

Benjamin Johnson
Draft EJ Plan Analysis

On November 21, 2007, Governor Granholm signed an executive order requiring the Department of Environmental Quality (DEQ) to implement a statewide environmental justice plan. (iii) In turn the DEQ established the Environmental Justice Working Group. Recently this group released the draft Michigan Environmental Justice Plan. This memo will summarize each chapter and provide analytical commentary.

Chapter 1 gives a general overview of the plan and begins appropriately with a background concerning the history of the Environmental Justice movement, relating it specifically to Michigan. The chapter proceeds with a discussion regarding the development of the working group, its mandate and leads to a section that stresses the possible constraints to implementation, primarily that the poor economy could limit financial funding for the proposed programs. The reader could easily interpret this as a clause that was inserted to excuse government inaction. Unfortunately this "clause" is seen throughout the language of this draft plan.

Enhanced Public Participation is a main tenet of the plan and Chapter 2 introduces the "Public Involvement Guidance and Toolkit." (7) The plan calls for adherence to the two "pillars" of environmental justice; "the fair treatment of all people and providing for meaningful public involvement in government decision-making." To achieve this goal, the plan calls for enhanced outreach initiatives, education of department staff on effective and meaningful outreach, a review of the "public outreach toolkit", increased electronic access of citizens and better

interaction amongst communities through leadership identification and increased numbers of meetings. This chapter does a great job of setting the stage for greater public participation and impressively realized that the stakeholders in environmental justice cases will change over time and that the plan needs to work for today and tomorrow.

Chapter 3 discusses the way that the DEQ will implement newly approved Environmental Justice Criteria into its practices. The goal is for all administrative practices to have new EJ criteria in areas such as permitting, compliance and enforcement activities. The DEQ has looked towards the EPA and its Title VI requirements for the most efficient and effective implementation process, consisting of 3 goals: 1) that it is comprehensive 2) is area specific with stakeholder participation and 3) is completed on a case by case basis. The DEQ has also implemented a comprehensive “enhanced public outreach” program that dictates certain procedures to increase stakeholder involvement. Chapter 3 ends with a description of the “three general methods that should be integrated into DEQ decision-making.” These include building capacity, implementing EJ principles and applying EJ principles to daily practice. The chapter ends with a brief discussion of a “pilot sustainable alternative agreement process,” which sounds very interesting but is not discussed in great detail. (17)

Chapter 4 introduces the DEQ approach “for identifying the circumstances under which the DEQ must consider and apply” EJ principles. Again the DEQ turns to the EPA for guidance on this program, specifically the EJSEAT program. (18) Using

these criteria, an identified EJ site would “trigger” the implementation of the DEQ’s EJ principles and methods. (20)

Chapter 5 discusses the role of interdepartmental integration of Environmental Justice principles and calls for the establishment of an Interdepartmental working group. By looking at other examples of working groups, the plan acknowledges that these efforts often do not work. In order to ensure success a working group must have “strong leadership from the executive branch”, the active engagement of senior level managers and a high level of individual leadership. (22)

The IWG for the Michigan will be tasked with reviewing environmental justice complaints that are filed through the petition process. Additionally, this group will identify other departments that could benefit from the development of an EJ plan and will assist these identified departments in setting goals and goal achievement plans. The IWG will also establish an environmental justice advisory council and will task the Governor’s Environmental Policy Advisor with job of Environmental Justice Coordinator for the state. This is a smart move, as it will ensure executive level support and leadership of all initiatives.

Chapter 6 discusses the petition process to be established for members of affected communities to file complaints regarding EJ issues. The plan has the goal of creating a straightforward and efficient process that is easily accessible by community members. The latter part of chapter 6 explains the actual petition process and how it will be set up. One of the most important parts of the petition process is that there is no specific form required to submit a complaint; a letter

stating the communities concerns will suffice. An alarming aspect of the petition process is that once again economic impact is part of the evaluation process for accepting a petition. The final obstacle to a petition plan being put in place is that the Governor must issue an additional executive order to ensure that all agencies will be involved.

Chapter 7 consists of a discussion of the role of local government units in the EJ plan. These entities can play an important role in identifying EJ sites/issues and can act as liaisons between communities and the state government. The EJ plan will also affect many of these local governments, as they are deeply involved in the permitting processes for different facilities.

Overall, this plan is an impressive first step in addressing environmental injustices in the state of Michigan. It gives the reader a great background in Environmental Justice and its public participation initiatives are very impressive. However, there will be some implementation problems that hopefully can be recognized and addressed. First, it is discomfoting to hear that the working group has only received a limited number of comments/critiques regarding the plan. This makes me think that the Draft EJ Plan is not being publicized or distributed widely. I experienced this fault firsthand when I tried to attend a town hall meeting discussing the plan. Upon arrival, I joined a group of interested citizens and we were sad to hear of the meetings cancellation. Our lack of knowledge as citizens shows that the public unveiling of this plan was less than perfect and one can only hope that this was an isolated incident.

When looking at the EJ plan, a second criticism that I have concerns the consistent use of language implying that a poor economy can be used as an excuse to not implement some of the Plan's initiatives in a timely/effective manner. When reading this language it is implied that the economic well being of the state is more important than the health and rights of its citizens. It is a shame that the EJ working group was not able to produce a document that put more value on basic human rights. If this economic language were taken out of the plan it would have provided a progressive document that could be held up as an example for the other 50 states in the Union.

Third a successful implementation depends on whether Governor Granholm succeeds in her re-election. As the plan states, it is vital that the EJ plan has support at the highest level. If the Governor lost her bid and her successor did not support the plan I believe it would slide behind other policy priorities, much like President Clinton's Executive Order 12898.

If Executive level support continues into the future then I believe success of the plan will depend on industry "buy in." It was unfortunate to hear that all industry members of the EJ Working Group withdrew their support of the final plan and this action gives an interesting view of the political climate that exists around environmental justice concerns in Michigan. It implies that they are against the plan, thereby reducing its effectiveness. If the industry were swayed to support the plan it would be easier to get bi-partisan political support for funding and implementation. Just like many state and national policies currently being proposed, a lack of bi-partisan support can easily stop a policy initiative dead in its tracks.

In order to correct these concerns the EJ working group should increase their public awareness and education campaign. By looking at the admirable public participation initiatives contained within the document it is apparent that the EJ working group desires increased participation. Part of this process is educating people about the plan in its entirety and I believe that the low number of received critiques/comments testifies to the lack of public distribution and education. Although budgets are tight the EJ Working Group and its leadership should use newspaper ads, commercials and radio announcements to notify the public of the plan and of the opportunity to comment on it.

On top of a successful adoption of the proposed EJ plan the State of Michigan should work towards preventing environmental injustices. The proposed plan addresses environmental justice concerns in a reactive manner but I think that there should also be a focus on being proactive when trying to end environmental injustice within the state. It is much more cost effective and efficient to prevent a problem than it is to fix it. Unfortunately there do not seem to be easy solutions to ending environmental injustice but with such a strong environmental justice history within the state I would hope that State Agencies could turn to community groups, industry and each other in order to start finding proactive solutions that would allow for the prevention of environmental injustice instead of dealing with its aftermath.

This plan is exciting and pertinent to the State of Michigan. I would hope that the plan is adopted swiftly but without industry support it will be difficult to really achieve broad level support. In my opinion the plan has industry friendly

components and potential for loopholes in order to maintain maximized profits.

Although this is unfortunate for EJ communities it does allow this plan to be a sort of middle ground that can be improved upon in the future. This plan is great foundation for future environmental justice work in this state and should be ratified.

