ANALYSIS OF PUBLIC COMMENTS ON MICHIGAN DRAFT ENVIRONMENTAL JUSTICE PLAN

PREPARED BY ALIZA COHEN, NATE GAMBILL, FERRIAL LANTON, TAD MACFARLAN, FAIZAH MALIK & RYAN SHANNON
STUDENTS AT THE UNIVERSITY OF MICHIGAN LAW SCHOOL

UNDER THE SUPERVISION OF PROFESSOR SARA GOSMAN

MAY 3, 2010

INTRODUCTION

On December 11, 2009, the Michigan Draft Environmental Justice Plan was released for public comment and posted on the DNRE website. The deadline for public comments was April 9, 2010. During this time, DNRE received a total of 38 comments.[1]

This analysis, prepared by students at the University of Michigan Law School, is designed to help the members of the Environmental Justice Working Group to review the comments and decide how best to proceed with the Plan. The analysis does not adopt a point of view, but rather summarizes the comments received.

The analysis is divided into three components:

(1) A spreadsheet listing each comment, the date on which it was received, information about the commenter if known, a short summary of the comment, and the subject(s) of the comment. The subjects are each chapter of the Plan; generally relevant but not specific to a chapter; and not relevant. This spreadsheet will be helpful as a record of the comments received and their relevance to the Plan.

(2) A detailed spreadsheet that contains the same basic information described above but also lists the main issues in each comment and provides a category, or numeric "code," for each issue related to the chapters of the Plan. The codes can be found in Appendix A to this analysis. This spreadsheet will be helpful for those interested in an in-depth look at the issues raised in the comments, and can be sorted by numeric code to collect all of the comments on any one issue or chapter.

(3) A written summary of the comments received. The summary contains seven parts, beginning with the general comments and those relating to Chapter 1, and then continuing sequentially through the comments for each of the chapters in the Plan. Each part reviews the comments and provides the commenters' recommendations. This summary will be helpful as a written synthesis of the comments on each of the chapters.

The students and Professor Gosman wish to thank Frank Ruswick, Linda Crawford, Bryce Feighner, and Robert Sills of DNRE for their assistance with this project.

[1] There were also two spam emails that are not included in this analysis.

GENERALLY RELEVANT COMMENTS & CHAPTER 1: INTRODUCTION

Introduction

This section of the analysis includes comments and recommendations that were directed at the introductory materials or the proposed Plan or comments and recommendations that were generally relevant but not specific to any particular chapter. There were 30 total comments falling into these two categories.

Review of Comments

Comments speaking to the Plan generally rather than to specific components split about evenly into what could be characterized as positive or negative. We received about five generally negative comments, some expressing concern over property rights or noting that the Plan is not clear enough and will cause uncertainty in the business community. Doug Roberts of the Michigan Chamber of Commerce summarily rejects the Plan, and comments that it will slow economic growth in urban areas and is not in line with the Land Use Leadership Council Report. We also received about five generally positive comments, recognizing either the importance of environmental justice or praising the overall layout of the Plan. Ahmina Maxey of the East Michigan Environmental Action Council supports a strong EJ program, and calls the proposed Plan a first step in effecting such a program. Several comments expressed concerns over the lack of funds available for implementing the Plan. Additional comments include:

- The Plan may end up compensating individuals for moving into areas with polluting facilities.
- Federal funding should be more readily available for state-run EJ Plans.
- Proximity to a pollution source is not akin to increased exposure.
- The Plan will encourage industry to site facilities in rural areas, will cause economic hardship, or will detract from urban revitalization efforts (Brian Kandler, Detroit Regional Chamber; Cynthia Zwick, Michigan Chemistry Council).
- The Plan will cause uncertainty for businesses and reduce key support (Kathryn Ross, Consumers Energy).
- The DNRE should avoid undertaking projects that do not relate to its primary mission (Cynthia Zwick, Michigan Chemistry Council).
- The Plan's definition of EJ is outdated and reflects environmental equity more than environmental justice.
- The Plan will slow the regulatory process and impose additional burdens on business (Jeanne Englehart, *et al.*, Grand Rapids Area Chamber of Commerce).
- For the Plan to be effective, public trust in the mechanisms must be enhanced.

Recommendations

Commenters made a number of recommendations regarding the scope of the Plan and the meaning of "environmental justice." Bunyan Bryant, Director of the Environmental Justice Initiative at the University of Michigan School of Natural Resources & Environment, suggested a detailed definition of environmental justice including consideration of economic factors, health care access, community crime rates, and distributive justice. Other specific recommendations include:

- The Plan should include a list of meaningful but inexpensive steps on which agencies can take immediate action.
- The concept of environmental justice should be expanded to include natural communities as well.
- The Plan should adopt simpler language for improved outreach (Anna Rahtz, Southwest Michigan Planning Commission).
- The effects of carbon pollution should be included in the Plan.
- The Plan should clearly announce that EJ actions will be accomplished within an agency's existing statutory and regulatory authority, and that there is no private right of action created by the Plan (Virginia King, Marathon Oil).
- The Plan should clarify that it does not create new laws or bind the regulated community (Jeanne Englehart, *et al.*, Grand Rapids Area Chamber of Commerce).
- The Plan should commit to engaging with tribes on issues specific to them (Kyle Powys White, Michigan State University).
- The Plan should incorporate formal consultation processes required by accords between tribes and the state, and should address issues identified by the EPA Native American Task Force (Martin Giiwegiizhigookway, Ketegitigaaning Ojibwe Nation).
- MEDC should provide an analysis comparing Michigan's proposed Plan with competing states to avoid undue competitive liability (Cynthia Zwick, Michigan Chemistry Council).
- More emphasis should be placed on partnering with universities and volunteer organizations to increase agency capacity.
- Local governments should have more say in setting specific goals but should work within a state framework.
- Sample action plans should be developed for different types of communities and should include frameworks for public participation.

