

Comment 23

From: DEQ-EJplan
Sent: Friday, April 09, 2010 3:18 PM
To: Crawford, Linda (DNRE)
Subject: FW: Comments 4-9-10: EJ and Tribes

From: Kyle Powys Whyte [mailto:kwhyte@msu.edu]
Sent: Fri 4/9/2010 2:55 PM
To: DEQ-EJplan
Subject: Comments 4-9-10: EJ and Tribes

Dear Members of the Environmental Justice Working Group,

I am pleased to comment on this very important environmental justice (EJ) plan. My major comment is that an additional set of sentences be added that express a future ?commitment? to engaging directly with tribes on the identification of EJ concerns specific to them. The following three reasons form the rationale behind why an expressed commitment to tribal participation is crucial to addressing environmental inequities in Michigan.

(1) EJ community identification tools, like EJSEAT, are ?not always? appropriate for the characteristics of resident populations in Indian country. For example, tribal lands may be largely inhabited by non-Indians due to the checkerboard problem, which sometimes makes it possible for environmental inequities to be inexplicit when the identification tools and criteria relevant for other communities are applied to Indian country.

(2) Tribes are sovereigns, and some of their EJ concerns are already covered by federal-tribal cooperative relationships. What needs to be known is what EJ concerns remain after these cooperative relationships have been accounted for. There should be some ?commitment? to finding out what these concerns may be.

(3) Sometimes tribes perceive EJ concerns as having to do with matters not usually considered in the cases of other communities. ?Cultural resources and sacred places? are important examples of this. There should be some awareness of what these ?perhaps? specifically tribal concerns are, especially when they are not covered by federal-tribal cooperative relationships, as discussed in (2). The Native American Task Force in EPA focuses, among other concerns, on the protection of tribal cultural resources and sacred places.

(1)-(3) suggest the addition, in the EJ plan, of a set of sentences that express a commitment to engage tribes in the future in order to better make known what EJ concerns tribes actually have in Michigan. Such additions may be relevant in the sections that discuss the Role of Local Units of Government. Given the legal and political limits of the EJ plan, the additions need not be definite about the sort of engagement activities needed, but the commitment to do so, in general, should be expressed. Doing so will enhance the relationships between tribes and the state and improve the possibility of taking advantage of opportunities for cooperative economic development.

Other state EJ policies have included a commitment to engage tribes in order to make tribal EJ concerns known, an example being the Oregon environmental justice policy.

Kind regards,

Kyle Powys Whyte

Kyle Powys Whyte, Ph.D.
Department of Philosophy
Michigan State University
503 South Kedzie Hall
East Lansing, MI 48824
517.355.4490
517.432.1320 (fax)

From: DEQ-EJplan
Sent: Friday, April 09, 2010 2:22 PM
To: Crawford, Linda (DNRE)
Subject: FW: Comments on the DEQ EJ Plan Draft

Attachments: D EJPLAN COMMENTS PDF.pdf

From: giiwegiizhigookway Martin [mailto:gmartin@lvdtribal.com]
Sent: Fri 4/9/2010 12:48 PM
To: DEQ-EJplan
Cc: Joette Pete-Baldwin Vice Chair
Subject: Comments on the DEQ EJ Plan Draft

Please accept this as comments on the DEQ EJ Plan Draft. **Comments are due today April 9, 2010.**

Ms. giiwegiizhigookway Martin/THPO
Ketegitigaaning Ojibwe Nation
P.O. Box 249
E23857 Poplar Circle
Watersmeet, MI 49969

906-358-0137 Office Phone
906-284-3536 Cell
906-358-4850 Fax

LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

Ketegitigaaning Ojibwe Nation Tribal Historic Preservation

P.O. Box 249, E23857 Poplar Circle Watersmeet, MI 49969

Phone: 906-358-0137 or 0138 Fax: 906-358-4850



Date: April 9, 2010

To Whom It May Concern:

REF: Comments on: DEQ-EJ plan

Please accept the following as the Ketegitigaaning Ojibwe Nation (Lac Vieux Desert Ojibwe Tribe) Tribal Historic Preservation Office comments on the proposed DEQ- EJ plan.

I did some research since I do not work with environmental justice and found that in 2004, the EPA formed a Native American Task Force in response to Executive Order 12898 entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," issued February 11, 1994. The task force focused on concerns regarding enhancing the protection of Tribal cultural resources and sacred places. I have never had any contact with this Task Force or heard or received any communications from them. I have been in this position since 2003.

