



Commonwealth of Massachusetts

*Executive Office of Energy and
Environmental Affairs*

**Massachusetts Environmental Policy Act
Mar. 4 & 18, 2022: MEPA Thresholds
(Wetlands & Waterways /
Water/Wastewater/Solid Waste)**



Wetlands/Waterways (301 CMR 11.03(3))

Mandatory EIR

- Provided Permit is required, alteration of **1+ acre of salt marsh or BVW**; alteration of **10+ acres of “any other wetlands”**
- Alteration requiring Wetland Protection Act (WPA) variance
- Construction of a New dam
- Structural alteration of an existing dam that causes an Expansion of 20% or any decrease in impoundment Capacity
- Provided c. 91 License is required, **New non-water dependent (NWD) use or Expansion** of an existing NWD structure, provided the use or structure occupies **1+ acres of waterways or tidelands**

Questions

- Any need for revision?



Wetlands/Waterways (301 CMR 11.03(3))

ENF

- Provided Permit is required, alteration of **coastal dune, barrier beach or coastal bank**; 500+ lf of bank along a fish run or inland bank; **1K+ sf of salt marsh or ORW**; **5K+ sf of BVW or IVW**; New/Expansion of fill or structure in velocity zone or regulatory floodway; **one-half+ acre of any other wetlands**
- Construction of New roadway/bridge/utility providing access/service to barrier beach
- Dredging of 10K+ cy of material; disposal of 10K+ cy of dredged material
- Provided c. 91 License is required, **New or existing unlicensed NWD use of waterways**, unless . . . an existing unlicensed structure in use prior to January 1, 1984
- Construction, reconstruction or Expansion of an **existing solid fill structure of 1K sf base area or pile-supported or bottom-anchored structure of 2K+ sf base area**, except a seasonal . . . float, provided the structure occupies . . . waterways

Questions

- Any need for revision?
- Are these impact levels appropriate for EJ neighborhoods?



Water (301 CMR 11.03(4))

Mandatory EIR

- New withdrawal or Expansion of **2.5M+ gpd from surface water source; 1.5M+ gpd from groundwater source**
- New interbasin transfer of water of 1M+ gpd or any amount determined significant by the Water Resources Commission
- **New water main 10+ miles in length**
- Provided that the Project is undertaken by an Agency, New water service to municipality or water district across municipal boundary . . .

Questions

- Any need for revision?



Water (301 CMR 11.03(4))

ENF

- New withdrawal or Expansion of **100K+ gpd from a water source that requires New construction** for the withdrawal
- New withdrawal or Expansion of **500K+ gpd from a water supply system** above the lesser of current system-wide authorized withdrawal volume or three-years' average system-wide actual withdrawal volume
- **New water main 5+ miles in length**
- **New drinking water treatment plant with 1M+ gpd Capacity** or Expansion by greater of 1M gpd or 10% of existing Capacity
- Alteration requiring Watershed Protection Act variance, except 1 single family home
- Non-bridged stream crossing 1,000 or less feet upstream

Questions

- Any need for revision?
- Are these impact levels appropriate for EJ neighborhoods?



Wastewater (301 CMR 11.03(5))

Mandatory EIR

- **New wastewater treatment/disposal facility with 2.5M+ gpd Capacity**
- New interbasin transfer of wastewater of 1M+ gpd or any amount determined significant by the Water Resource Commission
- **New sewer main 10+ miles in length**
- Provided that the Project is undertaken by an Agency, New sewer service to municipality or sewer district across municipal boundary . . .
- **New discharge or Expansion** of any amount of sewage, industrial wastewater or untreated stormwater directly to ORW
- New Capacity or Expansion for **storage, treatment, processing, combustion or disposal of 150+ wet tpd of sewage sludge**, . . . , unless the Project is an Expansion of an existing [site-assigned] facility

Questions

- Any need for revision?



