STATE ENVIRONMENTAL QUALITY REVIEW ACT

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The New York State Environmental Quality Review Act ("SEQRA" or "SEQR"), Environmental Conservation Law ("ECL") Article 8, was enacted in 1975 in order to:

> declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding to the ecological systems, natural, human and community resources important to the people of the state.

ECL §8-0101. SEQRA requires that "[s]ocial, economic and environmental factors shall be considered together in reaching decisions on proposed activities," ECL §8-0103(7), and that public agencies will give "due consideration... to preventing environmental damage." ECL § 8-0103(9). The primary purpose of SEQRA is "to inject environmental considerations directly into governmental decision making." *Matter of Coca–Cola Bottling, Inc. v. Board of Estimate*, 72 N.Y.2d 674, 679, 536 N.Y.S.2d 33, 35 (1988). The legislative intent is clear that "to the fullest extent possible the policies, statutes, regulations and ordinances of the state and its political subdivisions should be interpreted and administered in accordance with the policies set forth in" SEQRA. ECL §8-0103(6).

The heart of SEQRA is ECL §8-0109(4), which requires "agencies" (including state and municipal, boards, agencies and authorities), "[a]s early as possible in the formulation of a proposal for action" to "make an initial determination whether an environmental impact statement need be prepared," and ECL §8-0109(2), which requires all state agencies and municipalities to prepare or cause to be prepared "an environmental impact statement on any action they propose or approve which may have a significant effect on the environment." Regulations set forth at 6 N.Y.C.R.R. Part 617 prescribe the procedures used under SEQRA.

1. Actions. All "actions," including all "projects or physical activities" that are undertaken, funded or approved by an agency, and planning, policy making, and enactment of laws, rules or regulations, 6 N.Y.C.R.R. §617.2(b), are subject to SEQRA. Actions involving federal agencies are subject to SEQRA unless a federal EIS is compiled. 6 N.Y.C.R.R. §617.15.

If an action is classified as a "Type II action," no further SEQRA review is required. 6 N.Y.C.R.R. §§617.3(a), 617.6(a)(1)(I). The list of Type II actions is set forth at 6 N.Y.C.R.R. §617.5(c), and includes 37 categories of actions that are presumed to have only *de minimis* environmental impacts, including maintenance or repair or existing facilities, replacement in kind of existing facilities (below a specified threshold), construction of certain non–residential and educational facilities (below a specified threshold), school closings, agricultural farm management practices, permit renewals, individual setback variances, area variances for one to three-family houses, preliminary feasibility studies, moratoria on land development, judicial proceedings, acts of the Legislature, emergency actions, ministerial acts, certain actions subject to regulation under the Public Service Law or by the Adirondack Park Agency, and numerous other categories.

The list of "Type I actions" is set forth at 6 N.Y.C.R.R. §617.4(b), and includes 11 categories of actions, including the adoption of a new land use plan, rezoning of 25 acres, and the physical alteration of more than 10 acres. "Unlisted actions" are action that are not specifically listed as Type I or Type II. 6 N.Y.C.R.R. §617.2(ak).

2. Environmental Assessment Form. The SEQRA regulations first require completion of an Environmental Assessment Form ("EAF"), which is ordinarily prepared by or for the applicant, and reviewed by a "lead" agency. 6 N.Y.C.R.R. §617.6(a)(2,3). For a "Type I action," use of the lengthy "full EAF" is mandatory. §617.6(a)(2); *Farrington Close Condominium Bd. Of Managers v. Incorporated Village of Southampton*, 205 A.D.2d 623, 626, 613 N.Y.S.2d 257, 259 (2d Dep't 1994). However, unlisted actions only require the "short EAF," although the full EAF may still be required. §617.6(a)(3). A "draft EIS may be treated as an EAF for the purpose of determining significance." 6 N.Y.C.R.R. §617.6(a)(4).

