

Regulatory Impact Statement for Amendments to 6 NYCRR Parts 621, 421, and 601

1. Statutory authority

The New York State Department of Environmental Conservation (DEC) is promulgating these amendments to Part 621 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Uniform Procedures Act or UPA) and 6 NYCRR Part 421 pursuant to subdivision 1 of ECL 70-0107 and ECL 3-0301(2)(a). With respect to UPA, ECL 70-0107 (1) provides in relevant part that the “department, after public hearing, shall adopt rules and regulations to assure the efficient and expeditious administration of this article [ECL Article 70] ...” ECL 3-0301(2)(a) provides in relevant part that DEC, through the Commissioner of DEC, may “...[a]dopt, amend or repeal environmental standards, criteria and those rules and regulations having the force and effect of standards and criteria to carry out the purposes and provisions of this act [the Environmental Conservation Law] ...”

2. Legislative objectives

The purpose of UPA is to ensure that DEC’s permitting procedures for its major regulatory programs fulfill their intended objectives without costly delays or attention to frivolous concerns. These programs include use and protection of waters (e.g., stream disturbance); water withdrawals; Wild, Scenic and Recreational Rivers; discharges to waters under State Pollutant Discharge Elimination System; air pollution control; reclamation of mined lands; freshwater and tidal wetlands; solid waste management facilities; Coastal Erosion Hazard Areas; and several other programs. Specifically, UPA has the following objectives:

1. To ensure fair, expeditious and thorough administrative review of DEC regulatory permits;
2. To create uniform and consistent regulatory procedures and eliminate redundancies;
3. To establish reasonable time periods for administrative action on permits;

4. To encourage public participation in government review and decision-making processes and promote public understanding of all government activities; and
5. To substitute a “comprehensive project review approach” for that of individual permit application reviews.

The last complete update to the UPA regulations was effective on September 6, 2006 (see New York State Register, ENV-31-05-00006-A, September 6, 2006). The 2022 proposed changes are based on DEC’s experience with implementing the UPA regulations since 2006, as well as recent legislative changes to the UPA (see below). The revisions and enhancements are intended to advance the public policy objectives of ECL Article 70.

The proposed rule would implement the Climate Leadership and Community Protection Act (CLCPA; Laws of 2019, Chapter 106, as codified in ECL Article 75), including consideration of environmental justice within the context of CLCPA, and requirements for consideration of climate change (e.g., sea level rise and flooding) consistent with the Community Risk and Resiliency Act (Laws of 2014, Chapter 355, as amended by Laws of 2019, Chapter 6, Section 9).

While the regulatory programs administered under UPA apply to a broad range of environmental resources, the changes proposed in this rule making are procedural in nature and do not include changes to the standards for permit issuance that are contained in the program regulations for the programs that UPA procedurally administers. Therefore, each permit decision rendered by DEC under the proposed changes in UPA would remain subject to the substantive regulatory requirements in place at the time of permit issuance.

3. Needs and benefits

The purpose of, necessity for, and benefits for the principal changes are described below by section number.

621.1 (Applicability)

621.1 contains the list of DEC regulatory programs covered by UPA. DEC proposes to amend the list to include “Incidental Take of Threatened or Endangered Species” permits under ECL article 11 and 6 NYCRR Part 182. DEC adopted changes to Part 182 in 2010 (effective November 3, 2010) and at that time made Part 182 permits subject to UPA rather than create a separate procedure for it. The purpose of and necessity for the change is to conform Part 621 with Part 182. The benefit of the change is that the Section 621.1 will have a complete list of project types subject to UPA.

DEC would remove “Transportation of Water by Vessel” permits under ECL article 15, title 15 because those permit types are now covered under Water Withdrawal permits (see ECL art. 15, title 15; 6 NYCRR 601.6).

621.2 (Definitions)

This section contains many changes — beginning with the terms “adjudicatory proceeding.” The change was meant to underscore the fact that an adjudicatory hearing is just one component of the adjudicatory proceeding, which consists of a public statement hearing, issues conference and adjudicatory hearing. The change to definition for “administrative law judge” or “ALJ” is meant to conform Part 621 with changes that are expected to be made in 6 NYCRR Part 624 (DEC’s adjudicatory proceeding hearing regulations).

DEC proposes adding a definition for “day” or “days” inasmuch as that term is used throughout the regulations. The definition refers to the definition of “day” or “days” in section 19 of the General Construction Law. The purpose of and necessity for adding this definition is to create more certainty in how days are counted and, unless otherwise stated, the word “day” refers to a calendar day. Under subdivision (c) of 6 NYCRR 621.10, DEC has five “working days” to respond to a letter demanding permit issuance where DEC has failed to comply with UPA deadlines. The term “working days” is based on the statutory language in ECL 70-0109

(3)(b). Therefore, “working days” terminology has been retained in 621.10 to conform with the statutory terminology.

DEC has also modified other definitions including renaming of “legislative hearings” to “public comment hearings.” This change is also expected to be made in 6 NYCRR Part 624. The term “legislative hearing” leads to confusion with the types of hearings conducted for purposes of considering legislation rather than for permit review.

DEC has added a definition for “mail” or “mailing” so that the terms now include mail by electronic means as e-mail has become a predominant means of communication between DEC, applicants, consultants, and the public.

DEC has clarified that a registration is not a permit. This change conforms the regulations with the notion that registrations are “ministerial” actions whereas permit applications are “discretionary” actions.

DEC has added a definition of reissuance (as distinct from a renewal) and clarified the definition of variance. A variance under the UPA is treated as a permit application as the definition of “permit” includes variances.

The purpose, necessity and benefits of the foregoing changes will be to add greater clarity to UPA.

621.3 (General Requirements for Applications)

The proposed rule specifies that a complete application may include information needed to address the requirements of the Climate Leadership and Community Protection Act (CLCPA; enacted by the Legislature as Laws of 2019, Chapter 106, and codified in ECL Article 75). Under CLCPA and existing DEC policies, this change also includes information the DEC may request to address potential impacts to potential environmental justice areas and disadvantaged communities. Specifically, statutory changes have made it a requirement that applicants for UPA major projects must provide information to explain whether a project will be inconsistent

with, or will interfere with, the attainment of statewide greenhouse gas emission limits. The purpose of and necessity for this change is that the Legislature has made compliance with CLCPA a requirement for UPA major projects. The benefits derived are to conform the regulations implementing UPA with the CLCPA statutory requirement.

