



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT
GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

**MEPA GREENHOUSE GAS EMISSIONS POLICY
AND PROTOCOL REVISIONS**

November 24, 2008

The Executive Office of Energy and Environmental Affairs' (EEA) Greenhouse Gas Emissions Policy and Protocol (the GHG Policy) requires that certain projects undergoing review by the Massachusetts Environmental Policy Act (MEPA) Office quantify the greenhouse gas (GHG) emissions generated by the proposed project, and identify measures to avoid, minimize, or mitigate such emissions. Recent amendments to the MEPA statute at M.G.L. c. 30, §61 have required that EEA revise the GHG Policy to be consistent with the legislative changes. The details of the GHG Policy revisions are set forth below. In addition, the Secretary of Energy and Environmental Affairs is announcing the formation of a stakeholder group to review current MEPA practice under the GHG Policy, make recommendations for any further changes to the policy, and to develop regulations to codify the GHG Policy in the MEPA regulations at 301 CMR 11.00.

History

In early 2007, EEA determined that the phrase "damage to the environment" as used in the MEPA statute includes the emission of greenhouse gases caused by projects subject to MEPA review. In April of 2007, the Secretary of Energy and Environmental Affairs convened a technical advisory committee (TAC) of agency officials, private air quality consultants, and other stakeholders to develop a standardized protocol for the analysis of greenhouse gas emissions of projects subject to MEPA review. The GHG Policy was first issued in draft form in July of 2007, after which a public comment was held to allow broader public review and input concerning the new policy. The final GHG Policy was issued later that year and applied to projects that filed an Environmental Notification Form (ENF) after October 15, 2007. A slightly revised version of the GHG Policy was later issued and applied to projects that filed an ENF after June 30, 2008.

MEPA Statutory Changes

On August 8, 2008, Governor Patrick signed the Global Warming Solutions Act of 2008 (the Act) (Chapter 298 of the Acts of 2008). The Act calls for strict greenhouse gas emissions

reduction targets that will apply across all economic sectors of the Commonwealth. In addition, Section 7 of the Act amends Section 61 of Chapter 30 of the General Laws to provide that:

In considering and issuing permits, licenses and other administrative approvals and decisions, the respective agency, department, board, commission or authority shall also consider reasonably foreseeable climate change impacts, including additional greenhouse gas emissions, and effects, such as predicted sea level rise.

This provision of the Act became effective on November 5, 2008. Pursuant to this change, GHG emissions are now within the subject matter of every state permit or approval and therefore within the jurisdiction of MEPA.¹

Changes to the GHG Policy

Currently, projects are subject to the GHG Policy if an Environmental Impact Report (EIR) is required for the project, and if it falls into one or more of the following three categories:

1. MEPA has full scope jurisdiction;
2. The project is privately funded, but requires an air quality permit from the Department of Environmental Protection;
3. The project is privately funded, but requires a Vehicular Access Permit from the Massachusetts Highway Department.

Under the revised GHG Policy, **all projects that require an EIR will need to comply with the policy, regardless of whether the three conditions listed above are met.** This change is necessary to give effect to the recent changes to the MEPA statute under the Global Warming Solutions Act, and will also increase opportunities to achieve the GHG emissions reductions mandated under the Act.

This change will become effective for all projects that file an ENF after the February 2, 2009 MEPA filing deadline. A revised GHG Policy is available on the MEPA website (<http://www.mass.gov/envir/mepa/index.htm>). Projects that file a Notice of Project Change after the February 2, 2009 MEPA filing deadline will be subject to the GHG Policy in the Secretary's discretion. Note that the GHG Policy does include exceptions for certain projects; these exceptions remain in effect.

GHG Policy Revisions Working Group

Secretary Ian A. Bowles is also announcing the formation of a stakeholder "working group" to review current MEPA practice under the GHG Policy, make recommendations for any further changes to the policy, and to develop regulations to codify the GHG Policy in the MEPA regulations at 301 CMR 11.00. The working group will also consider ways in which to address the Act's requirement that state agencies and MEPA consider the potential effects of reasonably foreseeable climate change on projects subject to MEPA review. As was the case with the prior Technical Advisory Group, this working group will be chaired by the MEPA Director and EEA General Counsel, and will be comprised of agency officials, private consultants, attorneys,

¹ MEPA jurisdiction is predicated on the presence of an Agency Action such as a Permit, Financial Assistance or a Land Transfer under 301 CMR 11.01 and 11.02.

environmental advocacy groups and other stakeholders. The working group shall endeavor to develop a set of written proposals to the Secretary to carry out its recommendations by the end of April, 2009. Any revised policy or regulations proposed to be adopted by the Secretary will be subject to public review and comment prior to implementation.
