5. What are "actions" under SEQR?

Actions under SEQR include:

- physical projects or activities such as construction of a shopping center or residential development, building a road, dredging a stream or mining gravel;
- adoption or administration of rules, regulations or procedures, by a government agency, such as local zoning, public health regulations, wetland protection or handling of toxic wastes; or
- decisions by agencies on plans or policies such as land use plans, formation of special districts or establishment of policies on use of public lands.

A single overall action may include a combination of the above activities.

6. Is there a distinction between "decisions" and "actions" in applying SEQR?

Yes. In order for SEQR to be applied to any proposed action or related series of actions there must be at least one discretionary decision required by an agency. Often there are several such decisions necessary in order to carry out the action. For example, the "action" of developing a residential subdivision may require separate approval decisions by a town planning board for the subdivision plat, town board or zoning board of appeals if there is a zoning decision, or county health department if on-lot sewer and water facilities are required, and, possibly by the state Departments of Transportation or Environmental Conservation, if highway access or stream or other environmental permits are needed. No decision to approve, fund or directly undertake any part of an action should be made by any of these agencies until SEQR requirements are met. This SEQR review of an action may be done as part of a coordinated review process that involves several governmental agencies.

7. What are direct actions?

Actions that are proposed and undertaken by a local or state agency are called direct actions. This applies to construction "actions" whether agency staff or contractors actually do the design work or the on-site construction work or both.

8. May an agency deny an application for an action subject to SEQR without going through the SEQR process?

No. An agency must comply with SEQR before denying an application that is subject to review under SEQR. Failure by the lead agency to comply may leave the lead agency vulnerable to a procedural challenge to the denial.

9. Isn't it a waste of agency resources and unfair to the applicant to conduct a SEQR review on a project the agency knows it will deny?

There are three reasons why DEC recommends that the SEQR process be completed before the issuance of a denial.

- First, the applicant has a right to due process. Many applicants believe that, given the chance, they can provide the agency with the information necessary to support their application; and they welcome the opportunity to participate in an environmental review.

- Second, the agency might find, following the conduct of the environmental review, that its initial position was not supported by the facts. Contrary to its original belief, the agency may find that the action is approvable.
- Third, completion of the SEQR review gives the agency the strongest possible record to support its decision. If litigation over the denial is likely, having a good SEQR record gives the agency the best environmental basis for defending its decision.

10. What if it is clear that the application will not meet established standards for permit issuance. Does the agency have any options?

Yes. If it is clear that the application will not meet regulatory standards for issuance, and a denial of the application is unavoidable, the agency has some options to consider:

- Explain to the project sponsor how the project fails to meet standards for issuance and recommend that the application be withdrawn. Sometimes a clear explanation of the standards and why those standards cannot be met is sufficient to cause the project sponsor to withdraw the application before significant time or money is spent on the review.
- Explain to the project sponsor how the project fails to meet standards for issuance and suggest changes that might make the project more compatible. Some agencies are more comfortable with this approach than others. Agency staff should never redesign a project for an applicant because this will lead to the expectation that the redesigned project will automatically be approved. You can, however, offer suggestions on how the project sponsor can make his or her project more compatible with the applicable standards and urge that the project be modified and the application resubmitted.
- Issue a negative declaration and deny the application. The negative declaration would identify the possible impacts from the action but note that they do not rise to the level of requiring the preparation of an EIS. The denial would then be based on the applications failure to meet the regulatory standards for permit issuance.

The third option only works when there are clear regulatory standards in place and the denial is based on the failure of the application to meet those standards. If the standards are general in nature, and the denial is based on environmental reasons, then it is likely that this approach would be vulnerable to legal challenge.

11. Are there any situations where an agency can act without SEQR compliance?

Yes. Legislative bodies have the authority to refuse to entertain (not to consider) certain applications like petitions to change the zoning classification of a parcel. If the legislative body chooses not to entertain the petition they do not have to complete SEQR in making that decision. This decision has been placed on the Type II list (see 6 NYCRR Section 617.5).

For example, if an agency must make a legislative decision, such as rezoning or extending a water system, and the agency determines that the action will not be considered at that particular time, SEQR need not be applied to that legislative decision process. However, if at a later date, the legislative body does take up consideration of any aspect of the proposal for full or conditional approval, the action would then be subject to SEQR.

C. When to Begin SEQR

In This Section You Will Learn:

- when must SEQR be started; and
- can agencies make decisions before completing SEQR

1. At what point in the decision-making process must SEQR be applied?

Review under SEQR should be started:

- as soon as an agency receives an application to fund or approve an action, or
- as early as possible in an agency's planning of an action it is proposing.

SEQR review should begin as soon as the principal features of a proposed action and its environmental impacts can be reasonably identified. SEQR must be completed before any final decision to proceed with an action is made.

2. When does SEQR begin if more than one agency is involved in making decisions about an action?

If more than one agency is involved in the action, the review process is started when the first involved agency either:

- receives a request for approval or funding, or
- begins to plan a direct action.

(See Participation in the SEQR Process - C. Establishment of Lead Agency for more information about involved agencies.)

3. Can agency decisions be made or acted on before completion of the SEQR process?

It may be possible to implement some non-physical aspects of an action which are not subject to SEQR, but it should be noted that Subdivision 617.3(a) provides that a project sponsor may not commence any physical alteration related to an action until all provisions of SEQR have been complied with (i.e. the lead agency has issued a Negative Declaration or Findings). The fact that some early activities on an overall action are not subject to review under SEQR does not remove the consequences of these decisions from consideration with respect to the whole action.

