

FULL EAF, RESPONSE TO PUBLIC COMMENTS
JANUARY 25, 2012

INTRODUCTION

Comments are either directly quoted or paraphrased from original documents. To the greatest extent possible comments and responses have been organized along the organization of the environmental assessment form. References to questions are based on numbering of the EAFs noticed in the State Register on November 24, 2010 and posted on the Department of Environmental Conservation's website at Responses to comments on the Regulatory Impact Statement and Regulatory Flexibility Analysis and Job Impact Statement are also included below.

GENERAL ISSUES

1. Comment

“From a professional standpoint, these forms are an excellent improvement over the old EAF forms. The revised forms are very comprehensive and will provide a much more comprehensive evaluation of a project and its components that may impact the environment. They are more detailed, ask more involved and probing questions to determine the environmental consequence of proposed actions, and require the developer/applicant to gather more information to present to the lead agency. Better consideration of the environmental consequences of projects will result from use of these forms. If filled out properly the forms do have the potential to give the lead agency more information so as to reduce time-consuming back and forth between applicant and agency, The forms address many more areas of potential environmental impact that communities are concerned about and this will, we believe, result in better projects. “

Response

DEC agrees with this statement. Revisions made to the forms following the public review process have resulted in additional improvements.

2. Comment

The length of the proposed Full EAF, combined with the increased amount of background analysis required to ensure accuracy, will require a lead agency to place more confidence in the applicant's responses. New questions will lead some applicants to guess or not answer questions placing more pressure on the lead agency to review the forms for accuracy. Length and complexity of proposed Full EAF will force boards to request a Short EAF for all non-Type I actions.

Response

With the companion workbook and the built-in links to spatial data it should make it easier and more likely that project sponsors will have access to information that will allow them to provide an accurately completed Part 1. It will also make it easier for the reviewing agencies to confirm responses that they believe may be in error. DEC recognizes that the proposed Full EAF is longer and more thorough than the current form. However, in recognition that the use of the proposed Full EAF may be burdensome for smaller unlisted actions we have also improved the Short EAF so that agencies can use it with more confidence. The improvements to the Short

EAF should allow agencies to use that form for most Unlisted actions, which constitute the great majority of actions that are subject to SEQR.

3. Comment

Part 1 of both the Short and Full EAF should provide factual data and avoid asking project sponsors to offer an opinion on the likely significance of an impact. That should be reserved for the lead and involved agencies.

Response

Agree. Part 1 of the Short and Full EAF have been revised to eliminate most of the questions that require the project sponsor to offer an opinion on the probable outcome of the analysis. Consistency with any comprehensive plan and zoning and design features that have been built into the proposed project has been retained since these are areas where an applicant should offer input to assist the lead agency.

4. Comment

The revised forms are too lengthy and complicated for the vast majority of projects subject to SEQR. Along these same lines, one commentator wrote that many applicants and lead agencies will be unable to complete the form without hiring a consultant. He also wrote that a municipality is not allowed to bill the developer for the cost of hiring a consultant to complete an EAF and that rural towns may be discouraged from implementing effective local controls, such as site plan review or subdivision regulations in order to avoid triggering SEQR requirements.

Response

The Full EAF only applies to a portion of the projects subject to SEQR and for the most part only larger scale ones or Type I actions though the agency also recommends the use of the form for larger scale Unlisted actions. The form contains threshold questions. Depending on the answer, these questions make parts of the form skip-able. Additionally, the length of the form has been substantially reduced from the length of the form originally noticed in rulemaking. The form has also been revised so that most or all questions, depending on the complexity of the project, can reasonably be answered by a project sponsor without assistance from a consultant. The same is true for reviewing agencies.

5. Comment

DEC should require that the model Full EAF be used for all actions.

Response

DEC does not agree with the statement with the statement and believes that the new short-form is adequate to evaluate most Unlisted actions.

6. Comment

The EAF asks too many questions that are DEC-centric or of primary interest to DEC.

Response

DEC agrees with this criticism. In response to this criticism DEC has reduced the number of questions that would be of primary interest to DEC and not of general interest in conducting environmental assessments.

7. Comment

The Full EAF appears to be evolving into a "catch-all" for all planning and land development issues. The expressed purpose of SEQRA is to "incorporate the consideration of environmental factors into existing planning, review and decision making." Elements in the EAF such as school district identification, growth reducing aspects, community services and environmental justice are planning issues and not truly environmental in nature. The DEC should be mindful that the

EAF does not hijack the land use planning process as being the exclusive decision making document.

Response

The definition of the environment found in Article 8 of the Environmental Conservation Law is very broad and covers all of the issues raised in the comment above. The Full EAF is not trying to hijack the land use planning process. The addition of questions on comprehensive plans, special planning districts and local municipal services are intended to inform the process.

8. Comment

Full EAF Part 1 - The form would benefit from a question that identifies specifically the resources that were used to answer the questions on it in a tabular form. The table should be divided into the main areas of the long form and provide a means to indicate the availability of the report either including if it is digital or web based.

Response

Since the workbook will identify many of the sources of information that can be used to answer the questions this requirement is not needed. If a project sponsor has a study that has been conducted that is specific to the activity under review it can be identified in Section F "Additional Information."

9. Comment

"The idea of the 'alternative' EAF needs to be brought to attention. It is allowed under SEQR legislation and is underutilized. It can be particularly useful to local boards undertaking land use laws that do not speak specifically to one parcel or project."

Another commentator stated as follows:

"While I support the NYSDEC's efforts to develop a system for a more comprehensive and up-front review of environmental impacts, the process has become less applicable for review of projects that are not site-specific. The details required in the existing and revised EAFs are not appropriate for a more general project such as a comprehensive plan, a strategic master plan, a local waterfront revitalization program or zoning code. For review of such projects, greater emphasis should be placed upon the long-range growth impacts that will be incurred throughout the project area, the municipality and on a regional level."

Response

As the first commentator points out, alternative EAFs are allowed under the existing law as DEC's promulgated forms are model ones. DEC is open to suggestions, and in fact has struggled with fashioning meaningful assessment questions for generic sorts of actions such as adoption of comprehensive plans and zoning laws. The new Full EAF is a great improvement in this regard. DEC continues to look for ways to improve upon its efforts. The Department invites specific proposals and is also exploring the alternative possibility of creating a guide specific to environmental assessment of comprehensive plans and non-site specific types zoning actions.

10. Comment

Each form should provide for a clear path to form completion that makes a distinction between site specific actions, and non-site specific or jurisdiction wide actions (such as proposed adoption of plans, area-wide policies, zoning or land use standards applicable to municipalities). The forms remain fully focused on the primary body of actions (site specific) and as such remain, as proposed, awkward and inappropriate for use with non-site specific or area-wide actions. There is a modest improvement to the Full EAF towards streamlining the form's use in this manner -

but these improvements are not comprehensive and need to be more fully integrated into both forms early on in the form formatting. An alternative would be to create model forms for each of the 2 distinct types of actions, site specific or non-site specific area wide actions, policies or plans.

Response

As noted in the comment, the primary types of actions subject to environmental review are site specific projects. One of the goals of this rule making was to improve the form so that it could be used for both site specific projects that result in a physical disturbance to the environment and non-site specific activities such as planning and zoning actions. From the comments we have received it appears that more work is needed. The inclusion of more questions on planning should improve the connection between planning and development. But, the creation of a form that will serve the needs for strictly planning activities continues to elude the agency. Planning and zoning actions that cover wide swaths of a municipality require a different type of environmental review form. DEC expects to continue to work with members of the planning community to either develop a separate form or provide guidance in the companion workbook to address assessment of non-site specific actions.

11. Comment

The Full EAF needs at least one simplified version that can be used for uncomplicated actions that are designated as Type I for specific reasons, such as structure that exceed 100 feet in height or which are listed on state or federal registers of historic places.

Response

DEC is aware of the issue of certain small actions being classified as Type I due to proximity to a sensitive resource. This issue cannot be addressed in the current rule making on the EAF's. However, DEC expects it to be assessed in a separate rule making action that will look at the pertinent sections of Part 617.

USE OF ELECTRONIC TECHNOLOGIES

12. Comment

DEC received numerous comments along the lines that the existing and proposed forms do not make use of electronic technologies. Complaints included the fact that the fill-in boxes are not resizable to fit additional text and that partially completed PDF forms cannot be saved to the users' computer. One commentator wrote: "As drafted, the forms appear to be designed as 'dumb' paper forms, in that they do not appear to be interactive and do not appear to be designed to obtain, store and transform useful information in electronic form. In that form, they can only be downloaded, filled out in the form provided, and then copied, faxed or scanned. In contrast, consider state and federal tax forms. The forms are not just available for downloading: [sic] but can be completed and filled via an internet connection or utilized as part of property tax software. The data entered is available to the individual and the agency..."

Response

DEC agrees with the sentiments expressed by the commentator. One of the DEC's goals has been for the EAFs to take advantage of the electronic technologies that have come about since they were first created which was before computers and the internet became a daily fact of life. While much work remains to be done, DEC expects that, before the new forms become effective, they will have hyperlinks to spatial and other kinds of data existing on the internet and that the forms will appear in an electronic format that is fill-

out-able on the computer and have the capability of being saved as they are completed. DEC is open to other suggestions along these lines. DEC hopes to make the forms as “smart” as possible with new technology subject to budgetary considerations and as technology becomes available.

STRUCTURAL ISSUES/ORGANIZATION OF THE FORM

13. Comment

DEC received several comments objecting to the elimination of the Part 2 feature that allowed impacts to be classified as “small to moderate impact,” “potential large impact,” and “can impact be mitigated by project change.” An example of such criticism is the one from the Environmental Law Section of the New York State Bar Association, which wrote in relevant part that, “...the proposed EAF [elimination of categorization of impacts in Part 2] could be construed to require lead agencies (and in many instances project sponsors) to prepare extensive documentation to explain plainly minor and insignificant impacts. The Section is confident that the Department does not intend the revised EAF to have that consequence, and thus suggests that the EAF Part 2 should allow the lead agency to find that certain impacts are nominal, and do not need further discussion in Part 3...” The DEC also received support for the proposal from one commentator with extensive municipal experience in SEQR reviews. He wrote:

“Many municipal boards have been bogged down for countless hours in struggling to characterize potential impacts as “Small to Moderate” or “Potentially Large... Simply requiring identification of impacts as likely to occur or ‘will not occur’ rather than characterizing their magnitude, is a substantial improvement.”

Response

In response, DEC finds the Environmental Law Section’s arguments persuasive. It did not intend for small or nominal impacts to be analyzed in Part 3 and it realizes that the change invites such analysis where SEQR is misunderstood or those playing defensive SEQR practice. On the other hand, DEC continues to believe that the current system for categorizing impacts in Part 2 is confusing for the reasons described above and because the third category that asks “can impact be mitigated by project change” is premature ahead of the Part 3 analysis and the choice of words is too easily confused with mitigation that takes place in the EIS process.