(Environmental Justice Working Group, 2009)

Draft Michigan Environmental Justice Plan – Comments

The following comments are organized into four sections that highlight strengths, weaknesses/recommendations to overcome weaknesses, additional state actions, and obstacles.

Strengths

Michigan's initiative to create an Environmental Justice Plan demonstrates its commitment to environmental justice across the state. Among its many strengths, the Michigan Environmental Justice Draft Plan's emphasis on the prevention of negative environmental and health effects, accountability for laws and policies, integration of environmental justice in multiple sectors, and public participation merits recognition. These components of the Plan help meet the needs of environmental justice communities and help prevent future environmental disparities.

Using the three levels of prevention, remediation, and incentives, the Plan addresses both the prevention of negative effects and the promotion of environmental justice rather than focusing solely on existing inequitable distribution of hazards and reactionary strategies. By starting with prevention, Michigan will help build a foundation for a more environmentally just future. The Plan's reference of the "development, implementation, and enforcement" of laws and policies to address prevention and remediation of environmental justice issues highlights an element of accountability as well (MI EJ Draft Plan 2). Through an emphasis on penalties if the state Department of Natural Resources and Environment (DNRE) violates Title VI of the Civil Rights Act, and the assignment of the Interdepartmental Working Group to regularly review the progress of departmental compliance, the Plan presents a clear stance on the significance and importance of environmental justice issues.

In addition, the Plan addresses the need to integrate and coordinate state departments to achieve environmental justice. By integrating departments to create the Interdepartmental Working Group, having the DNRE and the Department of Civil Rights take leading roles, and requiring top officials from each state department participate, this will provide a space to bring together priorities and actions that will promote environmental justice across sectors. The Plan discusses the potential of environmental justice in benefiting economic growth and development; this Interdepartmental Working Group will help demonstrate the relevance and prevalence of environmental justice issues and help prioritize environmental justice within each department.

The Plan's focus on public participation is also a notable strength, as community involvement and collaboration is crucial to ensure success. Recognition of the fluidity and changing nature of the issue is important, and the emphasis of this Plan as "flexible and diverse" helps to ensure that the living document will continue to consider public demographics and needs over time (MI EJ Draft Plan 7). In addition to the multiple levels of public participation in the Plan, including informing, consulting, involving, and collaborating, the Plan also considers the need to provide community support. By providing grant application assistance, as well as identifying an environmental justice coordinator to serve as a liaison, the Plan recognizes the importance of meeting community needs and helping communities advocate for their right to a clean and safe environment.

Weaknesses; Recommendations to Overcome Weaknesses

Aside from the many strengths of the Plan, there are also some weaknesses that may detract from the Plan's intended goals. Some of the sections seem vague and may benefit from further clarification and guidance to prevent harmful misinterpretations of the document. Also, the Plan should address some of the assumptions, and provide alternatives if they do not hold.

The Plan provides sufficient guidance in much of the document, but in some sections more detail and examples would enhance the messages. For example, in educating department staff on how to communicate effectively about environmental justice issues with the public, the Plan states that the staff “need to know...*what* type of information needs to be provided to the public” (MI EJ Draft Plan 9). While perhaps the EPA will help in this training, it would be beneficial to include examples of what this information might be: the history of the site or the laws that exist to protect the public? Also, subjective terms are used to define when adverse disparate impacts may be acceptable; as long as there are no “practicable and comparatively effective alternatives” or “less discriminatory alternatives” the Plan states that disparate impacts may be justified (MI EJ Draft Plan 13). Further, complaints are reviewed to determine their validity. The Plan does not explain how these vague subjective guidelines will be determined, as there are infinitely many alternatives that often are not considered. Thus, more specific criteria can strengthen the Plan.

By relying on EJSEAT, the Plan assumes that air pollution is the main issue communities may face. As EJSEAT focuses mostly on air pollution and ignores soil and water hazards, if the EJSEAT screening tool helps determine priority communities, it will overlook communities that live on toxic soils and do not have safe and clean water. This can be resolved by incorporating soil and water data into EJSEAT or supplementing the EJSEAT screening tool with other environmental pollution data.

The Plan also states “the petition process is not intended to interfere with existing permitting or project timelines” (MI EJ Draft Plan 27). The underlying assumption with this statement is that public comment and participation procedures during the permitting stages have already been successfully advertised and have taken place. This thus provides no opportunity to act for communities who, prior to the implementation of this Plan, are unaware of project plans in their neighborhoods due to the lack of public notices and outreach. Especially in the first years of the Plan, when the implementation of effective public participation procedures may be experimental in nature, this statement weakens the ability of the public to advocate for environmental justice for their communities. This can potentially be addressed by emphasizing the enforcement of public notifications of permit and project timelines.

Also in the petition process, the Plan states that it must be signed by 50 citizens, 25 of which must be members of the affected community. This is concerning especially for more rural populations which, due to their lower population densities, may have a strongly disproportionately-burdened community with fewer than 25 residents. The Dickson, Tennessee case study with the Holt family, for example would have faced this issue because although the contamination affected the entire neighborhood, the Holt family’s surrounding white neighbors received alternative water sources and were thus less burdened¹. By presenting alternative ways to bring an issue to the DNRE’s attention, the Plan will seem more inclusive.

Additional State Actions

The Plan presents and details a variety of state actions to help Michigan reach its goal of achieving environmental justice for its residents, and here are some additional actions to consider

¹ Living just 54 feet from a toxic landfill, the Holt family was further burdened with procedural injustices when the government stopped testing their well water and did not notify them of potential health hazards, while their neighbors had been given alternative water sources and were told to stop using the water. For more information, please see Chapter 7 of *Toxic Wastes and Race at Twenty*, published by the United Church of Christ in 2007: <http://www.ucc.org/environmental-ministries/environment/toxic-waste-20.html>

that may help facilitate public participation and other processes and help overcome potential challenges.

The Public Outreach Toolkit includes a wide spectrum of techniques and approaches, and could benefit from the addition of a youth outreach program. Especially in some communities with non-native English speakers or families in poverty, outreach is often effective via the community's children in local schools. When important issues are discussed in the classroom, students may go home and share that information with their parents and other adults in the household. Supplementary non-technical documents in appropriate languages and formats for children to bring home may also help make use of schools as a communication vector.

While understandably difficult, the state should try to advocate for the consideration of negative 'impacts' beyond cancer and other physical health effects. Aesthetic and noise pollution from industry can affect mental health, community well-being, and neighborhood economics; these effects may often be as important as physical health effects, although they are more difficult to quantify and measure. When neighborhood property values plummet and as a result a community disintegrates, it further exacerbates environmental justice issues, as the community becomes even more vulnerable and can potentially experience additional environmental burdens such as new facility sitings and social disorder such as crime. By acknowledging these less tangible effects of environmental injustice, more communities can be included in the advocacy for a safe and livable community.

With the focus on increasing public participation, there is risk of what the public health discipline terms "inverse care law," where populations with the most resources will tend to take more advantage of the new system. Unless specific state efforts are taken to outreach specifically to traditional environmental justice communities, the populations involved in the Plan's public participation will be those who have resources and access, and not those who have the greatest need to have their voices heard. Not all communities have the ability to mobilize effectively; the state needs to take action to ensure that some communities will not be left behind. For example, since no specific form is required for the petition, perhaps the state could create a template or sample petition so disadvantaged communities who have little prior experience with writing official documents have an idea of what is likely to be received well and taken seriously.

