including any necessary revisions or supplements, copies of public comment received, and the lead agency's responses to the public comments. As with the DEIS, the FEIS is distributed to the interested and involved agencies after it is determined to be complete by the lead agency. The lead agency distributes the FEIS for a minimum of ten days prior to the lead agency issuing a final decision regarding the project. The ten-day period is designed to provide a minimum timeframe for the lead agency to consider all of the information gathered and presented in the FEIS prior to issuing its determination on the project, known as a Statement of Findings. While involved agencies and interested parties may comment on the FEIS, there is no obligation on the part of the lead agency to respond to comments received during the ten-day period. As outlined under 6 NYCRR 617.11(a), the lead agency shall afford agencies and the public a reasonable time period of not less than ten days in which to consider the FEIS prior to issuing its written Statement of Findings.

The SEQR process concludes when the lead agency issues a Statement of Findings which outlines the decisions the agency made, the potential impacts, whether the impacts have been properly mitigated, and how the agency arrived at the conclusions it reached (617.11(d)). A Positive Statement of Findings would indicate the project does minimize or mitigate impacts to the extent practicable and the project can be approved. If adverse environmental impacts of a project cannot be mitigated the lead agency must issue a Negative Statement of Findings and cannot approve the project. All involved agencies must issue a Statement of Findings regarding the project per Section 6 NYCRR 617.11(c).

Document Preparation, Filing, Publication and Distribution

One of the most critical areas of SEQR that school districts as lead agencies must be aware of and comply with are the procedural requirements for document preparation, filing, publication and distribution found in Section 617.12.

This section provides details on the types of information that must be contained in Negative Declarations, Positive Declarations, Notices of Completion for Draft and Final EIS's, Notices of Public Hearings, and Statement of Findings, as well as required time frames, where notices must be published, and who must receive copies of all documentation. Official notices are required to be published in the Environmental Notice Bulletin (ENB) in the manner prescribed by the Department of Environmental Conservation.

Failure to comply with the procedural aspects of Section 617 as well as the specific requirements of Section 617.12 pertaining to documentation can cause a SEQR determination to be overturned. These requirements must be strictly adhered to in order to protect the integrity of the process. The lead agency must be thorough and document all areas of study as well as alternatives, potential impacts and mitigation measures and be prepared to clearly describe how and why particular determinations were made after careful consideration of the documentation. Failure to comply has caused projects to be delayed by a year or more, as districts must complete the SEQR process again and seek a new voter authorization.

Under Section 617.3 General Rules, subparagraph (a), "No agency involved in an action may undertake, fund, or approve the action until it has complied with the provisions of SEQR." Therefore, if the SEQR determination is overturned, the subsequent vote is also invalid. Districts are cautioned that an improper SEQR process can not only cause substantial delays but the loss of community support and trust can be equally destructive to the success of the project.

The SED recommends that the SEQR process be completed prior to the Board of Education authorizing a date for referendum to guarantee compliance with Section 617.3(a).

Historic and Archeological Resources

SED has responsibilities under Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law to consult with The State Historic Preservation Office (SHPO) to protect New York's historic and archeological resources whenever it decides whether to fund or approve a project.

Many construction activities undertaken at public schools can impact historic and archeological resources. In many cases, seemingly minor renovations to existing structures can have significant impacts.

The State Education Department will require, as part of the submittal package for approval of a building permit, copies of letters from the New York State Office of Parks, Recreation and Historic Preservation to the district or its consultants, demonstrating that the district has sought SHPO's advice as to whether historic or archeological resources will be impacted and if so, how any substantial adverse impacts can be avoided or mitigated. This will apply to all projects regardless of size or scope, including all SEQR Type II, Type I, or Unlisted Actions. This includes all renovations, additions or new construction projects as well as land acquisitions.

The SED will not issue a building permit without the appropriate SHPO correspondence on file.

Approximately 75 – 80 percent of the building permits issued by SED in the last several years were issued for SEQR Type II actions and an equally large percentage of those did not impact historic or cultural resources. It is therefore expected that this requirement will not significantly affect a district's project schedule if properly planned. However, districts must contact SHPO as early in the process as information is available in order to facilitate the review process. For example, a SHPO determination that an archeological survey is warranted could substantially alter a project timeline if contact is not made early in the district's planning process.

Other Involved Agencies

SED must be assured that other appropriate agencies are being contacted and involved in the SEQR process.

The Department of Environmental Conservation's (DEC) Regional Office must be contacted for every Type I or Unlisted Action proposed by the school district. DEC has a range of oversight responsibilities including State Pollution Discharge Elimination System (SPDES) permits for storm water control as well as discharge from septic systems, wetland delineation, alterations to streams, sources of air contamination, as well as oversight for endangered plants and animal species and other issues.

