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VIA FIRST CLASS AND ELECTRONIC MAIL

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Subject: Petition for Massachusetts Department of Environmental Protection Rulemaking to Establish Regulations to Implement the Global Warming Solutions Act and An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy

Dear Secretary Tepper:

Conservation Law Foundation (“CLF”)¹ hereby petitions the Massachusetts Executive Office of Energy and Environmental Affairs (“EEA”) to initiate one or more rulemaking proceedings to promulgate new and amended regulations under the Commonwealth’s Global Warming Solutions Act (“GWSA”), An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy (“Roadmap Law”), and An Act Driving Clean Energy and Offshore Wind (“2022 Energy Law”) pursuant to G.L. c. 30A, § 4 and 310 CMR 2.00. As a result of the Commonwealth’s new net-zero emission standard, its statutory requirement to update the Clean Energy and Climate Plan (“CECP”) and the recent directive from the Massachusetts Legislature to consider environmental justice in climate programs, CLF asserts that previously enacted regulations require review and revision at this time. This petition is one of several concurrent petitions that CLF has filed as part of a multi-agency GWSA implementation package in which CLF seeks action by the EEA, Massachusetts Department of

¹ CLF, on behalf of its members, seeks a multi-agency GWSA implementation plan that puts Massachusetts on the path to be a national leader in both addressing the climate crisis and environmental injustice. Founded in 1966, CLF is a nonprofit, member-supported, regional environmental organization working to conserve natural resources, protect public health, and promote thriving communities for all in the New England region. CLF protects New England’s environment for the benefit of all people. We use the law, science, and markets to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy. CLF serves to protect and promote the interests of its 5,300 members, including more than 2,900 members residing throughout the Commonwealth.

Environmental Protection (“MassDEP”), Energy Facilities Siting Board (“EFSB”), Massachusetts Department of Energy Resources (“DOER”), Massachusetts Department of Public Utilities (“DPU”), and Massachusetts Department of Transportation (“MassDOT”). The multi-agency GWSA implementation package is summarized in Appendix A.

GWSA compliance and achieving our net-zero climate targets requires a comprehensive set of regulatory amendments. While Massachusetts has begun implementing the GWSA and the Roadmap Law, implementation is lacking and falls short of mandatory climate goals. In particular, the Roadmap Law requires the Secretary to promulgate greenhouse gas (“GHG”) emission limits every five years starting in 2025 and to reach carbon neutrality by 2050.² It also requires that the level of emissions in 2050 should not be higher than 85 percent below the 1990 level.³ Executive Order 569 further holds that agencies should reduce emissions per GWSA limits. With Massachusetts’ new Clean Energy and Climate Plan for 2025/2030 (“2025/2030 CECP”), the state aims to reduce 33 percent of emissions from the 1990 level by 2025 and 50 percent from the 1990 level by 2030.⁴ With this Petition, CLF requests that EEA undertake these regulatory changes to ensure the Commonwealth achieves its climate mandates and effectively decarbonizes the economy in a just and equitable manner.

Regulatory amendments must address historic disinvestment in Black, Brown, Indigenous, low-income, and immigrant communities, while also setting the stage for emissions reductions in the transportation, electricity, gas, buildings, and solid waste sectors as required by the GWSA and Roadmap Law.⁵ Climate justice can only be achieved if EEA and its partner executive agencies promulgate regulations that bring about concrete improvements in the health and lives of communities within the Commonwealth, especially those that both continue to be disproportionately impacted by pollution and experience the worst impacts of climate change and COVID-19. The policies must be holistic and developed and implemented with community participation. Unless climate justice is a central component of the Commonwealth’s path to net-zero emissions, the inequities of the Commonwealth’s past energy and environmental policies will be replicated.

CLF’s significant history of climate and environmental justice advocacy has included litigation to enforce the GWSA, legislative support to advance climate and environmental justice bills, as well as general advocacy to increase zero-emission transportation policies, expand energy efficiency services, reduce reliance on fossil fuels, and support greater reliance on clean energy. For example, in the 2016 case *Kain v. Department of Environmental Protection*, CLF contended that the Commonwealth was obligated to create and implement regulations to meet its carbon emission reduction mandates.⁶ The Massachusetts Supreme Judicial Court agreed with CLF’s assertion and held that the plain language of the statute and Section 3(d) required

² St. 2021, c. 8, § 9.

³ *Id.* § 8(b).

⁴ *Massachusetts Clean Energy and Climate Plan for 2025 and 2030*, Executive Office of Energy and Environmental Affairs (June 30, 2022) (hereinafter 2025/2030 CECP), <https://www.mass.gov/doc/clean-energy-and-climate-plan-for-2025-and-2030/download>.

⁵ St. 2021, c. 8, § 10; *see also* St. 2021, c. 8, § 56.

⁶ *Kain v. Dep’t of Env’tl. Prot.*, 474 Mass. 278, 288-90 (2016).

MassDEP to promulgate regulations.⁷ CLF has further worked to uphold the goals and purpose of the GWSA through its participation as an amicus curiae in the 2018 case, *New England Power Generators Association v. Department of Environmental Protection*.⁸ Following the above-referenced litigation, MassDEP proceeded to successfully meet its confirmed duties by promulgating GWSA regulations directed at compliance with the GWSA’s 2020 targets. In the intervening years climate science, law and policy options have advanced. We are now faced with new information about the climate crisis, more aggressive emissions targets, and the need to formulate and implement a new set of policies aimed at achieving the Commonwealth’s new, more stringent emissions mandate for 2030.

CLF has engaged with EEA on climate policy in recent years through its seat on the GWSA Implementation Advisory Committee as an official member, chair of the Electricity Working Group, and co-chair of the Climate Justice Working Group. CLF now seeks to work with EEA to implement a regulatory package that will advance climate action and climate justice within the Commonwealth. CLF’s advocacy and commitment to Massachusetts’ communities, environmental protection and justice have yielded significant expertise among CLF staff members in energy and climate matters, as well as matters relating to the transportation, electricity, solid waste, gas, and building sectors. Pursuant to Section 4 of the Massachusetts Administrative Procedure Act,⁹ CLF formally requests through this petition that EEA now enact regulations to implement the GWSA, the Massachusetts 2050 Decarbonization Roadmap (“2050 Roadmap Report”), and the Commonwealth’s emissions limits to mitigate climate change and protect vulnerable environmental justice populations.

⁷ *Id.* at 292.

⁸ *New England Power Generators Ass’n, Inc. v. Dep’t of Envtl. Prot.*, 480 Mass. 398, 399 (2018).

⁹ G.L. c. 30A, § 4.

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I. BACKGROUND

Legislative and Planning Actions

Recognizing the long-term threat posed by climate change, Massachusetts passed the GWSA in 2008 and was one of the first states to implement a regulatory program to mitigate climate change.¹⁰ The GWSA requires at least an 80 percent reduction in GHG emissions by 2050 from 1990 GHG emission levels.¹¹ It further requires coordinated state agency actions to achieve these GHG emission limits,¹² and mandates EEA's agencies like MassDEP to promulgate GHG reporting regulations.¹³ The GWSA also sets forth target goals for the reduction of GHG emissions from all sectors of the Commonwealth's economy.

A history of executive, legislative, and judicial actions followed the GWSA to address the grave threats that the climate crisis presents for the people, natural resources, and environment of the Commonwealth. In May 2016, the Supreme Judicial Court in *Kain* established that MassDEP must set actual enforceable limits for greenhouse gas emissions and not "promulgate regulations that merely establish aspirational goals or unenforceable targets."¹⁴ The *Kain* decision underscored that EEA and its agencies are primarily responsible for administering the required emission reductions.¹⁵ In September 2016, Governor Baker signed Executive Order 569, which set forth a comprehensive approach to meeting the Commonwealth's GHG emission goals, as well as protecting residents, businesses, and municipalities from the impacts of climate change. In 2018, the Supreme Judicial Court also recognized that the GWSA "is designed to make Massachusetts a national, and even international, leader in the efforts to reduce the greenhouse gas emissions that cause climate change."¹⁶ In upholding MassDEP's authority to promulgate sector specific regulations under G.L. c. 21N, § 3(d), the Supreme Judicial Court stated that the GWSA "establishes significant, 'ambitious,' legally binding, short-and long-term restrictions on those emissions."¹⁷

In January 2020, Governor Baker announced a commitment for Massachusetts to achieve net-zero GHG emissions by 2050 during his State of the Commonwealth Address.¹⁸ A year later, the Legislature passed S.2995, the Roadmap Law, amending the GWSA to incorporate a 2050 net-zero emissions mandate. After an initial veto, refiling, and passage again by the Legislature, a negotiated and amended version of the Act was enacted on March 26, 2021, requiring an updated 2025/2030 CECP.¹⁹ On June 30, 2022, EEA released its 2025/2030 CECP. On August 11, 2022, Governor Charlie Baker signed another climate law, the 2022 Energy Law, that includes new measures for clean energy, energy efficiency, and transportation emissions.

¹⁰ St. 2008, c. 298.

¹¹ G.L. c. 21N, § 3B.

¹² G.L. c. 21N, §§ 2-3.

¹³ G.L. c. 21N §§ 2, 10.

¹⁴ *Kain*, 474 Mass. at 287-290.

¹⁵ See G.L. c. 21N, §7; G.L. c. 21A, §2 clause (30).

¹⁶ *New England Power Generators Ass'n, Inc.*, 480 Mass. at 399.

¹⁷ *Id.* (citations omitted).

¹⁸ Press Release: *Governor Baker Delivers 2020 State of the Commonwealth Address*, MASS GOV (January 21, 2020), <https://www.mass.gov/news/governor-baker-delivers-2020-state-of-the-commonwealth-address>.

¹⁹ St. 2021, c. 8.

EEA has determined that Massachusetts must achieve at least an eighty-five percent gross emissions reduction while meeting the Roadmap Law’s net-zero GHG emissions requirement by 2050. Former EEA Secretary Theoharides issued a Letter of Determination on April 22, 2020, defining the net-zero requirement:

*A level of statewide greenhouse gas emissions that is equal in quantity to the amount of carbon dioxide or its equivalent that is removed from the atmosphere and stored annually by, or attributable to, the Commonwealth; provided, however, that in no event shall the level of emissions be greater than a level that is 85 percent below the 1990 level.*²⁰

EEA followed this Determination with the 2050 Roadmap Report on December 30, 2020, a technical report that set forth eight pathways to achieve net-zero emissions by 2050. The 2050 Roadmap Report was the culmination of input from a technical advisory committee and implementation advisory committee, in which CLF participates. A plan styled as an “Interim Clean Energy and Climate Plan” for 2030 (“Interim 2030 CECP”) and a request for comments accompanied the 2050 Roadmap Report.²¹ CLF filed detailed comments on the Interim 2030 CECP.