Conclusion

Comments and recommendations in this area focused on funding and the need to clarify the definition of environmental justice or reinforce the legal effects of the Plan. Comments were fairly diverse. There were about an equal number of generally positive and generally negative comments directed at the Plan as a whole.

CHAPTER 2: PUBLIC PARTICIPATION

Introduction

Comments were categorized within Chapter 2 if they addressed one or more of the following issues:

1. Internal training of agency staff regarding outreach to the public
2. Agency outreach to the public, including translation issues
3. The public comment period for the Plan or future agency guidance regarding the Plan

Review of Comments

Commenters were generally interested in the way existing state agencies will participate in the Environmental Justice program to be implemented by the Plan. Some were worried about the cost of training existing employees, and others thought the Plan should create an independent office of review or at least create staff positions that specialize in Environmental Justice.

Commenters were also interested in what kind of strategies the agencies should use in order to include the public in Environmental Justice issues. Many people approved of the Plan's focus on public outreach. Others had specific suggestions to improve public outreach – which will be listed below. And one commentator thought the cost of implementing the Public Outreach Toolkit will be too high. A primary concern from Michigan's Native American community is that the Plan does not do enough to include tribal governments in the planning process.

The recommendations listed below denote specific statements by commenters. Many commenters made general statements either approving or disapproving of some aspect of Chapter 2.

Recommendations

1. Internal training of agency staff regarding environmental issues:

    a. Officials need to be fully trained and capable of building trust with the public on environmental issues so the public will be convinced that the state really will act in accordance with the Plan. (Dawn Nelson)

    b. Plan should not create any new burdens for existing agency staff because it would be too expensive. (Randall Gross)

2. Agency outreach to public, including translation issues

    a. The Public Outreach Toolkit should include specific tools on how to reach out to populations who speak limited English, perhaps relying on existing community outreach services such as Red Cross or Catholic Relief Services. (Sidney Brown)

b. Wants to be informed via radio or TV about pending action on Environmental Justice issues, specifically information affecting Flint. (Clara Blakely, Okola Nicholson)

c. The Plan's language may need to be simplified or defined so broader populations can understand it. (Anna Rahtz)

d. The Plan should be more specific on what kind of training about public outreach the agency staffs will receive. (Emily Chi, Cybelle Shattuck)

e. The Toolkit should include resources for specifically reaching young people, perhaps through schools. (Emily Chi)

f. Implement a rule that agencies must reach a certain percentage of the affected population using elements from the Toolkit to ensure the elements are utilized effectively. (Cybelle Shattuck)

g. Don't favor online and written communication at the expense of the illiterate population – provide PSA's via television and radio. (Mona Younis)

h. Agencies should be incentivized to create mandatory, measurable objectives in regards to reaching out to the public. (Sidney Brown)

i. Website should be accessible and use visuals; post disparate impact findings and information on the website. (Heidi Phaneuf, Cybelle Shattuck)

j. Make more effort to include local ecclesiastical leaders. (Virginia Jones)

k. Tribal governments should be specifically mentioned in the Plan; state should reach out to tribal communities. (Sally J. Kniffen, Kyle Powys Whyte, Martin Giiwegiizhigookway, Robin Clark)

l. Organize a pre-meeting before public meeting in order to conduct an informal question and answer period. (Mona Younis)

m. Meetings should be held at an accessible place in the affected community. (Mona Younis, Debbie Fisher)

3. The public comment period for the Plan or future agency guidance regarding the Plan

a. Receipt of public comments on the Plan should be acknowledged in some way. (Mona Younis)

b. There should be a public comment period on the draft of the Environmental Justice Handbook. (Virginia King)

Conclusion

Several commenters provided thoughtful and thorough commentary on the Plan. The only concern from industry in regards to public outreach was cost – many worried that implementing the Plan, including the placement of training burdens on staff and the implementation of the outreach toolkit, would stretch budgets too far. From the private sector, most concerns about public outreach involved the fact that existing employees would bear the burden of reaching out to the public and implementing the Plan alongside along with their pre-existing duties. Several people suggested hiring employees solely for the purpose of interacting with the public in regards to Environmental Justice issues. Several commenters also worried that public outreach measures were too vague, and suggested that the Plan include specific goals and incentives for the agencies to contact the highest percentage possible of the affected population.

CHAPTER 3: INTEGRATION INTO DEQ ACTIVITIES

Introduction

Chapter 3 of the Plan discusses Integration of the Plan into DEQ (now DNRE) Activities. The Chapter is broken down into three sections: U.S. EPA Guidance, Current Enhanced Public Outreach, and Environmental Justice Considerations in DEQ Activities. The majority of comments dealt with sub-issues within the third section.

Review of Comments

- *General Comments*

One commenter (Consumers Energy) generally noted that the Plan does not adequately ensure that EJ considerations are integrated into DNRE operations.

- *Current Enhanced Public Outreach*

While many comments were received regarding public outreach, the focus of Chapter 2, two commenters specifically commented on the Current Enhanced Public Outreach section in Chapter 3. *See* Inter-Tribal Council of Michigan (specifically noting that the AQD's model for current enhanced public outreach has the opportunity for improvement with respect to coordinated planning and action with Tribal governments), Younis (noting that "current enhanced public outreach strategies" should be revised such that, as a minimum, outreach procedures should employ a mix of online, print, and at least one collaborative public meeting format).