The rule would also include requirements for consideration of climate change effects related to sea level rise and flooding in UPA permitting based on the Community Risk and Resiliency Act or CRRRA (enacted by the Legislature in Laws of 2014, Chapter 355, as amended by Laws of 2019, Chapter 6, Section 9) and consideration of environmental justice. The purpose of and necessity for these changes is that the Legislature has required UPA permits to consider the impacts of a project on sea level rise, flooding, and environmental justice communities. The benefit of the change will be to conform UPA permits with the statutory requirements that the Legislature has made applicable to UPA issued permits.

This aspect of the proposal is likely to have a beneficial impact on the environmental outcomes of DEC decision-making as well as to provide applicants and DEC clarity on the authority of DEC to require necessary information and improve DEC's consistency in considering climate change and environmental justice information in its decision-making. Generally, such information will promote projects that reduce factors contributing to climate change, are more resilient against the effects of climate change, and help address disproportionate impacts to disadvantaged communities.

The regulatory text that permits DEC to suspend processing of a UPA permit if DEC staff have commenced an enforcement proceeding is currently limited to enforcement proceedings concerning alleged violations at the same facility or site that is the subject of the permit application. DEC proposes to amend 621.3 by allowing DEC to suspend processing of a permit application for any site owned or controlled by an applicant and not merely where the site that is the subject of the application is the same as the site where the violation is alleged to have occurred or is occurring.

The reason for this change is that DEC staff encounter situations where a permittee has applied for a permit to conduct an activity on one site while owning another site next to or even distant from the site of the application that is the subject of unresolved alleged violations for the same activity that is the subject of the application. This revision would also align UPA more closely with the department's record of compliance enforcement policy.

The amendment would codify case law as well as DEC administrative precedent by qualifying the term "commenced" with "formally." Precedent provides that DEC may only exercise its powers under 621.3 where it has officially commenced an enforcement proceeding and not where it has only issued a notice of violation. See, for example, 4-C 's Development Corporation, ALJ Ruling 6, July 19, 1996, available on DEC's website at <https://www.dec.ny.gov/hearings/10924.html> (last accessed on November 9, 2021). DEC received a request for the change in its stakeholder review.

621.4 (Requirements for specific permit applications)

This section describes the basic information required for each of the permit applications (e.g., water withdrawal, SPDES, etc.). In addition, each of the permit types contains a list of "minor projects," which refers to projects "...which by its nature and with respect to its location will not have a significant impact on the environment... [ECL 70-0105 (3)]." Minor projects do not require public notice and have a shorter decisional time frame (ECL 70-0111). The effect of having a shorter decisional time frame and no public notice requirement is that applicants for minor projects can receive speedier decisions on applications and eliminate the cost of newspaper notices. Under ECL 70-0111, DEC promulgated a list of "minor projects." Based on the fifteen years of experience with administering UPA, DEC has concluded that the existing list of "minor projects" does not cover many projects that should be classified as "minor."

When a UPA-major permit application is complete, a notice of complete application must be published in a newspaper, at the applicant's expense, which can range from a few hundred dollars to many thousands.

Usually this is a legal notice in a local newspaper's classified advertisement section. DEC also publishes the same notice in the DEC's Environmental Notice Bulletin (ENB), which is published on the DEC website and is free of charge (see ECL 3-0306 and 70-0105[1]). The intent of the notice is to advise the public of the project and solicit public comment and input on an application. An estimated 40,000 notices have been published since 1977.

DEC's experience shows that legal notices for small-scale projects, such as bridge repairs and small quantities of wetland fill classified as "major" under UPA, have generated little public interest: that is, few telephone calls, letters, e-mails, or demonstrable community concern. Those projects that do elicit public interest are generally large-scale, environmentally consequential, or contentious developments, or certain types of facilities (e.g., mining, solid waste management).

The DEC proposes to expand the list of minor projects to better reflect the level of public interest generated by prior public notices. For federally delegated or authorized permit programs, such as permit applications under ECL Article 19 (air pollution control) and under the State Pollution Discharge Elimination System (SPDES; ECL Article 17, Title 8, as implemented by 6 NYCRR Part 750), substantive changes have not been proposed. In most program areas, larger scale actions, or those with sizable environmental effects, or of known public concern, are classified as major. This enhancement will improve the public's awareness of meaningful actions in their community. In doing so, it will improve the Department's engagement with citizens where important projects are located. While the proposed changes would result in additional actions reclassified as "minor" no longer requiring public notice prior to a final decision, this procedural change would not result in an environmental impact. It would, however, shorten permitting times, provide more expeditious review and reasonable time periods for administrative action on an increased number of minor applications, and thereby save applicants money and time.

DEC proposes to add a provision on incidental take permits under ECL Article 11 and 6 NYCRR Part 182 as Part 182 utilizes UPA procedures. The change synchronizes the UPA regulation with Part 182.

621.5 (Optional pre-application conferences)

DEC proposes to modify this section by stating that applicants should submit plans ahead of the pre-application conference. The purpose of this change is to improve the productiveness of such meetings by allowing DEC staff to view an applicant's plans ahead of time.

621.6 (Department action on applications)

DEC proposes to modify this section to allow DEC to deem an application withdrawn for failure of an applicant to respond to a notice of incomplete application after one year. The current regulation allows for this withdrawal, but only after a reminder notice is followed by a certified mailing advising an applicant that the application has been withdrawn – a two-step process that is overly cumbersome. The proposed change would allow DEC to deem the application withdrawn if there is no response to the initial reminder notice. This change will improve the ability of DEC to maintain accurate records as to active applications.