In the discussion of the federal complaint process, the Office of Civil Rights "generally attempts to resolve the matter informally" (MI EJ Draft Plan 24). While it may be more cost-effective in the short-term to discourage formal proceedings, legal cases have the potential of receiving more media coverage and generating greater public awareness, as well as setting a precedent for future environmental justice communities. Since these outcomes would greatly benefit the environmental justice movement and communities, perhaps the state could provide incentives to encourage cases to be resolved more formally to promote a more proactive stance on environmental justice issues.

At a larger scale, since several states have implemented or are drafting state environmental justice plans, perhaps Michigan could help encourage the federal government for stronger environmental justice regulations that will mandate the creation of state environmental justice plans in all states, and provide an environmental justice budget for each state.

Obstacles

Even with the strong state actions and proposals outlined in the Plan, obstacles will still exist. Particularly with the current economy, financial resources will be a significant concern, as

with state agencies already struggling with budgets and fewer personnel, it will be a challenge to ensure that environmental justice is prioritized.

Particularly with limited personnel and staff, it may be difficult to ensure that environmental justice issues are not ignored. For example, everyone serving on the Interdepartmental Working Group is double-booked. All the representatives are either directors or deputy directors of their department and they are inevitably busy with their departmental work. This is the same issue for the Environmental Justice Coordinator. Creating an additional position for the Environmental Justice Coordinator may be a solution to overcoming this challenge, but the dual roles of these representatives also helps to integrate environmental justice across sectors.

Additionally, with public participation, it will inevitably include participation from industries and other entities that contribute to the worsening of health and environmental effects in the community. Industry may also feel more confident in public speaking situations, and less-experienced community members may feel intimidated to speak up in their presence. It will be a challenge to create environments that are comfortable for environmental justice communities to voice their concerns, and also a challenge to encourage the people to get involved. Many environmental justice communities face economic disadvantages that may lessen their ability to devote time to participate in grassroots organizing and public participation. With the additional factors of intimidation and frustration, it may be difficult to make the public participation process effectively represent different populations.

In developing of the Environmental Justice Handbook, the DNRE is expected to develop this handbook based on the information in the Plan, and it seems challenging for the DNRE to develop a handbook that is satisfactory to the authors of the Plan. While it is important to have people within the DNRE participate in developing the handbook because they know the inner-workings of the department perhaps collaboration between the DNRE and the Michigan Environmental Justice Plan authors would help overcome the obstacle of people with minimal environmental justice backgrounds creating an important handbook.

Also, prevention of discriminatory or negative environmental and public health effects of laws, regulations, and policies is difficult to do with the existing social structure and historical patterns. "Race-neutral" laws tend to exacerbate existing inequalities, as a level playing field does not provide opportunities for those who are already disadvantaged; thus some affirmative action efforts need to take place. Considering the immense opposition toward affirmative action in higher education, it will be a major challenge to advocate for affirmative action in environmental regulations.

Summary

Despite the critiques and suggestions outlined in this analysis, the Michigan Environmental Justice Draft Plan has many strengths and thus significant potential to lead the state of Michigan in the positive direction of environmental justice.

Comment 16

From: DEQ-EJplan
Sent: Thursday, April 08, 2010 3:12 PM
To: Crawford, Linda (DNRE)
Subject: FW: comments on proposed EJ plan

Attachments: MI EJ Plan 1-2-1.docx

From: Cybelle Shattuck [mailto:scybelle@umich.edu]
Sent: Tue 4/6/2010 4:29 PM
To: DEQ-EJplan
Subject: comments on proposed EJ plan

Greetings,

Please find attached my comments on the proposed Environmental Justice Plan for the State of Michigan. If there are any difficulties accessing the file, please let me know.

Thank you.
Cybelle Shattuck

scybelle@umich.edu

Commentary on Michigan's EJ Plan draft

The proposed Environmental Justice Plan is an impressive document. It is the result of an Executive Directive from the governor asking the DEQ to develop and implement a plan to promote environmental justice in Michigan. (p. 1) The document has two key purposes: first, "to provide general guidance and recommendations for all state departments to consider when drafting agency-specific environmental justice plans;" and second, "to serve as the environmental justice plan for the DEQ." The process seems to have included a sensible mix of people with knowledge about the issues as well as representatives of the various stakeholders who will be affected by the plan. The tone is non-judgmental about the past, so that it was possible to focus on the future and to engage a wide group of people in designing a forward-looking vision. This vision is grounded by acknowledgment of some of the challenges inherent in implementing these proposals so it does not claim to be a definitive solution. The result is a pragmatic Plan with good ideas, although it will face numerous obstacles due to difficulties inherent in community relations, institutional resistance, and the state's economic situation.

Strengths

The Plan makes a case for the benefits of implementing an EJ plan. These include: the state's duty to treat all citizens fairly and to provide for meaningful public involvement in government decision-making; the need for the DEQ to have systems that allow its employees to fulfill their obligations; that clean, safe, and healthy communities are attractive to businesses; and that businesses need clear and fair regulations. Starting with these shifts the focus away from

the idea that one political party is an advocate and toward a recognition that all residents of the state have something to gain from this Plan.

The committee makes an effort to address some potential challenges that could emerge. If the Plan is not handled well and businesses find the rules inconsistent, overly expensive, or unpredictable, there could be economic repercussions. Differentiation of regulations between urban and rural areas could promote urban sprawl. Furthermore, the state is in the midst of a recession, so the DEQ does not have extra funds for new programs. Thus, the proposal suggests that clear, consistent regulations must be combined with efforts to integrate government departments. This will increase efficiency and prevent inconsistency—which will be good policy and may help control costs. By addressing these potential challenges, the Plan reminds possible dissenters that a half-plan or a poorly executed plan may be more harmful than a good plan. This is a nice way to encourage broad support.

Another strength is the emphasis on stakeholder involvement. The proposal advocates use of best current practices for promoting participation. Ideas like early outreach, providing the public with the necessary resources to help them fully engage in the process, choosing meeting times in consultation with the public, considering the needs of parents and those without transportation, etc all help fulfill the mandate for public participation well. These efforts would convince the public that they are actually part of the process and that their voices are important. This should result in a process that is better informed by data contributed from all parties, and, thus, is more likely to end with a shared consensus.

It is encouraging to see the idea of including EJ as a training topic for DEQ employees, along with related skills like relationship building, collaborative negotiating, and cultural

awareness. It might also be practical to have some employees who specialize in these skills who can act as leaders/coordinators of EJ processes.

Information in Chapter 3 defuses concerns about whether an EJ plan is possible. The description of the successful work being done at the DEQ Air Quality Division shows that one Michigan department is already able to follow most of these guidelines. (14) This makes the whole plan quite realistic. The suggestion that DEQ and Dept of Health coordinate to share data (15) could reduce redundancy and save money so that funds may be freed up to cover new costs imposed by EJ programs. A secondary benefit from the linked programs would be stronger community outreach and greater impact. The idea of building up a database of projects and case studies (16) would help generate practical ideas, speed up similar projects and save time because things do not have to be invented from scratch. It would be useful data for the communities too, as they can learn from other cases and see ways to build on other's successes. There is also the idea of building EJ onto existing successful programs like brownfield redevelopment. (16) This would increase the effectiveness of EJ efforts and encourage buy-in from cities with a stake in brownfield programs.

Weaknesses

Finding effective media of communication with the public is a challenge. The most salient stakeholders may be those with least access to newspapers (a dying institution anyway) or awareness of traditional public notices. This is actually addressed by the "toolkit" of outreach options listed on page 9, but those ideas also need to be considered in the public outreach advocated in Chapter 2. Staff will need to have clear guidelines for how to assess which communication options will be most useful. Perhaps there could be rules about finding a

combination of options that allows for successful communication with a certain percentage of the people in a community.

