

MASSACHUSETTS

How Does Massachusetts Define Environmental Justice and Environmental Justice Communities?

Environmental Justice Definitions:

Mass. Gen. Laws ch. 30, § 62 (Mass. environmental justice law) sets out a new definition of “environmental justice population” as follows:

“‘Environmental justice population’, a neighborhood that meets 1 or more of the following criteria: (i) the annual median household income is not more than 65 per cent of the statewide annual median household income; (ii) minorities comprise 40 per cent or more of the population; (iii) 25 per cent or more of households lack English language proficiency; or (iv) minorities comprise 25 per cent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 per cent of the statewide annual median household income.”¹

An important provision applies, however: for neighborhoods failing to meet the above criteria: upon petition of 10 residents of a geographic portion of a neighborhood that does meet one of the criteria, the agency may deem that geographic portion an environmental justice population; moreover, neighborhoods meeting the criteria may nevertheless be barred from consideration as environmental justice communities if criteria of affluence are met. That is, secretary cannot designate a neighborhood as an environmental justice population “upon finding that: (A) the annual median household income of that neighborhood is greater than 125 percent of the statewide median household income; (B) a majority of persons age 25 and older in that neighborhood have a college education; (C) the neighborhood does not bear an unfair burden of environmental pollution; and (D) the neighborhood has more than limited access to natural resources, including open spaces and water resources, playgrounds and other constructed outdoor recreational facilities and venues.”²

¹ Senate Bill 9 (2021) § 56, codified at Mass. Gen. Laws ch. 30, § 62. The agency definition of “environmental Justice population” applies “if any of the following are true: Block group whose annual median household income is equal to or less than 65 percent of the statewide median (\$62,072 in 2010); or 25% or more of the residents identify as a race other than white; or 25% or more of households have no one over the age of 14 who speaks English only or very well.” Mass. Dept. of Env’t Prot., “Env’t Justice Populations in Mass.,”

<https://www.mass.gov/info-details/environmental-justice-populations-in-massachusetts> (last visited June 30, 2022).

The agency definition will likely be relevant as to programs not covered by the provisions of the Massachusetts Environmental Policy Act, where the new definitions appear, although the interaction of the two definitions remains to be seen.

² *Id.*

In turn, "neighborhood" is defined 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."

In addition, Mass. environmental justice law defines "environmental justice principles" as:

"[P]rinciples that support protection from environmental pollution and the ability to live in and enjoy a clean and healthy environment, regardless of race, color, income, class, handicap, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief or English language proficiency, which includes: (i) the meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations and policies, including climate change policies; and (ii) the equitable distribution of energy and environmental benefits and environmental burdens."³

Environmental Justice Mapping Tools:

The Massachusetts Department of Environmental Protection (MassDEP) maintains an environmental justice mapping tool, "the Environmental Justice Map Viewer," allowing the public as well as government users to ascertain the location of environmental justice communities (as currently defined by the 2010 Census as well as the agency definition of environmental justice community).⁴ The tool is based on the EEA's⁵ definition of "Environmental Justice Populations," and not the more restrictive definition set out in Mass. environmental justice law.⁶

It should be observed that Mass. environmental justice law did not adopt the secondary screening criteria for Environmental Justice Populations set out in the EEA's 2017 Environmental Justice Policy, which highlighted the vulnerability of some Environmental Justice Populations, due to the incidence of health data such as elevated childhood blood lead levels and low birth weights.⁷

³ *Id.*

⁴ MassDEP, *Env't Justice Populations in Mass.: Interactive Map*, "Environmental Justice Map Viewer," <https://www.mass.gov/info-details/environmental-justice-populations-in-massachusetts#interactive-map> (last visited June 30, 2022).

⁵ EEA is the umbrella department containing Massachusetts's six environmental, natural resource and energy regulatory agencies, which include the Departments of Environmental Protection, Public Utilities, Energy Resources, Conservation & Recreation, Agricultural Resources, and Fish & Game.

⁶ MassDEP, *Env't Justice Populations in Mass.*, <https://www.mass.gov/info-details/environmental-justice-populations-in-massachusetts> (last visited June 30, 2022).

⁷ Exec. Off. of Energy & Env't Affairs, "Env't Justice Policy of the Exec. Off. of Energy and Env't Affairs" (Jan. 31, 2017), at p.6, *available at*

How Does Massachusetts Consider Environmental Justice in its Substantive Actions⁸?

