**Massachusetts**

**Department of Environmental Protection**

**Civil Rights and Non-Discrimination**

**Plan**



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1. **POLICY STATEMENT**

It is the policy of the Massachusetts Department of Environmental Protection (MassDEP) that no person shall be denied benefits or subjected to discrimination, intimidation, or retaliation in any MassDEP program, service, or activity on the basis of one’s sex, race, color, religion, creed, national origin, gender identity, income, disability, age, sexual orientation, ethnicity, genetic information, ancestry, or status as a veteran. MassDEP also requires its contractors and grantees to comply with this policy. Moreover, it is the policy of MassDEP to consider whether any MassDEP decision, service, program, or benefit results in a potential disproportionate adverse human health and environmental effect, including social and economic effect, on communities of color, tribal communities and other communities underrepresented in public processes.

1. **OBJECTIVES**

The objectives of this MassDEP Civil Rights and Non-Discrimination Plan are:

1. To outline MassDEP’s goals and principles in the areas of civil rights, non-discrimination and environmental justice, and to provide clear procedures for filing, investigating, and resolving civil rights and non-discrimination complaints in a prompt and fair manner.
2. To ensure MassDEP’s compliance with Civil Rights and Non-Discrimination laws (including compliance by MassDEP’s funding recipients, sub‐recipients, contractors, and related entities) and to assign responsibilities for ensuring compliance.
3. To ensure that all persons are able to receive the benefits of MassDEP programs, services and activities consistent with the notions of fair treatment, equal protection, self‐determination, and the just distribution of the benefits and burdens of decisions and actions.
4. To ensure that all persons, including limited English proficiency (LEP) individuals, and individuals with disabilities, are provided meaningful access to MassDEP programs, services and activities.
5. **LEGAL AUTHORITY REQUIRING TITLE VI AND NON-DISCRIMINATION COMPLIANCE**

At the federal level, Title VI of the Civil Rights Act of 1964 (Title VI) and regulations developed by federal agencies under Title VI authority, prohibit discrimination on the basis of race, color, national origin -- including limited English proficiency, as well as intimidation and retaliation. Other federal laws listed in Appendix 1 prohibit discrimination on the basis of disability, sex, or age (collectively, the “federal protections”), as well as intimidation and retaliation, in state programs or activities that receive federal financial assistance. MassDEP is a state agency that receives federal funds and is therefore required to comply with Title VI, other federal nondiscrimination laws and the United States Environmental Protection Agency’s (EPA) regulations. Not only do these EPA regulations prohibit *intentional* discrimination, they prohibit MassDEP from implementing any rule, policy or program that results in disparate or discriminatory impact, even though the rule, policy or program appears fair and neutral on its face.

Under the EPA regulations, the public may file grievances alleging intentional discrimination, including claims of intimidation or retaliation, and/or the disparate impact of an EPA financial recipient’s agency action in writing with EPA’s External Civil Rights Compliance Office (ECRCO). EPA’s Title VI regulations also require MassDEP to adopt a grievance procedure that gives Massachusetts residents a choice to have their grievance heard at the state level, ensuring a prompt and fair resolution of complaints which allege Title VI violations.[[1]](#footnote-2) This Civil Rights and Non-Discrimination Plan is accompanied by a Civil Rights and Non-Discrimination Grievance Procedure (Appendix 5) and Grievance Form (Appendix 6) which sets out how a complaint may be filed and processed with MassDEP’s Office of Environmental Justice. Grievance hearings will be conducted through the Office of Appeals and Dispute Resolution.

Along with federal protections against non-discrimination, state law provides additional safe-guards. Article CVI of the Massachusetts Constitution provides that, “… Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.” Massachusetts statutes, regulations, executive orders, and policies prohibit discrimination on the basis of race, color, age, gender, ethnicity, income, sexual orientation, gender identity, religion, creed, ancestry, national origin, disability, or veteran’s status (collectively, the “state protections”) in all programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state.[[2]](#footnote-3) Like the complaints alleging violations of federal protections, complaints of violations of state protections specific to this plan may be filed in writing with MassDEP’s Office of Environmental Justice.

A list of supporting federal and state legal authorities may be found in Appendix 1.

1. **ENVIRONMENTAL JUSTICE PRINCIPLES**

Environmental Justice (EJ) is predicated on the notion of fair treatment and equal protection, meaning a just distribution of the benefits and burdens of decisions and actions. No group of people should bear a disproportionate share of the negative environmental consequences resulting from the execution of governmental policies and programs.

All stakeholders must have an opportunity for meaningful involvement in all decisions that may affect their immediate lives. In the course of agency action, MassDEP strives to provide more than the minimum notice and comment opportunities, particularly where barriers to participation exist. To ensure fair treatment and involvement in decision‐making, communities potentially impacted by agency action must be identified and MassDEP must work to build capacity and opportunities for participation around the pertinent issues so that access is substantive and genuine.