3. Lead Agency. If more than one agency is an "involved agency" which makes a decision on the action, a lead agency may be selected by agreement of the agencies through the "coordinated review process," which is required for Type I actions. 6 N.Y.C.R.R. §617.6(b)(3). If only one is involved, it automatically acts as "lead." §617.6(b)(1). The lead agency function cannot be delegated to an uninvolved agency. *Coca–Cola Bottling v. Board of Estimate*, 72 N.Y.2d 674, 536 N.Y.S.2d 33 (1988). Unlisted actions can, but do not have to go through coordinated review, so each involved agency can conduct its own separate SEQRA review. 6 N.Y.C.R.R. §617.6(b)(4). If involved agencies are included in the designation process, the designation of lead agency is improper. *Ferrari v. Town of Penfield Planning Board*, 181 A.D.2d 149, 585 N.Y.S.2d 925 (4th Dep't 1992).

4. Determination of Significance. The lead agency then makes a "determination of significance" by reviewing the EAF, and deciding whether the proposal "may include the potential for at least one significant adverse environmental impact." §617.7(a)(1); *see West Branch Assoc. v. Planning Board, Town of Ramapo*, 177 A.D.2d 917, 576 N.Y.S.2d 675 (3d Dep't 1991). If so, an environmental impact statement ("EIS") must be prepared. ECL §8-0109(2); 6 N.Y.C.R.R. §617.7(a)(1). If not, the lead agency must make a negative declaration that the project will not have a significant adverse environmental impact. §617.7(b)(2).

In making the determination of significance, the lead agency must:

> (i) consider the action as defined in sections 617.2(b) and 617.3(g) of [the SEQRA regulations];
>
> (ii) review the EAF, the criteria contained in subdivision (c) of this section and any other supporting information to identify the relevant areas of environmental concern;

> (iii) thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant effect on the environment; and
>
> (iv) set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation.

6 N.Y.C.R.R. §617.7(b). Thus, the lead agency "must identify 'the relevant areas of environmental concern' and take a 'hard look' at them." *Merson v. McNally*, 90 N.Y.2d 742, 665 N.Y.S.2d 605, 609 (1997) [*citing Matter of Chemical Specialties Mfrs. Assn. v. Jorling*, 85 N.Y.2d 382, 397, 626 N.Y.S.2d 1 (1995)]; *Kahn v. Pasnik*, 90 N.Y.2d 569, 664 N.Y.S.2d 584 (1997).

The lead agency cannot merely set forth a "conclusory statement, unsupported by empirical or experimental data, scientific authorities or any explanatory information." *Tehan v. Scrivani*, 97 A.D.2d 769, 771, 468 N.Y.S.2d 402, 406 (2d Dep't 1983). A negative declaration is invalid if it was not supported by a written, narrative "reasoned elaboration." *See, e.g., Board of Cooperative Educational Services of Albany-Schoharie-Schenectady-Saratoga Counties v. Town of Colonie*, 268 A.D.2d 838, 702 N.Y.S.2d 219 (3d Dep't 2000); *Group for South Fork, Inc. v. Wines*, 190 A.D.2d 794, 593 N.Y.S.2d 557 (2d Dep't 1993); *West Branch Conservation Ass'n, Inc. v. Planning Board, Town of Ramapo*, 177 A.D.2d 917, 576 N.Y.S.2d 675 (3d Dep't 1991); *Morrell v. New York State Dept. of Environmental Conservation*, 119 A.D.2d 1009, 500 N.Y.S.2d 586 (4th Dep't 1986). Any analysis supporting a negative declaration should be adequately documented, and "should take into account (1) 'the impacts which may reasonably expected to result from the proposed action' 6 NYCRR [§617.7(c)(1)] as compared against the criteria listed in 6 NYCRR [§617.7(c)(1)(I-xii)]." *Fernandez v. Planning Board of Pomona*, 122 A.D.2d 139, 141, 504 N.Y.S.2d 524, 526 (2d Dep't 1986). When determining environmental significance based upon the criteria outlined in 6 N.Y.C.R.R.§617.7(c), the lead agency is responsible for the adequacy of the information contained in the EAF. *Kirk-Astor Drive Neighborhood Ass'n. v. Town Board of Town of Pittsford*, 106 A.D.2d 868, 483 N.Y.S.2d 526 (4th Dep't 1984), *app. dis'd* 66 N.Y.2d 896, 498 N.Y.S.2d 791 (1985); *Matter of LaDelfa v. Village of Mt. Morris*, 213 A.D.2d 1024, 625 N.Y.S.2d 117 (4th Dep't 1995).