For example, a site should not be cleared and graded nor should any structural demolition occur until all aspects of the overall proposed project subject to SEQR have been examined. The only exception to this would be for minor disturbances necessary for information gathering about a project; e.g. property surveys, soil sampling, test wells or temporary installation of various types of environmental monitoring equipment.

Chapter 2: Review Required Under SEQR

A. SEQR Handbook: Type I Actions

In This Section You Will Learn:

- what is a Type I action;
- how do we treat Type I actions (EAF, EIS, hearings);
- what is an Unlisted action and how is it different that Type I and II.

ACTIONS REQUIRING REVIEW

1. What actions require review?

Classes of actions identified as "Type I" or "Unlisted" must be reviewed further under SEQR to determine the potential for significant adverse environmental impacts.

TYPE I ACTIONS

2. What is a "Type I" Action?

A Type I action means an action or class of actions that is more likely to have a significant adverse impact on the environment than other actions or classes of actions. Type I actions are listed in the statewide SEQR regulations (617.4), or listed in any involved agency's SEQR procedures. The Type I list in 617.4 contains numeric thresholds; any actions that will equal or exceed one or more of the thresholds would be classified as Type I.

3. Are there required procedures for the treatment of Type I actions?

Yes. A full Environmental Assessment Form (EAF) must be submitted to the lead agency for all Type I actions, and the lead agency must always coordinate the SEQR review process with other involved agencies.

4. May a short EAF ever be used in place of a full EAF for Type I actions?

No. The short EAF may never be used for Type I actions.

5. Can a lead agency waive or excuse the requirement of filing an EAF?

Yes. The lead agency may waive the requirement for an EAF if a project proposal is accompanied by a draft EIS instead. [see 617.6(a)(4)].

6. What is the decision to prepare an Environmental Impact Statement (EIS) based on?

An EIS is warranted when the lead agency, after review of application documentation related to the proposed action, decides that the action as proposed is likely to cause at least one significant adverse impact to the environment.

7. How are determinations of significance documented for a Type I action?

Both the negative declaration (neg dec) [see 617.2(y)] and positive declaration (pos dec) (see 617.2(ac) must be documented in the record, in writing, and maintained in files that are readily accessible to the public and made available upon request [see 617.12(b)(3)]. A Type I neg dec and pos dec, as well as a conditional neg dec, Notice of Completion of an EIS, EIS and hearing notices must also be filed with the chief executive officer of the political subdivision where the action is located, the lead agency, all involved agencies and persons or parties who have requested a copy [see 617.12(b)(1)]. A neg dec or pos dec for a Type I action must be published in the Environmental Notice Bulletin (ENB). Notice of a neg dec must also be incorporated into at least one other notice required by law [see 617.12(c)(1) and 617.12(c)(4)].

8. Is an Environmental Impact Statement (EIS) always required for Type I actions?

No. A Type I action carries with it a presumption that it is more likely than an Unlisted action to have a significant adverse impact on the environment and may require an EIS. However, the lead agency must evaluate information contained in the EAF, and additional applications, filings or materials, against the criteria in 617.7 to make a determination of significance for each Type I action. SEQR responsibilities for Type I actions may be met by a well-documented, well reasoned negative declaration.

9. Is a SEQR hearing required for a Type I action?

No. Hearings under SEQR are optional. SEQR hearings are conducted at the discretion of the lead agency after it has accepted a draft EIS for public review. Agencies may have their own requirements under the provisions of other state or local laws regarding when other types of hearings must be held, and a SEQR hearing may be combined with any of those required hearings. (See Environmental Impact Statements - E. SEQR Hearing.)

10. Can the statewide list of Type I actions be supplemented by an agency?

Yes. An agency may expand the statewide Type I list by including any Unlisted action as Type I in its own SEQR procedures under 617.14. Such lists must include the statewide Type I list, be no less environmentally protective than the statewide list, and be adopted consistent with 617.14 (a), (b) and (f). In addition to including specific new items on their Type I lists, agencies may adjust thresholds for statewide Type I actions to make them more protective. These additional actions are Type I for the agency that listed them as such and any other agency involved with the listing agency in a specific action.

Note that Type II, Exempt or Excluded actions may not be placed on an agency's own Type I list.

11. Why can't an agency add statewide Type II actions from 6 NYCRR Part 617 to their list of Type I actions?

Individual agency Type I lists may not include actions from the adopted statewide Type II list [617.5(c)]because such actions have been defined on a statewide basis as never having a significant adverse impact on the environment, and therefore never requiring an EIS under SEQR.

12. What happens if an action is not on the statewide Type I list, but is on an agency's Type I list?

An action considered Type I by one involved agency, whether that agency serves in the role of lead agency or not, becomes a Type I action for all other agencies involved in that action [see 617.4(a)(2)]. However, such action need not be treated as Type I when the agency that created the expanded list is not involved in the action.

For example:

- The Town Board of Foxborough may, on its list, reduce the Type I threshold for physical disturbance for a non-residential activity from 10 acres to 5 acres.
- A proposed light industrial park of 7.5 acres would be a Type I action under this scenario if the Town of Foxborough is an involved party or is lead agency. All other involved agencies or parties would likewise treat this action Type I action. It is the responsibility of Foxborough, the agency that reduced the threshold, to notify the other involved agencies (ie. Towns of Deer Haven and Otter Creek) of the change in classification.
- However, if Foxborough has no discretionary permit involvement for an action such as this, the Towns of Deer Haven and Otter Creek (if involved parties) do not have to use Foxborough's lower threshold of 5 acres. The statewide threshold of 10 acres for physical disturbance for a non-residential activity would apply, and the 7.5 acres would put the action in the Unlisted category, not the Type I category.