It appears that this new Draft Environmental Justice Plan was developed in response to concerns by the DEQ, now the DNRE, that they were not meeting requirements by the EPA to keep grant funding. If this is the case, this Michigan Draft plan should also address the issues identified by the Native American Task Force of enhancing the protection of Tribal cultural resources and sacred places. There is also a long list of laws that Michigan should abide by and meet to consult with tribes regarding there issues:

- 2002 Government-to-Government Accord between the State of Michigan and the Federally Recognized Indian Tribes in the State of Michigan (October 28, 2002)
- The Intergovernmental Accord between the Federally Recognized Indian Tribes in Michigan and the Governor of the State of Michigan Concerning Protection of Shared Water Resources (May 12, 2004)
- The Governor's Executive Directive Number 2004-5 (May 12, 2004)
- The Intergovernmental Accord between the Federally Recognized Indian Tribes in Michigan and the Governor of the State of Michigan to Address the Crucial Issue of Climate Change (June 11, 2009).

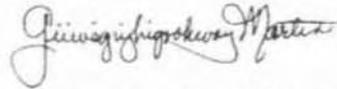
My contention is: Why are we developing yet another Task Force or Committee when others developed thus far have not chosen to diligently and in "good faith" work with the Tribes.

In my position as the Tribal Historic Preservation Officer for the Nation, I have said many times and will reiterate that the only way these measures can work is that an actual formal process for consultation must be developed and followed.

Further what is disheartening to me is that the Draft Plan does not mention Native American Tribes.

Thank you for your time.

Sincerely,

A handwritten signature in cursive script that reads "Giiwegiizhigookway Martin".

giiwegiizhigookway Martin
THPO

Giiwegiizhigookway Martin/THPO
Ketegetigaaning Ojibwe Nation
P.O. Box 249
Watersmeet, MI 49969

906-358-0137

gmartin@lvdtribal.com

From: DEQ-EJplan
Sent: Friday, April 09, 2010 2:23 PM
To: Crawford, Linda (DNRE)
Subject: FW: Comments on the Draft Environmental Justice Plan

Attachments: Draft EJ Plan - Consumers Energy comments 4-9-10.pdf

From: Kathryn R Ross [mailto:krross@cmsenergy.com]
Sent: Fri 4/9/2010 1:31 PM
To: DEQ-EJplan
Cc: A Kent Evans; Nancy A Popa
Subject: Comments on the Draft Environmental Justice Plan

Please find attached Consumers Energy Company's comments on the draft Environmental Justice Plan, dated December 11, 2009.

Kate Ross ☐ Consumers Energy ☐ Env Dept-Air Quality Section ☐ 517-788-0648 ☐ krross@cmsenergy.com ☐
517-788-2329 (fax)



A CMS Energy Company

Environmental & Laboratory Services

April 9, 2010

Director Rebecca Humphries
Michigan Department of Natural Resources & Environment
Constitution Hall
525 West Allegan Street
Lansing, MI 48909-7973

Submitted via DEQ-EJplan@michigan.gov

**RE: Consumers Energy Company's Comments on the
Draft Environmental Justice Plan, dated December 11, 2009**

Dear Director Humphries:

Consumers Energy Company ("Consumers") appreciates this opportunity to comment on the Michigan Department of Natural Resources and Environment's ("MDNRE") Draft Environmental Justice Plan (the "Plan"), dated December 11, 2009. As MDNRE is aware, Consumers is one of the nation's largest combined gas and electric utilities, ranking fifth among the gas utilities and thirteenth among electric utilities. We serve 6 million of Michigan's 9.9 million residents.

Consumers is proud of our achievements in meeting or exceeding previous Federal and State regulatory initiatives. Consumers shall continue to lead in this area and hopes that its comments below are integrated into the final Environmental Justice Plan that the MDNRE develops. Provided below are Consumers comments on the Draft Environmental Justice Plan, dated December 11, 2009.

1. The Plan is not specific enough

While Consumers supports the development of a State Environmental Justice Plan, we believe that the draft Plan does not accomplish many of the requirements stipulated in Executive Directive No. 2007-23. Consumers would like to state that we are supportive of the public participation mechanisms addressed in the Plan. However, we believe that the Plan does not identify specific measures to prevent discriminatory or negative effects on public health or the environment from cumulative/disparate impacts, nor does it provide specific policies and procedures for State departments to ensure Environmental Justice ("EJ") principles are incorporated into departmental decision-making practices. The current draft EJ Plan is not specific enough on how, when and where the EJ principles will be applied and thus does not adequately meet the intent of the Governor's directive.

