



## **New York Drinking Water State Revolving Fund STATE ENVIRONMENTAL REVIEW REQUIREMENTS**

### **State Environmental Review Process (SERP)**

This guidance sets forth the Drinking Water State Revolving Fund (**DWSRF**) environmental impact review requirements, referred to as the **SERP**, and how they relate to the State Environmental Quality Review Act (**SEQR**). **SERP** must be followed in order to qualify for DWSRF financing. By describing what you need to do to comply with SERP, the environmental impact review process should be more effective.

This guidance does not provide a detailed explanation of SEQR. SEQR and the underlying State regulations can be found in Title 6, Part 617 of New York State Code of Rules and Regulations (6 NYCRR Part 617).

SEQR/SERP is an integral part of the planning and design phases of a project, and should identify regulatory approvals and permits that are needed to construct and/or operate the project. The NYS Environmental Facilities Corporation (**EFC**) understands that complying with SERP can involve considerable time, effort and expense. Unfamiliar jargon related to SEQR and SERP (some helpful definitions are provided at the end of this guidance) and uncertainty about the procedures can cause confusion or delay in assessing environmental impacts.

Please contact EFC early in the development of a project for any assistance.

Generally, the State Environmental Review Process (**SERP**) requires you to conduct a review consistent with: (1) either a Type I or Type II (excluded) action under SEQR, and (2) a review of Section 14.09 of the NYS Parks, Recreation and Historic Preservation Law, which is referred to as a State Historic Preservation Office (**SHPO**) review.

If you are a non-municipal applicant, you will need to identify a municipal entity to conduct the SEQR/SERP review on your behalf.

### **SERP – TIER II REQUIREMENTS SPECIFIC TO THE DWSRF PROGRAM**

As with any project, you will need to comply with the requirements of SEQR, but if you conduct your SEQR review in certain ways, you will also meet the requirements of SERP. Be aware, however, that there are ways to comply with SEQR that will not result in compliance with SERP (see below).

To comply with **SERP**, projects must be properly classified in accordance with SEQR and documented as:

- a Type I action,
- an Unlisted action, which **must** be treated as a Type I action under SEQR, or
- a Type II action.

**All actions** need to be the subject of a **SHPO** review (see below) in order to comply with SERP.



### **Type I** actions or **Unlisted** actions:

To comply with SERP, these actions need to be the subject of a **Coordinated Review** by a properly established **Lead Agency**, and a **Full Environmental Assessment Form (EAF)**. SERP does not allow use of the **Short EAF**, conducting **Uncoordinated Reviews**, or the issuance of a **Conditioned Negative Declaration** and requires publication of any **Negative Declaration** issued by the lead agency to be published in the Environmental Notice Bulletin (ENB).

### **Type II** actions:

As defined by SEQR, meet the initial requirements of SERP. You need to document that the project has been declared a Type II action. You will need to submit the documentation generated by the appropriate SEQR review as well as the results of the **SHPO** review (see below) to the NYS Department of Health (**DOH**), Bureau of Water Supply Protection, Empire State Plaza, Corning Tower Rm. 1135, Albany, NY 12237. SERP requires that the DOH certify to EFC that the DWSRF applicant has complied with SERP. EFC will solicit this SERP Certification on behalf of the DWSRF applicant, **but** the certification cannot be issued if the applicant does not produce the appropriate SEQR/SERP documentation.

### **Positive Declarations (of Potential Adverse Environmental Impacts)**

In certain circumstances, a **Lead Agency** will determine that the project may have the potential for a significant adverse impact on the environment and issue a **Positive Declaration** as defined by SEQR. An environmental impact statement (EIS) will then need to be prepared. This does not cause the project to be ineligible for DWSRF financing, but the documentation needed to show SEQR/SERP compliance is beyond the scope of this guidance. Typically, the NYS Department of Environmental Conservation (**DEC**) Regional Permit Administrator as well as the DOH will be active participants in the environmental impact review in these situations. DWSRF applicants and their consultants are urged to seek project specific guidance from EFC and DOH staff early and as needed throughout the process.