Environmental Justice as a Policy of the Environmental Agency or Across All Agencies:

In March of 2021, Massachusetts enacted a landmark climate change bill, *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy* (Mass. environmental justice law), resetting the commonwealth's priorities around climate change. At the same time, Mass. environmental justice law codified and extended various executive branch orders and policies on environmental justice. Among its significant provisions are modifying Massachusetts's "mini-NEPA" to create heightened public participation and analysis for actions with significant impact upon environmental justice populations and reshaping the definition of an environmental justice community to focus resources on those communities most in peril.⁹ While Massachusetts's environmental justice policies were comprehensive and far-reaching prior to Mass. environmental justice law, statutory law is greatly preferable in terms of conferring legal rights on affected parties, as well as, protecting environmental justice principles and their implementation across administrations, plus providing legal remedies.

Consideration of Environmental Justice in Permitting:

Existing law requires the EEA to consider the potential for "direct, indirect and cumulative emission impacts" upon communities already affected adversely by air pollution when implementing market-based compliance mechanisms to reach the statewide greenhouse gas emission limits.¹⁰ Mass. Gen. Laws, ch. 21N, § 6 further requires the secretary to promulgate regulations regarding all sources or categories of sources that emit greenhouse gases in order to achieve the emissions limits and sublimits and implement the climate change roadmap plans. Significantly, those regulations must "achieve required emissions reductions equitably and in a manner that protects low- and moderate-income persons and environmental justice populations."¹¹

Then-Governor Deval Patrick's 2014 Executive Order on Environmental Justice (Executive Order No. 552) requires each Secretariat to develop environmental justice strategies, including the "identification of permitting or other applicable regulatory authority over development projects, brownfield remediation, industrial operations, and commercial facilities, which may impact Environmental Justice Populations and description of any mechanism to ensure that Environmental Justice Populations are protected (including through their

https://www.mass.gov/files/documents/2017/11/29/2017-environmental-justice-policy_0.pdf (last visited June 30, 2022).

⁸ Substantive is defined as governing the original rights and obligations of individuals. Cornell L. Sch., LII, *Wex Legal Encyclopedia*, https://www.law.cornell.edu/wex/substantive_law (last visited June 30, 2022).

⁹ Miriam Wasser, WBUR, "What You Need To Know About The New Mass. Climate Law" (March 26, 2021), available at <https://www.wbur.org/earthwhile/2021/03/26/new-mass-climate-law-faq> (last visited June 30, 2022).

¹⁰ Mass. Gen. Laws, ch. 21N, § 7(a)(1). For additional discussion of cumulative impacts, see "Other Consideration of Cumulative Impacts" below.

¹¹ Senate Bill 9 (2021) § 10, codified at Mass. Gen. Laws, ch. 21N, § 6.

participation) in the review process.”¹² Pursuant to the executive order, the Executive Office of Energy and Environmental Affairs issued a revised Environmental Justice policy in 2017 (2017 Environmental Justice Policy).¹³

Regarding permitting, the 2017 Environmental Justice Policy requires that the Energy Facilities Siting Board shall use enhanced review of impacts to water, air, solid waste, radiation and noise, and include measures to mitigate those impacts when environmental justice populations are present.¹⁴ While there is no specific call-out for environmental justice populations, the Energy Facilities Siting Board must consider “cumulative health impacts” due to compound effects caused by proximity to multiple energy, industrial or transportation sources.¹⁵

Consideration of Environmental Justice in Enforcement:

In an attempt to counteract the enforcement deficit often witnessed in environmental justice communities, the 2017 Environmental Justice Policy requires “[e]nvironmental compliance and enforcement agencies [to] develop targeted compliance initiative for neighborhoods where environmental justice populations reside and where local environmental and public health conditions warrant increased attention.”¹⁶ In addition, the 2017 Environmental Justice Policy requires EEA agencies to assist municipal offices and community organizations in environmental justice communities “in addressing compliance matters.”¹⁷

The 2017 Policy requires the maintenance of a list of community-based projects suitable for use as mitigation for environmental cases. These projects are known as supplemental environmental projects (SEPs), defined by MassDEP as “environmentally beneficial project in the settlement of environmental cases.”¹⁸ As MassDEP notes, the use of supplemental projects “in communities where environmental justice issues are present helps to ensure that persons who spend significant portions of their time in areas, or depend on food and water sources located near where the violations occur, would be protected.” The presence of an environmental justice community “is a compelling reason for the approval and implementation of SEPs in communities where environmental justice may be an issue” and the other SEP requirements are met.¹⁹

¹² 2017 Environmental Justice Policy, at § 5.

¹³ 2017 Environmental Justice Policy; Executive Order No. 552.

¹⁴ 2017 Environmental Justice Policy, § 20 at p.11.