There is a tendency to rely on the internet for communicating information, but websites for government agencies can be confusing. A person seeking information about a particular project would have to sort through data about the entire department to find the EJ section, then sort through the EJ section to find the project section, then find the specific project. Perhaps there could be a website link to the project page that is set up at the local library, or posted in all communication methods used, so people can easily get to the one site they need.

It is also problematic to rely too much on words to explain projects. People need visuals of “before and after” images so they can better conceptualize projects. Use of 3-D models (where appropriate) in public information hearings could also help facilitate understanding and stakeholder engagement. This could increase community participation early in the process.

Communication is also an issue in parts of the Plan itself, such as the use of ambiguous language. For example, Page 8 includes the following statement: “Agencies should avoid employing methods that will have a negative impact on the trust relationship.” (8) It is not clear what kinds of methods are indicated. Moreover, this sentiment ought to be true of all agency procedures in every department anyway.

A second weakness appears in the lack of real support for remediation, which is likely to get short-changed (16) New projects get attention because companies need permits so it is relatively easy to incorporate EJ into the permitting process. But there is no such impetus to encourage remediation and the financial limits at DEQ mean there will be no money left over to go out and look for extra work.

Challenges

Some of the goals described in the Plan are quite difficult. On Page 3, Goal 1 is to “Identify and address discriminatory public health or environmental effects of state laws, regulations, policies, and activities, including an examination of disproportionate impacts.”

This is a difficult process both intellectually and institutionally. Departments could include EJ in their regular program reviews, but it is unlikely that personnel are aware of, or even able to identify, existing regulations and/or processes that might be problematic. In fact, they are likely to resist the very idea that their policies could be part of the problem. The Plan acknowledges this when it comments that the DEQ staff perceives its standards as protective of health and environment and that this is not an unreasonable attitude. It suggests additional training of staff to sensitize them to EJ concerns. This is useful and may help with implementing the new EJ policies, but is not sufficient for enabling the DEQ to analyze existing policies. Review of current procedures would probably require an external audit or assigning a specially trained staff member to do a thorough investigation.

This same issue arises in relation to the working group’s charge to review the progress of the DEQ department and other departments with EJ plans in complying with the plan and promoting EJ. (4) The idea of setting benchmarks and assessing how well departments are meeting them is laudable. But the current proposal does not really establish what these benchmarks might be or explain who would assess them.

Some of the biggest challenges pertain to the legal definitions of EJ communities, disparate impact, cumulative impacts, and adverse impact decisions. (13) The Plan attempts such

definitions, but these will probably be contested. Finding criteria for these definitions is not easy. Perhaps the best option is to use definitions that parallel national policy and to cite the policy as the source. The criteria for the definitions need to be clear in order to demonstrate that they are not arbitrary or unique to the state. The use of EJSEAT is a step in this direction, but there are some problems with this metric and it is being improved. Perhaps the Michigan Plan could include a statement about reevaluating the criteria metric every 5 years to assure use of the best current models.

One overarching issue is the assumption that some people may have to bear a disparate burden for the good of the larger society. Page 13 includes the statement that an adverse impact may be justified to meet a legitimate goal if there are not less discriminatory alternatives. That means that some group of people is required to sacrifice. No groups should be forced to do so against their wills. If the pollution is not acceptable to anyone, then we have to consider the possibility of living without the product that causes the pollution or finding a way to eliminate the pollution from the process that causes it.

Another general concern is the assumption that any guideline will be adequate for all circumstances. This is partially counterbalanced by recognition of the importance of local context for defining EJ cases (19), which may encourage the use of some common sense. It is always difficult to find a balance between legally enforceable policy and the flexibility to adapt to local circumstances.

Another significant obstacle is the influence of politics. Chapter 5 notes the importance of leadership from the Executive Branch and the senior level departmental managers (22). Yet these are positions that change with the election cycles. An effective Plan requires consistency. This sets precedents, assures continuity and allows for emendation as day-to-day experiences inspire

improvements to the processes. If policies are periodically ignored then reinstated, the staff has to start from scratch every time--training, collecting data, learning effective practices, etc. This is hard for the departmental staff, frustrating for the communities, and creates an unpredictable climate for businesses. The Interdepartmental Working Group may help increase stability since multiple departments will be intertwined and may pressure each other to continue implementing policies. But, since most department heads are affected by gubernatorial elections, even this may not counter the political issue.

The Petition process seems to conform to the best available models. But to be effective, it requires that the DEQ EJ advocate have enough resources to truly help communities research and present their cases well. In an era of tight budgets, this office could be so badly underfunded that it cannot meet its mandate. Consider the situation in the social work division or the prison health care system as examples. Furthermore, according to the Plan, the IWG will have no regulatory authority over other agencies, so it can only make recommendations. And the (likely underfunded) EJ coordinator is responsible for ensuring that each agency is carrying out its responsibilities. But what leverage does he/she have to enforce this? Some kind of authority to penalize or reward may be necessary if the EJ coordinator is to have enough power to influence the behavior of government agencies. It would also be beneficial to have some kind of independent funding structure for the coordinator to assure the ability to fulfill the office and to be independent of the other agencies.

Finances are also an issue when asking for EJ efforts within local communities. The proposal that EJ be included in permitting is probably feasible, but many of the other suggestions may be regarded as unfunded mandates. One possible solution to this could be some kind of financial reward structure. There is no extra money to create new grants as incentives for

community EJ processes, but perhaps some current forms of matching funds that are sent to communities for health care, infrastructure, etc, could be made contingent upon timely development of local EJ plans. However, even this is likely to cause ill will since local government staffing is severely reduced and it would add extra work.

Conclusion

It is hard to know how to address the financial and structural problems that challenge the existing government and its abilities to fulfill its mandates. Yet, taking steps to address environmental justice has such potential benefits for the state (through improving the quality of life and making the state attractive to investors) that these ought to be a priority even in the current difficult times. There could even be a secondary benefit in the feeling that the state is trying to improve the lives of its citizenry in preparation for a positive future.

From: DEQ-EJplan
Sent: Thursday, April 08, 2010 3:13 PM
To: Crawford, Linda (DNRE)
Subject: FW: Environmental Justice Plan

From: Jean [mailto:JRCARLBERG@comcast.net]
Sent: Wed 4/7/2010 12:25 PM
To: DEQ-EJplan
Subject: Environmental Justice Plan

Steve I enjoyed the short time we had together at the EJ symposium held at Michigan last week. Again thanks loads for all the good work you have done to date. As promised please find below a broader definition of environmental justice. It is a definition that is forward thinking and reads like a vision of what future cities and communities could be like. I hope this is helpful. Let me know what you think?
BB

Environmental Justice: Environmental Justice (EJ) refers to those cultural norms and values, rules, regulations, behaviors, policies, and decisions that support sustainable communities where people can interact with confidence that their environment is safe, nurturing, and productive. Environmental Justice is served when people can realize their highest potential without experiencing discrimination based on race, class, ethnicity or national origin. Environmental Justice is supported by decent paying and safe jobs, quality schools and recreation, decent housing and adequate health care, personal empowerment, and communities free of violence, drugs and poverty. These are communities where both cultural and biological diversity are respected and highly revered, and where distributive justice prevails.

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SENT VIA EMAIL ONLY

DEQ-EJplan@michigan.gov

Michigan Department of Natural Resources & Environment

April 7, 2010

RE: Marathon Petroleum Company Comments on Michigan's Environmental Justice Plan Dated December 11, 2009

Dear Sir or Madam,

Marathon Petroleum Company (Marathon) submits the following comments regarding the draft Michigan Environmental Justice Plan (EJ Plan), as Marathon has operations that are potentially affected by this plan.