While acknowledging the pros and cons of both positions, DEC has replaced the existing categorization of impacts with a three step process. Step one requires the lead agency to first ask a gatekeeper question if there is any impact, e.g.:

1. Impact on Land

Proposed action may involve construction on, or physical alteration of, the land surface of the proposed site. (See Part 1. D.1)

NO YES

If “Yes”, answer questions a - j. If “No”, move on to Section 2.

If the lead agency answers “yes” then for each sub-question, it then must categorize whether there is no impact or “a small impact may occur” or “a moderate to large impact may occur.” Part 3 would only be completed where a “moderate to large impact” may occur. In the accompanying workbook, DEC expects to provide as much guidance as is reasonably possible as to categorization given the contextual nature of such answers. DEC expects that its new method for categorizing impacts will serve to prevent lead agencies from having to analyze small, commonplace impacts associated with any activity. As for moderate to large impacts, they have to be contextually analyzed in Part 3

– which should be the case in any event. At the same time, sponsors are encouraged through strong environmental project design to reduce impacts such that impacts may be accurately categorized as either small or found not to be significant based on a Part 3 analysis.

COMPLEXITY AND DETAIL OF THE FULL EAF

14. Comment

One commentator wrote as follows: “Some questions require very specific answers that might not be available at the early design stages of a project. The Cover Sheet identifies the information requested in Part 1 as ‘basic’. Some of these items are not basic at all and will likely lead to guesses, estimates, or unanswered questions by the applicants. These answers are important, but may develop more fully as the project evolves. Some method of addressing these issues needs to be developed so local agencies understand the reasons for the questions and do not just avoid those that are difficult.” Several other comments were received along these lines.

Response

In response to this comment, DEC reevaluated the Full EAF with an eye toward eliminating or reducing the complexity of questions that could not be reasonably answered at the EAF-stage of project application and review. The result is that the questions in Part 1 have been reduced in number and complexity. The revised traffic section is one such example, which has been rewritten to eliminate the necessity of conducting a traffic study for most projects at the EAF stage unless otherwise required or thought necessary by a local lead agency. Another example is the elimination from the form of the off-site dam safety questions, which DEC expects to move to the workbook for case by case consideration (i.e., whether a proposed downstream development would increase the hazard classification of an upstream dam). As for the reasons behind particular questions, DEC expects to cover them in workbook.

15. Comment

Considering that SEQR is to be started as early in the process as possible, the Full EAF contains very specific questions that may or may not have answers at this stage of project development. Conceptual projects are often proposed with no real engineering designs or plans. The specificity of this form makes it difficult to assess more generalized projects. Include "Unknown" as an option to Yes/No questions.

Response

If the project is truly at such a conceptual stage of development then it is probably too early to conduct a meaningful environmental assessment.

16. Comment

Applicants should be required to add list of references to responses so the lead agency can verify responses.

Response

DEC envisions the workbook as providing primary sources that will be available to both applicants and lead agencies. Boards are free to ask this information from applicants where they think it is appropriate or needed.

17. Comment

Full and Short EAFs - In both the draft revised Short EAF and Full EAF we notice that the Department or local municipal board (lead agency) is not the responsible party in obtaining

background and regional information. Certain information is not available to the applicant or is just not appropriate for the applicant to answer. Any questions pertaining to information on regional ecological resources, land use and traffic for example are the types of questions the lead agency can answer.

Response

Questions that would require a comprehensive biological assessment prepared by a consultant have been eliminated from the forms. The information needed to answer most of the ecological questions will be provided by the companion workbook and links to spatial data. Some data that is specific to the project sponsor's proposed site is the responsibility of the project sponsor to provide to the reviewing agency. The workbook will provide additional guidance to the project sponsor.

18. Comment

The additional detail required by the proposed form (Full EAF) will increase litigation exposure. Since the case law requires strict procedural compliance with SEQR, interveners will raise, as a contention, the failure of the project sponsor to answer any of the items required to be completed, or to answer them inaccurately as a basis for invalidating the determination, and therefore the action. Adding more information and more complexity to the form is likely to give rise to additional claims.

Response

The links to the spatial data and the workbooks should provide the necessary information needed by a lead agency to support its position regarding the adequate completion of the EAF. If both the applicant and the lead agency have access to the same data it should reduce the number of frivolous claims regarding the accuracy of the data.

19. Comment

The SEQRA regulations properly direct that an EIS should be analytic, not encyclopedic, and that SEQRA requirements should be carried out with minimum procedural and administrative delay. The Full EAF should be held to the same standard.

Response

As has been acknowledged by many persons commenting on this rule making, the current Full EAF, which has not been substantively changed in over 30 years, is seriously out of date. It does not address many of the current impact issues that have become a standard part of environmental assessment. This requires the completion of additional studies and many rounds of back & forth between the project sponsor and the reviewing agencies. The goal of including this information in the Full EAF is to eliminate the need for many of these additional studies and the iterative nature of the review. This should save project sponsors time. The revised EAFs should also serve as a better tool for scoping an EIS should one be required. This will hopefully result in more focused EISs.

STATE SMART GROWTH PUBLIC INFRASTRUCTURE POLICY ACT

20. Comment

DEC received several comments asking for inclusion of questions related to the State Smart Growth Infrastructure Act, Chapter 433 of the Laws of 2010, codified at Article 6 of the Environmental Conservation Law. Typical of such comments was the following comment: "In response to the recent enactment of the State Smart Growth Public Infrastructure Policy Act, we recommend that SEQR documents be carefully reviewed to take into considerations [sic] the requirements of this Act...." Another commentator stated: "Section D2 (f) is excellent in that it

addresses infrastructure expansions and how that may affect the environment. This seems to be an opportunity to ask about consistency of infrastructure plans with New York State's new Smart Growth Principles adopted in 2010. I suggest a question be asked about the consistency of proposed infrastructure expansions with those principles.”

Response

While many more planning related questions have been added to the new forms and some that bear directly on smart growth issues, specific reference to the State Smart Growth Public Infrastructure Policy Act would not be appropriate since the new law only applies to State Infrastructure agencies as defined in the law (ECL §6-0103[2]). State Infrastructure agencies may integrate their reviews under the State Smart Growth Infrastructure Act into SEQR and at least one has developed its own guidance. See <http://www.nysefc.org/CleanWaterStateRevolvingFund/SmartGrowth.aspx>. Such integration is contemplated by the statute. See ECL §8-0107 and 6 NYCRR 617.3(h). DEC will discuss the State Smart Growth Infrastructure Act and its relationship to relevant EAF questions in the workbook.

ELIMINATION OF PUBLIC CONTROVERSY QUESTION

21. Comment

Commentator objected to elimination of EAF, Part II, question 20, namely “[i]s there, or is there likely to be, public controversy related to potential adverse environmental impacts?” “Boards use it as a smell test...”

Response

Question was eliminated as it has no bearing in determining whether an action should require the preparation of an environmental impact statement and environmental reviews should not be influenced by the relative popularity of a particular proposal.

GAS DRILLING QUESTIONS

22. Comment

“There are opportunities not taken for asking more specific questions related to gas drilling. While this is not relevant to all of New York State, it is certainly important to many locations. I recommend their section D2 (a) be expanded to include language that makes it clear that gas drilling is covered by this set of questions.”

Response

Oil and Gas well drilling and consideration of its impacts, whether vertical, horizontal or directional, have their own environmental assessment form which asks for more detailed information specific to that type of project. High-volume hydraulic fracturing coupled with horizontal drilling is also being subject to an extensive environmental impact statement (see, e.g., <http://www.dec.ny.gov/energy/75370.html>). There is no need to cover the same ground in the model EAF and municipalities may supplement the model form to the extent that they may approve any action directly or indirectly related to oil or gas drilling operations subject to SEQR.

COST OF COMPLETING NEW FORMS (ALSO RESPONSIVE TO COMMENTS ON RIS AND JOB IMPACT STATEMENT)

23. Comment

Several commentators complained that the new forms will result in greater costs to the regulated community. According to one commentator, “[t]he revisions to the EAF forms will drive costs

forward when they are the most risky to incur...What you are considering in these new changes to the full- and short-version of the EAF, are additional barriers to achieving affordable housing in New York State..." Another commentator wrote that "[i]n a completely unscientific canvass of three environmental consulting firms" he determined that the cost of completing Part I of the EAF for a 60 unit subdivision on 90 acres with one acre zoning would cost from \$2,500 to \$5,000 and that these costs would double or quadruple using the new EAF.

Response

DEC has revised both Short and Full EAFs to eliminate or modify many of the questions that were criticized as being too detailed at the stage of the SEQR process when the EAF is normally completed and questions that were too DEC-centric. As a result, five pages of questions have been shaved from Part I of the Full EAF. At the same time, the new short-EAF can now be used in place of the existing Full EAF, which was routinely being used in place of the Short EAF because it was not inadequate to provide any kind of meaningful assessment. Overall, the burden on sponsors of Unlisted actions — which accounts for the vast majority of actions — may be less. Notwithstanding the validity of the commentator's survey, the estimates would no longer be valid because Part I of the Full EAF has been greatly reduced in size and complexity. There are so many variables in estimating costs of completing an EAF such as whether the sponsor needs a consultant to complete the form, the choice of consultant, project particulars including geographic location and design. The extent to which an EAF must be completed is dependent on the complexity of the project and the impacts of concern for a particular proposal. Further, the new EAFs are merely a comprehensive listing of issues and questions that routinely arise in environmental reviews. DEC has heard the complaint of project sponsors that such reviews become attenuated because issues are not raised early on. Project sponsors and lead agencies end up covering these issues in any event. The comprehensiveness of the new forms is intended to insure that such issues are raised early on when they will be less expensive to address as well as meeting the objective of SEQR that environmental issues are considered as early as possible in the review of an action.

24. Comment

Is there going to be a time limit imposed on a lead agency to complete Part 2?

Response

Placing a time limit on the completion of the form is outside of this rulemaking. Providing such a time limit as well as other possible reforms will be considered in the next round of proposed changes to Part 617.

25. Comment

The level of detail contained in these draft documents has the potential to be rather onerous to the layperson and may require substantial expenses for the hiring of a capable professional, especially those sections involving air emissions and impacts.

Response

Part 1 of the Full EAF has been revised in response to comments to eliminate many of the questions that would likely require the assistance of a consultant to answer. The form will contain hyperlinks to spatial data and the workbook will provide guidance on the questions, where the information can be found and how this question will inform the environmental assessment. The questions on air emissions are very detailed but these questions will only be answered when the proposed activity will require a DEC permit or registration. It must also be recognized that the Full EAF is only required for Type I actions which are generally larger and

more likely to require the preparation of an EIS. Requiring more detail for these larger actions is not unreasonable.

COMPLIANCE WITH EO 17

26. Comment

The Revised EAFs Contain New Mandates that require compliance with EO 17.

Response

DEC does not agree with the statement that EO 17 is triggered by the new forms since the forms do not add to the substantive mandates on local governments and procedurally only serve to insure that issues which local governments are already considering are reviewed as early as possible in the formulation of an action.