¹⁵ *Id.*

¹⁶ 2017 Environmental Justice Policy, § 22 at p.12. The 2002 Environmental Justice Policy has similar language regarding targeted inspections, enforcement, and assistance: “DEP shall prioritize neighborhoods where environmental justice Populations reside when selecting sectors and facilities for inspection and monitoring, prosecuting non-compliance, providing compliance assistance and allocating resources.” Exec. Off. of Env’t Affairs, “Env’t Justice Policy of the Exec. Off. of Env’t Affairs” (Oct. 9, 2002) at p.9, *available at* <https://www.mass.gov/files/documents/2017/11/29/ej%20policy%202002.pdf> (last visited June 30, 2022).

¹⁷ 2017 Environmental Justice Policy, § 24 at p.12.

¹⁸ 2017 Environmental Justice Policy, § 23 at p.12; Mass. Dept. of Env’t Prot., “Pol’y on Supplemental Env’t Projects,” DEP Protection Policy ENF-07.001 (rev’d 2018), *available at* <https://www.mass.gov/doc/enf-07001-policy-on-supplemental-environmental-projects-updated-october-2020/download> (last visited June 30, 2022).

¹⁹ “Policy on Supplemental Environmental Projects,” § V at p.3.

Consideration of Environmental Justice in Land Use:

N/A.

State Environmental Policy Act “Mini-NEPA”:

The commonwealth’s “Mini-NEPA,” the “Massachusetts Environmental Policy Act” (MEPA) requires that state agencies (and some subdivisions) prepare an Environmental Impact Report (EIR) before undertaking a project that would significantly damage the environment.²⁰ While the Massachusetts 2017 Environmental Justice Policy already requires enhanced public participation (for projects exceeding Environmental Notification Form thresholds for air/solid/hazardous waste) and enhanced analysis of impacts and mitigation for projects within a set distance from environmental justice populations,²¹ 2021’s Mass. environmental justice law codifies and significantly extends those protections; the public participation provisions will be discussed the “Enhanced Public Participation” section below.

Atop the customary requirement that a project’s likely damage to the environment is not insignificant, Mass. environmental justice law requires the production of an EIR when the project is located either within a distance of 1 mile of an environmental justice population (or within a distance of 5 miles of an environmental justice population for a project affecting air quality).²² These environmental justice-enhanced EIRs must include “statements about the results of an assessment of any existing unfair or inequitable environmental burden and related public health consequences impacting the environmental justice population from any prior or current private, industrial, commercial, state, or municipal operation or project that has damaged the environment.”²³ In those instances, the EIR “shall identify any: (i) environmental and public health impact from the proposed project that would likely result in a disproportionate adverse effect on such population; and (ii) potential impact or consequence from the proposed project that would increase or reduce the effects of climate change on the environmental justice population.”²⁴

Mass. environmental justice law also limits the ability of agencies to exempt projects from the production of an EIR: “[N]o agency shall exempt from an environmental impact report any project that is located in a neighborhood that has an environmental justice population and is reasonably likely to cause damage to the environment, as defined in section 61.”²⁵

The 2017 Environmental Justice Policy requires “enhanced analysis” of impacts and mitigation as part of the EIR, when a project exceeds pollutant thresholds, and is within the

²⁰ Codified at Mass. Gen. Laws Ann., ch. 30, §§ 61–62L, with implementing regulations found at 301 CMR 11.00 et. seq.

²¹ 2017 Environmental Justice Policy, at pp.11-12.

²² Senate Bill 9 (2021) § 58, codified at Mass. Gen. Laws, ch. 30, § 62B.

²³ *Id.*

²⁴ *Id.*

²⁵ Senate Bill 9 (2021) § 59, codified at Mass. Gen. Laws, ch. 30, § 62E.

characteristic one mile/five mile distance of an Environmental Justice Population.²⁶ The components of this enhanced analysis include analysis of multiple air impacts, baseline public health data of the Environmental Justice Population, operational alternatives to reduce impacts, as well as on-site and off-site mitigation measures.

Dedicated Funding to Environmental Justice Communities:

N/A.

Consideration of Cumulative Impacts:

The most significant cumulative impact provision is also the newest: as noted immediately above, Mass. environmental justice law enshrines in law enhanced analysis of projects located within set distances of Environmental Justice Populations, with required statements about the “results of an assessment of any existing unfair or inequitable environmental burden and related public health consequences impacting the environmental justice population from any prior or current private, industrial, commercial, state, or municipal operation or project that has damaged the environment.”²⁷ This enhanced analysis builds upon the prescriptions in the 2002 and 2017 Environmental Justice Policies of EEA.

As will be discussed below, Massachusetts’s 2008 climate change bill already considered the effect of regulatory action upon communities adversely affected by air pollution.²⁸

Prohibitions on Disparate Impact Discrimination:

See below under the section entitled “Processes and Procedures (including Title VI).”

Established Environmental Rights:

N/A.

