Testimony - SJ 004-Environmental Human Rights, Fav
Uploaded by: Ashley Egan
Position: FAV

Unitarian Universalist Legislative Ministry of Maryland

Testimony in Support
SJ 4 - Environmental Human Rights

To: Chair Feldman and the Members of the Education, Energy and the Environment Committee

From: Phil Webster, PhD
Lead Advocate on Climate Change
Unitarian Universalist Legislative Ministry of Maryland.

Date: March 8, 2023

The Unitarian Universalist Legislative Ministry of Maryland (UULM-MD) strongly supports **SJ 4 - Environmental Human Rights** and urges a FAVORABLE report by the committee.

The UULM-MD is a statewide faith-based advocacy organization with over 1,000 members, based on the Principles of Unitarian Universalism. Two Principles are particularly relevant. The Second Principle, *justice, equity and compassion* in human relations and the Seventh Principle, *respect for the interdependent web of all existence of which we are a part*.

Unitarian Universalists believe in *justice and equity in human relations*. We know that environmental degradation harms marginalized communities with alarming regularity and intensity. We know that the health and dignity of these communities are adversely impacted, with rates of cancer, asthma and early death clearly related to the levels of pollution. We know that these communities, due to the vestiges of years of racial discrimination, do not have resources to engage in lengthy and expensive legislative remedies for the environmental pollution. We know that these communities are not protected by State and Local enforcement of existing laws. And we KNOW this injustice can and must be remediated.

Unitarian Universalists also believe that we *should all have respect for the interdependent web of all existence of which we are a part*. Environmental pollution degrades water and air quality, contributes to climate change from the use of fossil fuels impacting everyone. Every person on this earth will suffer from environmental degradation and climate change, the only thing we DON'T KNOW is when and to what extent.

In 1973 the Maryland General Assembly enacted the Maryland Environmental Policy Act (MEPA), which stated:

All state agencies must "identify, develop, and adopt methods and procedures that will assure that:

1. *Environmental amenities and values are given appropriate consideration in planning and decision making along with economic and technical considerations;"*
2. *Study appropriate alternatives to present policies, programs, procedures and conflicts*
3. *Involve the public utilizing "the fullest practicable provision of timely public information and understanding"*

Maryland Environmental Policy Act MEPA@50 Resolution Goals are:

- To recognize the 50th anniversary of MEPA
- To reaffirm the General Assembly's support of environmental human rights
- To promote the fullest implementation of MEPA
- To open the door for legislation enhancing MEPA
- All is service to fully protecting environmental human rights for all

"Recognition of moral obligations is a prelude - a stage in the evolution of the public conscience which leads to legal obligations and rights."

Edith Brown Weiss, *In Fairness to Future Generations*

All Marylanders need bold and urgent action! Please keep us on the right and moral path towards a livable climate and a sustainable world. We owe it to our children.

We support this resolution and urge a FAVORABLE report in committee.

Phil Webster, PhD

Lead Advocate, Climate Change UULM-MD

SJ0004 Environmental Human Rights FAV.pdf
Uploaded by: Cecilia Plante
Position: FAV

MARYLAND LEGISLATIVE COALITION

TESTIMONY FOR SJ0004
Environmental Human Rights

Bill Sponsor: Senator Waldstreicher
Committee: Education, Energy, and the Environment
Organization Submitting: Maryland Legislative Coalition
Person Submitting: Cecilia Plante, co-chair
Position: FAVORABLE

I am submitting this testimony in strong support of SJ0004 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

This bill reaffirms the principle that everyone has a right to a healthy environment. It is not as powerful as the amendment to the State Constitution that our members have supported for some time, but it is a principle that goes beyond politics and says that we value each other and our environment over the short-term profits of businesses that would destroy the environment and make our state a poor place to live. If we can't even reaffirm that we believe in helping our neighbors and being good stewards for the environment, we are in a bad place.

We strongly support this bill and recommend a **FAVORABLE** report in committee.

SJ0004 MDEHR FAVORABLE_ 387 Maryland Petition Sign
Uploaded by: Claire Miller
Position: FAV

To: Senate President Bill Ferguson, Speaker Adrienne Jones and the Honorable Members of the Maryland General Assembly

We, the people of Maryland, ask the Maryland General Assembly to reaffirm the values and purpose of the Maryland Environmental Policy Act (MEPA), and urge its full implementation on this, its fiftieth anniversary, as outlined in resolution SJ0004 – Environmental Human Rights.

Whereas we recognize the singular natural beauty of our State, the quiet grandeur of the Chesapeake Bay, the majesty of the Appalachians, the verdant lands of the Piedmont, and the abundant gifts of the coastal plain of the Eastern Shore; and

Whereas, we recognize that all living things are dependent upon a healthful environment; and

Whereas, we recognize that the full expression of human dignity is incompatible with a degraded environment; and

Whereas, we recognize that a sustainable, regenerative ecosystem and climate conducive to human life are essential to support a vibrant society and economy; and

Whereas, we - like our ancestors before us - are the guardians of the earth for generations yet to come; and

Whereas 2023 is the fiftieth anniversary of the Maryland Environmental Policy Act (MEPA) which passed unanimously (minus one) in the House and Senate in 1973; and

Whereas MEPA recognizes that each person has a fundamental and inalienable right to a healthful environment; and

Whereas MEPA states that “the protection, preservation, and enhancement of the State’s diverse environment is necessary for the maintenance of public health and welfare and the continued viability of the economy of the State and is a matter of the highest public priority”; and

Whereas MEPA states that all State agencies are to conduct their affairs with an awareness that they are stewards of the air, land, water, living and historic resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations; and

Whereas a significant number of States, along with one-hundred and sixty-one nations of the global community, including the United States, have recognized the human right to a clean, healthy, and sustainable environment;

Therefore, we, the people of Maryland, ask the members of the 2023 Maryland General Assembly, to hereby reaffirm the principle established in the Maryland Environmental Policy Act of 1973 that a healthful and sustainable environment is a fundamental and inalienable human right and call upon the State to rededicate itself, its agencies, and all concerned stakeholders to further the development and implementation of environmental laws, practices and policies, as called for by the Maryland Environmental Policy Act (MEPA), and outlined in resolution SJ0004, for the benefit of both current and future generations.

Petition Signatures: 387 Maryland Residents

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SJ0004 MDEHR Favorable_53 Organizational Supporter
Uploaded by: Claire Miller
Position: FAV

Dear Senators,

We, the undersigned organizations, ask the Maryland General Assembly to reaffirm the values and purpose of the Maryland Environmental Policy Act (MEPA), and urge its full implementation on this, its fiftieth anniversary as outlined in resolution SJ0004.

Whereas we recognize the singular natural beauty of our State, the quiet grandeur of the Chesapeake Bay, the majesty of the Appalachians, the verdant lands of the Piedmont, and the abundant gifts of the coastal plain of the Eastern Shore; and

Whereas, we recognize that all living things are dependent upon a healthful environment; and

Whereas, we recognize that the full expression of human dignity is incompatible with a degraded environment; and

Whereas, we recognize that a sustainable, regenerative ecosystem and climate conducive to human life are essential to support a vibrant society and economy; and

Whereas, we - like our ancestors before us - are the guardians of the earth for generations yet to come; and

Whereas 2023 is the fiftieth anniversary of the Maryland Environmental Policy Act (MEPA) which passed unanimously (minus one) in the House and Senate in 1973; and

Whereas MEPA recognizes that each person has a fundamental and inalienable right to a healthful environment; and

Whereas MEPA states that "the protection, preservation, and enhancement of the State's diverse environment is necessary for the maintenance of public health and welfare and the continued viability of the economy of the State and is a matter of the highest public priority"; and

Whereas MEPA states that all State agencies are to conduct their affairs with an awareness that they are stewards of the air, land, water, living and historic resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations; and

Whereas a significant number of States, along with one-hundred and sixty-one nations of the global community, including the United States, have recognized the human right to a clean, healthy, and sustainable environment;

Therefore, we, the undersigned organizations, hereby reaffirm the principle established in the Maryland Environmental Policy Act of 1973 that a healthful and sustainable environment is a fundamental and inalienable human right. We call upon the members of the Maryland General Assembly and the State to rededicate itself, its agencies, and all concerned stakeholders to further the development and implementation of environmental laws, practices and policies, as called for by the Maryland Environmental Policy Act (MEPA), for the benefit of both current and future generations.

Signed

Nina Beth Cardin, Director
Maryland Campaign for Environmental Human Rights

Supporting Organizations

Adat Shalom Reconstructionist Congregation
Aid Through Trade
Alliance of Nurses for Healthy Environments
Arundel Rivers Federation
Assateague Coastal Trust
Audubon Mid-Atlantic
Audubon Society of Central Maryland
Beaverdam Creek Watershed Watch Group
Be the Change
Be the Change Bmore
Beth Am Synagogue Environmental Team
Cedar Lane Environmental Justice Ministry, Unitarian Universalist Congregation
Chesapeake Earth Holder Community
Climate XChange Maryland
DoTheMostGood Montgomery County
Echotopia LLC
Elders Climate Action Network
Episcopal Cathedral of the Incarnation
Forever Maryland
Glen Echo Heights Mobilization
Greenbelt Climate Action Network
Indivisible Howard County
Interfaith Partners for the Chesapeake
Interfaith Power & Light (DE.MD.NoVA)
Ji'Aire's Workgroup
Justice & Witness Action Network -- Maryland (Central Atlantic Conference, United Church of Christ)
Maryland Children's Environmental Health Coalition [MD CEHC]
Maryland League of Conservation Voters
Maryland Legislative Coalition
Maryland Legislative Coalition Climate Justice Wing
Maryland Ornithological Society
Maryland Pesticide Education Network
Mountain Maryland Movement (Frostburg)
National Aquarium
NeighborSpace of Baltimore County
Nuclear Resource and Information Service (for a nuclear-free, carbon-free world)
NAACP Maryland State Conference
One Montgomery Green
Rebuild Maryland Coalition
Policy Foundation of Maryland

Safe Skies Maryland
Sandy Spring Monthly Meeting of the Religious Society of Friends
Shore Rivers
Sierra Club Maryland
Southern Maryland Poor People's Campaign
St. Luke's Episcopal Church
St. Margaret's Church (Episcopal)
Sugarloaf Citizens Association
The Episcopal Diocese of Maryland
Trash Free Maryland
Unitarian Universalist Legislative Ministry of Maryland
Waterkeepers Chesapeake

Testimony in Support to of HJ0001.pdf
Uploaded by: Dave Arndt
Position: FAV

Testimony in Support to of HJ0001/SJ0004 - A Resolution to Fully Implement the Maryland Environmental Policy Act of 1973 (MEPA) on its 50th anniversary

March 6, 2023

Dear Chair and Committee Members:

Thank you for allowing my testimony today in support of HJ0001/SJ0004. I urge you to vote favorably on HJ0001/SJ0004.

Hello, my name is Dave Arndt, a resident of Baltimore MD, an environmental and social justice advocate, a chemical engineer and a former director of products and services at NIH.

After fifty years, it is time to fully implement the Maryland Environmental Policy Act of 1973 (MEPA).

That is what SJ0004/HJ0001 urges. MEPA would create a consistent, unified foundation upon which our State's agencies would build their methods to ensure:

- environmental rights are duly considered,

- environmental laws are properly implemented,

- environmental justice is fully pursued, and

- the public is informed and engaged in a timely manner.

And yet, most of the State's agencies have failed to develop methods and procedures that would fully implement this right.

It is the fiftieth anniversary of the Maryland Environmental Policy Act (MEPA), and it is time to fix that.

The Maryland Environmental Policy Act of 1973 (MEPA) was ground-breaking and contained two essential elements:

1) The assertion that "each person has a fundamental and inalienable right to a healthful environment", and

(2) That all State agencies "identify, develop, and adopt methods and procedures" to implement that right".

I just ask you to think about this:

Today, Curtis Bay residents have a 15-year shorter life span than other area of Baltimore, image what it would be if we had implemented MEPA.

Today, Baltimore's asthma rate is almost 3 times the nations average, image what it would be if we had implemented MEPA.

The Baltimore area spends approximately $54M on health care cost attributed to the incineration of waste, image what it would be if we had implemented MEPA.

I could go on and on with these what ifs, but hopefully you understand the principle that every one should have access to a healthy environment.

Another view of this is that with proper environmental regulation would not have happened: The hwy to nowhere, warehouses with large diesel fleets operating in Black, brown and low-income neighborhoods large scale chicken farms dumping pollutants into waterways, multiple incinerators, almost daily sanitary spills by the city of Baltimore, the dominance of the auto versus a working public transportation system.

it is time to act and use Governor Moore's words and let's leave no one behind.

Thank you,

Dave Arndt

CLA Testimony SJ 4.pdf
Uploaded by: Evan Isaacson
Position: FAV

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Support for Senate Resolution 4

Dear Chairman Feldman and Members of the Committee:

Enacted in 1973, the Maryland Environmental Policy Act ("MEPA") was born from the environmental movement in the late 1960s and early 1970s that brought about the U.S. Environmental Protection Agency (EPA), the National Environmental Policy Act (NEPA), the Clean Water Act, and other major federal environmental laws. In that spirit, the General Assembly made several bold declarations through the passage of MEPA, including that "***each person has a fundamental and inalienable right to a healthful environment***" and that "[t]he protection, preservation, and enhancement of the State's diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the economy of the State and is ***a matter of the highest public priority***." Additionally, MEPA established procedural requirements to force agencies to consider adverse impacts from certain activities before acting.

One of these requirements was for Executive Branch agencies to adopt regulations that will ensure environmental values are given appropriate consideration in planning, and that decision-making is undertaken with the "fullest practicable provision of timely public information in coordination with the public." When the General Assembly declared environmental protection as a core value "of the highest public priority" it intended for this to be enshrined as a permanent bedrock principle given effect through sufficient integration within the other core processes and procedures of Executive agencies. Consideration of environmental impacts were to be forever ingrained in the daily operation of these entities.

However, several factors resulted in MEPA becoming a dead letter law. First, when MEPA was enacted there was no such thing as the Maryland Department of the Environment ("MDE"), which was not created until nearly 15 years later. So the agency that would be most involved in the implementation of MEPA did not exist. By the time it was created, that initial process of adopting MEPA regulations had long since passed. Secondly, over that same time period of the 1970s and early 1980s, most of our major federal and state environmental laws were created. Thus, the implementation of so many new laws and regulatory regimes essentially resulted in MEPA being lost in the shuffle. Once again, when MDE was first chartered, MEPA was already an older law, while a plethora of new environmental regulatory activities became the new agency's primary charge.

But this is no excuse not to reinvigorate MEPA today, starting with ensuring that MDE adopt MEPA regulations for the very first time. If MDE and other agencies were to adopt regulations implementing MEPA, the goal would be to ensure that each agency revisits the bold intent of the

statute enacted in 1973 but with the benefit of hindsight and ability to give it modern relevance. Importantly, what MEPA could do to improve upon the current environmental law framework in Maryland is to enhance several key agency processes, including: (1) public participation, (2) transparency, and (3) community consultation and impact assessment.

- ***Public Participation***. MEPA regulations could modernize or improve public participation requirements in several key ways. To start, agencies should commit to disseminate information in the ways that people actually consume it in the 21st century. This means going beyond newspaper notices to include, for example, greater social media activity and using tools that push information out to the public rather than forcing the public to come to the agency. Agencies could offer the public, for example, the opportunity to enter an email address to receive notices of permit applications in their area. Successful MEPA regulations should define a minimum level of notice, including no less than 30 days for public comment.

- ***Transparency***. In order to ensure the "fullest practicable provision of public information" MEPA regulations should establish minimum standards of transparency that enable the public to become meaningfully involved in environmental decision-making processes and, indeed, foster and encourage such involvement. Agencies should maintain a centralized and easy to find web page that provides frequently updated (between daily and monthly depending on source) information on the topics or issues that the public most frequently asks for.

- ***Community Consultation and Impact Assessment***. While some environmental issues are regional or even global in nature, many forms of pollution and environmental impacts are highly localized. Moreover, each community in Maryland faces a unique array of environmental stressors and concerns. Agencies cannot possibly regulate effectively in this context without conducting assessment, analysis, and outreach on a local level where decisions are local, not regional, in nature. To this end, MEPA regulations should establish processes that invite local input and procedures, where relevant, that ensure that adequate consideration is given to unique local factors in any agency decision.

To some extent, establishing greater public participation and transparency through MEPA regulations will necessarily help ensure greater community consultation. However, the MEPA regulations ought to create some additional and specific procedural steps that shed light on community impacts before the agency acts. For example, if a particular action proposes a new or increased source of pollution of a type and in an amount known to have human health impacts, then, true to MEPA's statutory declaration regarding the importance of public health and welfare in environmental decision-making, a cumulative impact and/or health impact assessment should be conducted.

These are just a few examples of what modernized MEPA regulations could do to improve decision-making and environmental outcomes today and why the Chesapeake Legal Alliance supports SJ 4. For more information, please contact Evan Isaacson at evan@chesapeakelegal.org.