On June 30, 2022, former EEA Secretary Bethany Card released a final 2025/2030 CECP, which aims to achieve a 33 percent reduction in GHG emissions from the 1990 level by 2025 and the Roadmap Law’s statutorily required 50 percent reduction in GHG emissions from the 1990 level by 2030.²² While the 2025/2030 CECP sets overall objectives for the Commonwealth to tackle the climate crisis, the Plan lacks concrete action goals in multiple areas. Regulatory action is timely as EEA needs to establish concrete opportunities to achieve those goals and promulgate adequate regulations to meet its climate mandates.

On December 21, 2022, EEA released the 2050 CECP, a comprehensive plan to achieve net-zero GHG emissions by 2050.²³ The 2050 CECP reflects the state’s strategies to reach emission goals and is on the right track on phasing out fossil fuels, but still requires additional work to ensure that no environmental justice populations are left behind.

In January 2023, Governor Healey signed Executive Order 604, establishing the Office of Climate Innovation and Resilience and appointing a Climate Chief, a new-cabinet level position responsible for prioritizing climate change policies across all agencies. In the appointment of

²⁰ Secretary Kathleen Theoharides, *Determination of Statewide Emissions Limit for 2050*, Executive Office of Energy and Environmental Affairs (April 22, 2020), Commonwealth of Massachusetts, <https://www.mass.gov/doc/final-signed-letter-of-determination-for-2050-emissions-limit/download>.

²¹ *Interim Clean Energy and Climate Plan for 2030*, Executive Office of Energy and Environmental Affairs, at 47 (2020) (hereinafter Interim CECP).

²² See generally 2025/2030 CECP, *supra* note 4.

²³ *Clean Energy and Climate Plan for 2050*, Executive Office of Energy and Environmental Affairs (Dec. 2022) (hereinafter 2050 CECP), <https://www.mass.gov/doc/2050-clean-energy-and-climate-plan/download>.

Climate Chief Hoffer to monitor cross-agency climate work, Governor Healey established Massachusetts as the first state in the nation to establish such a position at the cabinet level.

EEA Implementation

The GWSA directs the Commonwealth’s executive agencies to promulgate regulations that achieve compliance. “In implementing its plan for statewide greenhouse gas emissions limits, the commonwealth and its agencies shall promulgate regulations that reduce energy use, increase efficiency and encourage renewable sources of energy in the sectors of energy generation, buildings and transportation.”²⁴ To implement the 2025/2030 CECP and to achieve the emissions limits set forth by the past administration, EEA must take advantage of the present opportunity and amend its regulations to ensure achievement of the Commonwealth’s climate goals.

In the 2025/2030 CECP, the EEA estimates that Massachusetts will achieve a 32 percent emissions reduction in 2025 on the way toward a 50 percent reduction emissions requirement by 2030. While existing policies including the 3-Year Energy Efficiency Plan and power plant emissions limits have helped reduce emissions and decarbonize Massachusetts’ economy, EEA must seize other opportunities to maximize emissions reductions through regulatory actions. The regulatory proposals in this petition will help ensure a transition to a clean energy economy while also considering equity and environmental justice.

EEA’s past regulations have been insufficient to meet the mandates of the GWSA and the Roadmap Law. While the agency has promulgated numerous environmental and conservation-related regulations, including the Massachusetts Environmental Protection Act, M.G.L c. 30, §§ 61-62L (“MEPA”), regulatory procedures by which Areas of Critical Environmental Concern are designated, several conservation tax credits, and programs such as the Coastal Zone Management Program and the Coastal Pollutant Remediation Program, EEA has failed to set more cross-sector stringent standards under its purview that would reduce GHG emissions, better protect the health in environmental justice populations, and help the Commonwealth prepare for climate change impacts. For example, EEA approvals issued under MEPA, the Coastal Zone Management Program, and Toxics Use Reduction are not subject to any GHG emissions reduction or limitation requirements. While EEA did issue MEPA interim protocols in 2021 and 2022 requiring quantification of GHG emissions reductions and environmental justice population impact analyses, these policies do not go far enough to mandate denial of MEPA approvals in circumstances where an increase in net greenhouse gas emissions occurs.

As the Secretariat responsible for energy and environmental matters with DOER, DPU, MassDEP, and other departments, programs, offices, and commissions under its executive office umbrella, EEA is uniquely positioned to lead by example in implementing the GWSA and the Roadmap Law. By promulgating regulations incorporating GHG emissions reductions and environmental justice population protections, EEA can lead its own departments, programs, and commissions, as well as other executive offices to implement a GWSA regulatory framework

²⁴ G.L. c. 21N, § 6.

that pushes the Commonwealth in the right direction in achieving GHG emissions targets and objectives laid out in the 2025/2030 CECP.

II. THE THREAT OF THE CLIMATE CRISIS REQUIRES URGENT ACTION

Climate scientists agree that at least net-zero GHG emissions must be achieved by mid-century to have a chance at mitigating the worst effects of climate change. The Massachusetts Supreme Judicial Court has acknowledged the emerging consensus shared by the scientific community that climate change is attributable to increased emissions, as well as perceptions in the Commonwealth that national and international efforts to reduce those emissions are inadequate.²⁵ As recognized by Governor Healey in her former role as Massachusetts Attorney General, climate change poses an existential threat to living beings.²⁶ The Intergovernmental Panel on Climate Change (“IPCC”) has warned that the time between now and 2030 is the most important for climate action.²⁷

Dire Warnings from Climate Scientists

The IPCC has found that the global surface air temperature has risen approximately 1.0 degree Celsius (1.8 degrees Fahrenheit) above pre-industrial temperatures.²⁸ The world and the region are also experiencing higher annual temperatures, increased and more severe storms, extreme weather, and rising sea levels as a result of the global rise of GHG emissions.²⁹ A vast majority of these rising emissions are from the burning, extraction, and transportation of fossil fuels over the past decades.³⁰

The IPCC emphasizes that the effects of climate change are increasingly getting more severe, and drastic decarbonization is needed to meet climate goals. For example, in 2014 the IPCC concluded that “continued emission of greenhouse gases will cause further warming” and long-lasting impacts and limiting climate change would require “substantial and sustained reductions in greenhouse gas emissions.”³¹ In 2018, the IPCC provided a graver assessment, concluding that with the current pace of emissions, warming will reach 1.5 degrees Celsius (2.7 degrees Fahrenheit) by mid-century.³² At 1.5 degrees Celsius there are still significant impacts on human health, food and water supply, sea level rise and mass species extinction.³³

²⁵ *Kain*, 474 Mass. at 281.

²⁶ *Massachusetts v. Exxon Mobil Corp.*, No. 19-3333, at 49 Massachusetts Superior Court (Oct. 24, 2019), <https://www.mass.gov/files/documents/2019/10/24/Complaint%20-%20Comm.%20v.%20Exxon%20Mobil%20Corporation%20-%202010-24-19.pdf>.

²⁷ Press Release: *The evidence is clear: the time for action is now. We can halve emissions by 2030*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (April 4, 2022), <https://www.ipcc.ch/2022/04/04/ipcc-ar6-wgiii-pressrelease/>.

²⁸ *Global Land-Ocean Temperature Index*, NASA, <https://climate.nasa.gov/vital-signs/global-temperature/>.

²⁹ *The Effects of Climate Change*, NASA, <https://climate.nasa.gov/effects/>.

³⁰ *Climate Change 2014 Synthesis Report Summary for Policymakers*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, (2014), at 5, https://www.ipcc.ch/site/assets/uploads/2018/02/AR5_SYR_FINAL_SPM.pdf.

³¹ *Id.* at 8.

³² *Global Warming of 1.5 °C, Chapter 1*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (2018), 82, https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_Chapter1_Low_Res.pdf.

³³ *Id.* at 9.

Similar warnings came from the United States Global Change Research Program in 2018³⁴ and the World Economic Forum’s Global Risks Report in 2019.³⁵ In 2020, the global community collectively experienced the highest temperatures on record, alarming heat and wildfires in the Arctic, and a record 29 tropical storms in the Atlantic.³⁶

In 2021, the IPCC issued another dire report, finding that climate change is “unequivocally” caused by human influence,³⁷ and that recent changes in the climate system are “unprecedented” over hundreds to thousands of years.³⁸ The report also stated that human-caused climate change is “already affecting many weather and climate extremes in every region across the globe.”³⁹ For instance, heavy precipitation events have increased since 1950 in most land areas and ecological and agricultural droughts have increased as well, mainly due to human-caused climate change.⁴⁰ The 2021 IPCC report warned that there is a narrow window to limit climate change to 1.5 degrees Celsius and policies must be enacted immediately to avoid setting off irreversible tipping points.

In fact, the 2021 IPCC report revealed that global surface temperature will continue to rise “until at least mid-century under all emission scenarios considered.”⁴¹ Mitigating climate change and its most catastrophic effects requires “limiting cumulative CO₂ emissions, reaching at least net zero CO₂ emissions.”⁴² The 2021 IPCC report also emphasized the importance of timely action, as every ton of carbon dioxide contributes to climate change and “[w]ith every increment of global warming, changes in extremes continue to become larger.”⁴³ While some effects of climate change would take millennia to reverse, scenarios that severely limit GHG emissions “would have rapid and sustained effects to limit human-caused climate change,” such as

³⁴ *Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States*, US GLOBAL CHANGE RESEARCH PROGRAM (2018), <https://nca2018.globalchange.gov/>.

³⁵ *The Global Risks Report 2019*, WORLD ECONOMIC FORUM (2019), <https://www.weforum.org/reports/the-global-risks-report-2019>.

³⁶ Damian Carrington, *Climate Crisis: 2020 was joint hottest year ever recorded*, THE GUARDIAN (January 8, 2021), <https://www.theguardian.com/environment/2021/jan/08/climate-crisis-experts-2020-joint-hottest-year-ever-recorded>.