How Does Massachusetts Address Environmental Justice in its Procedures²⁹?

Environmental Justice as Part of Environmental Agency’s Mission:

Again, Mass. environmental justice law establishes sweeping (and enduring) integration of environmental justice principles into the mission of MassDEP, mandating that “[t]he secretary shall consider the environmental justice principles, as defined in § 62, in making any policy or determination, or taking any action relating to a project review, undertaken pursuant to §§ 61-62J, inclusive, to reduce the potential for unfair or inequitable effects upon an environmental justice population.” This mandate applies to both MEPA, as well as the general programs of

²⁶ 2017 Environmental Justice Policy, § 17, at p.10.

²⁷ Senate Bill 9 (2021), § 58, codified at Mass. Gen. Laws, ch. 30 § 62B.

²⁸ Mass. Gen. Laws, ch. 21N, § 7(a)(1).

²⁹ Procedural is defined as rules and the methods used to ensure the rights of individuals. Cornell L. Sch., LII, *Wex Legal Encyclopedia*, https://www.law.cornell.edu/wex/procedural_law (last visited June 30, 2022).

MassDEP and its constituent agencies as they undertake projects, promulgate regulations and make policy.

The 2002 and 2017 EEA Environmental Justice policies as well as the 2014 executive order preceded Mass. environmental justice law with a variety of mission altering mandates for the executive branch. In 2002, the Executive Office of Environmental Affairs (now the Executive Office of Energy and Environmental Affairs, or EEA) issued its original Environmental Justice Policy, making environmental justice an “integral consideration” in the implementation of its programs.³⁰

As noted above, 2014’s Executive Order No. 552 directed the EEA to “ensur[e] equal compliance and enforcement for facilities subject to environmental regulatory programs and/or permitting requirements and located in geographic areas with identified Environmental Justice Populations.”³¹ Moreover, the order also required each governmental Secretariat to develop mission-specific environmental justice strategies, including the distribution of environmental benefits by “identification of economic development opportunities, environmental benefits, and other discretionary funding programs that do, or appropriately should, consider the needs of an Environmental Justice Population in the award process,” as well as enhanced public participation in agency decision making.³²

The 2017 Environmental Justice Policy also requires the EEA to develop a plan to “provide environmental justice training to EEA and other secretariat employees on ways to appropriately and effectively implement the Policy to ensure that environmental justice remains a priority for all EEA agencies.”³³

Environmental Justice as Part of Other Agency’s Mission:

N/A.

Processes and Procedures (including Title VI):

- *Non-Discrimination Policy:*

³⁰ “It is the policy of the Executive Office of Environmental Affairs that environmental justice shall be an integral consideration to the extent applicable and allowable by law in the implementation of all EOEA programs, including but not limited to, the grant of financial resources, the promulgation, implementation and enforcement of laws, regulations, and policies, and the provision of access to both active and passive open space.” 2002 Environmental Justice Policy, at p. 4.

³¹ Governor Deval Patrick, No. 552: Executive Order on Environmental Justice (Nov. 25, 2014) § 3, *available at* <https://www.mass.gov/executive-orders/no-552-executive-order-on-environmental-justice> (last visited June 30, 2022).

³² Executive Order No. 552, § 5. The executive order does not define the term “Secretariat,” but presumably the order would cover all executive agencies under the control of the governor (in Massachusetts, the AG’s office is an independently elected post).

³³ 2017 Environmental Justice Policy, § 2, at p.7.

MassDEP’s 2020 Title VI grievance plan addresses discrimination in violation of federal and Massachusetts nondiscrimination laws,³⁴ and the ensure the just distribution of the benefits and burdens of decisions and actions.³⁵ It also seeks 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.”³⁶ MassDEP provides a grievance form online.³⁷

- Grievance Procedures:

N/A.

- Enhanced Public Participation and Information Access:

Beginning with the 2002 Environmental Justice Policy and running through to 2021’s Mass. environmental justice law, agencies have been required to implement inclusive public participation programs for agency activities potentially affecting environmental justice populations, by focusing agency resources on outreach activities that enhance public participation. The 2002 Environmental Justice Policy required enhanced public participation for MEPA projects exceeding an Environmental Notification Form (ENF) threshold where the project site was within a set distance of an Environmental Justice Population.³⁸ The 2002 Environmental Justice Policy also required that agencies focus “on outreach activities that enhance public participation opportunities for agency activities [beyond MEPA review] that potentially affect Environmental Justice Populations.”³⁹ “Enhanced public participation may include use of alternative media outlets such as community or ethnic newspapers, use of alternative information repositories, and translation of materials or interpretation services at public meetings

³⁴ Including Executive Order No. 526, § 4 dictating that “[a]ll programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall 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.” Governor Deval Patrick, “Executive Order No. 526: Order regarding non-discrimination, diversity, equal opportunity, and affirmative action” (Feb. 2011), available at <https://www.mass.gov/executive-orders/no-526-order-regarding-non-discrimination-diversity-equal-opportunity-and> (last visited June 30, 2022). See also Executive Order No. 527, establishing the Office of Access and Opportunity within the Executive Office of Administration and Finance to promote non-discrimination and equal opportunity in state government, including but not limited to, employment, procurement, and policy relative to state programs, services, and activities. Available at <https://www.mass.gov/files/documents/2016/08/ul/eo527.pdf>.