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Position: FAV

Rules and Executive Nominations Committee
SJ0004 – Environmental Human Rights
Favorable
Kathleen Gagnon, JD Candidate, University of Maryland School of Law

Introduction

The National Environmental Policy Act ("NEPA") was enacted on January 1, 1970 and is widely acknowledged to be one of the most successful environmental laws in history. NEPA fundamentally altered the political process by requiring an understanding of likely environmental impacts before a project could be undertaken and empowering public participation in federal decision-making[1]. Following its enactment, many states adopted their own environmental policy acts, ranging in breadth and effectiveness.[2] These state environmental policy acts (known collectively as "SEPAs") help states make environmentally-conscious decisions that protect the planet, public health, and the economy.

Maryland's environmental policy act ("MEPA" passed in 1973) states that "[e]ach person has a fundamental and inalienable right to a healthful environment . . ."[3] To protect that right, "[a]ll State agencies must conduct their affairs with an awareness that they are stewards of the air, land, water, living and historic resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations."[4] The act further instructs all state agencies to "identify, develop and adopt methods and procedures" that would implement that right.

Despite this powerful language, most state agencies remain without such methods and procedures to guide their work. What was left is a patchwork of environmental guidelines that lack transparency and accountability, making the state's commitment to the right to a healthy environment little more than a broken promise.[5] In comparison, other states such as New York, Washington, California, and Montana have successfully used their SEPAs to stop poorly planned and economically inefficient projects that would have significantly harmed the environment. Several of these success stories are outlined below. They are meant to inform and inspire Maryland to recommit to the right to a healthy environment and use its environmental policy act to write the state's next environmental success story.[6]

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[1] Kenneth S. Weiner, *NEPA and State NEPAs: Learning From the Past, Foresight for the Future*, 39 ENV'T L. REP. 10675, 10678 (2009).
[2] Daniel P. Selmi, *Themes in the Evolution of the State Environmental Policy Acts*, 38 URB. LAW. 949, 954 (2006)
[3] Maryland Environmental Policy Act (MEPA), MD. CODE ANN., NAT. RES. §§ 1-301 to 1-305, §1-302(d) (West 2022).
[4] Maryland Environmental Policy Act (MEPA), MD. CODE ANN., NAT. RES. §§ 1-301 to 1-305, §1-302(c) (West 2022).
[5] *See generally*, Russell B. Stevenson Jr., *The Maryland Environmental Policy Act: Resurrecting a Tool for Environmental Protection*, 45 ENV'T L. REP. 10074 (2015).
[6] *Id.*

A. New York State Environmental Quality Review Act ("SEQRA")

New York is one example of a state that has used its SEPA to protect the environment, public health, and the economy since its enactment in 1978. The state uses a comprehensive handbook to inform both its citizens and rulemakers of the requirements and benefits of SEQRA.[7] Like California's and Washington's SEPAs (see below), SEQRA applies to both state and local agencies.[8] This specific success story illustrates how SEPAs can be used to fill the gaps left by NEPA.

In 1998, Queens, New York, was home to the Poletti Power Plant, which at the time was the biggest polluter in the city.[9] The power plant was owned and operated by the New York Power Authority ("NYPA"). The NYPA proposed to add a new 500 MW facility next to the plant and by taking advantage of loopholes in NEPA and the Clean Air Act, decided the project did not require a full environmental impact statement.[10] However, the Poletti plant was situated in the neighborhood of Astoria, Queens, which was located in an area of New York City known as "asthma alley," due to the high rates of asthma, especially among young children.[11] Despite growing evidence of small particulate pollution being linked to a variety of serious health problems such as "heart attacks, pulmonary and cardiovascular disease, cancer, chronic bronchitis, and premature mortality" in addition to asthma, NYPA declined to include any negative health impacts on children in its impact reporting.[12]

In addition to the new 500 MW facility next to the Poletti plant, New York planned to build eleven new turbines in several overburdened communities of color across the city, including some in and around Astoria.[13] In the EIS (environmental impact statement) completed under the SEQRA, NYPA determined the additional turbines would have no negative environmental impact on the already overburdened communities.[14] Seizing on this determination, local activist and community groups took the agency to court.[15] After a long legal battle, courts ordered NYPA to complete a more thorough EIS. By being forced to consider the negative impacts additional plants would have an the already overburdened communities, NYPA committed to ceasing operations of the Poletti plant by January 31, 2010, and in 2012, the plant was permanently demolished.[16]

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[7] SEQR HANDBOOK, 4th ed., https://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf.
[8] Selmi, *supra* note 2, at 957.
[9] Rebecca Bratspies, *Shutting Down Poletti: Human Rights Lessons from Environmental Victories*, 36 WIS. INT'L L. J. 247, 248 (2019).
[10] *Id.* at 253-54.
[11] *Id.*
[12] *Id.* at 253-54.
[13] *Id.* at 257.
[14] *Id.*
[15] *Id.* The Coalition Helping Organize a Kleaner Environment (CHOKE) had a three point campaign position: (1) NYPA must prove that NYC actually needs new power before building more plants; (2) If new plants are built, there must be a system for retiring older filthy plants, or at least bringing them up to modern standards; and (3) plants must be dispersed fairly across the city so that no neighborhood has undue burden. *Id.*
[16] *Id.*

There is no question that closing the Poletti plant was beneficial for both the health of the residents and New York's economy. The power plant was one of the dirtiest in the country and NYPA was losing tens of millions of dollars each year to keep it running.[17] The plant was replaced by one of the cleanest plants in New York city and by 2015, Astoria was below EPA's threshold for particulate matter and received a passing grade for particulate pollution from the American Lung Association.[18] This success story illustrates how SEPAs can play an important role helping to address the needs of local communities when national standards fail.

B. Washington's State Environmental Policy Act ("SEPA")

Washington's SEPA, enacted in 1971, is its most powerful tool for protecting the environment.[19] The four primary purposes of the act are: (1) to declare a state policy which will encourage productive and enjoyable harmony between people and their environment; (2) to promote efforts which will prevent or eliminate damage to the environment and biosphere; (3) to stimulate public health and welfare; and (4) to enrich the understanding of the ecological systems and natural resources important to Washington and the nation.[20] Like NEPA and other SEPAs, missions central to Washington's act are to consider environmentally friendly alternatives and to involve the public in the decision-making process.[21] One area where Washington's SEPA has been an invaluable tool for planning is in the state's coastal development projects.

Washington's St. Paul Waterway Cleanup and Habitat Restoration project was the first completed Superfund cleanup in United States to integrate natural resource restoration.[22] The state took an innovative and transparent approach to the environmental review process by partnering with a private company, Simpson Tacoma Kraft, to create a comprehensive environmental impact statement that satisfied state, local, and federal requirements.[23] By fully committing to SEPA's four primary purposes, the project, including clean up, source control, and habitat restoration, was approved in six months and was implemented nine months later.[24] Not only did developers choose the most environmentally beneficial alternative approach, but the approach was also the most cost-effective and "was completed in record time and without

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[17] *Id.* at 251-52.
[18] *Id.* at 264.
[19] *Overview of Washington State Environmental Policy Act (SEPA)*, DEP. OF ECOLOGY, https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/Basic-overview (last visited Feb. 26, 2023).
[20] *Id.*
[21] *Id.*
[22] Weiner, *supra* note 1, at 10680.
[23] *Id.*
[24] *Id.*

litigation."[25] The project included a minimum 10-year monitoring and adaptive management plan and the St. Paul Waterway was removed from the EPA's National Priorities List in 1996.[26]

The success of the St. Paul Waterway in Washington illustrates how SEPAs and NEPA can be used in conjunction to satisfy local, state, and federal needs without being delayed by redundancy.

C. The California Environmental Quality Act ("CEQA")

The purposes of CEQA, which was passed in 1970, are to inform governmental decision-makers and the public about relevant environmental issues, and to identify ways environmental damage can be avoided or reduced.[27] Unlike NEPA, CEQA requires agencies to respond to information in environmental impact statements by either (1) changing a proposed project, (2) imposing conditions on the approval of the project, (3) adopting plans or ordinances to control adverse impacts, (4) choose an alternative way of meeting the same need, or (5) disapproving the project, to name a few.[28] CEQA applies to local agencies, as well as state agencies.[29] Over the past several years, CEQA has been an integral tool in preserving the state's natural resources and securing justice for overburdened communities.

California has hundreds of success stories from over the past 50 years thanks to CEQA.[30] For example, in Kern County, the county Board of Supervisors prioritized passing an ordinance to allow new oil and gas drilling without considering the effects the ordinance would have on agriculture, "a major sector of the local economy," or public health.[31] Farmers, residents, and activists sued the Board based on its failure to complete a full environmental impact statement, which would have required the Board to consider the failures of past oil and gas projects that had leaked harmful methane near homes and farms.[32] Because of the County's failure to clean up past projects and refusal to properly implement CEQA, in 2020 a judge delivered an opinion in favor of the plaintiffs.[33] When the County still did not account for past oil and gas leaks or the new project's effects on agriculture and public health, the public sued in

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[25] *Id.* at 10681.
[26] *COMMENCEMENT BAY, NEAR SHORE/TIDE FLATS TACOMA, WA Cleanup Activities*, EPA.GOV, https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.cleanup&id=1000981 (last visited Fe. 25, 2023).
[27] CAL. PUB. RES. CODE, §§ 21000-21006 (Deering 2022).
[28] Cal. Pub. Res. Code, § 21002 (Deering 2022).
[29] Selmi, *supra* note 2, at 957.
[30] *CEQA Successes*, CEQA WORKS, https://ceqaworks.org/ceqa-successes/ (last visited Feb. 26, 2023).
[31] Chelsea Tu, *Prioritizing Public Health and Farmland over Oil Companies in Kern County*, CEQA WORKS, https://ceqaworks.org/prioritizing-public-health-and-farmland-over-oil-companies-in-kern-county/ (last visited Feb. 26, 2023).
[32] Colin C. O'Brien, *Court Ruling Deems Kern County's Oil and Gas Review Violated the Law*, EARTHJUSTICE (June 8, 2022), https://earthjustice.org/press/2022/court-ruling-deems-kern-countys-oil-and-gas-review-violated-the-law.
[33] Tu, *supra* note 31.

2022, and again a judge ruled in their favor, forcing the County to halt the project and conduct another environmental review.[34]

CEQA has also been used to further environmental justice initiatives. In South Fresno, California, a predominantly low-income community of color, residents used the statute's mandate that agencies consider effects on the environment before issuing permits to advocate for stronger protections when plans for a new warehouse threatened to destabilize the housing market and increase air, water, and noise pollution.[35] The community's protests forced the developer to make concessions, "including establishing a community benefit fund for home improvements to mitigate impacts, committing to developing a pedestrian and bicycle safety plan, conducting and implementing a traffic study to reduce the impact of new truck and van traffic, extending city water and wastewater services to the affected community, providing a construction liaison to deal with problems during the project's construction phase, taking steps to facilitate third-party air quality monitoring, and providing funds for workforce development so the new warehouse creates local jobs."[36] The success in South Fresno illustrates how SEPAs can be used to collaborate with developers and plan for a better future that works for all.

D. Montana's Environmental Policy Act ("MEPA")

MEPA was passed in 1971 and "has undoubtedly saved the State of Montana from proceeding with hasty, ill-considered, and costly actions that may have foreclosed future opportunities or cost tens of millions of dollars to mitigate, restore, or repair."[37] Since 1971, Montana agencies have completed over 70,000 MEPA documents and only 79 of the actions approved in those documents have been litigated, illustrating how delicate planning leads to agreeable results.[38] This is evident throughout the MEPA Handbook, with its clear emphasis on public participation and "thinking first."[39] Although shifts in Montana's political landscape in recent decades has limited MEPA's jurisdiction, the act is still being used today to stop poorly planned projects from harming the environment.

Montana's Department of Environmental Quality ("DEQ") was recently brought into court for failure to properly consider environmental impacts before approving the Black Butte Copper Mine.[40] The proposed mine would excavate about 440 tons of concentrated copper ore every day in the Smith River watershed and would pollute the water with metals and acid-generating minerals that are lethal to aquatic life.[41] Plaintiffs alleged the DEQ did not adequately assess how the amount of water needed to be diverted in order to operate the mine would affect

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[34] *Id.*
[35] Ashley Werner, *Protecting School Children and Public Health in South Fresno*, CEQA WORKS, https://ceqaworks.org/protecting-school-children-and-public-health-in-south-fresno/ (last visited Feb. 26, 2023).
[36] *Id.*
[37] *Id.*
[38] *Id.* at 12.
[39] *Id.* (stating MEPA is a "common sense" law).
[40] Complaint at 1, Mont. Trout Unlimited v. Mont. Dep't of Env't Quality, No. DV-20-10 (Mont. 14th D. 2022).
[41] *Id.*

local communities, nor did it properly consider alternatives that would avoid the most significant environmental impacts.[42] In a win for the plaintiffs, the Montana's Fourteenth Judicial District Court for Meagher County granted summary judgment, stating that the DEQ failed to consider alternatives proposed by its own consultants.[43]

Although proponents of the mine seem poised to appeal the decision, the District Court's decision shows how even in conservative states, SEPAs can be used to help citizens fight for their right to a clean and healthful environment. The Black Butte Copper Mine threatens to not only harm the health and safety of the river and the people and wildlife who depend on it, but it also threatens to harm two of the state's important economies, fishing and tourism. Without careful planning, shortsighted development projects like the Black Butte Copper Mine will continue to harm state economies and strip citizens of their right to a healthful environment for generations to come.

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[42] *Id.* at 2.

[43] John Riley, *Montana Judge says DEQ unlawfully approved construction of Black Butte Copper Mine*, KTVH (Apr. 11, 2022, 6:25 PM), https://www.ktvh.com/news/montana-judge-says-deq-unlawfully-approved-construction-of-black-butte-copper-mine.

SJ 0004 - Favorable.pdf
Uploaded by: Kenneth Phelps, Jr.
Position: FAV

THE EPISCOPAL DIOCESE OF MARYLAND

TESTIMONY IN SUPPORT OF SJ 0004:

Environmental Human Rights

****FAVORABLE****

March 8, 2023

TO: Senator Brian Feldman, Chair, Senator Cheryl Kagan and members of the Senate Education, Energy and the Environment Committee

FROM: The Rev. Kenneth O. Phelps, Jr; Diocese of Maryland; Co-Chair of the Maryland Episcopal Public Policy Network

In resolutely reaffirming the principles of the Maryland Environmental Policy Act and in celebrating its fiftieth year as law, we are also reminded, regrettably, that this particular human right has yet to become a reality in our state. Our state's biosystem – essential for our physical, economic and social health - continues to be subject to unnecessary harms. Communities of color and low income continue to suffer disproportionate concentrations of pollution and environmental degradation.

When passed in 1973, The Maryland Environmental Policy Act of 1973 was a ground-breaking document composed of two essential elements:

The assertion that "each person has a fundamental and inalienable right to a healthful environment", and that all State agencies "identify, develop, and adopt methods and procedures" to implement that right, including ensuring that environmental amenities and values were given appropriate consideration in planning and decision making along with economic and technical considerations; that appropriate alternatives to present policies, programs, procedures and conflicts were studied and considered; and that the public was involved, utilizing "the fullest practicable provision of timely public information and understanding"

Those were lofty goals that could have achieved great gains for Maryland. Yet for the past fifty years, the State has largely ignored this mandate and failed to develop methods and procedures that would fully implement this right.

The time has come to change that.

The Maryland Environmental Policy Act - MEPA@50 Resolution asks the Maryland General Assembly to reinvigorate MEPA by reaffirming its principles and using them to guide its deliberations.

4 E University Parkway, Baltimore, MD 21218-2437
Tel: 410-467-1399 / 800-443-1399 Fax: 410-554-6387
www.EpiscopalMaryland.org

It calls on the administration to re-dedicate itself to further the development and implementation of environmental laws, practices, and policies called for by MEPA, for the benefit of current and future generations. We are in full support of this resolution.

A fully implemented Maryland Environmental Policy Act would create…

Guidelines to help agencies craft and implement appropriate policies,
Promote meaningful processes for public information and participation,
Incorporate environmental justice definitions and processes in decision-making,
Establish timely processes for keeping permits up-to-date… and more

Without MEPA's enforcement, there is still no unified, coherent foundation upon which our State's agencies make their environmental policies, including ways to inform and engage the public, ways to assess environmental justice, ways to ensure that laws are properly implemented.

We have an opportunity with the new Governor and this new administration to strengthen our environmental policies and laws, better implement those already on the books, and embed protections for public health and environmental justice in all our agencies and decision-making.

The season of Lent calls the Church at this time to confess "our self-indulgent appetites and ways," "our waste and pollution of God's creation," and "our lack of concern for those who come after us" (Ash Wednesday Liturgy, *Book of Common Prayer*, p. 268). We have an opportunity here. This is the appointed time for all God's children to work together for the common goal of renewing the earth as a hospitable abode for the flourishing of all life, not just human.

Our mother is dying. There may still be time to save her, but we must act swiftly and definitively to accomplish that goal.

We urge a favorable report.