³⁷ *Climate Change 2021: The Physical Science Basis, Summary for Policymakers*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (2021), at 4, https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf (hereinafter 2021 IPCC Report).

³⁸ *Id.* at 6.

³⁹ *Id.* at 10.

⁴⁰ *Id.* at 8, 10.

⁴¹ *Id.* at 14.

⁴² *Id.* at 27.

⁴³ 2021 IPCC Report, *supra* note 37, at 15 (“For example, every additional 0.5°C of global warming causes clearly discernible increases in the intensity and frequency of hot extremes, including heatwaves (very likely), and heavy precipitation (high confidence), as well as agricultural and ecological droughts in some regions (high confidence).”

flooding.⁴⁴ Limiting emissions in the near term is imperative to minimize future warming and avoid the most devastating and irreversible impacts of climate change.⁴⁵

Since the dire 2021 report, two reports have been released that support cross-cutting regulatory action in Massachusetts. In the 2022 Summary for Policymakers Report on Mitigation, the IPCC recognized that “[c]limate governance is most effective when it integrates across multiple policy domains, helps realise synergies and minimize trade-offs.”⁴⁶ The IPCC further stated that policies that shifting behavioral changes can also “open up a broader range of mitigation efforts,” including promoting walkable urban areas, electrification, and renewable energy.⁴⁷ Overall, this report called for “a substantial reduction in overall fossil fuel usage,” as well as the “widespread electrification of the energy system.”⁴⁸ The 2022 Summary for Policymakers Report on impacts, adaptation, and vulnerability stated that “[s]oft limits to some human adaptation have been reached,” emphasizing the need for clear action.⁴⁹ The 2022 IPCC Adaptation Report concluded that “[i]nclusive governance contributes to more effective and enduring adaptation outcomes and enables climate resilient development.”⁵⁰

Severe Climate Impacts Already Hitting Massachusetts

Massachusetts is already experiencing harmful impacts from climate change and remains particularly vulnerable as GHG emissions continue to rise. Temperatures in Massachusetts already have increased more than the national average, and heavy precipitation in the region is greater than anywhere else in the country.⁵¹ Severe storms have pounded the state in recent years causing flooding, displacement, and millions of dollars of property damage.⁵² Residents living in urban areas such as Boston, particularly the young, ill, and elderly, will also face additional challenges if they live in buildings without air conditioning and “will face greater risks of serious heat-related health illnesses” as heat waves are projected to become more frequent and intense.⁵³ Boston is also at risk of coastal flooding, storm surges, and sea level rise, jeopardizing Boston Logan Airport, the train system, and those living throughout the city. Other coastal areas in Massachusetts are also particularly vulnerable to sea level rise and extreme sea level events that previously occurred once per century and are projected to occur at least annually in many areas by 2100. Low-lying areas will experience increases in the frequency and intensity of flooding,

⁴⁴ *Climate Change 2022: Impacts, Adaptation and Vulnerability, Summary for Policymakers*, Intergovernmental Panel on Climate Change, at 31 (2022), IPCC AR6 WG II, https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf (hereinafter 2022 IPCC Adaptation Report).

⁴⁵ *Id.* at 27-28.

⁴⁶ *Climate Change 2022: Mitigation of Climate Change, Summary for Policymakers*, Intergovernmental Panel on Climate Change, at 59 (2022), IPCC AR6 WG III, https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf.

⁴⁷ *Id.*

⁴⁸ *Id.* at 36.

⁴⁹ 2022 IPCC Adaptation Report, *supra* note 44, at 28.

⁵⁰ *Id.* at 33.

⁵¹ *Rising Temperatures*, RESILIENT MA CLIMATE CHANGE CLEARINGHOUSE FOR THE COMMONWEALTH, <https://resilientma.org/changes/rising-temperatures>.

⁵² *Billion-Dollar Weather and Climate Disasters: Events*, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, <https://www.ncdc.noaa.gov/billions/events>.

⁵³ *Id.*

and sandy coasts will undergo more severe coastal erosion. These impacts are most severely felt by environmental justice populations, frontline, and marginalized communities. For example, in addition to Boston, Revere (an environmental justice population), Marshfield, Quincy (an environmental justice population), Hull, and Salisbury are particularly exposed to sea level rise and flooding.⁵⁴

Failing to reduce GHG emissions will force higher costs upon the people of Massachusetts and impose greater threats to their health, safety, and property.⁵⁵ This will exacerbate issues felt by environmental justice populations already overburdened by pollution.

As the United Nations Secretary-General stated:

Today's IPCC Working Group I Report is a code red for humanity. The alarm bells are deafening, and the evidence is irrefutable: greenhouse gas emissions from fossil fuel burning and deforestation are choking our planet and putting billions of people at immediate risk. Global heating is affecting every region on Earth, with many of the changes becoming irreversible.

The internationally agreed threshold of 1.5 degrees Celsius is perilously close.

[...]

*We must act decisively now to keep 1.5 alive.*⁵⁶

The regulations proposed herein provide concrete steps that the Commonwealth should take to immediately implement the GWSA and 2050 Roadmap Law and align with the spirit and urgency of the most recent 2022 IPCC report to combat climate change.

III. AGENCIES MUST PRIORITIZE AND CENTER EQUITY AND JUSTICE IN GWSA IMPLEMENTATION

The “climate crisis, species loss, pollution, and predatory capitalism have placed increased pressures on our natural and built environment, often leaving the most marginalized communities, especially people of color, low-income residents, and limited English proficient residents, to bear the worst of the burden of environmental pollution.”⁵⁷ Race determines which

⁵⁴ *U.S. Coastal Property at Risk from Rising Seas*, Union of Concerned Scientists, <https://ucsusa.maps.arcgis.com/apps/MapSeries/index.html?appid=cf07ebe0a4c9439ab2e7e346656cb239>.

⁵⁵ *Id.*

⁵⁶ Press Release, *Secretary-General's statement on the IPCC Working Group I Report on the Physical Science Basis of the Sixth Assessment*, UNITED NATIONS (Aug. 9, 2021), <https://www.un.org/sg/en/content/secretary-generals-statement-the-ipcc-working-group-1-report-the-physical-science-basis-of-the-sixth-assessment>.

⁵⁷ *Recommendations for 80x50 Study Scenario Planning*, Climate Justice Working Group (February 24, 2020), <https://www.mass.gov/doc/gwsa-iac-climate-justice-working-group-memo/download>.

neighborhoods are safe and healthy places to live, learn, work, commute, and play,⁵⁸ and the COVID-19 pandemic has exacerbated these long-standing inequities in health outcomes between white people and people of color.⁵⁹ Specifically, environmental justice populations⁶⁰ are at risk of suffering from health conditions from criteria pollutants such as particulate matter, ground-level ozone, lead, carbon monoxide, nitrogen oxides, volatile organic compounds, black carbon, and researchers found that more people have died from fossil fuel pollution than earlier suggested.⁶¹ The Commonwealth will fail at achieving net zero emissions without ensuring emission reductions occur in all communities and concurrent improvements in air quality, public health, and economic opportunity in historically disinvested communities.

EEA, MassDEP, EFSB, DOER, DPU, and MassDOT have a responsibility and opportunity to concurrently meet their obligations under the GWSA, Green Communities Act (“GCA”), Green Jobs Act, Executive Order on Environmental Justice Number 552, the EEA’s 2021 Environmental Justice Policy, and to begin to redress environmental injustice and work toward climate justice. Environmental justice means that all people have a right to be protected from environmental pollution and to live in and enjoy a clean and healthy environment

⁵⁸ Daniel R. Faber and Erie J. Krieg, *Unequal Exposure to Ecological Hazards 2005: Environmental Injustices in the Commonwealth of Massachusetts*, Report by Philanthropy and Environmental Justice Research Project Northeastern University (October 2005), at 1, <https://web.northeastern.edu/ejresearchnetwork/wp-content/uploads/2014/10/Final-Unequal-Exposure-Report-2005-10-12-05.pdf>.

⁵⁹ *Weekly COVID-19 Public Health Report*, Massachusetts Department of Public Health COVID-19 Dashboard, at 46 (Dec. 24, 2022) (The most recent data set released by the Department of Public Health regarding COVID-19 as of December 2020 shows that 19 of the 20 municipalities with the highest total average daily cases in the Commonwealth contain EJ populations), <https://www.mass.gov/doc/weekly-covid-19-public-health-report-december-24-2020/download>; *See also Weekly Dashboard Data, City/Town* and “Race and Ethnicity” Tabs, <https://www.mass.gov/doc/weekly-public-health-report-raw-data-december-24-2020/download-compared-to-2010-Environmental-Justice-Populations>, <https://www.mass.gov/doc/ej2010communitystatisticspdf/download>. Many of these communities also have poor air quality and are home to essential workers who do not have the luxury of being able to work remotely. *See COVID-19 and Health Neighborhoods Study Communities*, Conservation Law Foundation (2020), <https://www.clf.org/covid-19-and-healthy-neighborhoods-study-communities/>; *see also Data Show COVID-19 is Hitting Essential Workers and Communities of Color Hardest*, ACLA Massachusetts (2020), <https://www.aclum.org/en/publications/data-show-covid-19-hitting-essential-workers-and-people-color-hardest>; and *see Lisa Friedman, New Research Links Air Pollution to Higher Coronavirus Death Rates*, NEW YORK TIMES (April 7, 2020), <https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html>.

⁶⁰ G.L. c. 30, § 56 (“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 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.”).

⁶¹ *Conservation Law Foundation Comments on Interim 2030 Clean Energy and Climate Plan*, at 12, 14-15 (March 22, 2021) (hereinafter CLF Comments on Interim 2030 CECP).

regardless of race, income, national origin, or English language proficiency.⁶² Climate justice focuses on the root causes of climate change – human-caused GHG emissions – and making systemic changes that are required to address unequal burdens to our communities and realign our economy with our natural systems.⁶³ At its core, climate change is both a social and ethical issue as the effects of climate change will be most severely felt by low-income and underserved communities. As a form of environmental justice, climate justice advocates hold that all humans (some would say species/living beings too) have the right to access and obtain the resources needed to have an equal chance of survival and freedom from discrimination.