- *Lack of Funding for Integration of Plan into DNRE Activities*

While many commenters mentioned lack of funding in general, at least two commenters specifically noted how lack of funding relates to DNRE activities. One thought that lack of funding to DNRE is the biggest obstacle to the Plan's implementation (Rep. Tlaib). Another (Michigan Manufacturers Association ("MMA")) thought that the state's scarce resources should not be used to fund several of the initiatives mentioned in Chapter 3, such as development of the EJ Handbook, the Operational Policy, and EJ training for staff.

- *Effect of the Plan Integration on Speed of DNRE Decision-Making*

A great many commenters noted that integration of various components of the Plan into DNRE's activities would add additional layers to or slow down DNRE decision making, particularly permitting. *See* Detroit Regional Chamber ("DRC") (noting that the IWG would create a new layer within the decision-making process), Michigan Chemistry Council ("M. Chem.") (noting that EJ compliance will be an additional part of existing permitting requirements), Consumers Energy (noting that the Plan is duplicative of DNRE's existing statutory and regulatory authority, and stating concern that that permitting may be delayed by prolonged public participation measures and "voluntary" EJ actions to address EJ concerns), Grand Rapids Area Chamber of Commerce ("GRACC") (concerned that the public participation aspect of the Plan would slow down DNRE decision making), Michigan Chamber of Commerce ("MCC") (asserting that the Plan will conflict with the EO creating the new DNRE by slowing the permit process).

Alternatively, some commenters noted that the Plan either would or should yield to other regulations imposing time constraints on agency decision making. *See* Sierra Club (stating that the inability of petitions to effect permitting timelines weakens the petition process), Marathon Oil (noting that the Plan does not have legal authority to alter regulatory permits in any way because the Plan was instituted using an Executive Directive, as opposed to an Executive Order), M. Chem. (suggesting that the IWG may have improper control over permitting process).

- *Effect of Plan Integration on Economic Growth*

Several commenters noted that implementation of various aspects of the Plan into DNRE activities would slow economic growth. These comments focused on ambiguities in the permitting process, but were not exclusively aimed at that DNRE activity. *See* Consumers Energy (concerned that uncertainties in the proposed timeframe for the permitting process may be viewed negatively by business), DRC (asserting that the descriptions of permitting procedures are too ambiguous and will discourage future economic growth), M. Chem. (stating that increased monitoring in EJ communities may frustrate economic development because of increased oversight, and that prioritizing enforcement and compliance in EJ areas will result in less economic development).

- *Effects of Plan on Permitting, Monitoring, Remediation, Incentive Programs, and Sustainable Alternative Agreements*

One commenter (Yanochko) was particularly concerned with how implementation of the Plan will impact future air permit decisions for new or modified facilities. The thrust of his concern is that the Plan does not allow new projects that have very small health impacts and that comply with health-based standards to proceed, in the same way that PSD regulations allow projects to proceed in the context of criteria pollutants. The same commenter wanted to make clear that once voluntary actions become embodied as a permit condition, it becomes mandatory.

Another commenter (Downs) supported the concept of Environmental Impact consideration in siting, and thought that Not In My Back Yard issues should not take advantage of citizens with the least capability to keep such facilities out.

Another commenter (Shattuck) thought that there was a lack of real support for remediation in the Plan, and that remediation programs were likely to get short-changed

Recommendations

- *General recommendations*

One commenter (Younis) mentioned that integration of the Plan into DNRE activities should focus more on the ethical aspects of EJ, and less on legal mandates.

Another (Waste Management) recommended greater collaboration between regulators, communities, and facilities, and a proportional approach within burdened communities so that contributors provide solutions in proportion to their contribution.

Another (DRC) recommended that the Plan focus existing staff resources on facilitating enhanced public outreach as a way to increase public confidence in the DNRE's commitment to environmental protection as well as increase dialogue between the business community and other community stakeholders.

- *Cost-Benefit Analysis*

One commenter (Baker) thought that cost-benefit analysis in DNRE activities should not undervalue environmental and health benefits. Another (M. Chem.) thought that Integration of the Plan itself should be subject cost-benefit analysis.

- *EJ Handbook, Operational Policy, Staff Training*

Several comments were received suggesting greater specificity and clarity with regard to the EJ Handbook, Operational Policy, and staff training. *See* Chi (Plan not specific enough with regard to training), MMA (the Plan should set measurable targets to obviate need for handbooks and guidance), Brown (the state should set clear measurable, mandated EJ targets), Grand Rapids Area Chamber of Commerce (the Plan should clarify its legal effect in reference to the EJ Handbook and Operational Policy). One commenter (Marathon Oil) suggested that the EJ Handbook be subject to a public comment period, and another (Chi) that the authors of the Plan should work with the drafters of the Handbook. Lastly, one commenter (Younis) thought that local community advocates should co-facilitate trainings of agency staff with state and federal employees, including DNRE staff.

- *EJ Coordinator within DNRE*

Several commenters (Chi, Gramlich, Shattuck, Maxey, Harley) recommended that new, full-time EJ positions should be established, rather than give additional responsibilities to existing agency staff. These comments apply to the DNRE EJ coordinator position envisioned by the Plan.

- *Exercising EJ in Practice*

One commenter (Younis) thought that the proposed guidelines for exercising environmental justice principles in practice must be revised to include Environmental Justice Impact Statements ("EJIS"), intradepartmental incentive programs, and an evaluation component for all agencies that adopt an environmental justice plan. The commenter suggests that the EJIS should be required as part of the permitting process, and should consider the precautionary principle.

