

Joint Comments of the Massachusetts Environmental Justice Table

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Via Electronic Mail

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Subject: Comments on the Interim Protocol for Environmental Justice Outreach

Dear Assistant Secretary and Massachusetts Environmental Policy Act (“MEPA”) Director Kim:

We write as the Massachusetts Environmental Justice Table with comments regarding the draft MEPA Interim Protocol For Environmental Justice Outreach (the “EJ Interim Protocol”) and the Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs dated January 31, 2017 (the “EJ Policy”). We thank the MEPA Office for drafting protocols to strengthen the MEPA Office’s environmental justice (“EJ”) practices.

**I. The EJ Interim Protocol Should Be Strengthened to Require Early and Continuous Community Engagement and Tailored Mitigation Measures.**

There is an opportunity to improve the MEPA process to deepen EEA’s commitment to EJ. Below are recommendations to strengthen the EJ Interim Protocol. As stated in the EJ Policy, EJ is “based on the principle that all people have a right to be protected from environmental hazards and to live in and enjoy a clean and healthful environment regardless of race, color, national origin, income, or English language proficiency.”<sup>1</sup> It is the “equal protection and meaningful involvement of all people and communities with respect to the development implementation, and enforcement of energy, climate change, and environmental laws, regulations, and policies and the equitable distribution of energy and environmental benefits and burdens.”<sup>2</sup> To achieve this principle, the MEPA Office must ensure that projects subject to environmental review redress past environmental racism and classism. Redressing environmental racism and classism is not looking at each Project in isolation to see whether it will create damage to the environment or create a burden for local residents or workers. Instead, it means looking at a community holistically to determine whether a Project can improve the environment, energy, climate, and public health conditions. Strengthening the EJ Interim Protocol is a step in the right direction, though more is necessary through MEPA regulatory amendments to begin to redress environmental injustice.

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<sup>1</sup> Massachusetts Executive Office of Energy and Environmental Affairs, *Environmental Justice Policy*, at 3 (2017).

<sup>2</sup> *Id.*

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We offer the following recommendations to strengthen the EJ Interim Protocol. Please see Appendix A with proposed redline edits, which are discussed herein.

- Proponents shall identify EJ populations potentially impacted by a Project within a five mile radius.
- Proponents shall conduct early outreach and engagement prior to filing with MEPA when EJ populations are potentially impacted.
- During MEPA review, EEA and the Proponent should engage with potentially impacted communities, including during the MEPA site visit.
- MEPA Certificates should include mitigation measures that are tailored to EJ populations.

A. Proponents Shall Identify EJ Populations Potentially Impacted by a Project Within Five Miles.

The 2017 EJ Policy requires enhanced analysis of impacts and mitigation for projects that exceed a mandatory environmental impact report (“EIR”) threshold for air, within five miles of an EJ population.<sup>3</sup> Therefore, the Interim Protocol should require Proponent’s to identify EJ populations within a five mile radius of the Project.

The 2017 EJ Policy definition of EJ population requires an update. As members of the Massachusetts Environmental Justice Table, we have spent more than one year in 2019 and 2020 to develop an updated, data-informed definition of EJ population that narrows the number of census block groups that would be designated as EJ populations from the current number of 72 percent based on the 2017 EJ Policy to 41 percent. We recommend that the definition in the EJ Interim Protocol and 2017 EJ Policy reflect the definition included in Section 56 of *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy* (“Roadmap Bill”) and pasted below.<sup>4</sup>

As used herein, “Environmental justice population” shall mean a neighborhood that meets 1 or more of the following criteria: (i) the annual median household income is not more than 65 per cent of the statewide annual median household income; (ii) minorities comprise 40 per cent or more of the population; (iii) 25 per cent or more of households lack English language proficiency; or (iv) minorities comprise 25 per cent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 per cent of the statewide annual median household income; provided, however, that for a neighborhood that does not meet said criteria, but a geographic portion of that neighborhood meets at least 1 criterion, the secretary may designate that geographic portion as an environmental justice population upon the petition of at least 10 residents of the geographic portion of that

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<sup>3</sup> *Id.* at 10, Section 17.