621.8 (Determination to conduct a public hearing)

As the title suggests, 621.8 is the procedural mechanism by which DEC determines whether to conduct either a public statement hearing on an application or to refer an application to DEC's Office of Hearings and Mediation Services for an adjudicatory proceeding under 6 NYCRR Part 624. DEC proposes to modify 621.8 to clarify the types of hearings covered by 621.8, provide for hearings by electronic means, and clarify time frames associated with applications that are subject to hearings. The improvements proposed in this section, and the related definitions in section 621.2, are necessary to address existing ambiguity about the types of hearings, which under current terminology may either be legislative or adjudicatory. Legislative hearings will be changed to "public comment hearings" to more plainly reflect the type of hearing involved, and adjudicatory hearings

will be changed to “adjudicatory proceedings” to better reflect that they are administered under 6 NYCRR Part 624 and involve a multi-step process. (“Legislative” or “public comment” hearings are a style of hearing that provide the public with the opportunity to make unsworn statements, whereas “adjudicatory hearings” are a trial-like hearing conducted before an administrative law judge under 6 NYCRR Part 624.)

In addition, the current regulation is ambiguous on timeframes associated with matters involving a legislative (public comment) hearing and DEC proposes to clarify the effect of existing time frame suspension in matters involving public comment hearings and adjudicatory proceedings.

621.9 (Settlement Conferences)

The only proposed change to 621.9 is to change the reference to “adjudicatory hearing” to “adjudicatory proceeding.” The purpose, need, and benefit of this change is to conform the section with the updated terminology contained in this proposed rule.

621.10 (Final decisions on applications)

DEC proposes to move the list of maximum permit terms from its present location in section 621.4 to section 621.10. This change is for ease of reference and to improve the logical flow of the regulations. DEC also proposes to add maximum permit terms for some permits where the maximum permit terms are not currently identified or are inconsistent with program regulations. In addition, DEC proposes to clarify that applicants may not request an adjudicatory proceeding on final decisions on applications that have already been the subject of an adjudicatory proceeding under 6 NYCRR Part 624 (based on a referral to the Office of Hearings and Mediation Services of a draft permit). The latter change just clarifies existing practice. The need and benefit of these changes are to provide a clear organization to the regulations for maximum permit terms and more clearly articulate the UPA permit issuance and appeal authority than does the current language — which is somewhat ambiguous on these matters.

621.11 (Applications for permit renewals, reissuances, and modifications, including transferring or relinquishing permits)

DEC proposes to revise the deadline for submitting applications to renew certain permit types from 30 days before expiration to 180 days before expiration. These permits include air state facility air pollution control, water withdrawals, solid waste management facility, mined land reclamation, and radiation control. The requirement to submit renewal applications earlier will align these permit types with others that involve operations of a continuing nature and already have a 180-day submission deadline. DEC also proposes to conform the period for submitting a renewal in Part 421 (mining permits) and Part 601 (water withdrawal) with UPA. The UPA timeframe, would, in any event, control over the existing 30-day provisions in Part 421 and Part 601. See ECL 70-0101 and 70-0107(2). The proposed change to the time to submit renewals will allow more time for the regulated public and DEC to address matters that arise during review of a renewal application and issue a decision on the renewal before expiration of the permit.

DEC also proposes to specifically list those permit types that involve activities of a continuing nature and, therefore, are subject to the provisions of the State Administrative Procedure Act (SAPA) for purposes of permit renewal. Other permit types not listed would then be clearly subject to the “reissuance” provision of the regulation. This change will provide clarity where the existing regulation is ambiguous as to those permit types of a continuing nature.

621.12 (Emergency authorizations)

In addition to adding clarifying text in 621.12, DEC has added language that explains what an applicant must show to be granted an extension to an emergency authorization and the basis for denying such a request. New language also clarifies that operations may continue after an emergency authorization ceases where the recipient of an emergency authorization has made an application to DEC and DEC determines that the application is complete. Importantly, the modified 621.12 text makes clear that all activity under an emergency

authorization must stop on or before 60 calendar days after the date of DEC's initial authorization except as described above. Ambiguity in the existing language allowed a facility to continue operating well after the emergency ceased at levels authorized on account of the emergency without a modification to its permit.

The necessity and benefit of the modified language is to clarify the UPA provisions related to emergency authorizations and prevent emergency authorizations becoming ongoing operations and thereby circumventing required permit review and issuance procedures.

621.14 (Special provisions)

DEC proposes to modify UPA to allow for electronic submission and transmittal of written materials. This change will implement provisions in Article 3 of the State Technology Law, the Electronic Records and Signatures Act, and facilitate DEC's on-going efforts to move toward use of electronic exchange of information in permitting.

DEC proposes to modify the regulation to clarify the procedures applicable to applications that are treated as new. There are various grounds by which an application for renewal or modification of a permit may be treated as a new application. However, the existing regulation is ambiguous about what procedures apply when an application is treated as new and currently all such applications are presumed to also be major projects. The proposed change would clarify the ambiguity by indicating that these applications may be subject to procedures either applying to major or minor projects. Additionally, the change underscores that "treat as new" means treat as new procedurally — which, depending on the reason an application is treated as new can mean different procedural requirements will come into play.

617.19 (Chief Permit Administrator and Regional Permit Administrators)

This section has been updated to show current contact information including e-mail addresses. E-mail contact information has been added to facilitate or encourage such communication.

4. Costs

In some cases, costs to regulated parties (which could include state agencies and local governments) may decrease because 621.4 increases the number of “minor projects.” Minor projects do not require public notice (6 NYCRR 621.3[b][2]). Minor projects also have a shorter review period. Shortening timeframes for permit types that have not been the subject of public interest review can be expected to reduce regulatory costs and regulatory uncertainty by speeding up review times. Costs could increase to some regulated parties (including state agencies and local governments) from the incorporation of CLCPA and CRRA requirements into UPA permits (see proposed 6 NYCRR 621.3 [a][11]-[13]). The rule would make fulfillment of informational requirements associated with CLCPA and CRRA, where applicable, a component of a complete application. CLCPA and CRRA were incorporated into UPA by the Legislature and DEC is only implementing the law. Ultimately, however, compliance costs will be influenced by program requirements that are being developed and not all permits will have CLCPA and CRRA costs associated with them. At present, DEC cannot estimate costs until the program regulations and policies are in place and even then, costs will vary depending on the type of project.