- *Ensure Efficiency of DNRE*

Commenters who noted that the Plan might slow down DNRE decision-making also recommended that the Plan be altered so that it not do so. *See* DRC (suggesting that the MDNRE should harmonize the Draft with provisions in the DNRE Transition Report that call for a more efficient permitting process), M. Chem. (arguing that the Plan should not delay, inhibit or otherwise frustrate the efforts of businesses to receive approvals or permits in a timely manner), MMA (arguing that the Plan should not add a new layer of bureaucracy, should not affect the efforts of businesses to receive approvals or permits in a timely manner, and should not create any new work for existing agencies). Another

commenter (Tlaib) encouraged community input as an integral part of the process, but recommended that it be implemented in a way that does not negatively impact economic growth or create another layer of bureaucracy.

- *Permitting Process*

One commenter (Community and Economic Development ("CED")) suggested that before public comment on a permit, the division in question should be required to issue a report on other similar permits within 50 mile radius and within state. The same commenter was concerned that the Plan fails to give instruction regarding how public comments are to be addressed in permitting decisions.

- *Incentive Programs and Sustainable Alternative Agreements*

One commenter (CED) found the language referring to Incentive Programs on page 16 of the Plan to be too vague, and thought that the Plan should provide that DNRE shall give priority to grants, loans, and other incentive programs that will benefit EJ areas. Another (Goodman) touched on this same concern (suggesting that the Plan was not detailed enough in explaining how DNRE will provide grant assistance to EJ communities). CED also thought that there might be some inadvertent missing language in attachment 8 on the SAA process.

Conclusion

Commenters were divided over whether the Plan goes too far or not far enough to address EJ concerns. The most comments centered around the effect of the Plan on the permitting process; while some were concerned that the Plan would delay the permitting program, slowing economic growth, others were concerned that the Plan would give way to permitting regulations, sacrificing EJ objectives.

Outside of this debate, commenters gave many suggestions about how EJ activities can be more ably integrated into DNRE activities.

CHAPTER 4: DISPARATE IMPACTS ASSESSMENT

Introduction

Chapter 4 of the Plan discusses the Disparate Impacts Assessment by which the DEQ must determine the minority or low-income areas where disparate adverse impacts exist or are likely to occur. There were approximately 34 statements related to issues encompassed by Chapter 4. While there are several comments that address the methodology of Disparate Impacts Assessment, there were generally two recurring concerns: (1) The lack of procedural detail specified in the Environmental Justice Plan and (2) The dangers of economic strain to developers or industry that are caused by manipulation of identifying EJ areas.

Review of Comments

- *General Comments*

One commenter (Consumers Energy) generally noted that the Plan does not adequately ensure that EJ considerations are integrated into DNRE operations. Another commenter (Robin Clark) has commented that there should be better coordination with tribal governments and rural tribal populations with regard to the Plan.

- *Mechanisms for Assessing Disparate Impact*

There were some concerns (*see, e.g.* comments by Heidi Phaneuf), that the mechanisms for assessing disparate impact should be more narrowly tailored. For instance, it may be more beneficial to consider the implications of disparate impacts within smaller geographic units or tribal communities rather than municipalities. Other commenters, such as Kathryn Ross of Consumers Energy, and Emily Chi of the University of Michigan School of Natural Resources, believe that Disparate Impacts assessments preclude consideration of more pressing concerns, such as potential health impact.

However, keeping with the recurring concerns about overly vague categories used in the Plan, several commenters (i.e. Consumers Energy and the Detroit Regional Chamber) noted that there is no clear definition about the term “disparate impact” or the methods for determining communities that should be properly defined in terms of disparate environmental impact. Some suggestions included a comparison of communities in a way that would highlight disparities. Other suggestions included anecdotal evidence of the living conditions influenced by disparate environmental impacts.

- *Definitions Used in Environmental Justice Draft to Identify Environmental Justice Areas*

Several comments (*see, e.g*. statements made by Jeri LeRoi, Gary Husted, and Emily Baker), thought that the racial criteria used to define Environmental Justice areas were unfairly exclusive. Commenters thought that the scope of EJ communities addressed by the Plan should be included on the basis of non-racial categories of discrimination. Other commenters thought that the Plan should actively consider Native American and Tribal communities within Michigan.

Several commenters, such as Cybelle Shattuck and the Grand Rapids Area Chamber of Commerce, noted that definitions such as "disparate impact," "cumulative impact" and "areas of concern" were extremely vague and need to be better defined. There is also concern that the use of demographic characteristics instead of local factors could lead to large portions of the state being identified as Environmental Justice communities.

- *Use and Non-Use of EJSEAT Tool*

There were several comments expressing concern about the State's use of the EJSEAT tool, particularly its reliance on data pertaining to air pollution burdens. In particular, there is concern that the EJSEAT tool has not been accurately refined as a tool for demography, especially when it comes to mapping small populations that have specific Environmental Justice problems (*see, e.g.* statements by Lael Goodman and Kyle Powys Whyte).

- *Permitting Category Definitions*

There were a few concerns about the threshold criteria that would warrant additional Environmental Justice consideration by the DNRE. In particular, commenters such as Cynthia Zwick of the Michigan Chemistry Council expressed concern that the threshold criteria were too vague and should include input from the business community. There was also worry that that air permits (PTIs) could be used as a tool for manipulating the approval of proposed developments (*see, e.g.* statements by David Yanochko).