"The threshold at which the requirement that an EIS be prepared is triggered relatively low." *Chinese Staff v. City of New York*, 68 N.Y.2d 354, 509 N.Y.S.2d 499 (1986). When a Type I action is involved, the threshold for an EIS is especially low, since Type I actions "are more likely to require the preparation of an EIS" than other actions. 6 N.Y.C.R.R. §617.4(a); *see also Shawangunk Mountain Environmental Association v. Planning Board of Town of Gardiner*, 157 A.D.2d 273, 557 N.Y.S.2d 495 (3d Dep't 1990). Thus, for a "type I action an EIS is presumptively required." *Town of Dickinson v. County of Broome*, 183 A.D.2d 1013, 1014, 583 N.Y.S.2d 637, 638 (3d Dep't 1992); *Kahn v. Pasnik*, 231 A.D.2d 568, 647 N.Y.S.2d 279 (2d Dep't 1996).

A "conditioned negative declaration" can be made, after public comment, if impacts of an unlisted action can be mitigated by conditions, 6 N.Y.C.R.R. §617.7(d), but cannot be used for a Type I action. *Ferrari v. Town of Penfield*, 181 A.D.2d, 149, 585 N.Y.S.2d 925 (4th Dep't 1992); *Shawangunk Mountain Environmental Association v. Planning Board of Town of Gardiner*, 157 A.D.2d 273, 557 N.Y.S.2d 495 (3d Dep't 1990).

5. Cumulative Impacts. SEQRA generally requires the consideration of cumulative environmental impacts of separate actions. *See, e.g., Chinese Staff & Workers Assoc. v. City of New York*, 68 N.Y.2d 359, 509 N.Y.S.2d 499 (1986) (cumulative impact of seven separate luxury apartment buildings on displacement of low−income residents); *Save the Pine Bush v. City of Albany*, 70 N.Y.2d 193, 518 N.Y.S.2d 943 (1987) (cumulative impact of ten separate projects in the Pine Bush area on habitat of an endangered butterfly); *Village of Westbury v. Department of*

Transportation, 75 N.Y.2d 62, 67, 550 N.Y.S.2d 604, 609 (1989) (interchange reconstruction project and road widening were part of the same overall plan to alleviate traffic congestion); *Segal v. Town of Thompson*, 182 A.D.2d 1043, 583 N.Y.S.2d 50 (3d Dep't 1992) (SEQRA review of sewer and water districts had to consider resulting development likely to follow from 800 new homes). While "cumulative impacts" are not defined by SEQRA or its implementing regulations, DEC addresses the issue in *The SEQR Handbook* at page 41:

> **What are the cumulative impacts?**
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> These are impacts on the environment that result from the incremental or increased impact of an action(s) when the impacts of that action are added to other past, present and reasonably foreseeable future actions. Cumulative impacts can result from a single action or a number of individually minor but collectively significant actions taking place over a period of time. Either the impacts or the actions themselves must be related.
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> **When must cumulative impacts be assessed?**
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> Cumulative impacts must be assessed when actions are proposed to or will foreseeably take place simultaneously or sequentially in a way that their combined impacts may be significant. Assessment of cumulative impacts is limited to consideration of probable impacts, not speculative ones.