<sup>4</sup> *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy*, S.13, <https://malegislature.gov/Bills/192/S13>.

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neighborhood meeting any such criteria; provided further, that the secretary may determine that a neighborhood, including any geographic portion thereof, shall not be designated an environmental justice population upon finding that: (A) the annual median household income of that neighborhood is greater than 125 per cent of the statewide median household income; (B) a majority of persons age 25 and older in that neighborhood have a college education; (C) the neighborhood does not bear an unfair burden of environmental pollution; and (D) the neighborhood has more than limited access to natural resources, including open spaces and water resources, playgrounds and other constructed outdoor recreational facilities and venues.

Following an updated definition of EJ population, EEA should incorporate the above definition of “Environmental justice population” into the mapping tool referred to in the EJ Interim Protocol. EEA should update its online mapping tool prior to issuing a 2022 EJ Policy. We would welcome the opportunity to meet with the MEPA Office and GIS staff to discuss updating the EJ Viewer online mapping tool. We acknowledge that the MEPA regulations will require amendment to integrate future statutory changes that are likely to be enacted with the passage of the Roadmap Bill.

B. Proponents Shall Conduct Early Outreach and Engagement Prior to Filing With MEPA When EJ Populations are Potentially Impacted.

The EJ Interim Protocol should require early engagement with EJ populations when a Project potentially impacts EJ populations. To conduct engagement in a meaningful way, the Proponent should be required to consult with the MEPA Office at least 60 days prior to filing. The EJ Interim Protocol requires consultation at least 10 days in advance, though 10 days is not sufficient time for the MEPA Office to provide the Proponent with ideas for public engagement and then for the Proponent to conduct that engagement prior to filing. A 60-day advance notice period will allow time for a Proponent and the MEPA Office to develop an outreach strategy and then to allow time to conduct outreach prior to filing with the MEPA Office.

As part of this outreach strategy, the Proponent shall develop a written Project statement about the facility that includes detailed information about: the Project need; public health, environmental, energy, economic, and climate risks and burdens; public health, environmental, energy, economic, and climate benefits for communities within two miles of the facility. The Project statement shall include reasonable alternatives. The Project statement shall be shared with the EEA Director of Environmental Justice and posted to a public website. If the Project will potentially impact an EJ population that is designated as limited English proficiency, then the MEPA Office shall provide guidance to the Proponent about the language(s) in which the Proponent should translate the Project statement.

Early engagement between a Proponent and the potentially impacted community prior to filing will likely require more time up front for a Proponent, but it could be an opportunity to improve a project and save time during the remainder of the environmental review. Within 30 days of submitting the Project statement, the Proponent shall invite community-based organizations, local elected officials, the EEA Director of Environmental Justice to a meeting to review the

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proposed project (information meeting). Based on guidance from the MEPA Office, the Proponent shall invite language interpreters, paid for by the Proponent, to ensure that information meeting attendees understand the terms of the project. During the information meeting, the Proponent shall review the Project statement, answer questions, and listen to attendee concerns and ideas. Following an information meeting, the Proponent shall adjust the Project to address community concerns or abandon plans to file with MEPA. The MEPA Office shall ensure that staff is available to support a Proponent during the early engagement period to make connections with potentially impacted EJ populations.

C. During MEPA Review, EEA and the Proponent Should Engage With Potentially Impacted Communities, Including During the MEPA Site Visit.

Community engagement should extend beyond the pre-filing phase. For projects that involve site visits, the MEPA Office and Proponent should work together to ensure residents of potentially impacted EJ populations know about the site visit. Further, the Proponent shall provide simultaneous language interpretation if the Project will potentially impact an EJ population that is designated as a limited English proficient neighborhood. During the site visit, the Proponent shall review the MEPA filing, answer questions, and listen to attendee concerns and ideas.

If site visit attendees raise concerns and/or recommended Project changes, the MEPA Office staff shall ensure they understand the information and address those concerns in the Secretary's Certificate. The MEPA Office shall consider extending the comment periods beyond the standard 20 or 30 days when a project potentially impacts EJ populations.

