

**Responses to Public Comments:  
DEC Program Policy, Assessing Energy Use and Greenhouse Gas Emissions in  
Environmental Impact Statements**

<b>Responsiveness Table</b>	
<b>Comment</b>	<b>Response</b>
<b>Topic: General Policy Issues</b>	
<p>The draft GHG Policy will have a chilling effect on economic growth in New York State. Source: Multiple Intervenors</p>	<p>The Policy will support the long-standing state and federal goals of increasing energy efficiency and reducing the State's dependence on fossil fuels. The State's long-term economic well being depends on, among other factors, increasing the efficiency and conservation of fuels, so we do not think that it will chill economic growth in New York State.</p>
<p><b><u>Two related comments:</u></b></p> <p><b>Comment 1:</b> The RGGI program and the DEC's rules for the control of nitrogen oxides (NOx) already regulate emissions from new, reconstructed, and expanded facilities that would be reviewed under SEQRA, and no additional mitigation of emissions from the power sector should be required under the draft policy. Source: IPPNY</p> <p><b>Comment 2:</b> The GHG Policy is duplicative of RGGI, the Systems Benefit Charge (SBC), the Energy Efficiency Portfolio Standard (EEPS) and the Renewable Portfolio Standard (RPS). Such standards already exact a high cost from electricity consumers in New York State. The greenhouse gas policy will add more cost to the price of electricity. Source: Multiple Intervenors</p>	<p>SEQR is not duplicative of the programs mentioned. SEQR requires lead agencies to identify all potential environmental impacts (such as climate change) that may result from a proposed action as part of the determination of significance, and then to assess these impacts in an EIS. Thus, agencies are already under an obligation to consider greenhouse gases in the EIS process. This Policy does not, therefore, add a new requirement to the EIS process. The Policy simply provides methods for DEC staff to implement the existing legal requirements of SEQR with respect to climate change and energy use and conservation. In contrast, the RGGI program and any rules regarding Nitrogen Oxide (NOx) (which is not a greenhouse gas) regulate the emissions of particular pollutants from the stack of certain applicable facilities, but do not address the full range of impacts from proposed facilities, as SEQR requires.</p>
<p>Development of the draft policy is premature, given that the State Energy Planning Process required by Governor</p>	<p>As described above, the Policy provides guidance to staff in implementing an existing legal requirement. DEC is actively</p>

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<p>Paterson's Executive Order still is underway. Source: IPPNY</p>	<p>engaged in the State energy planning process now underway. Nonetheless, SEQR presently requires the consideration of climate change as well as energy use and conservation. There is no conflict between SEQR's mandate and the goals of the current and future State Energy Plan, which include conserving fossil fuels and increasing energy efficiency. In fact, the existing State Energy Plan, issued in June 2002, included a recommendation for State agencies to consider CO<sub>2</sub> emissions and mitigation in environmental reviews (at page 1-43) and DOT has been taking this approach since that time.</p>
<b>Topic: Determining Significance for GHG Emissions</b>	
<p><b><u>Two related comments:</u></b></p> <p><b>Comment 1:</b> The policy should further clarify when the greenhouse gas impacts of a proposed action may be significant enough to trigger an environmental impact statement. Source: NRDC</p> <p><b>Comment 2:</b> CCE recommends that the Department develop very specific guidelines for lead agencies and the public that relate to greenhouse gas emissions and the threshold for "significance." Source: Citizens Campaign for the Environment</p>	<p>Explicit incorporation of GHG impacts into determinations of significance is being pursued in a separate initiative, through inclusion in proposed revisions to the environmental assessment form (EAF), which must be advanced via the formal rulemaking process required by the New York State Administrative Procedure Act because the EAF is a part of the SEQR regulations. The existing SEQR regulations, however, already require lead agencies to address the potential impact categories most directly related to GHG emissions and climate change impacts. It directs consideration of air quality impacts; energy usage; vegetation loss; and requires evaluation of individually-small but collectively-significant environmental changes. Thus, lead agencies now possess both the authority and mandate to address GHG-related impacts when reaching determinations of significance.</p>