"[C]onsidering the cumulative effects of related actions insures against stratagems to avoid the required environmental review by breaking up a proposed development into component parts which, individually, do not have sufficient environmental significance." *Stewart Park and Reserve Coalition v. New York State Department of Environmental Conservation*, 157 A.D.2d 1, 10, 555 N.Y.S.2d 481, 486 (3d Dep't 1990). Often, it is difficult to distinguish between segmentation and the failure to address cumulative impacts, and courts often muddle the concepts.

In making the determination of significance, a lead agency must make a positive declaration when presented with "two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria [for a positive declaration] in this subdivision." 6 N.Y.C.R.R. §617.7(c)(1)(xii). Further, when making the determination of significance:

> the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are:
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> (i) included in any long–range plan of which the action under consideration is a part;
>
> (ii) likely to be undertaken as a result thereof; or
>
> (iii) dependent thereon.

6 N.Y.C.R.R. §617.7(c)(2). ECL §8-0109(2) specifically requires that all potential environmental impacts of a project subject to an EIS be considered, including the long-term and short-term effects of the project. Likewise, the SEQRA regulations require that an EIS assess all "reasonably related short-term and long-term impacts, cumulative impacts and other associated environmental impacts." 6 N.Y.C.R.R. §617.9(b)(5)(iii)(a).

However, in *Long Island Pine Barrens Society, Inc. v. Planning Board of the Town of Brookhaven*, 80 N.Y.2d 500, 591 N.Y.S.2d 982 (1993), the Court of Appeals held that it is not necessary to consider cumulative impacts of independent actions that are not part of the same plan. Nonetheless, the lead agency may opt to require an analysis of cumulative impacts of separate actions. *Sprint Spectrum, L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1999) (lead agency could use discretion to decide whether to consider cumulative impacts of applications for separate cell towers in the same town).

6. Segmentation. The SEQRA regulations recognize that "[a]ctions commonly consist of a set of activities or steps," 6 N.Y.C.R.R. §617.3(g)(1), and provide that:

> Considering only a part of segment of an action is contrary to the intent of SEQR. If a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance and any subsequent EIS the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible.

6 N.Y.C.R.R. §617.3(g)(1).

Thus, SEQRA generally prohibits "segmentation," which is defined as "the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance." 6 N.Y.C.R.R. §617.2(ag). *See Sun Company, Inc. v. City of Syracuse Industrial Development Agency*, 209 A.D.2d 34, 625 N.Y.S.2d 371 (4th Dep't 1995), *app. dis'd* 86 N.Y.2d 776, 631 N.Y.S.2d 603 (1995); *Taxpayers Opposed to Floodmart, Ltd., v. City of Hornell Industrial Development Agency*, 212 A.D.2d 958, 624 N.Y.S.2d 689 (4th Dep't 1995). *See also* DEC, *The SEQR Handbook* at 21-22.

Accordingly, "[e]nvironmental review of the entire project is required before 'any significant authorization is granted for a specific proposal.'" *Kirk–Astor Drive Neighborhood Ass'n. v. Town Board of Town of Pittsford*, 106 A.D.2d 868, 869, 483 N.Y.S.2d 526, 528 (4th Dep't 1984), *app. dis'd* 66 N.Y.2d 896, 498 N.Y.S.2d 791 (1985) (project must be reviewed prior to rezoning); *see also Penfield Panorama Area Community, Inc. v. Town of Penfield Planning Bd.*, 253 A.D.2d 342, 688 N.Y.S.2d 848 (4th Dep't 1999) (remediation of pre-existing soil contamination must be reviewed).