### **SHPO - HISTORIC PRESERVATION AND CULTURAL RESOURCE REQUIREMENTS APPLICABLE TO DWSRF FINANCED PROJECTS**

**Section 14.09** of the NYS Parks, Recreation and Historic Preservation Law requires that publicly funded projects be reviewed for potential impacts on historic properties and resources. National Historical Preservation Act of 1966 (**NHPA**) **Section 106** review is required for projects that involve federal permits or federal co-funding sources in connection with the project. These reviews are conducted by the State Historic Preservation Office (**SHPO**), the Historic Preservation Field Services Bureau of the NYS Office of Parks, Recreation and Historic Preservation (**OPRHP**).

You will need to solicit a letter from OPRHP indicating that a suitable SHPO review has been initiated or completed. A copy of the OPRHP letter needs to be provided to EFC as part of an application for DWSRF financing. **OPRHP** may be an **Interested** or **Involved Agency** under SEQR. The SHPO review required by Section 14.09 of the NYS Parks, Recreation and Historic Preservation Law' or where applicable, SHPO review pursuant to **Section 106 of the NHPA**, needs to be performed in order to comply with SERP.

DWSRF funds will not be released for construction costs until OPRHP indicates that the SHPO review is completed and approved.



Included as part of the paper version of the complete DWSRF application package, or available electronically as a stand-alone form on the EFC website, is the OPRHP Project Review Checklist. Use of this form is not a DWSRF requirement. It is provided as a convenience to assist DWSRF applicants with initiating the SHPO review process.

## **OTHER CONSIDERATIONS:**

### **Municipalities Located Within the Adirondack Park**

A municipality located within the Adirondack Park must coordinate its environmental review with the **Adirondack Park Agency (APA)**. All projects located within the Adirondack Park are subject to APA environmental review requirements, even if the project is classified as a **Type II** action under **SEQR**. A municipality needs to complete the APA review process, and submit documentation of this review to the DOH and EFC.

Please contact the New York State Adirondack Park Agency at (518) 891-4050 or [www.apa.state.ny.us](http://www.apa.state.ny.us) to learn what must be done to comply with its requirements.

DWSRF funds will not be released for construction costs until the APA indicates that the review is completed and project approved. Please also be aware of the requirements of Local Finance Law, Section 104.10 as to the issuance of debt by towns located within the Adirondack Park.

### **Agricultural District Review Requirements Applicable To DWSRF Financed Projects**

Article 25-AA of NYS Agriculture and Markets Law provides for the creation of Agricultural Districts, and sets forth a process to assess, identify and address the impacts of utility projects, such as water or sewer projects, on agricultural resources. If an Agricultural District is within a project area, the process set forth in this law must be followed. In those cases, the NYS Department of Agriculture and Markets (Ag&Mkts) and the appropriate County Agricultural and Farmland Protection Board should be identified as **Involved Agencies** under SEQR.

If applicable, you will need to demonstrate compliance with these agricultural district review requirements. Such compliance should be specific to the stage of project development and the purpose for which DWSRF financing is being sought. See Agriculture and Markets Law, Section 305(4).

DWSRF funds will not be released for construction costs until EFC receives certification that the review is complete and deemed accepted by Ag&Mkts.

## **SUGGESTIONS FOR APPLICANTS AND CONSULTANTS**

### **A. Early Contact with DWSRF Program Staff and the DOH at the NYS DOH Bureau of Water Supply Protection**

The DOH is responsible for the environmental impact review. The DOH can guide DWSRF applicants through project-specific requirements, identify permits which may be required, arrange meetings with staff to coordinate interdisciplinary reviews, and facilitate sharing of documents and information. Early contact with the DOH will benefit your project review and help EFC timely obtain the SERP certification in a timely manner. DWSRF applicants should also contact EFC staff as soon as project planning begins to discuss the DWSRF program requirements.



**B. Classify the Project (the Action) Pursuant to SEQR and Review the Classification with the DOH**

In almost all cases, a municipality will be the SEQR Lead Agency. The municipality, as Lead Agency, needs to ascertain how SEQR applies to the project to be financed through the DWSRF. Discussing the classification with the DOH can help avoid problems with misclassification of the project.