REGIONAL ARBITRATION PANEL

27. Comment

“I have suggested before (and will continue to suggest) a regional arbitration panel should be established for SEQR disputes so the first course of action does not need to be litigation....”

Response

This comment pertains to the SEQR process generally and not the EAFs. The comment will be considered, however, along with other suggestions for improving the SEQR process.

USE OF SUBJECTIVE TERMINOLOGY

28. Comment

“There are many terms that must be defined. Many professionals will know, but many applicants or those attempting to fill this form out will not know. I urge DEC to include a definition section of all terms used on this form.” Along these same lines, some commentators expressed concern on the use of subjective terminology in the EAFs such as “adjoining,” “near the project site,” and “adjacent.”

Response

DEC agrees with this comment, and always endeavors to use plain language. In some cases, however, plain language cannot substitute for the technical or special term of art. DEC expects to define as many technical or legal terms as is possible in the workbook. Adjacent and adjoining are well understood terms. The phrase “near the project site” is a relative one dependent on context. Conversely, if DEC were to replace “near” with an absolute distance the EAF would be robbed of context.

WORKBOOK PUBLICATION

29. Comment

“The Department should publish as soon as possible and no later than a week or so in advance of the public hearing a draft of the proposed workbook that as explained in the Department's rulemaking summary, will explain questions in the EAF and direct users to sources for additional information...”

Response

DEC's expects to publish workbooks no later than the effective date of the new forms. The effective date of the forms has been set back to October to allow for completion and public comment on the workbooks and so training can be conducted on use of the new forms.

SEQR EDUCATION AND TRAINING

30. Comment

A number of commentators have asked for more SEQR education of local boards. One commentator stated “[t]he largest problem I see in SEQR today is local board’s interpretation of how SEQR should be reviewed.”

Response

This comment does not relate specifically to the forms. Nonetheless, it is useful to reiterate the fact that in the past DEC provided training to local boards either as stand alone training or in conjunction with other local government training programs. Even that training effort was insufficient and staff reductions have inhibited DEC’s ability to meet even modest training goals. DEC is considering greater use of electronic media to provide training assuming the availability of resources to make such training available.

31. Comment

“It would be nice to have a colorful ‘Citizens Guide’ guidance document that would be useful for outreach and provide information on how to participate in public hearings and submit public comment.”

Response

DEC already has such a guide. See <http://www.dec.ny.gov/permits/36860.html>. The New York State Department of State has a general guide to meetings and hearings. See http://www.dos.ny.gov/LG/publications/Conducting_Public_Meetings_and_Public_Hearings.pdf

32. Comment

One commentator suggested that there should be a requirement for mandatory SEQR training for any board member who must conduct a SEQR review.

Response

As the same commentator noted, there already is a state-wide requirement for training of planning and zoning boards. The Department of State, through its Division of Local Government, provides training on many municipal topics. See <http://www.dos.ny.gov/lg/lut/index.html>. At the same time, local governments may make SEQR one of the mandatory subjects for training of board members.

QUESTIONS ON ENVIRONMENTAL JUSTICE

33. Comments

DEC received several comments on environmental justice-related questions included in the new forms.

Response

Environmental justice questions have been removed from the forms in response to public comment.

COMMENTS SPECIFIC TO PART I AND RESPONSES

PART I, INSTRUCTIONS

34. Comment

Full EAF Part 1- The first line on page 1 of the form states that "Part 1 is to be completed by the applicant or project sponsor." Consider revising it to state that Part 1 is to be completed by the

project sponsor to make the form more consistent with the requirements of the SEQR regulations. 6 NYCRR Part 617.6(b)(3)(i) states that Part I of the Full EAF is to be completed by the project sponsor and not by the applicant or project sponsor. In addition, this revision needs to be made to conform to the instruction sheet for the EAFs, which states that "Part I - Is completed by the project sponsor."

Response

The phrase "project sponsor" and "applicant" are both defined in SEQR. They are frequently used interchangeably.

PART 1, A. PROJECT AND SPONSOR INFORMATION

34. Comment

Full EAF Part 1.A - DEC should provide model project descriptions.

Response

DEC expects to provide additional guidance in the EAF workbook on the elements of a good project description.

35. Comment

Full EAF Part 1.A - Where a municipality is proposing an "action" subject to SEQRA, it is the "project sponsor" who is required to complete Part I, but Section A asks for the name of the "action or project". This creates confusion when a municipality "sponsors" an action such as zoning, rezoning or other land use regulation that is not tied to a project. It would be very helpful to include in the opening "Instructions for Completing Part 1" an additional direction to municipal bodies in this situation, as: "Part I is to be completed by the project sponsor or applicant or, where there is no project, the approval body." As a result, the Section A "Name of action or project" becomes more consistent and need not be changed.

Response

This direction could be covered in the workbook.

36. Comment

Full EAF Part 1.A - Project and sponsor information - Include in parentheses after Brief Description of Action "and attach site plan if applicable."

Response

Agree. This is the type of direction that DEC expects to provide in the workbook along with guidance on the proper elements of a project description.

37. Comment

Full EAF Part 1.A - Project location, Add latitude and longitude (in minutes and seconds) to project location.

Response

DEC will consider noting the possibility of adding this information in the workbook, to the extent it aids in the description of the location of the project.

PART 1, B1. GOVERNMENT APPROVALS, FUNDING, OR SPONSORSHIP

38. Comment

Full EAF Part 1.B.1.i - Why was Coastal Resources added in the beginning in B1.

Response

It was added to B.1 to alert the sponsor and the lead agency to the possibility of the need for a coastal consistency determination. DEC considered placing this question in the planning and zoning section but determined that it fits better under government approvals.

39. Comment

Full EAF Part 1.B.1.i - It is very difficult to find a map on the state websites that specifically delineates coastal areas.

Response

The Department of State maintains a map of the coastal areas (referred to as the Coastal Atlas and is available at http://www.nyswaterfronts.com/maps_relief.asp). The workbook will provide a reference/link to that site or DEC will incorporate the maps directly into its Environmental Mapper which is available at <http://www.dec.ny.gov/imsmaps/ERM/index.htm>.

40. Comment

Full EAF, Part 1.B.2 - Asking about government funding might be construed as prejudicial to the review of a project (either for or against). I'm not certain this is a question that should be asked here. I do understand though that this falls under economic considerations of a community. It is a fine line that must be balanced.

Response

This question is only asked to identify the possibility of an involved agency.

PART 1. C. PLANNING AND ZONING

41. Comment

Full EAF Part 1.C - Zoning and planning information should include question about transfer development rights or TDR.

Response

Few places have provision for TDR outside of the Long Island Pine Barrens (see <http://pb.state.ny.us/#PBC>). Where applicable and relevant TDR should be mentioned in the project description but it does not need to be called out with a specific question.

42. Comment

Full EAF Part 1.C - Many of the additional questions in the Full EAF will impose a duty of inquiry upon the project sponsor that goes beyond the property or project itself, requiring review or consultation of plans, regulations or other documents not normally in the possession of a property owner. Thus, the property owner has to obtain and review documents that range from the NYS Open Space Plan to the Town's comprehensive plan and zoning law. In most cases, when a plan, regulation or other document is applicable, it is more readily accessible to the lead agency reviewing the EAF than to the project sponsor.

Response

The municipal plans or regulatory provisions that may apply to an activity can provide important information to the project sponsor in the design of the project and should be part of due diligence. A municipality's comprehensive plan or the applicable regulatory provision is an important resource for the project sponsor to consider as part of the project development process. Failure to consult these resources can lead to situations where the project, as designed, is in conflict with a community's goals or an existing regulatory standard. Project sponsors that have these design conflicts built into a proposal run the risk of a much longer and more contentious project review process. The goal of directing project sponsors to review this existing information is to help inform them in the design phase of their project.

43. Comment

Full EAF Part 1.C - Add what watershed is the project located in and has a watershed plan been prepared or adopted.

Response

Adopted watershed plans have been incorporated into question C.2.b.

44. Comment

Full EAF Part 1, Question C.2 - I find some of the use of their terminology not consistent with what planners typically use. For instance, their heading is "adopted land use plans". Why does this not say "adopted comprehensive plan"? They ask the question if there is a local, regional or statewide land use or resource management plan, but neglect to ask if there is a locally adopted comprehensive plan. I find this a critical omission. But then the next question asks if the site is included on a municipally adopted comprehensive land use plan. Again, the terminology seems confused and repetitive. This section also asks to summarize the relevant portion of the plan. I commend DEC for asking this question, but I think most people would find it difficult to summarize a relevant portion of a comprehensive plan for one parcel of land and thus I think a lot of people will not give much thought to answering this important question. Some of the questions in this section are vague. For instance, what does "what is the status of any planning efforts for that district or area" mean?"

Response

This section has been revised in response to comments. For example, the "status of any planning efforts" question has been eliminated and the section now uses the terminology "comprehensive plan." It is noted, however, that while the state enabling acts use the term "comprehensive plan, municipalities are not completely uniform about using that term and the term adopted land use plans is intended to capture the notion of such plans by whatever name they are referred to. Question C.2.a, b & c no longer asks the sponsor to summarize the relevant portions of the plan since assessing an action against whatever is called for by a municipal plan is really the job of the lead agency.

45. Comment

Full EAF Part 1, Question C.2 - Listing should include "county". Also we are unaware of a clear definition for "resource management plan." Would this include an MPO's Long Range Transportation Plan for example? Would this be a watershed management plan?

Response

Question has been eliminated in response to comments.

46. Comment

Full EAF Part 1, Question C.2 - Requires the applicant to determine if the proposed action is included in any municipally-adopted comprehensive land use plans. This information may be obtainable by the applicant but it could take significant effort to retrieve. The lead agency on the other hand will have this information readily available.

Response

The municipal plans or regulatory provisions that may apply to an activity can provide important information to the project sponsor in the design of the project and should be part of due diligence. A municipality's comprehensive plan or the applicable regulatory provision is an important resource for the project sponsor to consider as part of the project development process. Failure to consult these resources can lead to situations where the project, as designed, is in conflict with a communities goals or an existing regulatory standard. Project sponsors that have these design conflicts built into a proposal run the risk of a much longer and more contentious

project review process. The goal of directing project sponsors to review this existing information is to help inform them in the design phase of their project.

47. Comment

Full EAF Part 1, Question C.2.a - is an example where N/A would be appropriate, particularly for state agency actions that are not subject to local zoning and for regional or statewide planning that is not subject to local law. In these cases it would be unnecessary for state agencies to provide information on local laws.

Response

Although a state or county agency may not be strictly bound by a municipality's comprehensive plan it is still informative or even required to recognize that a plan exists. Municipal and county comprehensive plans often contain relevant information on environmental issues.

48. Comment

Full EAF Part 1, Question C.2.a - requires the applicant to review and summarize municipality-adopted comprehensive land use plans. This information may not be readily known by or available to an applicant. However, it should be in the possession of the lead agency. If an applicant is required to secure this information, it could involve significant effort and time.

