

**ENVIRONMENTAL JUSTICE WORKING GROUP MEETING**  
**Lansing, Michigan**  
**Monday, November 29, 2010, 1:00 – 4:00 p.m.**  
**Meeting Summary**

Members in attendance: Rhonda Anderson, Mark Bishop for Harold Core and Sylvia Elliott, Lisa Goldstein, Sara Gosman, Randall Gross, Jr., William Hischke, Abed Houssari, Carrie Houtman, Brian Kandler, Chris Bush for Susan Manente, Paul Mohai, Lou Pocalujka for Kathryn Ross, Pamela Smith, Andy Such, Brad Van Guilder, and Guy Williams

DNRE Staff in attendance: Frank Ruswick, Bryce Feighner, Cindy Salmon, Sue Maul, John Cherry

Moderator: Mark Becker

**OPENING:**

Mark Becker welcomed everyone. EJ work group members and DNRE staff introduced themselves.

**INTRODUCTION:**

Frank Ruswick spoke about how we got to this point and thanked the members for all their effort on this project. He stated that we have been working on this plan for a couple years, and at this point we need to wrap it up. He stated that DNRE Director Humphries has indicated that she will adopt a plan that has consensus agreement by the EJ Working Group. We will consider consensus agreement to be if all members either support the adoption of the plan or will not object to its adoption. We will work our way through the Plan today, identifying and trying to resolve issues that would prevent members from agreeing on adoption of the Plan. At the end of the meeting, we will poll members individually on whether they support, do not object, or object to adoption of the Plan.

**REVIEW OF THE DRAFT PLAN:**

Bryce Feighner gave an overview of the changes in the latest draft of the plan (see attachment).

**Chapter 1 Issues**

Possible Constraints: Guy Williams indicated that a more positive approach to this topic would be to invert the discussion of Economic Impacts and Constraints. This change was agreed to by the Working Group.

Possible Impact to Economic Development: Randy Gross indicated language in an earlier draft of the Plan had described serious potential economic impacts that might happen through an environmental justice policy. Recognition of this potential impact is important to the business community and he would like that discussion put back in. Brad Van Guilder said that it is actually included in the “Constraints” discussion. Randy agreed, but would like it moved back to the Economic Impacts discussion. The Work Group agreed to this move.

**Chapter 2 Issues**

Paul Mohai stated that “within a one mile radius” was the original language and that was taken out on Page 9 a. He also serves on the EPA task force and they were very concerned with false negatives in the levels 1, 2, and 3. Bryce said it was intentional because it is still not a

bright line. Paul feels that these issues could be right on the edge of census tracts, which form the basis of the areas used in EJSEAT. The way to address this is by using “within one mile radius of a 1, 2, or 3 census tract” to delineate an EJ area of concern. Brad Van Guilder agreed that it might help with clarity. Sara Gosman feels the agency should make it clear in the document that discretionary judgment will occur. She would like 6. on page 9 to be a stand alone sentence under a new c.

Several members representing the business community expressed a concern that this will mean that every major permit will have to go through enhanced public outreach.

Guy Williams stated that there are examples where the narrow definition of Levels 1 through 3 excludes tribes and migrant workers. One way to treat this issue is to list these as examples.

Andy Such said that consistency, certainty, and clarity are how they want permits to work. Frank Ruswick asked how Andy felt about adding “within a mile radius?” Andy would like that left out and just leave it at 1, 2, or 3 census tracts.

Frank Ruswick said before we try to resolve this issue in isolation, it would be helpful to identify all the issues Work Group members have with the Plan. The Group agreed to defer this issue for discussion later in the meeting.

### **Chapter 3 Issues**

Frank said from his perspective, the original question was “how will we incorporate environmental justice principles into our permitting activities?” He described how the issue had evolved from early discussions to this draft of the Plan. The DNRE had made major efforts to minimize any sense that EJ considerations would result in additional burdens on industry in the permitting process. The current draft of the Plan focuses on enhanced public involvement.