The GWSA requires the EEA Secretary to determine “whether activities undertaken to comply with state regulations and efforts disproportionately impact low-income communities” and to “consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources and other benefits to the economy, environment and public health.”⁶⁴

Massachusetts passed the GCA in 2008 “to help municipalities become more sustainable, control rising energy costs, and incubate clean energy technologies and practices.”⁶⁵ The GCA also laid out several provisions to ensure that low-income communities have access to the benefits of energy efficiency resources. Section 141 states that “[i]n all decisions or actions regarding rate designs, the department [of energy resources] shall consider the impacts of such actions” and “[w]here the scale of on-site generation would have an impact on affordability for low-income customers, a fully compensating adjustment shall be made to the low-income rate discount.”⁶⁶ Additionally, the GCA requires the Secretary of EEA to prepare “a 5-year plan for meeting the renewable and alternative energy and energy efficiency goals of the commonwealth” that addresses the “equitable distribution of program benefits to all customers and particularly low income customers to address the affordability and adverse impacts on low-income households of energy costs and demand mitigation strategies, and mitigation of such adverse impacts, such as by compensating adjustments to the low-income rate discount.”⁶⁷

In November 2014, former Governor Deval Patrick issued Executive Order (“EO”) 552 “to encourage sustained and continued efforts now and into the future to ensure that environmental justice (EJ) remains a priority for the Executive branch.” Each Secretariat, including the EEA and MassDOT, must develop a strategy to incorporate EJ considerations into its programs, including through permitting processes, economic development opportunities, and public participation and outreach.⁶⁸ EO 552 directs the EEA Secretary to update the

⁶² EXEC. ORDER No. 552 (2014).

⁶³ *Climate Justice Working Group Memorandum*, Massachusetts GWSA Implementation Advisory Committee (Feb. 24, 2020), <https://www.mass.gov/doc/gwsa-iac-climate-justice-working-group-memo/download>.

⁶⁴ G.L. c. 21N, § 5.

⁶⁵ *Massachusetts Clean Energy and Climate Plan for 2020*, Secretary of Energy and Environmental Affairs Matthew A. Beaton, at 111 (2015), <https://www.mass.gov/files/documents/2017/12/06/Clean%20Energy%20and%20Climate%20Plan%20for%202020.pdf>.

⁶⁶ St. 2008, c. 169, § 141.

⁶⁷ St. 2008, c. 169, § 116(b)(3).

⁶⁸ EXEC. ORDER No. 552 § 5.

Environmental Justice Policy originally issued in 2002.⁶⁹ The 2017 Environmental Justice Policy requires that, “EEA agencies shall consider the current and future impacts that climate change will have on EJ populations” and “shall take appropriate measures towards ensuring that EJ populations are equally protected from hazards and health risks imposed by future climate changes and properly informed of appropriate measures taken to increase their adaptive capacity.”⁷⁰

Through initiating rulemaking proceedings as recommended by this petition, executive agencies can simultaneously advance work to achieve the 2030 and 2050 climate targets while complying with a variety of other statutory mandates and benefiting environmental justice populations that have been marginalized and face additional burdens from climate change.

IV. EEA HAS THE AUTHORITY TO AMEND ITS REGULATIONS TO ACHIEVE THE GWSA

The right to petition agencies to engage in rulemaking is enshrined in Section 4 of the Massachusetts Administrative Procedure Act, which provides that “[a]ny interested person may petition an agency requesting the adoption, amendment or repeal of any regulation, and may accompany his petition with such data, views and arguments as he thinks pertinent.”⁷¹ It further states: “Each agency shall prescribe by regulation the procedure for the submission, consideration and disposition of such petitions.”⁷² Agencies in Massachusetts also have a right to engage in the rulemaking process. See *Borden, Inc. v. Commissioner of Public Health*, 338 Mass. 707 (1983) (citing *Cambridge Elec. Light Co. v. Department of Pub. Utils.*, 363 Mass. 474, 486-487 (1973)) (“The nature of the rule-making process is such that one may reasonably contemplate that the regulatory body will, either on the basis of some external or internal impetus, determine that a potential problem exists and further investigation is warranted to determine whether (1) such a problem does, in fact, exist and (2) some regulation is necessary to resolve the problem.”); see also *Arthurs v. Board of Registration in Medicine*, 383 Mass. 299, 312-313, (1981) (“an agency may adopt policies through adjudication as well as through rule-making.”).

CLF proposes numerous regulatory amendments to enable the Commonwealth to achieve its 2030 and 2050 climate goals and work toward climate justice.

⁶⁹ *Id.* § 3.

⁷⁰ *Environmental Justice Policy of the Executive Office Of Energy And Environmental Affairs*, at 13, Executive Office of Energy and Environmental Affairs (June 24, 2021), https://www.mass.gov/files/documents/2017/11/29/2017-environmental-justice-policy_0.pdf.

⁷¹ G.L. c. 30A, §4.

⁷² *Id.*

V. EEA HAS AN OPPORTUNITY TO IMPLEMENT A RULEMAKING PROCESS TO IMPLEMENT THE GWSA AND WORK TOWARD NET ZERO EMISSIONS BY 2050

Based upon the expertise gained through its experience advocating for climate policies, CLF is confident that the best strategy to achieve the Commonwealth’s decarbonization and emissions goals is a multi-sectored approach,⁷³ wherein the largest gains will come from reforming the building and transportation sectors. Because EEA regulations affect five sectors, it is an appropriate starting place to ensure necessary thorough and sweeping changes. The regulations below should be enacted and implemented by sector to achieve the best possible and practicable results.

A. Requiring Applicants to Demonstrate No Net Increase in Greenhouse Gas Emissions During Permit Applications

Current Status

Massachusetts can implement several regulatory changes to strengthen its commitment to reducing greenhouse gas emissions while also ensuring that environmental justice communities are protected. Currently, other states such as New York have demonstrated a commitment to incorporating climate justice within their greenhouse gas reduction plans. For example, New York Department of Environmental Conservation contains regulations that require its process to “[e]nsure that activities undertaken to comply with the regulations do not result in a net increase in co-pollutant emissions.”⁷⁴ The EEA and its agencies have not expressed a commitment to considering emissions in permitting. Ensuring that its permitting and review processes consider net emissions will help minimize local impacts and achieve mandates established by the Commonwealth’s climate goals.

Legal Authority

Massachusetts’ laws, including the GWSA, the Roadmap Law, the GCA, and the 2022 Energy Law, require agencies to implement regulations to reduce greenhouse gas emissions. The GCA’s mandate through the Roadmap Law, has been amended to elevate the need to reduce emissions, rather than solely aiming to obtain the lowest cost for ratepayers. With the Roadmap Law, the Commonwealth has now committed to net zero by 2050. While the Law requires the Secretary to promulgate emission limits every five years, the Roadmap Law is silent as to effective measures the EEA must take to achieve net-zero. As such, the EEA can demonstrate its sincerity in reducing greenhouse gas emissions, while also protecting vulnerable communities, through the following regulatory amendments.

⁷³ *Massachusetts 2050 Decarbonization Roadmap*, at 12 Massachusetts Executive Office of Energy and Environmental Affairs (Dec. 2020), <https://www.mass.gov/doc/ma-2050-decarbonization-roadmap/download> (hereinafter *Massachusetts 2050 Decarbonization Roadmap*).

⁷⁴ N.Y. Env’t Conserv. Law § 75-0109 (McKinney, 2019).

Needed Action

CLF has cautioned that impacts considered individually may seem small but will still result in damage to the environment when aggregated over time or within geographic proximity to each other. It is also crucial that projects of any size be assessed not just for the potential to cause damage to the environment, but also for how they may contribute to and be impacted by climate change impacts, and how they may impact EJ populations. Additionally, it is important that the MEPA⁷⁵ review process prevent net increases in GHG emissions.

EJ communities are often located near facilities that produce GHG emissions. The adoption of regulations promoting the reduction of GHG emissions ensure MEP that environmental justice populations are protected from being exposed to more GHG emissions and pollution during the transition to cleaner, renewable technology. To do so, EEA can amend several of its programs and regulations, including MEPA, the Coastal Zone Management Program, the Municipal Harbor Plan review process, and Toxics Use Reduction regulations.

Regulatory Proposals

Massachusetts Environmental Policy Act

- Amend 301 CMR 11.01 to ensure the MEPA's review process prevents the approval of Projects that increase net greenhouse gas emissions.
- Amend 301 CMR 11.02 to define net greenhouse gas emissions.
- Amend 301 CMR 11.03 to expand the categories of Projects that can undergo review to include those that will result in an increase in net greenhouse gas emissions, electric generating facilities powered by fossil fuels with a capacity of 25 megawatts or more, removal of healthy mature trees from an EJ population, addition of impervious surface in an environmental justice population, increase of public health risk in an environmental justice population, reduction of public transit service by an average of ten percent, increasing transit fares at an average of two percent, changing highway lane designations that increase the number of average daily trips, suspension of transit service that will last longer than 30 days, new combined sewer overflow plan, and noise increase.
- Amend 301 CMR 11.04 to update the fail-safe provision to remove criterion about whether damage to the environment could have reasonably been foreseen prior to when 201 CMR 11 was promulgated and integrate cumulative impacts.
- Amend 301 CMR 11.05 to require ENFs to include an analysis of how the Project will not increase net greenhouse gas emissions.

⁷⁵ G.L. c. 30, §§ 61-62I.

- Amend 301 CMR 11.06 to require that a single EIR demonstrate that the planning and design of a Project not result in an increase in net greenhouse gas emissions.
- Amend 301 CMR 11.07 to require EIRs to assess Project impacts that may increase net greenhouse gas emissions.
- Amend 301 CMR 11.08 to prevent adequate EIR issuance by the Secretary if the Project will result in an increase in net greenhouse gas emissions.
- Amend 301 CMR 11.11 to prevent the waiver of any provision or requirement not specifically required by MEPA if the Project would result in an increase in net greenhouse gas emissions.

Coastal Zone Management Program

- Amend 301 CMR 20.01 to ensure the Office of Coastal Zone Management considers the reduction of greenhouse gas emissions in its implementation of the Coastal Zone Management Program.
- Amend 301 CMR 20.02 to define net greenhouse gas emissions.
- Amend 301 CMR 20.03 to ensure that the Coastal Zone Management Office coordination with local governments, state, regional, and area-wide agencies, and other non-EEA agencies to ensure Coastal Zone Management Program implementation does not result in an increase in net greenhouse gas emissions.