Nonetheless, the SEQRA regulations also provide that "[i]f a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance, and any subsequent EIS, the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible." 6 N.Y.C.R.R. §617.3(g)(1). Thus, in *Concerned Citizens for the Environment v. Zagata*, 243 A.D.2d 20, 672 N.Y.S.2d 956 (3d Dep't 1998), *lv. den'd* 92 N.Y.2d 808, 678 N.Y.S.2d 594 (1998), it was not improper to segment review of a solid waste management facility from other portions of an integrated solid waste facility, including an incinerator and a resource recovery facility, since the process was "no less protective of the environment." Where segmentation is allowed, it is not necessary to consider the cumulative impacts of later actions, since such a requirement would "emasculat[e] any concept of segmented review." *Id.*

7. EIS Process. If an EIS is required, the optional "scoping" process is generally used to define the issues to be addressed. 6 N.Y.C.R.R. §617.8. If a positive declaration has been made, a draft EIS must be circulated, public comment allowed for at least 30 days, and a final EIS compiled which addresses public comments. §617.9. The lead agency may require a private applicant to

prepare an EIS. §617.9(a)(1).

The lead agency may, but is not required to, hold a public hearing on the DEIS. 6 N.Y.C.R.R. §617.9(a)(4). If, "on the basis of the draft EIS, and comments made thereon, the lead agency has determined that the action will not have a significant adverse impact on the environment," the EIS process can be aborted, and a negative declaration prepared. 6 N.Y.C.R.R. §617.7(a)(5)(i)(b). Under a recent amendment to the statute, "unless impracticable," both the draft and final EIS should be "posted on a publicly–available Internet website." ECL §8-0109(4,6).

The SEQRA regulations prescribe the basic contents of an EIS, 6 N.Y.C.R.R. §617.9(b), and set procedures for a "generic" EIS, §617.10. In the EIS, the lead agency is required to (1) identify the relevant areas of environmental concern, (2) take a "hard look" at them, and (3) make a "reasoned elaboration" of the basis for its determination. *H.O.M.E.S. v. New York State Urban Development Corp.*, 69 A.D.2d 222, 231-2, 418 N.Y.S.2d 827, 832 (4th Dep't 1979); *Jackson v. New York State Urban Development Corp.*, 67 N.Y.2d 400, 417, 503 N.Y.S.2d 298, 305 (1986).

An EIS must assess "the environmental impact of the proposed action including short-term and long–term effects," "any adverse environmental effects," "any irreversible and irretrievable commitments of resources," and "growth inducing aspects" of the proposed action. ECL §8-0109(2). The DEIS cannot defer resolution of mitigation measures, "because it shields the [mitigation] plan from public scrutiny." *Matter of Penfield Panorama v. Penfield Planning Board Area Community, Inc.*, 253 A.D.2d 342, 349, 688 N.Y.S.2d 848, 853 (4th Dep't 1999); *see also Town of Red Hook v. Dutchess County Resource Recovery Agency*, 146 Misc.2d 723, 552 N.Y.S.2d 191 (Sup. Ct. Dutchess Co. 1990).

An EIS must also contain an evaluation of "alternatives to the proposed action," ECL §8-0109(2). The analysis of alternatives has been called the "driving spirit" of the SEQRA process. *Citizens for Preservation of Windsor Terrace v. Smith*, 130 Misc.2d 967, 498 N.Y.S.2d 684 (Sup. Ct. Kings Co. 1986), *rev. on other grounds* 122 A.D.2d 827, 505 N.Y.S.2d 896 (1st Dep't 1986). The "range of alternatives must include the no-action alternative," and "may also include, as appropriate, alternative: (a) sites; (b) technology; (c) scale or magnitude; (d) design; (e) timing; (f) use; and (g) types of action." 6 N.Y.C.R.R. §617.9(b)(5)(v). Under the "rule of reason," an agency need only consider a "reasonable range of alternatives to the specific project." *Town of Dryden v. Tompkins Co. Bd. of Supervisors*, 78 N.Y.2d 331, 333-4, 574 N.Y.S.2d 930 (1991).

