

ENF – 20-001 – Policy on Penalty Assessment for Violations Occurring in Environmental Justice (“EJ”) Populations

(10.30.2020)

1. INTRODUCTION

A. Purpose and Intent

This document presents guidance on considering the ‘public interest’ factor as an upward adjustment of a penalty assessment when the enforcement action is one for which a civil administrative penalty for violating laws and regulations administered by MassDEP is to be assessed, and where such violations have occurred within an EJ population or where violations that have occurred outside a mapped EJ population affect an EJ population. (See definitions and related background in EEA’s Environmental Justice Policy (“EJ Policy”) (link infra., sec. III) and Executive Order no. 552, both of which are referred to and fully incorporated by reference. See also Federal Executive Order 12898, a related and foundational document with which Massachusetts EJ Policy comports.

B. Applicability and Legal Effect

This policy document provides guidance that applies to all administrative enforcement actions commenced after the effective date of this policy involving the consideration and assessment of civil administrative penalties for violations occurring in an EJ population or for violations occurring outside a mapped EJ population that affect an EJ population.

This policy supplements the Enforcement Response Guidance (ERG), and should be read in conjunction therewith. It is intended solely as guidance for MassDEP managers and staff in the exercise of enforcement authority under the Civil Administrative Penalties Act, G.L. c. 21A, §

16 and 310 CMR 5.00 et seq. This policy does not constitute final agency action, and is not “Regulations” as that term is used in G.L. c. 30A.

II. POLICY STATEMENT

In accordance with G.L. c. 21A and 310 CMR 5.00 et seq., MassDEP considers ‘public interest’ as one of several factors when assessing a civil administrative penalty. This policy also accords with G.L. c. 21A, § 2, which broadly describes the functions and duties of the Executive Office of Energy and Environmental Affairs (EEA) and the “departments and divisions” falling thereunder.

The directive of this policy, that MassDEP consider ‘public interest’ in the specific context of cases involving violations in EJ populations, has its foundation in EEA’s EJ Policy, and in Executive Order no. 552, discussed supra.

Accordingly, because it is in the public interest to further the intent of the EEA EJ Policy and Executive Order no. 552, and because it is in the public interest to address environmental equity issues in populations that fall within the definition of “EJ”, as that term is described in the EJ Policy (see [Link to sec. III infra.](#)), MassDEP should consider an upwards adjustment for any penalty, the underlying violation of which occurred in an EJ population or where the violation occurred outside a mapped EJ population and affected an EJ population.

LINKS

EEA's Environmental Justice Policy:

https://www.mass.gov/files/documents/2017/11/29/2017-environmental-justice-policy_0.pdf

Interactive Environmental Justice Populations Map:

<https://www.mass.gov/doc/ej-2010-pdf-map-state/download>

MassGIS Environmental Justice Viewer with data layers:

http://maps.massgis.state.ma.us/map_ol/oliver.php

MassGIS OLIVER Online Mapping Tool with data layers:

http://maps.massgis.state.ma.us/map_ol/oliver.php