D. MEPA Certificates Should Include Mitigation Measures That Are Tailored To EJ Populations.

To the extent that EJ population residents express concerns or ideas about a project, the MEPA Office shall consider how to require project changes and mitigation opportunities. The Secretary's Certificate shall include, when appropriate, specific mitigation requirements that are tailored to the potentially impacted EJ population needs and requests. These mitigation measures should reflect community ideas.

## II. Now is the Time for EEA to Begin Outreach to Update the EJ Policy.

The EJ Policy was executed on January 31, 2017. It requires the EEA Secretary to review the Policy and, after soliciting input, amend the policy every five years.<sup>5</sup> Thus, a new EJ Policy should be executed on or before January 31, 2022. Now is precisely the time for EEA to solicit input to amend the EJ Policy.

The Executive Order on Environmental Justice requires EEA to review MEPA thresholds that trigger enhanced review.<sup>6</sup> EEA is more than five years beyond the deadline to accomplish this

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<sup>5</sup> Massachusetts Executive Office of Energy and Environmental Affairs, *Environmental Justice Policy*, at 7, 14 (2017).

<sup>6</sup> Exec. Order 552 Mass. Reg. # 1276 (2014).

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task. Further, the EJ Policy requires updates to EIR thresholds for projects that trigger enhanced review and/or enhanced analysis of impacts and mitigation.<sup>7</sup>

In addition to the Executive Order requirement, the Roadmap Bill will, if enacted, further trigger MEPA updates to require more thorough consideration of EJ issues in MEPA and other environmental review stages. If the Roadmap Bill is enacted, then EEA will need to revise its EJ Interim Protocol, amend the MEPA regulations, and update the EJ Policy. If the Legislature or Governor fail to act on the Roadmap Bill or enact a version of the Roadmap Bill excludes the environmental justice portions to amend MEPA, then EEA still has an obligation to update MEPA thresholds that trigger enhanced review pursuant to the Executive Order on Environmental Justice and EJ Policy. Those of us engaged in negotiating the Executive Order on Environmental Justice discussed with the past administration the need to expand enhanced review beyond the MEPA thresholds for wastewater (301 CMR 11.03(5)), air emissions (11.03(8)), and solid and hazardous waste (11.03(9)).

We urge EEA to commence conversations about the MEPA thresholds update no later than June 30, 2021, should the Roadmap Bill not become law. We encourage EEA to work on the revised MEPA thresholds with the Massachusetts Environmental Justice Table, a statewide coalition of community-based, environmental, Indigenous, and civil rights organizations led by grassroots, community of color-led organizations.

Thank you for your consideration of these comments. We look forward to working with EEA as it pursues implementation of environmental justice processes under MEPA. If you have any questions about this letter, please contact Andrea Nyamekye ([andrea@n2nma.org](mailto:andrea@n2nma.org)), Maria Belen Power ([mariabelenp@greenrootschelsea.org](mailto:mariabelenp@greenrootschelsea.org)), or Staci Rubin ([srubin@clf.org](mailto:srubin@clf.org)).

Signed,

### Members of the Massachusetts Environmental Justice Legislative Table:

GreenRoots	Massachusetts Climate Action Network
Neighbor to Neighbor MA Education Fund	Clean Water Action
Alternatives for Community & Environment	Community Action Works
Conservation Law Foundation	Health Care Without Harm
Green Energy Consumers Alliance	Unitarian Universalist Mass Action
Environmental League of Massachusetts	Union of Concerned Scientists

Copy: Rishi Reddi, Director of Environmental Justice

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<sup>7</sup> Massachusetts Executive Office of Energy and Environmental Affairs, *Environmental Justice Policy*, at 10 (2017).

APPENDIX A

Red-lined Edits to MEPA Protocol

MEPA Interim Protocol for Environmental Justice Outreach

Issuance Date: [TBD], 2021

Background

In 2017, the Executive Office of Energy and Environmental Affairs (EEA) issued a revised Environmental Justice (EJ) Policy (the 2017 EJ Policy). Among other items, the 2017 EJ Policy requires that projects triggering certain MEPA ENF review thresholds provide opportunities for “enhanced public participation” by surrounding EJ neighborhoods,<sup>8</sup> and that projects triggering certain EIR thresholds conduct an “enhanced analysis of impacts and mitigation,” in addition to enhanced public participation.<sup>9</sup> The MEPA thresholds to which these EJ requirements apply are those related to wastewater (301 CMR 11.03(5)), air emissions (11.03(8)), and solid and hazardous waste (11.03(9)).