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SJ0004_Environmental Human Rights_Educ Energy Envi

Uploaded by: Laurie McGilvray

Position: FAV

Committee: **Education, Energy, and the Environment**
Testimony on: **SJ0004 - Environmental Human Rights**
Organization: **Climate Justice Wing of the Maryland Legislative Coalition**
Submitting: **Laurie McGilvray, Co-Chair**
Position: **Favorable**
Hearing Date: **March 8, 2023**

Dear Chair and Committee Members:

Thank you for allowing our testimony today in support of SJ0004. The Maryland Legislative Coalition (MLC) Climate Justice Wing, a statewide coalition of over 50 grassroots and professional organizations, urges you to vote favorably on SJ0004.

This joint resolution to fully implement the Maryland Environmental Policy Act of 1973 (MEPA) serves to reaffirm the principle that every person has the fundamental and inalienable right to a healthful environment. It further resolves that the State must rededicate itself, its agencies, and all concerned stakeholders to furthering the development, implementation, and enforcement of environmental laws, practices, and policies, as called for by MEPA.

MEPA includes the following broad and laudable policies:

> (1) the protection, preservation, and enhancement of the State's diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the State's economy and is a matter of the highest public priority;
>
> (2) all State agencies must conduct their affairs with an awareness that they are stewards of the air, land, water, living and historic resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations;
>
> (3) each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to contribute to the protection, preservation, and enhancement of the environment;
>
> (4) it is the continuing policy of the State to cooperate with the federal government, other states, the District of Columbia, the political subdivisions of the State, and other concerned public and private organizations and individuals, in a manner calculated to protect, preserve, and enhance the environment;

(5) the determination of an optimum balance between economic development and environmental quality requires the most thoughtful consideration of ecological, economic, developmental, recreational, historic, architectural, aesthetic, and other values;

(6) beneficial environmental effects of proposed actions can be identified and measures devised to obtain these benefits if environmental evaluations are made a part of the decision making process of the State;

(7) adverse environmental effects of proposed actions can be anticipated, minimized, and often eliminated if environmental evaluations are made as part of the decision making processes of the State;

(8) environmental effects reports can facilitate the fullest practicable provision of timely public information, understanding, and participation in the decision making processes of the State;

(9) the General Assembly has an obligation to the people of Maryland to review and evaluate proposed appropriations and other proposed legislation and the conduct of State agencies in carrying out the policy set forth in MEPA; and

(10) the policies, rules, regulations, and public laws of the State must be interpreted and administered in accordance with the policies set forth in MEPA.

To achieve these policy goals, MEPA requires all State agencies to identify, develop, and adopt methods and procedures that will assure that (1) environmental amenities and values are given appropriate consideration in planning and decision making, along with economic and technical considerations; (2) studies are undertaken to develop and describe appropriate alternatives to present policies, programs, and procedures that involve significant adverse environmental effects or unresolved conflicts concerning uses of available resources; and (3) planning and decision making involving environmental effects are undertaken with the fullest practicable provision of timely public information and understanding and in coordination with public and private organizations and individuals within jurisdiction by law, special expertise, or recognized interest. MEPA further requires State agencies to prepare an environmental effects report in conjunction with each "proposed State action" significantly affecting the quality of the environment.

However, since the law was enacted, Maryland State agencies have failed to develop the required methods and procedures that would fully implement the intent of MEPA. On this 50th anniversary of MEPA, we support this resolution to recommit the State to fully implementing this landmark law for this and all future generations. We urge a **FAVORABLE** vote on SJ0004.

sj4- environmental human rights- EEE 3-8-'23.pdf
Uploaded by: Lee Hudson
Position: FAV

Delaware-Maryland Synod
Evangelical Lutheran Church in America
God's work. Our hands.

Testimony Prepared for the
Education, Energy, and the Environment Committee
on
Senate Joint Resolution 4
March 8, 2023
Position: **Favorable**

Mr. Chairman and members of the Rules and Executive Nominations Committee, thank you for the opportunity to testify for a human right that inheres with the gifts of creation. I am Lee Hudson, assistant to the bishop for public policy in the Delaware-Maryland Synod, Evangelical Lutheran Church in America. We are a faith community with three synods in every part of our State.

Our community addressed concern for a safe, healthy environment that can sustain life in "Caring for Creation" (ELCA, 1993). Among perspectives articulated in that statement is stewardship of natural resources and processes as a matter of the human ethos. It is therefore a spiritual matter; because all living things are within a web of life called nature. Nature is simply not ours. It is a universal given, not traded goods.

Human activity has consequences, and consequences can result in illness and injury, life or death. We must discern, in order to be wise; we must respect in order to flourish. Because communities of faith worship a Maker, they approach providence with reverence and gratitude. Through created gifts—provided, not earned or owned—the holiness of life, time and human experience are glimpsed. We are not merely all in this together; we are all *of this*, together.

It turns out that a providential legacy for life is in Maryland's public record. An occurrence of this General Assembly adopted a Maryland Environmental Policy Act in its 1973 session. Among its commitments, *each person has a fundamental and inalienable right to a healthful environment.* We could not have said it better ourselves.

So, we support **Senate Joint Resolution 4**. Clearly its spirit and policy effect have been serially violated over its fifty years. But iterating and reiterating what is necessary for people to live safe, healthy lives has value beyond mere feel-good language. Maryland made environmental justice a policy value. That is a representation of proper aims for Maryland law and policy. It was true fifty years ago. It is more urgently so today. We implore your support for MEPA, as if you were supporting the lives of the people of Maryland. We ask your favorable report on **Senate Joint Resolution 4**.

Lee Hudson

5699 Meridale Rd. Baltimore, MD 21228 410-230-2860 800-869-5492 fax 410-230-2871

SJ 4_mgoldstein_fav 2023.pdf
Uploaded by: Mathew Goldstein
Position: FAV

Secular Maryland secularmaryland@tutanota.com

March 08, 2023

SJ 4 - SUPPORT

Environmental Human Rights

Dear Chair Feldman, Vice-Chair Kagan, and members of the Education, Energy, and the Environment Committee,

Secular Maryland supports this resolution affirming the importance maintaining and protecting our environment and natural resources. We alone are collectively the guardians of our planet. All living things are dependent on a healthful environment. The full expression of human dignity is incompatible with a degraded environment. A sustainable, regenerative ecosystem and stable climate are essential to support a vibrant society and economy.

Respectfully,
Mathew Goldstein
3838 Early Glow Ln
Bowie, MD

MD Catholic Conference_FAV_SJ0004.pdf
Uploaded by: MJ Kraska
Position: FAV

MARYLAND CATHOLIC CONFERENCE

March 8th, 2023

SJ0004
Environmental Human Rights

Education, Energy, and the Environment Committee

Position: Favorable

The Maryland Catholic Conference is the public policy representative of the three (arch)dioceses serving Maryland, which together encompass over one million Marylanders. Statewide, their parishes, schools, hospitals, and numerous charities combine to form our state's second largest social service provider network, behind only our state government.

SJ0004 reaffirms the principle enshrined in the Maryland Environmental Policy Act that every person has the fundamental and inalienable right to a healthful environment; and requiring the State to rededicate itself, its agencies, and all concerned stakeholders to furthering the development, implementation, and enforcement of certain environmental laws, practices, and policies for the benefit of both current and future generations.

As Pope Francis has written, climate change *"represents one of the principal challenges facing humanity in our day" (Laudato Si', no. 25*), threatening the wellbeing of peoples and the environment. Catholic social teaching envisions a sustainable and authentic human development, where technological solutions respect the principle of integral ecology and consider social, economic and ecological considerations.

SJ0004 echoes key themes in Catholic social teachings and is in harmony with various elements of Pope Francis's *encyclical Laudato Si': On Care for Our Common Home*. Its emphasis on an "inalienable right" to a healthy environment fits squarely with Catholic social teaching on the dignity of the human person and our responsibilities for future generations. Its description of "natural resources for the benefit of every person" echoes the Church's teaching that the *"gifts of the earth belong to everyone" (LS, p. 71).* Likewise, the resolution addresses the important issue of accountability by ensuring that matters of environmental justice can be addressed by all of Maryland's diverse citizenry.

The Conference appreciates your consideration and respectfully urges a **favorable** report for SJ0004.

Environmental Human Rights.pdf

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Position: FAV

JYCM testimony SJ0004 Environmental Human Rights.p

Uploaded by: Nina Cardin

Position: FAV

Hearing before the
Education, Energy and Environment Committee
of the Maryland General Assembly Senate
March 8, 2023

Statement of Support (FAVORABLE)
of the Jewish Youth Climate Movement Beth-El Chizuk Amuno Chapter on
SJ0004 Environmental Human Rights

The Jewish Youth Climate Movement, founded by the largest faith-based environmental organization Hazon in 2019, is a Gen Z-led movement dedicated to combating climate change and environmental injustice from a Jewish lens. Our goal is to make taking collective action towards climate justice a central, defining feature of what it means to be Jewish over the next decade, empowering the next generation of Jewish youth to be leaders in our fight to build a sustainable and equitable world for all. We are composed of over 50 chapters around the country and are sponsoring this legislation on behalf of the Beth El-Chizuk Amuno Baltimore Chapter of JYCM (JYCM BECA). (Please note that this does not necessarily reflect the official position of either Beth El Congregation or Chizuk Amuno Congregation.)

JYCM BECA wishes to express its enthusiastic support for passage of **SJ0004 Environmental Human Rights,** a joint resolution with the Maryland House of Delegates.

Environmentalism is a defining principle of what it means to be Jewish in 2023. We are guided by the values of Bal Tashchit (not wasting) and Tikkun Olam (repairing the world) to propel our climate activism and advocate for this resolution.

Fifty years ago, Maryland lawmakers recognized that much harm had already been done, and thus legislators at that time committed the state and its agencies to a new guide for its environmental policies. The Maryland Environmental Policy Act of 1973 (MEPA) was a ground-breaking document. It was composed of two essential elements: 1) the assertion that "each person has a fundamental and inalienable right to a healthful environment," and 2) a direction that all State agencies "identify, develop, and adopt methods and procedures" to implement that right.

The vision was that, going forward, a) environmental amenities and values would be given appropriate consideration in planning and decision-making along with economic and technical considerations; b) appropriate alternatives to existing policies, programs, procedures, and conflicts would be studied and considered; and c) that the public would be involved, utilizing "the fullest practicable provision of timely public information and understanding."

These were worthy goals, and reflected the Jewish idea that people must save future generations from destruction (L'dor va Dor) and might have achieved great gains for Maryland, had the policy statement been crafted into commensurate laws and regulations.

On the 50th anniversary of the Maryland Environmental Policy Act (MEPA), JYCM BECA joins with other faith-based organizations to say it is time to fix that. SJ0004 Environmental Human Rights asks the Maryland General Assembly to reinvigorate MEPA by reaffirming its principles and using them to guide its deliberations. It calls on the Administration to re-dedicate itself to further the development and implementation of environmental laws, practices, and policies called for by MEPA, for the benefit of current and future generations.

A fully implemented Maryland Environmental Policy Act would create:

- Guidelines to help agencies craft and implement appropriate policies,
- Promote meaningful processes for public information and participation,
- Incorporate environmental justice definitions and processes in decision-making,
- Establish timely processes for keeping permits up to date.

Without a renewed commitment to MEPA's salience and enforcement in caring for our common home, there will continue to be no unified, coherent foundation upon which our State's agencies make their environmental policies, including ways to inform and engage the public, ways to assess environmental justice, and ways to ensure that laws are promulgated and implemented to reflect the central premise that every citizen "has a fundamental and inalienable right to a healthful environment."

We encourage the Maryland General Assembly, along with our new Governor Moore and his administration, to strengthen our environmental policies and laws, better implement those already on the books, and embed protections for public health and environmental justice in all our agencies and decision-making.

Thank you for your consideration of our views and our respectful request for a **FAVORABLE** report on Senate joint resolution **SJ0004 Environmental Human Rights**.

SJ0004 2023 testimony NBC.pdf
Uploaded by: Nina Cardin
Position: FAV

Environmental Human Rights
Rules and Executive Nominations Committee
SJ0004
Favorable
March 8, 2023

Chairman Feldman, Vice Chair Kagan and Honorable Members of the Committee,

There are many legal, equity and environmental reasons to pass this resolution urging the full enforcement of the Maryland Environmental Policy Act of 1973. Some of those reasons are discussed in companion written testimony and addressed below.

But there is one other reason that passing this resolution is critical, not merely symbolic and should rise to be a matter of highest public policy– our children's trust and their mental well-being.

Recent world-wide studies[i] looking at children's beliefs about how their government is responding to the critical environmental issues of the day, especially climate change, is damning and heartbreaking. 58% of our children world-wide feel betrayed government. Children in the US are no different.

60% of children world-wide feel "very" or "extremely" worried about climate change, with 45% saying such worries negatively affect their *daily* lives. 75% of youth are frightened, not just occasionally but constantly, with 44% reporting feeling despair – a powerful emotion that dampens ambition and the desire to exert oneself today in the hopes of creating a better tomorrow. **These negative thoughts and feelings "showed correlations with feelings of betrayal and negative beliefs about government response."** [ii]

This sense of betrayal is likely to impact children's resiliency and ability to plan for and cope with the changes that are coming. "Such high levels of distress, functional impact, and feelings of betrayal will negatively affect the mental health of children and young people."[iii]

Individual laws and regulations are essential for protecting our children from the worst of climate change and environmental degradation. But a **statement of commitment that environmental health is a human right and that their government is committed to pursuing this right across the board, with the greatest energy and vigor possible, would begin to offer a significant measure of reassurance.** That is why so many young people, from middle schoolers to graduate school, support the call for environmental human rights as expressed in Maryland in 1973 in the Maryland Environmental Policy Act: "each person has a fundamental and inalienable right to a healthful environment."

MEPA is one of those rare laws that has impacts that are both grand and granular.

Grand, because it articulates and establishes the moral and legal foundation upon which all State environmental decision-making should rest.

Granular because it requires that all actions of the State in their details should, by design and practice, advance this right. To that end, it directs all State agencies to establish "methods and procedures" that would implement this right as "a matter of the highest priority" as they pursue their mandated work.

Regrettably, MEPA has been largely ignored over its 50-year history. Maryland has thus missed many opportunities to set standards that could more successfully protect our air, soil and water quality; more successfully protect our forests and woods; better respond to the urgency to promote environmental justice and prevent cumulative harm; more successfully notify and involve the public in decision-making concerning environmental activities that directly impact them; better assess appropriateness of permits and their enforcement; better promote intergenerational equity by considering today's actions on future generations; more nimbly respond to concerns about climate; and more.

Maryland was one of sixteen states in the 1970s to establish a state version of the National Environmental Policy Act. In a review of their then-30+ year-old environmental policy act, the Legislative Environmental Policy Office of Montana wrote of its MEPA (Montana Environmental Policy Act) that it created "a process whereby Montana can anticipate and prevent unexamined, unintended, and unwanted consequences rather than continuing to stumble into circumstances or cumulative crises that the state can only react to and mitigate."

In addition, Rep. George Darrow, Republican, the sponsor of the 1971 Montana Environmental Policy Act, writes, "MEPA has undoubtedly saved the State of Montana from proceeding with hasty, ill-considered, and costly actions that may have foreclosed future opportunities or cost tens of millions of dollars to mitigate, restore, or repair." Similar acts in other states, such as Washington, have likewise been responsible for substantial environmental protection and benefits while advancing the state's economic health.[iv]

The Maryland Environmental Policy Act can do the same here. If MEPA had been fully and well-utilized these past 50 years, we likely could have avoided some issues we are now seeking to rectify.

- MEPA could have helped prevent "a net statewide forest loss of more than 19,000 acres from 2013 through 2018" (as reported by The Hughes Center).
- MEPA could have protected the biosystems of Maryland's state butterfly, the Baltimore Checkerspot, which was designated the state butterfly the same year MEPA was passed, yet is now on the Threatened list. "While it inhabits wetlands in the western and central regions of the State, its numbers have diminished. Formerly found in fifteen counties, now it only appears in seven. Most are in western Maryland, particularly Garrett County."[v]
- It could have worked to reduce particulate matter from certain neighborhoods, thereby reducing the high incidence of asthma (33%) in Baltimore City's children,[vi] many times more than the national average, and whose illness causes these children to miss countless school days and affect their academic achievement.
- It could help anticipate and prevent harmful practices such as chemical recycling, which produces a health risk 250,000 greater than other chemicals the EPA permits.[vii]
- It could help prevent coal ash from poisoning the ground and water of Baltimore City and Brandywine.
- It could have stemmed PFAS contamination more quickly.
- It could more quickly help make our waters fishable and swimmable.
- It could create coordinated, consistent guidance for decision-making across State agencies, establishing a unified state policy pertaining to the development and preservation of the environment of our State.
- It can provide guidance in assessing and limiting climate impacts of proposed environmental actions.

MEPA would, in short, ensure that state entities provide coherent, coordinated, and consistent environmental policies that the public, businesses and local governments can rely on. Even more, guided by MEPA, the act of creating appropriate regulations would bring all stakeholders to the table to work toward a common, well-articulated goal, ensuring that everyone's interest is represented while all pulling in the same direction.

Time is short and we need to act with urgency. This winter brought massive winter storms to the west while the temperature here was 78 degrees Thursday, February 23. It snowed two days later. Microplastics are in the bodies of newborns. Toxins are leaching into our soil, air, land, us. The climate is threatening.

