FRRACS
NO COMPRESSOR
South Shore, MA

October 19, 2021

MEPA Office
Attn.: Tori Kim
100 Cambridge Street, Suite #900
Boston, MA 02114

Comment: MEPA revisions to comply with Environmental Justice provisions of the Next Generation Climate Law.

Dear Ms. Kim,

We have appreciated the opportunity to attend virtual public meetings with MEPA staff, as new regulations are developed to meet the environmental justice (EJ) requirements of the Next Generation Climate Law. We thank you for your intentionality, and we hope that the final result will indeed lead to the **equal protection** of environmental justice communities, and their **meaningful participation** in decisions that affect their health and their local environment, as required by Title VI of the 1964 Civil Rights Act. We at Fore River Residents Against the Compressor Station have almost seven years of experience of working to protect EJ communities in Quincy, Braintree, and Weymouth from the well-documented impacts of a proposed (and now actual) fracked-gas compressor station, which was permitted without a MEPA review. We hope that the new provisions will spare other EJ communities our fate of becoming a sacrifice zone. Our comments follow:

Environmental Justice Principles and equal protection: "The MEPA review process shall consider Environmental Justice Principles to reduce the potential for unfair or inequitable effects upon Environmental Justice Populations" (p. 1). These principles are invoked throughout the revised document. Could you clarify whether this refers to the classic set of EJ principles at http://www.ejnet.org/ej/principles.html, federal EPA or Mass. EJ definitions, or some other set of principles? Where they are found? Can you clarify how are these principles being used in the MEPA regulatory revision process to assure **equal protection**?

Meaningful participation: "The purpose of MEPA and 301 CMR 11.00 is to provide *meaningful opportunities for public review of the potential environmental impacts*…" (p.1). The ongoing process of revising the MEPA and MassDEP regulations to comply with the Next Generation Climate law reveals the challenge of achieving meaningful participation by members of the public, and especially by those residing in EJ communities. The small number of attendees at virtual hearings, with few from EJ communities, and the paucity of public comments are consistent with structural barriers that have been a problem for decades. The byzantine process is a challenge, even for highly educated professionals. Web pages or email sign-ups for notices of meetings reach only the people and organizations already engaged. Language needs to be added assuring meaningful engagement via:

- significant outreach on the ground, in multiple languages, in EJ communities.
- providing and publicizing transportation to in-person events in those languages.

- translation at meetings in as many languages as needed.
- holding meetings at times when working people can attend, with adequate time for comment periods that can incorporate the desires of the public, especially EJ communities, in shaping, or preventing certain projects.
- timelines that allow for public participation to be part of decision-making and not just a required box to check. Current language reads, "MEPA review *can* influence the planning and design of a program, regulations, policy, or other Project to enable an Agency to achieve these goals, *provided that MEPA review is initiated sufficiently early and in any event prior to the Proponent finalizing or otherwise irreversibly committing to the program, regulations, policy, or other Project"* (p. 2, italics added). The language needs amending to affirm a commitment to timelines that *shall* include the public's input and *will* be initiated sufficiently early. We concur with the strong advocacy of attendees at public meetings for MEPA review timelines that allow for public meetings and comments during pre-filing and that are well in advance of finalization of proponents' project plans.
- neighborhood inclusion. Proposed MEPA regulations define neighborhood as, "A census block group as defined by the United States Census Bureau, *excluding people who live in college dormitories and people who are under formally authorized, supervised care or custody, including federal, state or county prisons*" (p.10, italics added). Census block definitions must not be used to exclude people in supervised settings or prisons from environmental protection. For example, Norfolk State Prison has egregious problems with lack of clean water and other violations that affect the health and well-being of inmates. The new regulations need to address this environmental justice loophole.
- being engaged with EJ communities about their current health and environmental impact concerns, whether or not a project proponent is on the scene. Genuine community engagement around health and environmental concerns will require more funding and staff, but it is essential if there is to be meaningful participation from EJ communities.