³⁵ Massachusetts Dept. of Environmental Protection, *Massachusetts Department of Environmental Protection Civil Rights and Non-Discrimination Plan* (May 2020), available at <https://www.mass.gov/info-details/massdep-nondiscrimination-civil-rights> (last visited June 30, 2022).

³⁶ *Id.*

³⁷ Massachusetts Dept. of Environmental Protection, *MassDEP Civil Rights & Non-Discrimination Grievance Form*, available at <https://www.mass.gov/doc/massdep-civil-rights-non-discrimination-grievance-form/download> (last visited June 30, 2022).

³⁸ 2002 Environmental Justice Policy, ¶ 14, at p.8.

³⁹ *Id.*, ¶ 13, at p.7.

where the relevant Environmental Justice Population uses a primary language other than English in the home.⁴⁰

The 2017 Environmental Justice Policy has several provisions aimed at increasing public participation. § 15 requires each EEA sub-agency to create a Public Involvement and Community Engagement Strategy for “key activities,” and consider factors such as convenient public meeting times, access to public transit, timely notice to neighborhoods, assistance in grant applications, collaborative approaches to problem-solving. Moreover, the 2017 Environmental Justice Policy specifically requires enhanced public participation in the review of energy facility petitions:

The Energy Facilities Siting Board shall continue to use enhanced public participation procedures in its review of energy facility petitions requiring petitioners to “translate public hearing notices into language relevant to affected environmental justice populations and to publish such notices in both English and foreign-language media outlets, as well as to post notices in community locations that reach environmental justice populations.”⁴¹

On February 10, 2021, the EEA issued a draft of its MEPA Interim Protocol for Environmental Justice Outreach, proposing new obligations on proponents of projects sited within an Environmental Justice Population.⁴² Under the Interim Protocol, all project proponents filing with the MEPA Office must first use the Massachusetts Environmental Justice Mapping Tool to determine whether the project site is located within an Environmental Justice Population; if so, the proponent must consult with the MEPA Office at least 10 days prior to filing to determine an appropriate environmental justice outreach strategy.⁴³

Effective January 1, 2022 MEPA published the official Public Involvement Protocol for Environmental Justice Populations which “define the public involvement requirements for all MEPA projects.”⁴⁴ MEPA “will be required to identify the location of the project relative to EJ populations”⁴⁵ and work “to improve public participation.”⁴⁶

⁴⁰ *Id.* ¶ 14, at p.8.

⁴¹ 2017 Environmental Justice Policy, at p.9.

⁴² MEPA Office, Draft MEPA Interim Protocol for Env't Justice Outreach, at p.2, *available at* <https://www.mass.gov/doc/draft-mepa-interim-protocol-for-environmental-justice-outreach-0/download> (last visited June 30, 2022).

⁴³ *Id.*

⁴⁴ MEPA Office, MEPA Public Involvement Protocol for Environmental Justice Populations (Jan. 1, 2022), *available at* <https://www.mass.gov/doc/final-mepa-public-involvement-protocol-for-environmental-justice-populations-effective-date-of-january-1-2022/download> (last visited July 18, 2022).

⁴⁵ *Id.*

⁴⁶ *Id.* at p.3.

Most recently, Mass. environmental justice law raises the bar for meaningful public participation for projects triggering MEPA within the geographic area⁴⁷ of Environmental Justice Populations. New MEPA § 62J states that:

“[i]f a proposed project is significant and affects an environmental justice population, the secretary shall require . . . as appropriate: (i) making public notices, environmental notification forms, environmental impact reports, and other key documents related to the secretary’s review and decisions of a project review available in English and any other language spoken by a significant number of the affected environmental justice population; (ii) providing translation services at public meetings for a significant portion of an affected environmental justice population that lacks English proficiency in the project’s designated geographic area; (iii) requiring public meetings be held in accessible locations that are near public transportation; (iv) providing appropriate information about the project review procedure for the proposed project; and (v) where feasible, establishing a local repository for project review documents, notices and decisions.”⁴⁸

Moreover, Mass. environmental justice law confers the authority to the secretary of EEA to require additional measures for non-significant projects, or to improve participation opportunities for persons in an environmental justice population with language access issues.⁴⁹

Lastly, Mass. Department of Transportation (DOT) has a Title VI Public Participation Plan available for the public.⁵⁰ The goal of the plan is to encourage engagement with diverse groups who use our programs, services, and activities.