13. Do the stricter standards of an involved agency's expanded Type I list apply to the action only when the agency with the expanded list is the lead agency?

No. As stated above in Question 12, as long as the agency with the expanded Type I list is an involved agency, all the standards or thresholds on that local list apply to the action being assessed. Again, it is the responsibility of the agency that altered or reduced the threshold to notify the other involved agencies.

14. How does an agency know if an action is on another agency's Type I list?

The adoption or amendment of an agency's list of Type I actions requires hearing, filing and noticing pursuant to 617.14(f). Prior to the required public hearing on such adoption or amendment, it would be wise for the agency to directly inform all other local or state agencies normally making discretionary decisions within its jurisdiction of its intent to expand the list of Type I actions. Such other agencies could then comment in writing, or at the public hearing, regarding the impact of the Type I list expansion upon their activities.

In addition to filing any new list with the Commissioner of Environmental Conservation for publication in the Environmental Notice Bulletin (ENB), it is both reasonable and prudent for the filing agency to directly inform all potentially affected local and state agencies when it adopts or amends its Type I list.

15. Can the physical location of an action cause an Unlisted action to become a Type I action?

Yes. Unlisted actions may become Type I actions if they are undertaken in, or adjacent to, particular locations specified on the statewide Type I list [see 617.4(b)(8, 9, 10)]. These locations are:

- sites on, or eligible for listing on, the NYS or National Registers of Historic Places;
- publicly owned or operated parkland, recreation area or designated open space; and
- National Natural Landmarks.

In addition, any non-agricultural use that exceeds 20 percent of any Type I threshold in 617.4 also becomes a Type I action.

16. What do the items on the Type I list as presented in 617.4(b) really mean?

The following examples of Type I actions are based on DEC's experience and on court decisions:

617.4(b)(1)

"the adoption of a municipality's land use plan, the adoption by any agency of a comprehensive resource management plan or the initial adoption of a municipality's comprehensive zoning regulations;"

A municipality's or agency's land use, resource management or comprehensive zoning plans will affect the environment of the municipality for years to come. Examples of such plans are park, preserve or other state land master plans; state energy and solid waste management plans. Many potential conflicts between usage of the land and good stewardship can be avoided by applying SEQR analysis carefully at this early stage.

617.4(b)(2)

"the adoption of changes in the allowable uses within any zoning district, affecting 25 or more acres of the district;"

This item covers zoning changes that are initiated by a municipality without a petition by an applicant. For example:

- Town Zoning Board members in the Town of Maplewood have observed a dramatic rise in commercial business activities being run out of houses in residential neighborhoods in the adjacent Towns of Poplar Grove and Oakfield. This increase in-house cottage industries seems to be driven by an increase in costs related to establishing new business ventures where allowed by zoning Maplewood shares commercial zoning regulations and obstacles as Poplar Grove and Oakfield.
- After consulting with other members of the governing bodies of the Town of Maplewood, holding a public hearing on the acceptability of commercial business ventures being run from house in residentially zoned neighborhoods, and considering the information and public comment received at the hearing, the Zoning Board changed the zoning of all the districts in Maplewood to prohibit commercial business ventures operating from homes in residentially zoned neighborhoods.

617.4(b)(3)

"the granting of a zoning change, at the request of an applicant, for an action that meets or exceeds one or more of the thresholds given elsewhere in this list;"

This item covers zoning changes that are initiated by the submission of a petition by an applicant(s). For example, if an applicant requests a zoning change for a shopping center from residential to commercial, and proposes an additional 1200 new parking spaces, then the whole project would be Type I. The lead agency is responsible for checking all the items listed in 617.4(b), and any additional items listed by a local involved agency, to determine if the applicant's request is greater than any of the thresholds listed.

617.4(b)(4)

"the acquisition, sale, lease, annexation or other transfer of 100 or more contiguous acres of land by a state or local agency;"

This includes trades or in-kind exchanges of land between the state or federal government and a municipality, one municipality and another, or between a private citizen, partnership school board or corporation and the municipality. For example:

- City "A" has an old high school, a middle school, sports fields, and a small nature preserve located along the city's riverfront. The area covers a total of 110 acres.
- A developer is eager to acquire the land to build a marina plus a large number of condominiums. The developer is willing to buy a large piece of suitable upland acreage, build the city a whole new combined high school and middle school with new sports facilities and whatever else is needed. In return, the developer would get the waterfront property and a contribution from the city that is equal to less than half what it would cost to do necessary rehabilitation of the old schools in their present location.
- This proposal would definitely be a Type I action.

617.4(b)(5)

"construction of new residential units that meet or exceed the following thresholds:

- 10 units in municipalities that have not adopted zoning or subdivision regulations;
- 50 units not to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;
- in a city, town or village having a population of less than 150,000, 250 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;
- in a city, town or village having a population of greater than 150,000 but less than 1,000,000, 1,000 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works; or
- in a city or town having a population of greater than 1,000,000, 2,500 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;"

The phrase "to be connected at the commencement of habitation to existing community or public water and sewerage systems" means those utility distribution pipes and facilities must be either in place or have completed the environmental review and approval process prior to this proposed construction project. It does not include projects that have, as part of the proposal, the construction of a package sewage treatment facility, a community water system or both such facilities and systems.

Note that the first two items in this section are not tied to the population of the municipality. These two items apply to actions everywhere in the state.