Municipal Harbor Plans

- Amend 301 CMR 23.01 to ensure that EEA's Municipal Harbor Plan review process prevents approvals that result in an increase in net greenhouse gas emissions.
- Amend 301 CMR 23.02 to define net greenhouse gas emissions.
- Amend 301 CMR 23.04 to prevent the approval of Municipal Harbor Plans that result in an increase in net greenhouse gas emissions.

Administrative Council on Toxics Use Reduction

- Amend 301 CMR 40.01 to ensure that the Administrative Council on Toxics Use Reduction considers the reduction of greenhouse gas emissions in carrying out its responsibilities under 301 CMR 40.00 et seq.
- Amend 301 CMR 40.02 to define net greenhouse gas emissions.
- Amend 301 CMR 40.03 to add a reference to the GWSA.

- Amend 301 CMR 40.05 to prevent the Commissioner from waiving toxic use fees that result in an increase in net greenhouse gas emissions.

VI. CONCLUSION

As outlined above, CLF contends that a multi-sectoral approach will best allow the Commonwealth to achieve its 2030 and 2050 climate targets, while meeting additional statutory mandates and working toward climate justice. CLF is ready and able to work with EEA and other agencies to both amend current and promulgate new regulations, to meet the 2030 GHG emissions target and more pressing timeline facing Massachusetts. CLF urges EEA to take action to make these changes to help protect Massachusetts residents, communities, and natural resources from the potentially devastating effects of climate change.

Thank you for your continued work and dedication, CLF looks forward to continuing to work together with the EEA to achieve just, equitable, and effective solutions for the Commonwealth.

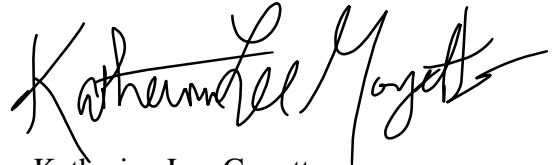
Respectfully submitted,



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Vice President, Massachusetts



Anxhela Mile
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APPENDIX A: COMPREHENSIVE MULTI-SECTOR REGULATORY PACKAGE

Department of Environmental Protection

Regulation	Description
<u>310 CMR 4.01: Purpose, Authority, and General Provisions</u>	Ensures all permits of any kind approved by DEP comply with no net emissions increase requirement
<u>310 CMR 7.00: Statutory Authority; Legend; Preamble; Definitions</u>	Defines net GHG emissions and zero emissions vehicles; adds the GWSA as statutory authority under DEP's air pollution control chapter
<u>310 CMR 7.02 U Plan Approval and Emission Limitations</u>	Ensures all air permits approved by DEP comply with no increase in net GHG emissions requirement
<u>310 CMR 7.11: U Transportation Media</u>	Accelerates zero emission vehicle deployment for MBTA trains and state or municipality-owned fleets
<u>310 CMR 7.32: Natural Gas-Fired Furnace NOx Emissions Standards</u>	Phases out NOx emitting natural gas-fired furnace and boiler sales and installations between 2024 and 2030
<u>310 CMR 7.35: Water Heater NOx Emissions Standards</u>	Phases out NOx emitting water heater sales and installations between 2024 and 2030
<u>310 CMR 7.37: MB High Occupancy Vehicle Lanes</u>	Increases deployment of bus-only and HOV lanes
<u>310 CMR 7.40: U Low Emission Vehicle Program</u>	Accelerates zero emission vehicle deployment for state or municipality-owned fleets
<u>310 CMR 7.73: Reducing Methane Emissions from Natural Gas Distribution Mains and Services</u>	Accelerates methane emissions reductions from and phase out of gas distribution system
<u>310 CMR 7.75: Clean Energy Standard</u>	Eliminates biomass from Clean Energy Standard; Requires hydroelectric power GHG emissions reporting
<u>310 CMR 7.77: Net Zero Communities Program</u>	Empowers municipalities to accelerate climate action and enforce consistency with climate plans
<u>310 CMR 7.78: Reducing Peak Electric Sector Emissions</u>	Requires electric utilities to reduce the difference between peak and average electric system demand
<u>310 CMR 9.01: Purpose</u>	Ensures all coastal zone management permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 9.02: Definitions</u>	Ensures all coastal zone management permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 9.31: Summary of License and Permit Requirements</u>	Ensures all coastal zone management permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 10.01: Introduction and Purpose</u>	Ensures all wetlands permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 10.04: Definitions</u>	Ensures all wetlands permits approved by DEP comply with no net emissions increase requirement

<u>310 CMR 16.01: General Requirements</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 16.02: Definitions</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement; Phases out high heat waste processing facilities
<u>310 CMR 16.03: Exemptions from Site Assignment</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement; Reduces methane emissions feedstocks from landfills
<u>310 CMR 16.04: General Permit for Recycling, Composting or Aerobic and Anaerobic Digestion Operations</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 16.05: Permit for Recycling, Composting and Conversion (RCC) Operations</u>	Phases out high heat waste processing facilities
<u>310 CMR 16.08: Site Assignment Application Submission Requirements</u>	Requires application for site suitability to confirm that facility will not increase GHGs or harm EJ populations
<u>310 CMR 16.13: Department Report on Suitability (Report)</u>	Requires that applications that increase net greenhouse gas emissions or harm an environmental justice population receive negative determinations of suitability
<u>310 CMR 19.001: Authority</u>	Adds the GWSA as statutory authority under DEP's solid waste permitting chapter
<u>310 CMR 19.002: Purpose</u>	Adds the reduction of GHG emissions as a purpose under DEP's solid waste permitting chapter
<u>310 CMR 19.006: Definitions</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement; Requires amendment to definition of recyclable material to create recyclable guidelines document every two years
<u>310 CMR 19.018: Third-party Inspections</u>	Improves enforcement of waste ban requirements
<u>310 CMR 19.032: Permit Procedure for a New Facility or Expansion Permit Application</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 36.01: Authority</u>	Adds the GWSA as statutory authority under DEP's water management permitting chapter
<u>310 CMR 36.02: Purpose</u>	Adds the reduction of GHG as a purpose under DEP's water management permitting chapter
<u>310 CMR 36.03: Definitions</u>	Defines net GHG emissions within DEP's water management permitting chapter.
<u>310 CMR 36.07: Registration Conditions</u>	Ensures all DEP-registered withdrawals comply with no net GHG emissions increase requirement

<u>310 CMR 36.27: Issuance of Permits</u>	Ensures all water management permits approved by DEP comply with no net GHG emissions increase requirement
<u>310 CMR 60.03: U Conformity to the State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. Or the Federal Transit Act</u>	Updates environmental justice and greenhouse gas emissions reduction requirements for transportation implementation plan; adds increased EV charging requirements and reduced internal combustion engine sales numbers as supplemental measures
<u>310 CMR 60.05: Global Warming Solutions Act Requirements for Transportation</u>	Accelerates transportation sector greenhouse gas reduction requirements

Department of Energy Resources

Regulation	Description
<u>225 CMR 4.02: RCS Program</u>	Focuses the RCS program on equity, affordability, and deployment of heat pumps
<u>225 CMR 14.02: Definitions</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives
<u>225 CMR 14.05: Eligibility Criteria for RPS Class I, Solar Carve-out Renewable Generation Units, and Solar Carve-out II Renewable Generation Units</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives
<u>225 CMR 15.02: Definitions</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives; tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.05: Eligibility Criteria for RPS Class II Generation Units</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives; tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.06: Statement of Qualification Process for RPS Class II Renewable Generation Unit</u>	Tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.07: Renewable Energy Portfolio Standard -- Class II</u>	Tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.08: Compliance Procedures for Retail Electricity Suppliers</u>	Tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 22.1.00: [Re] Scope and Administration</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower

	municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 22.2.00: [Re] Definitions</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 22.4.00: [Re] Residential Energy Efficiency</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>Appendix RC: MASSACHUSETTS MUNICIPAL OPT-IN SPECIALIZED STRETCH CODE 2023</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 23.2.00: [Ce] Definitions</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 23.4.00: [Ce] Commercial Energy Efficiency</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
APPENDIX CC - MASSACHUSETTS MUNICIPAL OPT-IN SPECIALIZED ENERGY CODE 2023	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>780 CMR 2.02 Definitions</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.1: Carbon Limits for Building Materials Procurements</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.2 Low-Embodied Carbon Concrete</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.3 Establish a Materials Reuse Facility</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.4 Carbon Reduction or Salvaging Requirement for Demolitions</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.5 Renovation vs. Knock-Down and Rebuild Comparison</u>	Addresses embodied carbon in construction materials

Department of Public Utilities

Regulation	Description
<u>220 CMR 5.02: Format of Tariffs, Schedules and Contracts</u>	Ensures all tariffs explain in plain language how rates reflect resilient infrastructure based on climate science
<u>220 CMR 10.000: Hazard Mitigation and Climate Plans</u>	Mandating the filing of Hazard Mitigation and Climate Plans; prescribing what should be included
<u>220 CMR 11.02: General Definitions</u>	Facilitates ZEV deployment
<u>220 CMR 11.04: Distribution Company Requirements</u>	All contracts and rate increases must reduce GHGs; Facilitates ZEVs; Prohibit utilities from using customer money for political activities or advertising of false climate solutions
<u>220 CMR 11.09: Forward Capacity Market</u>	Triggers for leaving ISO
<u>220 CMR 11.10: Charge Electric Vehicles Utility Pole Program (Charge EVs UPP)</u>	Accelerating municipal EV charging on utility poles
<u>220 CMR 11.11: Electric Vehicle Charging Station Installation</u>	Prohibiting approval of EV charging station installation by EDCs w/o a Dept finding that it will withstand climate change stressors
<u>220 CMR 14.01: Purpose and Scope</u>	Updates LDC purpose to include networked geothermal
<u>220 CMR 14.02: General Definitions</u>	Updates LDC definitions to include networked geothermal
<u>220 CMR 14.03: Local Distribution Company Requirements</u>	All contracts and rate increases must reduce GHGs; Updates LDC requirements to include networked geothermal; Prohibits utilities from using customer money for political activities or advertising of false climate solutions
<u>220 CMR 14.05: Information Disclosure Requirements</u>	Updates LDC info disclosure requirements to include networked geothermal; requires GHG disclosures; requires analysis before using alternative gases
<u>220 CMR 17.05: General Criteria for Long-term Contracts and Renewable Energy Generation Sources</u>	Ensures long-term contracts have RE generation sources that are resilient to current and future climate hazards
<u>220 CMR 19.03: Performance Standards for Emergency Preparation and Restoration of Service</u>	Ensures LDCs consider their Hazard Mitigation and Climate Adaptation Plan and general hazard mitigation and climate resilience planning in the development of emergency preparation
<u>220 CMR 19.04: Emergency Response Plans</u>	Requires LDCs to identify applicable components of their Hazard Mitigation and Climate Adaptation Plans that considers climate science in making hazard predictions and response plans