- Language Access:

As noted in the paragraphs immediately above, Mass. environmental justice law has increased the language access requirements for projects triggering MEPA, and subject

⁴⁷ For purposes of MEPA, “designated geographic area” means “an environmental justice 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 within 5 miles of an environmental justice population.” Senate Bill 9 (2021), § 60, codified at Mass Gen. Laws, ch. 30, § 62J.

⁴⁸ Senate Bill 9 (2021), § 60, codified at Mass. Gen. Laws, ch. 30, § 62J.

⁴⁹ *Id.*

⁵⁰ Mass. DOT, *MassDOT Title VI Public Participation Plan*,

<https://www.mass.gov/service-details/massdot-title-vi-public-participation-plan#:~:text=activities%20MassDOT%27s%20Public%20Participation%20Plan%20is%20a%20public,programs%2C%20services%2C%20and%20activities.%20Public%20Participation%20Plan%20documentation> (last visited July 7, 2022).

to the discretion of the EEA secretary, even for those projects that do not. In addition, Mass. environmental justice law also requires the proponents of projects requiring the filing of an environmental notification form to “indicate on the document whether an environmental justice population that lacks English language proficiency within a designated geographical area is reasonably likely to be affected negatively by the project.”⁵¹

While Mass. environmental justice law’s language access enhancements are largely confined to the MEPA context, other authorities improve language access more generally. For instance, Executive Order No. 552 calls for each Secretariat include in their environmental justice strategies an enhancement of “public participation opportunities in Environmental Justice Populations, including a plan for communicating in multiple languages” when environmental justice populations are “potentially affected by development projects, brownfield remediation, industrial operations, and commercial facilities.”⁵² The 2017 Environmental Justice Policy also requires 1) “translators [be] available at public comment hearings for project locations where environmental justice populations are present,”⁵³ and 2) EEA agencies comply with the Executive Office of Administration and Finance’s *Language Access Policy and Guidelines*.⁵⁴

- *Consultation with Indigenous Communities and Tribal Nations:*

N/A.

Governmental Environmental Justice Structures, Positions, and Funding Streams;

- *Environmental Justice Coordinating Agency:*

Beginning with the 2002 Environmental Justice Policy, there has been a Director of Environmental Justice and Brownfields Redevelopment within the predecessor office to the EEA. Executive Order No. 552 mandated the re-establishment of a Director of Environmental Justice within the Office of the Secretary EEA; this position was again

⁵¹ *Id.*

⁵² Executive Order No. 552, § 5. It should be noted, however, that few, if any, Secretariats have formally published their environmental justice strategies.

⁵³ 2017 Environmental Justice policy, at p.9, https://www.mass.gov/files/documents/2017/11/29/2017-environmental-justice-policy_0.pdf (last visited June 30, 2022).

⁵⁴ 2017 Environmental Justice Policy, § 6, at p.8, citing Office of Access and Opportunity, Administration and Finance, *Language Access Policy and Implementation Guidelines*, available at <https://www.mass.gov/doc/language-access-guidelines/download> (last visited June 30, 2022). MassDEP has its own Language Access Plan (2013), available at <https://www.masslegalservices.org/system/files/library/Department%20of%20Environmental%20Protection%20Language%20Access%20Plan%202013.pdf> (last visited June 30, 2022).

mentioned in the 2017 Environmental Justice Policy.⁵⁵ One role is serving as a liaison with Environmental Justice Coordinators throughout the executive branch departments.⁵⁶

In addition to the EEA director, MassDEP also has a Director of Environmental Justice.⁵⁷

- Environmental Justice Coordinator:

Executive Order No. 552 mandated that each Secretariat shall designate an Environmental Justice Coordinator as the main point of contact for environmental justice issues, responsible for developing and implementing environmental justice strategy within the department.⁵⁸ In addition, the coordinator of each department serves *ex officio* on the Governor's Interagency Environmental Justice Working Group, established by the same executive order.