5. Local government mandates

This rule contains no local government mandates. However, local governments can be applicants for DEC permits. Where a municipality is applying for a UPA permit, they may also be subject to the added mandates associated with complying with CLCPA and CRRA. Because the program requirements for CLCPA and CRRA are still in development DEC cannot say what the cost of complying with the mandate is. The amendment only makes explicit DEC’s ability to request additional information to meet those program requirements.

6. Paperwork

Generally, the proposed changes will reduce paperwork by allowing for transactions by electronic means and by reducing the number of required newspaper notices (due the proposed expansion of the minor project lists).

Applications subject to the requirements to consider climate change, climate risks, and environmental justice would be subject to additional information requirements. The required information may be obtained by additional forms DEC may develop, or by reports and analyses for which DEC provides general guidance. To the extent any forms are developed for these purposes, the forms are intended to standardize, simplify, and streamline the way the information is provided to DEC.

7. Duplication

The proposed changes do not expand the applicability of the rule to programs not currently administered by DEC. To the extent the rule will continue to cover DEC's administration of federally delegated air quality, water quality, and hazardous waste programs (by the US EPA), it continues to avoid duplication of those programs at the federal level.

8. Alternatives

The first and preferred alternative would be to adopt the changes as proposed. As explained above, this would provide additional clarification where needed, allow for public notices on the types of projects of most interest to the public, and incorporate provisions that address recent legislative actions on climate change, climate risk, and environmental justice.

There were no significant alternatives to be considered for the proposed changes. The procedural structure provided by the regulation already exists and the objective of the proposed changes is to improve implementation of the existing structure. Another alternative would be to leave the regulations as they are.

However, this would not incorporate recent legislative actions and would not address the procedural improvements noted above.

9. Federal standards

The proposed changes do not relate to or change any federal standards. As noted above, all underlying standards for permit issuance are contained in specific program regulations and those will remain unchanged. To the extent DEC administers federally delegated air quality, water quality, or hazardous waste programs, those standards are also not proposed to change in this rule making.

10. Compliance schedule

The proposed changes do not expand DEC's jurisdiction over activities that are currently unregulated, nor impose new requirements on existing facilities where no changes in operations are proposed. In most cases, the review of new applications will benefit from the proposed procedural changes (e.g., allowing easier transmission of application materials through electronic means, not requiring public notice in some cases). In cases where new applications are subject to additional considerations related to climate change, climate risks, or environmental justice, the rule does not impose a schedule for compliance. Compliance with those requirements will be achieved at the time of DEC's decision on the application.

DEC would, if the proposed new rules are adopted, make them effective 90 calendar days from the publication of notice of adoption in the State Register. This would provide time for the rules to be published in the paper version of the Official Compilation of Codes, Rules and Regulations and for DEC to develop training and guidance materials on the changes.

Summary of the Regulatory Impact Statement on Amendments to 6 NYCRR Parts 621, 421, and 601

The New York State Department of Environmental Conservation (DEC) is promulgating this amendment to Part 621 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Uniform Procedures Act or UPA) pursuant to subdivision 1 of ECL 70-0107. With respect to UPA, Subdivision 1 of ECL 70-0107 provides in relevant part that the “department, after public hearing, shall adopt rules and regulations to assure the efficient and expeditious administration of this article [ECL Article 70] ...”

The proposed amendments would, among other changes, update the regulations. The UPA regulations have not had a complete update since 2006. The amendments incorporate e-business provisions into the permitting regulations. The amendments also implement the Climate Leadership and Community Protection Act (CLCPA; Laws of 2019, Chapter 106, as codified in ECL Article 75), including consideration of environmental justice within the context of CLCPA, and requirements for consideration of climate change (e.g., sea level rise and flooding) consistent with the Community Risk and Resiliency Act (Laws of 2014, Chapter 355, as amended by Laws of 2019, Chapter 6, Section 9).

While the regulatory programs administered under UPA apply to a broad range of environmental resources, the changes proposed in this rulemaking are procedural in nature and do not include changes to the standards for permit issuance that are contained in the program regulations for the programs that UPA procedurally administers. Therefore, each permit decision rendered by DEC under the proposed changes in UPA would remain subject to the substantive regulatory requirements in place at the time of permit issuance.

In some cases, costs to regulated parties may decrease because 621.4 increases the number of “minor projects.” Minor projects do not require public notice (6 NYCRR 621.3[b][2]). Minor projects also have a shorter review period. Shortening timeframes for permit types that have not been the subject of public interest review can be expected to reduce regulatory costs and regulatory uncertainty by speeding up review times. The

part of the rule that may increase cost to regulated parties is that the Legislature has incorporated CLCPA and CRRA as requirements of UPA permits (see proposed 6 NYCRR 621.3[a][11]-[13]). DEC has no control over that fact and the costs of having to provide additional information in connection with the application for a particular permit is at best difficult to quantify. Ultimately, compliance costs will be determined by program requirements that are being developed. At present, DEC cannot estimate costs until the program regulations and policies are in place and even then, costs will vary depending on the type of project.

This rule contains no local government mandates. However, local governments can be applicants for DEC permits. Where a municipality is applying for a UPA permit, they may also be subject to the added mandates associated with complying with CLCPA and CRRA. Because the program requirements for CLCPA and CRRA are still in development DEC cannot say what the cost of complying with the mandate is. The amendment only makes explicit DEC's ability to request additional information to meet those program requirements.

Generally, the proposed changes will reduce paperwork by allowing for transactions by electronic means and by reducing the number of required newspaper notices (due the proposed expansion of the minor project lists).

Applications subject to the requirements to consider climate change, climate risks, and environmental justice would be subject to additional information requirements. The required information may be obtained by additional forms DEC may develop, or by reports and analyses for which DEC provides general guidance. To the extent any forms are developed for these purposes, the forms are intended to standardize, simplify, and streamline the way the information is provided to DEC.

The proposed changes do not expand the applicability of the rule to programs not currently administered by DEC. To the extent the rule will continue to cover DEC's administration of federally delegated air quality,

water quality, and hazardous waste programs (by the US EPA), it continues to avoid duplication of those programs at the federal level.