8. Findings. Neither the lead agency, nor any other involved agency, can take action until the public is given at least 10 days to consider the final EIS, and findings are made. 6 N.Y.C.R.R. §617.11(a,c). The findings must:

(1) consider relevant environmental impacts, facts and conclusions disclosed in the final EIS;

(2) weigh and balance relevant environmental impacts with social, economic and other considerations;

(3) provide a rationale for the agency's decision;

(4) certify that the requirements of [SEQRA] have been met;

(5) certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental effects to the maximum

> extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

6 N.Y.C.R.R. §617.11(d); *see also* ECL §8-0109(8).

This is the "teeth" of SEQRA, and the only provision which clearly takes it beyond a mere environmental full disclosure procedure, and requires substantive results, including mitigation measures. Thus, in making findings, an agency must:

> consider fully the environmental consequences revealed in an EIS and to take these consequences into account when reaching a decision whether or not to approve an action. Moreover, the statute authorizes the approving agency to implement measures designed to mitigate the adverse environmental impacts identified, so long as these measures are reasonable in scope and are reasonably related to the adverse impacts identified in the EIS.

Town of Henrietta v. DEC, 76 A.D.2d 215, 227, 430 N.Y.S.2d 440, 449 (4th Dep't 1980).

9. Timing of SEQRA Review. SEQRA requires that "consideration must be given at the earliest possible time (ECL §8-0109(a)) to the impacts which may be reasonably expected to result from any proposed action." *Kirk–Astor Drive Neighborhood Assoc. v. Town of Pittsford*, 106 A.D.2d 868, 483 N.Y.S.2d 526, 528 (4th Dep't 1984), *app. dis'd* 66 N.Y.2d 896, 498 N.Y.S.2d 791 (1985). The EIS is an "environmental 'alarm bell' whose purpose is to alert responsible public officials to environmental changes before they have reached ecological points of no return." *Town of Henrietta v. DEC*, 76 A.D.2d 215, 220, 430 N.Y.S.2d 440, 448 (4th Dep't 1980).

"No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR." 6 N.Y.C.R.R. §617.3(a). The "purpose of SEQRA is to assure the preparation and availability of an environmental impact statement at the time any significant authorization is granted for a specific proposal." *Tri–County Taxpayers Assoc. v. Town Board of Queensbury*, 55 N.Y.2d 41, 46-7, 447 N.Y.S.2d 699, 701 (1982). That way, "a decision maker [will] balance the benefits of a proposed project against its unavoidable environmental risks in determining whether to approve the project." *Town of Henrietta v. DEC*, 76 A.D.2d 215, 430 N.Y.S.2d 440, 447 (4th Dep't 1980); *Briody v. Village of Lewiston*, 188 A.D.2d 1017, 591 N.Y.S.2d 1017 (4th Dep't 1992).

"[C]ompliance with SEQRA must occur before the agency acts; after-the-fact compliance is of no avail." *DiVeronica v. Arsenault*, 124 A.D.2d 442, 507 N.Y.S.2d 541, 543 (3d Dep't 1986). Thus, before an agency can make a "significant authorization" for an "action," it must have before it either an accepted FEIS and findings, or else a valid negative declaration that the proposal will not have a significant environmental impact. *Devitt v. Heimbach*, 58 N.Y.2d 925, 460 N.Y.S.2d 512 (1983). Otherwise, the action is invalid. *Tri-County Taxpayers Assoc. v. Town Board of Queensbury*, 55 N.Y.2d 41, 447 N.Y.S.2d 699 (1982); *Briody v. Village of Lewiston*, 188 A.D.2d 1017, 591 N.Y.S.2d 1017 (4th Dep't 1992), *app. den'd* 81 N.Y.2d 710, 600 N.Y.S.2d 197 (1993).