Starting in 2020, the MEPA Office has embarked on an effort to update its EJ related review protocols, in consultation with the EEA EJ Director and other EEA agencies. This effort will coincide with parallel efforts to update MEPA regulations at 301 CMR 11.00 et seq. While these efforts are ongoing, the MEPA Office is issuing this interim protocol to improve notification and outreach to, and engagement with, EJ neighborhoods by project proponents. The interim protocol shall remain in place until amended, if necessary, to comply with statutory requirements or superseded by a formal MEPA EJ strategy and associated policy or guidance to be developed through a public stakeholder process.

Interim Protocol

Effective [TBD], 2021, all new projects filing with the MEPA Office will be required to identify the location of the project relative to Environmental Justice Populations as depicted on this mapping tool, and include a printout of the project location shown on the mapping tool as an attachment to the Environmental Notification Form (ENF) (or EENF) submittal. The printout shall identify all Environmental Justice Populations within a five mile radius of the project.

If any portion of the project site is located within an “EJ population” as defined in the 2017 EJ Policy, the Proponent is required to consult with the MEPA Office at least ~~1060~~ days prior to filing to determine an appropriate EJ outreach strategy. As part of this outreach strategy, the Proponent shall develop a written Project statement about the facility that includes detailed information about: the Project need; public health, environmental, energy, economic, and climate risks and burdens; public health, environmental, energy, economic, and climate benefits for communities within two miles of the facility. The Project statement shall include reasonable

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<sup>8</sup> The specific ENF thresholds are 301 CMR 11.03(5)(b)(1)-(2), (5); 301 CMR 11.03(8)(b); and 301 CMR 11.03(9)(b).

<sup>9</sup> The specific EIR thresholds are 301 CMR 11.03(5)(a)(1)-(2), (5); 301 CMR 11.03(8)(a); and 301 CMR 11.03(9)(a).

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alternatives. The Project statement shall be shared with the EEA Director of Environmental Justice and posted to a public website. Within 30 days of submitting the Project statement, the Proponent shall invite community-based organizations, local elected officials, the Director of Environmental Justice to a meeting to review the proposed project (information meeting). During the information meeting, the Proponent shall review the Project statement, answer questions, and listen to attendee concerns and ideas. Following an information meeting, the Proponent shall adjust the Project that address community concerns or abandon plans to file with MEPA.

In most cases, such strategy shall include, at a minimum, conducting outreach to local EJ groups and, if “English Isolation” (limited English proficiency) is indicated on the mapping tool as an identifying feature of the EJ population, offering a translated version of the Project statement, to the extent practicable, translation and interpretation services in languages spoken by a significant portion of the population, and interpretation services during information meetings and the MEPA site visit, if requested 48 hours in advance. These language service requirements shall apply to notices, documents, and community meetings that pertain to the proposed project all at the project proponent’s expense. The MEPA Office can provide assistance in identifying the relevant languages for the neighborhood. In lieu of pre-filing consultation, the Proponent may voluntarily conduct EJ outreach prior to filing and include a summary of these outreach activities as part of the ENF/EENF filing so long as the outreach is equal to or exceeds the requirements noted above. Remediation projects will be exempted from this requirement.

In addition to these pre-filing requirements, the MEPA Office will consider the potential need for enhanced outreach to EJ neighborhoods during the course of MEPA review, including during the site visit, for any project that is subject to the requirement to file a mandatory environmental impact report (EIR). This determination will be made on a case by-case basis, in consideration of the project’s proximity to EJ neighborhoods, and its specific impacts. If required, enhanced outreach activities will be specified in the EIR Scope. The Secretary’s Certificate will include mitigation requirements that are tailored to EJ population needs and requests.

This Interim Protocol is intended to supplement, and shall not supersede, the requirements of the 2017 EJ Policy. The 2017 EJ Policy shall remain in effect for all projects to which its requirements apply.