The first and preferred alternative would be to adopt the changes as proposed. As explained above, this would provide additional clarification where needed, allow for public notices on the types of projects of most interest to the public, and incorporate provisions that address recent legislative actions on climate change, climate risk, and environmental justice.

There were no significant alternatives to be considered for the proposed changes. The procedural structure provided by the regulation already exists and the objective of the proposed changes is to improve implementation of the existing structure. Another alternative would be to leave the regulations as they are. However, this would not incorporate recent legislative actions and would not address the procedural improvements noted above.

The proposed changes do not relate to or change any federal standards. As noted above, all underlying standards for permit issuance are contained in specific program regulations and those will remain unchanged. To the extent DEC administers federally delegated air quality, water quality, or hazardous waste programs, those standards are also not proposed to change in this rule making.

The proposed changes do not expand DEC's jurisdiction over activities that are currently unregulated, nor impose new requirements on existing facilities where no changes in operations are proposed. In most cases, the review of new applications will benefit from the proposed procedural changes (e.g., allowing easier transmission of application materials through electronic means, not requiring public notice in some cases). In cases where new applications are subject to additional considerations related to climate change, climate risks, or environmental justice, the rule does not impose a schedule for compliance. Compliance with those requirements will be achieved at the time of DEC's decision on the application.

DEC would, if the proposed rule is adopted, make it effective 90 days from the publication of notice of adoption in the State Register. This would provide time for the rules to be published in the Official Compilation of Codes, Rules and Regulations and for DEC to train its staff and the public on the changes.

Rural Area Flexibility Analysis on Amendments to 6 NYCRR Parts 621, 421 and 601

1. Types and estimated numbers of rural areas:

The proposed rule applies statewide and includes all rural areas of the State.

2. Reporting, recordkeeping, and other compliance requirements; and professional services:

The rule does not establish additional reporting, recordkeeping or compliance requirements that are specific to rural areas. Under the rule the Department of Environmental Conservation (DEC) would have specific authority to ask for information to satisfy the requirements of the Climate Leadership and Community Protection Act (CLCPA; Laws of 2019, Chapter 106, as codified in ECL Article 75), the Community Risk and Resiliency Act (Laws of 2014, Chapter 355, as amended by Laws of 2019, Chapter 6, Section 9), and requirements for weighing environmental justice in certain UPA permitting. These requirements, however, apply statewide and are not specific to rural areas.

3. Costs:

The proposed rule will likely result in increased costs for rural applicants (as well as all applicants) subject to CLCPA, CRRA or EJ requirements. As discussed in the Regulatory Impact Statement, the newly proposed rule only codifies and specifies DEC's ability to seek additional information related to the newly legislated requirements under CLCPA, CRRA and EJ and for purposes of determining whether an application is complete. Thus, the new requirements are acts of the legislature, and DEC has no control over that fact.

4. Minimizing adverse impact:

The rule would not have adverse impacts on rural areas.

5. Rural area participation:

The proposed changes to UPA do not affect rural areas as distinct from other demographic or geographic regions of the state. Possible rural concerns are not distinct from the concerns of other stakeholders. Public participation is discussed generally in the Regulatory Flexibility Analysis for Small Businesses and Local Governments. Stakeholders who participated in the sessions described therein also represent stakeholders in rural areas as well as in other demographic and geographic areas of the State. Readers should refer to that discussion.

Regulatory Flexibility Analysis for Small Businesses and Local Governments on Amendments to 6 NYCRR Parts 621, 421 and 601

1. Effect of rule

The proposed changes to the Uniform Procedures Act (UPA) regulations (Part 621 of Title 6 of Official Compilation of Codes, Rules and Regulations of the State of New York or Part 621) apply to all applicants for Department of Environmental Conservation (DEC) permits reviewed under UPA. Any business or local government that is an applicant for a DEC permit, which is governed by UPA, would be affected by the proposed rule. DEC does not track its business applicants by whether the applicant is a small, medium, or large size business. Therefore, it is impossible to determine how many small businesses would be affected by the proposed changes. Any small business that is an applicant for a UPA governed permit would be affected by the proposed changes. With respect to local governments, DEC administers about 9000 active permits issued to local governments throughout New York State.

2. Compliance requirements

The rule does not establish additional reporting, recordkeeping or compliance requirements that are specific to small businesses and local governments. The rule does make explicit DEC's ability to request additional information to satisfy the requirements of the Climate Leadership and Community Protection Act (CLCPA; Laws of 2019, Chapter 106, as codified in ECL Article 75), the Community Risk and Resiliency Act (Laws of 2014, Chapter 355, as amended by Laws of 2019, Chapter 6, Section 9), and requirements for weighing environmental justice in UPA permitting. These requirements, however, apply statewide and to all applicants, where relevant. The CLCPA, CRRRA and EJ requirements, together or separately, will likely result in additional application costs for projects that are subject to those requirements depending on the application and programmatic requirements that are still being developed.

3. Professional services

Where an application is subject to CLCPA, CRRA or EJ, small businesses and local governments may need to engage consultants in responding to additional information requests for information on greenhouse gas emissions, flooding or impacts on EJ communities. DEC has no way of determining what these costs may be as they will depend on the application and on the programmatic requirements that are still to be developed.

4. Compliance costs

In some cases, costs to regulated parties, including small businesses and local governments, may decrease because 621.4 increases the number of “minor projects.” Minor projects do not require public notice (6 NYCRR 621.3[b][2]). Minor projects also have a shorter review period. Shorter review times indirectly reduce regulatory costs and regulatory uncertainty by speeding up review times. This change is a significant benefit for some smaller scale projects that fit into the Minor Project classification.

The rule that may increase cost to regulated parties that are asked to comply with CLCPA, CRRA and EJ (see proposed 6 NYCRR 621.3 (a) (11)-(13)). CLCPA, CRRA and EJ are requirements that the Legislature made applicable to UPA permits. DEC has no control over that fact. Compliance costs (application related) will include responding to information requests or, where applicable, outreach in environmental justice communities. These costs depend on the application. Therefore, DEC cannot estimate them collectively or individually.

5. Economic and technological feasibility

In complying with the proposed rule, there are no known economic or technological feasibility issues for small businesses and local governments.