"Significant authorizations" required to be preceded by full SEQRA compliance have included such things as permit approvals, *City of Schenectady v. Flacke*, 100 A.D.2d 349, 475 N.Y.S.2d 506 (3d Dep't 1984), *app. den'd* 63 N.Y.2d 603, 480 N.Y.S.2d 1025 (1984), a referendum to approve a special district, *Tri–County Taxpayers Assoc. v. Town Board of Queensbury*, 55 N.Y.2d 41, 447 N.Y.S.2d 699 (1982), and an application for federal funding, *Bardon v. Town of North*

Dansville, 134 Misc.2d 927, 513 N.Y.S.2d 584 (Sup. Ct. Livingston Co. 1987).

Furthermore, an application for a permit or funding is not complete until either a negative declaration is made, or a draft EIS is accepted. 6 N.Y.C.R.R. §617.3(c). "When the draft EIS is accepted, the SEQR process will run concurrently with other procedures relating to the review and approval of the action, if reasonable time is provided for preparation, review and public hearing with respect to the draft EIS." 6 N.Y.C.R.R. §617.3(c)(2).

10. Notice Requirements. The SEQRA regulations also include a variety of notice and filing requirements, 6 N.Y.C.R.R. §617.12. "Notice of a Type I negative declaration, conditioned negative declaration, positive declaration and completion of an EIS must be published in the *Environmental Notice Bulletin*." 6 N.Y.C.R.R. §617.12(c)(1). The *ENB* can be found on the DEC web site at www.dec.ny.gov/enb/enb.html but is not available in hard print anymore. In addition, "[n]otice of a negative declaration must be incorporated once into any other subsequent notice required by law." 6 N.Y.C.R.R. §617.12(c).

While notice of a public hearing on a DEIS must be published "at least 14 days in advance of the hearing date, in a newspaper of general circulation in the area of the potential impacts of the action," 6 N.Y.C.R.R. §617.12(c)(2), there is no requirement for publication in a local newspaper if the lead agency elects not to have a public hearing.

11. Judicial Review. Compliance with SEQRA is subject to review by a special proceeding under CPLR Article 78, which is generally governed by the four-month statute of limitations set forth at CPLR §217. *Save the Pine Bush v. City of Albany*, 70 N.Y.2d 193, 518 N.Y.S.2d 943 (1987). In many cases, suit must be brought sooner if a shorter statute of limitations is applicable, such as 30 days under the Town or Village Law if a local planning or zoning board is involved, or a DEC wetlands permit is challenged. *See, e.g., Purchase Environmental Protective Association, Inc. v. Town Board of Town/Village of Harrison,* 207 A.D.2d 351, 615 N.Y.S.2d 444 (2d Dep't 1994).

Overruling previous case law, in 2003 the Court of Appeals ruled that the limitations period will normally run from the time of the SEQRA determination, rather than the later substantive determination. *Stop–the–Barge v. Cahill*, 1 N.Y.3d 218, 771 N.Y.S.2d 40 (2003). However, the issue is still very cloudy, and there is no "bright line" rule. In *Matter of Eadie v. Town Bd. of Town of N. Greenbush,* 7 N.Y.3d 306, 821 N.Y.S.2d 142 (2006), the statute of limitations ran from the approval of rezoning, and not an earlier SEQRA findings statement. However, the Court of Appeals noted a gaping exception to this logic:

> This does not mean that, in every case where a SEQRA process precedes a rezoning, the statute of limitations runs from the latter event, for in some cases it may be the SEQRA process, not the rezoning, that inflicts the injury of which the petitioner complains. This might be a different case if, for example, the Galloglys or others were contending that mitigation measures required by the final GEIS and adopted in the Findings Statement unlawfully burdened their right to develop their property. In that hypothetical case, the injury complained of would not be a consequence of the rezoning, but of the SEQRA process, and it would make little sense either to require or to permit the person injured to await the enactment of zoning changes before bringing a proceeding. But that is not the case before us: these petitioners are complaining about the zoning change.

