



New Massachusetts Greenhouse Gas Emissions Policy

On April 23, 2007, the Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA) issued a Greenhouse Gas (GHG) Emissions Policy, making Massachusetts the first state to require state agencies and private developers to assess GHG in their environmental review documents. The policy requires certain projects undergoing review by the Massachusetts Environmental Policy Act (MEPA) Office to quantify the GHG emissions associated with the project and to propose alternatives to avoid, minimize, or mitigate the emissions. The MEPA Office has convened an advisory committee that will develop a standardized protocol for the emissions analysis. The advisory committee is expected to complete action on the protocol so that it can be available for public notice by July 1, 2007. Until that time, project proponents will not be required to assess GHG emissions, but they will be required to incorporate measures to mitigate such emissions.

Projects Subject to the Policy

A project will be subject to this policy if an Environmental Impact Report (EIR) is required under MEPA and it falls into one or more of the following four categories:

1. The Commonwealth or a state agency is the proponent;
2. The Commonwealth or a state agency is providing financial assistance;
3. The project is privately funded, but requires an air quality permit from the Department of Environmental Protection;
4. The project is privately funded, but will generate 3,000 or more new vehicle trips per day for office projects; 6,000 or more vehicle trips per day for mixed use projects that are 25% office space; or 10,000 vehicle trips per day for other projects.

Covered Emissions

EIRs prepared under the new policy must quantify both direct and indirect emissions of the six GHGs covered by the Kyoto Protocol: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride. The analysis will include both "direct" GHG emissions (e.g., stack and fugitive emissions from the proposed operation) and "indirect" emissions (e.g., emissions from vehicles driven by employees and generating plants supplying electricity to the proposed operation).

Mitigation Measures

In addition to the quantification of project-related GHG emissions, project proponents must also consider a project alternative in the EIR that incorporates measures to avoid, minimize, or mitigate such emissions. According to the EOEAA, these reduction measures may include:

1. Energy efficiency improvements in buildings, including: lighting, energy management systems, insulation, HVAC technology, windows, water heating technology, roofing and other building materials;
2. Layout of the site and building orientation to make best use of natural light, natural heating and cooling, and solar energy potential;
3. Incorporation of low impact development techniques (including green roofs) to reduce the amount of asphalt and provide greener shading;
4. Transportation demand management, including locating the project near mass transit, access to shuttle or bus services (preferably using alternative fuels), ridesharing programs, bicycle and pedestrian accommodations, provision of Zip Car spaces;
5. Use of clean and alternative fuels;
6. Establishment of systems for on-site reuse and recycling of construction and demolition materials and recycling of occupant waste materials.

Effective Date

For projects subject to the policy, MEPA will immediately begin incorporating into new scoping certificates the requirement that the proponent identify measures to avoid, minimize, or mitigate greenhouse gas emissions. Once the protocol is available, MEPA will require the quantification of greenhouse gas emissions.

This policy will have significant impacts on future development in Massachusetts and will be closely monitored by other states considering GHG assessment policies of their own. The advisory committee is to include representatives of the development community who will undoubtedly seek to ensure that the policy's impact on economic growth is considered. Based on the list of mitigation measures, it is clear that the policy encourages implementation of many the same design techniques adopted by the United States Green Building Council (USGBC) as part of the LEED certification process.

If you have any questions concerning this One Minute Memo, please contact the Seyfarth Shaw LLP attorney with whom you work or a member of either the Environmental, Safety and Toxic Torts Group or the new Alternative Energy and Climate Change Group.

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