<u>220 CMR 19.05: Department Investigation into Company Performance; Remedies</u>	Allows Department denial of LDC recovery for failure to follow a Hazard Mitigation and Climate Adaptation Plan during outages
<u>220 CMR 79.01: Annual Return for Gas Companies</u>	Requires reporting of just transition workforce data for LDCs
<u>220 CMR 79.04: Annual Return for Electric Companies</u>	Requires reporting of just transition workforce data for EDCs
<u>220 CMR 112.11: Plans and Procedures</u>	Ensures that LNG plant operators update plans and procedures every 5 years for safety planning, using climate science
<u>220 CMR 115.04: Annual Reporting Requirements</u>	Requires accurate tracking of methane emissions from gas leaks
<u>220 CMR 274.02: Definitions</u>	Requires TNC fleet decarbonization
<u>220 CMR 274.08: Transportation Network Vehicle Requirements</u>	Requires TNC fleet decarbonization
<u>220 CMR 274.12: Reporting Requirements</u>	TNC fleet reporting statistics

Energy Facilities Siting Board

Regulation	Description
<u>980 CMR 1.01: Scope and Construction of Rules</u>	Environmental justice and GHG emissions updates to definitions
<u>980 CMR 1.04: Institution of an Adjudicatory Proceeding</u>	Environmental justice, GHG emissions, and climate resilience pre-filing requirement
<u>980 CMR 1.08: Rendering of Decisions in Adjudicatory Proceedings</u>	Environmental justice, GHG emissions, and climate resilience conditions for granting petitions
<u>980 CMR 1.09: Supplemental Procedures</u>	Environmental justice site visit procedures
<u>980 CMR 5.02: Environmental Assessment</u>	Environmental justice requirements for environmental assessments
<u>980 CMR 13.01: Facility Construction and Maintenance</u>	Environmental justice, GHG emissions
<u>980 CMR 14.00: Site Restoration and Decommission</u>	Requiring a decommissioning site and restoration plan

Executive Office of Energy and Environmental Affairs

Regulation	Description
<u>301 CMR 11.01: General Provisions</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.02: Definitions</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.03: Review Thresholds</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.04: Fail-Safe Review</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.05: ENF Preparation and Filing</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.06: ENF Review and Decision</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.07: EIR Preparation and Filing</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.08: EIR Review and Decision</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.11: Waivers</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 20.01: Authority and Purpose</u>	Ensures all CZMA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 20.02: Definitions</u>	Ensures all CZMA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 20.03: Implementation of the Coastal Zone Management Program</u>	Ensures all CZMA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 23.01: Purpose</u>	Ensures all MHP approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 23.02: Definitions</u>	Ensures all MHP approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 23.04: Review Procedures</u>	Ensures all MHP approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.01: Authority and Purpose</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.02: Definitions</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.03: Toxic Use Fees</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.05: Fee Waiver</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement

Department of Transportation

Regulation	Description
<u>700 CMR 4.01: Purpose</u>	Accelerates deployment of electric rail
<u>700 CMR 4.02: Definitions</u>	Accelerates deployment of electric rail
<u>700 CMR 4.04: Administration</u>	Accelerates deployment of electric rail
<u>700 CMR 4.07: Application Process</u>	Accelerates deployment of electric rail
<u>700 CMR 4.08: Evaluation Criteria</u>	Accelerates deployment of electric rail
<u>700 CMR 7.01: Scope and Effect</u>	Adds equity and GHG reductions to Purpose of DOT
<u>700 CMR 7.02: Definitions</u>	Defines electric vehicle
<u>700 CMR 7.09: Traffic, Operation, and Safety</u>	Accelerates deployment of HOV lanes
<u>700 CMR 11.05: Vehicle Operations</u>	Codifies Tobin Bridge bus-only lane
<u>700 CMR 14.08: Miscellaneous for Contractors</u>	Requires GHG-related disclosures in bidding documents
<u>700 CMR 15.00 Planning and Transit Operations</u>	Accelerates electrification of MBTA-owned vehicles

APPENDIX B: REDLINED REGULATIONS

301 CMR 11.01: General Provisions

(1) Authority and Purpose.

(a) General. 301 CMR 11.00 is promulgated to create a uniform system for compliance with the Massachusetts Environmental Policy Act, G.L. c. 30, §§ 61 through 62L (MEPA) and the Global Warming Solutions Act, G.L. c. 21N, § 3(d). The purpose of MEPA and 301 CMR 11.00 is to provide meaningful opportunities for public review of the potential environmental impacts of Projects for which Agency Action is required, reduce greenhouse gas emissions, and to assist each Agency in using (in addition to applying any other applicable statutory and regulatory standards and requirements) all feasible means to avoid Damage to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable.

(b) MEPA Review. MEPA review is an informal administrative process that is intended to involve any interested Agency or Person as well as the Proponent and each Participating Agency. The Secretary conducts MEPA review in response to one or more review documents prepared and filed by a Proponent. The Secretary's decision that a review document is adequate or that there has been other due compliance with MEPA and 301 CMR 11.00 means that the Proponent has adequately described and analyzed the Project and its alternatives, and assessed its potential environmental impacts and mitigation measures, and does not result in an increase in net greenhouse gas emissions. A Participating Agency retains authority to fulfill its statutory and regulatory obligations in permitting or reviewing a Project that is subject to MEPA review, which does not itself result in any formal adjudicative decision approving or disapproving a Project. Consistent with G.L. c. 30, § 62K, the Secretary and all EEA agencies must consider Environmental Justice Principles in implementing MEPA review. Accordingly, MEPA review shall be conducted in a manner that provides sufficient disclosures to allow for a full consideration of Environmental Justice Principles in order to reduce the potential for unfair or inequitable effects upon Environmental Justice Populations. The amendments to this subsection (b) shall take effect on and after January 1, 2025.

...

(2) Applicability.

(a) Jurisdiction.

1. MEPA establishes jurisdiction over: a Project undertaken by an Agency; those aspects of a Project within the subject matter of any required Permit; a Project involving Financial Assistance; and those aspects of a Project within the area of any Land Transfer. MEPA jurisdiction determines the Scope, if an EIR is required.

2. MEPA jurisdiction is broad when a Project is undertaken by an Agency or involves Financial Assistance. Broad, or full scope, jurisdiction means that the Scope, if an EIR is required, shall extend to all aspects of a Project that are likely, directly or indirectly, to cause Damage to the Environment, or result in an increase in net greenhouse gas emissions. The amendments to this subsection (2)(a)(2.) shall take effect on and after January 1, 2025.

301 CMR 11.02: Definitions

...

Net Greenhouse Gas Emissions shall have the meaning as defined in 310 CMR 7.00.

...

301 CMR 11.03: Review Thresholds

The review thresholds identify categories of Projects or aspects thereof of a nature, size or location that are likely, directly or indirectly, to cause Damage to the Environment; or, on or after January 1, 2025, result in an increase in net greenhouse gas emissions. Except when the Secretary requires fail-safe review, the review thresholds determine whether MEPA review is required. MEPA review is required when one or more review thresholds are met or exceeded and the subject matter of at least one review threshold is within MEPA jurisdiction. A review threshold that is met or exceeded specifies whether MEPA review shall consist of an ENF and a mandatory EIR or of an ENF and other MEPA review if the Secretary so requires. The subject matter of a review threshold is within MEPA jurisdiction when there is full-scope jurisdiction (*i.e.*, the Project is undertaken by an Agency or involves Financial Assistance) or when the subject matter of the review threshold is conceptually or physically related to the subject matter of one or more required Permits (provided that the review thresholds for Land and Areas of Critical Environmental Concern shall be considered to be related to the subject matter of any required Permit) or the area subject to a Land Transfer. The review thresholds do not apply to: a lawfully existing structure, facility or activity; Routine Maintenance; a Replacement Project; or a Project that is consistent with a Special Review Procedure review document, or other plan or document that has been prepared with the express purpose of assessing the potential environmental impacts from future Projects, has been reviewed as such in accordance with MEPA and 301 CMR 11.00, and has been allowed or approved by any Participating Agency, unless the filing of an ENF and an EIR was required by a decision of the Secretary on any such review document, plan or document. The review thresholds are the following:

(1) Land.

(a) ENF and Mandatory EIR.

1. Direct alteration of 50 or more acres of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices.
2. Creation of ten or more acres of impervious area impervious surface covering more than ten percent of the project area or ten acres, whichever results in a smaller area.
3. Creation of impervious surface if any part of the project is within a floodplain, as identified by the municipality in which the project is located, using the best available flood data.
4. Removal of healthy mature trees due to a development, transportation, or other construction project in an environmental justice population. If trees are proposed to be removed, proponents should explain how they plan to replace trees on site or otherwise mitigate the loss of tree canopy and the benefits it provides to ensure improvement to the urban heat island effect. For locations with heat islands and limited tree canopy, tree preservation should be a priority and any loss of tree

cover should warrant mandatory mitigation. Project proponents should also provide explanations on what trees and vegetation will be added to the site. Any local and/or state requirements that apply to the project related to tree removal (i.e., tree ordinance, bylaw, or regulations) should be cited by the proponent.

...

(5) Wastewater.

(a) ENF and Mandatory EIR.

...

6. New Capacity or Expansion in Capacity for storage, treatment, processing, combustion or disposal of 150 or more wet tpd of sewage sludge, sludge ash, grit, screenings, or other sewage sludge residual materials, unless the Project is an Expansion of an existing facility within an area that has already been sited for the proposed use in accordance with G.L. c. 21 or G.L. c. 83, § 6.