SJ0004 reaffirms the General Assembly's resolve to promote and pursue environmental health and human rights as articulated in MEPA, urges the Administration to direct its agencies to craft methods and procedures that will protect the environment and implement those rights, begins to earn back the trust of our youth and gives them once again a reason to believe in their future.

We urge you to pass this resolution.

Nina Beth Cardin, Director
Maryland Campaign for Environmental Human Rights

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[i] "Climate anxiety in children and young people and their beliefs about government responses to climate change: a global survey," Caroline Hickman et al. 2021
[ii] Hickman, et al. p.e870
[iii] Hickman, et al. p. e871
[iv] *Overview of Washington State Environmental Policy Act (SEPA)*, DEP. OF ECOLOGY, https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/Basic-overview (last visited Feb. 26, 2023).
[v] https://msa.maryland.gov/msa/mdmanual/01glance/html/symbols/insect.html#:~:text=The%20Baltimore%20Checkerspot%20Butterfly%20(Euphydryas,7%2D308).
[vi] https://health.baltimorecity.gov/node/454
[vii] https://www.theguardian.com/environment/2023/feb/23/climate-friendly-us-program-plastics-fuel-cancer

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The Maryland Environmental Policy Act: Resurrecting a Tool for Environmental Protection

by Russell B. Stevenson Jr.

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Summary

Maryland's version of the National Environmental Policy Act has lain essentially dormant because its environmental assessment requirements only apply to actions required or requested by the legislature. While it is unclear whether the political costs of amending the statute to make it more effective are worth it, there are still aspects of the statute that should be used by Maryland agencies. In particular, agencies should adopt rules to ensure that environmental concerns receive adequate consideration in agency decisions. Agencies should also designate individuals as having particular responsibility for ensuring that environmental considerations are taken into account in agency decisions and take steps to make information of environmental concern more readily available to the public. Finally, agencies should ensure that environmental concerns are clearly and expressly considered in their rulemaking proceedings.

I. Introduction

In 1973, the Maryland General Assembly enacted the Maryland Environmental Policy Act (MEPA)[1] as a measure to aid in the protection, preservation, and enhancement of the state's environment.[2] For the reasons described below, MEPA has had virtually no effect in achieving the lofty goals that it purports to serve and has been entirely ignored since the early 1980s. This Article reexamines the statute with a view to suggesting how it might be resurrected and put to use in protecting the environment in Maryland.

MEPA was patterned after the National Environmental Policy Act (NEPA),[3] passed in 1970, as were the many similar laws enacted by other states during an era of great public concern over environmental problems.[4] Like the federal model, MEPA begins with a ringing declaration of the importance of environmental protection. This is followed by a two-pronged procedural mandate directed at all state agencies. The first prong, following the NEPA precedent, requires that agencies prepare an environmental effects report (EER) "in conjunction with each proposed state action significantly affecting the quality of the environment."[5] Although as originally introduced this requirement was as broad as NEPA's analogous require-

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1. Maryland Environmental Policy Act (MEPA), Md. Code Ann., Nat. Res. §§1-301 to 1-305 (West 2014).
2. *Id.* at §1-302.
3. National Environmental Policy Act (NEPA), 42 U.S.C. §§4321-4370f, ELR Stat. NEPA §§2-209. *See* Pitman v. Washington Suburban Sanitary Comm'n, 368 A.2d 473, 475, 7 ELR 20292 (Md. 1977) (describing the legislative history of MEPA).
4. As many as 32 states have enacted some version of an environmental policy statute. *See* Richard Lazarus, *The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtains*, 100 Geo. L.J. 1507, 1520 (2012). *See also* Daniel Mandelker, NEPA Law and Litigation §12:1 (2013).
5. *Id.* at §1-304. Section 1-304 reads:

   > [A]ll State agencies shall prepare, in conjunction with each proposed State action significantly affecting the quality of the environment, an environmental effects report including, but not limited to, a discussion of:
   > (1) The effects of the proposed action on the environment, including adverse and beneficial environmental effects that are reasonably likely if the proposal is implemented or if it is not implemented;
   > (2) Measures that might be taken to minimize potential adverse environmental effects and maximize potential beneficial environmental effects, including monitoring, maintenance, replacement, operation, and other follow-up activities; and
   > (3) Reasonable alternatives to the proposed action that might have less adverse environmental effects or greater beneficial environmental effects, including, the alternative of no action.

ment of environmental impact statements (EISs), as discussed below, the General Assembly effectively gutted it by adopting an extremely narrow definition of "proposed State action." The second prong, again patterned on NEPA, requires state agencies to identify, develop, and adopt methods and procedures that will assure that" environmental considerations are given due weight in agency decisions.[6]

Finally, MEPA requires that "[t]he policies, rules, regulations, and public laws of the State shall be interpreted and administered in accordance with the policies set forth in this subtitle."[7] This provision is again modeled on NEPA's requirement that "to the fullest extent possible . . . the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act."[8] This language has a substantive ring to it, the effect of which is explored below.

Notwithstanding MEPA's clear mandate that state agencies take environmental considerations seriously in carrying out their missions, its provisions have remained essentially dormant since it was adopted in 1973. There are only three reported judicial opinions that discuss the substance of the statute, and all three concern only the very narrow requirement regarding the filing of an EER. Only three state agencies have adopted any formal "methods and procedures" to ensure the protection of the environment.

This Article begins with a discussion of the principal features of MEPA, including its strong declaration of policy, its specific requirements regarding the preparation of EERs, and the largely ignored broader requirements to adopt "methods and procedures" to ensure the protection of the environment. It then examines the potential substantive effect to be given to MEPA's requirement that "[t] he policies, rules, regulations, and public laws of the State shall be interpreted and administered in accordance with the policies set forth in [the statute]." It reviews the limited judicial gloss that Maryland courts have added to the statute, the potential application of the federal courts' reading of the similar language in NEPA, and the precedent from several other state "mini-NEPAs." Finally, the Article suggests how the language of MEPA (and its cousins in many other states) could be used by environmentalists to require government agencies to make relevant information more available; to strengthen their arguments in rulemaking proceedings; to challenge inadequate or imperfect permits; and otherwise steer agency actions in the direction of more effective protection of the environment.

II. The Statute

A. *Statement of Policy*

MEPA's statement of policy commences by declaring, "The protection, preservation, and enhancement of the State's diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the economy of the State and is a matter of the highest public priority." It then goes on to elaborate on this broad theme, articulating the obligations of state agencies to protect the environment, the rights of persons to a healthful environment, the need for cooperation with the federal government and other state governments, the need to find the optimum balance between economic development and environmental quality, the need to consider the beneficial effects of protecting the environment, and so forth.[9]

6. MEPA §1-303 reads:
   All State agencies, except where existing law expressly prohibits, shall identify, develop, and adopt methods and procedures that will assure that:
   (1) Environmental amenities and values are given appropriate consideration in planning and decision-making along with economic and technical considerations;
   (2) Studies are undertaken to develop and describe appropriate alternatives to present policies, programs, and procedures that involve significant adverse environmental effects or unresolved conflicts concerning uses of available resources; and
   (3) Planning and decision-making involving environmental effects are undertaken with the fullest practicable provision of timely public information and understanding and in coordination with public and private organizations and individuals with jurisdiction by law, special expertise, or recognized interest.
7. MEPA §1-302(k).
8. NEPA §102, 42 U.S.C. §4331.
9. MEPA §1-302 reads in its entirety:
   In general
   (a) The General Assembly of Maryland finds and declares the facts and policies set forth in this section.
   Public priority to protect, preserve, and enhance State's environment
   (b) The protection, preservation, and enhancement of the State's diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the economy of the State and is a matter of the highest public priority.
   Obligation to protect environment
   (c) All State agencies must conduct their affairs with an awareness that they are stewards of the air, land, water, living and historic resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.
   Right of persons to healthful environment
   (d) Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to contribute to the protection, preservation, and enhancement of the environment.
   Cooperation with federal government, other state governments
   (e) It is the continuing policy of the State to cooperate with the federal government, other state governments, the District of Columbia, the political subdivisions of the State, and other concerned public and private organizations and individuals, in a manner calculated to protect, preserve, and enhance the environment.
   Optimum balance between economic development and environmental quality
   (f) The determination of an optimum balance between economic development and environmental quality requires the most thoughtful consideration of ecological, economic, developmental, recreational, historic, architectural, aesthetic, and other values.

Reading this part of the statute is, for those who were politically aware in 1973, a bit like entering an alternative universe. It is a shock to recall, over 40 years later, the strength of public support in that era for laws that were protective of the environment and environmental values. In that earlier time, there was little discussion about trade offs between environmental protection and economic concerns.[10] Instead, there was a general understanding that the human economy is an element of the complex ecosystem of which the natural environment is an equally important element, and that treating the two as separate and largely unrelated is a recipe for long-term undesirable consequences. At the time of its passage, the policy declarations of MEPA were a reflection of a broad consensus that environmental values had been underweighted and should be given greater prominence in guiding the activities of governments. It is an unfortunate fact of today's political climate that the awareness of the importance of the environment and the need to protect it has been significantly eroded by thoughtless rhetoric about "job-killing regulations," and willful disregard of the large but often unquantifiable benefits of a healthy environment.

B. Procedural Provisions

1. Environmental Effects Reports

Like NEPA, MEPA contains two procedural mandates. The first is the requirement that state agencies prepare an EER "in conjunction with each proposed state action significantly affecting the quality of the environment."[11] In the original draft of the bill, "proposed State action" was defined as "requests for legislation, promulgation of rules or regulations, or actions involving the use of state funds or state owned lands."[12] As passed, however, the definition was limited to "requests for legislative appropriations or other legislative actions."[13]

Since the enactment of MEPA in 1973, there have been only three reported judicial decisions interpreting it. In *Pitman v. Washington Suburban Sanitary Commission*,[14] the Maryland Court of Appeals (the state's highest court) unsurprisingly applied the EER requirement literally, holding that MEPA did not require the preparation of an EER for the purchase of land for disposal of sewage sludge because the funds for the purchase came from a bond issue by the commission and not from funds appropriated by the General Assembly. While this decision is undoubtedly a correct reading of the statute, it is neither enlightening nor useful.

The court extended *Pitman* in *Mayor & City Council of Baltimore v. State*,[15] holding that the Department of Public Safety and Correctional Services was not required to prepare an EER for action it was taking pursuant to a legislative direction of the General Assembly. These two decisions put an end to any hope that MEPA could be used to require an EER for any agency action that did not involve a request for a legislative appropriation or other legislative action, effectively depriving MEPA of what has proved to be the most important tool for environmental protection under its federal counterpart. In the only remaining decision that interprets MEPA, *Leatherbury v. Peters*,[16] the Maryland Court of Special Appeals held that MEPA applied only to actions by state agencies and did not create a right enforceable in a private action for nuisance.

Unfortunately, because of MEPA's restricted definition of "proposed State action" it has been deprived of the beneficial action-forcing effects that NEPA has had on federal actions. Therefore, if MEPA is to achieve the lofty policy goals it proclaims, it is necessary to look beyond the narrow confines of the small number of instances in which a Maryland agency is required to prepare an EER.[17]

2. Adoption of Methods and Procedures

In addition to the specific, though narrow, requirement that agencies prepare EERs when seeking legislation that would have a potential significant effect on the environment, MEPA also contains a much broader directive regarding agency procedures. Section 1-303 directs all state agencies to identify, develop, and adopt methods and procedures that will ensure that:

(1) Environmental amenities and values are given appropriate consideration in planning and decision-making along with economic and technical considerations;

(2) Studies are undertaken to develop and describe appropriate alternatives to present policies, programs,

Beneficial environmental effects of proposed actions

(g) Beneficial environmental effects of proposed actions can be identified and measures devised to obtain these benefits if environmental evaluations are made a part of the decision-making process of the State.

Anticipation, minimization of adverse environmental effects

(h) Adverse environmental effects of proposed actions can be anticipated, minimized, and often eliminated if environmental evaluations are made a part of the decision-making processes of the State.

10. *See generally* Lynton Caldwell, The National Environmental Policy Act: An Agenda for the Future ch. 1 (1998).
11. MEPA §1-304(a).
12. 1973 Laws of Maryland, ch. 702 at 1478. *See* Pitman v. Washington Suburban Sanitary Comm'n, 368 A.2d 473, 475 n.1, 7 ELR 20292 (Md. 1977).
13. MEPA §1-301(d). *See Pitman*, 368 A.2d at 475 n.1, in which the court of appeals described the legislative history that resulted in the narrow definition of "proposed State action." The U.S. Senate bill containing MEPA was introduced in 1973, modeled loosely on NEPA. However, before the bill was adopted, amendments were submitted, including one that revised the definition of "proposed State action" to its present form, which were eventually adopted without modification.
14. *Pitman*, 368 A.2d 473.
15. Mayor & City Council of Baltimore v. State, 378 A.2d 1326 (Md. 1977).
16. Leatherbury v. Peters, 332 A.2d 41 (Md. Ct. Spec. App. 1975), *aff'd sub nom.* Leatherbury v. Gaylord Fuel Corp., 347 A.2d 826 (Md. 1975).
17. Given the total absence of reported cases discussing MEPA since 1977, it is possible that MEPA has been so forgotten that agencies are not preparing EERs in even those unusual cases in which the statute would actually require one.

and procedures that involve significant adverse environmental effects or unresolved conflicts concerning uses of available resources; and

(3) Planning and decision-making involving environmental effects are undertaken with the fullest practicable provision of timely public information and understanding and in coordination with public and private organizations and individuals with jurisdiction by law, special expertise, or recognized interest.[18]

This provision also appears to have been based in part on language in NEPA that requires federal agencies to "identify and develop methods and procedures . . . which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations."[19] It also requires agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources."[20]

Despite the breadth of the language of §1-303, it appears to have been largely ignored by state agencies. So far as appears in the Maryland Code of Regulations, only three state agencies have adopted written procedures in accordance with the statutory mandate: the Department of Planning,[21] the Department of Transportation,[22] and the Department of Labor, Licensing, and Regulation.[23] Interestingly enough, neither the Department of the Environment, the Department of Natural Resources, nor the Department of Agriculture—all agencies whose activities are likely to have significant effects on the environment—appear to have adopted any such rules.

The rules of the Department of Planning are brief:

> If the Department initiates any proposed State action affecting the quality of the environment, or if the Department receives for review or coordination notice of any proposed State action, the Department shall consider:
>
> A. Adverse or beneficial environmental effects that are reasonably likely if the proposal is implemented or if it is not implemented;
>
> B. Measures that might be taken to minimize potential adverse environmental effects or maximize potential beneficial environmental effects; and
>
> C. Reasonable alternatives to the proposed action that might have less adverse environmental effects or greater beneficial environmental effects, including the alternative of no action.[24]

In the unlikely event that the Department of Planning makes a legislative request that would require the preparation of an EER, its rules also require that a copy of the EER be provided to a Clearinghouse maintained by the Department of Natural Resources.[25]

Among all state agencies, the Department of Transportation is one of the few that might regularly be required to prepare EERs. It also has the most extensive set of rules under MEPA. They begin with a general policy statement:

> A. It is the policy of the Department of Transportation that the Department, and each of its administrations, agencies, boards, commissions, and other units, conduct its affairs with an awareness of its responsibility for the protection of the environment for the present and future. The Maryland Environmental Policy Act (Act), Chapter 703 of the Laws of 1973, as codified in §§1-301-1-305, Natural Resources Article, Annotated Code of Maryland, mandates that State agencies, in balancing economic development and environmental quality, shall engage in thoughtful consideration of the environmental effects of their proposed actions, including: ecological, socio-economic, developmental, recreational, historic, architectural, aesthetic, and other values. Environmental assessment forms (EAF) and environmental effects reports (EER), as defined in the guidelines of the Department of Natural Resources adopted pursuant to the Act, will be utilized by the Department to accomplish this purpose, . . . as well as to increase public participation in the planning of Departmental projects and to provide the General Assembly with additional social, economic, and natural environmental information to assist it in deciding upon legislative appropriations for projects in the annual capital budget.[26]

The rules go on to codify various aspects of the procedures to be followed in preparing an EER.[27] The only other state agency to have adopted rules pursuant to §1-303 is the Department of Labor, Licensing, and Regulation. Its rules are brief,[28] effectively adopting by reference regulations published by the Department of Natural Resources in 1973.[29]

18. MEPA §1-303.
19. NEPA §102(2)(B).
20. NEPA §102(2)(E).
21. Md. Code Regs. 34.01.02.
22. Md. Code Regs. 11.01.08.
23. Md. Code Regs. 09.01.01.
24. Md. Code Regs. 34.01.02.03.
25. Md. Code Regs. 34.01.02.04.
26. Md. Code Regs. 11.01.08.01.
27. Md. Code Regs. 11.01.08.03.
28. The operative provision of the rules reads:
    > All Boards, commissions, and agencies within the Department of Licensing and Regulation shall give appropriate consideration to possible environmental effects which may arise in conjunction with any Agency proposal or action. Environmental Assessment forms and Environmental Effects reports shall be used in the decision making process in compliance with standards established by the Department of Natural Resources.