617.4(b)(6)

"activities, other than the construction of residential facilities, that meet or exceed any of the following thresholds; or the expansion of existing non-residential facilities by more than 50 percent of any of the following thresholds:

- a project or action that involves the physical alteration of 10 acres;
- a project or action that would use ground or surface water in excess of 2,000,000 gallons per day;
- parking for 1,000 vehicles;
- in a city, town or village having a population of 150,000 persons or less, a facility with more than 100,000 square feet of gross floor area;
- in a city, town or village having a population of more than 150,000 persons, a facility with more than 240,000 square feet of gross floor area;"

This section deals with many of the most common large commercial actions. Note that only the items involving square footage of the facility are contingent upon the population of the municipality. The first three items apply everywhere in the state.

617.4(b)(7)

"any structure exceeding 100 feet above original ground level in a locality that has no zoning regulation pertaining to height;"

This would include, but not be limited to, buildings, signs, towers, power generating windmills, and ski jumps.

617.4(b)(8)

"any Unlisted action that includes a nonagricultural use occurring wholly or partially within an agricultural district (certified pursuant to Agriculture and Markets Law, article 25-AA, sections 303 and 304) and exceeds 25 percent of any threshold established in this section;"

This item does not take into account whether or not there is an actual farm on the land that is proposed to be used for the action. If the action is in the agricultural district as certified in the Ag and Markets Law, it is a Type I action.

Examples:

Type I Threshold	Reduced Threshold	Project	Type I (Y/N)
10 acres	2.5	3 acres	Y
1,000 vehicles	250 vehicles	150 vehicles	N

617.4(b)(9)

"any Unlisted action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site

- that is listed on the National Register of Historic Places, or
- that has been proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register, or
- that is listed on the State Register of Historic Places (The National Register of Historic Places is established by 36 Code of Federal Regulation (CFR) Parts 60 and 63, 1994 [see 617.17];"

617.4(b)(10)

"any Unlisted action, that exceeds 25 percent of any threshold in this section, occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space, including any site on the Register of National Natural Landmarks pursuant to 36 CFR Part 62, 1994 [see 617.17]; or"

617.4(b)(11)

"any Unlisted action that exceeds a Type I threshold established by an involved agency pursuant to section 617.14 of this Part."

If an agency adds a particular threshold to its Type I list, and that agency is an involved agency, the new threshold applies to all involved agencies. It is not necessary for the agency with the expanded Type I list to be the lead agency when reviewing the action.

17. What is meant by the term "substantially contiguous?"

The term "substantially contiguous" as used in both sections 617.4(b)(9) and (10), is intended to cover situations where a proposed activity is not directly adjacent to a sensitive resource, but is in close enough proximity that it could potentially have an impact. Although the term can be difficult to define, the following examples may provide some guidance.

- Construction of a structure across a residential or downtown two to four-lane street from a building listed on the National Register of Historic Places would be substantially contiguous. However, if the street were a six lane limited access highway with a 100 foot median it would not be substantially contiguous.

- Construction of a structure on a site that is separated from a City Park by a 50 foot right-of-way would be substantially contiguous.
- Construction of a residential development overlooking a historically designated bay would be substantially contiguous.
- Construction of a boat launch ramp 100 feet away from a prehistoric Native American encampment site proposed for designation on the National Register of Historic places would be substantially contiguous.

When considering the issue of what is substantially contiguous, it is important to realize that you are only determining if the action will be classified as Type I or Unlisted, and not determining its significance. If there is question whether an action is substantially contiguous, it is best to treat it as Type I and proceed with the review.

18. Can you illustrate how the threshold reduction requirements in the Type I list are applied to Unlisted actions?

617.4(b)(3), (6) and (10)

A project sponsor requires a zoning variance to build a Go-Kart racetrack across a two-lane road from Oak Orchard Creek Marsh, which is on the Register of National Natural Landmarks (see photo below). The project involves grading of 8 acres and will have parking for 150 cars.

Type I Threshold	Reduced Threshold	Project	Type I (Y/N)
10 acres	2.5	8 acres	Yes
Parking for 1,000 cars	250	150 cars	No

This project is substantially contiguous to a National Natural Landmark and therefore the thresholds described in 617.4(b)(10) apply. Since this project exceeds the reduced threshold for physical alteration of 10 acres, it must be classified as a Type I action. This is true even though other thresholds are not exceeded, such as the parking for 150 cars which falls below the reduced threshold of 617.4(b)(6). **If any part of the action is found to be Type I, the whole action must be classified as Type I.**

Had the property not been substantially contiguous to a National Natural Landmark , the action would not have been classified as Type 1. This is because the 8 acres falls below the 10 acre threshold and must therefore be considered an Unlisted action.

In addition to the above, the request for zoning change also triggers Type I treatment for this action [617.4(b)(3)] since a threshold under 617(b) has been exceeded.

617.4(b)(3), (6) and (10)

In a town with a population of 18,000, a project sponsor has submitted a petition to rezone a 7 acre parcel of land adjacent to a county park from residential to commercial to allow the construction of a 30,000 sq. ft. office building with parking for 125 cars.

Type I Threshold	Reduced Threshold	Project	Type I (Y/N)
100,000 sq. ft	25,000 sq. ft.	30,000 sq. ft.	Yes
1000 cars	250 cars	125 cars	No

The fact that the site is adjacent to publicly owned or operated parkland means that all numeric thresholds on the Type I list are reduced by 75 percent [617.4(b)(10)]. Therefore, the gross leasable area of 30,000 sq. ft. exceeds the reduced threshold for square footage of gross leasable area and it should be classified as a Type I action. Again, this is true even if another factor such as parking for a certain number of cars does not trigger the Type I threshold. If any part of the action is found to be Type I, the whole action must be classified as Type I.