6. Minimizing adverse impact

The CLCPA, CRRRA and EJ requirements are legislative requirements. The rule only specifies that DEC has authority to request additional information to comply with CLCPA, CRRRA and EJ.

7. Small business and local government participation:

DEC staff made extensive outreach efforts to the consultant, legal and business community.

a. Albany Meetings on April 19, 2019 and July 22, 2019

DEC staff held a stakeholder meeting on April 19, 2019, in which they invited approximately twenty-five persons from the legal and consulting engineer community. These persons regularly represent persons and entities including municipal entities involved in UPA permitting matters. Of the approximately twenty-five invitees, seven persons attended the meeting. Much of the discussion centered around the difficulties in getting to a complete application. Attendees asked that process be made more transparent and offered the suggestion, among others, that DEC create completeness checklists for the different program areas as the Army Corp of Engineers has done for the permitting programs it administers. Attendees supported DEC's proposal to create more categories of minor permits. Attendees discussed clarifying what the phrase "significant degree of public interest" means in terms of the determination on whether to conduct a public hearing. In follow-up to the April 19, 2019 meeting, Elizabeth Morss, Esq., Young Sommer, wrote a letter to DEC staff expressing her views on, among other topics, the revised definition of completeness, public participation plans, and DEC's proposal to expand its authority to suspend applications for enforcement matters where the application does not involve the same site as that where the violation is alleged to have occurred. The letter (letter in response to stakeholder outreach) will be published on DEC's website alongside the other rule making documents.

DEC staff met on July 22, 2019 with members of the New York State Bar Association. Four attorneys attended the meeting.

b. Other Scheduled Meetings

DEC scheduled a separate stakeholder meeting for environmental groups (invites sent to Riverkeeper, Scenic Hudson, Protect the Adirondacks, Inc., and Adirondack Council) to occur on April 24, 2019. Only one group responded to the solicitation but then cancelled.

Staff also organized a stakeholder meeting to occur in Stony Brook, Long Island, on June 19, 2019. The invitees represented the consulting and environmental analyst community, who in turn represent municipal and industry participants in the UPA permitting process. There were eleven invitees but no acceptances. The meeting, therefore, was cancelled.

DEC staff scheduled additional stakeholder meetings in Buffalo on November 13, 2019 and then in Watertown on November 14, 2019. Together, thirteen persons representing the consulting and legal community were invited. As with the Albany stakeholders, these persons were selected inasmuch as they regularly represent individuals, corporations, and municipalities in the UPA permitting process. After nobody confirmed their attendance, the meetings were cancelled.

While interest in the rulemaking was limited based on participation, the meetings that were held, and those in attendance, proved very informative and beneficial to development of the proposed amendments. Overwhelmingly, stakeholders had one over-riding concern — which was the need for greater certainty in the regulatory process.

Statement in lieu of Job Impact Statement (SAPA 201-a[2][a])

The Department of Environmental Conservation has determined that the proposed amendments to the regulations that implement the Uniform Procedures Act (6 NYCRR Part 621) will not have a substantial adverse impact on jobs and employment opportunities and that this conclusion is evident from the text of the proposed rule. The Uniform Procedures Act is a procedural rule, and, as such, does not create new substantive and substantial obligations that impose additional costs on the economy.

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information				
Name of Action or Project:				
Project Location (describe, and attach a location map):				
Brief Description of Proposed Action:				
Name of Applicant or Sponsor:			Telephone:	
			E-Mail:	
Address:				
City/PO:		State:	Zip Code:	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?			NO	YES
If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			<input type="checkbox"/>	<input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency?			NO	YES
If Yes, list agency(s) name and permit or approval:			<input type="checkbox"/>	<input type="checkbox"/>
3. a. Total acreage of the site of the proposed action? _____ acres b. Total acreage to be physically disturbed? _____ acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres				
4. Check all land uses that occur on, are adjoining or near the proposed action: <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify): </div> <div style="margin-top: 5px;"><input type="checkbox"/> Parkland</div>				

5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	NO <input type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/>	N/A <input type="checkbox"/> <input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO <input type="checkbox"/>	YES <input type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO <input type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO <input type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/>	

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest Agricultural/grasslands Early mid-successional </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> Wetland <input type="checkbox"/> Urban Suburban </div>		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, <div style="margin-left: 20px; margin-top: 10px;"> a. Will storm water discharges flow to adjacent properties? </div> <div style="margin-left: 20px; margin-top: 10px;"> b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? </div> If Yes, briefly describe: <div style="border-bottom: 1px solid black; margin-top: 5px; height: 1.2em;"></div> <div style="border-bottom: 1px solid black; margin-top: 5px; height: 1.2em;"></div>	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment: <div style="border-bottom: 1px solid black; margin-top: 5px; height: 1.2em;"></div> <div style="border-bottom: 1px solid black; margin-top: 5px; height: 1.2em;"></div>	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: <div style="border-bottom: 1px solid black; margin-top: 5px; height: 1.2em;"></div> <div style="border-bottom: 1px solid black; margin-top: 5px; height: 1.2em;"></div>	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: <div style="border-bottom: 1px solid black; margin-top: 5px; height: 1.2em;"></div> <div style="border-bottom: 1px solid black; margin-top: 5px; height: 1.2em;"></div>	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
<p>I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</p> <p>Applicant/sponsor/name: _____ Date: _____</p> <p>Signature: <u>James J. Eldred</u> Title: _____</p>		

Project:

Date:

Short Environmental Assessment Form

Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept “Have my responses been reasonable considering the scale and context of the proposed action?”

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
2. Will the proposed action result in a change in the use or intensity of use of land?		
3. Will the proposed action impair the character or quality of the existing community?		
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
7. Will the proposed action impact existing:		
a. public / private water supplies?		
b. public / private wastewater treatment utilities?		
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?		
11. Will the proposed action create a hazard to environmental resources or human health?		