7 N.Y.3d 306, 317, 821 N.Y.S.2d 142, 147. Thus, a petitioner is on shaky ground if they do not assume that the statute runs from the SEQRA determination, and that any short time limitations period (like a 30-day limitations period for zoning and planning boards) applies.

The courts mandate "literal" or "strict compliance" with the SEQRA process, and "substantial compliance" has been held insufficient. *King v. Saratoga Board of Supervisors*, 89 N.Y.2d 341, 653 N.Y.S.2d 233 (1996); *Taxpayers Opposed To Floodmart, Ltd. v. City of Hornell Industrial Development Agency*, 212 A.D.2d 958, 624 N.Y.S.2d 689, 690 (4th Dep't 1995), *stay vac'd* 85 N.Y.2d 961, 628 N.Y.S.2d 48 (1995), *app. dis'd* 85 N.Y.2d 812, 631 N.Y.S.2d 289 (1995); *Matter of West Branch Conservation Ass'n v. Planning Bd. of the Town of Ramapo*, 177 A.D.2d 917, 576 N.Y.S.2d 675, 677 (3d Dep't 1991).

However, judicial review of the content of the EIS and other "substantive obligations under SEQRA must be viewed in light of a rule of reason. 'Not every conceivable environmental impact, mitigating measure or alternative must be identified and addressed before an FEIS will satisfy the substantive requirements of SEQRA.'" *Jackson v. New York State Urban Development Corp.*, 67 N.Y.2d 400, 417, 503 N.Y.S.2d 298, 305 (1986); *Matter of Eadie v. Town Bd. of Town of N. Greenbush*, 7 N.Y.3d 306, 821 N.Y.S.2d 142 (2006). Further, there need not be "scientific unanimity" with regard to the conclusions reached. *Schodack Concerned Citizens v. Town Board of Schodack*, 148 A.D.2d 130, 134, 544 N.Y.S.2d 49, 51 (3d Dep't 1989), *app. den'd* 75 N.Y.2d 701, 551 N.Y.S.2d 905 (1989).

Under the "broad rule of standing," *Douglaston Civic Association, Inc. v. Galvin*, 36 N.Y.2d 1, 6, 364 N.Y.S.2d 830, 834 (1974), where citizens "are within the 'zone of interest' protected" by a statute, they have standing to bring suit, because it is desirable that environmental disputes be resolved on their merits rather than by preclusive, restrictive standing rules." *Ecumenical Task Force of Niagara Frontier, Inc. v. Task Force of Love Canal Area Revitalization Agency*, 179 A.D.2d 261, 265, 583 N.Y.S.2d 859 (4th Dep't 1992), *app. dis'd*. 80 N.Y.2d 758 (1992). Thus, nearby residents who will be impacted by a project will have standing, *Steele v. Town of Salem Planning Board*, 200 A.D.2d 870, 606 N.Y.S.2d 810 (3d Dep't 1994), and adjoining landowners are automatically presumed to have standing. *Crady v. Newcomb*, 142 A.D.2d 940, 530 N.Y.S.2d 365 (4th Dep't 1988); *Karasz v. Wallace*, 133 Misc.2d 520, 507 N.Y.S.2d 365 (Sup. Ct. Saratoga Co. 1986). However, if a petitioner's only interest in a case is economic and not environmental, he or she does not have standing to bring a SEQRA challenge. *Society of Plastics Industry, Inc. v. County of Suffolk*, 77 N.Y.2d 761, 773, 570 N.Y.S.2d 778, 785 (1991).

If an organization brings suit, at least one member must have standing in their own right, the interests it asserts must be "germane to its purposes," and it must be unnecessary to join individual petitioners. *Society of Plastics Industry, Inc. v. County of Suffolk*, 77 N.Y.2d 761, 773, 570 N.Y.S.2d 778, 785 (1991). An unincorporated association has the capacity to sue in the name of its president or treasurer. General Associations Law §12.