

<u>Comparison Provision</u>	<u>S.9 [red text is Gov. Baker's proposed changes]</u>	<u>2017 EJ Policy</u>
<i>Section 56 of S.9 expands the definition of key terms in the 2017 EJ Policy and inserts them into MEPA:</i>		
Environmental benefits:	the access to clean natural resources, including air, water resources, open space, constructed playgrounds and other outdoor recreational facilities and venues, clean renewable energy sources, environmental enforcement, training and funding disbursed or administered by the executive office of energy and environmental affairs.	access to funding, open space, enforcement, technical assistance, training, or other beneficial resources disbursed by EOEPA, its agencies, and its offices
Environmental burdens:	any destruction, damage or impairment of natural resources that is not insignificant, resulting from intentional or reasonably foreseeable causes, including but not limited to[, climate change], air pollution, water pollution, improper sewage disposal, dumping of solid wastes and other noxious substances, excessive noise, activities that limit access to natural resources and constructed outdoor recreational facilities and venues, inadequate remediation of pollution, reduction of ground water levels, impairment of water quality, increased flooding or storm water flows, and damage to inland waterways and waterbodies, wetlands, marine shores and waters, forests, open spaces, and playgrounds from private industrial, commercial or government operations or other activity that contaminates or alters the quality of the environment and poses a risk to public health.	[not defined]
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; provided, however, that for a neighborhood that does not meet said criteria, but a geographic portion of that neighborhood meets at least 1 criterion, the secretary may designate that geographic portion as	a neighborhood whose annual median household income is equal to or less than 65 percent of the statewide median or whose population is made up 25 percent Minority, Foreign Born, or Lacking English Language Proficiency

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	<p>an environmental justice population upon the petition of at least 10 residents of the geographic portion of that neighborhood meeting any such criteria; provided further, that the secretary may determine that a neighborhood, including any geographic portion thereof, shall not be designated an environmental justice population upon finding that: (A) the annual median household income of that neighborhood is greater than 125 per cent 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.</p>	<p>neighborhoods (U.S. Census Bureau census block groups) that meet one or more of the following criteria:</p> <ul style="list-style-type: none"> • The median annual household income is at or below 65 percent of the statewide median income for Massachusetts; or • 25 percent of the residents are minority; or • 25 percent of the residents are foreign born, or • 25 percent of the residents are lacking English language proficiency.
Environmental justice principles:	<p>principles 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.</p>	<p>all people have a right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment. Environmental justice is the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies and the equitable distribution of environmental benefits.</p>
Neighborhood:	<p>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</p>	<p>a census block group as defined by the U.S. Census Bureau but not including people who live in college dormitories or people under formally authorized, supervised care or custody (i.e. in federal or state prisons).</p>
<p><i>Sections 57 & 58 of S.9 amend MEPA to require an EIR for projects affecting an EJ population and requires consideration of environmental impact to a greater extent than was already required under the 2017 EJ Policy.</i></p>		
	<p>An environmental impact report shall contain: (i) statements describing the nature and extent of the proposed project and its environmental and public health impact as result of any development, alteration and operation of the project; (ii) studies</p>	<p>[P]rojects undergoing MEPA review shall require enhanced analysis of impacts and mitigation for an Environmental Impact Report (EIR) scope under the following two conditions:</p>