Randy Gross responded that on page 10, in the 4<sup>th</sup> paragraph, 1<sup>st</sup> sentence; it says we will incorporate environmental justice into permitting decisions. He would like all references to permitting decisions removed. Frank said this describes the functions that the agency provides. On page 13, we are referencing permitting in general, and then we specify how we will incorporate environmental justice.

Brian Kandler said that in the 4<sup>th</sup> bullet on page 13, it implies that it is voluntary, but putting it in here creates an expectation that it will happen.

Andy Such felt that if it is voluntary then it shouldn't be listed.

Carrie Houtman agreed with Brian and Andy.

Andy said it adds cost to the permit. Brian said that industry need only follow the permit and follow the law.

Rhonda Anderson said that when an industry moves into a community, that community needs some type of recourse if the industry pollutes.

Sara Gosman said there is a law that directs the state to do this. It says “if agreed upon by the applicant” – that isn't mandatory. This is something the DNRE should encourage.

Rhonda sees this as a way that communities and businesses can work together. The community is often willing to do that, but they don't want to be stonewalled.

Randy stated that the industry is not buying into this. The DNRE often says “this needs to be in your permit or you won’t get your permit.”

Sara Gosman asked if there was language that the industry reps could propose that would alleviate their concerns on this section.

Guy Williams stated that vagueness doesn’t serve the communities’ interest either – they need certainty, consistency, and clarity also.

For the 4<sup>th</sup> bullet, Guy suggested that we drop the sentence “If agreed upon by the applicant ... permits.”

Andy Such suggested in the first sentence in the 4<sup>th</sup> bullet, take out the words “and address.” He would like it changed to *discuss*.

Carrie and Andy asked if they have to address each and every issue raised. Frank stated it doesn’t require them to do any of this, it says *encourage*.

Lisa Goldstein stated that just having a dialogue between the industry and community can go a long way to harmony between the two.

Carrie Houtman stated that Dow makes huge contributions to the local communities, but they need all the requirements to be spelled out – “What does that mean?”

Sara Gosman clarified with Frank and Bryce that there is nothing in this plan that requires anyone outside the DNRE to do anything. Frank and Bryce agreed.

Randy Gross said then just remove all references to permitting.

Frank asked Randy what in these four bullets he finds offensive. Randy said he is fine with the first three bullets, but still wants all references to permitting removed.

Frank suggested “enhanced public involvement” instead of “permitting” where public involvement is required.

The next issue presented by Guy Williams was “What does Environmental Justice Principles mean?” (We will come back to this.)

Carrie wanted clarification on Title VI issues – Sara Gosman said that is EPA’s language on page 10, Paragraph 2.

Sara said we could eliminate on page 11, beginning with The U.S. EPA analyzes... everything down to ENVIRONMENTAL JUSTICE CONSIDERATIONS IN DNRE ACTIVITIES. EPA will continue to use their draft guidance, but it doesn’t have to be a part of our Plan. Carrie said we could provide a link to this (we will reference it). The Work Group agreed with this approach.

Randy – Environmental Justice benchmarking on page 13 – second paragraph under 3. Frank said this is a management technique. Randy doesn’t understand what the measureable outcomes are. Frank stated that is up to the program manager to decide.

Abed asked what the agency isn’t able to do right now. Perhaps the goal could be to do more audits. Frank said this incorporates the implementation of the EJ Plan into the DNRE program manager’s planning process.

This issue can be addressed by adding “how this environmental justice plan will be implemented” and taking out the word “*considerations*.”

Abed – Implementation of operational policy on page 12 – it is not clear to him what this means. Frank stated the DNRE has guidance documents and involves stakeholders in developing the policies. Abed said they have run into problems in the past with operational policy. Frank and Bryce said they will clarify the wording.