As background, Marathon owns and operates the only remaining refinery in the state of Michigan, and also owns and operates numerous pipeline and terminal facilities located within the state. Specifically, Marathon's Detroit refinery is located in southwest Detroit and received the Michigan Voluntary Protection Program Rising Star Award for workplace safety and health in 2009. In addition, the Detroit refinery is a Responsible Care® certified facility. Currently, Marathon is investing \$2.2 billion on a refinery project that will help create jobs and provide for a more stable supply of petroleum products for Michigan motorists.

Comment 1 – Eliminate The Petition Process, Or In The Alternative, Clearly Define The Scope And Reach Of The Work Plan To Ensure That It Does Not Exceed Its Limited Statutory And Regulatory Authority.

The Michigan Department of Natural Resources and Environment (MDNRE) does not have the appropriate authority, as conferred by legislative action, to implement the Petition Process¹ as described in the EJ Plan and impose more stringent regulatory standards on applicants. If the MNDRE wishes to manage the way it conducts its own actions, that is commendable, but there is no authority to impose additional burdens on the regulated community.

As background, the Executive Directive No. 2007-23, and likewise Michigan EJ Plan, is merely a policy statement and does not and cannot alter the existing state regulatory regime or substantive state law. Therefore, unlike a federal executive order, an executive directive does not have the effect of law. In fact, an executive directive merely constitutes a formal expression of the Governor's policy. This was recently articulated by Mike Cox, Michigan Attorney

¹ Chapter 6 of the EJ Plan.

General, in a formal opinion² regarding Executive Directive 2009-2(A) and (D) which required the then Michigan Department of Environmental Quality to determine whether there are more environmentally protective “feasible and prudent alternatives” to construction of a new coal-fired electricity generating plant when evaluating an air emissions permit application. Specifically, this opinion states that “executive directives are not provided for as such in the [MI] constitution, but rather they have been used historically by governors as one means by which they exercise their supervisory authority under art 5 §8 in the form of internal policy statements”. Therefore, to the extent that the implementation of Executive Directive 2007-23 and the EJ Plan attempt to extend beyond the limited authority provided in the legal citations stated in the prefatory “whereas” clauses, they are unenforceable.

The Petition Process detailed in the EJ Plan relies in part on the petition process that was once available in New Jersey. However, unlike Michigan, the New Jersey petition process was executed under the authority of an executive order (not a mere directive). Nonetheless, the New Jersey executive order has since been amended to eliminate the petition process. Furthermore, even an executive order in Michigan is limited to the powers provided for under Const 1963, art 5, §2 which merely allows the Governor to “make changes in the organization of the executive branch or in the assignment of the functions among its units”³, such as the recently reorganization which created the MDNRE pursuant to Executive Order 2009-44. In sum, the cited authority in the Executive Directive does not provide sufficient authority to authorize the unbridled petition process described in the EJ Plan.

To shed more light on this point, a few examples are in order. MDNRE may be within its statutory bounds to increase communication and information sharing with an EJ community, coordinate and facilitate information meetings among the affected stakeholders, encourage cooperative solutions among the affected stakeholders, concentrate investigations and clean-up efforts for Superfund sites located within an EJ community, increase enforcement efforts near EJ communities, provide additional grant monies to fund state initiatives within EJ communities, or fund additional monitoring and testing within EJ communities. However, it is unlikely the MDNRE has the authority to revoke or deny a permit solely on EJ grounds, or condition such a permit on costly EJ mitigation projects.

Therefore, the Petition Process of the EJ Plan should be eliminated, or in the alternative, clearly define the scope and reach of the work plan to ensure that it does not exceed its limited statutory and regulatory authority. Furthermore, the EJ Plan document should contain the following clause to ensure transparency on the scope and reach of the EJ Plan “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.” Similar clauses exist in other state EJ policies.

² Opinion No. 7224

³ Mike Cox, Attorney General Formal Opinion No. 7224.

Comment 2 – The Disparate Impacts Assessment Is Vague As To What Constitutes A Disparate Impact and When and How Such An Assessment Is To Be Conducted.

The Executive Directive No. 2007-23 requires the MDNRE to “address discriminatory public health or environmental effects of state laws, regulations, policies, and activities on Michigan residents including an examination of disproportionate impacts”. Like the Petition Process, if the Disparate Impacts Assessment⁴ described in the EJ Plan imposes additional permitting burdens or mitigation measures on the regulated community, it exceeds its statutory and regulatory authority.

The Disparate Impact Assessment requirements described in the EJ Plan are vague and general, and do not describe what constitutes a disparate impact and when and how such an assessment is to be conducted. Instead the Disparate Impact Assessment references a forthcoming Environmental Justice Handbook intended to put meat on bones with respect to when and how a disparate impact assessment would be conducted. Therefore, to the extent that this forthcoming Handbook imposes additional burdens on the regulated community, it would constitute an illegal rulemaking.

Therefore, the Disparate Impact Assessment should be revised to clearly describe what constitutes a disparate impact and when and how such an assessment is to be conducted. Furthermore, the Disparate Impact Assessment requirements cannot impose additional burdens on the regulated community extending beyond the limited authority provided in the legal citations stated in the Executive Directive.

Comment 3 – The “Public Comment On Plan Revision” Section Should Be Extended To Include The EJ Handbook and Any Implementing Guidance.

Just as the public was provided an opportunity to comment on the EJ Plan and any substantive revisions, the public should also be afforded an opportunity to comment on the EJ Handbook and any implementing guidance. In general, the EJ Plan itself is written in broad philosophical terms. Thus, it is likely that the substantive issues will either be addressed in the implementing guidance or handbooks designed to execute the EJ Plan. Therefore, all implementing documents should be afforded an opportunity for public comment.

Comment 4 – The EJ Plan Affords No Private Cause of Action

The EJ Plan is not a regulation or adjudication and therefore affords not private right of action. The EJ Plan document should be amended to clearly state that “Nothing in the Executive Directive or the EJ Plan is intended to create a private right of action to enforce any provision of the Directive or EJ Plan; nor is the Directive or EJ plan intended to diminish any existing legal right or remedies.” Similar clauses exist in other state EJ policies.

⁴ Chapter 4 of the EJ Plan

Comment 5 – Marathon Supports The EJ Plan To The Extent It Encourages Meaningful Stakeholder Engagement.

Marathon recognizes that it is a privilege to conduct business in any community and that we must do so in a manner that cares for the people and the environment. To that end, Marathon supports MDNRE's commitment to encourage meaningful stakeholder engagement.

Sincerely,

A handwritten signature in cursive script that reads "Virginia M. King". The signature is written in dark ink and is positioned above the printed name.

Virginia M. King



MICHIGAN CHAPTER

Environmental Justice Implementation Plan

Comments by the Sierra Club Michigan Chapter

Submitted April 8, 2010

Sierra Club supports a strong pro-active Michigan Environmental Justice program, preferably with regulatory authority to modify state permits, emission levels, and projects that will have adverse impacts on defined Environmental Justice Areas of Concern.

The proposed plan to implement Governor Jenifer Granholm's Environmental Justice Executive Directive 2007-23 outlines a framework and process for beginning coordinated state action to address environmental justice impacts on thousands of people of color and low income residents of Michigan. It places most of the administrative responsibility on an Interdepartmental Working Group led by the Michigan Department of Natural Resources and Environment (MDNRE) and stresses the role of public participation in challenging potentially adverse, social, economic, and environmental threats to minority and low income communities. The Plan proposes appointment of a Coordinator in the Governor's office, an interdepartmental working committee, Departmental staff training, public outreach, guidance on environmental justice policy and procedures, and cooperation with local governments.

