

March 31, 2021

Via email

Director Tori Kim
MEPA Office
100 Cambridge Street, Suite 900
Boston, MA 02114
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Re: MEPA Regulatory Updates

Dear Director Kim:

Charles River Watershed Association (“CRWA”) provides the following comments regarding potential Massachusetts Environmental Policy Act (“MEPA”) regulatory updates. CRWA’s mission is to protect, preserve, and enhance the Charles River and its watershed through science, advocacy, and the law. CRWA comments on nearly every project within the Charles River watershed undergoing MEPA review, and we routinely highlight the lack of information provided on several key topics, which are described herein. We recommend the following updates to the MEPA regulations to ensure that climate resilience, water quality impacts, and environmental justice are fully evaluated during MEPA review. We also provide several recommendations regarding the MEPA process, including updating the MEPA review thresholds, improving the availability of information, ensuring that critical components of the review are carried throughout the process, and improving coordination with permitting agencies.

The MEPA regulations should require climate resilience to be fully disclosed and analyzed.

To effectively address climate resilience, EEA must focus on the entire range of current and future climate impacts, including extreme weather (storms, wind, etc.), changes in precipitation (including drought), sea level rise, and rising temperatures. CRWA is encouraged by EEA’s efforts to ensure consistency in how climate resilience is considered across projects through incorporation of the Resilient Massachusetts Action Team (“RMAT”) work into MEPA policy. The RMAT framework should similarly be incorporated into the MEPA regulations, with all projects required to use the RMAT checklist to evaluate vulnerabilities and necessary adaptation/resilience measures. Additionally, the MEPA regulations should prioritize adaptation measures that promote the preservation, protection, restoration, and enhancement of natural systems through nature-based solutions. Any project that proposes altering wetland or stream areas, including intermittent streams, should be required to conduct detailed hydrologic and hydraulic modeling of downstream flood impacts caused by the loss of that flood storage.

CRWA is simultaneously submitting detailed comments on the MEPA Interim Protocol on Climate Change Adaptation and Resiliency, which we incorporate herein by reference. The same considerations and principles described in our comments on the interim policy should be incorporated into the MEPA regulations.

The MEPA regulations should require water quality impacts to be fully disclosed and analyzed.

Most projects undergoing MEPA review have the potential to affect water quality, both during construction and long-term, often through the discharge of stormwater into municipal drainage systems or directly into nearby waterways. Many projects do not address how they will comply with approved Total Maximum Daily Loads (“TMDLs”) and protect water quality limited water bodies (any water body that does not meet applicable water quality standards, including, but not limited to, waters listed in categories 5 or 4b on the Massachusetts Integrated List of Waters listed pursuant to Clean Water Act sections 303(d) and 305(b)) from further degradation, including increased discharges. In addition, project proponents frequently do not explain how the project will affect the respective municipality’s ability to comply with its requirements under the General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (“MS4”) in Massachusetts (“MS4 permit”), particularly those related to impaired waters, construction site stormwater runoff, and post-construction stormwater runoff.

For example, the Charles River is impaired due to phosphorus pollution from stormwater runoff and has nutrient TMDLs for the Upper/Middle Charles and the Lower Basin (as applicable). This pollutant is one of the most significant threats to the Charles River today, but many project proponents do not address this issue in their MEPA filings.

A project’s present and anticipated phosphorus export is critical to understanding its effect on water quality. Interested parties cannot adequately evaluate and comment on this aspect of a project’s overall environmental impact unless stormwater considerations—and phosphorus loading specifically—are required to be disclosed as part of the MEPA review process. It is not sufficient that a project proponent indicate that they will comply with the Massachusetts Stormwater Handbook and Standards; that is only part of the relevant inquiry. The TMDL and MS4 considerations discussed below must also be addressed by project proponents.