In addition, the request for zoning change also triggers Type I treatment for this action [617.4(b)(3)] since a threshold under 617(b) has been exceeded.

617.4(b)(5) and (10)

Sponsor proposes construction of a 17 unit subdivision with individual wells and septic systems. The site is located across a two lane county road from the Tollgate Tavern, a structure that is listed on the National Register of Historic Places.

Type I Threshold	Reduced Threshold	Project	Type I (Y/N)
Contiguous to NR Property	none	Across from Tollgate Tavern	Yes
50 Units	none	17 Units	No

This is a case where the size of the project (17 units) does not exceed the threshold of 50 units [as discussed in 617.4(b)(5)(ii)]. However, because the project is substantially contiguous to the National Register property, the action becomes a Type I in accordance with 617.4(b).

If the proposed project had been 62 residential units, the threshold in 617.4(b)(5)(ii) would apply, and the agency would consider the action a Type I, (with or without the proximity to the National Register property).

Regarding nationally recognized properties, do not to confuse properties included, or eligible for inclusion, on the National Register of Historic Places with properties on the Register of National Natural Landmarks. Properties listed on, and eligible for, the National Register of Historic Places triggers the treatment of certain actions as Type I rather than Unlisted (617.4(b)(9). However, inclusion on the Register of National Natural Landmarks triggers a threshold reduction of 75% when actions are adjacent to such properties (discussed in 617.4(b)(10)).

617.4(b)(6)

A private school has purchased an adjacent parcel of land and wishes to enlarge its existing campus to repair and enlarge its track, and expand the number of ball fields and soccer fields that are available for the students. The project will more than double the size of the facility, will involve the regrading of 6.7 acres, and will require additional fill to level some of this acreage.

Type I Threshold	Reduced Threshold	Project	Type I (Y/N)
10 acres	5	6.7	Yes

The fact that this is an expansion of an existing, non-residential facility, means that we must reduce the standard threshold by 50% [see 617.4(b)(6)]. The proposed 6.7 acre alteration is greater than 50% of the 10 acres identified in 617.4(b)(6)(I), so this example would be treated as a Type I action.

617.4(b)(6)

In a town with a population of 172,000, an existing shopping mall is to be expanded by 112,000 sq. ft. with the addition of parking for 280 cars involving the physical disturbance of 4.4 acres of land.

Type I Threshold	Reduced Threshold	Project	Type I (Y/N)
240,000 sq. ft.	120,000 sq. ft.	112,000 sq. ft.	No
1000 cars	500 cars	280 cars	No
10 acres	5 acres	4.4 acres	No

This project is the expansion of an existing, non-residential facility which means that the thresholds contained in 617.4(b)(6) are reduced by 50 percent. Since this project does not exceed any of the reduced thresholds, it must be classified as an Unlisted action.

617.4(b)(6) and (8)

In a town with a population of 32,000, construction of a 15,000 sq. ft. office building with parking for 120 cars involving the physical disturbance of 2.8 acres of land is proposed in a certified agricultural district.

Type I Threshold	Reduced Threshold	Project	Type I (Y/N)
100,000 sq. ft.	25,000 sq. ft.	15,000 sq. ft.	No
1000 cars	250 cars	120 cars	No
10 acres	2.5 acres	2.8 acres	Yes

This is a nonagricultural use proposed for a site located in a certified agricultural district, which means that all numeric thresholds on the Type I list are reduced by 75 percent [617.4(b)(8)].

Since this project exceeds the reduced 25% threshold for physical disturbance, it must be classified as a Type I action [per 617.4(b)(6)(I)]. As previously stated, the fact that other thresholds are not triggered does not keep this action Unlisted. Passing only one threshold is sufficient to consider the action a Type I.

UNLISTED ACTIONS

19. What is an "Unlisted" action?

An Unlisted action is one that is not included in statewide or individual agency lists of Type I or Type II actions.

Unlisted actions are the largest category of actions subject to review under SEQR. As may be implied from their name, no list has been made of them, in part because it is impossible to anticipate in advance every potential discretionary decision of government. Unlisted actions may range from very minor zoning variances to complex construction activities falling just below the thresholds for Type I actions, or from the granting of minor permits to the adoption of major regulations. For example:

- Using the 10 acre physical disturbance threshold for activities other than residential construction [617.4(b)(6)(I)] - a project that would disturb 9.9 acres of land would be an Unlisted action, as would a project that would disturb 0.1 acre of land.
- Using the 100 acre threshold for acquisition, sale, lease, annexation or other transfer of land [617.4(b)(4)] - the acquisition of 95 acres of land and the acquisition of 1 acre of land would both be Unlisted actions.
- Using the 25 acre threshold for a change in the allowable uses within a zoning district [617.4(b)(2)] - construction of a private school on a 3 acre site within a zoning district that does not list the construction as an allowable use would be an Unlisted action.

20. Can an Unlisted action involve more than one agency?

Yes. The number of agencies involved has no bearing on whether an action is classified as Type I or Unlisted. SEQR review by all involved agencies does not change just because the action type (I, II or Unlisted) is different. The classification of an action is a requisite component of each agency's SEQR responsibility.

21. How do SEQR review procedures differ between Unlisted and Type I actions?

Many of the same basic procedures generally apply to Unlisted actions in conducting SEQR as apply to Type I actions.