Response

DEC does not agree with the statement. A project sponsor for a Type I project or any project of any size that would require the completion of a Full EAF should be aware of the existence of a community's comprehensive plan. Project sponsors always point to "certainty" as a goal in the land use planning process. A comprehensive plan that lays out the development goals of the community would provide information that is critical to the development of a project. Question has been revised in response to comments to eliminate the need for the applicant to summarize the plan. .

49. Comment

Full EAF, Part 1, Question C.2.b - should reference "Local historic preservation overlay districts and local historic preservation laws."

Response

Historic preservation overlay districts are covered by new question C.3.a. Local historic preservation laws would constitute an approval that should be identified in section B.

50. Comment

Full EAF Part 1, Question C.2.b - Please add to list "Scenic Areas of Statewide Significance (SASS). Explanation: DOS administers the Scenic Areas of Statewide Significance (SASS) designation program. New York State currently has six designated SASS locations in the Hudson Valley and one SASS location in Easthampton on Long Island. These seven designated areas are considered an important indicator of scenic quality and are to be included as a component of the environmental review.

Response

These resource areas which are just a few of the officially designed federal, state or local scenic resources are addressed in question E.3.h. DEC expects them to be mentioned in the workbooks for both the Short and Full EAF.

51. Comment

Full EAF, Part 1, Question C.2.b - Except for the provided examples of "coastal waterfront" or "inland waterway" the term local or regional special planning district is an uncommon and vague term that requires clarification or editing. Is this different than the area that would be covered under the earlier resource management plan?

Response

The term is used as a general phrase to cover, for example, an overlay area such as a scenic overlay district, or on a regional scale, the Long Island Pine Barrens. DEC expects that the workbooks will provide additional illustrations.

52. Comment

Full EAF, Part 1, Question C.2.b - Is the site of the proposed action within any local or regional special planning district, a local waterfront revitalization planning area within a coastal area or adjoining a designated inland waterway; Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other? This information will need to be provided by the municipality and in some instances this requested information may not be defined.

Response

Questions C.2.a through c have been revised in response to comments to reduce the amount of detail needed to answer the questions.

53. Comment

Full EAF Part 1, Question C.2.b - relates to whether the proposed action is situated within any local or regional special planning district, etc. Again, it is unreasonable to expect an applicant to know the status of all current planning efforts for these districts or areas.

Response

DEC does not agree with the statement. A project sponsor for a Type I project or any project of any size that would require the completion of a Full EAF should know if the proposed site is located within any local or regional special planning district. The question has been revised in response to comments. The project sponsor is asked to identify if the proposed site is located in a special planning district and to identify the district or plan.

54. Comment

Full EAF Part 1, Question C.2.b.ii - "What is the status of any planning efforts for that district or area?" We suggest adding the word "known" before "planning efforts," as many planning efforts may be undertaken by different entities.

Response

Question has been deleted in response to comments.

55. Comment

Full EAF Part 1, Question C.2.c - Asks if the action is located in an area listed in the current NYS Open Space Plan, an adopted municipal open space plan, a county farmland protection plan, or otherwise designated. First, this may be confusing because many communities address open space very completely in their comprehensive plan but have no adopted open space plan. Second, this question must be changed to recognize that now many towns have local farmland protection plans."

Response

This section has been modified to only refer to locally adopted municipal open space plans and the same for adopted municipal farmland protection plans.

56. Comment

Full EAF, Part 1, Question C.2.c - Include "county" open space plan.

Response

Counties would be included in the word "municipal. If additional clarification is needed it will be included in the workbook.

57. Comment

Full EAF Part 1, Question C.3 - Does not adequately anticipate a zoning change that, without involving any specific project, could have a significant impact on the environment. Such changes include rezoning that allows new impacts or large projects not allowed before, and land use regulatory changes that substantially relax environmental protections. This is a category of actions that deserves its own question. For example, proposed C.3.d(i) and (ii) could be combined, and a new (ii) included that addresses the situation described above. Thus: C.3.d(i). If the zoning change would accommodate a specific project proposal, what would be the maximum development potential of the site if fully built out according to the proposed zoning? C.3.d (ii). If the zoning change is unrelated to a specific project proposal, what would be the maximum development potential of the new zone or land use district if fully built out as allowed under the proposed zoning?

Response

Other comments were received that expressed concern that requiring the identification of the maximum development potential of a site under the current and proposed zoning would be difficult given that a zoning classification could have many different allowed uses. Also, evaluating the impacts of changes to density and/or allowable uses is a municipal responsibility. A discussion of this type of analysis will be included in the portion of the workbook that covers the assessment of planning and zoning activities in Part 2. Based on these comments, the questions have been revised to eliminate the need for the maximum development potential.

58. Comment

Full EAF, Part 1, Question C.4.f - What libraries, parks, and other public or recreational facilities serve the project site and vicinity? The word "vicinity" needs to be defined with a specific radius for the search area. If they define vicinity to be the municipality, does it leave out regional planning?

Response

Questions in Part C.4 have been revised in response to comments to reduce the amount of detail needed to answer the questions.

PART 1, D. PROJECT DETAILS

59. Comment

The Full EAF should include questions about alternatives considered by the applicant.

Response

The consideration of alternatives is part of the environmental impact statement process and not part of the determination of significance.

60. Comment

Full EAF, Part 1, Part D.1- There should be a question about maintenance of subdivision roads.

Response

This is usually an issue addressed in municipal subdivision approvals. There is no need to duplicate it in the EAF.

61. Comment

Full EAF, Part 1, Question D.1.b - What is the total acreage owned or controlled by project sponsor, including project area and all contiguous properties? It is not clear what relevance this information has on the subject property application.

Response

This question has been included in the EAF Part 1 since 1978 (617.20, Part 1, B.1.a). Knowing the total contiguous acreage owned or controlled by the project sponsor is used by a lead agency to determine if the project under review may be a part of a larger action to avoid segmentation.

62. Comment

Full EAF, Part 1, Question D.1.f - An applicant may have no prior or historical knowledge of the property; this information should be provided by the municipality as part of the application/approval process. What is the bearing on the "site specific" analysis of this action?

Response

Question has been deleted in response to comments. The concept of finding and making use of the information in previous project proposals is valid and it could help the project sponsor to complete the current environmental assessment by making use of previously completed work rather than having to reinvent information that may already be available. This opportunity and its benefits will be discussed in the Full EAF workbook

63. Comment

Full EAF, Part 1, Question D.1.g.iv - Should have a column added for average lot size.

Response

DEC does not agree with the statement. The average lot size is not as important for assessing impact as the minimum and maximum lot size.

64. Comment

Full EAF, Part 1, Question D.1.j.ii - Does the proposed action include new non-residential construction (including expansions)? Approximate extent of building space to be heated or cooled? It is not clear what relevance the area of a proposed building is to be heated has on an application. If they are looking to generate statewide data on this, let NYSERDA do a survey, not use SEQR.

Response

The intent is not to generate statewide data. The size of the building space requiring heating/cooling will provide information to the lead agency about the use and conservation of energy as well as possible greenhouse gas emissions.

65. Comment

Full EAF, Part 1, Question D.1.k - Does retention areas include storm water basins?

Response

Questions have been revised in response to comments. Identification of storm water detention/retention basis is covered in question D.2.e.

66. Comment

Full EAF Part 1, Section D.2 - Contains many subsections. As a general observation, several of the questions are "yes/ no," and any "yes" response requires very detailed information. Such information may require lengthy analyses of estimated energy usage, emissions, etc., that could not be completed by a typical applicant, and would clearly add time and cost to the completion of the EAF. Furthermore, such information is not directly relevant to the determination of significance.

Response

DEC does not agree with the statement. Section D.2 asks for information about the elements of the proposed action. Information about the source of water, plans for wastewater disposal, traffic, stormwater, air emissions and other elements are critical to the determination of

significance. If a project sponsor cannot answer these questions then it is probably too early to conduct a meaningful environmental assessment.

67. Comment

Full EAF, Part 1.D.2. - Project Operations, Energy and Air Emissions. Municipal permits should be added to the question of whether the project would require federal or state air emission permits. Moreover, the quantification of GHG gases for State Facility or Title V permits should be deleted; applicants/agencies will not have quantified emissions at the time they are preparing Part 1 of the EAF, which is used to establish the appropriate lead agency.

Response

Municipal permits are listed in B (Governmental Approvals) for purposes of identifying involved agencies. This has always been part of the EAFs. Quantification of GHG emissions, along with other contaminants, is only required for facilities needing a State Facility, air registration, or Title V permit. Contaminant information is part of the application for such approvals and therefore known or readily ascertained at the stage of the application process when Part I of the EAF is completed.

68. Comment

Full EAF, Part 1, Question D.2.a - Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? A significant portion of these questions may be relevant during the design phase of a project but may not be known at the time this form is completed.

Response

Question has been revised in response to comments to clarify that it does not include excavation of material due to general site preparation, grading or installation of utilities or foundations where all material will remain on site. This will limit this question to only those projects where excavation, mining and/or dredging is the principal objective of the project.

69. Comment

Full EAF, Part 1, Question D. 2.b - Wetlands and waterbodies questions seems repetitive with E.2.i. This information could be grouped together.

Response

DEC does not agree with the statement. Question D.2 seeks information about a proposed action while question E.2.i is seeking information about the presence of resources on or adjoining the site.

70. Comment

Full EAF, Part 1, Question D.2.b - Question on wetlands does not identify if it covers federal or state wetlands or both?

Response

All wetlands would be covered by this question.

71. Comment

Full EAF, Part 1, Question D.2.c - Requests the source of supply for the water district. This is not the purview of the applicant and should not influence the lead agency's determination of significance. The same is true for the question regarding potential extensions or capacity expansions of the proposed water district. The applicant has no control over the operation of the district and this information should not be the basis of the lead agency's determination of significance of the proposed action.

Response

DEC does not agree with the statement. Providing water to a proposed development is a key environmental issue. Where water will be obtained and the means for obtaining potable water are critical to a successful project. An applicant for a Type I action or an action large enough to justify the preparation of a Full EAF should have this information available at the time of completion of the form. Although the project sponsor may not have direct control over the actual extension, the fact that the proposed project would require an extension is part of the environmental assessment to ensure that the review is not segmented and all impacts are identified.

72. Comment

Page 6 of 18, EAF Part 1, Question D.2.c - Should be changed to read “does the existing public water supply have adequate water source and treatment capacity to serve the proposal...[and] does the existing public water supplier have the technical, managerial and financial capabilities to serve the proposal?”

Response

DEC has changed the question to ask about capacity. The other suggestions ask for information that may be too agency specific and that the relevant agency can ask for in its individual review.

73. Comment

Full EAF Part 1, Question D.2.c.ii - Questions asked about water supply are good but this information is too detailed for the Full EAF. Questions such as those asked are usually supplied in later reports by a specialized consultant or engineer.

