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**Response to Comments on  
Environmental Justice Protocols Proposed by  
Massachusetts Environmental Policy Act (MEPA) Office**

***MEPA Protocol for Public Involvement by Environmental Justice Populations***  
***MEPA Protocol for Analysis of Project Impacts on Environmental Justice***  
***Populations***

**December 2021**

**Regulatory Authority:**  
**M.G.L. c. 30, §§ 61 to 62I**

## **Background**

On October 1, 2021, notice was published in the Massachusetts Register of proposed amendments to regulations of the Massachusetts Environmental Policy Act (MEPA) Office at 301 CMR 11.00 et seq. These amendments implement new requirements under Sections 55-60 of Chapter 8 of the Acts of 2021: *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy* (the “Climate Roadmap Act” or “the Act”). The amendments also reflect modest updates to MEPA filing and circulation requirements.

On November 5, 2021, the MEPA Office issued for comment two protocols to support implementation of the proposed regulatory changes. The MEPA Public Involvement Protocol for Environmental Justice (EJ) Populations (the “MEPA EJ Public Involvement Protocol”) sets forth procedures for providing opportunities for public involvement by EJ populations during MEPA reviews, and the MEPA Protocol for Analysis of Project Impacts on Environmental Justice Populations (the “MEPA Protocol for Analysis of EJ Impacts”) describes requirements for analyzing a project’s impacts on EJ populations in accordance with the Act.

In September 2021, the MEPA Office formed a MEPA Advisory Committee, consisting of a variety of stakeholders that regularly engage in the MEPA review process, to provide ongoing input for this regulatory review effort. The MEPA Office appreciates the time and effort that the MEPA Advisory Committee has expended to date.<sup>1</sup>

The final protocols have been issued with an effective date of **January 1, 2022**, and are posted on the [MEPA website](#). Consistent with 301 CMR 11.05(5), the full text of the two protocols and corresponding revisions to the ENF form will be published in the December 22, 2021 *Environmental Monitor* in advance of the effective date.

## **Response to Comments on MEPA EJ Public Involvement Protocol**

The MEPA Office appreciates the feedback and suggestions received, in relation to the MEPA EJ Public Involvement Protocol issued for public comment on November 5, 2021. The MEPA Office also accepted public comments on a prior version of the protocol issued on June 23, 2021. The following responds to comments received on both draft protocols.

### **June 23 draft protocol**

The following individuals and organizations provided written comments on the June 23 draft:

Conservation Law Foundation  
Eversource  
Fore River Residents Against the Compressor Station  
Massachusetts Environmental Justice Table  
North American Megadam Resistance Alliance  
Pioneer Valley Planning Commission  
Save the Pine Barrens, Inc., and Community Land & Water Coalition

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<sup>1</sup> Members of the MEPA Advisory Committee and summaries of past meetings can be viewed at <https://www.mass.gov/info-details/mepa-advisory-committee>.

1. **Comment:** Several comments voiced support for enhancing measures to promote meaningful involvement by EJ populations in the MEPA review process. Comments suggested that certain requirements should be strengthened (e.g., changing “should” to “shall” in some places), and indicated that polluting facilities should not be sited in already burdened communities.

**Response:** The MEPA Office acknowledges the importance of enhancing public participation in the MEPA review process, and looks forward to implementing the new MEPA EJ Public Involvement Protocol to effectuate this purpose. We note that MEPA review does not serve as a permit in and of itself or otherwise serve to approve or disapprove projects; accordingly, it is inappropriate for MEPA regulations and protocols to set standards for when an agency could deny a permit for a particular facility.

2. **Comment:** Several comments raised concerns with the additional filing requirement proposed in the June 23 draft protocol, namely, a requirement to file a “Letter of Intent” (LOI) with the MEPA Office to provide early details of a project when initiating pre-filing consultations with EJ communities. Comments raised concern with the level of detail that a Proponent would be expected to provide at such an early stage of a project, and indicated confusion regarding the requirements for the content of an LOI, as compared to a written project summary to be used in pre-filing consultation meeting and the later-filed environmental notification form (ENF).