- An environmental assessment must be conducted for both Unlisted and Type I actions and a determination of significance made.
- Both types of actions require an assessment of possible environmental concerns. A short Environmental Assessment Form (EAF) may be used as the basis for a determination of significance for Unlisted actions. A Full EAF is required for a Type I action and may be used for Unlisted actions at the discretion of the Lead Agency;
- Coordinated review is not required for an Unlisted action. The lead agency must always coordinate the SEQR review process with other involved agencies when considering a Type I action;

22. Are there ever reasons that an agency may treat Unlisted actions as Type I actions?

Yes. Type I procedures can be used for the review of an Unlisted action at any time, at the discretion of the lead agency. Examples of when this might occur are:

- there are potential adverse impacts that could be more thoroughly investigated by using a Full EAF and coordinating review; or
- an agency has special concerns regarding a sensitive resource within its jurisdiction; or
- an agency is uncertain about the concerns of other involved agencies and decides to coordinate review; or
- the action falls just below the applicable Type I threshold; or
- anytime the agency judges that the Type I procedures would be more helpful.

If an agency finds that it is frequently using the Type I procedures for particular types of Unlisted actions, the agency should consider adding these actions to its own Type I list as provided for in 617.4(a)(2).

23. How do Unlisted and Type I actions differ if a negative declaration is reached?

If the determination is that there will not be significant adverse environmental impacts, for either an Unlisted or Type I action, and a negative declaration is written, the review process terminates and the decision on the action may be made.

Notice requirements for negative declarations are less extensive for Unlisted action than for Type I actions (see 617.12 and the questions on Notification and Filing; in the section on SEQR Housekeeping):

- Unlisted negative declarations are not required to be published or noticed.
- Type I negative declarations are required to be noticed, filed and published.

Notice, filing and publication requirements for Type I actions are listed in section 617.12.

24. How do Unlisted and Type I actions differ if a positive declaration is reached?

If the review of either an Unlisted or Type I action determines that there may be one or more significant adverse environmental impacts, a positive declaration is required, and an EIS may be necessary.

Unlisted actions do not carry with them the same likelihood of requiring an EIS that is associated with Type I actions. A somewhat less rigorous, and possibly quicker, review option may be followed.

A Conditioned Negative Declaration (CND) procedure may be applied in some situations to Unlisted actions involving applicants [See 617.7(d) and the section on CNDs in the chapter on the Determining Significance Process], or, if an EIS is required, it must be completed and accepted by the lead agency before agency findings can be made and decisions on the actions taken.

B. SEQR Handbook: Type II Actions

In This Section You Will Learn:

- what are Type II actions;
- what major changes were made to SEQR in 1996;
- what are emergency actions;
- what is "grandfathering".

TYPE II ACTIONS - ACTIONS REQUIRING NO REVIEW

1. Are there actions that, once classified, require no further agency review under SEQR?

Yes, there are, and they are called "Type II." (See also the definition of "action" in the Decisions Subject to SEQR section of this Handbook). Actions that can be classified "Type II" actions under the SEQR regulations do not require any further SEQR review, not even an EAF. The list of actions identified as Type II is found in 6 NYCRR Part 617.5

2. What is a Type II Action?

Type II actions are those actions, or classes of actions, which have been found categorically to not have significant adverse impacts on the environment, or actions that have been statutorily exempted from SEQR review. They do not require preparation of an EAF, a negative or positive declaration, or an EIS. Any action or class of actions listed as Type II in 617.5 requires no further processing under SEQR. There is no documentation requirement for these actions, although it is recommended that a note be added to the project file indicating that the project was considered under SEQR and met the requirements for a Type II action.

The agency classifying the action must make sure that all aspects of the whole action are included when determining that an action is Type II. Additionally, the applicant or agency working with the action must keep in mind that, although an action is classified as Type II under SEQR, it must still comply with all relevant local laws and ordinances and meet all the criteria or standards for approvals.

3. What do the items on the Type II list mean?

Based on DEC's experience, and on court decisions, the following additional examples are offered to illustrate Type II actions as discussed under 617.5(c).

617.5(c)(1)

> "maintenance or repair involving no substantial changes in an existing structure or facility;"

This allows for the normal cleaning, upkeep and minor repairs to a structure or facility. Painting, repair of damaged wood around a window, retiling a ceiling, repairing a hole in an existing fence, sealing an asphalt parking lot, installing vinyl siding on a house in a historic district, or reshingling a roof would be examples of actions that would fit in this category.

Ordinary home repair, business repair, in-place, in-kind remodeling, or upgrading to meet fire or plumbing codes are not substantial changes, unless the repairs are extensive enough to trigger any of the Type I thresholds. Even if a building is damaged or destroyed by fire, if it is rebuilt in the same footprint, and is comparable in size, scale and intended use to the old structure, it is still not subject to SEQR.

Examples of repair and remodeling that would not exceed a Type II threshold and examples of actions that would be considered a "substantial change" that does exceed the Type II threshold are given below:

- If a school district decided to pave a narrow walkway denuded of vegetation and beaten into the ground by children running for the school bus, the action would not be considered a substantial change. However, paving a 12,000 square foot play area for handball, tennis, or basketball courts **would** be considered a substantial change.
- A commercial building located in a town with a population of 150,000 or fewer was damaged by a tornado. The owner decided to take advantage of a bad situation and knock out the side of the structure that was damaged and build a whole new wing on the building. The plan submitted to the town for approval is for a warehouse area that exceeds 50,000 square feet. This action **would** be a substantial change, and thus subject to SEQR.
- If a waterfront was bulkheaded, and the old wood was rotting, replacing the bulkhead with new wood, of the same length and as close to the old location as possible, would **not** be considered a substantial change. Placing the new bulkhead a sizeable distance from the old bulkhead (for example, several feet seaward), and filling in the area between the old and new bulkheads, **would be** considered a substantial change. Bulkheading an area that had never been bulkheaded before **would** also be considered a substantial change.