MassDEP implements EJ principles pursuant to the 2021Environmental Justice Policy issued by the Executive Office of Energy and Environmental Affairs. In some cases, implementation of EJ principles also involves or may affect classes protected by federal and state non-discrimination laws. Environmental Justice Communities are populations identified on the basis of minority, limited English proficiency, or low income status. MassDEP implements the EJ Policy in accordance with its own EJ Strategy, which may be found on the agency website.

Principles of environmental justice in decision‐making include:[[3]](#footnote-4)

* Ensuring all communities have a strong voice in environmental decision-making regardless of race, color, national origin, income, or English language proficiency;
* Increasing attention focusing on communities that are built in and around the state’s oldest areas with a legacy of environmental pollution, particularly in areas with residents who have elevated rates of disease and health burdens;
* Identifying residents living next to existing large and small sources of pollution and old, abandoned, contaminated sites;
* Enhancing public participation and engagement, target compliance assessment and assistance efforts;
* Enhancing the review of significant new or expanding facilities presenting potential adverse impacts to public health or the environment; and
* Encouraging economic growth through the cleanup and redevelopment of Brownfield sites.

The 2021 Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs (2021 EJ Policy), which applies to MassDEP as an EEA agency, may be found in Appendix 4.

1. **MEANINGFUL PUBLIC INVOLVEMENT REQUIREMENTS**

It is MassDEP’s policy to include the public in important decisions by providing for early, open and continuous public participation and access to key planning and project decision‐making processes. Under EPA’s Title VI Guidance, “Meaningful public involvement consists of informing, consulting and working with potentially affected and affected communities at various stages of the permitting process to address their concerns.”[[4]](#footnote-5) The following Public Involvement Principles were outlined in the Executive Office of Environmental Affairs’ 2002 EJ Policy, 2017 EJ Policy and remain in effect in the 2021 EJ Policy. MassDEP is committed to applying the EJ Policy principles in addition to EPA’s Title VI Guidance for meaningful public involvement in planning, services and decision‐making.

1. **Partnership**: Community members have a right to be involved in decisions that affect them. Participants can influence decision‐making and receive feedback on how their input was used. The public has the opportunity to recommend projects and issues for government consideration.
2. **Early Involvement**: Public involvement is an early and integral part of issue and opportunity identification, concept development, design, and implementation of MassDEP policies, programs, and projects.
3. **Building Relationships and Community Capacity**: Public involvement processes invest in and develop long‐term, collaborative working relationships and learning opportunities with community partners and stakeholders.
4. **Inclusiveness and Equity**: Public dialogue and decision‐making processes identify, outreach to, and encourage participation of the community in its full diversity. Processes include a range of values and interests and the knowledge of those involved. Historically excluded individuals and groups are included authentically in processes, activities, and decision‐ and policy‐making. Impacts, including costs and benefits, are identified and distributed fairly.
5. **Good Quality Process Design and Implementation**: Public involvement processes and techniques should be well‐designed to appropriately fit the scope, character, and impact of a policy or project. Processes adapt to changing needs and issues as they move forward.
6. **Transparency**: Public decision‐making processes are accessible, open, honest, and understandable. Members of the public receive the information they need, and with enough lead time, to participate effectively.
7. **Accountability**: MassDEP leaders and staff are accountable for ensuring meaningful public involvement in the work of the organization.

**MassDEP’s Public Involvement Opportunities**

MassDEP ‘s agency-wide Public Involvement Plan (PIP) is implemented to be consistent with EPA’s Title VI Guidance and outlines the agency’s public participation process and procedures for specific actions. The agency-wide PIP requires agency staff to incorporate into their program the following information: i. a description of the community where the activity is occurring or is being impacted by the agency’s actions; ii. a contact list of relevant agency personnel; iii. a list of past and present concerns of the relevant community; iv. a detailed plan of action the agency will take to address concerns; v. a contingency plan for unexpected events; vi. the location where public meetings will be held and its accessibility to public transportation; vii. the name of agency contacts for translation services; viii. identify appropriate media contacts relevant to different communities’ culture and language; and ix. the location of the agency PIP repository.[[5]](#footnote-6) In addition to the agency-wide PIP, MassDEP’s Bureau of Waste Site Cleanup has a document entitled, Public Involvement During Cleanup of Contaminated Properties that provides information to the public, licensed site professionals (LSP) and responsible/potentially responsible parties (RPs/PRPs) about the cleanup of hazardous waste sites. The MassDEP’s Bureau of Air and Waste has bureau-specific PIPs that provide public involvement opportunities in solid waste, hazardous waste, and air quality permitting decisions. These bureau-specific public involvement documents work in concert with the agency-wide PIP.

Links to bureau-specific public involvement opportunities may be found in Appendix 2.

1. **ACCESS TO PROGRAMS AND ACTIVITIES BY PERSONS WITH DISABILITIES**

MassDEP complies with federal and state statutes and regulations prohibiting discrimination in access to programs and activities by persons with disabilities. The federal Americans with Disabilities Act (ADA), requires state, local and municipal governments to provide equal opportunity for persons with disabilities in all programs and activities (in Title II, 42 U.S.C. § 12131, et seq.), and prohibits discrimination against the disabled in places of public accommodation (in Title III, 42 U.S.C. § 12181, et seq.).