- Environmental Justice Advisory Board:

Executive Order No. 552 established the Governor's Environmental Justice Advisory Council, responsible for advising the Governor and the Secretary of Energy and Environmental Affairs on policies, practices, and specific actions to promote environmental justice. The executive order also established the Interagency Environmental Justice Working Group, comprised of the Environmental Justice Coordinators of each department under the governor's authority.⁵⁹ The Interagency Working group's mission is "to maximize state resources, research, and technical assistance to further the environmental justice goals contained in the executive order." The 2017 Environmental Justice policy largely recapitulates this language.⁶⁰

Mass. environmental justice law added the following section to MEPA – codifying much of the executive order's requirements of composition and role of the advisory council:

“There shall be an environmental justice council to advise and provide recommendations to the secretary of energy and environmental affairs on relevant policies and standards to achieve the environmental justice principles. The council shall consist of not less than 9, but not more than 15, members

⁵⁵ 2017 Environmental Justice Policy, at p.7.

⁵⁶ Executive Order No. 552, § 1.

⁵⁷ Mass. Dept. of Env't Prot., “Env't Justice Contacts,”

<https://www.mass.gov/service-details/environmental-justice-contacts> (last visited June 30, 2022).

⁵⁸ Executive Order No. 552, § 5.

⁵⁹ Executive Order No. 552, §§ 2, 6. (“the Advisory Council shall meet at least semi-annually and submit supplemental reports giving advice and recommendations to the Governor and Director of Environmental Justice no less often than once per year.”)

⁶⁰ 2017 Environmental Justice Policy, at p.8.

appointed by the governor, who shall designate a chair. Members may be removed without cause, by the governor. All members shall serve without compensation.

The secretary of energy and environmental affairs shall consult with the environmental justice council before making any substantial adoptions, revisions or amendments to any regulation related to the definition of environmental justice population as defined in section 62.’⁶¹

A significant new statutory role for the council is the continual review of the newly enacted definitions of environmental justice in Mass. environmental justice law, to ensure that the demographic thresholds continue to further environmental justice principles, *inter alia*.⁶²

- *Funding for Environmental Justice:*

The commonwealth has a variety of grants with express environmental justice components, aimed at providing environmental benefits to environmental justice communities; other programs are of general applicability and may serve environmental justice interests, as well. The 2017 Environmental Justice Policy requires the EEA to issue annual reports detailing how environmental justice criteria have been used in awarding grants.⁶³ The following is a non-exhaustive list of programs with explicit environmental justice nexus:

- 1) The Parkland Acquisitions and Renovation for Communities (PARC) Grant Program aims to provide funding to municipalities to acquire and develop land for park and outdoor recreation activities.⁶⁴ While the program is of general applicability, projects directly serving the environmental justice population and projects with demonstrated outreach to environmental justice populations receive higher scores and thus a greater likelihood of being approved for the matching grant.⁶⁵
- 2) The Urban and Community Forestry Challenge Grant provides matching grants to municipalities and nonprofit groups to improve and protect urban

⁶¹ Senate Bill 9, § 60, codified at Massachusetts Gen. Laws, ch. 30, § 62L.

⁶² *Id.*

⁶³ 2017 Environmental Justice Policy, § 12, at p.8.

⁶⁴ Mass. EEA, *Parkland Acquisitions and Renovations for Communities (PARC) Grant Program*, <https://www.mass.gov/service-details/parkland-acquisitions-and-renovations-for-communities-parc-grant-program> (last visited June 30, 2022).

⁶⁵ Mass. EEA, *Parkland Acquisitions and Renovations for Communities (PARC) Grant Program* (March 2021) at p.17, <https://www.mass.gov/doc/parkland-acquisitions-and-renovations-for-communities-parc-grant-program-bid-fy-22/download> (last visited June 30, 2022).

forests. Projects located exclusively in environmental justice neighborhoods are eligible for an enhanced 75-25 matching grant.⁶⁶

- 3) The Lead in Schools Initiative–Assistance Program for Lead in School Drinking Water is a cooperative program providing “free comprehensive technical assistance to assess lead in drinking water at public schools and public and private group and family day care facilities.”⁶⁷ The program prioritizes facilities located in lower-income areas, and communities with elevated childhood blood lead levels.⁶⁸
- 4) The Municipal Vulnerability Preparedness (MVP) Program⁶⁹ “provides support for cities and towns in Massachusetts to begin the process of planning for climate change resiliency and implementing priority projects.” One MVP core principle is “Involving Environmental Justice Populations in meaningful decision-making, as defined and outlined in the 2017 EEA Environmental Justice Policy, and giving special consideration to Climate Vulnerable Populations.” The provision of environmental justice benefits is a grant evaluation criterion.⁷⁰ To increase participation in the grant program, there is a requirement to “develop and implement an outreach and education program about climate change and its effects for low-income, environmental justice and urban communities.”⁷¹
- 5) The Executive Office of Energy and Environmental Affairs administers Conservation Land Tax Credits with environmental justice criteria.⁷² Another grant program concerns the disposal of oil and hazardous material. Grant selection criteria consider “whether the disposal site location is within an Economic Target Area or area designated as an Environmental Justice Community.”⁷³
- 6) The MassTrails Grant Program “provides grants to support recreational trail and shared use pathway projects across the Commonwealth.”

