

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY ENVIRONMENTAL JUSTICE WORK GROUP

JANUARY 12, 2009

MDOT HORATIO S. EARLE LEARNING CENTER

STATE SECONDARY COMPLEX, DIMONDALE

1:00 -4:00 PM

Attendance:

- Steven E. Chester, Director, Michigan Department of Environmental Quality
- Harold Core, Office of Public Affairs, Michigan Department of Civil Rights
- Sylvia Elliott, Office of Legal Affairs, Michigan Department of Civil Rights
- Bryce Feighner, Air Quality Division, Michigan Department of Environmental Quality
- Lisa Goldstein, Executive Director, Southwest Detroit Environmental Vision
- Sara Gosman, Lecturer, University of Michigan Law School
- Randy Gross, Regulatory Affairs, Michigan Manufacturers Association
- Abed Houssari, Manager, DTE Energy
- Brian Kandler, Detroit Regional Chamber
- Shawn Kimmel, Detroiters Working for Environmental Justice
- Tom Martin, Director of Policy and Legislative Affairs, Michigan Department of Labor & Economic Growth
- Paul Mohai, Professor, University of Michigan School of Natural Resources
- V. Stacy Muniz, Office of the Director, Michigan Department of Civil Rights
- Lori Noblet, Michigan Department of Transportation
- Oladipo Oyinsan, Michigan Department of Environmental Quality
- Linda V. Parker, Director, Michigan Department of Civil Rights
- Frank Ruswick, Senior Policy Advisor, Michigan Department of Environmental Quality
- Raymond Scott, Detroit Department of Environmental Affairs
- Robert Sills, Air Quality Division, Michigan Department of Environmental Quality
- Pamela Smith, Saginaw County Dept. of Public Health
- Sara Smith, Office of Great Workplace Development, State of Michigan
- Brad van Guilder, Organizer, Ecology Center
- Olatunbosun Williams, Michigan Department of Transportation
- Donele Wilkins, Detroiters Working for Environmental Justice

I. WELCOME & LOGISTICS

The meeting was called to order at 1:08 p.m. by facilitator Sara Smith.

II. VALIDATE MEETING MINUTES

The minutes of the November 10, 2008 workgroup meeting were approved as presented.

Frank Ruswick took several minutes to remind everyone that a draft letter is available to send to potential Resource Group members. This letter will go out under Director Steven Chester's signature. Mr. Ruswick asked that names and contact information for nominees to the Resource

Group be turned in no more than two weeks from today's meeting.¹ Director Chester reiterated the value of the resource group to the end work product of the larger group.

III. REVIEW HOW TO INCORPORATE PUBLIC INVOLVEMENT RECOMMENDATIONS

Director Chester quickly reviewed the Public Involvement handout. He reminded members of ongoing budget constraints on State government that might impact the resources available to the Resource Group and public involvement, in general. While the workgroup is not legally required to seek out public input on the EJ policy, in the long run it is advantageous to do so.

Potential sources for cooperative funding or resource sharing to accomplish the EJ policy work include public or private foundations and the U.S. Environmental Protection Agency. In fact MDEQ is planning to apply for funds from the USEPA Region 5 for an unrelated project, but it's possible funds might be available for EJ demonstration projects. Director Linda Parker mentioned that she has contact information for the Kresge Foundation, which has funded other environmental projects.²

IV. SUB TEAM PRESENTATION – DISPARATE IMPACT

Definitions of disparate impact differ according to who is doing the defining, but the following questions help form a basis for discussion: Does defining environmental justice disparate impact help to avoid problems? Can it be approached proactively? Is it meant to be preventative? Does it respond to complaints? Determine remedies? Address legacy issues? Account for cumulative impacts? Determine trends? Where does the precautionary principle fit in? Where does the value of healthy community indicators come in?

Must discrimination exist for disparate impact to exist? From a legal perspective, any practice that is neutral on its face but can become discriminatory by its application. Under Title VI section 601 private parties can bring suit, but it requires proof of discrimination. Sec. 602 does not allow private right of action. So, Title VI is not very productive, and courts have not been helpful. 42 USC 1983 allows private cause of action (in some jurisdictions) but federal courts dispute whether or not there is recourse under this action.

However, the concept of environmental justice is built into our EJ directive, so what about focusing on high priority areas? U.S. EPA Region 5 is using the Environmental Justice Strategic Environmental Assessment Tool method (EJSEAT) based on 18 indicators of environmental risk and demographic characteristics, health, violations and enforcement indicators. Some available data is better than others, but each set of data may reflect different reporting dates, which begs the question how does the data reflect the current state of environment affairs? Can this workgroup come up with more or better data to implement criteria? Can the concept of "what is a model community?" be incorporated into the EJ policy?

¹ Action Item: Review Resource Group recruitment letter and submit names and contact information of potential Group members to Frank Ruswick no later than January 26, 2009

² Action Item: Director Linda Parker will forward contact information for the Kresge Foundation to Director Chester.

How does an EJ policy impact economic interests of communities? How are conflicts or discrepancies dealt with, for example, federal DOT and EPA differences on the emissions measurement impacts?

Clearly, more research is needed to learn about EJ policies in other states. Pennsylvania, for example, focuses on ‘areas of concern’ and incorporates a geographic distance perspective when identifying environmental justice issues. Several documents were recommended for additional background information.³ Additionally, participation from all this workgroup’s members is crucial, including the members from Community Health and MSHDA.⁴

Finally, the workgroup’s recommendations should always include plans for sustainability and should be framed as a positive guides rather than negative discouragement.

Director Chester asked the sub team to continue their work and plan to have their final report ready for the larger workgroup at the July 2009 meeting.⁵ He would also like to aim for the completion of the final EJ Policy by October 1, 2009.