MassDEP to the extent feasible strives to ensure that disabled persons, including those with impaired vision or hearing, receive the benefits and services of programs and activities receiving Federal financial assistance.[[6]](#footnote-7) MassDEP makes efforts to provide accessibility unless modifications would fundamentally alter the nature of the program or services or cause an “undue burden.” [[7]](#footnote-8)

Under state law, Article CXIV of the Massachusetts Constitution provides “No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth.”

Chapter 272, §§ 92A, 98, and 98A of the Massachusetts General Laws, also known as the public accommodation law, is the state statute that prohibits disability-based discrimination in places of public accommodation. The ADA and Section §3.03 of the Massachusetts Disability-Based Non-Discrimination Standards for Executive Branch Entities Handbook[[8]](#footnote-9) define “disability” as:

* a physical or mental impairment that substantially limits one or more major life activities;
* having a record of such impairment;
* being regarded as having such an impairment; or
* being associated with a person with one or more disabilities.

For more information regarding MassDEP’s Disability Plan contact Massachusetts Executive Office of Energy and Environmental Affairs ADA Coordinator, Melixza Esenyie at [Melixza.Esenyie2@mass.gov](mailto:Melixza.Esenyie2@mass.gov).

MassDEP’s Non-Discrimination Notice is provided in Appendix 3.

1. **LIMITED ENGLISH PROFICIENCY REQUIREMENTS[[9]](#footnote-10)**

It is the policy of MassDEP to ensure that persons with Limited English Proficiency (LEP) have meaningful access to its programs, services, and activities. MassDEP recognizes that language can be a barrier to accessing important benefits or services, understanding, and exercising important rights, complying with regulations, or understanding other information provided by its programs and activities.

For purposes of this policy, a person with LEP is defined as one who does not speak English as his or her native language and has a limited ability to read, write, speak, or understand English. The U.S. Census Bureau defines persons with limited English proficiency as individuals who speak English “less than very well.” “Translation” refers to the replacement of a written communication from one language to another, either in written or oral form, and “interpretation” refers to the act of listening to dialogue in one language and orally translating it into another language. In both contexts, effective communication is the goal.

MassDEP’s Language Access Plan (LAP) is intended to ensure that all people, regardless of their proficiency in English, are included in, and have meaningful access to, the benefits of agency programs, services and activities.[[10]](#footnote-11) Persons interacting with MassDEP will be notified, in a language in which they are skilled, about the availability of foreign language assistance and critical service information. Each of MassDEP’s program bureaus -- the Bureau of Air and Waste, which regulates a wide variety of activities (air pollution control, solid waste, recycling, toxics, hazardous waste, and waste ban implementation and compliance), the Bureau of Water Resources, which regulates a variety of water resources (e.g. ground water, wetlands, drinking water, and surface water), and the Bureau of Waste Site Cleanup, which regulates the cleanup of oil and hazardous waste spills and oversees the recovery of funds for the remediation and preservation of the Commonwealth’s natural resources – will assess the language proficiency of the persons to be served in determining how to provide meaningful access to their services, programs and activities. Additionally, each Bureau will identify which documents are vital to the public’s interaction with that Bureau and translate those documents into a foreign language as dictated by the relevant community’s needs.

In making translation decisions or offering interpretation services, the following factors should be considered:

1. The number or proportion of LEP persons encountered in the impacted population; analysis will be made by the safe harbor threshold using the American Community Survey (ACS) or the U.S. Census Bureau on a case-by-case basis.[[11]](#footnote-12)
2. MassDEP will provide written translation of vital documents for each eligible LEP language group that constitutes 5% or includes 1,000 members, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered during the course of agency action. Translation of other documents, if needed, will be provided orally; or
3. If there are fewer than 50 persons in a language group that reaches the 5% trigger in i. above, MassDEP will not translate vital written materials but will provide written notice in the primary language of the LEP language group of the right to receive competent oral translation of those written materials.

2. The frequency with which LEP individuals come in contact with the program, service or activity.

1. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. MassDEP will also consider the frequency of different types of language contacts.

3. The nature and importance of the program, service or activity.

i. The more important the activity, information, service or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely services are needed.

4. Available resources and exploration of the most cost-effective means of delivering competent and accurate language services.[[12]](#footnote-13)

i. MassDEP has access to key staff and a list of state vendors under contract that can provide telephonic, written and in-person meeting translation and interpretation services.

ii. MassDEP will monitor the services provided and update its translation and interpretation service contract as needed.

The Language Access Plan should be used in evaluating what services are reasonably necessary to provide meaningful access for LEP persons.

