

DRAFT SCOPE
for the
Generic Environmental Impact Statement (GEIS)
on the
Proposed Amendments
to the
State Environmental Quality Review Act (SEQRA)

6 NYCRR - Part 617

PREPARED BY THE NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL PERMITS & POLLUTION PREVENTION
July 11, 2012

Description of the Action

The New York State Department of Environmental Conservation (DEC) proposes to amend the regulations that implement the State Environmental Quality Review Act (“SEQR”, Title 6, New York Code of Rules and Regulations (6 NYCRR), Part 617). The principal purpose of the amendments is to streamline the SEQR process without sacrificing meaningful environmental review.

The Department has not identified any significant adverse environmental impacts from the proposed amendments. However, DEC has chosen to use a generic environmental impact statement (GEIS) as the means to discuss the objectives and the rationale for the proposed amendments, present alternative measures which are under consideration and provide the maximum opportunity for public participation.

DEC is conducting this public scoping of the issues to be addressed in the GEIS to allow maximum, early public participation. Comments and suggestions related to the scoping of potential significant adverse environmental impacts and additional alternatives to be considered by DEC should be submitted in writing to the office listed below.

Comments on the draft scope will be accepted through **August 10, 2012**.

Summary of Proposed Amendments to 6NYCRR Part 617

617.2 DEFINITIONS

- Add definition of “Green Infrastructure”
- Add definition of “Minor Subdivision”
- Add definition of “Municipal Center”
- Revise definitions of:
 - “Negative Declaration”
 - “Positive Declaration”

- 617.4 TYPE I ACTIONS
- Reduce number of residential units in items 617.4(b)(5)(iii), (iv) & (v);
 - Reduce number of parking slots for municipalities with a population under 150,000; and
 - Bring the threshold reduction for historic resources [617.4(b)(9)] in line with other resource based items on the Type I list.
- 617.5 TYPE II ACTIONS
- Add new Type II actions to encourage development in urban areas vs. development in greenfields and to encourage green infrastructure projects;
 - Add new Type II actions to encourage the installation of solar energy arrays;
 - Add new Type II action that allows for the sale, lease or transfer of property for a Type II action;
 - Add new Type II action to make minor subdivisions Type II;
 - Add a new Type II actions to make the disposition of land by auction a Type II action; and
 - Add a new Type II action to encourage the renovation and reuse of existing structures.
- 617.8 SCOPING
- Make scoping mandatory;
 - Provide greater continuity between the environmental assessment process, the final written scope and the draft Environmental Impact Statement (EIS) with respect to content;
 - Strengthen the regulatory language to encourage targeted EISs;
 - Clarify that issues raised after the completion of the final written scope cannot be the basis for the rejection of the draft EIS as inadequate.
- 617.9 PREPARATION AND CONTENT OF ENVIRONMENTAL IMPACT STATEMENTS
- Add language to require that adequacy review of a resubmitted draft must be based on the written list of deficiencies; and
 - Revise the timeline for the completion of the FEIS.
- 617.12 DOCUMENT PREPARATION, FILING, PUBLICATION AND DISTRIBUTION
- Add language to allow for the electronic filing of EIS's with DEC.
- 617.13 FEES AND COSTS
- Add language to require that a lead agency provide the project sponsor with an estimate of review cost, if requested; and
 - Add language to require that a lead agency provide the project sponsor with a copy of invoices or statements for work done by a consultant, if requested.

The following discussion provides the objectives and rationale for the major proposed changes. It also includes pre-draft language. The pre-draft text amendments show proposed

language deletions as bracketed ([XXXX]) and new language as underlined (XXXX). This language is being provided to stimulate discussion and comment on the preliminary changes

TYPE I LIST

Objectives and Rationale: The Department proposes to:

- (1) Reduce some of the thresholds for residential subdivisions. Experience has shown that the thresholds for some of the Type I items for residential construction are rarely triggered because they were set too high in 1978. This change will bring the review of large subdivision into conformance with current practice. Large subdivisions are frequently the subject of an EIS.
- (2) Add a threshold for parking spaces for communities of less than 150,000 persons. A common and often recommended measurement is 1 parking space per 200 square feet of gross floor area of a building. If you are a community of less than 150,000 persons the applicable Type I threshold for the construction of commercial or industrial facilities is 100,000 square feet of gross floor area. This equates to 500 parking spaces.
- (3) Bring the threshold reduction for historic resources in line with other resource based items on the Type I list. On the existing Type I list any Unlisted action, regardless of size, that occurs wholly or partially within or substantially contiguous to a historic resource is automatically elevated to a Type I action. This results in many very minor actions being elevated to Type I. Other resource based Type I items such as those addressing agriculture and parkland/open space result in a reduction in the Type I thresholds by 75%. Given the fact that the new Full EAF now requires much more information it would be very onerous and potentially expensive for a project sponsor to have to complete a Full EAF for a relatively minor activity. Also, the new Short EAF now contains a question regarding the presence of historic resources so the substance of the issue will not escape attention.