**C. Complete the Appropriate Environmental Review Process/SERP**

**Type I and Unlisted Actions** – to comply with SERP, the following procedures apply:

- The municipality solicits comments from Involved Agencies and establishes itself as **Lead Agency**;
- The **Full Environmental Assessment Form (EAF)** needs to be completed;
- The **Coordinated Review** process needs to be undertaken;
- If the project is located within the Adirondack Park, you may need APA approval;
- If the project includes an agricultural district, you may need to conduct a review pursuant to Agriculture and Markets Law, Section 305(4);
- Filing, publication and distribution of documents must follow the requirements applicable to a **Type I** action;
- Any determination of adverse environmental impact (referred to as either a **Negative Declaration** or a **Positive Declaration**) needs to be supported with reasons and then published in the DEC Environmental Notice Bulletin (ENB);
- For treatment works projects that receive a Positive Declaration, the lead agency is required to conduct a public hearing.
- The applicant requests and obtains a letter from OPRHP regarding the **SHPO** review, which can be obtained simultaneously with the environmental review or whenever convenient in the process; and
- All SERP documentation needs to be submitted to DOH or EFC in order for EFC to be able to obtain a SERP Certification on your behalf.

**Type II Actions** – to comply with SERP, the following procedures apply:

- The applicant classifies the project as a **Type II** action and adopts a resolution citing the specific SEQR Type II regulatory exemption pursuant to 6 NYCRR Section 617.5(c);
- The applicant requests and obtains a letter from OPRHP regarding the **SHPO** review, which can be obtained simultaneously with the environmental review or whenever convenient in the process;
- If the project is located within the Adirondack Park, you may need APA approval;
- All SERP documentation needs to be submitted to DOH or EFC in order for EFC to be able to obtain a SERP Certification on your behalf.



## TIPS FOR MUNICIPALITIES AND CONSULTANTS:

1. Use the list of regulatory permits and approvals shown in [Item D, page 2](#), of the DWSRF Application Form, along with Governmental Approvals. Funding or Sponsorship identified in Part 1 of the Full EAF, to properly identify all Involved Agencies.
2. Include the DWSRF project identification number, if one has been assigned, on all SEQR and regulatory correspondence.
3. Include information that is needed for environmental impact reviews in the preliminary engineering report for the project. If the project is not a **Type II** action, you might want to consider preparing Part 1 of the **Full EAF** and a map detailing the project location suitable for conducting a **Coordinated Review** in conjunction with the engineering report.
4. Early in the process, begin to secure documentation needed to comply with certain regulatory issues, particularly **SHPO** and **Agricultural District** reviews. It is very helpful to cover these issues in the scope of the project's preliminary engineering report.
5. Send a complete set of materials documenting the SEQR/SERP process to the DOH and EFC staff associated with the project.
6. The Full EAF has a signature line at the end of Part 1. Be sure it is properly signed and dated. The date of the signature at the end of Part 1 should be signed prior to distribution as part of the Lead Agency solicitation.
7. At the same time that a notice of intent to be **Lead Agency** is issued, specifically request each **Involved Agency** to provide written comments as to permits and other approvals.
8. Document the SEQR/SERP proceedings with:
  - A copy of the resolution by the municipality classifying the action;
  - A copy of the notice of intent to be **Lead Agency** sent to all **Involved Agencies**;
  - A copy of the map and **Full EAF** (must complete Parts 1, 2 and 3) used in the SEQR/SERP review;
  - Prepare a written determination of significance for any impacts identified as moderate-to-large in Part 2 of the **EAF**.
  - A copy of the **Negative Declaration** or **Positive Declaration** with supporting justification;
  - A copy of correspondence from **Involved Agencies** regarding the status of each permit or regulatory authority vested with it; and
  - A copy of the **ENB** publication of the Notice of Negative or Positive Declaration.
9. Follow up routinely with DOH, EFC, and Involved Agency staff so they are aware of your needs and the status of your project.

## FOR MORE INFORMATION

### A. For Additional Information and Assistance with Environmental Impact Reviews and Regulatory Permits

Please contact the DOH: Michael J. Montysko, P.E., Chief, Design Section, NYSDOH, Bureau of Water Supply Protection, Empire State Plaza, Corning Tower Rm. 1135, Albany, NY 12237, at



(518) 402-7676 or call the DOH toll-free number at (800) 458-1158 (from within New York State only).

## B. For General DWSRF Information

Please contact EFC's SRF Program Services Coordinator at (518) 402-7396.

**RESOURCES:** The following are **attached** as an aid to you in your environmental review:

- List of Permitting Agencies and Potential Permits
- List of Potentially Involved Agencies

## OTHER RESOURCES:

- NYS DEC SEQR web page – [www.dec.ny.gov/permits/357.html](http://www.dec.ny.gov/permits/357.html)
- NYS DEC SEQR Handbook – Third Edition – Topics presented in a Q&A format and addresses common questions that arise during the process of applying SEQR (can be obtained at <http://www.dec.ny.gov/permits/6188.html> )
- The SEQR Cookbook - A Step by Step Discussion of the Basic SEQR Process can be obtained at: [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/cookbook1.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/cookbook1.pdf))
- The Environmental Assessment Form (EAF) Workbooks (can be obtained at: <http://www.dec.ny.gov/permits/90125.html> ).