Response

DEC does not agree with the statement. Providing water to a proposed development is a key environmental issue. Where water will be obtained and the means for obtaining potable water are critical to a successful project. An applicant for a Type I action or an action large enough to justify the preparation of a Full EAF should have this information available at the time of completion of the form. Preparing an EAF, without this information, likely means that the proposed action is not ripe for the start of the environmental review.

74. Comment

Full EAF, Part 1, Question D.2.d - One of the questions requests information regarding the receiving water for the wastewater discharge. This information is the purview of the wastewater treatment provider, not the applicant, and is not relevant to the issuance of a determination of significance.

Response

Providing waste water treatment to a proposed development is a key environmental issue. How wastewater will be conveyed and treated are critical to a successful project. An applicant for a Type I action or an action large enough to justify the preparation of a Full EAF should have this information available at the time of completion of the form. Although the project sponsor may not have direct control over the creation of a new district, the fact that the proposed project would require a new district is part of the environmental assessment to ensure that the review is not segmented and all impacts are identified.

75. Comment

Full EAF Part 1, Question D.2.d - Define process water and wastewater. Does it include stormwater?

Response

The term “process water” is not contained in the question. Information about storm water is covered in the next question, D.2.e. The Full EAF workbook will contain information to assist a preparer to answer the question.

76. Comment

Full EAF Part 1, Question D.2.d.iii - Is this question asking for the receiving water post wastewater treatment?

Response

Yes. The question has been revised to clarify that point.

77. Comment

Full EAF Part 1.D.2.e - Questions on stormwater should include: number of acres being disturbed, date of NOI filing, Date SWPP filed and approved SWPP number.

Response

Section on stormwater has been revised in response to comments. The number of acres disturbed in covered in question D.2.e. The other information requested will frequently not be available at the time the Full EAF is being completed since the Notice of Intent and the Stormwater Pollution Prevention Plan are usually submitted after the Full EAF is completed.

78. Comment

Full EAF, Part 1, Question D.2.e. – Suggests adding ”Mechanism and entity responsible for long term maintenance of post construction storm water management facilities.”

Response

DEC will consider this as a possible work book topic, and may also be part of the work book discussion on project description.

79. Comment

Full EAF Part 1, Question D.2.e - Details on stormwater are often supplied in later reports by a specialized consultant or engineer.

Response

Questions have been revised in response to comments to address concern.

80. Comment

Full EAF, Part 1, Question D.2.e - Add what percent of the total impervious area will be unconnected and specify the percent of the total roof and paved area that will be porous.

Response

This is partially covered by a more general question in full EAF, Part 1, D.2.e, which asks the following question: Describe plans to minimize impervious surfaces, use pervious materials or to collect and re-use stormwater.

81. Comment

Full EAF, Part 1.D.2.e - Add, does the proposed action maximize the use of green infrastructure practices.

Response

DEC will discuss green infrastructure such as pervious pavement and green roofs in the workbook and keyed to various parts of the EAFs as ways to reduce the environmental significance of a development project.

82. Comment

Full EAF, Part 1, Question D.2.e.ii - Estimated runoff volume needs to be more defined or not asked. Suggests that if needed, question be added on estimated pre-development runoff volume

for 100 yr 24 hr rainfall, estimated post development runoff volume 100 yr 24 hr rainfall, and estimated on-site runoff stormwater detention volume.

Response

This question has been revised to focus on impervious surface, point source identification and receiving water bodies. The issue of runoff estimation may be discussed in the work book and could be raised as appropriate by the lead agency.

83. Comment

Full EAF Part 1, Question D.2.e.iii - Will the proposed action create new point source stormwater discharges, such as ditches, pipes, swales, curbs, gutters, or other concentrated flows of stormwater, during construction, operations, or both? If discharge is to adjacent property, has the property owner given permission for the proposed discharge? New York State has drainage laws that govern the discharge of stormwater from one property to the next. If a project currently drains to an adjacent property then it would be legal to continue to do so, "permission" is not needed.

Response Question has been revised in response to comments and the reference to property owner permission for the proposed discharge has been removed.

84. Comment

Full EAF, Part 1, Question D.2.e.iii – Suggests adding a specific line for infiltration of stormwater and if employed, asking if it meets DEC criteria for a groundwater injection well system.

Response

This is best discussed in the work book evaluation based on the project description.

85. Comment

Full EAF, Part 1, Question D.2.e.iv – Suggests description of stormwater plans be more specific and also suggests adding green infrastructure planning practices, erosion and sedimentation control practices to be employed, water quantity treatment practices to be employed, water quality treatment practices to be employed, runoff reduction practices to be employed.

Response

These items have merit, but are too specific to ask directly. The topics may be treated in the work book as items that should be incorporated into applicant /sponsor responses to Part 1 questions.

86. Comment

Full EAF, Part 1, Question D.2.f - Requires information regarding air quality, specifically stationary sources during the construction process. This information would be in most cases, speculative at this time of the environmental review process, and is not relevant in making a determination of significance.

Response

DEC does not agree with the statement. If the proposed project includes a stationary source, the potential emissions from that source may be critical elements of a determination of significance.

87. Comment

Full EAF, Part 1, Question D.2.g - Requires an extensive level of detail regarding air emissions. It is not feasible for an applicant to be expected to provide this information particularly at the EAF stage. Moreover, the level of detail requested would require significant time by a consultant, at a cost to the applicant.

Response

DEC does not agree with the statement. This question is only answered for projects that will require a DEC permit or registration. That is a very small percentage of actions. Any proposed action that requires registration or a permit should have the consultant services available to answer the questions.

88. Comment

Full EAF, Part 1, Question D.2.g.i - Applicants for smaller projects should not have to gather or calculate certain types of information, especially when it is obvious that the information will have no bearing on the decision whether to require an environmental impact statement. Examples include the additional emissions information sought by question D.2.g.i.

Response

Applicants for smaller projects would most likely be completing the Short EAF, which does not contain an equivalent to question D.2.g.i., and generally goes into less detail than the full EAF. Question D.2.g.i contains a gateway question, namely “[w]ill any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? Thus, only a sponsor requiring an air registration or permit (and proposing a Type I action) would have to complete the more detailed emissions information. DEC disagrees that such information has no bearing on whether to require an environmental impact statement with five of the contaminants being greenhouse gases and the sixth hazardous air contaminants.

89. Comment

Full EAF Part 1, Question D.2. h - A methodology should be included for identifying methane generation. Could a threshold be provided to allow for small on-site composting facilities? Is manure management applicable only for Concentrated Animal Feeding Operations (CAFOs) or will it apply for other smaller manure management operations (e.g., for horse stables)? Another commentator asked specifically about the applicability of CAFOs.

Response

Agree. Detailed guidance on the type of additional information that could be included will be covered in the workbook. Reference to management of manure, including Concentrated Animal Feeding Operations (CAFO's), has been deleted from the question since these types of activities when they are conducted as part of an agricultural activity are Type II actions.

90. Comment

Full EAF Part 1, Question D.2.i - This section requires clarification. Does DEC intend the section to contemplate only direct release of air pollutants, or downstream release as well?

Response

DEC contemplates only direct emissions. The question has been clarified accordingly.

91. Comment

Full EAF Part 1, Question D.2.j - The quantification of vehicle miles traveled per year (VMT) should be deleted; agencies for traffic generating projects will not be able to determine VMT impacts without a tremendous amount of work. VMT also requires predicting trip length. This is appropriate for EIS-level analysis, but not for EAFs. The same is true for gallons of fuel consumption per year from post-construction operations.

Response

Comment accepted and changes made.

92. Comment

Full EAF Part 1, Question D.2.j - Requiring the project sponsor to include this information will result in a full traffic study being prepared for all projects. The information needed to answer questions like average number of trips per hour, maximum trips rates and "total number of trips yearly" will require the hiring of a traffic consultant.

Response

Agree. Questions on traffic that require the generation of traffic counts have been deleted in response to comments.

93. Comment

Full EAF Part 1, Question D.2.j - Suggest including the source of the traffic forecasts and if any new or additional parking stalls are proposed to be land banked.

Response

The transportation section has been revised and sources for recommendations and decisions are cited. Parking is handled in a less rigorous way than recommended, but will also be elaborated on in the work book.

94. Comment

Full EAF Part 1, Question D.2.j - One of the specific items within this subsection requires the applicant to determine, at the application submission stage, whether any modifications of existing roads would be required. This goes far beyond an applicant's ability, clearly requires a traffic engineer and would add significant cost and time.

Response

The instructions for Part 1 clearly state that the form should be completed based on the information currently available. This question will allow the project sponsor to identify if the project, as proposed, includes any new, or modification of existing, roads and access.

95. Comment

Full EAF Part 1, Question D.2.j - Asks about traffic volumes. I recommend while they are asking for such comprehensive information that the form include a question on what current traffic volumes are. That way the local agency can determine if the proposed traffic volume is significant.”

Response

The traffic section has been substantially re-written so it can be completed without the aid of traffic studies.

96. Comment

Full EAF Part 1, Question D.2.j - The classes of vehicles making trips will almost always include all the classes. For example, semi-trailers are used by many people to move into single family homes and they may be serviced by garbage trucks, UPS etc. Is the intent to be Principal Class(es)..... For single family houses is the response intended to be just cars?

Response

Agree. Question on classes of vehicles has been revised. New question is specific to semi-trailer trucks for commercial activities.

97. Comment

Full EAF Part 1, Question D.2. j.i - Total number of trips yearly. It is not clear what the yearly data will provide other than a very large number that will likely have no bearing on the project.

Response

Question has been deleted in response to comments.

98. Comment

Full EAF Part 1, Question D.2.j.iv - Does modification of existing roads include access modifications.

Response

Question D.2.j.v has been revised to include access roads.

99. Comment

Full EAF Part 1, Question D.2.j.v – If proposed action includes access to public transportation or incentives for use of hybrid or electric vehicles, describe. It is again not clear what relevance the requested information (hybrid/electric cars) will provide when determining significance.

Response

Question has been deleted in response to comments. The intent was to allow a project sponsor to identify the elements of the design that would either make use of existing public transportation or encourage non-traditional vehicle use as a way to reduce transportation related impacts. This kind of built in mitigation could assist the lead agency in determining the potential impact on traffic and energy use. This topic will be discussed in the workbook.

100. Comment

Full EAF Part 1, Question D.2.k - A methodology should be included for estimating electricity demand.

Response

Question has been revised in response to comments to limit to only commercial or industrial projects. DEC expects to cover the methodology on how to estimate electricity usage in the workbook.

101. Comment

Full EAF Part 1, Question D.2.k.i-vi - Most of this information will need to come from the utility company supplying the project. The question of "consumption of fuels during post-construction" could be very difficult to predict, does this include all residential uses including heat, electric, vehicles, lawn equipment, gas grills, pool heaters, fire places, etc.

Response

Question has been revised in response to comments to limit it to only commercial or industrial projects.