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	<p>to evaluate said impacts; (iii) all measures being utilized to minimize any anticipated environment and public health damage; (iv) any adverse short-term and long-term environmental and public health consequences that cannot be avoided should the project be undertaken; and (v) reasonable alternatives to the proposed project and their environmental consequences.</p> <p>An environmental impact report shall be required for any project that is likely to cause damage to the environment that is not insignificant and is located within a distance of 1 mile of an environmental justice population; provided, that for a project that impacts air quality, such environmental impact report shall be required if the project is likely to cause damage to the environment that is not insignificant and is located within a distance of 5 miles of an environmental justice population. Said report shall contain 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. The required assessment shall conform to the standards and guidelines established by the secretary. If the assessment indicates an environmental justice population is subject to an existing unfair or inequitable environmental burden or related health consequence the report 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. The secretary may require that an assessment be performed at any stage of the review process.</p>	<ul style="list-style-type: none"> • (1) The project exceeds a mandatory EIR threshold for air, solid and hazardous waste (other than remediation projects), or wastewater and sewage sludge treatment and disposal; <i>and</i> • (2) The project site is located within one mile of an EJ Population (or in the case of projects exceeding a mandatory EIR threshold for air, within five miles of an EJ Population). <p>Enhanced analysis of impacts and mitigation may include analysis of multiple air impacts; data on baseline public health conditions within the affected EJ Population; analysis of technological, site planning, and operational alternatives to reduce impacts; and proposed on-site and off-site mitigation measures to reduce multiple impacts and increase environmental benefits for the affected EJ Population. The project proponent may submit actual air modeling data on the project's area of potential air impacts in its EIR to modify the presumed five-mile impact area referred to in condition (2) above.</p>
<p><i>Section 59 of S.9 prohibits granting a MEPA exemption for any project affecting an EJ population.</i></p>		
MEPA exemption prohibition	No agency shall exempt from an environmental impact report any project that is located in a neighborhood that has an	[No exemption prohibition]

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	<p>environmental justice population and is reasonably likely to cause damage to the environment, as defined in section 61. The provisions of this paragraph shall not apply to emergency actions essential to avoid or eliminate a threat to public health or safety or a threat to any natural resource undertaken in compliance with section 62F.</p>	
<p><i>Section 60 of S.9 inserts three additional subsections into MEPA covering enhanced public participation (§ 62J), the requirement to consider EJ principles in all agency actions (§ 62K), and the establishment of the EJ advisory council (§ 62L). These provisions were previously covered in the 2017 EJ Policy and Executive Order No. 552.</i></p>		
<p>Section 62J (enhanced public participation)</p>	<p>To enable the public to assess the impact of proposed projects that affect their environment, health and safety through the project review process established under sections 61 through 62J, inclusive, the secretary shall provide opportunities for meaningful public involvement.</p> <p>For any proposed project that requires the filing of an environmental notification form, the proponent of the project shall 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.</p> <p>If a proposed project is significant and affects an environmental justice population, the secretary shall require additional measures to improve public participation by the environmental justice population. Such measures shall include, 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</p>	<p>Agency Public Participation Programs. As part of their EJ strategies, all EOEA agencies shall have an inclusive, robust public participation program that focuses agency resources on outreach activities that enhance public participation opportunities for agency activities that potentially affect EJ Populations. Each EOEA agency must create a Public Participation Strategy. In developing these public participation plans, agencies shall consider the following outreach efforts:</p> <ul style="list-style-type: none"> • Scheduling public meetings or hearings at locations and times convenient for neighborhood stakeholders; • Translating public notices into other languages; • Offering interpreters and translated documents at public meetings; • Providing notices as early as possible to all neighborhoods potentially impacted by a decision; and • Assisting EJ Populations with grant applications and questions about environmental regulations to assist them with compliance and sustainability.