Preliminary Text Amendment:

- 617.4(b)(5)(iii) in a city, town or village having a population of [less than]150,000 persons or less, [250]200 units to be connected (at the commencement of habitation) to existing community or public water and sewage systems including sewage treatment works;
- 617.4(b)(5)(iv) in a city, town or village having a population of greater than 150,000 persons but less than 1,000,000, [1,000]500 units to be connected (at the commencement of habitation) to existing community or public water and sewage systems including sewage treatment works;
- 617.4(b)(5)(iv) in a city, town or village having a population of greater than 1,000,000, [2,500]1000 units to be connected (at the commencement of habitation) to existing community or public water and sewage systems including sewage treatment works;
- 617.4(b)(6)(iii) in a city, town or village having a population of 150,000 persons or less, parking for 500 vehicles;
- 617.4(b)(6)(iv) in a city, town or village having a population of 150,000 persons or more, parking for 1000 vehicles;
- 617.4(b)(9) any Unlisted action that exceeds 25 percent of any threshold in this section [(unless the action is designed for the preservation of the facility or site)] occurring

wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National Register of Historic Places, or that has been proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register, or that is listed on the State Register of Historic Places (The National Register of Historic Places is established by 36 Code of Federal Regulation (CFR) Parts 60 and 63, 1994 (see section 617.17 of this Part));

TYPE II LIST

Objective and Rationale: The Department proposes to broaden the list of actions that will not require review under SEQRA. This will allow agencies to focus their time and resources on those projects likely to have significant adverse impacts on the environment. The additions to the Type II list are based on discussions that DEC has conducted with representatives from state agencies, environmental organizations, business and the 30+ years of experience of staff in the Division of Environmental Permits.

A second and more important reason for many of the proposed additions to the Type II list is to try and encourage environmentally compatible development. Many of the additions attempt to encourage development in urban areas vs. development in greenfields and encourage green infrastructure projects and solar energy development. Others proposed items will remove obstacles encountered by municipalities when developing affordable housing in cooperation with not-for-profit organizations. The overall goal is to provide a regulatory incentive for project sponsors to further the State's policy of sustainable development.

Proposed Text Amendment:

- The acquisition, sale, lease, annexation or transfer of any ownership of land to undertake any activity on this list.
- Disposition of land, by auction, where there is no discretion on the part of the disposing agency on the outcome.
- Re-use of a non-residential structure not requiring a change in zoning or a use variance unless such action meets or exceeds any of the thresholds in section 617.4(b)(6),(8),(9),(10) and (11) of this Part.
- Lot line adjustments and area variances not involving a change in allowable density [replacing existing items 12 and 13 in 6 NYCRR 617.5(c)].
- In municipalities with adopted subdivision regulations, subdivisions involving 10 acres or less and defined as minor under a town, village or city's adopted subdivision regulations or subdivision of four or fewer lots, whichever is less.
- The recommendation of a county or regional planning entity made following referral of an action pursuant to General Municipal Law, sections 239-m or 239-n.
- In the municipal center of a city, town or village having a population of less than 20,000, with adopted zoning regulations, construction or expansion of a residential or commercial structure or facility involving less than 8,000 square feet of gross floor area or construction or expansion of a residential structure of 10 units or less where the project is subject to site plan review, and will be connected (at the commencement of habitation) to existing community owned or public water and sewerage systems including sewage treatment works which have the capacity to provide service and does not involve the

construction of new public roads.