**H**. **ADMINISTRATION OF THE CIVIL RIGHTS AND NON-DISCRIMINATION PROGRAM**

MassDEP’s Civil Rights and Non-discrimination Plan specifically, its grievance procedures, are implemented through its Office of Environmental Justice which serves all Bureaus/Offices of MassDEP and is a resource, providing management oversight of complaints pertaining to this Civil Rights

and Non-Discrimination Plan. For MassDEP’s Civil Rights and Non-Discrimination Program and grievance procedures, the Factfinders are staff of MassDEP’s Office of Appeals and Dispute Resolution or are staff designated to act under the supervision of the Office of Appeals and Dispute Resolution. The MassDEP Grievance process is available to any person in the event they feel they have been discriminated against in any program or activity. The Grievance Procedure is attached as Appendix 5.

**I. CONTRACTOR AND SUB GRANTEE AGREEMENTS**

It is the policy of the MassDEP to require that state contractors and grantees to affirm that they are aware of federal Title VI requirements and state non-discrimination laws, and that every contract and grant include clauses required by federal statute and their implementing regulations. Should circumstances warrant, MassDEP may undertake its own Title VI review against a contractor or grantee.

**APPENDIX 1**

**LEGAL AUTHORITY FOR THE CIVIL RIGHTS AND**

**NON-DISCRIMINATION PLAN**

**Massachusetts Laws/Orders**

Massachusetts Constitution Article CVI, Article CVI amends Article I, by adding the last sentence “Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.”

Massachusetts Constitution Article CXIV, Article CXIV provides protection from discrimination for handicapped individuals in any program or activity within the commonwealth.

M.G.L c. 272 §§ 92A, 98, 98A – Public Accommodation Law, the Public Accommodation Law prohibits making any distinction, discrimination, or restriction in admission to, or treatment in a place of public accommodation because of race, color, religious sect, creed, class, denomination, sex, gender identity, sexual orientation, nationality, deafness, blindness or any physical or mental disability.

Executive Order 526 – Order Regarding Nondiscrimination, Diversity, Equal Opportunity, and Affirmative Action, Section 4, (Feb. 7, 2011), the Executive Order requires all programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for and by the state to be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran’s status (including Vietnam-era veterans), or background.

**Federal Laws**

**Title VI and EPA's Implementing Regulations**

Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d to 2000d-7) (Pub. L. 88-352, title VI, § 601, July 2, 1964, 78 Stat. 252.), prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities. Title VI itself prohibits intentional discrimination.

EPA’s nondiscrimination regulations can be found at 40 C.F.R. Part 7, Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency. EPA-funded agencies are prohibited from taking actions, including permitting actions that are intentionally discriminatory or have a discriminatory effect based on race, color, or national origin.

**APPENDIX 1 Cont’d**

**LEGAL AUTHORITY FOR THE CIVIL RIGHTS AND**

**NON-DISCRIMINATION PLAN**

**Other Federal Laws**

EPA also requires compliance with Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination based on sex under programs or activities receiving financial assistance under the Clean Water Act.

EPA also requires its recipients of federal funds to comply with the other relevant federal non-discrimination statutes:

* <https://www.epa.gov/ocr/section-504-rehabilitation-act-1973>**,** prohibits discrimination against persons with disabilities under Federally-assisted programs or activities;
* <https://www.epa.gov/ocr/title-ix-education-amendments-act-1972>**,** prohibits discrimination on the basis of sex in Federally-assisted education programs; and
* <https://www.epa.gov/ocr/age-discrimination-act-1975>**,** prohibits age discrimination under Federally assisted programs.
* To the extent that MassDEP receives federal funding from other federal agencies, it must comply with any additional Title VI requirements from that federal agency. In addition to U.S. EPA, MassDEP receives federal funding from the following federal agencies:
  + **United States Department of Defense. 32 CFR §195 -**United States Department of Defense prohibits discrimination in federally assisted programs of the Department of Defense—Effectuation of Title VI of the Civil Rights Act of 1964.
    - National Defense: [e-CFR Title 32 Subtitle A Chapter 1 Subchapter M - Part 195](https://www.ecfr.gov/cgi-bin/text-idx?SID=1333bd7597c3d8bf08e764faa1f1162f&mc=true&node=pt32.2.195&rgn=div5)

**United States Department of Homeland Security, 6 CFR §21–** United States Department of Homeland Security prohibits discrimination on the basis of race, color, national origin in programs or activities receiving federal financial assistance from the Department of Homeland Security.

* + - Domestic Security: [e-CFR Title Chapter 1 Part 21](https://www.ecfr.gov/cgi-bin/text-idx?SID=b3a79f12439c8e84ff750a852963d102&mc=true&node=pt6.1.21&rgn=div5)

**APPENDIX 2**

**PUBLIC INVOLVEMENTOPPORTUNITIES**

**MassDEP Public Involvement Plan**

**Bureau of Air and Waste:**

* [How to Participate in MassDEP Air Quality Permitting Decisions | Mass.gov](https://www.mass.gov/service-details/how-to-participate-in-massdep-air-quality-permitting-decisions)
* [How to Participate in MassDEP Hazardous Waste Permitting Decisions | Mass.gov](https://www.mass.gov/service-details/how-to-participate-in-massdep-hazardous-waste-permitting-decisions)
* [How to Participate in MassDEP Solid Waste Permitting Decisions | Mass.gov](https://www.mass.gov/service-details/how-to-participate-in-massdep-solid-waste-permitting-decisions)