Sierra Club recognizes the plan as a start up program to begin implementing the Governor's earlier Directive, but is concerned about its effectiveness. It relies primarily on interdepartmental cooperation and a complaint driven process to deal with the many complex and overlapping issues that impact minority and low income communities---multiple sources of air and water pollution, proposals for developments that will introduce additional pollution and displacement, and elevated health risks, to name a few. The plan initiates a petition process allowing individuals, community groups and organizations to file complaints against adverse or disparate social, economic or environmental conditions expected from specific sources such as air, water, landfill, waste disposal and mining permits, large Concentrated Animal Feeding Operations (CAFOs), highway construction, and commercial developments. While the petition process offers a means of changing or modifying unjust agency decisions and practices, it also places most of the burden for redress on the victims or would be victims; it depends heavily on their ability to investigate proposals, obtain professional help in preparing petitions and meet the time limits built into proposal schedules.

There are no provisions for an EJ office or working staff to investigate, document or assist with problems resulting from proposed agency actions, and only a few administrative staff—or part time staff—are named to carry out the Directive's mission. The Governor's Environmental Policy Advisor will serve as the Environmental Justice Coordinator for the state, for example, and an Environmental Justice Coordinator within MDNRE is responsible for assisting and evaluating MDNRE's and related environmental justice programs and activities. This person will also serve as a point of contact for outside parties with environmental justice concerns. The

Interdepartmental Working Group, made up of department directors and deputies will be responsible for responding to petitions and will meet at least quarterly with the Governor's Environmental Justice Coordinator. While active involvement of top level administrators can provide critical leadership, is it practical to expect department directors and deputies to resolve serious complaints about statewide air and water pollution permits for major sources, or residential displacement due to proposed industrial expansion or proposed highway construction? An environmental justice program or office with staff is needed to insure that the process proposed can be implemented.

Specific concerns include:

- **Petition Process:** The section on "Consideration of Petitions," p.27, states "The petition process is not intended to interfere with existing permitting or project timelines." Does this rule out complaints related to permit enforcement, permit renewals, and expansion of existing permits? If the petition process is to address the cumulative impacts of pollution, review and reconsideration of existing permits in Areas of Environmental Concern is needed. How can the petition process be effective if project timelines cannot be reconsidered in order to address problems?
- **Public Participation:** There is a great deal of emphasis on outreach, better public notification and greater efforts to involve the public in proposed decisions. While Sierra Club supports expanded agency outreach and public notice, increased public participation without addressing issues raised by the public is a decided concern, based on a long history of testifying at public hearings and raising issues that are frequently ignored. Increasing public participation will not be successful unless it results in positive action to benefit the individuals or community affected.
- **Consideration of Health Impacts:** The discussion of data to be included in screening to identify environmental justice areas of concern (p. 21) indicates that it "may be beneficial to include health data and a broader range of pollution data for Michigan than are currently available in EJSEAT [EPA's screening data base]." Using health and pollution data available in Michigan should clearly be a part of screening to identify environmental justice communities in the state. Available zip code data on health conditions--asthma, cancer rates, lead poisoning, diabetes and other environmentally related diseases--should definitely be considered, as well as existing data on soil and water contamination and air quality monitoring reports.

Conclusion: Sierra Club recognizes the proposed Implementation Plan as a starting point for the state's environmental justice program. Since a Directive has limited legal power, the Governor's challenge is to provide active leadership and strengthen the proposal by finding funding resources for support staff. She must also insure that key departments in her administration are active in implementing the plan and making a difference in the way state agencies address equity issues important to people of color and low income communities.

Sincerely,

Jean Gramlich, Sierra Club Michigan Chapter Chair

Comment 20

From: DEQ-EJplan
Sent: Friday, April 09, 2010 9:56 AM
To: Crawford, Linda (DNRE)
Subject: FW: plan comments

From: Lael Goodman [mailto:laelgoodman@yahoo.com]
Sent: Thu 4/8/2010 9:53 PM
To: DEQ-EJplan
Subject: plan comments

Strengths and Weaknesses:

The Plan has a lot of strengths, especially in the spirit and intention of the document. The dedication shown to true public outreach is evident throughout the entirety of the Plan. Especially impressive is the level of specificity in the section labeled "Review and Rely on the Public Outreach Toolkit" (p. 9). This list of ways to meet with and inform the affected community members is detailed and explicit. Not only may this help to ensure that public outreach measures are taken in the future, but helps advise agencies about the expected level of commitment and options available to achieve effective outreach. In the same vein, the Plan mentions limiting the use of industry specific language (p. 8) that can have the effect of isolating the community and making information inaccessible. This attention to detail shows a good understanding of problems faced by environmental justice communities and a commitment to change.

Environmental justice issues are often seen as an inconvenience to those tasked with upholding its principles. However, the Plan demonstrates multiple other advantages of incorporating these ethics into a formal framework: better decision-making is mentioned (p.12), and a full three paragraphs (p. 5-6) are focused on the integration of environmental justice and economic growth as movements with mutually beneficial results. In highlighting these benefits of the Plan, it anticipates and refutes some of the criticisms that often gain the most traction in a community.

However, it is a lack of specifics that contribute to the major weaknesses of the Plan. In particular, the phrase, "The DEQ should provide environmental justice communities assistance with grant applications" (p. 17), provides no information as to who would take charge, or what this entails. This could mean anything from providing data to environmental justice communities to having a consultant help prepare grant applications. Yet another example of vague and broad generalizations is, "Agencies should avoid employing methods that will have a negative impact on the trust relationship" (p. 8). This statement, lacking specific examples, adds very little to the plan and instead can be seen to indicate a lack of commitment to an undeveloped idea.

The reasoning behind the choice of the petition process remains rather vague. Although it is stated that the petition process combines elements of the other two strategies (p. 25), the best explanation that the Plan gives for the choosing the petition process is that, "it [the directive] can best be accomplished through the creation of a petition process" (p. 26). However, given that the petition process has produced dissatisfaction where it has been previously implemented (p. 26), it remains unclear why this process was chosen, or how Michigan has tweaked the plan in order to promote greater satisfaction. In fact, one of the main complaints was the lack of support and resources with only one environmental justice coordinator (p. 26), however Michigan's Environmental Justice Plan also calls for the creation of only one position to tackle this

same task (p. 15). Although the working group may very well have clear reasons for structuring the grievances process in this way, the rationale is not identifiable in the body of the Plan. However, the provision whereby names and contact information are provided to the community if a petition is rejected (p. 28) will go a long way towards allowing a community to feel as though its concerns are recognized as legitimate. Additionally, although the Environmental Justice Coordinator will meet quarterly with the Interdepartmental Working Group (p. 23), there is little discussion of how often the IWG will itself meet. Because environmental justice efforts are not to interfere with existing timelines or permitting operations (p. 27), under the current wording, it is possible all permitting would take place before a petition would be considered by the IWG. True participatory decision-making should allow that all citizens have a chance to have their voices heard before any decisions are made.

The plan itself is also somewhat confusing in its structure. The detailed references to federal EPA regulations are not clearly delineated from the new structures that Michigan's Plan will be enacting. Even a close read of the Plan may lead citizens to believe that many of the measures discussed are new measures, rather than merely a background reference as to how federal policies influence the current Plan. In a document that already requires effort to read and comprehend, any structural or formatting change providing clarity should be adopted.