A draft Public Involvement plan was handed out for review.⁶ Public comment is valuable because it confirms inclusivity and will help to make the final product more comprehensive. To insure that the public has a wide window of opportunity to comment on the (proposed) EJ policy, the document should be available in as many public places for viewing as possible, such as in OP/ED articles, public and internal websites (where appropriate) and in other local publications or media outlets that reach the greatest number of people, especially those people who would not normally visit traditional posting areas (State buildings, etc.)

V. SUB GROUP ASSIGNMENTS AND DIRECTION

Members affiliated with the following component sub groups to advance the work of the workgroup (a * indicates tentative Group Leader):

Disparate Impacts: Bryce Feighner*, Abed Houssari, Sylvia Elliott, Donele Wilkins, Olatunbosun Williams, Paul Mohai

Federal Requirements: this should be integrated into every sub group

³ Document references: *Environmental Justice for All - A Fifty State Survey of Legislation, Policies and Cases Third Edition* available at http://www.uchastings.edu/site_files/plri/EJ2007.pdf; *Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice*, available at <http://www.earthjustice.org/library/reports/us-commission-on-civil-rights-report-on-environmental-justice.pdf>;

⁴ Action Item: The EJ member(s) from Michigan Department of Community Health and the Michigan State Housing Development Authority are encouraged to contribute information on disparate impacts on health and housing.

⁵ Action Item: The Disparate Impacts sub team will continue to research EJ policies of other states, evaluate and incorporate input from other workgroup members on disparate impacts and be ready to present a final product to the workgroup at its July 2009 meeting.

⁶ Action Item: Review the “DRAFT Environmental Justice Working Group Public Involvement” handout prior to the March meeting.

Inter-Departmental Integration: Brad Van Guilder, Tom Martin*, Olatunbosun Williams

Integration into DEQ Activities: Frank Ruswick*, Randy Gross, Tom Martin, Bryce Feighner, Brian Kandler

Monitoring: to be discussed later

Petitions Process: Sara Gosman*, Dipo Oyinsan

Public Participation: Pamela Smith, Lisa Goldstein, Steven Chester, Bryce Feighner, Shawn Kimmel, Lori Noblet, Harold Core

Role of Local Units of Government: Chuck Hersey*, Ramond Scott, Pamela Smith, Dipo Oyinsan

Each sub group will meet to discuss their component. The groups will research and make the appropriate recommendations to the entire EJ workgroup. Those EJ workgroup members that were not present need to sign up for one of the sub groups. Please contact the Group Leader and Sara Smith of your decision.

Director Chester asked the sub teams to plan to have their final report ready for the larger workgroup at the July 2009 meeting.⁷ He would also like to aim for the completion of the final EJ Policy by October 1, 2009.

Each sub group can make suggestions for Guest Speakers at upcoming meetings, such as EPA representatives or other Resource experts as appropriate to their group and topic(s). Each sub group will give status reports at each of the next two meetings (March and May).⁸ To facilitate participation and for the convenience of presenters, it was suggested that a video/tele-conference be implemented at the March meeting.⁹

VI. NEXT MEETING TOPICS

- Finalize the Resource Group
- Finalize the How to Incorporate Public Involvement within the Workgroup
- Speaker will present on
- Each sub group will report on status and bring any questions they may have for the Workgroup.

⁷ Action Item: The Disparate Impacts sub team will continue to research EJ policies of other states, evaluate and incorporate input from other workgroup members on disparate impacts and be ready to present a final product to the workgroup at its July 2009 meeting.

⁸ Action Item: Each sub group should be prepared to report its work at each of the next two meetings in March 2009 and May 2009.

⁹ Action Item: Donele Wilkins volunteered to find locations for a video and/or tele-conference site in the Detroit area for the March 2009 meeting. She will contact Frank Ruswick and/or Sara Smith with that information.

VII. NEXT STEPS AND REVIEW THE DAY

Lisa Goldstein mentioned the proposed bridge construction over the Detroit River, and asked if it could be used as a case study in further discussion of this workgroup. Director Chester agreed that it could be valuable to follow the progress of that project.

Director Parker announced that this was her last meeting with the workgroup, since she is leaving the Michigan Department of Civil Rights to become a judge in the Wayne County court system.

ACTION ITEMS

- Members should review the (draft) Resource Group recruitment letter and submit names and contact information of potential resource group members to Frank Ruswick no later than January 26, 2009
- Director Linda Parker will forward contact information for the Kresge Foundation to Director Chester.
- Background documents for reference and mentioned in this meeting are:
Environmental Justice for All - A Fifty State Survey of Legislation, Policies and Cases (Third Edition) available at http://www.uchastings.edu/site_files/plri/EJ2007.pdf and
Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice, available at <http://www.earthjustice.org/library/reports/us-commission-on-civil-rights-report-on-environmental-justice.pdf>;
- Workgroup members from Michigan Department of Community Health and the Michigan State Housing Development Authority are encouraged to contribute information on disparate impacts on health and housing.
- The Disparate Impacts sub team will continue to research EJ policies of other states, evaluate and incorporate input from other workgroup members on disparate impacts and be ready to present a final product to the workgroup at its July 2009 meeting.
- Members should review the “DRAFT Environmental Justice Working Group Public Involvement” handout prior to the March meeting.
- Members should sign up for a Subgroup. Contact the Group Leader for inclusion.
- Each sub group should meet and be prepared to report its work at each of the next two meetings in March 2009 and May 2009.
- Donele Wilkins will attempt to identify available locations in Detroit for a video and/or tele-conference site for the March 2009 meeting. She will contact Frank Ruswick and/or Sara Smith with that information.

Next meeting: 1:00 p.m. Location: TBD in, Detroit

Lynn McNamara
Recording Secretary
Michigan Department of Civil Rights