**Bureau of Waste Site Cleanup:**

* [Public Involvement During Cleanup of Contaminated Properties | Mass.gov](https://www.mass.gov/lists/public-involvement-during-cleanup-of-contaminated-properties)

**GUIDE TO PROVIDING TRANSLATION AND INTERPRETATION SERVICES**

MassDEP’s Director of Environmental Justice is the point of contact for obtaining translation and interpreter services and services for the deaf and hard of hearing.  Individuals seeking assistance from MassDEP for interpreter or translation services or services for the deaf and hard of hearing should be directed to the Director of Environmental Justice. If the request is made in a regional office, the regional office point of contact should contact or advise the individual to contact the Office of Environmental Justice for an intake form.  The Environmental Justice Director or her designee will provide an intake form for the individual to identify the language, type of service (oral or written), the level of language skills needed as well as the date and time the service is needed, if applicable.[[13]](#footnote-14)  Once the intake form is completed, the Environmental Justice Director will contact the appropriate Language Bank volunteer(s) to identify his/her availability to accommodate the request for services or utilize vendors contracted by MassDEP.

**APPENDIX 3**

**NOTICE OF NON-DISCRIMINATION**

NOTIFICATION TO THE PUBLIC





MassDEP Notice of Nondiscrimination

The Massachusetts Department of Environmental Protection (MassDEP) operates its programs, services and activities in compliance with all applicable nondiscrimination laws. MassDEP complies with applicable federal and state laws and regulations and will not condone discrimination, intimidation, threats or coercion or retaliation against any individual or group.

**Federal Law – Title VI/Nondiscrimination Protections**

MassDEP complies with Title VI of the Civil Rights Act of 1964 and other applicable federal1 statutes and regulations in the implementation of its programs. These federal laws prohibit discrimination in federally assisted programs and requires that no person in the United States of America shall, on the grounds of race, color or national origin (including limited English proficiency), be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination, intimidation or retaliation under any program or activity receiving federal financial assistance. MassDEP also provides meaningful access to its programs, services, and activities to individuals with limited English proficiency.

1 Federal law requires compliance by state agencies that receive federal funding under these additional nondiscrimination statutes: Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972 and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. The U.S. Environmental Protection Agency (EPA) has incorporated the federal nondiscrimination requirements into its regulations which can be found at 40 CFR Part 5 and 7.

**State Law – Nondiscrimination Protections**

MassDEP complies with Executive Order 526, section 4 requiring all programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for and by the state to be conducted without unlawful discrimination based on **race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran’s status (including Vietnam-era veterans), or background**.

MassDEP complies with the state’s Public Accommodation Law, G.L. c. 272 §§ 92A, 98, 98A, which prohibits making any distinction, discrimination, or restriction in admission to, or treatment in a place of public accommodation based on **race, color, religious creed, national origin, sex, gender identity, sexual orientation, deafness, blindness, or any physical or mental disability**, **or ancestry**.

To request additional information about this notice, or to file a Grievance under Title VI or other nondiscrimination laws, please contact:

Deneen Simpson, Non-Discrimination Coordinator

MassDEP Office of Environmental Justice

100 Cambridge Street, 9th Floor

Boston, MA 02114

Phone: (857) 406-0738 or Email: [Deneen.Simpson@mass.gov](mailto:Deneen.Simpson@mass.gov)

**APPENDIX 4**

**ENVIRONMENTAL JUSTICE POLICY**

[Environmental Justice Policy | Mass.gov](https://www.mass.gov/service-details/environmental-justice-policy)

**APPENDIX 5**

**Massachusetts Department of Environmental Protection**

**Civil Rights and Non-Discrimination**

**Grievance Procedure**

**CIVIL RIGHTS AND NON-DISCRIMINATION GRIEVANCE PROCEDURE**

As a recipient of federal financial assistance, the Massachusetts Department of Environmental Protection (MassDEP) is required to adopt a grievance procedure that ensures the prompt and fair resolution of complaints which allege discrimination in its operation of programs or activities. This Grievance Procedure is implemented pursuant to Title VI of the Civil Rights Act of 1964 (Title VI), as amended, and regulations developed by federal agencies under Title VI authority, that prohibit discrimination on the basis of race, color, national origin (including limited English proficiency), as well as intimidation or retaliation. Other federal nondiscrimination laws prohibit discrimination on the basis of disability, sex, or age (federal protections), as well as intimidation or retaliation, in state programs or activities that receive federal financial assistance. Federal regulations prohibit *intentional* discrimination, they prohibit MassDEP from implementing any rule, policy or program thatresults in disparate or discriminatory impact, even though the rule, policy or program appears fair and neutral on its face. This Grievance Procedure serves as a process for the submission, review and resolution of grievances made under federal law. [[14]](#footnote-15)

MassDEP also complies with section 4 of state Executive Order 526, which requires that all programs, activities and services provided, performed, licensed, chartered, funded, regulated or contracted for be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran’s status (including Vietnam-era veterans) or background. Grievances based on any one of these categories may also be filed using this Grievance Procedure.