**Response:** In light of comments received, the MEPA Office has elected to eliminate the LOI requirement from the MEPA EJ Public Involvement Protocol. Instead, certain projects will now be expected to provide “advance notification” of a project, as described in response to Question 3 below, to community-based organizations (CBOs) and tribes (with a copy to the MEPA Office at [MEPA-EJ@mass.gov](mailto:MEPA-EJ@mass.gov)), based on a recommended list (the “EJ Reference List”) provided by the EEA EJ office. The MEPA Office has developed an “EJ Screening Form” that should be used to provide advance notification, as shown in the final protocol. In addition, the EEA EJ office is available to assist Proponents in their obligation to identify, contact and communicate with relevant stakeholders.

3. **Comment:** Some comments objected to a mandatory 45-day pre-filing consultation period as onerous and adding unnecessary delay to project reviews. Other comments advocated for a longer 60-day period for pre-filing consultation, and requested that the MEPA Office be directly involved in facilitating consultations and meetings with EJ communities.

**Response:** After consultation with the MEPA advisory committee, the MEPA Office has elected to retain a mandatory 45-day advance notification requirement for projects that meet or exceed mandatory EIR projects, or plan to seek expedited review of the ENF through a single or “rollover” EIR under 301 CMR 11.06(8), (13). The MEPA Office encourages projects to schedule pre-filing meetings with the MEPA Office and the EEA EJ office to discuss specific community engagement strategies, and plans to dedicate specific times each week to such pre-filing meetings. Requests for such joint pre-filing meetings can be sent to [MEPA-EJ@mass.gov](mailto:MEPA-EJ@mass.gov). While the final protocol does not prescribe specific community engagement strategies for all projects, it requires some level of community engagement for any project undergoing MEPA review that is located within the designated geographic areas around EJ populations. The 45-day advance notification is mandatory for certain projects as specified above.

4. **Comment:** Several comments raised concerns with the approach set forth in the June 23 protocol of “presuming” negative effects on EJ populations for every MEPA project located within 1 mile of an EJ population. Comments questioned how any such presumption would be rebutted, and requested clarification as to when the presumption would have to be met since a project that does not successfully rebut the presumption at the time of ENF filing would then be required to withdraw the filing and initiate the 45-day pre-filing consultation process. Other comments requested clarification as to when a project would be presumed to have air quality impacts, such that community engagement must be conducted over a 5-mile radius.

**Response:** In light of comments received, the MEPA Office has elected to eliminate language regarding “presumptions” of negative effects. As shown in the final protocol and 301 CMR 11.05(5), the Proponent will be required to address in the ENF whether the project is reasonably likely to negative affect EJ populations, consistent with requirements set forth in Section 60 of the Climate Roadmap Act. The final protocol adopts a broad approach (without the need to show “negative effects”) of requiring some level of community engagement for any project undergoing MEPA review that is located within the designated geographic areas around EJ populations. The Proponent is given discretion to determine the level of engagement commensurate with the complexity and impacts of the project. However, consistent with 301 CMR 11.05(4), the EEA Secretary will have discretion to reject an ENF as incomplete, or extend the MEPA review period, if a project has failed to provide advance notification if required, or has made no effort to engage EJ communities prior to filing. As shown in amendments to 301 CMR 11.02 (definition of “designated geographic area”), the MEPA Office has defined in regulation when a project will be determined to impact air quality, such that the designated geographic area pertaining to a 5-mile radius will be applied. Namely, a project will be determined to impact air quality if it meets or exceeds MEPA review thresholds at 301 CMR 11.03(8)(a)-(b), or generates 150 or more New adt of diesel vehicle traffic, excluding public transit trips, over a duration of 1 year or more.

5. **Comment:** Several comments urged that Native American tribes be included in new public involvement protocols developed by the MEPA Office. Comments indicated that tribes have been historically excluded from public decision-making.

**Response:** The final protocol has included Native American tribes and tribal organizations identified by the EEA EJ office in the EJ Reference List as entities that must be provided with advance notification of certain projects. Circulation to all “tribal contacts” on the EJ Reference List is mandatory for all projects.

#### November 5 draft protocol

Additional comments were received from the following individuals and organizations on the November 5 draft protocol:

Eversource

Massachusetts Environmental Justice Table (including Airport Impact Inc., Alternatives for Community & Environment, Clean Water Action, Coalition for Social Justice, Conservation Law Foundation, GreenRoots, Health Care Without Harm, Neighbor to Neighbor, North American Indian Center of Boston, Unitarian Universalist Mass Action, Union of Concerned Scientists)

NAIOP Commercial Real Estate Development Association of MA

**6. Comment:** Some comments continued to advocate for a 60-day advance notification requirement and suggested that all MEPA projects subject to the final protocol should be required to consult with the MEPA Office to develop a public involvement plan. Comments suggested that the Proponent should be required to respond to concerns raised during community meetings as part of the MEPA filing, and that the environmental justice advisory council established under Section 60 of the Climate Roadmap Act (encoded in M.G.L. c. 30, § 62L) should be notified of MEPA projects.