    Md. Code Regs. 09.01.01.03.
29. Although these rules are specifically referenced in the Department of Labor, Licensing, and Regulation's rules, they are not published as part of Mary-

In sum—to the extent that it is possible to determine 40 years after MEPA's enactment—it appears that state agencies have interpreted §1-302 to require no more than the establishment of rules governing the filing of an EER. Agencies have ignored the broader injunction to "develop and adopt methods and procedures that will assure that" environmental considerations are given appropriate weight in agency decisionmaking. As discussed below, there are several areas in which §1-302 could be useful in requiring agencies to do more to promote the goals of the statute.

C. A Substantive Mandate?

1. Background

Section 1-302(k) of MEPA declares, "The policies, rules, regulations, and public laws of the State shall be interpreted and administered in accordance with the policies set forth in this subtitle."[30] Although this provision appears in a section of the statute that purports to be a declaration of "facts and policies," its plain language consists of a clear directive to state agencies about the way they are to interpret and apply the laws they administer. Read together with MEPA's broad policy statement, this injunction raises a strong implication that the legislature must have intended MEPA to have some effect beyond the requirement that agencies file EERs on the rare occasions that they make a request of the General Assembly for appropriations or other actions that might affect the environment.

Section 1-302(k) was evidently based on NEPA §102, which begins, "The Congress authorizes and directs that, to the fullest extent possible . . . the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act." In the years immediately following the enactment of NEPA, there was some thought that it might have a significant substantive impact on judicial review of agency actions. Some suggested that NEPA authorizes a court reviewing an agency action to set it aside as inconsistent with the broad statements of policy found in §§2 and 101 or with some other declaration of environmental policy.[31]

As discussed below, however, judicial construction of NEPA took another path, focusing predominantly on determining when the statute requires the preparation of an EIS and, when it does, how extensive the EIS must be. That is not to say that NEPA is entirely devoid of substantive effect. To the extent that it still has substantive teeth, they can be used as precedent in interpreting MEPA.

The Maryland Legislature chose to go in a different direction with MEPA, confining its requirement to prepare EERs to the rare case in which an agency makes a request for an appropriation or other legislative action that will have environmental effects. There is thus no equivalent to NEPA's EIS process for most decisions by state agencies. But MEPA places a series of substantive obligations on state agencies, including that they: (1) interpret and administer the policies, rules, regulations, and public laws of the state in accordance with the policies articulated in the statute (§1-302(k)); and (2) "identify, develop, and adopt methods and procedures" that ensure that appropriate weight is given to environmental concerns in planning and decisionmaking and that the public can be fully informed on the relevant issues (§1-303). Whereas the courts have found that federal agencies can usually satisfy the analogous substantive requirements of NEPA through the EIS process, there is no equivalent process under MEPA for most state agency decisions. Accordingly, if MEPA is to have any meaningful effect in achieving its stated goals, its language must be read to impose obligations on state agencies going beyond the need to prepare an EER should they have occasion to request some action by the legislature.

The sparse judicial record under MEPA suggests that there have been few or no efforts to explore how its mandatory language might be used. After describing that brief record, this section examines the limited but relevant ways in which NEPA can be said to have been given effects that might be considered "substantive," and considers the substantive use of NEPA-like statutes in three other states.

2. The Judicial Gloss

There are only two reported opinions that allude to the force of the broad language of MEPA regarding the obligations of state agencies to protect the environment. In *Bausch & Lomb, Inc. v. Utica Mutual Insurance Co.*,[32] the most recent case to cite MEPA, the Maryland Court of Appeals was called on to decide whether a comprehensive general liability insurance policy covered the costs of remediation of chemical contamination at an industrial site.[33] In passing, the court offered a clear endorsement of the importance of MEPA and its meaning for state agencies:

> The 1973 Maryland Environmental Policy Act declared that *the protection of the environment is necessary for the public health and welfare as a matter of the highest public*

land's Code of Regulations, and the author has been unable to obtain a copy of them. *See* Md. Code Regs. 09.01.02.

30. MEPA §1-302(k).

31. Environmental Def. Fund, Inc. v. Corps of Eng'rs, 470 F.2d 289, 298-99, 2 ELR 20740 (8th Cir. 1972) ("Given an agency obligation to carry out the substantive requirements of the Act, we believe that courts have an obligation to review substantive agency decisions on the merits."). *See* Richard S. Arnold, *The Substantive Right to Environmental Quality Under the National Environmental Policy Act*, 3 ELR 50028 (Jan. 1973). For an excellent discussion of the evolution of the substantive application of NEPA, see Philip Michael Ferester, *Revitalizing the National Environmental Policy Act: Substantive Law Adaptations From NEPA's Progeny*, 16 Harv. Envtl. L. Rev. 207, 213-23 (1992).

32. Bausch & Lomb, Inc. v. Utica Mut. Ins. Co., 625 A.2d 1021 (Md. 1993).

33. The policy covered only liabilities to which the insured became liable as a result of some injury to a third party. Bausch & Lomb, Inc. argued that the contamination had injured the state by polluting groundwater that belonged to it. The court held that, under Maryland law, although the state had a strong interest in regulating groundwater, it was not the "property" of the state for purposes of construing an insurance policy.

> *priority*, and that each person has a "fundamental and inalienable right" to a healthful environment. The same statute in Section 1-302(c) *directs that State agencies must conduct their affairs as "stewards of the air, land, [and] water . . . resources"*; in common usage, a steward is one who cares for the property or interests of another.[34]

The only other reference to the potential substantive impact of MEPA was in *Leatherbury*, discussed above. In its opinion, the court offered a similar comment on the obligations of state agencies under MEPA. Although it gave a literal and narrow interpretation of the meaning of "proposed State action," it recognized that §§1-303 and 1-304 "impose certain responsibilities and duties only upon state agencies. For example, the agencies must undertake studies 'to develop and describe appropriate alternatives to present policies, programs, and procedures that involve significant adverse environmental effects or unresolved conflicts concerning uses of available resources.'"[35]

3. The Federal Precedent

The interpretation of NEPA offers an interesting though hardly definitive perspective on how the substantive language of MEPA might be interpreted. As they have applied it, federal courts have treated NEPA's procedural provisions—embodied in the requirement that agencies conduct formal, rigorous analyses of the environmental consequences of any major federal action—as largely sufficient to ensure the achievement of NEPA's substantive goals. Consequently, particularly in more recent years, courts have generally treated the mandatory language of §102 as satisfied when agencies follow the EIS process. As described below, however, courts have not confined NEPA exclusively to its procedural aspects, but instead have left some teeth in its broader substantive-sounding language in situations to which the EIS process does not apply.

Among other things, there remains unchallenged precedent that: (1) NEPA authorizes agencies to take environmental considerations into account, even if their organic statutes do not[36]; (2) agencies may not *refuse* to consider the environmental consequences of their actions[37]; (3) an agency that fails to take adequate notice of environmental consequences, in particular to consider alternatives to a proposed action, may be acting arbitrarily or capriciously in violation of the Administrative Procedure Act (APA)[38]; and (4) agencies must consider alternatives that may have less harmful environmental consequences in their decisions even when no EIS is required.[39]

In the years immediately following NEPA's enactment, there seemed a possibility that its broad language would have consequences extending well beyond the requirement that agencies prepare EISs. Several decisions of federal district and appeals courts made a point of saying that NEPA required more of federal agencies than the fulfillment of a paperwork obligation. Notwithstanding those cases, by the mid-1980s, NEPA litigation had come to focus almost exclusively on the need for, or the adequacy of, an EIS. Nevertheless, the early decisions to the effect that the broad language of the statute demands that agencies do more than just comply with the EIS mandate have never been overruled. Even though rarely cited today, they would seem to remain good law.

The U.S. Court of Appeals for the District of Columbia (D.C.) Circuit's ground-breaking opinion in *Calvert Cliffs Coordinating Committee, Inc. v. Atomic Energy Commission*[40] was the first to consider the nature and extent of the obligations NEPA imposes on federal agencies. The plaintiffs had claimed that certain rules promulgated by the Atomic Energy Commission (AEC) failed to comply with NEPA §102. Judge Skelly Wright held that NEPA "makes environmental protection a part of the mandate of every federal agency and department."[41] It "mandates a particular sort of careful and informed decisionmaking process and creates judicially enforceable duties."[42] No longer could an agency claim, as had the AEC, that its particular statutory mandate did not allow it to take environmental considerations into account in carrying out its mission.[43] NEPA (then relatively new) did not always dictate an outcome favorable to the environment, but agencies were henceforth required to take the environmental consequences of their decisions into account. The opinion emphasized the procedural nature of NEPA, while nevertheless leaving open the possibility that, in some cases, it might have substantive effect: "The reviewing courts probably cannot reverse a substantive decision on its merits under Section 101 unless it be shown that the actual balance of costs and benefits that was struck was arbitrary or clearly gave insufficient weight to environmental values."[44]

Judge Wright wrote that the U.S. Congress intended the procedural provisions of NEPA to be "action-forcing."[45] He took this expression from a statement by Sen. Henry M. "Scoop" Jackson (D-Wash.), the principal sponsor of NEPA, who said that a major result of the passage of the statute would be that "[n]o agency will [now] be able to

34. *Bausch & Lomb*, 625 A.2d at 1035 (emphasis added).
35. Leatherbury v. Peters, 332 A.2d 41 (Md. Ct. Spec. App. 1975), *aff'd sub nom.* Leatherbury v. Gaylord Fuel Corp., 347 A.2d 826, 834 (Md. 1975) (internal citations omitted).
36. *See, e.g.*, Flint Ridge Dev. Co. v. Scenic Rivers Ass'n of Oklahoma, 426 U.S. 776, 6 ELR 20528 (1976).
37. *See, e.g.*, Environmental Def. Fund v. Mathews, 410 F. Supp. 336, 6 ELR 20369 (D.D.C. 1976).
38. *See, e.g.*, Natural Res. Def. Council, Inc. v. Securities & Exch. Comm'n, 389 F. Supp. 689, 5 ELR 20074 (D.D.C. 1974). The Administrative Procedure Act (APA) is codified at 5 U.S.C. §§501 et seq., *available in* ELR Stat. Admin. Proc.
39. *See, e.g.*, Trinity Episcopal Sch. Corp. v. Romney, 523 F.2d 88, 5 ELR 20497 (2d Cir. 1975).
40. Calvert Cliffs Coordinating Comm., Inc. v. Atomic Energy Comm'n, 449 F.2d 1109, 1 ELR 20346 (D.C. Cir. 1971).
41. *Id.* at 1112.
42. *Id.* at 1115.
43. *Id.* at 1112.
44. *Id.* at 1115. *See* Richard Lazarus, *The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtains*, 100 Geo. L.J. 1507, 1517 (2012).
45. *Calvert Cliffs Coordinating Comm., Inc.*, 449 F.2d at 1112-13.

maintain that it has no mandate or no requirement to consider the environmental consequences of its actions."[46] The "action-forcing" characterization of NEPA has subsequently been widely adopted by the federal courts.[47]

NEPA thus requires more than that agencies go through the motions of considering the environmental effects of proposed actions. They must take a "hard look" at the environmental consequences of their actions. This metaphor first appeared in *Natural Resources Defense Council, Inc. v. Morton*,[48] was adopted by Justice Lewis Powell in his opinion in *Kleppe v. Sierra Club*,[49]and has since been thoroughly established as a part of NEPA jurisprudence.[50] It also makes an appearance in cases decided under several state environmental statutes.[51]

Notwithstanding the broader language of some of the early cases under NEPA, the U.S. Supreme Court's 1978 decision in *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*[52] had the effect of diverting the course of much of the subsequent NEPA litigation into a relatively narrow channel. NEPA, the Court wrote, was to be considered "essentially procedural."[53] Although recognizing that "NEPA does set forth significant substantive goals for the Nation,"[54] the Court said that its primary purpose "is to insure a fully informed and well-considered decision, not necessarily a decision the judges of the Court of Appeals or of this Court would have reached had they been members of the decisionmaking unit of the agency."[55]

Since *Vermont Yankee*, litigation under NEPA has focused largely, though not exclusively, on the necessity for, and adequacy of, EISs associated with major federal actions. This has hardly meant that NEPA has been ineffective in achieving its policy goals. In *Calvert Cliffs*, Judge Wright predicted, "These cases are only the beginning of what promises to become a flood of new litigation—litigation seeking judicial assistance in protecting our natural environment."[56] His prediction was accurate. A search of Westlaw turns up over 4,000 federal judicial decisions mentioning "NEPA" and "environmental impact statement."

In part as a result of this litigation, and in part the result of regulations adopted by the Council on Environmental Quality (CEQ) spelling out the requirements for EISs, NEPA has caused federal agencies to prepare thousands of them—according to one estimate, at the rate of about 500 per year.[57] In addition, agencies prepare some 50,000 environmental assessments (EAs) each year in determining that the environmental impact of a proposed action is not "significant" and therefore no EIS is required.[58] The analytical process thus "forced" by NEPA often leads agencies to alter their projects to make them more environmentally acceptable. Moreover, these statements have provided environmental organizations and citizens' groups with information they could not have developed on their own, allowing them to be more effective in their advocacy of environmental causes than they might otherwise have been.[59]

This does not mean, however, that NEPA is limited *only* to requiring EAs or EISs, or that it is entirely without substantive teeth. Its "action-forcing" essence means that agencies must not only identify any significant environmental consequences of a proposed action, but, having done so, they must also give due consideration to those consequences in making their decisions. Even when NEPA does not require the preparation of a formal EA or EIS, agencies cannot ignore the statute in making decisions with environmental consequences.

This position is supported by CEQ rules. Section 102 of NEPA directs agencies to consult with the CEQ in identifying "methods and procedures" to assure that they give adequate weight to environmental concerns. The CEQ's rules make clear that its regulations implementing that section "are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2)."[60]

At a minimum, despite the Supreme Court's insistence on its "essentially procedural" nature, NEPA clearly *permits* agencies to take the environmental policies it articulates into account in their decisions, even when the statutes they administer make no mention of environmental concerns. The courts have recognized this in a variety of different contexts. One is rulemaking proceedings. For example, in *Flint Ridge Development Co. v. Scenic Rivers Association*

46. NEPA: Hearings on S. 1075, S. 237, and S. 1752 Before the Senate Comm. on Interior and Insular Affairs, 91st Cong. 206 (1969). Just before the Senate finally approved NEPA, Senator Jackson said on the floor that the Act "directs all agencies to assure consideration of the environmental impact of their actions in decisionmaking." 115 Cong. Rec. (Part 30) 40416 (1969).
47. *See, e.g.*, Andrus v. Sierra Club, 442 U.S. 347, 350-51, 9 ELR 20390 (1979) ("If environmental concerns are not interwoven into the fabric of agency planning, the 'action-forcing' characteristics of §102(2)(C) would be lost."); ("Section 102(2)(C) is one of the 'action-forcing' provisions intended as a directive to 'all agencies to assure consideration of the environmental impact of their actions in decisionmaking.'"). *See also* Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 47 (2008); Department of Transp. v. Public Citizen, 541 U.S. 752, 769, 34 ELR 20033 (2004); Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349, 19 ELR 20743 (1989.
48. Natural Res. Def. Council v. Morton, 458 F.2d 827, 838, 2 ELR 20029 (D.C. Cir. 1972).
49. Kleppe v. Sierra Club, 427 U.S. 390, 410 n.21, 6 ELR 20532 (1976).
50. *See, e.g.*, *Robertson*, 490 U.S. at 349; Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, Inc., 462 U.S. 87, 97, 13 ELR 20544 (1983); Hughes River Watershed Conservancy v. Glickman, 81 F.3d 437, 443, 26 ELR 21276 (4th Cir. 1996).
51. *See, e.g.*, Clean Wisconsin, Inc. v. Public Serv. Comm'n of Wisconsin, 700 N.W.2d 768, 829 (Wis. 2005); Ebbetts Pass Forest Watch v. Dep't of Forestry & Fire Prot., 20 Cal. Rptr. 3d 808, 817 (Cal. Ct. App. 2004); H.O.M.E.S. v. New York State Urban Dev. Corp., 418 N.Y.S.2d 827, 832 (N.Y. App. Div. 1979).
52. Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, 435 U.S. 519, 8 ELR 20288 (1978) (citations omitted). *See also Baltimore Gas & Elec. Co.*, 462 U.S. at 98; Strycker's Bay Neighborhood Council, Inc. v. Karlen, 444 U.S. 223, 227, 10 ELR 20079 (1980).
53. *Vermont Yankee*, 435 U.S. at 558.
54. *Id.*
55. *Id.*
56. Calvert Cliffs Coordinating Comm., Inc. v. Atomic Energy Comm'n, 449 F.2d 1109, 1111, 1 ELR 20346 (D.C. Cir. 1971). *See* Lazarus, *supra* note 44, at 1516.
57. Lois J. Schiffer, *The National Environmental Policy Act Today, With an Emphasis on Its Application Across U.S. Borders*, 14 Duke Envtl. L. & Pol'y F. 325, 326 (2004).
58. *Id.*
59. *See* Lazarus, *supra* note 44, at 1518-19.
60. 40 C.F.R. §1500.3.