MassDEP’s Office of Environmental Justice and Office of Appeals and Dispute Resolution implement this Grievance Procedure and serve all of MassDEP’s Bureaus/Offices as a resource, providing management oversight of complaints based on civil rights and non-discrimination protections. Any person who files a grievance with this office may request translation or interpretation services, or alternative accommodation, as needed, in order to complete the grievance process. For MassDEP’s Grievance Procedure, the Factfinders are staff of MassDEP’s Office of Appeals and Dispute Resolution or are staff designated to act under the supervision of the Office of Appeals and Dispute Resolution. Below are the roles and responsibilities of the staff who implement this Grievance Procedure:

* **Non-Discrimination Coordinator** – The Non-Discrimination Coordinator provides information internally and externally regarding rights of access to programs, services, and activities without regard to race, color, age, national origin (including on the basis of limited-English proficiency), sex, disability or previous involvement in discriminatory complaints. The Non-Discrimination Coordinator provides notice internally and externally of the agency’s formal and informal grievance processes and the ability to file a discrimination grievance; implements grievance procedures; reviews all grievances for administrative completeness, assigns a case number, and tracks all grievances filed with MassDEP under federal and state non-discrimination laws; and reviews semiannually all grievances filed with MassDEP under federal and state non-discrimination laws in order to identify and address any patterns or systemic problems.
* **Factfinder** – The Factfinder investigates complaints and may dismiss a grievance for reasons listed in paragraph ix of this Civil Rights and Non-Discrimination Grievance Procedure. The Factfinder may request additional information regarding the grievance from the petitioner or MassDEP staff. If, after review of the additional information, the Factfinder determines that the grievance may be resolved by immediate corrective action, the Factfinder shall inform both the petitioner and MassDEP in writing of the proposed immediate corrective action required to address the grievance. If the grievance proceeds to a formal process, the Factfinder will work with the parties to determine the issues for resolution. Once the formal grievance process begins, the Factfinder may take oral testimony[[15]](#footnote-16), and may visit or inspect any site, property or other places or things with the petitioner and the MassDEP staff and their witnesses, as appropriate, to make observations relevant to the factual issues in dispute. The Factfinder shall prepare a Final Decision containing a summary of the observations at the site or property inspected, if any, a review of any statements, testimony, exhibits, and other information reviewed. The Final Decision shall include proposed findings of fact and a resolution of the civil rights and non-discrimination issue. The Factfinder shall issue the Final Decision to the parties and the Non-Discrimination Coordinator.

1. **GRIEVANCE PROCEDURE**
2. **How to Submit a Grievance**

Any person who believes that he or she or any specific class of persons has been subjected to discrimination by MassDEP that is prohibited by federal Title VI or a state non-discrimination law, may submit a written grievance to MassDEP.

Grievances shall be submitted in writing, addressed to the Non-Discrimination Coordinator and shall be signed by the petitioner(s) and/or a representative of the petitioner(s). Grievances may be filed by electronic mail, regular mail, facsimile, or delivered in person at any MassDEP office during normal MassDEP business hours Monday thru Friday at 8:45am – 5:00pm.[[16]](#footnote-17) Grievances shall describe as completely as possible the facts and circumstances surrounding the alleged discrimination. The grievance must be submitted within 180 calendar days of the date(s) of occurrence of the alleged discriminatory action or date of discovery or the latest instance of an alleged continuing occurrence.

Grievance form can be obtained here: [MassDEP Nondiscrimination & Civil Rights | Mass.gov](https://www.mass.gov/info-details/massdep-nondiscrimination-civil-rights#grievance-form-)

Written grievances shall be addressed to:

Deneen Simpson, Non-Discrimination Coordinator

MassDEP Office of Environmental Justice

100 Cambridge Street, 9th Floor

Suite 900

Boston, MA 02114

Email: [Deneen.Simpson@mass.gov](mailto:Deneen.Simpson@mass.gov)

Phone: (857) 406-0738

In the case where the petitioner is not able to provide a written statement and has no designee to do so, an oral grievance may be made through the Non-Discrimination Coordinator at MassDEP. Oral grievances may be submitted either in person or via telephone at (857) 406-0738. The Non-Discrimination Coordinator or her designee will convert the oral allegations to writing and provide the petitioner with the written document for confirmation, revision, and a signature before processing.

