



**C H E S A P E A K E**  
**L E G A L A L L I A N C E**

# 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

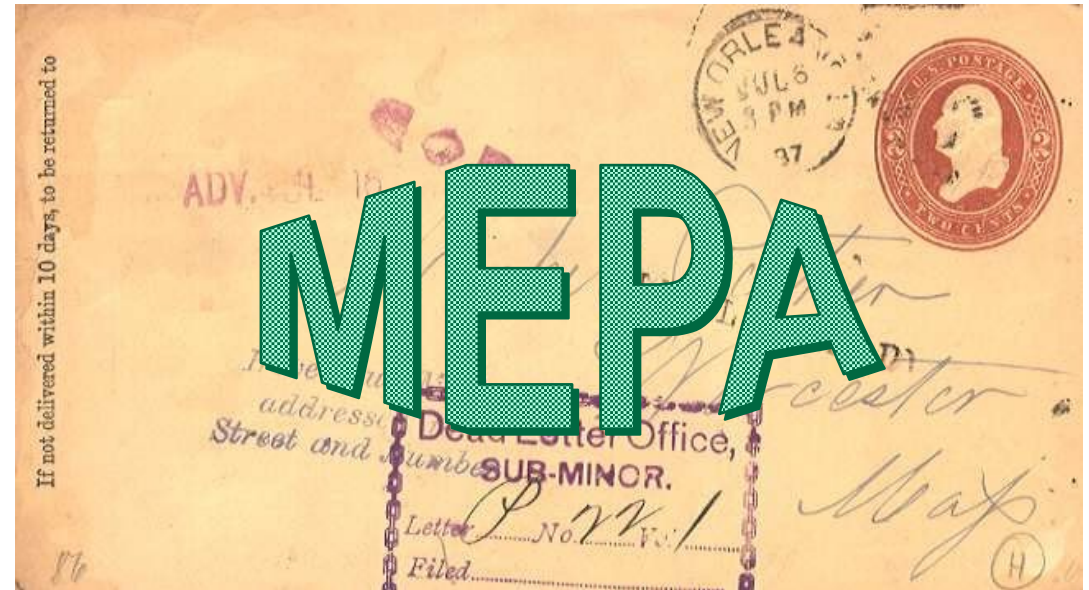


- ▶ The NEPA precedent
  - ▶ Devolved into a requirement that agencies prepare Environmental Assessments and, in many cases Environmental Impact Statements for “major Federal actions significantly affecting the quality of the human environment”
  - ▶ Still a powerful tool for environmentalists
- ▶ MEPA 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?



**Chesapeake Legal Alliance**  
501 Sixth Street | Annapolis, MD 21403  
T: 410-216-9441 | F: 410-216-7077  
[www.chesapeakelegal.org](http://www.chesapeakelegal.org)