Recommendations to Overcome

Weaknesses:

Most of the identified weaknesses could be overcome with more specificity and precise language. Providing grant assistance for environmental justice communities is an excellent part of the Plan and should be expanded upon. Running workshops on grant applications with follow-up and resources would be a meaningful outreach effort that would have the added benefit of empowering the local community, the importance of which is discussed in Chapter 2 (p. 8).

Generally, including more specific examples of what is meant by broad statements would greatly improve the effectiveness and coherence of the Plan. For example, instead of recommending that actions having, "a negative impact on the trust relationship" (p. 8) be avoided, examples of what this might entail or clues on how to assess actions that might have a negative impact would explain a great deal about the reason for this statement's inclusion.

Rather than implementing the same petition process that has had problems in New Jersey, Michigan's Plan should have solutions to some of the most common problems. This may mean hiring two environmental justice coordinators or including an explicit statement about what resources this coordinator might have access to in order to best serve a potential environmental justice community.

In terms of the timing of meetings of the IWG and its intersection with permitting actions and timelines, this clause should be reconsidered. It is essential that petitions be reviewed before any decisions are made, although petitions should not be allowed to be filed merely as a means for delaying a project that would not otherwise concern an environmental justice community. If the Plan were able to outline how quickly a petition would be reviewed after submission or ensure that no final decisions would be made before proper consideration of the petition, this would go far towards ensuring a fair hearing.

To make the section on the marriage of environmental justice and economic growth even stronger, there could be more explanation of sustainable alternatives agreements. Although mentioned in the text (p. 17), and with further notes

added as an attachment, SAAs are becoming more widely used and deserve a greater role in the environmental justice plan. Yet there is not a convincing case as to why SAAs should only be included as a pilot project for a period of at least three years (p. 17). Similar programs have been enacted in many examples, and it seems unlikely that SAAs would harm a community. Instead, a program for these deals could be rolled out on even a limited basis, helping numerous communities in the time a pilot program would only affect one community.

In order to remove some of the confusion about which policies the Plan is suggesting and which are previously instated federal regulations, the wording should be more clear. Instead of merely providing key information on what is being outlined with a title, the Plan should plainly state that certain regulations have already been in effect for a number of years and that the plan being outlined is included for modeling purposes only or to describe current policies. Conversely, current policies that have no bearing on procedures adopted by the state of Michigan, such as other state models could easily be moved to an appendix.

Additional Actions for the State:

This Plan implements a petition process for reviewing environmental justice cases. However, the state should consider allowing for petitions to be posted publicly on the DNRE website, even before the petition is reviewed. Because the requirements for filing a petition are relatively modest, only 50 Michigan residents need to sign, a petition might be filed before there is widespread awareness of the potential injustice. If the petition were publicly posted on the website, interested parties from the entire state would be informed about the issue. Although communities could put their petition on the Internet themselves, only the DNRE's website would be a stable location for people to find information that would be well-known to citizens from all over Michigan. This is done in the same spirit as the annual report of petitions, but would be more effective and accessible.

Posting petitions on the DNRE's website would have the additional benefit of raising media awareness about the issue. One of the goals of the Plan is enhanced public outreach, and using the media to help disseminate information to community members and other interested parties would be an extremely efficient and cost-effective way to promote broad public awareness.

As is outlined in Chapter 7, local governments are crucial in the environmental justice efforts of the state. Although local governments should, be capable of guiding

residents through a environmental justice complaint and petition process (p. 30), 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 Chapter 7. Upon the

finalization and implementation of this Plan, the state government should hold training sessions for local officials, similar to what is outline in the Build Capacity section (p.15). If local governments are poised to become the liaison between concerned citizens and state government as is indicated (p. 30), then training at the local level is just as necessary as in state departments.

Obstacles to Implementing the Plan:

Although the bulk of the Plan is concerned with fair treatment for environmental justice communities, another key aspect is the identification of which communities qualify for special treatment through the use of EJSEAT. However, because the data used is mostly data pertaining to air pollution burdens (p. 20), many environmental justice communities with problems unrelated to air pollution may go unrecognized. The Plan itself points out this same concern and has suggestions for the inclusion of other factors in the

future. But until the EJSEAT tool is greatly refined, Michigan's Environmental Justice Plan will operate much less successfully than it could otherwise. As is mentioned several times throughout the body of the plan, economic difficulties in the state of Michigan and elsewhere will provide significant obstacles to carrying out all the details laid out in the Plan. However, this obstacle is mentioned so many times in the Plan that this could be used as an excuse to not implement the plan whatsoever. Although there is currently a fiscal crisis, proper living standards and equality are ideals that are relevant and necessary at all times, not only during times of prosperity. Thus in addition to mentioning why certain elements of the plan cannot be implemented soon, there should also be a mention of which initiatives will remain in effect, even given economic woes. If no such commitment can be made, then there should be some amount of guidance as to which programs are most important, such as the position of an environmental justice advocate, for when it must be decided what to implement given a limited budget.

The many positive aspects to Michigan's Environmental Justice Plan as well as areas needing improvement. Although the plan is far from perfect, its intentions as well as many of the specific details have the ability to change Michigan for the better.

From: DEQ-EJplan
Sent: Friday, April 09, 2010 9:56 AM
To: Crawford, Linda (DNRE)
Subject: FW: Comments on Draft Environmental Justice Plan

From: David Yanochko [mailto:dyan0chk0@comcast.net]
Sent: Thu 4/8/2010 6:57 PM
To: DEQ-EJplan
Subject: Comments on Draft Environmental Justice Plan

Thank you for the opportunity to comment on the Department's Draft Environmental Justice Plan, dated December 11, 2009. As a former Air Quality Division, Southeast Michigan District and Permit Section staff member for more than 15 years, and an Environmental Consultant in Southeast Michigan for the last 8 years, I believe that I bring a broad perspective to this emotionally-charged issue. Because the majority of my work experiences, both regulatory and consulting, have been in the field of air quality, my comments are necessarily limited by and to that experience.

The overarching theme of environmental justice seems to be rooted in the basic assumption that because a community is located near certain types of source categories, that community is presumed to be subject to disproportionate impacts from that source category. However, most, if not all of these same source categories are also the most heavily investigated and regulated types of sources from an air regulatory perspective. As a result of modern environmental regulations and air pollution controls, emissions of hazardous air pollutants have been reduced significantly over the last 30 years. For many of these source categories, every aspect of their current operation is now regulated by federal National Emissions Standards for Hazardous Air Pollutants (NESHAPs). In some cases, these standards have been in place long enough for the USEPA to return to the standard to do the required residual risk analysis. As a result, EPA as either published a finding indicating that there is no increased risk associated with the source category operating in compliance with the NESHAP standard or further tighten the standard if required. In spite of such detailed source category risk analysis, I have no doubt that the Department's draft Environmental Justice Plan would find a low income or minority community living in proximity of one of these sources to be disproportionately impacted due only to its historical reputation as a "dirty" source category. This is not meant to discredit the idea or possibility that a low income or minority community may, in fact, be experiencing higher incidences of cancer or other disease or lower birth weight children, than a more affluent community. It is to say that we may well be spending significant time, effort, and public funds in a misguided effort to correct social problems that are not related to how environmental laws and policies regarding air quality have been administered over the last 45 years since the original passage of the Clean Air Act in 1963.