Recommendations

- *Disparate Impact Recommendations*

For those statements in support of keeping the categories of potential EJ areas, commenters such as Cybelle Shattuck and Virginia King of Marathon Oil have suggested that the Plan needs to be more detailed about the specific procedures for identifying and comparing areas. There should be a set of agreed-upon definitions for terms that are central to understanding the use of disparate impact assessments. In addition, there needs to be a clearly stated, consistent procedure for assessing disparate environmental impacts in similar communities. Statements made on behalf of the Grand Rapids Chamber of Commerce suggest that areas of concern should be objectively defined and listed. Environmental Justice measures should only be triggered if a project is located in an area of concern and is of major significance.

- *Consultation with Tribal Communities*

Martin Giiwegiizhigookway believes that the Plan needs to incorporate or acknowledge existing environmental agreements between the state and federal governments and tribal communities. There should also be meetings with local tribal communities, who may be victims of environmental discrimination on very local level, and whose presence may go undetected by current demographic tools. Sally Kniffen of the Saginaw Chippewa Indian Tribe has suggested that tribal communities should be identified and included as areas of concern.

- *Refine EJSEAT*

Many commenters, such as Lael Goodman of the University of Michigan, feel that the EJSEAT tool should not be used until it is more thoroughly refined.

Conclusion

On one end of the spectrum, commenters thought that the Plan should avoid racial and economic considerations because they might impede economic development while ignoring other concerns, such as health and safety or the need for economic improvement in the state of Michigan. On the other end of the spectrum, there are several comments that demonstrate the belief that the Plan should be more specific in the way that it defines certain terms and in the way that it envisions the execution of voluntary procedural mechanisms.

CHAPTER 5: INTERDEPARTMENTAL INTEGRATION

Introduction

In comparison to other chapters of the proposed EJ Plan, there were relatively few comments directed at interdepartmental integration. While we initially expected more comments regarding membership on the advisory council or the training of agency staff to be sensitive to EJ issues, comments instead focused on mechanisms for ensuring agency accountability and other IWG activities. A total of 14 public comments were submitted regarding interdepartmental integration. Roughly half of these expressed concerns but made no recommendation. The remaining comments included at least general recommendations for changing the Plan.

Review of Comments

There were several comments, including one from Susan Harley of Clean Water Action, praising the IWG and the development of inter-agency toolkits as well-conceived ideas. Other comments expressed the following concerns:

- There is no express meeting schedule for the IWG
- The IWG and its guidance must be strong enough to withstand political pressure and have strong executive support.
- Placing department heads on the IWG may cause implementation to become political.
- Agency accountability is an especially important function of the IWG (State Representative Rashida Tlaib).
- The Plan creates a new regulatory layer and more work for state agencies (Brian Kandler, Detroit Regional Chamber; Randall Gross, Michigan Manufacturers Association).
- Adequate funding and power for EJ staff is essential.
- The Plan does not acknowledge economic constraints on the state and should not create work for activities done as part of the regulatory process (Randall Gross, Michigan Manufacturers Association).
- More specificity as to individual agency action plans is necessary for meaningful integration of EJ principles into department activities (Kathryn Ross, Consumers Energy).
- Designating the Governor's environmental policy advisor as the EJ coordinator will provide an important single point of contact (Cynthia Zwick, Michigan Chemistry Council).

Recommendations

Several recommended the creation of dedicated positions charged solely with carrying out the EJ Plan. Ahmina Maxey of the East Michigan Environmental Action

Council, Jean Gramlich of the Michigan Chapter of the Sierra Club, and Susan Harley of Clean Water Action recommended creating distinct offices for the EJ Coordinator and Advocate rather than relying on dual appointments. Other comments similarly recommended creating an Office of Environmental Justice separate from the DNRE to avoid inter-agency tensions or creating a separate task force to oversee communication and progress. Other recommendations include:

- The IWG should work more closely with other interagency groups and federal-state tribal groups concerned with environmental issues (Sally Kniffen, The Saginaw Chippewa Indian Tribe).

- Funding shortages could be closed by relying on university research and creating an "EJ Corps" of volunteers to assist the EJ Coordinator and Advocate.

- IWG benchmarks for interdepartmental integration should be made more specific in the EJ Plan.

- The Plan should clarify that the IWG cannot add additional elements to permits, contravene the permitting process or exceed existing law (Cynthia Zwick, Michigan Chemistry Council).

- The advisory council should have an active role and hold frequent meetings to ensure stakeholder support for IWG implementation (Susan Harley, Clean Water Action).

Conclusion

Most comments (but not all) can be broadly sorted into two related categories. The first category expresses concern regarding funding or executive support. The second category, which comes primarily from individual members of the public or representatives of environmental interest groups, recommends the creation of separate and distinct apparatuses for environmental justice integration across state agencies, rather than relying on dual appointments of DNRE officials.

CHAPTER 6: PETITION PROCESS

Introduction

The petition process established in this Chapter was identified as the best way to meet the Executive Directive mandate to include mechanisms for "members of the public, communities, and groups to assert adverse or disproportionate social, economic or environmental impact upon a community and request responsive state action." If structured properly, the process can ensure that affected individuals and affected communities have a voice in the process and are able to provide "feedback to departments regarding the impacts of environmental decisions."

Comments recognized the importance of the issue, but expressed doubts that the petition process outlined would meet the goals of the Environmental Justice Plan, particularly given the State of Michigan's limited resources. Others expressed concerns about impacts that the petition process would have on existing project timelines. Recommendations were generally aimed at addressing concerns about implementation of the process, raising community awareness of the process, and changing the threshold requirements for community petitions.