1. **Grievances should include**:
2. The name, address and phone number of the person who experienced the alleged discriminatory act;
3. If the petitioner is represented by an attorney or other authorized representative, the name, address and phone number(s) of petitioner’s attorney or authorized representative;
4. The date of the alleged discriminatory act or the date when the petitioner(s) became aware of the alleged discriminatory act, or the date of the last occurrence, and a brief but specific description of the discriminatory act or practice and any relevant facts;
5. The name(s), address(es) and title of the alleged discriminating officials or entities;
6. The names and contact information of any witnesses, including MassDEP employees

or contractors with direct knowledge of the alleged discriminatory act; and

1. The date and petitioner’s signature.
2. **Review of Grievances**

Upon receipt of the grievance, the Non-Discrimination Coordinator will determine:

1. If the grievance has met the minimum requirements as stated in paragraph ii;
2. If the Department has jurisdiction; and
3. If the grievance is timely.

If the minimum requirements have been met, the Non-Discrimination Coordinator will notify the petitioner in writing within 10 calendar days of receipt of the grievance that the minimum requirements have been met. The Non-Discrimination Coordinator will then forward the grievance to a Factfinder for his or her review.

If the minimum requirements have not been met and the grievance is not accepted, the Non-Discrimination Coordinator will inform the Factfinder and the Factfinder will issue a Final Decision based on non-compliance with the minimum requirements.

1. **Investigation of Grievances:**

The Factfinder’s role is to provide a prompt and impartial investigation of the petitioner’s grievance. The Factfinder will review the petitioner’s grievance and advise the petitioner within 10 calendar days if any immediate corrective action may be taken to resolve his or her grievance. If no immediate corrective action is available, the Factfinder will inform the petitioner of three available processes for resolution: 1) an informal process, as agreed by the parties; 2) a formal process, including an investigation and written Final Decision; or 3) a mutually agreed Alternative Dispute Resolution (ADR) process.

1. **Additional Information Needed:**

The Factfinder may, at any time in the process of evaluating a grievance, request additional information in writing from the petitioner or MassDEP staff to be submitted within 10 calendar days of the request, if the Factfinder determines that additional information is necessary to evaluate the grievance. The request for information will include a clear description of the information requested. Failure by petitioner to respond to a request for information may result in dismissal of the grievance in accordance with paragraph ix. If after review of the additional information the Factfinder determines the grievance may be resolved by informal resolution, the Factfinder will notify the parties in writing. The Factfinder may also decide, without consent of the parties, to conduct a formal process.

**vi. Informal Resolution of Grievances**:

In evaluating an informal resolution of a grievance, the Factfinder will consider if any immediate corrective action by the Department may resolve the grievance. The Factfinder shall inform both the petitioner and MassDEP in writing of the proposed resolution to remedy the grievance. Within 10 calendar days after issuance of a proposed resolution, the petitioner and MassDEP may agree or object to the resolution. If both parties agree, the signed resolution will be the Final Decision. If either the petitioner or MassDEP objects to the proposed resolution, the parties may either both agree to continue discussions to informally resolve the grievance, or the grievance will be investigated through a formal process. If the parties agree to continue with an informal resolution of the grievance, the Factfinder will provide a timeline for the parties to reach a mutual agreement that does not exceed 60 calendar days. At any time during informal resolution, the parties may request to utilize the ADR services and work with an impartial MassDEP mediator to facilitate discussions of resolution.[[17]](#footnote-18)

**vii. Formal Resolution of Grievances:**

In the formal resolution of grievances, a hearing will adhere to the following procedure:

1. A simplified hearing, which normally shall not include the filing of motions and prefiled direct testimony unless required by the Factfinder.
2. Each party shall have an opportunity to present its view of the disputed issues. Each party and any witnesses shall appear at the hearing to present its case and may offer evidence including statements, documents and papers. Following a party's presentation, each other party shall have an opportunity to cross-examine witnesses and to refute the case presented. All statements shall be provided under oath or affirmation.
3. A preponderance of the evidence standard will be applied during the analysis of the complaint.
4. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs. The weight to be attached to any evidence will rest within the discretion of the Factfinder. The hearing shall be recorded electronically or otherwise.
5. The Factfinder may make any ruling to help ensure brevity, simplicity, informality and fairness. The Factfinder shall conform to any timeline established by Directive.[[18]](#footnote-19)
6. Within 30 calendar days of the conclusion of the hearing, the Factfinder shall prepare a written Final Decision containing a summary of the grievance, disputed facts and issues, and a statement of reasons determining every issue of fact or law necessary to the decision. Formal resolution of grievances will not exceed 60 calendar days.

The Factfinder shall simultaneously issue a Final Decision to the petitioner, MassDEP staff, and the Non-Discrimination Coordinator.

**viii. Alternative Dispute Resolution:**

At any time during the informal or formal resolution process, the petitioner may request the services of a Department mediator to facilitate the resolution of the grievance through Alternative Dispute Resolution (ADR). The decision to participate in an ADR process is voluntary and must be agreed to by all parties.

**ix. Grounds for Procedural Dismissal of Grievances by Factfinder:**

Grounds for procedural dismissal include:

* The petitioner withdraws the grievance.
* The petitioner fails to respond to repeated requests for additional information needed to process the grievance.
* The petitioner cannot be located.
* The grievance does not state a Civil Rights violation under federal or state law.
* The grievance is determined to be legally insufficient.