of Oklahoma,[61] the Supreme Court held that, because of a clear conflict between the provisions of the Interstate Land Sales Full Disclosure Act (Disclosure Act)[62] and NEPA's EIS requirement, the Department of Housing and Urban Development (HUD) was exempt from preparing an EIS before allowing a "disclosure statement" to become final under the Disclosure Act. Nevertheless, the Court insisted that this did not mean that NEPA was totally without effect. Pointing out that the Disclosure Act required disclosures regarding some environmental aspects of a subdivision, and that it authorized the Secretary to require additional disclosures, the Court said:

> Therefore, if the Secretary finds it necessary for the protection of purchasers or in the public interest, the Secretary may adopt rules requiring developers to incorporate a wide range of environmental information into property reports to be furnished prospective purchasers; and respondents may request the Secretary to institute a rulemaking proceeding to consider the desirability of ordering such disclosure.[63]

Environmental Defense Fund v. Mathews,[64] decided just before *Flint Ridge*, went a step farther. Not only does NEPA authorize agencies to consider the environment in their decisions, the U.S. District Court for the District of Columbia held, but they may not refuse to do so. The case was a challenge to an amendment to U.S. Food & Drug Administration (FDA) rules that eliminated environmental concerns as a factor in FDA decisions, effectively limiting them to the grounds authorized under the Food, Drug, and Cosmetic Act (FDCA).[65] The district court had no difficulty granting summary judgment to the plaintiffs, holding that:

> In the absence of a clear statutory provision excluding consideration of environmental factors, and in light of NEPA's broad mandate that all environmental considerations be taken into account, we find that NEPA provides FDA with supplementary authority to base its substantive decisions on all environmental considerations including those not expressly identified in the FDCA and FDA's other statutes. . . . This is not to say that NEPA requires FDA's substantive decisions to favor environmental protection over other relevant factors. Rather, it means that *NEPA requires FDA to consider environmental factors in its decision-making process* and supplements its existing authority to permit it to act on those considerations.[66]

A series of three related decisions involving rulemaking by the U.S. Securities and Exchange Commission (SEC) made the consideration of environmental concerns in accordance with NEPA an element of the APA's "arbitrary or capricious" test.[67] Those three decisions hold that NEPA not only *permits* agencies to consider the environment in rulemaking, but further that their decision may be deemed arbitrary and capricious if they do not. In *Natural Resources Defense Council, Inc. v. Securities and Exchange Commission*,[68] three nonprofit organizations, relying in part on NEPA, had filed a petition with the SEC requesting it to adopt a rule requiring public companies to make extensive disclosures to shareholders regarding environmental matters. The Commission first declined to issue the rules proposed by the petition, instead requiring disclosures of environmental issues only to the limited extent that they had material financial consequences to the company. The plaintiffs appealed the denial of their petition to the federal district court for the District of Columbia, which remanded the case to the SEC on the grounds that the agency's rulemaking proceedings fell short of the requirements of the APA.[69] In a decision rendered before *Vermont Yankee*, Judge Charles R. Richey made clear his belief that any future review of the SEC's rule was not confined solely to compliance with procedural requirements, but that he was empowered to examine the substance of the SEC's decision in light of NEPA.

> Indeed this Court can set aside SEC rules which do not meet the NEPA mandate, if the Court finds that the SEC rulemaking is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A). Reviewing courts have authority and responsibility to scrutinize agency decisions closely in order to ensure that they proceed from a proper understanding of the relevant laws and in order to correct those decisions which are inconsistent with Congressional mandates, fall short of the statutory policies, or strike an improper balance among conflicting interests.[70]

In response to the district court's ruling, the SEC conducted further rulemaking proceedings in an effort to cure the procedural defects of its first decision, but again determined to require only limited environmental disclosure. The plaintiffs again appealed, and again the district court ruled in their favor, holding that the Commission had acted arbitrarily and had failed to "consider alternatives to its actions which would reduce environmental damage."[71]

On appeal, the D.C. Circuit reversed, holding that the appropriate scope of substantive review by courts was a narrow one, which the district court had exceeded.[72] Nev-

61. Flint Ridge Dev. Co. v. Scenic Rivers Ass'n of Oklahoma, 426 U.S. 776, 6 ELR 20528 (1976).
62. Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§1701 et seq.
63. *Flint Ridge*, 426 U.S. at 792.
64. Environmental Def. Fund v. Mathews, 410 F. Supp. 336, 6 ELR 20369 (D.D.C. 1976).
65. Food, Drug and Cosmetic Act (FDCA), 21 U.S.C. §§301 et seq.
66. *Mathews*, 410 F. Supp. at 338 (emphasis added).
67. 5 U.S.C. §706.
68. Natural Res. Def. Council, Inc. v. Securities & Exch. Comm'n, 389 F. Supp. 689, 5 ELR 20074 (D.D.C. 1974). The petition also requested rules regarding the disclosure of employment practices.
69. *Id.*
70. *Id.* at 688-89.
71. Natural Res. Def. Council, Inc. v. Securities & Exch. Comm'n, 432 F. Supp. 1190, 1207, 7 ELR 20434 (D.D.C. 1977) (quoting Calvert Cliffs Coordinating Comm., Inc. v. Atomic Energy Comm'n, 449 F.2d 1109, 1128, 1 ELR 20346 (D.C. Cir. 1971), *rev'd*, 606 F.2d 1031 (D.C. Cir. 1979).
72. Natural Res. Def. Council, Inc. v. Securities & Exch. Comm'n, 606 F.2d 1031, 9 ELR 20367 (D.C. Cir. 1979).

ertheless, the D.C. Circuit recognized that NEPA was not entirely without substantive effect. The petitioner-appellees had argued that the SEC had violated NEPA by failing to consider an alternative rule that would have limited required environmental disclosures to proxy statements. Citing *Vermont Yankee*, the court acknowledged that this argument was "essentially procedural." It went on to say, however, that the argument "necessarily involves a substantive element." If a proposed agency action would have adverse environmental consequences, NEPA expressly requires that the agency consider alternatives that would be less harmful to the environment.[73] It follows, therefore, that

> [i]f the court is to determine whether an agency has fulfilled its procedural NEPA duties by 'considering' alternatives, it must exercise at least a minimal scrutiny over the rationality of the agency's reasons for rejecting likely alternatives. *To this extent at least, appellees' NEPA contentions can be thought of as raising mixed questions of substance and procedure*.[74]

Another context in which NEPA's extra-procedural character has been brought to bear is in challenges to the issuance of permits. One of the earliest such cases was *Zabel v. Tabb*,[75] in which landowners sued the U.S. Army Corps of Engineers (the Corps) to force it to grant a permit for the dredging and filling of Boca Siega Bay, near St. Petersburg, Florida. The plaintiffs had argued that the Rivers and Harbors Act did not authorize the Corps to deny the permit unless the proposed activity would interfere with navigation and was not authorized to take environmental considerations into account. Although the Corps had denied the permit before the passage of NEPA, the case reached the U.S. Court of Appeals for the Fifth Circuit after NEPA's enactment. In upholding the Corps' decision, the court relied on the policy articulated in the statute, which it said "essentially states that every federal agency shall consider ecological factors when dealing with activities which may have an impact on man's environment."[76] The court thus recognized that, at a minimum, NEPA's mandate that "to the fullest extent possible . . . the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act" requires agencies to take environmental concerns into account in their decisionmaking unless their organic statute prohibits it.

Trinity Episcopal School Corp. v. Romney[77] was a challenge to a decision to build a low-income housing project on Manhattan's Upper West Side. Although the plaintiffs did not claim that NEPA required HUD to prepare an EIS, they argued that the agency was nevertheless required to consider alternatives that might alleviate the project's environmental impact. The U.S. Court of Appeals for the Second Circuit agreed, saying that "HUD failed to comply with the mandate of §102(2)(D) of [NEPA] and that compliance therewith is a prerequisite to any further federal action on the Site 30 project. . . . *Federal agencies must consider alternatives under §102(2)(D) of NEPA without regard to the filing of an EIS*."[78]

4. Precedent From NEPA-Like Statutes in Other States

The enactment of NEPA set in motion a chain of adoptions by the states of similar statutes. By 1981, some 28 states had done so.[79] Many of these statutes are patterned closely on NEPA, and others (including that of Maryland) depart from NEPA to a greater or lesser degree. Depending on the statutory language and judicial predilection, the states have varied significantly in the extent to which they provide for substantive review of administrative decisions. Many states have effectively followed the federal courts' lead, holding that their statutes are primarily procedural. A few, however, have leapfrogged federal law in the application of their statutes, being far more aggressive in permitting them to be used to limit harm to the environment.[80] The laws of California, New York, and Washington are notable for going the farthest in that direction.

Friends of Mammoth v. Board of Supervisors of Mono County,[81] an early case in California, is among the most cited decisions in state environmental protection law. Relying on the extensive legislative history of the California Environmental Quality Act (CEQA),[82] the California Supreme Court ruled that private development activities that required governmental permits were subject to the CEQA. In a much-quoted passage, the court said that the statute should be "interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."[83] It went on to make it clear that the CEQA *required* changes to a project to the extent necessary to mitigate adverse envi-

73. NEPA §§102(C)(iii), 102(E).
74. *Natural Res. Def. Council*, 606 F.2d at 1044 (emphasis added).
75. Zabel v. Tabb, 430 F.2d 199, 1 ELR 20023 (5th Cir. 1970).
76. *Id.* at 211; *accord* Di Vosta Rentals, Inc. v. Lee, 488 F.2d 674, 4 ELR 20005 (5th Cir. 1973).
77. Trinity Episcopal Sch. Corp. v. Romney, 523 F.2d 88, 5 ELR 20497 (2d Cir. 1975).
78. *Id.* at 92-93 (emphasis added); *accord*, Aertsen v. Landrieu, 637 F.2d 12, 20, 11 ELR 20005 (1st Cir. 1980):

> The . . . obligation to describe alternatives is not limited to a proposed major action significantly affecting the human environment, for otherwise it would add nothing to §102(2)(C)(iii) of NEPA which already imposed an obligation upon a Federal Government agency to make with respect to a proposed major action a statement of "alternatives to the proposed action."
>
> Natural Res. Def. Council, Inc. v. Callaway, 524 F.2d 79, 93, 5 ELR 20640 (2d Cir. 1975) (The requirement to consider environmental consequences "is independent of and of wider scope than the duty to file the EIS. This requirement is independent of and of wider scope than the duty to file the EIS.").

79. *See* Nicholas Robinson, *SEQRA's Siblings: Precedents From Little NEPAs in the Sister States*, 46 Alb. L. Rev. 1155, 1157 (1982).
80. For a discussion of the co-evolution of NEPA and its state equivalents, see Kenneth S. Weiner, *NEPA and State NEPAs: Learning From the Past, Foresight for the Future*, 39 ELR 10675 (July 2009).
81. Friends of Mammoth v. Board of Supervisors of Mono Cnty., 502 P.2d 1049, 2 ELR 20673 (Cal. 1972), *disapproved of by* Kowis v. Howard, 838 P.2d 250 (Cal. 1992).
82. Cal. Pub. Res. Code, §§21000-21151 (West 2014).
83. *Friends of Mammoth*, 502 P.2d at 1056.

ronmental consequences: "Obviously if the adverse consequences to the environment can be mitigated, or if feasible alternatives are available, the proposed activity, such as the issuance of a permit, should not be approved. In making these determinations concrete concepts, not mere aphorisms or generalities, must be considered."[84] Since *Friends of Mammoth* was decided, the California Legislature has amended the CEQA several times to strengthen it, including codifying the holding of the case.

Washington's State Environmental Policy Act of 1971 (SEPA)[85] was patterned closely on NEPA. While as in NEPA the focus of the statute has been on the need for and adequacy of environmental impact statements, one early case established clearly that SEPA would have an effect on the construction by the courts of other statutes. *English Bay Enterprises, Ltd. v. Island County*[86] involved the construction of an aspect of the state's Shoreline Management Act.[87] In holding that the statute applied to the issuance of a permit to harvest clams, the court said, "A liberal construction of the act is also mandated by the State Environmental Policy Act."[88] That principle is apparently firmly established in Washington jurisprudence.[89]

New York was the last of these three states to adopt the State Environmental Quality Review Act (SEQRA),[90] its NEPA-like statute.[91] SEQRA's analogue to MEPA's §1-302(k) states, "It is the intent of the legislature that all agencies . . . regulate . . . activities so that due consideration is given to preventing environmental damage."[92] New York courts have construed this language to authorize courts to strike down administrative decisions that failed to give appropriate weight to environmental considerations. In *Town of Henrietta v. Department of Environmental Conservation of New York*, citing *Calvert Cliffs*, an intermediate appellate court observed that, "requirement of environmental consideration 'to the fullest extent possible" sets a high standard which must be enforced by the reviewing courts. Failure to employ this balancing analysis may be grounds for nullifying an administrative decision."[93] In *E.F.S. Ventures Corp. v. Foster*, the New York Court of Appeals (the state's highest court) made it clear that the SEQRA was not merely a procedural statute, saying, "[O]ur statute, unlike many others, imposes substantive duties on the agencies of government to protect the quality of the environment for the benefit of all the people of the State."[94]

84. *Id.* at 1060.
85. 1971 Wash. Laws ch. 109 (codified as amended at Wash. Rev. Code. Ann. §§43.21C.010.914).
86. English Bay Enters., Ltd. v. Island Cnty., 568 P.2d 783, 786 (Wash. 1977).
87. Shoreline Management Act, Wash. Rev. Code §90.58.030(3)(d).
88. *English Bay*, 568 P.2d at 786.
89. *See, e.g.*, Herman v. State of Washington Shorelines Hearings Bd., 204 P.3d 928, 935 (Wash. Ct. App. 2009).
90. N.Y. Envtl. Conserv. Law §§8-0101 to -0117 (McKinney 1997).
91. *Robinson*, *supra* note 79, at 1159.
92. N.Y. Envtl. Conserv. Law §8-0103(9) (McKinney 1997).
93. Town of Henrietta v. Department of Envtl. Conservation of N.Y., 430 N.Y.S.2d 440, 447 (N.Y. App. Div. 1980) (citations omitted); s*ee generally* John W. Caffry, *The Substantive Reach of SEQRA: Aesthetics, Findings, and Non-Enforcement of SEQRA's Substantive Mandate*, 65 Alb. L. Rev. 393 (2001).
94. E.F.S. Ventures Corp. v. Foster, 520 N.E.2d 1345, 1351 (N.Y.1988).

III. Resurrecting MEPA

For most of its life, MEPA has lain dormant. It has been mentioned in only five reported opinions of the Maryland courts, the last of which was in 1993,[95] and it appears never to have been used successfully to challenge a decision of a state agency. This dormancy is both unfortunate and unnecessary. There is nothing unclear about the goals the legislature declared in the statute. Nor is there any ambiguity about MEPA's requirement that agencies administer the law, including adopting appropriate methods and procedures, in a manner that advances those goals. It is true that the General Assembly chose not to make the preparation of EERs for agency actions that may affect the environment the kind of tool that EIS is under NEPA. But that only means that the other parts of the statute should be given greater significance. In short, it is time that MEPA grew up.

There are several ways that advocates for the environment could make MEPA the powerful tool that it was intended to be. These include: (1) enforcing the requirement that agencies adopt procedures so as to ensure that they give environmental considerations appropriate weight in carrying out their missions, especially with respect to the information they make readily available to the public; (2) challenging the grants of permits or approvals affecting the environment; and (3) ensuring that agencies consider the environment when adopting new or amended rules.

A. *Adoption of Methods and Procedures*

MEPA requires state agencies to "identify, develop, and adopt methods and procedures" to promote the inclusion of environmental protection in their decisions. Nevertheless, as mentioned above, only three agencies have published any rules whatsoever under MEPA. Two sets of these rules are skeletal at best, and the third, issued by the Department of Transportation, is limited to the methods and procedures to be followed in the preparation of EERs. MEPA §1-303 reads in its entirety:

> All State agencies, except where existing law expressly prohibits, shall identify, develop, and adopt methods and procedures that will assure that:
>
> (1) Environmental amenities and values are given appropriate consideration in planning and decision-making along with economic and technical considerations;
>
> (2) Studies are undertaken to develop and describe appropriate alternatives to present policies, programs, and procedures that involve significant adverse environmental effects or unresolved conflicts concerning uses of available resources; and

95. The earlier four cases are discussed above. The fifth case was *Hampton Associates Ltd. P'ship v. Baltimore Cnty.*, 505 A.2d 537 (Md. Ct. Spec. App. 1986), where an intermediate appellate court mentioned MEPA in passing only in describing the holding in an earlier decision.

(3) Planning and decision-making involving environmental effects are undertaken with the fullest practicable provision of timely public information and understanding and in coordination with public and private organizations and individuals with jurisdiction by law, special expertise, or recognized interest.

This language could hardly be clearer or more straightforward. It requires that *all* agencies adopt "methods and procedures" to protect the environment; there is no suggestion that they be limited to the procedures to be followed in preparing an EER. Why should not the agencies whose work is of particular environmental sensitivity—including the Departments of Agriculture, the Environment, and Natural Resources—be required to elaborate on how they will take environment concerns into account in carrying out their missions?