Review of Comments

- *Recognizing Importance of Petition Process*

Comments generally recognized the importance of the petition process as "essential to hearing the voices of the affected communities" (Clean Water Action) and "the only true opportunity [for residents of minority and low-income communities] to have a voice." (State Representative, Rashida H. Tlaib). One comment defined involvement of community members as one of the "core principles" of environment justice. (Waste Management) Despite its import, one commenter criticized the process for placing "most of the burden for redress on the victims or would be victims." (Sierra Club)

- *Criticism of Choice of Petition Process*

Some comments expressed disapproval over the EJ Plan's choice of a petition process over other procedural options, either because the DNRE lacks the appropriate regulatory authority (Marathon Oil, Cybelle Shattuck, Benjamin Johnson) or resources (Grand Rapids Area Chamber of Commerce, Cybelle Shattuck) to implement the petition process. Comments also cited the fact that the New Jersey petition process, upon which Michigan's process was based, was discontinued because of lack of resources, a problem which Michigan will likely face as well. (Grand Rapids Area Chamber of Commerce, Marathon Oil, Lael Goodman).

- *Disapproval of Petition Form Requirements*

Commenters disapproved of the form requirements for petitions. Many felt that the EJ Plan set too low of a threshold for petition approval, and that 50 signatures did not impose enough of a burden on an affected community given the delay that the petition could cause. (Michigan Chamber of Commerce, Grand Rapids Area Chamber of Commerce, Michigan Chemistry Council) One commenter thought that 50 signatures was sufficient, but objected to the fact that up to 25 of those signatures could come from without the affected community, since that would be insufficient to show that a concern

exists "within the community." (David Yanochko) Another brought up that the "Form and Requirements for a Petition" section did not include a requirement that the parties signing on to the position have some standing to bring the complaint. (Michigan Chemistry Council) Others felt that the number of required signatures should vary, depending on the affected community. (Michigan Chemistry Council) One commenter agreed, adding that the requirement for 50 signatures would impose too much of a burden on some communities, particularly rural ones with insufficient population density to reach the critical 25 affected members. (Emily Chi).

- *Impact of Petition Process and Existing Project Timelines*

Commenters were also concerned about the impact of the petition process on existing project timelines. Some emphasized that it be essential for any petition process to not interfere with existing timelines for approval of permits (Michigan Chamber of Commerce, Michigan Manufacturers Association, Michigan Chemistry Council), while others doubted that the petition process could be effective without reconsideration of project timelines (Sierra Club, Emily Chi, Lael Goodman).

- *Comments on Scope of Issues Addressed by Permit Process*

Some commenters felt that the scope of issues addressed by the permit process was too narrow, and should include ways to address existing problem areas (David Yanochko), as well as permit enforcement, permit renewals, and expansion of existing permits. (Sierra Club) Other commenters felt that the petition process did a good job "including a process for petitioning departments regarding new issues or problems that fall outside the scope of the list of project permits." (Clean Water Action) One commenter felt that economic impact should not be included as part of the evaluation process for accepting a petition. (Benjamin Johnson)

Recommendations

- *Consider Other Types of Processes*

To address concerns that DNRE lacks the resources to implement the petition process, one comment suggested that the EJ working group review strategies used in other states that are sustainable considering the current economic climate in Michigan. (Grand Rapids Area Chamber of Commerce) In response to concerns that DNRE lacks the regulatory authority to implement the petition process, comments also suggested elimination of the petition process altogether, or, in the alternative, a statement clearly defining the scope and reach of the work plan (such as: "The actions mandated as a result of the Executive Directive and the EJ Plan shall be accomplished within the bounds of, and consistent with, the relevant agency's existing statutory and regulatory authority.") (Marathon Oil) One commenter suggested addressing resource issues by splitting the work between two coordinators or "including an explicit statement about what resources this coordinator might have access to in order to best serve potential environmental justice community." (Lael Goodman)

- *Project Timelines*

One commenter urged reconsideration of the clause regarding existing project timelines. Though environmental justice should not be used as a means for delaying a

project, the Plan could provide timelines for review of petitions to ensure the interests of the permittee and the community are both met. (Lael Goodman)

- *Limiting Responses*

One commenter felt that the Plan should emphasize that "any proposed action plan should not require state agencies to take action beyond their state and federal requirements." (Michigan Chemistry Council)

- *Increase Inclusion and Availability*

Some comments emphasized that, to be available to laypeople, the rules and expectations of the petition process should be clearly spelled out through "action plans, implementation timelines, and descriptions of resources available." (State Representative Rashida H. Tlaib) One suggested review of the current petition process "to ensure inclusion of all." (East Michigan Environmental Action Council)

- *Allow for Communities To Follow Up after Rejection*

Two commenters suggested that the IWG provide names and contact information to groups whose petitions had been rejected so that the communities could know who was accountable and hold them to a higher level of conduct, even without IWG support. (Mona Younis, Lael Goodman)

- *Provide for Alternate Avenues*

To address concerns that the threshold petition requirement might not be adequate to address the needs of rural communities, one commenter suggested that the Plan should provide for alternate ways for a community to bring an issue to DNRE's attention. (Emily Chi) Another commenter suggested requiring a "supermajority" of community members to sign on to petitions, or requiring that petitioners establish at least a "rational connection or stake in the outcome of the proposed project." (Michigan Chemistry Council)

- *Consider Input from Tribal Governments*

One commenter suggested that the "Response to Petitions" section include language indicated that the IWG should take into account the work of federal-state tribal governments and interagency groups. (Saginaw Chippewa Indian Tribe)

- *Raise Awareness of EJ Issues*

One commenter noted that the emphasis on attempts to resolve matters informally through the petition process should not completely foreclose the use of formal proceedings and legal actions, which may have the benefit of bringing media coverage and public awareness to the environmental justice issue. (Emily Chi) Another commenter suggested posting petitions publicly on the DNRE website, even before the petition is reviewed, as a way to raise public awareness of the issue. (Lael Goodman)

Conclusion

The comments addressing the petition process reflect the importance that the process has to the environmental justice framework as a whole, as well as the difficulties

in ensuring that the process respects the needs of both the impacted communities and the regulated entities. These difficulties are exacerbated by the limited resources currently available to the State of Michigan, as well as the limited authority granted to various entities tasked with implemented the EJ Plan.