617.5(c)(2)

> ". . . replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds in section 617.4 of this Part"

Replacement in kind refers to function, size and footprint. Stick for stick replacement is not needed to qualify as replacement in kind, especially where the changes are required by

current engineering, fire and building codes. Actions such as building ramps as required by the Americans with Disabilities Act, installing new or improved fire escapes, or removal of asbestos shingles would be Type II.

After over twenty years of use, the Alfred E. Smith state office building in Albany needed to be rehabilitated and brought up to current codes. It was initially thought that this action would be classified as Type II because the action included repairs, upgrades and in-kind replacement. However, when the project manager for the New York State Office of General Services looked more closely at the wording of 617.(5)(c)(2), he realized that the action did not satisfy the final provision in the item ". . .unless such action meets or exceeds any of the thresholds in section 617.4 of this part." The scope of the work on this multi-story building far exceeded the threshold in 617.4(b)(6)(v):

> "(6) activities, other than the construction of residential facilities, that meet or exceed any of the following thresholds; . . .
>
> (v) in a city, town or village having a population of more than 150,000 persons, a facility with more than 240,000 square feet of gross floor area;"

Clearly the wording of 617.5(c)(2), combined with 617.4(b)(6)(v), leads us to the conclusion that the action was properly classified as Type I, instead of Type II.

617.5(c)(3)

"agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming;"

Clearing a field to plant crops; construction, maintenance and repair of farm buildings and structures; building of dikes, ditching, or installing drainage piping; or erecting a farm stand would not require SEQR review. However, subdivision of land to sell off as lots would be subject to SEQR.

If a farmer decides to build a home for his son and the son's family, the action is not agricultural in nature, but would be Type II anyway pursuant to 617.5(c)(9), **provided that** local laws did not require a subdivision approval for the new house. If some sort of discretionary approval was needed before the house could be built, the action would no longer be Type II.

617.5(c)(4)

> "re-paving of existing highways not involving the addition of new travel lanes;"

This runs parallel to the "in place, in-kind" replacement of structures. Routine maintenance and paving is not subject to SEQR, but changes or expansions such as the addition of lanes for traffic, a new interchange, or the building of a rest area would need SEQR review.

617.5(c)(5)

> "street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;"

Again, this distinguishes routine recurring actions from new projects. In contrast to routine repair or maintenance, opening streets to install new utility distribution lines SEQR unless the action falls under the description in **617.5(c)(11)** below.

617.5(c)(6)

> "maintenance of existing landscaping or natural growth;"

In a municipal park, routine trimming of trees or replacement of shrubbery that has died would be Type II under this section. In contrast, clear-cutting of a forested area of the park would not fit under the heading of maintenance.

617.5(c)(7)

> "construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities;"

The first place to look for a specific definition of gross floor area is your local code book (town/city/village). **If these local codes have no definition**, DEC provides this clarification: cellar or basement space not used for the main purpose of a non-residential facility is not considered part of the gross square foot area of the facility. However, a basement used as a sales floor, or for office space would be included as part of the gross floor area. The same logic also applies to attic space. Unless explicitly included by local codes, the footprints of structures such as gas pumps and canopies are not included in the definition of gross floor area. The calculations are for the floor area of the building itself.

The primary environmental impacts associated with these types of actions are usually infrastructure-related concerns such as traffic, storm water drainage and sewage disposal; or nuisance issues such as noise, lighting and littering. In communities with site plan review or special use permit requirements, these routine concerns can be managed well under those local review standards, without the need for the additional analysis or authority which an EIS could provide. For communities that have no land use controls, such as zoning or site plan review, these types of small commercial projects usually require only a building permit, which is a ministerial act and already exempt from SEQR.

Another issue with some such applications is the compatibility of the proposed use with existing uses (e.g., whether this fast food facility be constructed adjacent to an existing residential community). This issue should generally be addressed prospectively, under zoning, before an application is received. However, in communities which have not updated their local land use controls to reflect current development patterns, care must be taken to not overextend the SEQR process in an attempt to make up for out-of-date zoning.

Examples that fall in the Type II non-residential construction category are:

- Expansion of a local Elks Lodge facility by 3500 square feet, in a manner and location consistent with local zoning;
- Expansion, in a commercial zone, of a restaurant where the project involves less than 4,000 square feet, exclusive of an outdoor patio for serving patrons in good weather; and the final building meets setback requirements.

Radio and microwave transmission towers or other stand-alone facilities constructed specifically for radio or microwave transmission are specifically **not** included in the exemption for construction of small non-residential structures. However, if a small dish antenna or repeater box is mounted on an existing structure such as a building, radio tower, or tall silo, the action would be Type II.

617.5(c)(8)

> "routine activities of educational institutions, including expansion of existing facilities by less than 10,000 square feet of gross floor area and school closings, but not changes in use related to such closings;"

This section includes changing transportation schedules or policies, changes in curriculum, developing or changing after school activities, changing the school calendar, or transferring students from one school to another. It also includes an expansion of less than 10,000 square feet. This includes construction of new, elevators or storage space; or expansions for new classrooms (typically eight rooms or less), elevators, special facilities for handicapped access, libraries, lunch rooms, special education facilities, computer laboratories, garages, caretaker residences, teacher centers, child-care centers, storage buildings, pole barns, press boxes and greenhouses, etc.