⁶⁶ Dept. of Conservation & Recreation, “Guide: Urban and Community Forestry Challenge Grants,” <https://www.mass.gov/guides/urban-and-community-forestry-challenge-grants> (last visited June 30, 2022).

⁶⁷ Mass. DEP, “Technical Assistance for Lead in School and Child Care Center Drinking Water,” <https://www.mass.gov/service-details/technical-assistance-for-lead-in-school-and-child-care-center-drinking-water> (last visited June 30, 2022).

⁶⁸ *Id.*

⁶⁹ Mass. Gen. Laws Ann. ch. 21N, § 11.

⁷⁰ Mass. EEA, “Mass. Mun. Vulnerability Preparedness (MVP) Program” (undated), *available at* https://massland.org/sites/default/files/files/2a_mv_p_king.pdf (last visited June 30, 2022).

⁷¹ Mass. Gen. Laws Ann. ch. 21N, § 11.

⁷² 301 Mass. Code Regs. § 14.05.

⁷³ 310 Mass. Code Regs. § 40.1457.

Preferred beneficiaries of the grants include environmental justice communities.⁷⁴

- 7) The Food Security Infrastructure Grant Program, which helps ensure equitable access to food, includes the service of environmental justice communities as a grant criterion.⁷⁵

Moreover, Mass. environmental justice law establishes a clean energy equity workforce and market development program, providing workforce training and education and grants, targeting, among others, individuals residing within an environmental justice community.⁷⁶

Additional Massachusetts Environmental Justice Provisions?

Article 97 of the Constitution of the Commonwealth of Massachusetts provides that the “people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.”⁷⁷

The 2017 Environmental Justice Policy promotes the creation of open space in environmental justice communities as well as maximizing brownfields restoration.⁷⁸

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⁷⁴ Mass. Dept. of Conservation & Recreation, “Masstrails Grants Program: Grant Guidelines and Application Information” (undated), *available at* <https://www.mass.gov/doc/masstrails-grant-guidelines-and-application-information/download> (last visited June 30, 2022); Mass. Dept. of Conservation & Recreation, “Guide:MassTrails Grants,” *available at* <https://www.mass.gov/guides/masstrails-grants> (last visited June 30, 2022).

⁷⁵ Mass. EEA, “FY21 Food Security Infrastructure Grant Program” (June 10, 2020), *available at* <https://www.mass.gov/doc/fy21-food-security-grant-program-rfr/download> (last visited June 30, 2022).

⁷⁶ Senate Bill 9 (2021), § 14, codified at Mass. Gen. Laws, ch. 23J, § 14.

⁷⁷ No decisional law in the commonwealth applies the general protection to environmental justice.

⁷⁸ 2017 Environmental Justice Policy, at p.12.

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Where to Find Massachusetts Environmental Justice Laws, Policies, and Tools?

Constitutional Provisions:

- Constitution of the Commonwealth of Massachusetts, Art. 97

Executive Orders:

- Executive Order No. 552 (2014):
<https://www.mass.gov/executive-orders/no-552-executive-order-on-environmental-justice>
- Executive Order No. 526 (2014):
<https://www.mass.gov/executive-orders/no-526-order-regarding-non-discrimination-diversity-equal-opportunity-and>.
- Executive Order No. 527 (2014):
<https://www.mass.gov/files/documents/2016/08/ul/eo527.pdf>.

Legislation and Statutes:

- Senate Bill 9 (2021) § 56, codified at Mass. Gen. Laws ch. 30, § 62:
<https://malegislature.gov/bills/192/S9>.
- Mass. Gen. Laws, ch. 21N, § 7(a)(1).

Regulations:

- MassDEP — Air Pollution Control: 310 Mass. Code Regs. 7.74 (Reducing CO2 Emissions from Electricity Generating Facilities) and 7.75(c) (Clean Energy Standard).

Policies/Guidance:

- 2002 Environmental Justice Policy:
<https://www.mass.gov/files/documents/2017/11/29/ej%20policy%202002.pdf>.
- 2017 Environmental Justice Policy:
https://www.mass.gov/files/documents/2017/11/29/2017-environmental-justice-policy_0.pdf.
- 2020 Policy on Supplemental Environmental Projects:
<https://www.mass.gov/doc/enf-07001-policy-on-supplemental-environmental-projects-updated-october-2020/download>.

Mapping Tools:

- Environmental Justice Map Viewer:
<https://mass-eoeea.maps.arcgis.com/apps/webappviewer/index.html?id=1d6f63e7762a48e5930de84ed4849212>.

Other:

N/A.