Under the Charles River nutrient TMDLs, significant reductions in phosphorus loading are required in order to meet water quality standards—there is no allocation for any additional phosphorus loading to the Charles River. For example, the Upper/Middle Charles River nutrient TMDL found that the total annual phosphorus load to that section of the river was 29,872 kg/year while the TMDL load (amount in a healthy river) is 14,968 kg/yr, meaning a 50% total reduction in annual phosphorus load is needed in order to meet water quality standards in that part of the river. Project proponents should be required to address how they are complying with the applicable TMDL in their MEPA filings, including by providing detailed calculations showing existing loading, reductions, and final loads.

Additionally, all cities and towns in the Charles River watershed are subject to mandatory phosphorus reduction requirements under the MS4 permit. If projects increase a municipality’s baseline load, their required phosphorus reduction will be even higher. Cities and towns will not be able to reduce their total phosphorus load by the required amounts over the next 17 years if projects continue adding new sources of phosphorus to the total load. Failure to meet the phosphorus reduction requirements, including the interim reduction requirements, specified in the MS4 permit is a violation of the permit and the Clean Water Act. It is therefore critical for project proponents to address how their project will affect the respective municipality’s ability to comply with its requirements under the MS4 permit during the MEPA process.

While these comments refer specifically to the Charles River watershed, impaired water protection and TMDL consistency, along with MS4 permit compliance, must be considered by all projects regardless of location.

The MEPA regulations should require environmental justice considerations to be fully disclosed and analyzed.

Environmental justice must be incorporated into the MEPA regulations in order to effectively protect the rights and interests of environmental justice communities. Through MEPA, there is a unique opportunity to look at a community holistically to determine whether a project can improve environmental, energy, climate, and public health conditions, particularly for those who have historically been excluded from consideration. In addition, there is an opportunity to provide these residents with equal access to the decision-making (i.e., MEPA review) process. CRWA is simultaneously submitting detailed comments on the MEPA Interim Protocol for Environmental Justice Outreach, which we incorporate herein by reference. The same considerations and principles described in our comments on the interim policy should be incorporated into the MEPA regulations.

The MEPA review thresholds should be updated.

The current thresholds that trigger the various levels of MEPA review do not adequately capture the full range of impacts that should be considered in connection with climate change and adaptation/resilience. In particular, we recommend creating or expanding MEPA thresholds based on future flood mapping, including sea level rise and precipitation-based flood-prone areas, and other climate-related impacts.

The considerations recommended herein should be carried throughout the MEPA review process.

While we agree that it makes sense for proponents to submit information related to climate resilience and environmental justice, as well as water quality impacts, at the environmental notification form (“ENF”) stage, the MEPA office should make it clear in updated regulations that those considerations must also be carried through subsequent environmental review processes, including draft and final environmental impact reports.

MEPA information should be provided in a publicly-accessible way.

CRWA echoes comments made by Conservation Law Foundation regarding improved access to online documents. CRWA reviews many MEPA Certificates and we rarely see comments submitted by local residents, even though we know many residents have concerns about developments in their communities. This is likely because the public is not aware of the MEPA process and how to participate in it. It is currently exceedingly difficult to find MEPA documents associated with a particular project unless one knows in which version of the Environmental Monitor the documents were published. An easily searchable system that includes both current and archived documents would enhance public participation in the MEPA process. Many other agencies have online systems where one can search using various criteria, including project name, location, key words, etc. that could be used as a template for the MEPA program.

The MEPA office should improve coordination with sister agencies.

The MEPA office should dedicate more resources to working with permitting agencies to ensure that requirements in the Secretary's Certificates are accurately and meaningfully incorporated into permits. We occasionally see issues arise when the Secretary's decision in the Certificate is based on certain representations, assumptions, or conditions, but those representations or assumptions subsequently change, or conditions are not carried through the permitting processes. In order to effectuate the Secretary's intent, continued coordination with permitting agencies is necessary in many cases.

Thank you for considering these comments, we look forward to working with the MEPA office throughout the regulatory update process. Please do not hesitate to reach out with any questions.

Sincerely,



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