7. New proposed combined sewer overflow control plan, any proposed water quality variance or change in water quality standard based on combined sewer overflows.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. Construction of a New wastewater treatment and/or disposal facility with a Capacity of 100,000 or more gpd.

...

6. Increase in flows to sewers that will increase combined sewer overflow activations or flows.

(6) Transportation.

(a) ENF and Mandatory EIR.

...

6. Generation of 3,000 or more New adt on roadways providing access to a single location.

7. Construction of ~~1,000~~ 500 or more New parking spaces at a single location.

8. Reduction of public transit service by an average of 10 percent.

9. Increasing transit fares by an average of two percent.

10. Changing highway lane designations that increase the number by average daily trips.

11. Suspension of bus, rail, rapid transit, commuter rail and ferry service more than 10 percent if such suspensions will last longer than 30 days.

(7) Energy.

(a) ENF and Mandatory EIR.

1. Construction of a New electric generating facility that is powered by fossil fuels including all fuels other than wind, solar, or geothermal energy with a Capacity of ~~35~~ 100 or more MW or a New electric generating facility that is powered by wind, solar, or geothermal energy with a Capacity of 100 or more MW.

2. Expansion of an existing electric generating facility that is powered by fossil fuels including all fuels other than wind, solar, or geothermal energy by ~~35~~ 100 or more MW or an existing electric generating facility that is powered by wind, solar, or geothermal energy by 100 or more MW.

3. Construction of a New fuel pipeline ten or more miles in length.

4. Construction of electric transmission lines with a Capacity of 230 or more kv, provided the transmission lines are five or more miles in length along New, unused or abandoned right of way.

5. Construction of an electrical substation or gas compressor station located within one mile of an environmental justice population.

...

(13) Noise.

(a) ENF and Mandatory EIR. Any project that will increase background noise levels above 65 decibels.

(14) Public Health.

(a) ENF and Mandatory EIR. Any Project that would impact public health by increasing elevated blood lead levels, childhood asthma emergency room visits, heart attack rate per 10,000, or low birth rate in environmental justice populations with vulnerable health according to the Department of Public Health Environmental Justice Tool.⁷⁶ Proponents shall use public health indicators to document impacts of the Project on public health and also indicate the public health baseline.

⁷⁶ This tool is available at EJ screening custom mapping (mass.gov).

301 CMR 11.04: Fail-Safe Review

(1) Petition or Secretary's Initiative. Upon written petition by one or more Agencies or ten or more Persons, or at the initiative of the Secretary, the Secretary may require a Proponent to file an ENF or undergo other MEPA review for a proposed program, regulations, policy, or other Project that does not meet or exceed any review thresholds unless all Agency Actions for the Project have been taken, provided that the Secretary finds in the decision on the petition or initiative that:

(a) the Project is subject to MEPA jurisdiction;

(b) the Project has the potential to cause Damage to the Environment and the potential Damage to the Environment either:

1. contributes to a cumulative impact on an environmental justice population that increases public health risk or environmental burdens could not reasonably have been foreseen prior to or when 301 CMR 11.00 was promulgated; or

2. would be caused by a circumstance or combination of circumstances that individually would not ordinarily cause Damage to the Environment; and

(c) requiring the filing of an ENF and other compliance with MEPA and 301 CMR 11.00:

~~1. is essential to avoid or minimize Damage to the Environment; and~~

~~2. will not result in an undue hardship for the Proponent.~~⁷⁷

A written petition for fail-safe review shall state with specificity the Project-related facts that the petitioners believe support the Secretary's required findings.

(2) Notice and Effect of Petition or Secretary's Initiative. Within ten Days of receiving of a petition, or immediately when the Secretary initiates fail-safe review, the Secretary shall notify the Proponent and any Participating Agency of the petition or initiative and may request further information from the Proponent. Following such notice, a Participating Agency shall not take Agency Action on the Project unless and until the Secretary has issued a decision that the Project does not require the filing of an ENF or, if the Secretary requires an ENF, the Secretary has determined that an EIR is not required or the Secretary has determined that the single or final EIR is adequate and 60 Days have elapsed following the publication of the notice of the availability of the single or final EIR in the Environmental Monitor in accordance with 301 CMR 11.15(2).

⁷⁷ It is difficult for a non-proponent petitioner to quantify what would be an undue hardship for the proponent. MEPA is about reviewing potential environmental impacts, detailing all means to avoid damage to the environment, and mitigating some damage. This fail-safe provision should be invoked to determine when MEPA review is needed to consider alternatives, impacts to EJ populations, and avoid, minimize, and mitigate.

301 CMR 11.05: ENF Preparation and Filing

...

(5)(a) Description of the Project and Potential Impacts. The ENF shall include a concise but accurate description of the Project and its alternatives, identify any review thresholds the Project may meet or exceed and any Agency Action it may require, present the Proponent's initial assessment of potential environmental impacts, propose mitigation measures, provide an analysis as to how the Project will not increase net greenhouse gas emissions, indicate whether the Project is reasonably likely to negatively affect any Environmental Justice Population located in whole or in part within the Project's Designated Geographic Area and what measures were taken prior to the filing of the ENF to provide meaningful opportunities for public involvement by such Environmental Justice Populations, and may include a proposed Scope. The ENF shall also identify all languages spoken by 5% or more of residents who identify as not speaking English very well in any census tract that is located in whole or in part within the Designated Geographic Area around the Project. The ENF shall indicate whether the Proponent is requesting that the Secretary allow a single EIR in accordance with 301 CMR 11.06(8), establish a Special Review Procedure in accordance with 301 CMR 11.09, or grant a waiver in accordance with 301 CMR 11.11. The Proponent shall not limit description of the Project or assessment of its potential environmental and public health impacts on account of any jurisdictional or other limitation that may apply to the Scope, if an EIR is required. The ENF shall separately assess potential environmental and public health impacts and proposed mitigation. The ENF shall identify the sources on which the assessments are based. The amendments to 301 CMR 11.05(5)(a) shall take effect on and after January 1, 2025.

301 CMR 11.06: ENF Review and Decision

(7) Decision on ENF and Scope.

(a) After the close of the public comment period and on or prior to the last Day of the ENF review period, the Secretary shall issue a written certificate stating whether or not an EIR is required and, if so, what to require in the Scope in accordance with 301 CMR 11.06(9). The Secretary's failure to issue a timely certificate shall have the effect of a determination that no EIR is required, unless the Project meets or exceeds one or more mandatory EIR review thresholds or an EIR is required in accordance with 301 CMR 11.06(7)(b), in which case such failure shall have the effect of a determination that an EIR is required, and that it shall address all aspects of the Project that are likely, directly or indirectly, to cause Damage to the Environment, provided that such aspects are within any applicable jurisdictional limitations in accordance with 301 CMR 11.06(9)(b). The Secretary's decision on the ENF shall be subject to the legal challenge periods in accordance with 301 CMR 11.14.

(b) The Secretary shall require an EIR for any Project that is located within a Designated Geographic Area around an Environmental Justice Population.

(8) Decision Allowing Single EIR. When issuing a Scope in accordance with 301 CMR 11.06(7), the Secretary shall ordinarily require a draft and final EIR, but may allow a single EIR, provided that the Secretary finds that the expanded ENF requesting a single EIR in accordance with 301 CMR 11.05(7):

(a) describes and analyzes all aspects of the Project and all feasible alternatives, regardless of any jurisdictional or other limitation that may apply to the Scope;

(b) provides a detailed baseline in relation to which potential environmental and public health impacts and mitigation measures can be assessed;

(c) demonstrates that the planning and design of the Project use all feasible means to avoid potential environmental impacts and not result in an increase in net greenhouse gas emissions; and

(d) for any Project for which an EIR is required in accordance with 301 CMR 11.06(7)(b), describes and analyzes all aspects of the Project that may affect Environmental Justice Populations located in whole or in part within the Designated Geographic Area around the Project; describes measures taken to provide meaningful opportunities for public involvement by Environmental Justice Populations prior to filing the expanded ENF, including any changes made to the Project to address concerns raised by or on behalf of Environmental Justice Populations; and provides a detailed baseline in relation to any existing unfair or inequitable Environmental Burden and related public health consequences impacting Environmental Justice Populations in accordance with 301 CMR 11.07(6)(n)1.

(9) Limits on Scope.

(a) Potential Environmental Impacts. The Secretary shall limit the Scope to those aspects of the Project that are likely, directly or indirectly, to cause Damage to the Environment or result in an increase in net greenhouse gas emissions.

(b) Subject Matter Jurisdiction. In the case of a Project undertaken by a Person that requires one or more Permits or involves a Land Transfer, but does not involve Financial Assistance, the Scope shall be limited to the direct and indirect potential environmental and public health Impacts from those aspects of the Project that are within the subject matter of any required Permit or within the area subject to a Land Transfer, regardless of whether or not those aspects met or exceeded any review thresholds.

(c) Elements of Scope The Secretary shall determine the form, content, level of detail, and alternatives required for the EIR and may establish guidelines as to page length and time necessary for preparation. The Secretary may direct the Proponent to consult with any Participating Agency and describe in the EIR any opportunity to maximize consistency and facilitate coordination between any Agency Action and MEPA review or any other Agency Action.

...

(15) This regulation shall take effect on and after January 1, 2025.

301 CMR 11.07: EIR Preparation and Filing

(6) Form and Content of EIR. Unless the Secretary has indicated otherwise in the Scope or as part of a Special Review Procedure, the depth and level of description and analysis in the EIR shall reflect the status of Project planning and design, the type and size of the Project, the requirements of any Agency Action, the availability of reasonable alternatives and methods to avoid or minimize potential environmental and public health impacts, and the opportunity to assess environmental and public health impacts and to identify appropriate mitigation measures. The EIR shall ordinarily contain the following sections (unless the Secretary indicates in the Scope or as a part of a Special Review Procedure that specific issues shall be described or analyzed in additional sections in the EIR or that any of these sections shall not be included in the EIR):

...

(h) Assessment of Impacts. A detailed description and assessment of the negative and positive potential environmental and public health impacts of the Project and its alternatives, as well as any potential increases in net greenhouse gas emissions due to the proposed Project. The EIR shall assess (in quantitative terms, to the maximum extent practicable) the direct and indirect potential environmental and public health impacts from all aspects of the Project that are within the Scope, and shall contain studies to evaluate said impacts. The assessment shall include both short-term and long-term impacts for all phases of the Project (*e.g.*, acquisition, development, alteration, and operation), any adverse short-term and long-term environmental and public health consequences that cannot be avoided should the project be undertaken, and cumulative impacts of the Project, any other Projects, and other work or activity in the immediate surroundings and region.