The Factfinder will notify the petitioner in writing that the grievance has been dismissed and the grounds for dismissal. The dismissal letter will be the Final Decision of the agency.

**B**. **RECORD KEEPING REQUIREMENT**:

The Non-Discrimination Coordinator will maintain a log of all Civil Rights and Non-Discrimination grievances received. This log will be available for public review and compliance review audits at the offices of the Department of Environmental Protection, 100 Cambridge Street, Suite 900, Boston, MA 02114, during normal business hours, Monday through Friday 8:45 a.m. – 5:00 p.m.

1. **CONCURRENT PROCEEDINGS AND FILING**

Filing of a Civil Rights or Non-Discrimination grievance at MassDEP is not a prerequisite for filing a complaint with the U.S. EPA’s External Rights Compliance Office. Grievances may be filed with MassDEP’s Office of Environmental Justice either separately or concurrently with the U.S. EPA, External Civil Rights Compliance Office. Grievances based on protected classes recognized *only* by the state cannot be resolved at U.S. EPA’s External Rights Compliance Office and must be filed with MassDEP’s Office of Environmental Justice. Grievances should be filed in writing and submitted electronically or mailed to the following addresses:

MassDEP’s Office of Environmental Justice

100 Cambridge Street, Suite 900

Boston, MA 02114

Attn: [Deneen.Simpson@mass.gov](mailto:Deneen.Simpson@mass.gov)

Email: Deneen.Simpson@mass.gov

External Civil Rights Compliance Office

EPA Office of General Counsel

1200 Pennsylvania Avenue, NW

Mail Code 2310A

Washington, DC 20460

Attn: Director, External Civil Rights Compliance Office

**APPENDIX 6**

MassDEP Grievance Form - [MassDEP Nondiscrimination & Civil Rights | Mass.gov](https://www.mass.gov/info-details/massdep-nondiscrimination-civil-rights#grievance-form-)

1. 40 C.F.R. § 7.90. [↑](#footnote-ref-2)
2. Mass. Exec. Order 526, (Feb. 7, 2011). (superseding Mass. Exec. Order 478 (January 30, 2007)). [↑](#footnote-ref-3)
3. Theoharides, Kathleen, “EEA Environmental Justice Policy.” June 24, 2021, https://www.mass.gov/service-details/environmental-justice-policy. [↑](#footnote-ref-4)
4. EPA P1 Guidance, 71 Fed. Reg. 14210 (March 21, 2006) [↑](#footnote-ref-5)
5. EPA PI Guidance, 71 Fed. Reg. 14211 (March 21, 2006) [↑](#footnote-ref-6)
6. 40 CFR § 7.65 [↑](#footnote-ref-7)
7. 40 CFR § 7.65 [↑](#footnote-ref-8)
8. Disability Handbook Link- [Disability Handbook for the Executive Branch (mass.gov)](https://www.mass.gov/doc/the-disability-handbook-for-the-executive-branch/download?_ga=2.71745882.814639906.1672403428-1226826045.1668357556) [↑](#footnote-ref-9)
9. Pursuant to Section 601 of Title VI of the Civil Rights Act of 1964, as amended, and Federal Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency. [↑](#footnote-ref-10)
10. The Massachusetts Administrative Bulletin #16 requires state agencies to develop a Language Access Plan which includes improved access to state services, programs and activities to LEP persons. [↑](#footnote-ref-11)
11. [Data and Language Maps | LEP.gov](https://www.lep.gov/maps) [↑](#footnote-ref-12)
12. MassDEP has explored the most cost-effective means of delivering competent and accurate language services by: sharing language assistance materials and services; pooling resources and connecting with qualified, well known and trusted community leaders; and by procuring a state interpreter and translation services. [↑](#footnote-ref-13)
13. If the individual/requestor requires assistance in completing the intake form, the Environmental Justice Director will request assistance from the language bank volunteers. [↑](#footnote-ref-14)
14. This Grievance Procedure serves to comply with other non-discrimination statutes of federal agencies from which MassDEP receives financial assistance. See full list of applicable federal statutes in Appendix 1. [↑](#footnote-ref-15)
15. The Factfinder may take written testimony and hear motions, if in his or her determination good cause warrants it. [↑](#footnote-ref-16)
16. If a grievance is received in a MassDEP regional office or at the William X Wall Experiment Station (WES Lab), the grievance will be forwarded to the Non-Discrimination Coordinator via email as a PDF within 1 business day, unless MassDEP’s internal courier schedule ensures delivery of the grievance to Boston headquarters within 1-2 business days, for appropriate next steps. [↑](#footnote-ref-17)
17. Discussions with the mediator are voluntary and confidential. The Factfinder will not know the details of the discussions but will be provided the terms of the resolution, if one is reached. [↑](#footnote-ref-18)
18. For purposes of this Grievance Procedure, a “Directive” means a public document issued by the Commissioner requiring Department employees and parties to take specific actions or follow specific procedures, to further effectuate the provisions of this Grievance Procedure. [↑](#footnote-ref-19)