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<p><b><u>Two related comments:</u></b></p> <p><b>Comment 1:</b> Since the policy does not offer any thresholds for review or compliance, permit applicants stand to be put into an endless loop of data submissions and lead agency reviews. Under the rules of UPA and SEQR, applications processing timeframes are suspended; meaning applicants are left without recourse to compel an agency decision. The GHG policy has every potential to make every controversial application to be “dead on arrival,” due to process rather than science. Source: NYCMA</p> <p><b>Comment 2:</b> Because this policy does not suggest any mechanism or threshold for determining the significance of these energy use or emission categories under SEQR, there is no way of consistently and objectively assessing the importance of these emissions and energy usage, nor the need to consider mitigation. Under this proposal, Department staff will have complete discretion to make determinations about the potential environmental impact of a proposed project based on these quantitative estimates of greenhouse gas emissions, provided by applicants. Source: Business Council</p>	<p>See response to comments above. In addition, the Policy merely provides methodologies for assessing GHG and energy use, which reduces (rather than enhances) the opportunities for arbitrariness in reviews. In making determinations of significance, as directed by both the SEQR statute and regulations, the DEC, as lead agency, would be guided in identifying potential impacts and the significance of those impacts through the EAF. The Uniform Procedures Act and common law help to ensure, as they do for all other DEC actions under SEQR, that its decisions are timely and reasonable.</p>

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<b>Topic: Adaptation to Climate Change</b>	
<p><b><u>Two Related Comments</u></b></p> <p><b>Comment 1:</b> The policy should have discussed the impacts of climate change on projects, such as sea level rise. Source: Columbia University</p> <p><b>Comment 2:</b> The policy does not seem to require some consideration of the impacts of climate change upon the proposed action. Source: NRDC</p>	<p>It is agreed that this Policy is generally silent on this issue. The science of predicting the impacts of climate change – especially at the local level – is rapidly evolving, which complicates SEQR’s requirement for the consideration of ‘reasonably predicable’ impacts. Further, it would be premature to address adaptation and sea level rise in the Policy as the Legislature has created a Sea Level Rise Task Force that is due to issue a report in 2010. It would be more appropriate to develop guidance with respect to sea level rise and adaptation issues after issuance of that Report.</p> <p>As written, the Policy does not preclude the consideration of climate change impacts on a proposed project. Whether potential secondary impacts of climate change on a proposed project could be significant, or even relevant, requires a site- and project-specific assessment, and this is referenced in the final paragraph of Section B of the Policy.</p>
<b>Topic: Mitigation, Avoidance and Findings</b>	
<p>The DEC should include additional flexibility options to mitigate GHG emissions within the draft policy, such as the ability to use offset projects. Source: IPPNY</p>	<p>The Policy directs staff to give priority and preference to on-site mitigation measures, as is the traditional practice with SEQR reviews and Findings. Further, prioritizing on-site measures is in keeping with the policy goal of encouraging low-carbon project design. The Policy does allow for some flexibility in terms of consideration of off-site mitigation, as long as these off-site measures are permanent and enforceable,</p>

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	and result in GHG emissions reductions that are verifiable, real, and would not be occurring otherwise.
It is unclear how the fundamental test in Findings will be evaluated against an alternative that purportedly avoids or minimizes significant adverse environmental impacts. How will GHG considerations be evaluated and weighed against other environmental considerations? Source: CWS	This comment raises the issue of how GHG concerns factor into Findings. The Policy changes nothing with respect to the rules that apply to the making of Findings and consideration of alternatives. Climate change impacts resulting from emissions of greenhouse gases will be weighed in the same way that all other impacts are weighed. As cited in Section F of the Policy, the fundamental test in Findings is that the alternative to be selected or approved will avoid or minimize significant adverse environmental impacts to the maximum extent practicable.
The sampling of measures identified in the document is an ambitious list. All measures may not be practical with respect to the “economic, environmental, energy, and efficiency realities.” The technology may not be commercially available. The policy should allow for these considerations. Source: CWS	The Policy states that all measures may not be practical or feasible for all proposed projects. The DEC does not expect that any one project will integrate all of these measures. Rather, the list is a menu of potential mitigation measures. In each case, the EIS will contain a description of mitigation measures (as required by SEQR) and the Findings will “weigh and balance relevant environmental impacts with social, economic, and other considerations.”
<b>Topic: Impacts Covered by the Policy</b>	

