

Environmental Review and the Tortured BESS Law Rulemaking

A handful of developers are seeking to install lithium-ion battery energy storage systems (BESSs) on Grand Island. A BESS stores electrical energy in rechargeable batteries during off-peak hours and releases it during high demand periods. The widely known issue related to a lithium-ion BESS is the risk of electrochemical fire that releases harmful gases and particulates, is extremely difficult if not impossible to extinguish, and can reignite hours or even days after the initial conflagration. In present time however, a properly designed BESS is considered “safe” when the components are manufactured, handled, installed, operated, and monitored in accordance with industry standards.

The town retained a lawyer to write Local Law Introduction #5 of 2025 titled: Battery Energy Storage Systems, and New York’s State Environmental Quality Review (SEQR) regulations govern this rulemaking process. SEQR requires the consideration of environmental factors in the planning, review, and decision-making process “as early as possible in the formulation of the action” to ensure potential impacts are identified promptly, to focus on the most critical issues, and to support timely and effective rulemaking.

The SEQR process for any rulemaking begins with the submission of a Full Environmental Assessment Form (FEAF). The FEAF is a SEQR tool used in part to make the early “significance determination.” The significance determination for an action that does not result in any adverse environmental impacts; or, where the identified adverse environmental impacts will not be significant, is a written document called a “negative declaration,” often referred to as a “Neg Dek.” The significance determination for an action that may include the potential for at least one significant adverse environmental impact is a written document called a positive declaration (“Pos Dek”).

The FEAF that the town prepared for the battery law is incomplete, inaccurate, unsigned, and is therefore invalid. Most importantly, Section F of the FEAF requiring a description of the potential adverse impacts and the measures proposed to avoid or minimize was left blank, not identifying the obvious risk of electrochemical fire or the industry standard mitigations.

I am a registered professional geo-environmental engineer with a 46-year career in environmental permitting under SEQR. I am appalled by the unmitigated habitat destruction and other adverse environmental/community impacts resulting from the improper application of SEQR by hired attorneys advising the Town Board on projects ranging from solar farm construction to the excavation of recreational ponds, and now the siting of BESS in the Town of Grand Island.

At the first public hearing on the BESS law, I asked whether the significance determination had been made. I subsequently was told by the lawyer that the town making that determination "...before receiving comments or allowing the time to elapse for another involved agency to object to the Town Board's intent to act as lead agency, would render any action by the Town Board procedurally defective and in direct violation of SEQRA." The lawyer had no idea the Town Board is the only agency that can approve this local law (i.e. the only involved agency) and under SEQR is automatically the lead agency? Eight months and three versions of the law later, the early significance determination has yet to be made.

After the first public hearing the comment period was left open and the first version of the law was referred to the Planning Board, the Agriculture Advisory Board and the Conservation Advisory Board (CAB) for recommendations. Key among the recommendations was to incorporate industry standard requirements in the law, notably National Fire Protection Association (NFPA) Standard 855, titled Standard for the installation of Energy Storage Systems. The stated purpose of

NFPA 855 is to “provide the minimum requirements for mitigating the hazards associated with BESS and the storage of lithium-ion batteries.”

The lawyer ignored many of the advisory recommendations, including the need to incorporate mitigating industry standard requirements. The improvements included in the second version were significant enough, however, to require a second public hearing. Because the industry standard mitigating elements were again not incorporated in the second version, significant editing for a third version of the law is underway, and a third public hearing must be held.

This expensive, inefficient rulemaking can be attributed directly to the poorly researched and unproofed first and second version of the law, the invalid FEAF, and an administrative procedure that ignored the SEQR process. The missing Section F of the FEAF symbolizes the main concern; that is, the law was prepared absent any consideration of the dangers or adverse impacts a BESS may impose on the community, or the way those impacts can be adequately mitigated. Had adequate care in writing the law be taken in a manner consistent with the spirit and intent of SEQR, the BESS law would most likely have been adopted eight months ago, on November 3, 2026.

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