Project:

Date:

Short Environmental Assessment Form

Part 3 Determination of Significance

For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Name of Lead Agency

Date

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

— *James J. Eldred* —

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)

Coastal Assessment Form

1. State agencies shall complete this CAF for proposed actions which are subject to Part 600 of Title 19 of the NYCRR. This assessment is intended to supplement other information used by a state agency in making a determination of significance pursuant to the State Environmental Quality Review Act (see 6 NYCRR, Part 617). If it is determined that a proposed action will not have a significant effect on the environment, this assessment is intended to assist a state agency in complying with the certification requirements of 19 NYCRR Section 600.4.
2. If any question in Section C on this form is answered "yes", then the proposed action may affect the achievement of the coastal policies contained in Article 42 of the Executive Law. Thus, the action should be analyzed in more detail and, if necessary, modified prior to either (a) making a certification of consistency pursuant to 19 NYCRR Part 600 or, (b) making the findings required under SEQR, 6 NYCRR, Section 617.11, if the action is one for which an environmental impact statement is being prepared. If an action cannot be certified as consistent with the coastal policies, it shall not be undertaken.
3. Before answering the questions in Section C, the preparer of this form should review the coastal policies contained in 19 NYCRR Section 600.5. A proposed action should be evaluated as to its significant beneficial and adverse effects upon the coastal area.

1. Type of state agency action (check appropriate response):
 - (a) Directly undertaken (e.g. capital construction, planning activity, agency regulation, land transaction) ____X__
 - (b) Financial assistance (e.g. grant, loan, subsidy) ____
 - (c) Permit, license, certification ____
2. Describe nature and extent of action: Revisions to Part 621 regulations that implement ECL Article 70 (Uniform Procedures Act - UPA), with conforming changes to 6 NYCRR Parts 421 and 601 related to deadlines for submission of renewal applications. UPA governs the New York State Department of Environmental Conservation's (Department or DEC) review and decision-making for applications in 17 permitting programs. The proposed rule would provide additional clarity where the regulation is lacking and by promoting expeditious, comprehensive, and thorough review of permit applications. To that end, the proposed changes to the existing regulations would: update, add and modify definitions to reflect other changes proposed in this rule to UPA; expand the list of "minor projects" in 6 NYCRR 621.4 to make it better reflect DEC's experience with "minor projects" versus "major projects"; recognize the exchange of electronic document and e-business concepts in UPA permitting, including the conduct of virtual hearings; and incorporate references to recent acts of the Legislature requiring DEC consideration of climate change and environmental justice in permitting, namely the Climate Leadership and Community Protection Act, the Community Risk and Resiliency Act, and environmental justice. The proposed rule would also require applicant appeals to specify the basis of an appeal and, in general, clarify the appeal provisions related to requests for hearings on draft permits and final permits.
3. Location of Action: NA - the regulation applies to DEC permitting statewide

4. If an application for the proposed action has been filed with the state agency, the following information shall be provided:

(d) State agency application number: _____

Yes _____ No X If yes, which federal agency? _____

YES NO

(c) Important agricultural lands?	<u> </u>	<u>X</u>
---	-------------------	----------

(g) Structures, sites or districts of historic, archeological or cultural significance to the State or nation? X

3. Will the proposed activity involve or result in any of the following:
- (a) Physical alteration of two (2) acres or more of land along the shoreline, land under water or coastal waters? X
 - (b) Physical alteration of five (5) acres or more of land located elsewhere in the coastal area? X
 - (c) Expansion of existing public services of infrastructure in undeveloped or low density areas of the coastal area? X
 - (d) Energy facility not subject to Article VII or VIII of the Public Service Law? X
 - (e) Mining, excavation, filling or dredging in coastal waters? X
 - (f) Reduction of existing or potential public access to or along the shore? X
 - (g) Sale or change in use of state-owned lands located on the shoreline or under water? X
 - (h) Development within a designated flood or erosion hazard area? X
 - (i) Development on a beach, dune, barrier island or other natural feature that provides protection against flooding or erosion? X
4. Will the proposed action be located in or have a significant effect upon an area included in an approved Local Waterfront Revitalization Program? X

D. SUBMISSION REQUIREMENTS

If any question in Section C is answered "Yes", AND either of the following two conditions is met:

Section B.1(a) or B.1(b) is checked; or
Section B.1(c) is checked AND B.5 is answered "Yes",

THEN a copy of this completed Coastal Assessment Form shall be submitted to:

New York State Department of State
Office of Coastal, Local Government and Community Sustainability
One Commerce Plaza
99 Washington Avenue, Suite 1010
Albany, New York 12231-0001

If assistance or further information is needed to complete this form, please call the Department of State at (518) 474-6000.

E. REMARKS OR ADDITIONAL INFORMATION

Preparer's Name: James Eldred
(Please print)

Title: Environmental Analyst Agency: NYSDEC

Telephone Number: (518) 402-9158 July 28, 2022 Date

New York State Department of Environmental Conservation
Uniform Procedures Act Rule Making
July 28, 2022
State Environmental Quality Review Act (SEQR)
Short Environmental Assessment Form (EAF) Part 3 Attachment

EAF Part 3 Attachment - Evaluation of potential environmental impacts and determination of no significant adverse environmental impacts

As identified in the narrative description of the action in Part 1 of this EAF, UPA provides the procedural framework for DEC's review and decision making on permit applications subject to UPA. Accordingly, the updates identified are primarily administrative in nature and all questions on Part 2 of the EAF have been answered No Impact. Further, where an application received by the DEC involves a discretionary decision for an action that is subject to SEQR, compliance with SEQR is required prior to issuing a completeness determination and final decision under UPA. Those procedural requirements remain unchanged by this proposed action. Therefore, the proposed UPA rulemaking will not result in any significant adverse environmental impacts.

While no adverse environmental impacts have been identified, the following provides a discussion of the most significant changes proposed by this action:

Update major / minor application classifications.

When a UPA-major application is complete, a Notice of Complete Application must be published in a newspaper, at the applicant's expense, which can range from a few hundred dollars to thousands. Usually this is a legal notice in the newspaper's classified ad section. The Department also posts the same notice in the Department's online Environmental Notice Bulletin (ENB). The intent is to advise the public of the project and solicit public review and comment. An estimated 40,000 notices have been published since 1977.