#### **Chapter 4 Issues**

Carrie – DNRE will educate individuals and communities – where is industry’s voice in the 3<sup>rd</sup> paragraph on page 15? She is looking for historical background on this. Frank said we were very careful in not imposing requirements and that may have caused this to be left out. Frank and Bryce will add language to address this issue.

Randy has a question regarding spectrum of participation on page 17. Bryce said this came from our Leadership Academy – suggesting that instead of holding a Public Information Meeting where the DNRE just disseminated information, we move to a more collaborative process with give and take from both sides. Several members representing business groups are concerned about language in the chart that refers to the Department developing “alternatives.” This implies that the Department will develop alternatives for the permit applicant. Frank indicated that is not the intent and the DNRE will develop language to clarify that.

#### **Chapter 5 Issues – none**

**Chapter 6 Issues** – No one was here representing the Tribes, but the DNRE said Kyle Whyte, representing the Tribes, is in agreement with chapter 6.

#### **Chapter 7 Issues**

Andy Such said he has a problem with the local governments getting involved in this. Sara Gosman stated that this comes from the Executive Directive. Frank stated that this chapter doesn’t require any specific action of local units of government. Pamela Smith stated that she helped develop this section and that it is mainly about fostering communication.

Andy expressed concern that recommending responsibilities or activities for local units of government would provide a justification for local fees being imposed. This had happened in the context of hazardous materials regulation. Frank indicated that plan does not explicitly indicate the need for local fees and any such proposal would be subject to the political process at the local level.

Andy Such said specifically in the 3<sup>rd</sup> paragraph on 32, “health risks” and “environmental justice complaint process,” and on page 33 “address environmental justice concerns” were the areas he didn’t like. Randy and Andy feel this endorses local units of government to create their own environmental justice plans.

Frank suggested that on page 32, middle paragraph under Participation by Local Units of Government, we remove that paragraph. Andy Such agreed, but felt that on page 33, 3<sup>rd</sup> bullet under 2. it still sounds like requirements.

Guy Williams feels that industry is pushing to make this document extremely vague, to the point where the document will be meaningless.

Frank Ruswick said we have identified a number of areas where we could eliminate things to come to agreement. One side wants the plan to have less of an impact, and the other feels that if we make those changes, it will not have enough of an impact.

Brad Van Guilder said the advocates have moved to a point where a number of their issues are not even in the document, and the document continues to be tweaked again and again to satisfy industry.

Frank summarized: There are three remaining areas of concern: 1) The definition of environmental justice areas of concern, 2) references to the permitting process, and 3) the role of local units of government.

Andy Such stated that they recognize that the EJ community has made a lot of concessions. They would like to see the three remaining areas addressed. If we can state that this is a guidance document and not a rule, then when we see the final document we may be able to be neutral. However, we need to see some concessions in those three remaining areas.

There was a suggestion to add a general disclaimer at the beginning of the document to clarify that it does not require any actions by parties outside of state government. The Working Group agreed to this change.

Guy Williams said hearing that, where does that leave us on number one? Andy Such does not want to add "one mile radius" but leave it as is. Brad Van Guilder proposed adding "within a one mile radius" to a level 1, 2, or 3..., but leaving the remainder of this description as is.

All but one member of the Working Group agreed to that approach.

Mark Becker asked where we stand on the reference to the permitting process? Lisa asked if permitting isn't a subset of things requiring public involvement. Randy said he doesn't want reference to permitting as a process. He is not opposed to public outreach.

Guy Williams said on page 13, 4<sup>th</sup> bullet, he thought we agreed to take out one sentence, "If agreed..."

Pamela Smith feels that bullet three under 2. on page 33 is important.

## **DECISION**

Frank Ruswick proposed that the question be put to the group in this way: Can you support or not object to the Plan given: 1) The changes that have already been agreed to by the Working Group, 2) Adding the one mile radius language to the definition of EJ area of concern, 3) redrafting of the "permitting" discussion to reference public involvement activities more generally, and 4) redrafting of the local government discussion to focus on activities that would improve communication. It is understood that the position taken at this time is contingent upon review and approval of specific language changes to reflect decisions made today.