- In the municipal center of a city, town or village having a population of greater than 20,000 but less than 50,000, with adopted zoning regulations, construction or expansion of a commercial or residential structure or facility involving less than 10,000 square feet of gross floor area or construction or expansion of a residential structure of 20 units or less where the project is subject to site plan review, and will be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works which have the capacity to provide service and does not involve the construction of new public roads;
- In the municipal center of a city, town or village having a population of greater than 50,000 but less than 150,000, with adopted zoning regulations, construction or expansion of a commercial or residential structure or facility involving less than 20,000 square feet of gross floor area or construction or expansion of a residential structure of 40 units or less where the project is subject to review under local land use regulation, and will be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works which have the capacity to provide service and does not involve the construction of new roads.
- In the municipal center of a city, town or village having a population of greater than 150,000, with adopted zoning regulations, construction or expansion of a commercial or residential structure or facility involving less than 40,000 square feet of gross floor area or construction or expansion of a residential structure of 50 units or less where the project is subject to review under local land use regulation, and will be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works which have the capacity to provide service and does not involve the construction of new roads.
- Replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading of buildings to meet building, energy, or fire codes, unless such action meets or exceeds any of the thresholds in section 617.4(b)(6),(8),(9),(10) and (11) of this Part.
- Replacement, rehabilitation or reconstruction of a structure or facility, using green infrastructure techniques, unless such action meets or exceeds any of the thresholds in section 617.4(b)(6),(8),(9),(10) and (11) of this Part.
- Installation of rooftop solar energy arrays on an existing structure that is not listed on the National or State Register of Historic Places or installation of less than 25 megawatts of solar energy arrays on closed sanitary landfills.
- Installation of cellular antennas or repeaters on an existing structure that is not listed on the National or State Register of Historic Places.
- Brownfield site clean-up agreements under Title 14 of ECL Article 27.

SCOPING

Objectives and Rationale: The Department proposes to:

- (1) Require public scoping for all EIS's. Currently scoping is not mandatory but all parties have come to accept the importance of public scoping as a tool to focus an EIS on the truly substantive and significant issues. Seeking public input early in the EIS process helps to ensure that all of the substantive issues are identified prior to the preparation of

- the draft EIS.
- (2) Place more emphasis on using the EAF as the first step in scoping. The revised EAF's are much more comprehensive than the previous versions. This should allow the lead agency to assess, in a thorough fashion, all of the potential impacts and to establish a basis for determining those issues that need additional scrutiny in an EIS and issues that do not require any further analysis and can be excluded from the EIS scope. Scoping can then be used to determine the depth and type of assessment that will be required in the draft EIS.
 - (3) Provide clearer language on the ability to target an EIS. All parties agree that many EIS's are currently filled with information that does not factor into the decision. This is driven by the defensive approach agencies and project sponsors take in developing the EIS record. In pursuit of the "bullet proof EIS" the tendency is to include the information even though the environmental assessment has already concluded that the issue is not substantive or significant.
 - (4) Provide better guidance on the basis for accepting/rejecting a draft EIS for adequacy. The current regulations give to the project sponsor the responsibility for accepting or deferring issues following the preparation of the final written scope. A lead agency cannot reject a draft EIS as inadequate if the project sponsor has decided to defer an issue and treat it as a comment on the draft EIS. Language would be added to clarify that the decision of the project sponsor cannot serve as the basis for the rejection of a draft EIS as not adequate to start the public review process.

Proposed Text Amendment:

- 617.8(a) - The primary goals of scoping are to focus the EIS on potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or [non] not significant. Scoping should result in EISs that are only focused on relevant, significant, adverse impacts. Scoping is [not] required for all EISs [. Scoping] and may be initiated by the lead agency or the project sponsor.
- 617.8(f)(2) - the potentially significant adverse impacts identified both in Part III of the environmental assessment form [positive declaration] and as a result of consultation with the other involved agencies and the public, including an identification of those particular aspect(s) of the environmental setting that may be impacted;
- 617.8(f)(7) - A brief description of the prominent issues that were raised during scoping and determined to be not relevant or not environmentally significant or that have been adequately addressed in a prior environmental review[.] and the reason(s) why those issues were not included in the final written scope.
- 617.8(h) - The project sponsor may incorporate information submitted consistent with subdivision 617.8(g) of this section into the draft EIS at its discretion. Any substantive information not incorporated into the draft EIS must be considered as public comment on the draft EIS. Information submitted following the completion of the final scope and not included by the project sponsor in the draft EIS cannot be the basis for the rejection of a draft EIS as inadequate.

PREPARATION AND CONTENT OF ENVIRONMENTAL IMPACT STATEMENTS

Objectives and Rationale: The Department proposes to add language to require that the

adequacy review of a resubmitted draft must be based on the written list of deficiencies and revise the timeline for the completion of the FEIS.