...

(7) This regulation shall take effect on and after January 1, 2025.

301 CMR 11.08: EIR Review and Decision

...

(8) Secretary's Determination on EIR.

(a) General. Within seven Days after the close of the public comment period in accordance with 301 CMR 11.08(4), the Secretary shall issue a written certificate stating whether or not the EIR adequately and properly complies with MEPA and 301 CMR 11.00. The Secretary shall attach to the certificate a copy of each comment timely received. The Secretary's failure to issue a timely certificate shall have the effect of a determination that the EIR is adequate and does so comply. The Secretary's decision on the EIR shall be subject to the legal challenge periods in accordance with 301 CMR 11.14.

...

(e) Net Greenhouse Gas Emissions: (e) The Secretary shall not determine that an EIR is adequate under 301 CMR 11.08(8) if the Project will result in an increase in net greenhouse gas emissions.

...

(11) This regulation shall take effect on and after January 1, 2025.

301 CMR 11.11: Waivers

...

(7) Exceptions: The Secretary shall not waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA if the Project results in an increase in net greenhouse gas emissions.

(8) This regulation shall take effect on and after January 1, 2025.

301 CMR 20.01: Authority and Purpose

(1) Authority. 301 CMR 20.00 is promulgated by the Secretary of the Executive Office of Energy and Environmental Affairs under the authority of G.L. c. 21A, §§ 2 and 4A and St. 1983, c. 589, § 30₂, and pursuant to the federal Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*) and implementing regulations at 15 CFR §§ 923 and 930, and the Global Warming Solutions Act, G.L. c. 21N, § 3(d).

(2) Purpose. 301 CMR 20.00 is promulgated to carry out the responsibility of the Office of Coastal Zone Management under G.L. c. 21A, § 4A to secure for the inhabitants of the Commonwealth the objectives and benefits of the federal Coastal Zone Management Act 16 U.S.C. 1451 *et seq.* The general purposes of 301 CMR 20.00 are to:

- (a) establish the Massachusetts Coastal Program Policies as official statements of state environmental policy governing coastal resources and uses as part of the Massachusetts Coastal Zone Management Program;
- (b) ensure that implementation of the Massachusetts Coastal Zone Management Program by the Executive Office of Energy and Environmental Affairs, its Office of Coastal Zone Management, and its departments and divisions are conducted and coordinated in accordance with G.L. c. 21A, §§ 2(29) and 4A; and
- (c) allow for analysis and evaluation of projects in the Coastal Zone for which consistency review with Coastal Program Policies is authorized; and
- (d) and reduce greenhouse gas emissions.

301 CMR 20.02: Definitions

Net Greenhouse Gas Emissions shall have the meaning as defined in 310 CMR 7.00.

...

This regulation shall take effect on and after January 1, 2025.

301 CMR 20.03: Implementation of the Coastal Zone Management Program

...

(4) Consultation and Coordination Outside EEA. The CZM Office will consult and coordinate with local governments; inter state, regional, and area-wide agencies; and other non-EEA agencies with jurisdiction over coastal uses or resources to:

(a) ensure the effective participation of such other units of government in Coastal Zone Management Program implementation; and

(b) ensure Coastal Zone Management Program implementation does not result in an increase in net greenhouse gas emissions.

(5) This regulation shall take effect on and after January 1, 2025.

301 CMR 23.01: Purpose

(1) 301 CMR 23.00 serves as the primary agency of the Commonwealth for environmental planning, as set forth in G.L. c. 21A, §§ 2 and 4; and to implement the Massachusetts Coastal Zone Management Program (CZM Program), established by G.L. c. 21A, § 4A for the purpose of securing for the inhabitants of the Commonwealth the objectives and benefits of the Federal Coastal Zone Management Act, 16 USC 1451 *et seq.* 301 CMR 23.00 forms part of the CZM Program and shall be interpreted and applied in a manner consistent with 301 CMR 20.00: *Coastal Zone Management Program* and the Global Warming Solutions Act, G.L. c. 21N, § 3(d).

(2) Purpose. 301 CMR 23.00 establishes a voluntary procedure by which municipalities may obtain approval of Municipal Harbor Plans (MHPs) from the Secretary, in order that such plans may serve to inform and guide state agency actions affecting the implementation of waterway management programs at the local level. Specifically, Approved MHPs will be of direct assistance to the Department of Environmental Protection (DEP) in making regulatory decisions pursuant to G.L. c. 91 that are responsive to municipal objectives and priorities, harbor-specific conditions, and other local and regional circumstances. The additional purposes served by the regulations are as follows:

(a) to promote long-term, comprehensive, municipally based planning of harbors and other waterway areas that fully incorporates state policies governing stewardship of trust lands, as defined in 310 CMR 9.02: *Definitions*, and that establishes, through early and continuing consultation, an effective partnership between the Commonwealth and its municipalities in such planning efforts;

(b) to carry out overall state environmental policy by, among other things, providing for the management of water and land resources to assure the protection and balanced utilization of such resources; promoting the best usage of land and water by encouraging and providing for, in cooperation with other appropriate state agencies, planned industrial, commercial, recreational, and community development; encouraging the restoration and reclamation of degraded or despoiled areas, including harbors and coastal waters; and assisting other state agencies and regional planning agencies in developing programs and policies relating to land-use planning and regulation in the Commonwealth;

(c) to comply with and implement national coastal policy as set forth in the Federal Coastal Zone Management Act of 1972, as amended, by encouraging the preparation of special area management plans that provide for increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, and improved predictability in governmental decision making and by encouraging the participation and cooperation of the public, state, local, regional, interstate, and federal governments in the preparation of such plans;

(d) to foster the right of the people to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and aesthetic qualities of their environment under Article XCVII of the Massachusetts Constitution; and

(e) reduce greenhouse gas emissions.

301 CMR 23.02: Definitions

Net Greenhouse Gas Emissions shall have the meaning as defined in 310 CMR 7.00.

...

This regulation shall take effect on and after January 1, 2025.

301 CMR 23.04: Review Procedures

(1) Submission Requirements. The planning representative of the municipality shall submit a proposed MHP to the Secretary within two years of the date of issuance of the Notice to Proceed, unless written approval is obtained from the Secretary for an extension of the submission deadline by an additional six months. The proposed MHP shall be prepared in accordance with content and format instructions provided by CZM, with whom advance consultation is encouraged to obtain guidance as to the information necessary to allow the review process to commence. At a minimum such content shall include the following:

(a) text encompassing all basic elements of an MHP as defined in 301 CMR 23.02 and addressing all matters discussed in the Notice to Proceed; ~~and~~

(b) supporting documentation containing, among other things, the data and analysis establishing how the MHP complies with the standards for approval set forth in 301 CMR 23.05; ~~and~~

(c) documentation demonstrating the proposed MHP will not result in an increase in net greenhouse gas emissions.

...

(7) Net Greenhouse Gas Emissions: The Secretary shall not approve an MHP that results in an increase in net greenhouse gas emissions.

(8) This regulation shall take effect on and after January 1, 2025.

301 CMR 40.01: Authority and Purpose

(1) Authority. The Administrative Council On Toxics Use Reduction adopts 301 CMR 40.00 pursuant to G.L. c. 21I, §§ 4(C) and 19 and the Global Warming Solutions Act, G.L. c. 21N, § 3(d).

(2) Purpose. The Administrative Council on Toxics Use Reduction promulgates 301 CMR 40.00 to carry out its authority and responsibility:

(a) to promote the coordination and enforcement of federal and state laws and regulations pertaining to chemical production and use, hazardous waste, industrial hygiene, worker safety, public exposure to toxics and the release of toxics into the environment;

(b) to coordinate state programs in order to promote most effectively toxics use reduction in the Commonwealth;

(c) to minimize unnecessary duplication of reporting requirements concerning chemical or hazardous substance production, use, release, disposal, and worker exposure;

(d) to provide up-to-date and consistent information about manufacturing, worker exposure, distribution, process, sale, storage, release or other use of chemicals on a facility, regional and statewide basis;

(e) to adjust and to determine the toxics use fee under G.L. c. 21I, § 19; and

(f) to otherwise effectuate the purposes of G.L. c. 21I; and

(g) to reduce greenhouse gas emissions.

301 CMR 40.02: Definitions

Net Greenhouse Gas Emissions shall have the meaning as defined in 310 CMR 7.00.

...

This regulation shall take effect on and after January 1, 2025.

301 CMR 40.03: Toxic Use Fees

(1) Applicability.

(a) For each facility in each year that a toxics user is required to file a toxics use report in accordance with G.L. c. 21I, the toxics user shall pay to the department a toxics use fee calculated pursuant to 301 CMR 40.03 and the Global Warming Solutions Act, G.L. c. 21N, § 3(d).

(2) Calculation of Toxics Use Fee. The toxics use fee for a facility shall be the sum of a base fee and toxics fee but shall not exceed the maximum fee for that facility. 301 CMR 40.03(2)(a), (b) and (c) set forth the amount of the base fee, toxics fee and maximum fee.

(a) Base Fee. For each facility, a toxics user shall determine the base fee in accordance with the following chart:

<u>Full-Time Individuals Employed Base Fee</u>	
10 - 49	\$1,850.00
50 - 99	\$2,775.00
100 - 499	\$4,625.00
500 or more	\$9,250.00

(b) Toxics Fee. For each facility, a toxics user shall pay a toxics fee of \$1,100.00 for each toxic manufactured, processed or otherwise used in amounts equal to or greater than the applicable threshold amount, except that there shall be no toxics fee for any toxic designated as a lower hazard substance pursuant to 301 CMR 41.00.

(c) Maximum Fee. For each facility, the maximum fee is listed below:

<u>Full-Time Individuals Employed Maximum Fee</u>	
10 - 49	\$5,550.00
50 - 99	\$7,400.00
100 - 499	\$14,800.00
500 or more	\$31,450.00

301 CMR 40.05: Fee Waiver

...

(4) Exceptions: The Commissioner shall not waive any toxic use fees that result in an increase in net greenhouse gas emissions.

(5) This regulation shall take effect on and after January 1, 2025.