The members indicated their position as follows with "S" indicating support for adoption and "N" or "neutral" indicating the member would not oppose adoption:

Lisa Goldstein: S

Brad Van Guilder: S

Sara Gosman: S  
Rhonda Anderson: N  
Chris Bush: S  
Randy Gross: N  
Andy Such: N  
William Hischke: N  
Abed Houssari: N  
Lou Pocalujka: N  
Carrie Houtman: N  
Mark Bishop: N  
Pam Smith: N  
Guy Williams: S  
Paul Mohai: S  
Brian Kandler: N

## **CLOSING**

Frank indicated that the DNRE will provide a redraft of the Plan incorporating today's decisions by December 3. Members will then be asked to review and provide any objections to the redraft within one week. Members objecting are asked to include the reason for those objections.

Frank again thanked the members of the Working Group for the long and hard efforts in support of developing a Michigan Environmental Justice Plan.

**Environmental Justice Draft Plan  
November 3, 2010**

**Summary of Changes to the December 11, 2009**

**General**

Chapters were re-ordered so that **Disparate Impacts** appeared first of the subgroup chapters.

The **Interdepartmental Integration** chapter was renamed **Inter-agency Coordination**. The **Petition Process** chapter was deleted. Some of the elements were incorporated in the **Inter-agency Cooperation** chapter.

**Executive Summary:** reordered to accord with chapter changes noted above.

**Chapter 1. Overview**

**Purpose** – more explicit definitions of EJ and the associated two “pillars” were added (page 1).

**Background** – info on the new direction was added (page 4).

**Possible Constraints To Implementation**

**Potential Impacts On Economic Development**

**Chapter 2. Disparate Impacts**

**Introduction** – explained where phrase disparate impacts came from more clearly (page 7).

**EPA Guidance** – deleted old Region 5 criteria/definitions (page 19 of the December 11, 2009 draft plan)

**Environmental Justice Activity Triggers** – clarified triggers and resultant actions from triggers (page 9).

**Chapter 3. Integration Into DNRE Activities**

**Introduction**

**EPA Guidance**

**Environmental Justice Considerations in DNRE Activities** - moved “Current Enhanced Public Outreach” to Public Participation chapter (page 15); under “Build Capacity” changed develop “handbook” to “toolkit” (page 12); under “Operationalize the Exercise of Environmental Principles” added coordination with other state and federal agencies (page 13); under “Exercise EJ Principles in Practice” re-wrote and re-ordered a number of items (pages 13 and 14); deleted Pilot Sustainable Alternative Agreement Process.

**Chapter 4. Public Participation**

**Introduction** – defined meaningful involvement more clearly (page 15).

**Current Enhanced Public Outreach** – move this here from the DNRE Integration Chapter (page 15).

**Public Involvement Guidance and “Toolkit”** – added much info from Leadership Academy projects on public participation (throughout); added info on providing feedback to the public (page 22)

**Public Comment On Revisions To The Plan**

**Chapter 5. Inter-agency Cooperation** – formerly “Interdepartmental Integration”

**Introduction** -

**Interdepartmental Working Group** – reconfigured IWG to give leadership to the Governor’s Environmental Policy Advisor and to discuss and address EJ issues brought to its attention (page 23).

**Examples** – list of cooperative efforts the DNRE is engaging in to address EJ (pages 24 through 26).

**Chapter 6. Tribal Consultation** – completely new chapter

**Introduction**

**Policies**

**Implementation**

**Chapter 7. Role of Local Units of Government** – language revisions throughout.

**Introduction**

**Participation By Local Units Of Government** – removed language that suggested a fee should be assessed (page 30 of the December 11, 2009 draft plan).