Wastewater (301 CMR 11.03(5))

ENF

- **New wastewater treatment/disposal facility with 100K+ gpd Capacity**; Expansion of existing facility by the greater of 100K gpd or 10% of existing Capacity
- **New sewer mains**: (a) that will result in Expansion in flow to wastewater treatment/disposal facility by 10% of existing Capacity; (b) **5+ miles in length**; (c) one-half+ miles in length, provided sewer main is not in ROW or existing roadways
- **New discharge or Expansion to**: (a) **sewer system of 100K+ gpd of sewage**, industrial wastewater or untreated stormwater; (b) **surface water of 100K+ gpd of sewage**, 20K+ gpd of industrial wastewater, or any amount requiring a WQ variance; (c) **groundwater of 10K+ gpd of sewage** within [environmentally sensitive areas]; **50K+ gpd of sewage within any other area**; 20K+ gpd of industrial wastewater; or any amount requiring Title 5 variance
- **New Capacity or Expansion**: (a) combustion/disposal of any amount of sewage sludge . . . ; (b) **storage, treatment, or processing of 50+ wet tpd of sewage sludge . . .**

Questions

- Any need for revision?
- Are these impact levels appropriate for EJ neighborhoods?



Solid Waste (301 CMR 11.03(9))

Mandatory EIR

- New Capacity or Expansion of **150+ tpd for storage, treatment, processing, combustion or disposal of solid waste**, unless the Project is a **transfer station**, is Expansion of an existing facility within a validly site assigned area, or is exempt from site assignment requirements

ENF

- New Capacity or Expansion for **combustion or disposal of any quantity of solid waste, or storage, treatment or processing of 50+ tpd of solid waste**, unless the Project is exempt from site assignment requirements
- Provided a c. 21D Permit is required, New Capacity or Expansion for the storage, recycling, treatment or disposal of hazardous waste

Questions

- Any need for revision?
- Are these impact levels appropriate for EJ neighborhoods?



MEPA Advisory Committee Feedback

Wetlands/Waterways

- The phrase “Provided a Permit is required” requires clarification. Does it include more than superseding order of condition?
- “Any other wetlands” requires clarification. MEPA should distinguish between redevelopment and alteration of natural wetlands. E.g., impervious areas could be excluded from impact calculation.
- Should MEPA consider developing new thresholds by wetland type (e.g., forested wetlands, bogs, salt marsh). May be difficult due to variation in existing conditions.
- Should 10 acre EIR threshold be lowered?
- Temporary wetland impacts (such as for construction matting) should be distinguished from permanent impacts.
- Coastal wetland thresholds are low. Walkways and pathways could be viewed differently, though this could set precedent for other projects.



MEPA Advisory Committee Feedback

Wetlands/Waterways (cont'd)

- Could new EIR required under climate legislation include just the new “EJ analysis”? May be difficult to distinguish “EJ impacts” vs. others.
- Could c. 91 related thresholds be revised to address projects like ethanol/hazardous waste transport?

Water

- Many of these projects are beneficial, such as projects to improve water quality and PFAS treatment.
- How would de-salination plants be viewed? Recent project required federal NPDES permit.
- MassDEP water management act permitting relies on average daily volumes, not max. daily. MEPA thresholds could be made consistent.



MEPA Advisory Committee Feedback

Water (cont'd)

- Why are EIR thresholds for water withdrawals different for surface water (2.5M gpd) and groundwater (1.5M gpd)? Possibly related to earlier concern about municipal wells. Could be made consistent.

Wastewater

- How are CSO control plans reviewed? MWRA review is required under consent order, which typically does not qualify as “Agency Action.”
- What about Water Quality Certification (WQC) variances required for CSO plans? May be a candidate for programmatic reviews.
- Sewer main extensions no longer require MassDEP permitting, so some cleanup may be warranted for this threshold.



MEPA Advisory Committee Feedback

Solid waste

- Transfer station exemption in the EIR threshold should be clarified, especially to make clear that it does not apply in ENF category.
- EIR exemption for expansion of facility within validly site assigned area raises concern.
- There are EJ concerns about siting multiple facilities in the same area. Lowering the 50 tpd ENF threshold may be one way to address this.
- More transfer station projects are anticipated given reduced landfill capacity. There is federal preemption of permitting of railroad lines.
- Should there be programmatic review of solid waste master plan or a master development plan by a solid waste company? Could be a way to streamline reviews of individual projects.



MEPA Advisory Committee Feedback

Additional public comment

- Should relicensing of energy generation facilities undergo MEPA review? E.g., hydro relicensing which requires FERC/NEPA review.
- Could consider threshold for relicensing of energy generation that results in increased capacity or impacts, or increases investment by some percentage.