Here, again, the administrative implementation of NEPA can serve as a guide. Section 102(2)(B) directs agencies to consult with the CEQ in establishing "methods and procedures" to ensure that environmental considerations are "given appropriate consideration in decisionmaking." In furtherance of that directive, the CEQ has adopted regulations spelling out what is expected of agencies.[96] Among other things, these rules state:

> Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act.[97]

Although the principal focus of the CEQ's rules is the adoption of procedures necessary to comply with the provisions of NEPA dealing with EISs, they also address the need to include environmental considerations more broadly in agency decisionmaking, including:

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.[98]

The rules are also quite explicit about the obligation of agencies to make environmental information available to the public and to encourage public participation.[99]

In that regard, the last clause of MEPA §1-303, which requires "the fullest practicable provision of timely public information," is of particular relevance. Fuller compliance with that directive has the potential for providing the public much better access to information about permitting and enforcement.[100] For example, the U.S. Environmental Protection Agency (EPA) makes available on its website detailed information on the issuance of permits under the national pollution discharge elimination system (NPDES) of the Clean Water Act (CWA).[101] By contrast, the Maryland Department of the Environment occasionally issues press releases announcing enforcement actions and publishes an annual report with statistics summarizing its enforcement activities; information about particular enforcement actions is not generally available on the department's website. The Maryland Department of Agriculture, which manages and enforces a nutrient management program intended to reduce pollution in surface waters, is equally opaque about the details of its enforcement activities. Given the importance of enforcement to ensuring that antipollution laws are being followed, "timely information" about these agencies' enforcement programs would be of great value to the ability of the public to monitor how well they are carrying out their statutory duties.

Virtually every federal agency whose activities might affect the environment has adopted rules to comply with NEPA's mandate. The focus of most agency rules is the preparation of EAs and EISs. Most, if not all, however, refer to or incorporate by reference the CEQ's rules.[102] As pointed out above, these include the more general mandate that agencies take environmental consideration into account in *all* their activities, whether or not they implicate NEPA's formal procedural requirements. Some have recognized that mandate in their own rules. For example, rules of the U.S. Department of Agriculture (USDA) specify that: "All policies and programs of the various USDA agencies shall be planned, developed, and implemented so as to achieve the goals and to follow the procedures declared

96. 40 C.F.R. Part 1500.
97. 40 C.F.R. §1500.6.
98. 40 C.F.R. §1505.1.
99. 40 C.F.R. §1506.6.
100. Although much of the language §1-302 is drawn from NEPA §102, the federal statute has no provision equivalent to MEPA §1-303(3).
101. *See, e.g.*, EPA's NPDES web page, http://www.epa.gov/reg3wapd/npdes/index.htm (last visited July 21, 2014). The Clean Water Act (CWA) is codified at 33 U.S.C. §§1251-1387, ELR Stat. FWPCA §§101-607.
102. *See, e.g.*, 40 C.F.R. §6.100 (EPA); 7 C.F.R. §1b.1(a) (USDA); 10 C.F.R. §1021.103 (U.S. Department of Energy); 43 C.F.R. §46.20(a) (U.S. Department of the Interior); 33 C.F.R. §230.1 (Corps).

by NEPA in order to assure responsible stewardship of the environment for present and future generations."[103]

It is also of interest that, in many cases, agencies have designated a particular official as the individual responsible for compliance with NEPA.[104] Were Maryland agencies to charge a single official with responsibility for compliance with MEPA, the likely result would be much greater sensitivity to environmental concerns.

B. Permits and Authorizations

Among the more consequential environmental actions by state agencies is the issuance of a variety of permits and licenses. The Maryland Department of the Environment, for example, issues discharge permits under the CWA[105] and the Clean Air Act[106] pursuant to delegated authority from EPA. These permits have obvious effects on the environment. The Maryland Department of Agriculture's nutrient management program requires agriculturists to file "nutrient management plans" and "annual implementation reports" on their compliance with those plans.[107] Because agriculture is one of the largest contributors to nutrient pollution in the Chesapeake Bay Watershed, this program, too, has important environmental ramifications.

At the federal level, the issuance of a permit or license with potential environmental consequences triggers NEPA's procedural aspects, requiring the preparation of an EA and often an EIS. Although MEPA does not require state agencies to prepare an EER before issuing a permit or license, it still requires that they "interpret and administer" their statutes in accordance with the policies of the statute. Section 1-303 also requires that they adopt "methods and procedures that will assure that [e]nvironmental amenities and values are given appropriate consideration in . . . decision-making." There is nothing in the statutory language to suggest that that these statutory directives do not apply to decisions regarding the issuance of permits or licenses.

Viewed thus, MEPA is simply an overlay to whatever statutory regime governs the issuance of a particular license or permit. Failure to take due account of environmental consequences in granting a license or permit would violate MEPA's mandate to "interpret and administer" the law in accordance with the policies elaborated in MEPA and to give "appropriate consideration" to "environmental amenities and values." Such a decision would then be subject to challenge under Maryland law, which empowers courts to set aside government actions that are "affected by . . . [an] error of law" or are "arbitrary or capricious."[108]

C. Rulemaking Proceedings

While state agencies only infrequently make rules to which MEPA would be relevant, when they do, MEPA would seem to require that they must take into account any potential environmental consequences of the proposed rule. *Flint Ridge* and *Natural Resources Defense Council v. SEC*, discussed above, provide instructive examples of how citizens might use MEPA to improve agency rules. In *Flint Ridge*, the Supreme Court suggested that, though NEPA's procedural requirements did not apply to the approval of a disclosure statement under the Disclosure Act, NEPA might require that HUD's regulations require more environmental information in such statements. In *Natural Resources Defense Council v. SEC*, the D.C. Circuit made clear that in reviewing agency rulemaking, courts may consider whether the agency has paid adequate attention to NEPA's mandate that they consider the environment.

Just as with the issuance of licenses or permits, therefore, MEPA would appear to require that in adopting or amending their rules, agencies must take due account of any potential adverse environmental consequences. The agency must therefore consider those consequences and evaluate alternatives with lesser adverse consequences, adopting the version of the rule with the minimum effect on the environment and only when the other considerations for the rule outweigh any negative environmental effects. And the agency should do so explicitly and on the record. Failure to do so despite MEPA's mandate to "interpret and administer" the law in accordance with the policy set forth in MEPA and to give "appropriate consideration" to "environmental amenities and values" would subject the rule to challenge as being affected by an error of law or otherwise "arbitrary or capricious."

IV. Conclusion

MEPA has lain essentially dormant since it was enacted in 1973, largely because the narrow definition of "proposed state action" makes its EER feature—which has been the principal focus of attention under its federal counterpart—largely useless. The most obvious road to modifying MEPA so that it can contribute to the achievement of the lofty goals set forth in its preamble[109] would be to amend it to redefine "proposed state action" to include all proposed actions with a potential to have a significant effect on the environment, not just requests for action by the legislature. Such legislation would undoubtedly face serious political opposition, and while it could result in strengthening MEPA's "action-forcing" aspects, it is unclear whether the political costs of accomplishing such an amendment are worth it.

In the meantime, however, there are other provisions of the statute that have been entirely overlooked and that have the potential to give environmental concerns appropriate weight in agency activities. There are a number of

103. 7 C.F.R. §1b.2(a).
104. *See, e.g.*, 40 C.F.R. §§6.102(b)(8), 6.103 (EPA); 7 C.F.R. §1b.2(c) (USDA); 10 C.F.R. §1021.105 (U.S. Department of Energy); 33 C.F.R. §230.5 (Corps).
105. *See* 33 U.S.C. §§1342; Md. Code Ann., Envir. §§9-30 et seq. (West 2014).
106. Clean Air Act (CAA), 42 U.S.C §§7401-7671q, ELR Stat. CAA §§101-618; Md. Code Ann., Envir., §§2-401 et seq. (West 2014).
107. *See* Md. Code Ann., Agric. §§8-801 et seq. (West 2014).
108. Md. Code Ann., State Gov't §10-222 (West 2014).
109. *See* MEPA §1-302.

steps agencies whose actions are likely to have environmental consequences should take to bring them into compliance with these provisions. First, they should adopt rules to ensure that environmental concerns receive adequate consideration in agency decisions. In particular, these rules should ensure that those concerns are given due weight in the issuance of permits or licenses. Agencies should also designate individuals who have particular responsibility for seeing that environmental considerations are taken into account in agency decisions and procedures. Second, agencies such as the Department of the Environment and the Department of Agriculture should, in compliance with the final clause of MEPA §1-303, take steps to make information of environmental concern more readily available to the public. Finally, agencies should ensure that environmental concerns are clearly and expressly considered in their rulemaking proceedings.

MEPA has been largely ignored by state agencies almost since its passage in 1973. An effort to implement the statute's clear language in service of the policies it so clearly and powerfully articulates is long overdue.

The-Maryland-Environmental-Policy-Act-Final (4).pd
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Position: FAV

CHESAPEAKE
LEGAL ALLIANCE

The Maryland Environmental Policy Act

RUSS STEVENSON
CHESAPEAKE LEGAL ALLIANCE
OCTOBER 6, 2020

Introduction

- Background of the Maryland Environmental Policy Act (MEPA)
- MEPA's major provisions
  - Statement of policy
  - Charge to Maryland agencies
  - Requirement of Environmental Effects Reports (EERs)
- MEPA's fate
- Resurrecting MEPA

Background

- January 1, 1970 – President Nixon signs the National Environmental Policy Act (NEPA)
- April 22, 1970 – The first Earth Day
- May 24,1973 Maryland is one of the first states to adopt a NEPA equivalent, the Maryland Environmental Policy Act (MEPA)
- 1970-1980 – Some 31 other states adopt state NEPA equivalents

Major Provisions of MEPA

- Much of language taken directly from NEPA
- Broad statement of policies, including:
  - “The protection, preservation, and enhancement of the State’s diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the economy of the State and is a matter of the highest public priority.”
  - “All state agencies must conduct their affairs with an awareness that they are stewards of the air, land, water, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.”
  - “Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to contribute to the protection, preservation, and enhancement of the environment.”
  - “The policies, rules, regulations, and public laws of the State shall be interpreted and administered in accordance with the policies set forth in this subtitle.”

Major Provisions of MEPA

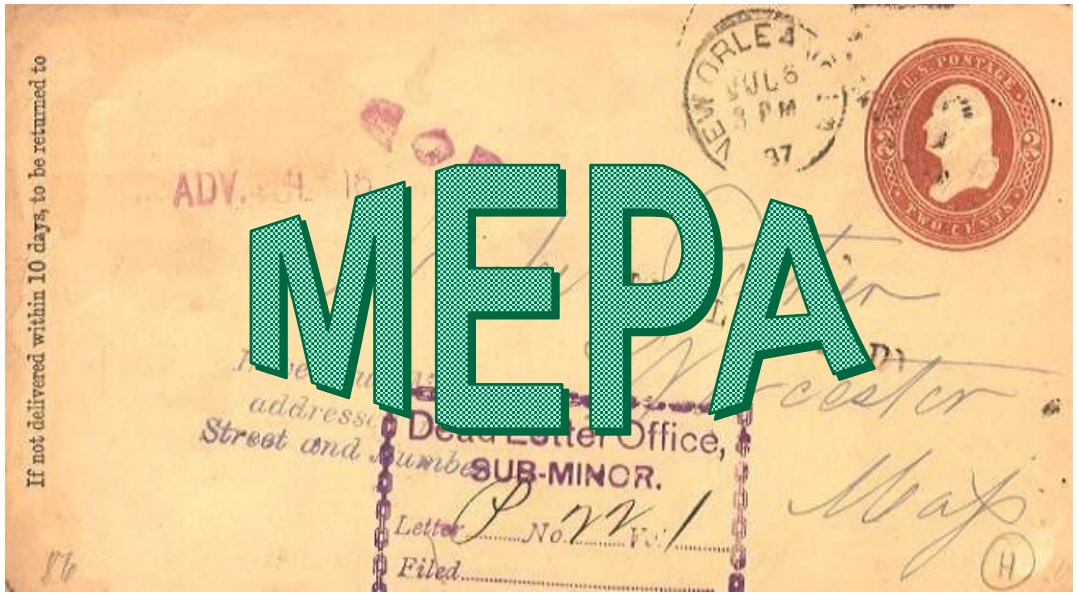
- Procedural provisions
  - Requires preparation of Environmental Effects Report (EER) for each “proposed state action significantly affecting the quality of the environment”
    - Similar to Environmental Impact Statement (EIS) under NEPA
  - Requires that State agencies “identify, develop, and adopt methods and procedures” to assure that
    - Environmental values are given appropriate consideration
    - They develop “appropriate alternatives to present policies, programs, and procedures that involve significant adverse environmental effects”
    - Planning and decision-making are transparent and coordinated with the public
- Substantive provisions?
  - “The policies, rules, regulations, and public laws of the State shall be interpreted and administered in accordance with the policies set forth in this subtitle.”
  - “Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to contribute to the protection, preservation, and enhancement of the environment.”

MEPA's Fate

- The NEPA precedent
  - Devolved into a requirement that agencies prepare Environmental Assessments and, in many cases Environmental Impact Statements for "major Federal actions significantly affecting the quality of the human environment"
  - Still a powerful tool for environmentalists
- MEPA in the General Assembly
  - Original draft followed NEPA model for preparation of EERs
  - General Assembly gutted this, confining "proposed State action" to "requests for legislative appropriations or other legislative actions that will alter the quality of the air, land, or water resources"
- MEPA in the agencies
  - Only three adopted "methods and procedures"
  - Departments of Planning, Transportation, and Labor, Licensing, and Regulation
  - Department of Environment not created until 1987 – still has no MEPA rules

MEPA's Fate

- MEPA in the courts
  - Only three judicial decisions
  - Two interpreted the EER requirement, both holding it was inapplicable to an agency action
  - One held that MEPA did not create a right enforceable in a private action for nuisance
- MEPA today
  - Neglected
  - Forgotten
  - A dead letter



MEPA's Potential - Five Types of Benefits

- (1) Greater examination of environmental effects through **reports** or **findings**
- (2) More **transparency** into agency data and records
- (3) Meaningful **public participation**
- (4) Proactive **consultation** of particularly affected or vulnerable communities
- (5) More **judicial** consideration of MEPA's lofty goals

Potential – Reports or Findings

- **Greater examination of environmental effects through reports or findings**
- The classic NEPA “hard look” at environmental impacts of agency actions
- The EER is not the EIS (MEPA < NEPA) but room for incremental improvement
- Implementation of fresh MEPA regs could result in a few EERs per agency per year, or several dozen to several hundred EERs per year total.
- At worst, more transparency into agency decision-making. At best, dozens of more environmentally-protective alternatives chosen.

Potential – Transparency

- **More transparency into agency data and records**
- Now: antiquated website, some good databases hosted in web portals; PIA (ugh)
- A MEPA Future (for MD's environmental agencies)
  - All electronic data searchable on a unified webpage with multiple data portals
    - Agencies always request data in electronic format. No deliberately evading easy web access
  - All public records are stamped as public or in need of redaction for quick PIA release
- The public is viewed as a partner, not a pest, and a core part of agency mission
  - Requires a cultural shift. Advocates (you) also have a duty to help make this shift.
  - ("a government **OF** the people, **BY** the people, **FOR** the people."

Potential – Public Participation

- **Meaningful public participation**
- Most environmental decisions are made in the rulemaking or permitting process
- Statute establishes certain public participation (min) requirements
  - MEPA gives agencies fresh opportunity to go beyond them
- Primarily, this means 3 things:
  - (1) Meeting the public where they are (social media, not newspapers and libraries)
  - (2) Inviting participation earlier in the process, not when the decision's already made
  - (3) Seeking advice from outside experts, not pretending you are the only expert

Potential – Proactive Consultation

- **Proactive consultation of particularly affected or vulnerable communities**
- Environmental effects are localized and/or have disproportionate affects
  - And agencies know that
- Agencies have the know-how and information to locate communities
- Need to build in this step to the public participation process
- At a minimum, it's requiring signage and add'l interested party notices
  - Better yet, certain actions should trigger community liaison, C/I assessment

Potential – Judicial Consideration

- **More judicial consideration of MEPA's lofty goals**
- Lawyers have a role in reviving this "dead letter" law
- A court doesn't (generally) care if a law is old or new
  - Fresh example: the CRA was a dead letter until Trump revived it to kill a number of environmental and other safeguards
- That lofty language in MEPA is more than just pretty, it's arguably mandatory and at the very least can provide a helpful "gloss" to a relevant claim.

MEPA's Limitations

- MEPA is not NEPA
  - E.g., an EER is not an EIS
  - Refresher: EER = Environmental Effects Report; the state cousin of the federal Environmental Impact Statement (EIS)
- MEPA is not self-implementing
  - And while agencies are required to adopt methods and procedures (regulations), it may be difficult to compel them to
- MEPA (arguably) does not give us any new rights
- Lawyers love NEPA, but not necessarily others
  - MEPA may need to be reimagined and not just reinvigorated

Fit with the MEHR Campaign

- MEPA is not even close to as powerful as the constitutional amendment would be
- But MEPA is a tool in the toolbox that could:
  - Compel greater public participation with agency decision making
  - Demand proactive consultation with affected communities
  - Ensure full transparency of agency information (public records)
  - Provoke agencies to take a hard look at potential environmental impacts
- Each of these aims is achievable through reasonable regulations
- And getting these “on the books” is winnable because the law is on our side

Questions?