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<p>The direct emissions from the cutting of trees and destruction of grasslands should be a required assessment of any SEQR submittal. Source: Nature Conservancy.</p>	<p>Whether deforestation/devegetation impacts are significant, or even relevant, will necessarily be a site-specific assessment. 6 NYCRR 617.7(c)(1)(ii) explicitly requires consideration of impacts of vegetation removal in reaching the determination of significance, so lead agencies already have both the mandate and the authority to consider potential climate change-related deforestation/devegetation impacts under SEQR's existing regulations. Further, the final paragraph of Policy section B notes that scoping should be used to identify analysis and quantification needs when potential deforestation or revegetation impacts have been determined to be significant for a particular project.</p>
<p>The Policy should include a greenhouse gas emission analysis of the decommissioning of the proposed project, and/or useful end-of-life of the product in the full EIS. Source: CCE</p>	<p>Whether there is a predicted or likely finite useful life-span of a proposed project, and so whether GHG or climate change impacts related to decommissioning of that proposed project may be significant, or even relevant, requires a site- and project-specific assessment by the lead agency when developing its determination of significance for that project. Nothing in the Policy prohibits such an analysis, and scoping should be used to identify analysis and quantification needs when potential decommissioning or end-of-project-lifespan impacts have been identified for a particular proposed project.</p>
<p>The language in the guidance document is overly broad; examples in Section A</p>	<p>The scope of this Policy is (1) when DEC is lead agency, and (2) when GHG or</p>

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include "large facilities", "thousands of truck trips" without a time period reference, and "significant amounts of electricity". Source: CWS	energy use has been identified as in the scope of an EIS, either through a positive declaration or via the typical scoping process. The terms mentioned in this comment are meant to indicate the broad types of projects that we expect may be relevant to this Policy. But as with any SEQR review, the scope of the EIS is developed on a case-by-case basis. To avoid future confusion, the language referenced in this comment has been deleted.
<b>Topic: Waste Disposal</b>	
The suggestion that there are discrete actions that can be taken to reduce methane emissions is overly broad. Requiring enhanced landfill gas collection will remove the current financial incentive for voluntary actions. Source: CWS	The Policy further defines the discrete actions that can be taken by listing: the reduction of organic material disposal in landfills, enhanced collection and flaring of methane, and use of landfill gas for energy generation. The Policy does not require any of these measures, but highlights that they are actions to mitigate GHG emissions. In NY, for example, projects to use collected landfill gas for energy generation are eligible for the Renewable Portfolio Standard (RPS); the language included in this Policy would not impact that eligibility.
The guidance document does not clearly specify which calculation methodology to use for methane from landfills, either the LandGEM or the Climate Leaders GHG calculation methodology, nor does it acknowledge that landfill gas generation models are evolving. Source: CWS	The Policy directs staff to the LandGEM model plus site-specific factors, as listed. There are multiple, and evolving, models for landfill gas; the Policy has been modified to provide additional flexibility to DEC staff to accept the most appropriate methodology.
Though the WARM model is an 'excellent tool', the Policy should acknowledge that the understanding of impacts from various	There are multiple, and evolving, models that estimate emissions from waste generation. The Policy has been modified

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waste management practices is evolving. Source: CWS	to provide additional flexibility to staff to accept an appropriate model.
Rather than using the term 'methane production at landfills', use 'fugitive emissions from landfills.' Source: CWS	As the term 'production' may possibly infer intention, the Policy has been modified to use the term 'methane emissions from landfills'.
Fossil CO <sub>2</sub> emissions and other anthropogenic emissions of Gags should be the focus of the Guidance, not emissions from biomass. Source: Covanta Energy	Because SEQR has a focus on a proposed project's overall impacts, a lead agency needs to look at all GHG emissions, regardless of source. With respect to climate change mitigation, the primary concern is fossil fuel combustion CO <sub>2</sub> emissions and other anthropogenic sources. The Policy has been modified to clarify that if emissions result from the combustion of biomass, those emissions should still be assessed in an EIS but their source (biomass) should also be identified and explained.
The Guidance should reference the WRI/WBCSD GHG Protocol for Project Accounting and ISO 14064-2, "Specification with guidance at the project level for quantification, monitoring, and reporting of greenhouse gas emissions reductions or removal enhancements". Source: Covanta Energy	The DEC reviewed the two documents cited by Covanta. The Policy has been modified to list these two documents under "Additional Resources." Both documents address projects that result in overall reductions in GHG emissions.
The LandGEM model has limitations. While it may be useful for an inventory, it does not facilitate comparison of landfilling with alternative waste management techniques, including recycling, composting, and waste to energy. A life cycle assessment should be used. Source: Covanta Energy	The Policy directs staff to the LandGEM model plus site-specific factors, as listed. There are multiple, and evolving, landfill gas models. The Policy has been modified to provide additional flexibility to DEC staff to select an appropriate methodology. The Policy also cites the responsibility of the DEC, as lead agency, to conduct or require the analyses of project