Determining the adequacy of a draft EIS is a challenging step of the EIS process. If the document has been rejected as not adequate, the lead agency must provide a written list of the identified deficiencies that the project sponsor needs to correct. When the document is re-submitted the second review must be based on the list of deficiencies that were identified in the first round of review. This is an issue of fairness and will lead to a more efficient process. A draft EIS does not have to be perfect. The goal is to provide a document that is adequate to start the public review.

The current language regarding the timeframe for the preparation of the final EIS is unrealistic. It requires that the final EIS be prepared within 45 days after the close of any hearing or within 60 days of the filing of the draft EIS. Rarely, if ever, are these timeframes met. The Department proposes to extend this timeframe and provide certainty for when the EIS process will end.

Proposed Text Amendment:

- 617.9(a)(2) The lead agency will use the final written scope[,if any,] and the standards contained in this section to determine whether to accept the draft EIS as adequate with respect to its scope and content for the purpose of commencing public review. This determination must be made [in accordance with the standards in this section] within 45 days of receipt of the draft EIS. Adequacy means a draft EIS that meets the requirements of the final written scope and section 617.9(b) of this Part.
 - (i) If the draft EIS is determined to be inadequate, the lead agency must identify in writing the deficiencies and provide this information to the project sponsor.
 - (ii) The lead agency must determine whether to accept the resubmitted draft EIS within 30 days of its receipt. The determination of adequacy of a resubmitted draft EIS must be based solely on the written list of deficiencies provided by the lead agency following the previous review.
- 617.9(a)(5) - Except as provided in subparagraph (iii) of this paragraph, the lead agency must prepare or cause to be prepared and must file a final EIS, within [45 calendar days after the close of any hearing or within 60] 180 calendar days after the lead agency's acceptance of the draft EIS[, whichever occurs later].
 - [(i) No final EIS need be prepared if:
 - (a) the proposed action has been withdrawn or;
 - (b) on the basis of the draft EIS, and comments made thereon, the lead agency has determined that the action will not have a significant adverse impact on the environment. A negative declaration must then be prepared, filed and published in accordance with section 617.12 of this Part.]
 - (i) If the Final EIS is not prepared and filed within the 180 day period, the EIS shall be deemed complete on the basis of the draft EIS, public comment and the response to comments prepared and submitted by the project sponsor to the lead agency. The response to comments must be submitted to the lead agency a minimum of 60 days prior to the required filing date of the final EIS.

- (ii) The lead and all involved agencies must make their findings and can issue a decision based on that record together with any other application documents that are before the agency.
 - [(a) if it is determined that additional time is necessary to prepare the statement adequately; or
 - (b) if problems with the proposed action requiring material reconsideration or modification have been identified.]
- (iii) No final EIS need be prepared if:
 - (a) the proposed action has been withdrawn or;
 - (b) on the basis of the draft EIS, and comments made thereon, the lead agency has determined that the action will not have a significant adverse impact on the environment. A negative declaration must then be prepared, filed and published in accordance section 617.12 of this Part.

SEQR FEES

Objective and rationale: The Department proposes to clarify existing fee assessment authority by amending language to provide project sponsors with the ability to request an estimate of the costs for reviewing the EIS and a copy of any invoices or statement of work done by any consultant for the lead agency. This is primarily an issue of fairness and disclosure. A project sponsor should have the right to receive an estimate of the lead agency's costs for the review of the EIS along with written documentation to support such fees. Currently, the lead agency must provide an estimate to the project sponsor when they take on the responsibility for the preparation of the EIS.

Proposed Text Amendment:

617.13(e) [Where an applicant chooses not to prepare a draft EIS, t] The lead agency shall provide the applicant, upon request, with an estimate of the costs for preparing or reviewing the draft EIS calculated on the total value of the project for which funding or approval is sought. The applicant shall also be entitled, upon request to, copies of invoices or statements for work prepared by a consultant.

COMMENT PROCEDURES

Comments on this draft scope will be accepted in writing or by email through **August 10, 2012**. Comments via e-mail should be submitted to: depprmt@gw.dec.state.ny.us . Please insert the phrase "Comments on Part 617 Draft Scope" in the subject line. Alternatively, comments submitted in writing should be sent to:

New York State Department of Environmental Conservation
 Division of Environmental Permits & Pollution Prevention
 625 Broadway
 Albany, New York 12233-1750