Cullen | Dykman

NYSDEC Adopts SEQR Amendments

July 1, 2018

On June 27, 2018, the New York Department of Environmental Conservation ("DEC") adopted amendments to the regulations implementing the New York State Environmental Quality Review Act ("SEQR").

Notable changes include the following:

Type I Actions

The rule lowers the Type I thresholds associated with certain residential developments. The construction of new residential units that will be connected to existing community or public water and sewerage systems that meet or exceed the following thresholds are now classified as Type I actions: In a city, town, or village having a population of (i) 150,000 persons or less, 200 units (previously 250 units); (ii) greater than 150,000 persons but less than 1,000,000 persons, 500 units (previously 1,000 units); and (iii) greater than 1,000,000 persons, 1,000 units (previously 2,500 units) .

The rule also includes as a Type I action those activities proposing parking that meet or exceed the following thresholds or the expansion of existing nonresidential facilities by more than 50 percent of any of the following thresholds:

1. Parking for 500 vehicles in a city, town, or village having a population of 150,000 persons or less; and
2. Parking for 1,000 vehicles in a city, town, or village having a population of 150,000 persons or more.

The rule also provides that an Unlisted action exceeding 25 percent of any Type I threshold and that is within or contiguous to any building or site that has been listed on the National or State Register of Historic Places or is eligible for listing on the State Register of Historic Places is considered a Type I action.

Type II Actions

The rule also expands the list of Type II actions to include the following:

1. Building upgrades to meet the energy code;
2. Green infrastructure upgrades or retrofits;
3. Installation of telecommunication cables in existing highway or utility rights of way utilizing trenchless burial or aerial placement on existing poles;

4. Installation of solar arrays (less than 25 acres of disturbance) on closed landfills, brownfield sites that have received a certificate of completion, disturbed areas of wastewater treatment facilities, disturbed areas of sites zoned for industrial use, or parking lots and garages;
5. Installation of solar arrays on an existing structure if such structure is not listed on the National or State Register of Historic Places or located in a district located in the National or State Register of Historic Places;
6. Lot line adjustments;
7. Reuse of residential or commercial structures, or mixed-use residential/ commercial structures, where the residential or commercial use is a permitted use under the applicable zoning law and the action does not meet or exceed any other Type I threshold;
8. Recommendations of county or regional planning boards made pursuant to General Municipal Law sections 239-m or 239-n;
9. Acquisition of conservation easements, acquisition and dedication of parkland of less than 25 acres, and dedication for parkland of land previously acquired;
10. Sale of land by public auction pursuant to Article 11 of the Real Property Tax Law; and
11. Construction and operation of certain anaerobic digesters operating at publicly owned landfills.

Environmental Impact Statements

The rule requires scoping for all environmental impact statements ("EIS") except supplemental EIS. The rule also includes clarifying language to assist agencies in determining whether a draft EIS is adequate and, where relevant, provides that an EIS should include information regarding measures to avoid or reduce an action's impact on climate change.

The amendments will become effective January 1, 2019.

This Cullen and Dykman advisory is intended to provide an overview of the SEQR amendments; it does not address every component of the amendments or their implications with respect to SEQR compliance and should not be construed as providing specific legal advice. For specific advice, or if you have any questions about the amendments or their effect on your particular organization, please contact Brendan Mooney at 516-357-3757 or bmooney@cullenanddykman.com.

Attorneys

- Brendan J. Mooney