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Letter of Support_ MEPA 50th anniversary resolutio
Uploaded by: Phylicia Porter
Position: FAV

CITY OF BALTIMORE

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Councilwoman Phylicia R. L. Porter
District 10

MEMBER:
Public Safety and Government Operations
Education, Workforce, and Youth
Health, Environment, and Technology

Councilwoman Phylicia Porter's Letter of Support for Environmental Human Rights
Senate Education, Energy, and the Environment Committee
March 6, 2023

Senator Brian J. Feldman
Chair, Education, Energy, and the Environment Committee
2 West
Miller Senate Office Building
Annapolis, Maryland 21401

Dear Chair Feldman and Members of the Committee,

I am proud to be writing to urge your support for the passage of SJ0004 on its fiftieth anniversary. For the purpose of Reaffirming the principles, the Maryland Environmental Policy Act of 1973 (MEPA) not only maintains that that every resident of this state has the fundamental and inalienable right to a healthful environment, but also provides all state agencies with certain freedoms and guidelines to "identify, develop, and adopt methods and procedures" to ensure this right is upheld for all Marylanders.

Established during an era significant for its environmental movements and crusaders, MEPA aimed to ensure that the state would hold environmental issues, planning and decision making with the same regard as it does economic and technological considerations. As our nation witnessed growing grassroots movements and the creation of the Environmental Protection Agency, policymakers were charged to acknowledge the importance of taking care of the planet, our home, and with a greater sense of urgency. The passing of the MEPA was Maryland's direct response to that.

While the act has some lofty goals, it's meaningful and careful consideration as to how policymakers should implement guidelines for planning and problem-solving are still necessary. Not to mention how the act maintains education, communication, and awareness for the general public. Fifty years ago, MEPA set the precedent for what the state could and should strive toward.

However for the past fifty years, the State has largely ignored this mandate and failed to develop methods and procedures that would fully implement this right. Along with the rest of the world, Maryland is suffering from a rapidly increasing climate crisis and is in need of actionable environmental and climate change revitalization. More specifically, the communities in the City of Baltimore's Tenth District, which I serve, are disproportionately affected by cumulative impacts on the waterfronts of Curtis Bay, Brooklyn and Hawkins Point. Such close proximity to big factories and exposure to coal dust, airborne emissions and other pollutants have negatively affected the public health and welfare of South Baltimore residents for generations and remains an issue that is at the forefront of the Mayor of Baltimore's agenda and my office in particular. On the fiftieth anniversary of the Maryland Environmental Policy Act (MEPA) I speak for Baltimore City's Tenth District when I say, it is time to fix that.

I am asking for your support of the MEPA@50 Resolution and ask that the Maryland General Assembly reinvigorate MEPA by reaffirming its principles and use them to guide its deliberations. Marylanders deserve an administration that will seriously consider the harsh environmental impacts that residents

face daily by amplifying their voices and leading with a willingness to reorient itself toward environmental justice and climate solutions with a sense of urgency.

Sincerely,

Councilwoman Phylicia Porter, MPH, MSL - District 10
Phylicia.Porter@baltimorecity.gov

anniversary

SJ 4_Maryland Catholics for Our Common Home_FAV.pd
Uploaded by: Robert Simon
Position: FAV

Hearing before the
Senate Education, Energy, and the Environment Committee
of the Maryland General Assembly
March 8, 2023

Statement of Support (FAVORABLE)
of Maryland Catholics for Our Common Home on
SJ 4 - Environmental Human Rights

Maryland Catholics for Our Common Home (MCCH) is a lay-led organization of Catholics from parishes in the three Catholic dioceses in Maryland: the Archdiocese of Baltimore, the Archdiocese of Washington, and the Diocese of Wilmington. It engages in education about, and advocacy based on, the teachings of the Catholic Church relating to care for creation. MCCH is a voice for the understanding of Catholic social teaching held by a wide array of Maryland Catholics—over 350 Maryland Catholics have already signed our statement of support for key environmental bills in this session of the General Assembly—but should be distinguished from the Maryland Catholic Conference, which represents the public policy interests of the bishops who lead these three dioceses.

MCCH wishes to express its enthusiastic support for passage of **Senate Joint Resolution 4- Environmental Human Rights**.

As Catholics, we believe that God's creation and care for vulnerable groups in society as an integral part of our faith, as taught by recent Popes, including the forceful statements of Pope Francis in his 2015 encyclical, entitled *Laudato Si': On Care for Our Common Home*.* Following in the footsteps of Saint John Paul II before him, Pope Francis preached in *Laudato Si'* of humanity's need to undergo an "ecological conversion," defined as a "transformation of hearts and minds toward greater love of God, each other, and creation…a process of acknowledging our contribution to the social and ecological crisis and acting in ways that nurture communion, healing and renewal of our common home." That transformation requires us to "examine our lives and acknowledge the ways in which we have harmed God's creation through our actions and our failure to act" (no. 218).

Fifty years ago, Maryland lawmakers recognized that much harm had already been done, and thus legislators at that time committed the state and its agencies to a new guide for its environmental policies. The Maryland Environmental Policy Act of 1973 (MEPA) was a ground-breaking document. It was composed of two essential elements:

(1) the assertion that "each person has a fundamental and inalienable right to a healthful environment," and
(2) a direction that all State agencies "identify, develop, and adopt methods and procedures" to implement that right.

* The English text of the encyclical, to which the paragraph numbers in the following parentheses refer, can be found at: https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html.

The vision was that, going forward:
(1) environmental amenities and values would be given appropriate consideration in planning and decision-making along with economic and technical considerations;
(2) appropriate alternatives to existing policies, programs, procedures, and conflicts would be studied and considered; and
(3) that the public would be involved, utilizing "the fullest practicable provision of timely public information and understanding."

These were worthy goals, close in nature to the ecological conversion called for in *Laudato Si'*, and might have achieved great gains for Maryland, had the policy statement been crafted into commensurate laws and regulations.

On the 50th anniversary of the Maryland Environmental Policy Act (MEPA), MCCH joins with other faith-based organizations to say it is time to fix that. Senate Joint Resolution 4 asks the Maryland General Assembly to reinvigorate MEPA by reaffirming its principles and using them to guide its deliberations. It calls on the Administration to re-dedicate itself to further the development and implementation of environmental laws, practices, and policies called for by MEPA, for the benefit of current and future generations.

A fully implemented Maryland Environmental Policy Act would:

- create guidelines to help agencies craft and implement appropriate policies,
- promote meaningful processes for public information and participation,
- incorporate environmental justice definitions and processes in decision-making, and
- establish timely processes for keeping permits up to date.

Without a renewed commitment to MEPA's salience and enforcement in caring for our common home, there will continue to be no unified, coherent foundation upon which our State's agencies make their environmental policies, including ways to inform and engage the public, ways to assess environmental justice, and ways to ensure that laws are promulgated and implemented to reflect the central premise that every citizen "has a fundamental and inalienable right to a healthful environment."

We encourage the Maryland General Assembly, along with our new Governor Moore and his administration, to strengthen our environmental policies and laws, better implement those already on the books, and embed protections for public health and environmental justice in all our agencies and decision-making.

Thank you for your consideration of our views and our respectful request for a **FAVORABLE** report on **Senate Joint Resolution 4-Environmental Human Rights**.

2023 SJ0004 FAV Carella MD CEHC Testimony 230308 F

Uploaded by: Veronika Carella

Position: FAV

Maryland Children's Environmental Health Coalition

Rules and Executive Nominations Committee Senator Brian J. Feldman, Chair Senator Cheryl C. Kagan, Vice-Chair 2 West Miller Senate Office Building Annapolis, Maryland 21401 phone: 410-841-3661	March 8, 2023 Hearing **SJ0004** Environmental Human Rights **Support**

INTRODUCTION

Maryland Children's Environmental Health Coalition (MD CEHC) is a group of children's advocates working collaboratively toward improving the lives of children in Maryland. Our coalition works to support and advocate for laws that address children's environmental health and well-being. MD CEHC recognizes the urgent need to address the growing issues surrounding the environment where our children live, play, and attend school. We are specifically concerned about protecting children from known hazards, and preventing new hazards, thus allowing our children to reach their full potential as contributing members of society.

Our Coalition **STRONGLY SUPPORTS SJ0004** for these important reasons. This resolution

- addresses positive health attributes in addition to positive environmental attributes
- clearly and correctly defines Maryland's responsibility to be good stewards of our resources
- clearly and correctly defines Maryland's commitment to human rights under Maryland Law

EMPOWERING ALL MARYLANDERS

We thank you for addressing basic human, environmental and civil rights in **SJ0004**. We strongly support that this resolution will finally recognize through long overdue enforcement of Maryland Environmental Policy Act of 1973 (MEPA) that every person, especially our children, as a matter of basic human dignity, has a fundamental and inalienable right to a healthful, stable environment.

We believe that there is urgency after 50 years of in action in reaffirming the principle enshrined in the Maryland Environmental Policy Act. We believe that every person has the fundamental and inalienable right to a healthful environment; and that the State must rededicate itself, its agencies, and all concerned stakeholders to furthering the development, implementation, and enforcement of any and all existing environmental laws, practices, and policies for the benefit of both current and future generations.

Specifically, State Agencies should engage with experts and advisory councils such as the Commission for Environmental Justice and Sustainable Communities (CEJSC) as well as the Children's Environmental Health and Protection Advisory Council (CEHPAC) who can share their expertise in in writing the definitions of EJ communities, cumulative impacts, as well as providing assistance in defining ways to assess current actions' impacts on future generations (there are models that can help do that) and creating methods and protocols for assessing environmental and health impact. All are necessary to fully implement the regulations necessary for Marylanders to have access to MEPA.

In 1973, the Maryland legislature passed the Maryland Environmental Policy Act (MEPA) which unequivocally recognizes "each person's fundamental and inalienable right to a healthful environment." **This policy has been part of Maryland's codes for 50 years, yet it has been largely ignored because no regulations were ever written by the respective state agencies - a necessary step to implementing this Act.** Why have these regulations not yet been written for an Act that went into effect in 1973?

2023 is the 50th anniversary of the passing of this foundational environmental legislation. It is time to recommit to its principles. We know there is a pivotal connection between the health of our natural resources, including our air, water, and land, and the health of the people and the economy of Maryland. The Maryland Environmental Policy Act - MEPA@50 Resolution encourages the community of state leaders, state agencies, businesses, non-profits, and individuals to recommit to the principles outlined in this Act.

For more information please contact: Pam Wallentiny, MD CEHC Executive Director **email:** Pamela.Wallentiny@mdcehc.org
Veronika Carella, MD CEHC Legislative Director **email:** Veronika.Carella@mdcehc.org
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This Legislature is tasked with ensuring that communities remain sustainable throughout the state – even if they are not yet identified as an EJ community. You have an opportunity to act proactively to prevent harm from to public health and the environment. The goal is to prevent them from becoming an EJ community by protecting the air, water and soil – our natural resources - from known hazards. Ensuring that state agencies adopt the necessary regulations to ensure that MEPA is enacted as written – will provide Maryland another tool to ensure that all communities remain sustainable and that EJ communities can be fully protected under this 1973 Act.

Please codify in regulation that the State is trustee of Maryland's natural resources, including its air, lands, waters, wildlife, and ecosystems, for the benefit and enjoyment of both present and future generations. We look to **SJ0004** as a vehicle to allow best practices and standards to be implemented via this Act thus facilitating the State's efforts to in ensuring Health in All Policies (HiAP)[1].

MARYLAND COMMITMENT TO CHILDREN

The General Assembly has taken action to define in statute (Health Article §13–1501 thru §13–1506)[2] that it recognizes that children in the State face an array of preventable exposures to environmental hazards in their schools, homes, and communities. In certain cases – documented in statute - children are at greater risk than adults for exposure to and possible illness from environmental hazards because children;

i. Have a decreased ability to detoxify certain substances;
ii. Have a greater sensitivity to environmental hazards during the stages of development and growth as a result of their immature body organs and tissues and immature immune systems;
iii. Have different exposure behavior patterns, such as hand-to-mouth behavior, spending a greater amount of time outdoors near hazards, and spending more time on the floor and on the ground where contaminants can concentrate; and
iv. Take in a greater amount of contaminants due to their eating proportionately more food, breathing proportionately more air, and drinking proportionately more fluids than adults.

PROTECTING CHILDREN

The state is currently lacking basic protective measures to ensure that children do not come in contact with known hazardous substances that are currently polluting our air, water and soil – some allowed under existing statute, regulations and policies - which do NOT consider the impact to public health or the environment. We believe regulations for this Act would promote standards not only improve our environment, but also protect our air, water and soil for future generations.

Maryland has a responsibility to our children and future generations to be good stewards of our natural resources, which will help to reduce both asthma, cancer and other health compromises in children and adults. **When we reduce allergies, sensitivities, and negative health impacts, we increase a child's chances of reaching their fullest potential as healthy and productive adults.** This is not only an environmental issue, but a significant public health issue and most definitely a children's health issue and human rights issue.

We support all efforts to protect infants and young children from known hazards which contribute to poor air quality, water, soil and unsafe conditions for Maryland's children. Many of the products used throughout the state contain substances which negatively impact our natural resources, create unsafe conditions, and have the potential for causing harm to growing children. It is prudent and responsible to establish standards to protect all Marylanders, especially children, from coming in contact with known hazards by ensuring they have a constitutional right to such protection.

Maryland parents are also concerned about the health of the watershed including ground water accessed by wells for drinking water in homes and schools. Concern is not only because these are sources of drinking

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water, but also because these are the waterways where their children live, learn and play. The health effects of such exposures as detailed in the Report by the MDE and Maryland Department of Health (MDH) entitled Maryland Children and the Environment[3] are noted in the forward;

"*It is well-recognized that the health of children is directly related to the environment generally and to specific environmental factors…Perhaps no single factor is more important to these efforts than reliable, accurate information that enhances the public understanding and supports the development of effective prevention efforts*".

HJ001 is about meeting the health and environmental protection needs of all Maryland children. The right to this protection needs to be clearly defined in enforceable regulations as indented and outlined in the Maryland Environmental Policy Act of 1973 (MEPA). Maryland as a State should have a primary focus on protection of our residents and our natural resources. This is an important tool in ensuring that protection. Marylanders have waited 50 years for action.

CONCLUSION

Knowledge is power – here the power to protect children and their environment. Parents would be able to know that their child's air, water, and soil is cleaned and safe. Our hope is that Maryland Environmental Policy Act of 1973 (MEPA) will finally be enforce through the necessary regulations so that all, residents and public servants, will opt-in, for the sake of our future: our children. Maryland has the knowledge and expertise to protect our children from known hazards introduced into our environment and an Act to codify our resolve. We support all efforts to protect the most vulnerable, infants and children, from known hazards, which is consistent with your mission.

We hope that the Committee acts swiftly and favorably on **SJ0004**.

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[1] Maryland Health in All Policies Workgroup and Final Report to Governor and Legislature accessed February 15, 2022 at URLs
https://msa.maryland.gov/msa/mdmanual/26excom/defunct/html/20healinall.html website
https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/024600/024610/20200396e.pdf Final Report

[2] Children's Environmental Health and Protection in Maryland Statute accessed February 18, 2022 at urls:
https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=ghg&section=13-1501&enactments=false thru
https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=ghg&section=13-1502&enactments=False&archived=False
https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=ghg&section=13-1503&enactments=False&archived=False
https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=ghg&section=13-1504&enactments=False&archived=False
https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=ghg&section=13-1505&enactments=False&archived=False
https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=ghg&section=13-1506&enactments=False&archived=False

[3] Maryland Children and the Environment; State of Maryland (MDH & MDE);
url: https://health.maryland.gov/phpa/OEHFP/EH/Shared%20Documents/CEHPAC/Report-2008-FINAL.pdf accessed 1/30/22

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SJ0004 Testimony.pdf
Uploaded by: Will Zwart
Position: UNF

Testimony in opposition of House Resolution HJ0004 - William Zwart.

Good afternoon, Honorable Chair and members of the committee,

Is this really necessary?

Of all the priorities and important issues to be addressed by Maryland alone, not to mention the nation at large, reaffirming environmental human rights (which is arguably not actually a right), isn't exactly a priority for most Americans.

Let me ask you this: when was the last time you saw a large crowd blocking roads and waving signs, demanding their legislators reaffirm their "inalienable right to a healthful environment."

Yes, we should take care of the environment, but all this does is say, "yes, we should take care of the environment." It's like that toothpick with the frill on top that restaurants put in sandwiches. It looks nice, and makes you feel like you're getting a good deal, but in the end, it doesn't actually do anything.

I appreciate the sentiment, but this is kind of a waste of time, and shouldn't be sent to the floor, where it will take up a time slot that could otherwise be used for better legislation.

Thank you for your time.