102. Comment

Full EAF Part 1, Question D.2.k.vi - Asking the applicant or project sponsor to "[d]escribe any energy conservation designs or practices incorporated into the proposed action" provides little guidance on what energy conservation designs or practices are available, and how effective they are at reducing GHG emissions. DEC should reference the "Building Design and Operation Measures," listed on page 12 of the DEC's Guide/or Assessing Energy Use and Greenhouse Gas Emissions in an Environmental Impact Statement to clarify what steps can be employed to improve energy efficiency, and should indicate in a companion document the degree of energy conservation that can be achieved using each energy conservation measure. DEC should also inquire into whether the project would be eligible for LEED or Energy Star certification.

Response

The question has been eliminated.

103. Comment

Full EAF, Part 1, Question D.2.k - Requests information with respect to energy, including electricity use. The applicant is asked to estimate the amount of fuel consumption post-construction for both transportation as well as stationary sources. It may be difficult to almost

impossible to estimate such figures if the proposed action is conceptual in nature or specific users have not yet been identified for a development.

Response

Questions on fuel consumption have been deleted in response to comments.

104. Comment

Full EAF Part 1, Question D.2.k.iii - The need for a new substation is a concern for the supplier. It is too much detail for an EAF.

Response

Question has been revised in response to comments to limit its applicability to only commercial or industrial projects. When a project will either generate or use a substantial amount of energy the project sponsor will be aware of the need. Disclosing this is part of the whole action for the purpose of determining significance.

105. Comment

Full EAF, Part 1, Question D.2.k.iv - Details on fuel consumption are often supplied in later reports by a specialized consultant or engineer.

Response

Questions on fuel type and usage have been deleted in response to comments.

106. Comment

Full EAF Part 1, Question D.2.1.i & ii - Hours of operation will be dictated by code during construction. Does during operation include residential?

Response

Question has been revised in response to comments to limit it to only commercial or industrial projects.

107. Comment

Full EAF Part 1, Question D.2.m. inquires as to whether the proposed action would result in any noise, odor or bright lights. First, "bright lights" is not defined, and is, therefore, subjective. Also, with respect to outdoor lighting, the proposed EAF contains questions as to the source, location, types of bulbs, heights of lighting fixtures, direction and aim, etc. Requesting such specific data at this stage of the environmental review process is premature, especially since many plans are only conceptual at the time the EAF is prepared. More important, no reasonable person could argue that type of bulbs used relates to the determination of significance.

Response

The term "bright lights" and the identification of the type of bulb have been deleted from this question in response to comments.

108. Comment

Full EAF Part 1, Question D.2.m - Discusses outdoor lighting and that is excellent However. It does not ask what the intensity of the lighting source would be..."

Response

The question has been simplified to correspond with the information a project sponsor is likely to have at the time they complete Part 1 of the EAF. If lighting is an issue, then intensity would be important information to know and can be asked as a follow-up question during review and this will be mentioned in the workbook.

109. Comment

Full EAF Part 1, Question D.2.m - Why ask about lighting if the activity is a commercial activity located in a commercially zoned district. Leave this issue to site plan.

Response

The DEC does not agree with this statement. Lighting is a valid concern and is frequently identified as an issue in the review of local projects. Asking for this information will provide the lead agency with information needed to assess this impact which can then be addressed by a design change if necessary. In addition, not every community has a site plan law.

110. Comment

Full EAF Part 1, Question D.2.m - Questions on light and noise barriers should be left to site plan.

Response

The DEC does not agree with this statement. Lighting and noise are valid concerns and frequently identified as issues in the review of projects. Asking for this information will provide the lead agency with information needed to assess these impacts which can then be addressed by a design change if necessary. In addition, not every community has a site plan law or a site plan law that adequately covers these issues.

111. Comment

Full EAF Part 1, Question D.2.o - Requests information regarding the use of pesticides, herbicides and insecticides during construction and operation. The information requested is highly specific and speculative as to, for example, the targets of the pesticide, herbicide or insecticide use and the frequency and dates of proposed treatments. A typical applicant would not be able to provide such information, and such detail is not required to issue a determination of significance.

Response

Questions have been revised in response to comments to address concern.

112. Comment

Full EAF, Part 1, Question D.2.p & q - Solid waste management facilities are run by regional authorities or private sector businesses. Expansions or modifications are market driven.

Response

Intent of the comment is not understood. Most commercial projects are market driven. The Full EAF must be able to handle all types of projects even those that are market driven.

113. Comment

Full EAF Part 1, Question D.2.s - Involves the demand for community services and the likely increase in the need for such services and the timing for such services. A typical applicant would not have such information. Furthermore, such level of detail is not required for a determination of significance.

Response

Agree. Question D.2.s has been deleted in response to comments.

114. Comment

Full EAF, Part 1, Question D.2.s - Questions about the demand for community services can be very complex and in most cases cannot be answered in a few lines in an EAF.

Response

Questions on the demand for community services have been deleted in response to comments.

115. Comment

Full EAF Part 1, Question D.2.s - Involves the demand for community services and the likely increase in the need for such services and the timing for such services. A typical applicant would not have such information. Furthermore, such level of detail is not required for a determination of significance.

Response

Agree, question D.2.s has been deleted in response to comments.

PART 1, E - SITE AND SETTING

116. Comment

Full EAF Part 1, Question E.1.a - Land uses should include "recreation, open space and/or parkland."

Response

All other types of land use that are not specifically noted can be identified by using the "Other" category.

117. Comment

Full EAF Part 1, Question E.1.a - Evidence suggests that schools do not have the time and/or do not examine prior land uses when considering site acquisition or use, steps that might well prevent chemical exposures and costly remediation after the fact.

Response

New questions in Part 1 that request information about prior uses onsite and adjacent land uses will elicit the type of information that would inform siting decisions for schools and all homes or facilities. The current Full EAF does not contain these questions so it is easy for the project sponsors and lead agency to overlook this information as part of the environmental review.

118. Comment

Full EAF Part 1, Question E.I.b - Asks about land uses and cover types. Agriculture is described as (includes active orchards, field. etc.). I think that is a poor description of agriculture in most parts of New York State and should be more oriented to field crops, pastures, active farm fields, nurseries, greenhouses, etc."

Response

The list is illustrative only and green houses have been added to it. The other examples will be added to the workbook.

119. Comment

Full EAF Part 1, Question E.1.c - a reference is made to the project site and its use by the community as open space or recreation...On what basis does a lead agency have to be concerned with an informal recreational use of property, especially if it is not publicly owned?

Response

The question now relates only to use by the members of the community for public recreation. It may be important for a lead agency to understand how property is currently used and the extent to which a proposed action may affect that use.

120. Comment

Full EAF Part 1, Question E.1.e - Facility locations such as group homes and day care centers are not necessarily known. What database could be used to identify these facilities? In addition, it should be noted that parks are facilities that serve these same populations (e.g., children, elderly, people with disabilities).

Response

Agree. Detailed guidance on the how to locate these facilities will be covered in the workbook. Parks were not included in this question because sensitive populations may use parks but they are not likely to be resident at a park on a daily basis for multiple hours per day.

121. Comment

Full EAF Part 1, Question E.1.f.iv - Several of the bulleted items request information that does not follow any NYS DOT or ITE standards. Vehicle trips are measured based upon a daily average, the "average" level of service has no parameters, the level of service is always measured per the peak hour per current industry standards. It is not clear what the yearly data will provide other than a very large number that will likely have no bearing on the project.

Response

Question has been deleted in response to comments. The question regarding parking has been moved to Full EAF, Part 1, Question D.2.j.

122. Comment

Full EAF Part 1, Question E. 1. i, j, & k - requires information regarding solid and hazardous materials, potential contamination etc. It would appear that, at a minimum, a Phase I Environmental Site Assessment would be required to address the questions in this section of the proposed Full EAF. A typical applicant could not prepare such information without retaining a professional.

Response

Question has been revised in response to comments. The information to answer the questions can be found on the DEC website.

123. Comment

Full EAF Part 1, Question E.1.f - Requires information regarding transportation facilities. It requests information on the existing usage of streets (e.g. maximum vehicle trips per hour and annually, average level of service level of Service at peak hours) that would serve large developments (over 1,000 parking spaces, developments larger than 100,000 square feet or developments that could generate sufficient additional traffic to degrade the level of service at key affected intersections) This would require the preparation of a comprehensive traffic analysis by a qualified professional at substantial expense.

Response

Agree, question E.1.f has been deleted in response to comments and the remaining questions on traffic (see new Part 1 Question D.2.j) should not require a traffic study in order to answer.

124. Comment

Full EAF, Part 1, Question E.1.f v. Although it is a welcome change to include pedestrian and bicycle routes, a database that provides this information should be referenced.

Response

This question has been revised in response to comments and moved to question D.2.j.

125. Comment

Full EAF Part 1, Question E.2.d - Requires information regarding average, minimum, and maximum depth to the water table. While some of this information is available through published data, other information would require site specific study, which would require retention of a professional, and is not necessary for the issuance of a determination of significance.

Response

Question has been revised and simplified to the way it appeared in 1978 Full EAF.

126. Comment

Full EAF Part 1, Question E.2.p - It may be more appropriate to simply identify wildlife "known to occur on site." It is rare to find "predominant wildlife." The term "predominant" better identifies vegetation.

Response

The use of the term predominant is intended to avoid the need for a full listing of each and every species that may be found on a site. This could be an extensive list and take a lot of time to assemble. Some projects may require that level of detail but most do not. The term predominant may be better used to identify vegetation but it can also be used to guide a project sponsor to identify the commonly found species on a site. Guidance on completing this question will be included in the workbook.

127. Comment

Full EAF Part 1, Question E.2.o & p - These two questions will create extensive project delays resulting in complex studies followed by court review. An applicant has only to fail to list one common plant or animal species, which will result in a data gap that could likely be made into a blown up issue by groups or individuals opposing a project. In addition, this section, along with recent revisions in Part 182, Incidental Takings, will result in numerous projects to be bogged down in complex studies that are inherently difficult to prove 100 percent conclusive, since not finding a specific plant or animal during a study is not absolute proof that that plant or animal does not exist at a site. The unfortunate part the SEQR process is that a neighbor who opposes a project and who claims to have sighted an animal such as a wood turtle on the site has more power to affect the timing and outcome of SEQR review than a professional wildlife biologist who has been hired by the applicant and who has searched multiple times for that wood turtle but has found none. A species may occasionally use or pass through a site, but that individual may not represent a large population of that species inhabiting the site. With the changes in the thresholds of the EAFs, many more EIS's will end up needing to be prepared even though the current approach of a long EAF and supporting studies are fully adequate and successful at resolving most issues.

Response

Question E.2.o has been deleted. It requested information that was already covered in question E.1.b. Question E.2.p asks the preparer to identify the "predominant" wildlife species on the project site. It does not require that the preparer identify all species. The workbook will provide information that the preparer can use to answer this question.

128. Comment

Full EAF Part 1, Question E.2.o - If the plant material on site is not rare, threatened or endangered then what bearing does this information have on the project. What qualifications are required to document this information?

Response

Question has been deleted in response to comments. This information can already be found in the Full EAF in question E.1.b.

129. Comment

Full EAF Part 1, Question E.2.p - How and who will define the term "predominant", if there are no rare or endangered species documented on the site then what bearing does this information have on the project?