**Response:** As noted, the MEPA Office has elected to retain a 45-day advance notification requirement for projects that meet or exceed mandatory EIR projects, or plan to seek expedited review of the ENF through a single or “rollover” EIR under 301 CMR 11.06(8), (13). In addition, the MEPA Office encourages pre-filing consultations for all projects, and expects that many projects will seek guidance on how to apply the new regulations and protocols that will be in effect by January 1, 2022. While the final protocol gives discretion to the Proponent to determine the exact level of engagement needed for a particular project, it is the strong expectation of the MEPA Office that the Proponent will, at a minimum, hold one or more community meetings prior to filing, if requested by any entity that is provided with advance notification; the Proponent also may choose to hold such a meeting(s) even without such a request. Efforts to provide public involvement opportunities for EJ populations will be assessed by the MEPA Office when determining whether to grant a request for expedited review of a project under 301 CMR 11.06(8) and (13). Under 301 CMR 11.05(4), the EEA Secretary will have discretion to reject an ENF as incomplete, or extend the MEPA review period, if a project has failed to provide advance notification if required, or has made no effort to engage EJ communities prior to filing.

As for the environmental justice advisory council, that council was established under the Act to “advise and provide recommendations to the secretary of energy and environmental affairs on relevant policies and standards to achieve the environmental justice principles.” Among other tasks, the council must deliberate about whether the definition of environmental justice population achieves the objectives of the environmental justice principles set forth in the Act. The MEPA regulations have been amended to incorporate the definition of “Environmental Justice Population” in the Act, and any future changes to that definition approved by the council will require further amendments to MEPA regulations. As the Act did not specifically contemplate a role for the environmental justice advisory council in reviewing MEPA projects, and the number of project filings will be numerous, the MEPA Office does not consider it appropriate to provide advance notification of projects to the EJ advisory council. The MEPA Office will continue to consult with the EEA EJ Director, the EJ advisory council and stakeholders about this topic as the MEPA EJ Public Involvement Protocol is implemented.

**7. Comment:** Other comments provided technical suggestions for strengthening the final protocol, including by clarifying mandatory versus discretionary provisions, clarifying language translation/oral interpretation requirements, and adjusting the recommended period for advance notification from 45-90 days to 30-45 days.

**Response:** The MEPA Office appreciates the thoughtful suggestions for technical changes to the protocol. The final protocol has adopted many of these changes, but has retained the recommended period of 45-90 days for advance notifications. As noted, a 45-day (no earlier than

90 day) advance notification is mandatory for certain specified projects. Translation and interpretation requirements are in line with the public process outlined in Section 60 of the Climate Roadmap Act, and are intended to address additional obligations under Title VI of the Civil Rights Act of 1964 and Executive Office for Administration and Finance Bulletin #16.

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### **Response to Comments on MEPA Protocol for Analyzing EJ Impacts**

The MEPA Office appreciates the feedback and suggestions received, in relation to the MEPA Protocol for Analysis of EJ Impacts issued for public comment on November 5, 2021.

The following individuals and organizations provided written comments on the draft protocol:

Cape Cod Commission  
Cape Cod Cranberry Growers' Association  
Eversource  
Friends of the Malden River  
Massachusetts Environmental Justice Table (including Airport Impact Inc., Alternatives for Community & Environment, Clean Water Action, Coalition for Social Justice, Conservation Law Foundation, GreenRoots, Health Care Without Harm, Neighbor to Neighbor, North American Indian Center of Boston, Unitarian Universalist Mass Action, Union of Concerned Scientists)  
NAIOP Commercial Real Estate Development Association of MA  
National Grid

1. **Comment:** Some comments requested clarification on the scope of applicability of this protocol, arguing that Section 58 of the Climate Roadmap Act should not be read as expanding the scope of MEPA jurisdiction.