CHAPTER 7: ROLE OF LOCAL UNITS OF GOVERNMENT

Introduction

Chapter 7 discusses the role of Local Units of Government (LUGs) in meeting the goals of the Executive Directive. In total, there were 14 comments relating to LUGs. Comments centered on three issues: (1) public participation, (2) implementation, and (3) funding.

Review of Comments

Public participation: Comments affirmed the importance of public participation and the crucial role LUGs can play because of their local relationships, expertise and knowledge. However, comments differed on the level of public participation that should be sought.

- Local governments are crucial in the environmental justice efforts of the state. (Lael Goodman, Graduate Student)

- Local governments can facilitate community involvement. (Emily Baker, Graduate Student)

- The Plan will encourage the community to participate more and feel satisfied with outcomes. (Anonymous resident at Flint meeting)

- The role LUGs play depends heavily on their specific capacities and interests in organizing the community around public input sessions. (Mona Younis, Graduate Student).

- Increased public participation could slow down agency decision-making and delay development activities. (Grand Rapids Area Chamber of Commerce).

- The Plan lacks specific outreach to limited English-speaking populations (Sidney Brown, Graduate Student) and Tribal populations (Kyle Powys Whyte, Visiting Assistant Professor, MSU).

Implementation: Several comments raised concerns about how the Plan would be implemented by LUGs.

- This Plan is a fairly new initiative and it is unlikely that many local governments will have the expertise to be able to fulfill all the suggestions outlined in the chapter. (Lael Goodman, Graduate Student)

- The Plan creates too many new rules, while discounting the laws already in place that govern the decisions made by local elected officials, such as zoning ordinances. (Brian Kandler, Detroit Regional Chamber)

- The participation of local units of government can be valuable as long as it doesn't add another layer to the permitting process. (Cynthia Zwick, CEO, Michigan Chemistry Council)

Funding: A couple of comments raised the issue of funding constraints for LUGs.

- Funding should serve as an incentive for LUGs to implement the Plan. (Cybelle Shattuck, Graduate Student)

- The Michigan Constitution prohibits the state from imposing unfunded mandates on LUGs. (Grand Rapids Area Chamber of Commerce)

Recommendations

- Local governments can facilitate involving the community by setting up the basic framework and allowing communities to set more specific details, goals, and terms. (Emily Baker, Graduate Student)

- LUGs and community organizations should establish local environmental justice networks. They may need to rely on volunteers in the face of funding concerns. (Mona Younis, Graduate Student).

- Plan should commit to future engagement with Tribal communities based on EJ concerns that are specific to them, particularly in the section on local government. (Kyle Powys Whyte, Visiting Assistant Professor, MSU)

- Steps should be taken to ensure that industry doesn't overshadow citizens in public meetings. (Emily Chi, Graduate Student)

- There should be increased media exposure about pending votes and local EJ issues through public radio and television. (Clara Blakely and Okola Nicholson)

- The state government should hold training sessions for local officials, similar to what is outlined in the Build Capacity section on page 15. (Lael Goodman, Graduate Student)

- Health data should be collected in smaller geographic units than municipalities or counties and should be made publicly available on the web. (Heidi Phaneuf)

- Funding to LUGs should be contingent on their compliance with EJ issues. (Cybelle Shattuck, Graduate Student)

Conclusion

Comments on this chapter reflected a tension on the proper amount of LUG involvement. On one hand, many of the comments affirmed the importance of LUGs in

outreach to communities and recommended the expansion of efforts currently in the Plan. On the other hand, some comments, notably from the business community, expressed concerns about LUG implementation capacities and funding constraints.

APPENDIX A: CODES FOR DETAILED SPREADSHEET

Presented below is the list of categories or "codes" used to sort public comment on the draft Environmental Justice Plan in the detailed spreadsheet, with an explanation of the code. The codes are organized by chapter of the Plan.

Chapter 1: Overview

0101 Purpose of Plan

Comments on the purpose of the Plan, including the direction given by the Governor's Executive Directive and the definition of environmental justice.

0102 History of Environmental Justice

Comments on the history of environmental justice in Michigan and nationally.

0103 Development of Plan

Comments on the process by which the Plan was developed by the working group.

0104 Constraints on Implementation

Comments on constraints to implementation identified in the Plan, such as the state of the economy, institutional awareness of environmental justice, and political and public acceptability.

0105 Potential Impacts on Economic Development

Comments on the impacts the Plan could have on economic development, both positive and negative.

Chapter 2: Public Participation

0201 Internal Training Burdens on State and Local Agencies

Comments that do not fit easily into 2.1.1 but are still related to concerns about personnel training.

02011 Budget Appropriations

Comments related to whether an agency will be able to afford (in any sense of the word) the additional training encouraged by the Plan.

0202 Translation Requirements

Concerns or questions about translating documents, notices, or meetings into languages besides English.

0203 Outreach to the Public

Comments that do not fit easily into 02031, 02032, or 02033 but are still related to the relationship a government agency should be developing with the public in regards to the Plan.

