



Commonwealth of Massachusetts

Executive Office of Energy and Environmental Affairs

Massachusetts Environmental Policy Act ***December 2021***

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KEY THEMES FOR REGULATORY REVIEW

- **Regulatory review effort launched in February 2021**
- **Goal is alignment with state policy and planning efforts**
 - Environmental justice
 - Climate adaptation and resiliency
 - Greenhouse gas (GHG) mitigation
- **Timing of regulatory revisions**
 - 2021: Meet December 2021 statutory deadline to incorporate environmental justice requirements into regulation.
 - 2021-22: Partner with MassDEP's cumulative impact analysis (CIA) stakeholder effort and consider 2nd phase rulemaking in 2022.



MEPA OVERVIEW

- **Basic rule**

- MEPA review needed if there is Agency Action and “review thresholds” (defined in regulation) are exceeded

- **MEPA statute (M.G.L. c. 30, s. 61 et seq.)**

- *NEW: 2021 climate legislation (St. 2021, c. 8, ss. 57-60) requires consideration of environmental justice during MEPA review*

- **MEPA regulations (301 CMR 11.00)**

- Review thresholds define project impacts that are “**likely to cause Damage to the Environment**”
 - “ENF” thresholds require filing of environmental notification form
 - “Mandatory EIR” thresholds require environmental impact reports



CLIMATE LEGISLATION (Section 57)

- **Modified existing provisions for Environmental Impact Reports (EIRs) submitted to the MEPA Office**
- **New requirements:**
 - A description of the **public health impact** of the proposed project
 - Include measures to minimize **public health damage**
 - Include adverse **public health consequences** that cannot be avoided



CLIMATE LEGISLATION (Section 58)

- **Added new requirements for EIRs to contain analysis of impacts on Environmental Justice (EJ) populations:**
 - EIR for projects that are **likely to cause Damage to the Environment [as defined in regulation]** and are located **within 1 mile of an EJ population or within 5 miles if the project that impacts air quality**
 - Assessment of any **existing unfair or inequitable environmental burden and related public health consequences** from any prior or current project
 - If EJ population is subject to an existing burden, the report shall identify any: (i) environmental and public health impact from the proposed project that would **likely result in a disproportionate adverse effect**; and (ii) potential impact or consequence from the proposed project that would **increase or reduce the effects of climate change** on the EJ population



CLIMATE LEGISLATION (Section 60)

- **Added new requirements for public involvement by EJ populations:**
 - Environmental notification form shall indicate if an EJ population that lacks English language proficiency within a designated geographical area is **reasonably likely to be affected negatively by the project.**
 - If a proposed project affects an EJ population, the **secretary shall require additional measures to improve public participation** by the EJ population.
 - The term **designated geographic area** shall mean an EJ population located within a distance of 1 mile of a project, unless the project affects air quality then the distance from such project shall be increased to 5 miles.



FINAL REGULATORY APPROACH

- 1. Apply plain language of statute (“EIR shall be required”) for any project within 1 mile of EJ population [5 miles would be based on air quality impact, as defined in regulation].**
- 2. Define in regulation what EIR scope would contain if EIR were required based on EJ impacts, including:**
 - Assessment of “existing environmental burden”
 - Assessment of “disproportionate adverse effects” on EJ population and whether project will increase/reduce climate effects
 - Mitigation and Sec. 61 findings to the extent related to EJ impacts
- 3. Apply existing flexibility in review procedures (e.g., Single EIR and “rollover EIR”).**
- 4. Incorporate key elements of public involvement protocol into regulation, including 45-day advance notification requirement.**

MEPA Public Involvement Protocol

❖ Draft MEPA Public Involvement Protocol issued in June

- Accepted public comments until August 9
- Will be incorporated into M.G.L. c. 30A rulemaking effort

❖ Key Components

- Early notification to EEA EJ Director and local EJ groups and tribes prior to filing with the MEPA office
- Meaningful engagement with EJ communities through community meetings, alternative language media, etc.
- Language services to be provided based on languages identified through the EEA [EJ Map Viewer](#) or local data

MEPA Protocol for Analysis of EJ Impacts

Step 1: Assess Existing Environmental Burden

1. **DPH EJ Tool**: “vulnerable health criteria” for EJ populations and additional mapping layers (available at <https://matracking.ehs.state.ma.us/Environmental-Data/ej-vulnerable-health/environmental-justice.html>)
2. **RMAT climate tool**: climate risks for sea level rise and precipitation (urban and riverine) (available at https://resilientma.org/rmat_home/designstandards/)
3. **EPA EJ Screen**: environmental indicators (available at <https://www.epa.gov/ejscreen>).
4. Any other factors identified during **community engagement**

MEPA Protocol for Analysis of EJ Impacts

Step 2: Assess Project Impacts

1. Consider **nature** and **severity** of project impacts to determine disproportionate adverse effect
2. Compare impacts on **EJ vs. non-EJ populations**
3. Consider **project benefits** that will reduce existing environmental burden
4. Consider **climate change effects** (e.g., flooding)
5. Provide **mitigation** if disproportionate adverse effects or increased climate risks to EJ population are identified.

Current Schedule - MEPA Process

Early September
2021

- Formed MEPA advisory committee for 2021-22 regulatory review effort

September 17, 2021

- Filed draft regulations with Secretary of State's Office
 - Oct. 20 end of comment period

November 5-29, 2021

- Comment period for EJ protocols

December 2021

- **Official promulgation**

2022

- Consider second phase regulatory revisions following MassDEP's CIA stakeholder effort





WAYS TO PARTICIPATE

- Attend public meetings of the MEPA advisory committee: <https://www.mass.gov/info-details/mepa-advisory-committee>.
- Send blank email to subscribe_mepa_reg_review@listserv.state.ma.us to receive ongoing alerts. To request translation, email MEPA-regs@mass.gov.
- Updates will be posted at MEPA website at <http://mass.gov/service-details/information-about-upcoming-regulatory-updates>.