We have concerns about the **primary role of proponents** as the source of information as to whether their projects will exceed environmental thresholds for an EIR within the one- and five-mile radii near EJ communities. (See esp. pp. 21, 24, 30-31). If proponents are the only source of data, the new regulations will not be effective. Data is almost always available for similar existing projects and should be checked by the appropriate Mass. agencies to confirm that it is consistent with proponents' estimates since proponents have financial motivations to underestimate projected impacts.

We celebrate the addition of **public health and environmental well-being** in EJ communities to MEPA regulations.

- We urge the addition of cancer, neurological diseases, and diabetes to the list of environmentally-related health effects falling under required health studies.
- We have concerns about using, "*feasible* means to avoid Damage to the Environment and related public health impacts or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment and related public health impacts *to the maximum extent practicable*" (p.1, italics added).
    - The question of whether, and how much, mitigation is "feasible" and "practicable" must not be left to the proponent, who, again, has strong incentives not to engage in

costly mitigation.
    - There needs to be a defined decision-making process for a cost-benefit analysis via MEPA review to decide whether and how the value of a polluting project outweighs damage to public health and the environment.
    - That decision-making process must be the same for environmental justice communities as for wealthier, whiter ones.
    - There can be no mitigation for the loss of life or health or for climate and environmental catastrophe. The new regulations must acknowledge that not every project can arrive at a permit via promised mitigation. MEPA review must include clear limits that include denial of permits. The lives and health of children and EJ community members and the web of life that sustains all of us must take priority.
- We have concerns about who will do **Health Impact Assessments** under the new regulations, how they will be funded, whether they will be allotted adequate time for "meaningful participation" of EJ communities, and whether they will require independently collected, scientifically verifiable data prior to final permit decision-making.

Maps and Tools: We commend the development of maps and tools for assessing equity and public health, but are concerned that in the recent public meeting the MEPA PowerPoint, after describing them, states that they provide, "results that are not designed to be the basis for agency decision making." If the maps and tools are not used for helping agencies make decisions, what is the point of having them? How is the "clear intent" of the new climate law regarding environmental justice to be enforced? Perhaps the final regulations need to include a point system for getting permits that makes clear what *is* part of the decision making and how each item that is considered is weighted. Public input into creating such a system would be crucial.

Replacement Projects/Routine Maintenance "The review thresholds do not apply to: a lawfully existing structure, facility or activity; Routine Maintenance; a Replacement Project; or a Project that is consistent with a Special Review Procedure review document…" (pp. 11-12). We would like to see working definitions of "replacement projects" and "routine maintenance" that would require environmental review if the replacement is in a different location, if maintenance will result in new or increased emissions, or other increased environmental impacts. This is essential. For example, Enbridge is currently re-excavating large portions of the contaminated compressor site under the guise of routine maintenance thereby exposing neighboring EJ communities to several additional months of exposure to toxic coal ash.

Exemption for Restoration projects: We support the request by other commenters that restoration projects that qualify for an Ecological Restoration Order of Conditions under the Wetland Protection Act be eligible to request a waiver from the mandatory EIR. This would keep projects in EJ communities on equal regulatory footing for beneficial projects including dam removals and wetlands restoration that provide a healthier environment for those communities that often bear the heaviest burden of environmental damage. We are concerned that the proposed regulation as currently written may have an unintended consequence of creating a disincentive for taking on restoration projects like dam removals, culvert/stream crossing replacements, and wetlands and tidal restoration projects in EJ communities because of the increased regulatory burden and financial cost of a mandatory EIR. *At the same time*, we believe that language granting

such waivers must be carefully crafted so as not to enable projects such as pipelines, power plants or industrial facilities to be granted waivers because they include a 'restoration' component.

We would like to see a working definition of "***insignificant destruction, damage or impairment***" of the environment vs. "Damage to the Environment?" (p.8, italics added), the latter requiring intervention and the former not requiring it. The views of EJ communities as to what is and is not "insignificant" must be included and must not be left to MEPA and/or proponents.

Finally, MEPA review needs to include an expansive **overview** of proposed projects. Our experience is that the silos of the permitting process never included any agency looking at the "big picture" of potential threats to public health and safety and to the environment in and near our EJ communities. The MEPA review is the obvious place to consider the interaction of every aspect of a project prior to allowing it into the numerous permitting silos.

Sincerely,
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