02031 Online Access to Relevant Materials

Any comments that mention posting materials online or establishing and maintaining a website.

02032 Community Leaders

Comments that mention how agencies should find or interact with leaders of any community.

02033 Public Meetings

Comments that mention anything about the proper time, place, frequency, structure or agenda of meetings held by a government agency in regards to the Plan.

0204 Public Comment Periods for Revisions

Comments or concerns about the plan to provide notice and comment periods for each revision of the Plan.

Chapter 3: Integration into DEQ Activities

0301 EPA Guidance Documents

Comments relating to EPA's guidance documents on Environmental Justice, including deviations of the Plan from EPA's guidance.

0302 Inability to Fund EJ Integration

Comments relating to the inability of DNRE to integrate the Plan into its activities because of a lack of funding or resources.

0303 The Operational Policy, the EJ Handbook, and Key Staff Training

Comments relating to the Operational Policy that DNRE will develop, the EJ Handbook that will allow DNRE staff to recognize how the Operational Policy relates to their day-to-day activities, and the training that key DNRE staff should undergo to build capacity for understanding and implementing EJ principles.

0304 The EJ Coordinator

Comments relating to the identification and role of the EJ Coordinator.

0305 Information Mechanisms

Comments relating to the various mechanisms envisioned by the Plan to make information available to interested parties and the public at large, including the DNRE website, Fact Sheets, and the Regional Environmental Outreach Team.

0306 Coordination with the Department of Community Health

Comments relating to coordination with the Department of Community Heath in assessing public health issues associated with environmental impacts.

0307 Integration of the Plan into Particular DNRE Activities

Comments relating to specific implementation measures.

03071 Permitting

03072 Compliance and Enforcement

03073 Remediation

03074 Incentive Programs

03075 Pilot "Sustainable Alternative Agreement" Process

0308 The Legality of Integrating the Plan into DNRE Activities

Comments relating to the legality of integrating the Plan into DNRE activities. This may include potential conflicts with the U.S. Constitution, Title VI, EPA Title VI regulations, the Michigan Constitution, state environmental statutes, and state regulations.

Chapter 4: Disparate Impacts Assessment

0400 Disparate Impacts Assessment

General comments.

0401 Mechanisms for Assessing Disparate Impact

Comments related to the determination of disparate impact areas, including methodology and financial limitations inherent in the process of designating Disparate Impact areas.

0402 Definitions Used in EJ Draft to Identify EJ Areas

Comments that take issue with the definition of Environmental Justice areas in the Plan.

0403 Use (and Non-Use) of EJSEAT Tool

Comments that are concerned with Michigan's evolving use of EJSEAT mapping and demographics.

0404 Permitting Category Definitions

Statements that relate to "what gets in and what gets out" of the types of permits and threshold criteria that would require additional consideration by the DNRE.

Chapter 5: Interdepartmental Integration

0501 Alternative Working Group Structures

Comments relating to the hierarchy of the working group, its meeting schedule, and the governor's role in review of IWG.

0502 Agency Accountability

Comments related to the speed or review of implementation of EJ plans at agencies other than the DNRE and the IWG's role in identifying and recommending goals at those agencies.

0503 Interdepartmental Working Group Membership

Comments suggesting changes or additions to IWG membership.

0504 Role / Membership of EJ Advisory Council

Comments related to the composition of the EJ Advisory Council.

0505 Training and Education at Other Agencies

Comments related to the assistance of IWG to agencies implementing their own EJ plans and the methods of training.

0506 Other IWG Activities

General comments or miscellaneous comments not covered in 0501-0505.

Chapter 6: Petition Process

0601 Introduction/Purpose

Importance of petition process, ideas behind it, general concerns.

0602 Why Choose Petition Process?

The Plan outlines various state and Federal approaches complaint processes and settles on a petition process. Comments may questions this choice or provide other alternative models.

0603 Elements of Successful Petition Process

The Plan outlines six elements for a successful petition process. Comments and questions may challenge the selection of elements or provide an alternative framework.

06031 Organization

Comments may be directed towards the efficacy of the organizational arrangement, including the need for support at the highest level of state government, the role of the IWG, and the EJ advocate.

06032 Forms and Requirements for Petitioners

Comments may be directed towards statement/signature requirements, the role of the advocate, and role of existing mechanisms.

06033 Consideration of Petitions

Comments may be directed to the interaction with EJ petition consideration and other project timelines, role of public input, the factors for consideration, and the lack of appeal (among other things).

06034 Response to Petitions

Comments may be directed to development and implementation of action plan, as well as a community's right to ensure progress is being made on the plan.

06035 Dissemination of Information

Comments relating to state government web site, fact sheet distributed to communities, and IWG annual progress report; comments may suggest other means of dissemination.

06036 Implementation

Comments related to how and whether elements of final petition process will be implemented by Executive Order.

Chapter 7: Role of Local Units of Government

0701 Proper Role of Local Units of Government

General comments about the proper role of LUGs in meeting the needs of their local communities and in meeting the goals of the Executive Directive.

0702 Assisting Community Groups on EJ Issues

Comments relating to the establishment of processes to assist community groups in receiving resources (i.e. funding, technical assistance, and educational information) to empower them to identify and address their unique environmental justice concerns.

0703 Assessing and Eliminating Disparities

Comments relating to how LUGs can identify, assess, and eliminate disparities at a local level, including:

07031 Public Participation

Comments about participation of the public in the LUG agency decision-making process, such as the use of public hearings and public notice requirements.

07032 LUG Actions

Comments relating to LUG actions directly, such as collaboration between LUGs and the state in permitting and licensing decisions and revision of local codes and zoning ordinances.