## DEFINITIONS AND ACRONYMS (definitions may be more detailed in 6 NYCRR Part 617)

**Adirondack Park Agency (APA)** – the State agency charged with various regulatory and planning responsibilities in the Adirondack Park. APA has authority to perform its own environmental review process in place of SEQR.

**Coordinated Review** – a process by which the Lead Agency seeks to identify any potentially significant environmental impacts relative to a project with input from all Involved Agencies within a defined process and timetable. It is through this process that a municipality establishes itself as Lead Agency and eventually issues a determination of significance.

**DOH, or Department of Health** – the State department responsible for reviewing SEQR/SERP compliance and certifying SEQR reviews as meeting SERP requirements for DWSRF financings.

**Environmental Notice Bulletin, (ENB)** – the weekly publication of DEC published pursuant to section 3-0306 of the Environmental Conservation Law, and accessible on DEC's website at <http://www.dec.ny.gov/enb/enb.html> .

**Interested Agency** – any agency that lacks the jurisdiction to fund, approve or directly undertake an action but wishes to participate in the review process because of its specific expertise or concern about the proposed action. An "interested agency" has the same ability to participate in the review process as a member of the public.



**Involved Agency** – any agency with jurisdiction by law to fund, approve or undertake the proposed action. If an agency will ultimately make a discretionary decision to fund, approve or undertake an action, then it is an "involved agency", notwithstanding that it has not received an application for funding or approval at the time the SEQR process is commenced. The lead agency is also an "involved agency".

**Lead Agency** – the agency responsible for undertaking, funding or approving an action, and therefore responsible for determining the environmental significance of a project, and completing SEQR review procedures. In most cases, the municipality sponsoring a DWSRF project serves as Lead Agency.

**Negative Declaration** – a written determination by a Lead Agency that the implementation of the action as proposed will not result in any significant adverse environmental impacts. Under SEQR, a Negative Declaration may also be a Conditioned Negative Declaration as defined in subdivision 617.2(h), **but** a Conditioned Negative Declaration does **not** meet the requirements of SERP. Negative declarations must be prepared and properly supported with reasons for the determination, filed and published in accordance with sections 617.7 and 617.12 of 6 NYCRR Part 617.

**OPRHP, or NYS Office of Parks, Recreation and Historic Preservation** – the NYS department charged with regulating impacts of actions on historic and cultural resources; often used interchangeably with SHPO.

**Positive Declaration** – a written statement prepared by the lead agency indicating that implementation of the action as proposed may have a significant adverse impact on the environment and that an environmental impact statement will be required. Positive declarations must be prepared, filed and published in accordance with sections 617.7 and 617.12 of 6 NYCRR Part 617.

**RPA (Regional Permit Administrator)** – a staff member of the NYS DEC responsible for coordinating the issue of various DEC permit programs, providing DEC representation in SEQR reviews, and certifying SEQR reviews as meeting SERP requirements for CWSRF financings.

**SEQR, or State Environmental Quality Review Act** – the law which requires all state and local government agencies to assess the environmental significance of all actions they have discretion to approve, fund or directly undertake. SEQR requires the agencies to balance the environmental impacts with social and economic factors when deciding to approve or undertake an action. See [6 NYCRR Part 617 State Environmental Quality Review \(SEQR\)](#), Environmental Conservation Law Sections 3-0301(1)(b), 3-0301(2)(m) and 8-0113.

**SERP, or State Environmental Review Process** – the pathway of specific qualifying SEQR actions, and its documentation, and regulatory approvals necessary to meet SRF financing requirements.

**SHPO, or State Historic Preservation Office** – the office or process that evaluates the potential impact of a project on historic or cultural resources. SHPO is part of OPRHP; the acronym is often used interchangeably with OPRHP.

**Type I Action** – a proposed action or project directly undertaken, funded or approved by an agency that is more likely to require the preparation of an environmental impact statement (EIS) than Unlisted actions or one with a significant potential for an adverse environmental impact. See 6 NYCRR 617.4.