The New York State Department of Transportation (DOT) must be contacted when alterations in the form of entrances and exits to state highways are proposed or traffic studies reveal improvements are required for traffic signals, sidewalks, crosswalks, etc.

The information on the existing SED project description forms will be retained, revised and updated on a new form entitled "Scope of Proposed Project." SED will use this information to review potential impacts to the environment as a result of the project and verify that appropriate involved or interested agencies have been contacted.

There are many instances when local interested agencies should be contacted even though they have no jurisdiction or oversight concerning the project. They may have valuable local knowledge and information on various topics particular to a project and can offer alternatives and solutions to problems associated with a project for the lead agency to consider and evaluate.

Facilities Planning Procedural Changes

SED will be an involved agency on every Type I or Unlisted Action and must be copied on all SEQR correspondence relating to a project application (Type II, Type I, or Unlisted). The district, as lead agency, will issue its Negative Declaration, if appropriate, in accordance with 6 NYCRR 617. Districts will be required to copy SED on correspondence during the process so that we may participate in the SEQR review if we believe it is necessary. All SEQR

correspondence and notices must include the SED Project Number to allow Facilities Planning to properly track and review projects. When a district ultimately completes SEQR and receives voter authorization for a project, SED will review documentation at the time of preliminary or final submission that verifies that SEQR was completed, appropriate Type II Board of Education resolution was completed, or appropriate Negative Declaration or Statement of Findings was issued after completion of DEIS or FEIS as appropriate, and that the date of such statement was prior to the date of voter authorization. We have amended our project description form, now entitled "Scope of Proposed Project," accordingly and have attached it for reference .

For all capital projects proposed for inclusion in the district's annual budget vote, there are several critical points to keep in mind. For Type II Actions, districts must follow the steps previously identified to reach the decision regarding Type II applicability and then must pass the appropriate board of education resolution declaring the action to be a Type II, not subject to further SEQR review. It is important to note that this applies to all capital projects and funding, including those proposed for voter approval as part of the district's annual budget vote. Generally, the size and scope of projects considered in the budget cycle will qualify as Type II actions. All capital projects must be subject to SEQR review prior to authorization for funding. Previously, when districts set up project numbers and submitted project description forms, SED made the Type II determination, where applicable, prior to the district's budget vote. In the future, Boards of Education must insure that the SEQR process and determinations occur prior to the district's annual budget vote for any capital project included in the budget. Although these will normally be Type II Actions, it is important to note that larger districts with ongoing capital programs may in fact include Type I or Unlisted Actions in their annual budgets. The SEQR process must be completed including a DEIS and FEIS, if necessary, prior to the district's budget vote.

SED Process Overview

The SED process will be dependent on the SEQR classification of the action as follows:

(a) **Type II SEQR Action**

- Submit Letter of Intent (LOI) for assignment of project number and project manager.

- Submit signed and sealed final plans and specifications for approval in the following order: **NOTE: The Cover of the specifications must contain the statement – “The Plans and Specifications are in accordance with the applicable requirements of the New York State Uniform Fire Prevention and Building Code, the State Energy Conservation Construction Code, and the construction standards of the Education Department.”**

- 1) Checklist for Application for Building Permit and Examination and Approval of Final Plans and Specifications (FP-CL)
- 2) Application for Examination and Approval of Final Plans and Specifications (FP-F)
- 3) Evaluation of Existing Building (FP-EEB)
- 4) Scope of Proposed Project (FP-SP)
[NOTE: This was formerly the Project Description Form]
- 5) Asbestos Letters with current photocopy of Project Designer Certificate, if appropriate
- 6) Highway Letter
- 7) Structural Responsibility Checklist and Certification (FP-SC)
- 8) Board resolution declaring SEQR Type II determination
- 9) State Historic Preservation Office correspondence
- 10) SED Code Compliance Checklist

b) Type I or Unlisted SEQR Action

- Submit Letter of Intent (LOI) for assignment of project number and project manager.
- Complete SEQR process in accordance with 6 NYCRR 617. SED will be an involved agency on every Type I or Unlisted Action and must be copied on all SEQR correspondence.
- Submit preliminary plans for approval in accordance with the document entitled “Approval of Preliminary Plans,” reference guide B.2 attached (revised March 2001).

- Submit final plans and specifications for approval by project in the order as previously outlined under Type II Actions – Items 1, 2, 5, 6, 7, and 10 only.

Summary

The above discussion is a brief outline and overview of the Education Department's changing role in the SEQR environmental review process. The latest version of the SEQR regulations are attached for reference as well as a DEC publication entitled "The SEQR Cookbook." Districts should download additional information and future editions from the DEC website at: www.dec.state.ny.us. Additional training is available from the Department of Environmental Conservation and the Department of State.