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	alternatives. In the case of a new or proposed landfill, an important project alternative will always be alternative methods of waste disposal. An EIS for a new or expanded landfill has typically reviewed projected impacts of alternative methods of waste disposal to air, water, and land. In the future, the alternatives analyses will also address the GHG emissions from the alternatives as well.
Covanta Energy supports inclusion of GHG emissions from waste, but has concerns with the U.S. EPA's Waste Reduction Model (WARM). Suggests the use of Municipal Solid Waste Decision Support Tool (MSW-DST) or other validated life cycle assessment tools. Source: Covanta Energy	The Policy has been modified to approve the use of three models: the WARM model, the MSW-DST model, and a model provided by the Northeast Recycling Council (NERC); or to allow the project proponent to provide other methods for the DEC's approval.
The list of mitigation measures should recognize waste-to-energy technology as an additional option. Source: Covanta Energy	While all measures listed will not be relevant or feasible for all projects, the DEC did attempt to select those mitigation measures with potentially wide application. Use of a waste combustion technology is an alternative to a proposed landfill, but it is not relevant for most of the wide range of projects subject to SEQR. As such, including waste combustion on a list of mitigation strategies may be confusing to both DEC staff and project proponents. In the case of a proposed new or expanded landfill, we would fully expect that alternative waste management approaches would be assessed in the EIS's alternatives analysis.
We believe the NYS DEC should allow the use of ASTM 06866 'Standard Test Methods for Determining the Bio-based Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass	Because SEQR applies to proposed rather than existing projects, the Policy focuses on predictive models rather than on test methodologies. Thus, the Policy does not specify any test methods. The Policy also

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Spectrometry Analysis' for the measurement and verification of biogenic/ biomass CO <sub>2</sub> . Source: Beta Analytic, Inc.	does not preclude staff from imposing conditions in a permit that would require testing or verification of mitigation measures. In these circumstances, project proponents can propose specific test methods, such as ASTM 06866, for DEC approval.
The unit of measure should specify short tons or metric tons. Additionally, the Global Warming Potential Factor (GWP) should be published. Source: CWS	The Policy has been modified to specify short tons. Because Global Warming Potential (GWP) Factors have been changing over time as scientific knowledge develops, the DEC chose not to publish the GWP factors in this document. But in response to this comment, the Policy has been modified to cite the Intergovernmental Panel on Climate Change (IPCC) as the reference organization for the most updated GWP factors.
<b>Topic: Applicability and Use of the Policy by Other Agencies</b>	
<p><b>Three related comments:</b></p> <p><b>Comment 1:</b> The Policy should be converted to a regulation binding on all lead agencies, once some experience has been accumulated under the Policy. Source: Columbia University</p> <p><b>Comment 2:</b> There is no reason to limit the applicability of this guidance to situations when DEC is the lead agency. NRDC</p> <p><b>Comment 3:</b> CCE strongly opposes limiting that inclusion to when DEC is the lead agency. Source: Citizens Campaign for the Environment (CCE)</p>	As DEC has no direct oversight authority over administration of SEQR by other agencies, it cannot compel performance by other agencies serving as SEQR lead agencies. Thus, the Policy can only apply directly to DEC, although staff anticipates that the methods recommended will be applied by other lead agencies as they have been for other policies that DEC has issued. As mentioned above, DEC is engaged in a separate initiative -- comprehensive proposed revisions to the environmental assessment form -- which we expect will incorporate GHG considerations into the significance determinations of all lead agencies. These changes must be advanced via the formal rulemaking process.

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<p>CCE recommends that the DEC provide a grievance process for the public if local lead agencies fail to provide adequate review under SEQR. Source: CCE</p>	<p>This is really a comment on general SEQR practice, rather than specifically on the proposed GHG policy. DEC possesses no statutory authority to oversee implementation of SEQR by other agencies. While the SEQR statute directs DEC to develop statewide regulations, it provides no oversight or enforcement authority. Further, the statute explicitly states an intention to make each individual agency responsible for the substance and process of its own environmental reviews. Thus, as with any other challenge to SEQR compliance by any lead agency, the remedies available to members of the public seeking to compel or challenge lead agency actions regarding GHG-related impacts remains the same as it does for all other SEQR actions .</p>