Response

Directions on how to answer this question will be contained in the workbook. Knowing the type of species that occupy a site, not just those that are threatened or endangered, is needed to provide the context for evaluating the projects impacts on wildlife.

130. Comment

Full EAF Part 1, Question E.2.q - How and who will define the term "significant natural communities?" This is very subjective

Response

Information needed to answer the questions can be obtained from the DEC website.

131. Comment

Full EAF Part 1, Question E.2.q - Need to identify what is meant by designated significant natural community. Are these areas designated in some way such as through Natural Heritage Areas? Or any significant habitats mapped by the NY Natural Heritage Program (NHP), or some other identification? If using NHP data, need to explain process for getting this information.

Response

Guidance on completing this question and links to spatial data will be included in the workbook.

132. Comment

Full EAF Part 1, Question E.2.s - What is the difference between this question and the one above, are there separate lists of data bases?

Response

Question E.2.q addresses habitat while question E.2.s is seeking information on the presence of individual species. Information needed to answer the questions can be obtained from the DEC website.

133. Comment

Full EAF Part 1, Question E.3.a & b - Need a source of information on agricultural districts and soils. Also, is information on highly productive soils available for other than agricultural districts? This information is needed for non-agricultural lands too.

Response

This question is specific to agricultural soils. Guidance on completing this question and links to spatial data will be included in the workbook.

134. Comment

Full EAF Part 1, Question E.3.b - Asks whether agricultural lands consisting of highly productive soils are present. While that is an important question when determining if impacts are likely to affect agriculture, it does not address the fact that many communities do not have highly productive soils but have plenty of agriculture taking place. The EAF should address not just the prime soils, but critical farmlands for that specific community.

Response

DEC agrees with the statement but the question about productive soils is not the only question in the form about agricultural lands. Question E.1 asks, for example, about current acreage devoted to agriculture and how much will remain after development. This question is not keyed to soil types.

135. Comment

Full EAF Part 1, Question E.3.e - Introduces new language in the Full EAF through the phrase "has been determined eligible for inclusion on" the State and National Registers. It is inappropriate to use this jurisdictional term of art from SHPA in the context of the SEQR review. Currently there are 83,000 properties listed on the State or National Registers either individually or as part of an historic district. SHPO has made an additional 32,000 formal "eligibility" determinations under 9 NYCRR Part 427. Many of these eligibility determinations, however, are not updated. There are hundreds of thousands of other historic resources that could be construed

as potentially eligible for listing on the Registers under the plain language meaning of the word "eligible."

Response

Agree. This question has been changed in response to comments to be consistent with the language found in 617.4(b)(9).

136. Comment

Full EAF Part 1, Questions E.3.e. and E.3.e.i - Should be expanded to encompass all five historic resource classes noted above (building, structure, object, site or district).

Response

Guidance on the five classes of historic resources and the links to spatial data will be included in the workbook.

137. Comment

Full EAF Part 1, E.3.f - Should refer project sponsors to the SHPO website with directions on how to use it to search for archeological sites.

Response

Agree. Guidance on completing this question and links to spatial data will be included in the workbook.

138. Comment

Full EAF Part 1, Question E.3.g - Requests information on additional archaeological or historic sites or resources identified as potentially present on the project site. This is clearly a speculative question, and no applicant could possess this information. The question should be clarified so that it refers to an archeological site or building, structure, object, other site or district that has been identified by a source other than SHPO such as a e.g., a local historian, text or other community archive.

Response

Not all information on archaeological and historic resources has been provided to the State Office of Parks, Recreation and Historic Preservation. The workbook will identify other sources such as county and local historians, community archives, Native American communities and professional societies that may have documented information about the presence of historic resources.

139. Comment

Full EAF Part 1, Question E.3.h - The proposed EAFs do not facilitate an adequate assessment of the potential negative impacts to the visual environment of a proposed action in the unique geographic region of the Finger Lakes.”

Response

The EAFs are statewide forms, which are intended as “model forms”. While DEC tried to be as comprehensive as possible, it is not possible to catch geographic nuances. New York, to its benefit, has a broad range of geographic areas from the High Peaks of the Adirondacks to flat farm fields on eastern Long Island. The forms do not preclude lead agencies from accounting for geographic nuances in their individual reviews – to the extent the forms insufficiently do so. Along these lines, local governments can designate critical environmental areas to protect scenic areas (see <http://www.dec.ny.gov/permits/6184.html>) and visual overlay areas as part of zoning (see http://www.dos.ny.gov/LG/publications/Creating_the_Community_You_Want.pdf).

140. Comment

Full EAF Part 1, Question E.3.h - How and who will define these "scenic or aesthetic resources", will it be a subjective call by the Lead Agency?

Response

The question is limited to "officially designated and publically accessible federal, state or local resources. Additional guidance will be provided in the workbook.

141. Comment

Full EAF Part 1, Question E.3.h - Visibility assessment questions with emphasis on 'dedicated', 'designated,' 'listed,' and "established misleadingly implies that project must be visible from one of those areas to have consideration for impact. This is not true for the Finger Lakes region. Could change assessment questions to "could be designated" and provide guidance to determine eligibility."

Response

The forms can reasonably only address views and viewsheds that have already been identified and officially designated. Within the context of the EAF, it would be unreasonable to ask for an impact assessment on places that have not been identified and designated. This fact points to the importance of planning so viewsheds that deserve protection are called out ahead of time through establishment of critical environmental areas and scenic overlay areas.

142. Comment

Full EAF Part 1, Question E.3.h - Distance between project and resource applies a visibility metric that is too simplistic therefore is misleading for evaluation. Visibility is determined by distance, massing, and elevation. The assessment should lead the evaluator to two conclusions: project visibility (highly visible, not visible) and the contextual impact of the project on the surrounding environment and viewshed."

Response

Distance is admittedly a crude measure of visibility but it is a way to get a quick analysis. The forms do not preclude lead agencies from using a more detailed method as described in the comment.

143. Comment

Full EAF Part 1, Question E.3.h - Questions did not appear to address ridgeline or hilltop development...Forms do not appear to address designated or eligible historical landscapes, case in point is Bare Hill in the Canandaigua Lake viewshed."

Response

The forms do not preclude individualized analysis of such development. Locally significant ridgelines or hilltops can be designated as critical environmental areas or made part of a scenic overlay area.

Historical landscapes may be included on the list of historic and archeological properties that have been determined eligible to, or are listed on, the State or National Registers of Historic Places. Should a check of the data base reveal these types of important recognized resources, the lead agency will need to consider them in its review and analysis.

144. Comment

Full EAF Part 1, Question E.3.h - SEQR process should require input from the other municipalities that would be impacted. Regarding viewshed, towns that share the viewshed should be required to complete an assessment or hold a public hearing."

Response

This response to this comment is beyond the scope of the rulemaking to resolve. Generally speaking, the SEQR regulations encourage participation by interested and involved agencies in the process. See <http://www.dec.ny.gov/permits/6443.html>. There are also numerous avenues for inter-municipal input into planning and zoning decisions through General Municipal Law §§239-m, 239-n, and 239-nn.

145. Comment

Full EAF Part 1, Question E.3.h - In my experience, municipalities are ill-equipped for viewshed analysis nor have access to current technology. They typically rely on information provided by project sponsors and there is no standardization of methods or documents. A guidance document on viewshed and visibly [sic] impact assessment would be useful.”

Response

DEC has a guidance document on visual analysis posted on its website. See http://www.dec.ny.gov/docs/permits_ej_operations_pdf/visual2000.pdf. In some cases, county and regional planning agencies may also be of assistance to individual municipalities.

146. Comment

Full EAF Part 1, Question E.3.h. Need resources to determine whether a project will be visible from certain types of sensitive areas. Also, listing in ii, would imply it was intended to include parks in the lead-in question. It seems to be trying to cover too much material in one question. Scenic questions are only applicable if it is a designated resource. How is this designation determined? It seems that the question should be broader and aesthetic impacts on open space or recreation area should be separate with a description of the resource as one that is "dedicated to and available to public". Otherwise, how does one distinguish the scenic from non-scenic areas?

Response

Guidance on completing this question and links to spatial data will be included in the workbook. This question uses the same terminology as found in the existing DEC Program Policy DEP-00-2“Assessing and Mitigating Visual Impacts” that has been successfully implemented since 2000.

147. Comment

Full EAF Part 1.G -Technical claims regarding the presence or absence of possibly protected resources such as wetlands or cultural resources need to be verifiable. The other general shortcoming of the EAF forms relates to the absence on the forms of any information about whether the person signing the “verification” at the end of Part I of an EAF has the technical capabilities to answer many of the "resource" questions, whether those responses were reviewed by a technically qualified person, or otherwise supported by site-specific studies or investigations.

Response

The EAF’s have been designed to allow for a wide variety of individuals to complete the form. The instructions for completing an EAF specifically recognize that not everyone is a technical expert in environmental analysis. The addition of the workbooks and the links to the spatial data sets will allow for the verification of information, as needed.

FULL-EAF, PART 2

PART 2, INSTRUCTIONS

148. Comment

Full EAF Part 2, Instructions - should encourage local agencies to consider the impacts of the specific project and make sure it is understood the questions are meant as examples of impacts. They should not be considered the 'be all and end all' of questions."

Response

DEC agrees with the sentiment of the comment. As we have said in response to other comments, the EAF is a model form that is intended to be somewhat generic so as to be applicable to a wide range of actions throughout the state which is extremely diverse. The comment is addressed by the fact that each section is followed up by a category for "other impacts" that are not otherwise captured by the representative list of impacts provided by DEC but still encompassed by the notion of environmental impact under SEQR.

PART 2, GENERAL

149. Comment

"Another major concern I have is that the new Part 2 seems to establish 'thresholds' for impacts. While the current Part 2 also does that, many more are now included. For example "the proposed action may utilize more than 2,500 MWhrs per year of electricity'. Do these thresholds mean that anything less than that amount is NOT a potential impact? Are they absolute? Isn't it important that the action be evaluated in context of the community (what may not be a problem in some places may be a problem in others)? Is it feasible that by answering "no" to some of these questions, that significant impacts for a specific locality will be overlooked? And, do these thresholds have legal significance or backed up by some scientific information?"

Response

DEC intended the use of thresholds in Part 2 to scale potential impacts or to separate out actions with relatively minor impacts from ones that may have larger impacts. The thresholds are not absolute but if an impact is below a particular threshold it helps the lead agency to answer that a particular impact is likely to be small. It is important to evaluate impacts in the context of the community but this is only done where the lead agency has determined that an impact may be moderate or large. The thresholds were based on consultation with experts in the various fields.

PART 2, SPECIFIC

150. Comment

Full EAF Part 2, Question 1.a - > 1,000 square feet impervious surface used to be small to moderate impact. Now don't have to check it at all, but impact could still be important. What if the area is 990 sf?

Response

As set out above, the Format of Part 2 has been changed in response to comments to allow for a reviewing agency to characterize the anticipated size of the impact.