DEC's experience shows that most legal notices, for small-scale projects such as bridge repairs and small quantities of wetland fill that are considered "major" under UPA, have generated little public interest: few calls, letters, emails or demonstrable community concern. Those projects that do elicit public interest are generally large-scale, environmentally consequential, contentious developments, or certain types of facilities (e.g., mining, solid waste management).

DEC proposes to adjust the regulations' major and minor application classifications to better reflect the level of public interest generated by prior notices. In most program areas, larger scale actions, or those with sizable ecological effects, or of known public concern, will be classified as major. This enhancement will improve the public's awareness of meaningful actions in their community. In doing so, it will improve the Department's engagement with citizens where important projects are located. While the proposed changes would result in additional actions when reclassified as "minor" no longer requiring public notice prior to a final decision, this procedural change would not result in an environmental impact. It would, however, provide more expeditious review and reasonable time periods for administrative action on an increased number of minor applications.

Information required to address CLCPA, CRRA, and EJ

The proposal specifies that a complete application may include information needed to address the applicable requirements of the Climate Leadership and Community Protection Act (CLCPA) and the Community Resiliency and Recovery Act (CRRA). Under CLCPA and existing DEC policies, this also includes information to address potential impacts to potential environmental justice areas and disadvantaged communities.

This aspect of the proposal will have a beneficial impact on the environmental outcomes of DEC decision-making. It will provide applicants and DEC greater clarity on the authority of DEC to require necessary information and improve DEC's consistency in considering such information in its decision-making. Generally, such information will promote projects that reduce factors contributing to climate change, are more resilient against the effects of climate change, and help address disproportionate impacts to disadvantaged communities.

Overall Administrative Benefits

Other changes included in the proposed rulemaking have the overall effect of improving DEC's administration of permit application review and decision-making. By itself, this does not have any direct environmental impacts, as noted above. However, greater clarity and improvements in administrative procedures promote the efficient use of DEC staff resources, which fosters better and more timely decisions. Some examples of these improvements in the proposed rulemaking include:

- Addition of “E-business” Provisions: Provisions have been added to allow for the electronic submission and transmittal of application materials and DEC responses. These provisions also allow for the conduct of hearings by electronic means.
- State Administrative Procedure Act (SAPA) clarifications: The proposal expressly lists the permits that involve activities “of a continuing nature”. This change, while not resulting in any environmental impact, would give applicants and DEC staff implementing UPA a clearer understanding of procedural requirements, particularly with regard to provisions of SAPA related to renewal applications.
- Clarifying completeness requirements: The section identifying general requirements for complete application would be revised to consolidate information presently scattered and repeated among specific permit application requirements.
- Hearings: References to hearings would be revised to better describe the two types of hearings involved in DEC permitting. Current language related to “legislative hearings” would be revised to “public comment hearings” to better describe that type of hearing. Current language related to “adjudicatory hearing” would be revised to “adjudicatory proceeding” to better capture the full scope of the adjudicatory process involved in permit matters.

New York State Department of Environmental Conservation
Uniform Procedures Act Rule Making
July 28, 2022
State Environmental Quality Review Act (SEQR)
Short Environmental Assessment Form (EAF) Part 1 Attachment

EAF Part 1 Attachment - Narrative description of the intent of the proposed action and environmental resources that may be affected.

Description of Action:

The New York State Department of Environmental Conservation (Department or DEC) proposes updates to the regulations that implement the Uniform Procedures Act (UPA; ECL Article 70, with implementing regulations codified in Part 621 of Title 6 of the Official Compilation of Codes Rules and Regulations of the State of New York [6 NYCRR Part 621]), with conforming changes to 6 NYCRR Parts 421 and 601 related to deadlines for submission of renewal applications.

UPA establishes uniform procedures and specific time periods for Department processing of a broad range of environmental permit applications enumerated in ECL 70-0107 and 6 NYCRR 621.1. These include permit applications for regulated activities involving use and protection of waters (e.g., stream disturbance); water withdrawals; wild, scenic and recreational rivers; discharges to waters under State Pollutant Discharge Elimination System; air pollution control; reclamation of mined lands; freshwater and tidal wetlands; solid waste management facilities; Coastal Erosion Hazard areas; and several other programs. Specifically, UPA is intended to:

1. ensure fair, expeditious and thorough administrative review of DEC regulatory permits;
2. create uniform and consistent regulatory procedures and eliminate redundancies;
3. establish reasonable time periods for administrative action on permits;
4. encourage public participation in government review and decision-making processes and promote public understanding of all government activities; and
5. substitute comprehensive project review approach over individual permit application reviews.

The proposed rule would further the legislative intent of ECL Article 70 by providing additional clarity where the regulation is lacking and by promoting expeditious, comprehensive, and thorough review of permit applications. To that end, the proposed changes to the existing regulations would: update, add and modify definitions to reflect other changes proposed in this rule to UPA; expand the list of “minor projects” in 6 NYCRR 621.4 to better match DEC’s experience with the kinds of projects that belong to the “minor projects” classification versus “major projects”; recognize the exchange of

electronic documents and e-business concepts in UPA permitting, including the conduct of virtual hearings; and incorporate references to recent acts of the Legislature requiring DEC consideration of climate change and environmental justice in permitting, namely the Climate Leadership and Community Protection Act (Laws of 2019, Chapter 106, as codified in ECL Article 75) and the Community Risk and Resiliency Act (Laws of 2014, Chapter 355, as amended by Laws of 2019, Chapter 6, Section 9).

The action is fully described in the proposed express terms and State Administrative Procedure Act impact statements.

Affected Environmental Resources

The regulatory programs administered under UPA apply to a broad range of environmental resources, as reflected in the above listing of applicable permits. These include the full extent of New York State's natural resources and a wide variety of municipal, institutional, industrial, and commercial activities affecting land, air, and water quality.

The changes proposed in this rulemaking are primarily procedural in nature and do not include any changes to the underlying standards for permit issuance contained in any of the applicable program regulations. Therefore, each permit decision rendered by DEC under the proposed changes in UPA would be subject to the same regulatory requirements currently in place.

Further, several proposed additions to UPA related to climate change and environmental justice are intended to reduce environmental impacts. This would be accomplished by requiring complete applications to address the policy and environmental goals contained in the CLCPA and CRRRA, where applicable.