The problems with these basic assumptions begin to manifest themselves in Chapter 3, *Integration Into DEQ (DNRE) Activities*. My comments are primarily focused on how this policy, if adopted, will impact future air permit decisions for new or modified facilities. The basic premise of assumed risk versus actual risk first appears on page 13 of the draft in the USEPA's six step approach for determining whether there is a Title VI violation. Step 4 states that even if the impacts from the proposed permit comply with health-based ambient standards, the permit can still be part of a Title VI violation if "there is evidence that the residents are exposed to high levels of the pollutant from other sources." Presumably those "other sources" are beyond the control of the permit applicant. What if those "other sources" are a higher incidence of smoking or lead-based paint in homes in the community? In the federal Prevention of Significant Deterioration (PSD) permitting program, which covers "criteria pollutants" for which National Ambient Air Quality Standards (NAAQS) have been set, a new or modified facility can show that the impacts from the project do not significantly cause or contribute to a violation of an NAAQS. The health effects caused by the criteria pollutants are just as real and significant as those caused by the Hazardous Air Pollutants at which the Environmental Justice Policy is directed. Yet the draft Policy does not provide the same clear off ramp as the PSD regulations to allow for new projects, with very small health impacts that comply with health-based standards, to proceed, while the Department continues to study the "other sources" responsible for the "high levels of pollutant impact."

Also in Chapter 3, on page 16 in the discussion on *Exercising Environmental Justice Principals in Practice in Permitting*, the draft Plan discusses embodying voluntary actions by permit applicants into permit conditions. The Department needs to understand that once a voluntary action becomes embodied as a permit condition it is no

longer voluntary.

In Section 4, *Disparate Impacts Assessment*, I agree with the concept set forth on page 21 that "each state agency should include clear identification of specific projects or activities that would meet the threshold for evaluating environmental justice concerns." However, I disagree that Item 2 on the list on page 21 *Air Permits to Install (PTIs) that require a public comment period* achieves that goal. Under Section 5511 of Act 451 of 1994 any permit to install "for which there is a known public controversy" must go through public comment. By this standard, if a single person alleges an environmental justice "controversy" regarding a particular air permit application, that application, regardless of size or impact, must go through a formal public comment period and, as a result, according to the draft policy, a full-blown environmental justice review. I do not believe that an individual using this policy to roadblock a small project with minimal environmental impact was the intent of the draft policy. However, it has been my direct experience that it is in fact being used in that way. How will the MDNRE cover the cost involved to complete an environmental justice review for every project requiring an air permit, for which there is a known public controversy involving environmental justice? The Air Quality Division is currently unable to fulfill mandated duties required by Act 451 of 1994 and the Rules promulgated there under to timely process modifications to Renewable Operating Permits. If the AQD cannot afford to meet mandated duties, where will it find the funding to take on new voluntary duties for environmental justice reviews?

My final comment is related to Chapter 6, *Petition Process*. I believe that if there is to be an Environmental Justice Policy it should not be focused solely on new and modified sources. Therefore, a petition process is a reasonable way to address existing problem areas. I believe that 50 signatures are reasonable to demonstrate a concern within the community. However, I believe that requiring only half of those signatures to be from the affected community is not appropriate. All of the petition signatories should be required to come from people living or working in the affected community. A process run in any other way does not demonstrate that a concern exists "within the community."

David M. Yanochko, P.E.

Comment 22

From: DEQ-EJplan
Sent: Friday, April 09, 2010 2:23 PM
To: Crawford, Linda (DNRE)
Subject: FW: EJ Comments

Attachments: DRC EJ Final Comments.doc

From: Brian Kandler [mailto:bkandler@detroitchamber.com]
Sent: Fri 4/9/2010 12:37 PM
To: agreenbe@horizonenv.com; DEQ-EJplan; Ruswick, Frank (DNRE)
Subject: EJ Comments

Please see attached.

-Brian

Brian Kandler
Director, Government Relations
Detroit Regional Chamber
One Woodward Suite 1900
Detroit, MI 48226
Phone: (313) 596-0348
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April 9, 2010

Rebecca Humphries, Director
Michigan Department of Natural Resources & Environment
Constitution Hall
525 West Allegan Street
Lansing, MI 48909

Dear Director Humphries:

I am writing regarding to communicate the Detroit Regional Chamber's opposition to the Draft Michigan Environmental Justice Plan. In its current form, the Draft would be confusing, at best, to implement and would not effectively address environmental justice. It is in conflict with the recommendations of the Department of Natural Resources & Environment's Transition Report, issued just four months ago. We are concerned that this would hinder Michigan's economic competitiveness and create significant difficulties for mature, urban communities, like those found across regional Detroit.

The Detroit Regional Chamber is a business organization made up of over 20,000 members, ranging in size from sole proprietors to fortune 500 companies. Our members employ over $\frac{3}{4}$ million working men and women in Michigan. Our economic development efforts, through the public/private collaborative Detroit Regional Economic Partnership, bring Millions of dollars of new investment annually to the region.

Before making final recommendations to the Governor, the Detroit Regional Chamber believes the MDNRE should, first, harmonize the Draft with provisions in the DNRE Transition Report that call for a more efficient permitting process. Not only does the Draft fail to effectively address the issue of environmental justice, it deviates greatly from the core principals of the Governor's efforts to consolidate the executive departments. In fact, as described in the Draft, the Interagency Working Group (IWG) would create a new layer within the decision-making process. This structure seems neither efficient, nor transparent and represents an "end-run" around the existing rulemaking process.

We suggest focusing 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. This would benefit state regulators and the regulated community, alike, and work to dispel misconceptions about environmental progress, which has been significant over the past forty years. Rather than retain a focus on increased access and communication for these communities, the Draft discounts the validity of decisions made by local elected officials, such as zoning ordinances, and seems to operate independently of the system of laws and rules that are the current product of our democratic process.

One of the most significant deficiencies of the Draft is its inability to guarantee a predictable regulatory outcome. The Draft relies heavily on ambiguous concepts, such

as "disparate impact". In fact, the EPA guidance cited in the text was so opaque that we, along with the City of Detroit, expressed immediate concern in a letter to EPA dated May 4, 1998 that illustrates how EPA's interim guidance, similar to the concept of "trigger" provisions and the function of the IWG in the petition process described in the Draft eliminate the opportunity for certainty in the regulatory process by subjecting permits to new objections even after they have been issued. Permit applicants deserve to know the objectives of a given permitting exercise before an application is filed. Requiring certain applicants to go beyond the requirement found in current environmental laws and regulations without focusing on a direct benefit to the environment and without answering "how much is enough?" will discourage future economic growth and likely exacerbate our current struggle to return from recession.

For communities in regional Detroit, implementing the Draft would conflict with policies aimed at assisting urban revitalization. Lacking a clear path to compliance, companies will be encouraged to site operations in rural or suburban areas to avoid allegations of discriminatory impacts and the associated regulatory inefficiencies. Rather than revamp older operations, the Draft would encourage companies to avoid taking their chances with new permits. The effect on residents in mature, urban communities would be more properties becoming vacant or falling into disrepair and a failure to deliver the improvement in quality of life that some may expect. The success of smart growth tools, such as brownfield redevelopment, is based on the attractive nature of the incentives attached to desired investment choices. This is the "road-tested" method for creating more vibrant urban space. It is unrealistic to assume, as stated in the Draft, that a more complicated path to compliance for industrial businesses would improve the business climate for other sectors of the business community, such as commercial retailers.

The Detroit Regional Chamber supports the desire to address the environmental effects that result from our industrial legacy. We will continue to work with the Department of Natural Resources & Environment toward a policy that assists stakeholders, from businesses, to local units of government, to individual residents, to provide better access to information about the permit process and their environment. We believe this can be accomplished without the displacement of existing rules and regulations and without sacrificing efficiency or clarity in the permitting process.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian A. Kandler". The signature is fluid and cursive, with the first name "Brian" being the most prominent.

Brian A. Kandler
Director, Government Relations
Detroit Regional Chamber