The closure of a school is also included as a Type II action under this item. However, refitting an elementary school building to become a senior center or town hall administration building would not fit under this category. In addition, a school closing with the intention of leasing the building for non-school purposes would not be classified as Type II.

Educational institutions include all schools and libraries chartered and/or registered by the New York State Board of Regents.

617.5(c)(9)

> "construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections as provided in section 617.5(c)(11) and the installation, maintenance and/or upgrade of a drinking water well and a septic system;"

Note that this item is specific to one, two and three-family dwellings on approved lots only. While the size of the project is an important factor in determining applicability of this item, approval of the lot is equally important. This provision does not apply where one or more new lots are being created but are not yet approved. SEQR review is still warranted in those instances.

Where a building lot has already been approved, then even when a single-family, two-family or a three-family residence requires one or more additional approvals, such as site plan approval or zoning variances from a local board, or other permits such as a DEC natural resources permit (freshwater wetlands, tidal wetlands, stream protection, etc.), **no further review under SEQR is required**. This does not mean that the permit or approval(s) can be ignored, nor does it mean that the governmental authority must issue the permit(s). The project must still meet all regulatory standards and be issued the approval(s) or permit(s).

Examples of actions that are classified as Type II by this item are:

- demolition of a small seasonal camp and its replacement by a large permanent home;
- building one, two or three-family homes on a few remaining lots in an older approved subdivision; or
- replacement of a single-family home destroyed by fire with a two-family home of similar dimensions in an area zoned for one or two-family residences.

This provision was added in the 1996 amendments to the SEQR regulations. Over twenty years of experience has shown that these kinds of actions do not have a significant adverse effect on the environment, and the preparation of an EIS will not provide better explanation or understanding of impacts nor provide the reviewing agency with significant additional authority.

The typical impacts associated with the construction of single, two or three family residences are limited to clearing, grading and filling of the site, noise, dust and runoff. These impacts are minor in nature and easily controlled by standard construction techniques. Additional impacts from occupancy of the structure can be from use of pesticides and herbicides for lawn and garden care; and the construction and operation of water supply wells and onsite sanitary systems. These activities for one-, two- and three-family homes seldom create a significant adverse environmental impact. Any of the non-significant impacts that result from the construction of a house are subject to review under other existing local, state and federal regulatory programs, and they can be controlled through these jurisdictions. Proper local land use planning, zoning and subdivision regulations can and do protect readily identifiable unique features from the impacts of inappropriate development.

There have been very few court cases in which an EIS was required for a one, two or three-family dwelling. In reviewing those cases, Department staff found that the decisions turned on whether the proposed projects met DEC, Department of Health or local permit issuance standards; whether the projects complied with local zoning; or a combination of the two. The broader environmental questions were not part of the decision to require an EIS. Additionally, the EISs that were reviewed did not substantively contribute information that added to the lead agency's decision.

617.5(c)(10)

> "construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density;"

The key to this item is that accessory/appurtenant structures must be "minor" ones having a "secondary" use, or facilities adjunct to, or supporting some main use of the facility. The list of appurtenant structures contains examples and is not intended to be complete or exclusive. Other examples of structures within this category are: catwalks, gazebos, swing sets, permanent basketball hoops on poles, hot tubs, skateboard ramps, dog kennels, and cabanas.

617.5(c)(11)

> "extension of utility distribution facilities, including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action on this list;"

If the extension of utility service is functionally dependent on an action on the Type II list, then all parts of the action constitute the whole action and are not subject to SEQR. If the destination of the utility line is a Type II action, it is reasonable that extending utility lines to the structure or facility is also Type II.

This item would not, however, apply to the extension of utility service to larger projects such as a new subdivision undergoing review by a planning board. In these cases, the SEQR review would include all phases or components of the activity consistent with the "whole action" concept of review. Separating the utility extension from the review for the rest of the project would constitute segmentation. If any component of an action being evaluated for applicability of this subsection has aspects that are Type I or unlisted actions, it should be reviewed as a Type I or unlisted action and not classified as Type II under this item.

In addition, this item covers only distribution lines, not transmission lines. High voltage transmission lines (defined as an electric transmission line of a design capacity of 125 kV or more extending a distance of one mile or more, or of 100 kV or more and less than 125 kV, extending a distance of ten miles or more) and gas transmission lines (defined as a gas transmission line extending a distance of 1,000 feet or more to be used to transport fuel gas at pressures of 125 pounds per square inch or more) are reviewed under Article 7 of the Public Service Law, and therefore are not subject to SEQR review. Transmission lines below those thresholds may be subject to SEQR if they require discretionary approvals from any agencies.

617.5(c)(12)

> "granting of individual setback and lot line variances;"

This section covers all variances for setback and lot line requirements including front, side, back, width and depth. In this item, "individual" denotes one project on one lot.

This section does not include use or area variances. A use variance is defined by the New York Planning Federation as "the authorization consistent with New York State Town Law Section 267-b (www.dos.state.ny.us/lgss/townlaw.html#267b) and by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations." For example, a variance to allow a driveway or parking area closer to a side property line than normally allowed would be a Type II. However, a use variance to allow a new business to locate in a residential district would not be allowable.

Area variance is defined in the discussion of section 617.5(c)(13) directly below.

617.5(c)(13)

> "granting of an area variance(s) for a single-family, two-family or three-family residence;"