**Type II Action** – a proposed action which has been found categorically to not have significant adverse impacts on the environment, OR actions that have been statutorily exempted from SEQR review. See 6 NYCRR 617.5.



***Uncoordinated Review*** – the review conducted by a Lead Agency for Unlisted Actions involving more than one agency. This review does **not** meet the requirements of SERP.

***Unlisted Action*** – an action not identified as a Type I or Type II action.

## Attachments:

Attachment I – List of Permitting Agencies and Potential Permits

Attachment II - List of Potentially Involved Agencies



**Attachment I**  
**List of Permitting Agencies and Potential Permits**



## Permitting Agencies and Potential Permits

Permitting Agency	Applicable Statute and/or Regulations	Activity Covered
<u>Federal</u>		
US ACOE	Section 404*	Placement of dredged or fill material in waters of the <u>US (stream crossings/wetlands)</u> .
<u>US FWS</u>	<u>Endangered Species Act</u>	Construction activities potentially affecting listed or <u>proposed threatened or endangered species</u> .
US EPA	Sole Source Aquifer	Construction activities potentially impacting the water quality of an EPA designated Sole Source Aquifer
<u>New York State</u>		
NYS DEC	Section 401 Certification * (Clean Water Act)	401 water quality certification for activities permitted by the federal government potentially affecting State water quality standards
NYS DEC	Freshwater Wetlands * (6 NYCRR Parts 663-664)	Construction activities potentially affecting State regulated wetlands.
NYS DEC	SPDES (Article 17, Titles 7, and 8 & Article 70 of the Environmental Conservation Law)	General permit (GP-93-06) for storm water discharges from construction activities. Preparation of storm water pollution prevention plan (SWPPP).
NYS DEC	Protection of Waters (6 NYCRR Part 608)	Disturbances to streams and other waters.
NYS DEC	Water Supply Permit (6 NYCRR Part 601)	Potable water supply components.
NYS OPRHP	State and Federal Preservation Laws (9 NYCRR 428) (36 CFR 800)	Activities affecting historic, architectural, archaeological, or cultural resources.
NYS DOH	Water Supply Plan Approval (10 NYCRR Part 5)	Potable water supply facilities.
NYS DOT	17 NYCRR Parts 126 and 131	Work within State highway ROWs.
NYS DOS	Executive Law, Article 42 19 NYCRR Part 600 6 NYCRR Part 617	Activities affecting coastal zone management areas.
NYS AG & MKTS	Notice of Intent to Undertake an Action within An Agricultural District (Article 25AA of the NYS Agriculture & Markets Law, Section 305(4), 1 NYCRR Part 371)	Activities in agricultural districts (including options and easements).
<u>Local</u>		
County DOH	Water Supply Plans	Approval of water supply plans.
City/County/Towns	Highway Permit	Work within city/county/town highway ROWs.



US ACOE – United States Army Corps of Engineers

US FWS – United States Fish & Wildlife Service

NYS DEC – New York State Department of Environmental Conservation

NYS OPRHP – New York State Office of Parks, Recreation & Historic Preservation

NYS DOH – New York State Department of Health

NYS AG & MKTS – New York State Department of Agriculture & Markets

NYS DOS – New York State Department of State

NYS DOT – New York State Department of Transportation

\* Denotes NYS DEC & US ACOE Joint Application for Permit



## **Attachment II List of Potentially Involved Agencies**

## List of Potentially Involved Agencies

### Federal Agencies

United States Army Corps of Engineers  
United States Fish & Wildlife Service  
United States Environmental Protection Agency, Region II  
Marine & Wetland Protection Branch  
Environmental Impact Branch  
United States Department of Agriculture  
Soil and Water Conservation District  
National Marine Fisheries Service  
Federal Emergency Management Agency  
National Marine Fishing Service

### New York State Agencies

Department of Agriculture and Markets  
Department of Environmental Conservation  
Environmental Facilities Corporation  
Department of Health  
Department of Transportation  
Office of Parks, Recreation and Historic Preservation  
State Thruway Authority  
State Public Service Commission  
Adirondack Park Agency  
Office of the State Comptroller  
Department of State

### County Agencies

Appropriate County Officials/Agencies  
(e.g., County Health Department, County Legislature, County Planning Department)

### Local Agencies

Appropriate Municipal Officials/Agencies  
(e.g., Town Supervisor, Town Manager, City Planning Office)