**Response:** The MEPA Office acknowledges that Section 58 did not alter MEPA jurisdiction. However, it did require that all projects that are “likely to cause Damage to the Environment” and located within the designated geographic areas around EJ populations must submit an EIR. Because MEPA review thresholds are defined as categories of projects or aspects thereof that are “likely, directly or indirectly, to cause Damage to the Environment,” 301 C.M.R. 11.01(2)(b)1., the new EIR requirement is applied to all projects that meet or exceed MEPA review thresholds (and are otherwise subject to MEPA jurisdiction) and are located within the designated geographic areas. The final protocol has added language to clarify the applicability of the EIR requirement in Section 58 of the Act.

2. **Comment:** Several comments expressed concern about the breadth of the EIR requirement in Section 58 of the Act, indicating that a lengthy EIR review process may unnecessarily delay implementation of important projects, including those would benefit, not harm, the environment. Comments from the Cape Cod Commission note that the requirement to file an EIR during MEPA reviews necessarily triggers a lengthier process under Section 12(i) of the Cape Cod Commission Act, which requires the Commission to review as a Development of Regional Impact (DRI) any project for which the EEA Secretary requires the preparation of an EIR. Based on experience in recent years, the Commission estimates that the new EIR requirement in Section 58 of the Act has the potential to increase the number of DRI reviews by 40%.

**Response:** The MEPA Office acknowledges that an increase in EIR filings is likely due to the mandatory phrasing in the Climate Roadmap Act that an EIR “shall be required” for projects located within the designated geographic areas around EJ populations. However, as the requirement is now set forth in statute, the MEPA Office lacks the authority to waive it. As shown in amendments to 301 CMR 11.05(9), 11.06(8), and 11.06(13), the MEPA Office has expanded options for streamlined reviews in instances where a Proponent demonstrates, among other items, that a project will not materially exacerbate any existing unfair or inequitable environmental burden or related public health consequence borne by an EJ population and that it will not result in a disproportionate adverse effect or an increased climate change effect on an EJ population. In the case of a project that seeks to qualify in its entirety as an Ecological Restoration Project under the Wetlands Protection Act and implementing regulations at 310 CMR 10.00, the Proponent may provide the analysis in 301 CMR 11.07(6)(n) in a checklist format as determined by the Secretary. The MEPA Protocol for Analysis of EJ Impacts provides a recommended checklist format that may be used by these projects.

3. **Comment:** Additional comments raised concerns about the generalized nature of the methodology set forth in the MEPA protocol, and offered specific suggestions for clarifications. One comment objected to the requirement to conduct analysis of greenhouse gas emissions (GHG) emissions associated with projects (such as residential and commercial buildings) that are likely to be used or occupied by EJ populations.

**Response:** The MEPA Office appreciates the thoughtful suggestions for technical changes, and has adopted many of these edits. We note that the Massachusetts Department of Environmental Protection (MassDEP) is currently engaged in a stakeholder effort to implement a mandate under Sections 102C of the Climate Roadmap Act to “evaluate and seek public comment on the incorporation of cumulative impact analyses” into certain categories of air permits. Because of the potential overlap between such analyses and the evaluations required under Section 58 of the Act, the MEPA Office is partnering with MassDEP on this stakeholder effort and intends to consider any applicable analytical frameworks or methodologies that may result from that effort as part of a second-phase rulemaking effort in 2022. Because the MEPA Protocol for Analysis of EJ Impacts was developed in a short time frame, the MEPA Office acknowledges that the methodologies contained therein may require refinement as more precise and quantitative approaches are developed. To that end, we are adopting the suggestion in some comments that the protocol be referenced as an “interim” protocol during the first year of implementation.

With regard to GHG emissions, the requirement to conduct analysis of GHG emissions for projects that are likely to be used or occupied by EJ populations responds to the mandate in Section 58 of the Act that the required EIR address whether a project will “increase or reduce the effects of climate change” on the identified EJ population. The GHG emissions from a project have the potential to contribute to climate change, and could specifically impact EJ populations that use or occupy a facility, for instance, through increased utility bills for residential dwellings. The MEPA Office will apply this requirement only to projects with conditioned spaces that are estimated to generate 2,000 tons per year (tpy) of stationary source emissions, a number that was derived from an analysis of MEPA projects reviewed in 2020-21. The MEPA Office, in consultation with the Department of Energy Resources (DOER), has developed an Emissions Footprint Calculation Tool, included in the final protocol as a link, whereby Proponents will be able to insert the building type and square footage of the project and automatically generate a GHG emissions estimate for purposes of determining the applicability of this requirement.