151. Comment

Full EAF Part 2, Question 3 - Impacts on Surface Water. Add a new section immediately following section "k" (Relevant Part I Question(s):D2): "The proposed action may include stormwater mitigation and/or reuse."

Response

DEC does not agree with the statement. Mitigation is covered in Part 3. The workbook will include a discussion on the types of mitigation that could be employed to avoid or reduce a stormwater impact.

152. Comment

Full EAF, Part 2, Question 3 (Impacts on Surface Water) doesn't include anything on altering or disrupting the natural flow of or current in the water. Question 3 (Impacts on Surface Water) doesn't include anything on altering the depth of the water body or the natural bottom composition. Question 3 (c): (The proposed action may involve dredging more than 100 cubic yards of material from a wetland or water body) should also include simply disturbing bottom materials as there may be pollutants somewhat sequestered by sediments. Question 4 (Ground Water) seems to emphasize effect on drinking water supplies yet Question 3 (surface water) doesn't. Surface water is just as important for drinking water as ground water is. Question 15e states "e." The proposed action may result in lighting creating sky-glow brighter than area conditions. This should also include darkening effect. Question 16 (Impact on Human Health) doesn't include anything about federally recognized polluted areas, Brownfield or impaired areas. It should.

Response

The limits of a form do not allow for every possible question to be listed. All of the above concerns could be legitimate for a particular activity. The lead agency could use the "Other Impacts" area to identify these potential impacts. The workbook will provide additional detail to assist lead agency in using the form.

153. Comment

Full EAF Part 2, Question 3.b - Requires measuring impacts to surface water area and it is unclear how this is to be done.

Response

The workbook will contain information to assist a review in answering this question.

154. Comment

Full EAF Part 2, Question 3.j - Can delete reference to "or herbicides" since all herbicides are pesticides.

Response

Reviewer is correct. However, many non-technical individuals are frequently confused on this point so the word "herbicides" was retained. This will be further explained in the workbook.

155. Comment

Full EAF Part 2, Question 4 - Thresholds used are very low or non-existent and may require revising Type I list to reflect this.

Response

The Format of Part 2 has been changed in response to comments to allow for a reviewing agency to characterize the anticipated size of the impact.

156. Comment

Full EAF Part 2, Question 6 - Needs to specify what is meant by "substantial." Overall EAF instructions are to check "Yes" if the answer might be "Yes," so preparers would then be required to answer all other questions in this section. For instance, a furnace would be an air emission source and all of the questions would need to be completed. Workbook guidance is required to answer these questions.

Response

The word “substantial” has been deleted in response to comments. The workbook will contain information to assist a review in answering this question.

157. Comment

Full EAF Part 2, Question 7 - It is unclear where you would find information on species of special concern and conservation need (c.), or their habitats (d.).

Response

The workbook will contain information to assist a review in answering this question.

158. Comment

Full EAF Part 2, Question 7 - Regarding "designated significant natural community" referred to in (f.): depending on the definition used for Part I E.2.q, this question could apply to most habitat improvement projects undertaken by State Parks. A methodology is needed to identify the type of impacts, whether positive or negative, to the habitat.

Response

The workbook will contain information to assist a review in answering this question. Part 3 is where the lead agency could explain both the positive and negative impacts.

159. Comment

Full EAF Part 2, Question 7 - Again, delete "or herbicides" from i. since all herbicides are pesticides.

Response

Reviewer is correct. However, many non-technical individuals are frequently confused on this point so the word “herbicides” was retained. This will be further explained in the workbook.

160. Comment

Full EAF Part 2, Question 8.c - Impact on Agricultural Resources. Revise the following section to read "The proposed action may disrupt or prevent installation of an agricultural land management system or create a need for such measures".

Response

The Other impacts section can be used to add any new issue that is not covered by the examples that have been provided.

161. Comment

Full EAF Part 2 Question 9 - There is a strong emphasis on dedicated scenic resources but there is a paucity of information on these (see comments on E.3.h.) The Visual EAF Addendum used "dedicated to and available to the public".

Response

Guidance on completing this question and links to spatial data will be included in the workbook. This question uses the same terminology as found in the existing DEC Program Policy DEP-00-2“Assessing and Mitigating Visual Impacts” that has been successfully implemented since 2000.

162. Comment

Full EAF Part 2, Question 9. Impact on Aesthetic Resources. Add the following new section "a" as follows and then renumber the subsections. Is the project located in or adjacent to a designated "Scenic Area of Statewide Significance," -as defined in 19 NYCRR Part 602.

Response

This issue is covered by current “a” that includes all “officially designated federal, state, or local scenic or aesthetic resource.” If each specific resource was listed separately it would result in the addition of many questions.

163. Comment

Full EAF Part 2 Question 10 - List is "open-space" oriented and does not address recreational facilities and parks. The gatekeeper question is not necessarily exclusive of other questions. For instance, there could be an impairment (see a.) without a reduction, and note that the gatekeeper does not even include parks.

Response

Agree. Gatekeeper question has been revised in response to comment.

164. Comment

Full EAF Part 2, Question 10 - Add a sub-question, "Is the site presently used by the community or neighborhood as an open space or recreation area, including trails?"

Response

All other types of recreational use that are not specifically noted can be identified by using the "Other" category, as appropriate.

165. Comment

Full EAF Part 2, Question 10 - Questions a,b and c - should track the language suggested above for the companion sections in Part I, Section E.3.e, f and g. Question "e" is a welcome addition to the form, but in e.ii. the term "integrity" should be substituted for the term "environment."

Response

Agree. Questions have been changed in response to comments.

166. Comment

Full EAF Part 2, Question 12 -The title of item 12 should be amended to read 'impact on previously designated critical environmental areas' and the phrase 'previously designated' should be added to the first line, for the same reason discussed above and in the short-EAF."

Response

Comment accepted with the modification that the title will read 'state listed critical environmental areas' to make the phrase consistent with Part 1.

167. Comment

Full EAF Part 2, Question 13 - Reference to the 'service' of any affected intersection in item 13 should instead be reference to the 'Level of Service,'" as the subsequent reference to LoS Level and "C" is obviously a reference to the Level of Service term of traffic engineering."

Response

Transportation section has been modified in response to public comment and the particular question has been eliminated.

168. Comment

Full EAF Part 2, Question 13.c - Is the concern for runoff and hence the use of "paved" or having so many cars in one place? Is there any concern for special event field parking over 1,000 vehicles or automated garages (metal lifts etc.) of over 1,000 vehicles?

Response

Based on additional research into generally accepted parking ratios, the 1000 parking space threshold was reduced to 500, which would correspond to the parking requirements of a non-residential structure with 100,000 square feet of gross floor area which is the threshold contained in 617.4(b)(6)(iv). The intent of the question is to cover all impacts associated with a parking

area of that size. Automated garages and special event parking would be details that would be considered.

169. Comment

Full EAF Part 2, Question 13.d - Public transit generally will not go on private roads. This statement appears to include many subdivisions. Is that the intention? Item 13.e seems to handle pedestrian accommodations to a transit way.

Response

Question has been revised in response to comments to focus on potential impact to existing transit, pedestrian or biking accommodations.

170. Comment

Full EAF Part 2, Question 14 - Asking if the proposed action 'does not incorporate energy conserving opportunities' provides little guidance regarding what energy conservation opportunities are available, and how effective such opportunities are at reducing GHG emissions. The EAF should reference the "Building Design and Operation Measures," listed on page 12 of the DEC's Guide for Assessing Energy Use and Greenhouse Gas Emissions in an Environmental Impact Statement for guidance, and indicate in a companion document the degree of energy conservation achieved using each energy conserving opportunity. DEC should also inquire into whether the project would be eligible for LEED or Energy Star certification.

Response

Question has been removed.

171. Comment

Full EAF Part 2, Question 15 - Revise c. to read as follows " ... routine odors [of] for more than one hour per day."

Response

Agree. Question has been revised in response to comment.

172. Comment

Full EAF Part 2, Question 16 - Add "parks" to b. since many vulnerable populations such as children, the elderly and disabled use parks.

Response

DEC does not agree with the statement. Parks were not included in this question because sensitive populations may use parks but they are not likely to be resident at a park on a daily basis for multiple hours per day.

173. Comment

Full EAF Part 2, Question 16 - Add storage for flammable liquids.

Response

All other types of exposure that are not specifically noted can be identified by using the "Other" category, as appropriate.

174. Comment

Full EAF Part 2, Question 16 - How is the health impact determined and by whom? I would argue that the agencies responsible for preparing the SEQR's [sic] are not qualified to determine health impacts of their projects. The local or state health department is the only qualified entity to determine health impact. The local and state health departments have access to resources and expertise that position them to best determine health impacts."

Response

SEQR does not prevent the local and state health departments from taking an active role in SEQR related assessments of health impacts whether such agencies have involved or interested

status in a particular review. See <http://www.dec.ny.gov/permits/6443.html>. DEC expects to mention local and state health departments in the workbook as a resource for assessing impacts on human health.

175. Comment

Full EAF Part 2, Question 16.a. Impact on Human Health. The lead agency is referred back to "Relevant Part 1 Questions" to answer if the proposed action may create, or increase, an environmental justice burden. However; there is no reference to the pesticide questions in Part I (D. 2.o) which potentially create an environmental justice concern. Referral to pesticide use (Part 1, D.2.o.) should be included in the list.

Response

Agree. Reference to the pesticide question has been added in Part 1.

176. Comment

Full EAF Part 2, Question 17 - Need information on where adopted land use plans can be found.

Response

The workbook will contain information to assist a reviewer in answering this question.

177. Comment

Full EAF Part 2, Question 17 - The "gatekeeper" question is not exclusive of other questions. The Sub-questions help answer the gatekeeper, so it seems to be the wrong gatekeeper question.

Response

Agree. Gatekeeper question has been revised in response to comment.

178. Comment

Full EAF Part 2, Question 17 - Could have impacts checked on a lot of these even when the project is consistent with the plans.

Response

Agree. Format for Part 2 has been changed in response to comments.

179. Comment

Full EAF Part 2, Question 18 - The "gatekeeper" question is not exclusive of other questions. The Sub-questions help answer the gatekeeper, so it seems to be the wrong gatekeeper question.

Response

DEC does not agree with the statement. Community Character is a broad enough topic to cover all of the sub questions.

180. Comment

Full EAF Part 2, Question 18 - What are "officially recognized or designated public resources"? Clarify and/or provide examples - e.g., parks, monuments

Response

Guidance on completing this question and links to spatial data will be included in the workbook. This question uses the same terminology as found in the existing DEC Program Policy DEP-00-2 "Assessing and Mitigating Visual Impacts" that has been successfully implemented since 2000.

EAF, PART 3

181. Comment

Full EAF Part 3 - Recommend that examples, matrices, or other tools be included in Part III to help take the answers from Part I and II to an actual understanding if those impacts are of high magnitude or significance."

Response

DEC agrees with the comment and believes that this is best accomplished through training as well as the workbook.