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	<p>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.</p> <p>The secretary of energy and environmental affairs may require such additional measures as appropriate for non-significant projects projects that do not require the filing of an environmental notification form pursuant to section 62A, or to improve participation opportunities for persons in an environmental justice population that lack English language proficiency and do not speak a dominant language spoken by such population.</p> <p>As used in this section, the term designated geographic area shall mean 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.</p>	<p>Enhanced Public Participation Under MEPA. As part of the Secretary's commitment to Environmental Justice, enhanced public participation will be required for the following projects as they undergo review in accordance with MEPA:</p> <ul style="list-style-type: none"> • (1) Any project that exceeds an Environmental Notification Form (ENF) threshold for air, solid and hazardous waste (other than remediation projects), or wastewater and sewage sludge treatment and disposal³; and • (2) The project site is located within one mile of an EJ Population (or in the case of projects exceeding an ENF threshold for air, within five miles of an EJ Population). <p>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 where the relevant EJ Population uses a primary language other than English in the home.</p>
<p>Section 62K (requirement to consider EJ principles in all agency actions)</p>	<p>The secretary shall consider the environmental justice principles, as defined in section 62, in making any policy or determination, or taking any action relating to a project review, undertaken pursuant to sections 61 through 62J, inclusive, to reduce the potential for unfair or inequitable effects upon an environmental justice population.</p> <p>To further the environmental justice principles the secretary shall direct its agencies, including the departments, divisions, boards and offices under the secretary's control and authority, to consider the environmental justice principles in making any policy, determination or taking any other action related to a project review, or in undertaking any project pursuant to said</p>	<p>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.</p> <p>Agency EJ Strategies. Agencies shall develop their own strategies to proactively promote environmental justice in all neighborhoods in</p>

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	<p>sections 61 through 62J, inclusive, and related regulations that is likely to affect environmental justice populations.</p> <p>In addition, the secretary shall establish standards and guidelines for the implementation, administration and periodic review of environmental justice principles by the executive office of energy and environmental affairs and its agencies.</p>	<p>ways that are tailored to the specific mission of each agency. In addition to the particular services already specified below, EOEА agencies shall identify and promote agency-sponsored projects, funding decisions, rulemakings or other actions intended to further environmental justice in the Commonwealth.</p>
<p>Section 62L (establishment of EJ advisory council)</p>	<p>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 appointed by the governor, who shall designate a chair. Members may be removed without cause, by the governor. All members shall serve without compensation.</p> <p>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.</p> <p>The environmental justice council shall conduct a comprehensive analysis by not later than July 31, 2022, and every fifth year thereafter, to ensure the definition of environmental justice population achieves the objectives of the environmental justice principles, pursuant to the definitions of environmental justice population and environmental justice principles contained in section 62. The analysis shall include, but not be limited to, an evaluation of this definition as compared to the demographics of environmental justice populations in the commonwealth. As part of the analysis, said council shall provide advice and make recommendations to the secretary on any necessary changes to the percentage thresholds included in this definition and any related regulation. The secretary shall consider the recommendations of the council regarding any proposed changes</p>	<p>[previously established under Executive Order No. 552]</p>

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	<p>to the percentage thresholds under this definition; provided, however, that such changes are needed to achieve and promote the environmental justice principles as defined under said section 62. Proposed regulations shall be adopted only after the approval of the council by a majority vote in the affirmative of those members so voting.</p> <p>The environmental justice council may recommend and provide advice to the secretary on proposed substantial legislative or regulatory changes related to this definition at any time prior to conducting a comprehensive analysis.</p>	
<p><i>Governor Baker's proposed changes would insert additional sections to S.9 setting timelines for the promulgation of regulations implementing the new EJ requirements and incorporating a "cumulative impacts analysis" into MassDEP's air and other permit reviews:</i></p>		
<p>Time for promulgating regulations</p>	<p>SECTION 102A. The secretary of energy and environmental affairs shall promulgate regulations to implement sections 57 and 58 by no later than 180 days after the effective date of this act.</p> <p>SECTION 102B. The requirements imposed by sections 57 and 58 shall apply to new projects filed under section 62A of chapter 30 of the General Laws on or after the effective date of regulations promulgated under section 102A.</p>	<p>[n/a]</p>
<p>Cumulative impacts analysis regulations</p>	<p>SECTION 102C. The department of environmental protection shall evaluate and seek public comment on the incorporation of cumulative impact analyses in the assessment and identification of certain categories of permits and approvals. Not later than 18 months after the effective date of this act, the department of environmental protection shall propose regulations to include cumulative impact analyses for defined categories of air quality permits identified through the evaluation and public comment process.</p>	<p>[n/a]</p>