2. The Plan is duplicative of already enforceable statutes and regulations

Consumers identifies with the statement in the Plan that the DNRE staff perceive the environmental laws and regulations applied are *per se* protective of public health and the environment; therefore it is not readily apparent how this Plan will address EJ concerns, outside of voluntary measures. The DNRE already has the authority to address environmental impacts via the permitting and compliance/enforcement processes, thus it is not clear what additional regulatory authority this Plan provides the

Agency. While voluntary action on the behalf of a business to address EJ issues should be encouraged, there is a concern that many businesses cannot afford, or will be scared away from, addressing additional environmental issues and cumulative impacts that are over and above what is required by a permit or regulation.

3. The Plan does not provide process timeframes

Although the Plan states that it should not interfere with the issuance of permits, Consumers is concerned that permitting may be delayed due to lengthened public participation periods and negotiation of "voluntary" actions to address EJ concerns. Moreover, it is not abundantly clear what the resulting impacts or consequences are to a business if voluntary EJ Plan principles are not agreed to or adhered to.

Since the Plan does not address timeframes for any of the activities it requires, businesses have no indication of how long these processes will take. Additionally, the Plan does not indicate whether all EJ concerns must be resolved before a permit can/will be issued. This uncertainty in the process may cause projects to be cancelled (due to schedule delays) or may deter businesses from considering EJ communities.

Consumers firmly believes that the level of uncertainty in how the Plan will be administered and implemented, as well as the lack of a defined resolution process, will surely be seen negatively by business and industry.

Consumers Energy appreciates the opportunity to review and provide comment on the draft EJ Plan.

Sincerely,



Kathryn R. Ross
Senior Environmental Planner
Environmental Department

cc: AKent Evans, P22-535A
NAPopa, P22-534

From: DEQ-EJplan
Sent: Friday, April 09, 2010 3:18 PM
To: Crawford, Linda (DNRE)
Subject: FW: MMA Comments on Draft Plan

Attachments: MMA Comments to Draft EJ Plan 040910.pdf

From: Randall Gross [mailto:gross@mma-net.org]
Sent: Fri 4/9/2010 3:07 PM
To: DEQ-EJplan
Subject: MMA Comments on Draft Plan

Attached you will find a document containing MMA's comments on and concerns with the Draft Environmental Justice Plan. Thank you.

Randy

Randall G Gross Jr | Director of Environmental and Regulatory Affairs | Michigan Manufacturers Association
620 S. Capitol Ave • Lansing Michigan • 48933
Tel: 517.487.8543 | Fax: 517.853.3343 | Email: gross@mma-net.org



April 9, 2010

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

**SUBJECT: Comments to the Draft Michigan Environmental Justice Plan
(December 11, 2009 Draft)**

Director Humphries:

The following comments to the proposed Draft Michigan Environmental Justice Plan (EJ Plan) are submitted for your consideration by the Michigan Manufacturers Association (MMA).

MMA represents the interests and needs of over 2,500 members, ranging from small manufacturing companies to some of the world's largest corporations. MMA's goal is to make it possible for Michigan manufacturers to successfully compete in the national and international marketplace. MMA's members operate in the full spectrum of manufacturing industries, which account for 90% of Michigan's industrial workforce and employ over 500,000 Michigan citizens. Manufacturing is the largest single sector of the Michigan economy, creating 20% of the gross state product, totaling \$76 billion.

MMA has a number of concerns with the proposed EJ Plan including consideration of economic constraints on the State, creating regulatory uncertainty, and stifling economic growth and redevelopment. Michigan is competing against other states and countries for companies to locate here. We do not need to create any barriers to attracting those companies. It is our belief that implementing a plan of this nature will make Michigan less competitive in attracting job providers and stimulating growth in our economy.

We urge you to reevaluate the proposed EJ Plan and focus it to a voluntary, incentive based program that will capitalize on the good work many companies are already doing and will ultimately encourage redevelopment and job growth in our urban centers.

Economic Constraints

MMA is concerned about how resources (both financial and human) will be deployed to implement the plan considering the current economic climate. While the EJ Plan appropriately references the economic constraints of the state, it fails to recognize these constraints as significant limitations to the scope of environmental justice (EJ) expectations.

The EJ Plan describes the creation of several new positions and will require significant investment of staff time. Time requirements will consist of staff members participating in a new interdepartmental working group as well as forming an EJ advisory council, creating new positions of an EJ Coordinator and EJ Advocate, as well dedicating employee time to develop department-specific EJ plans, an EJ Handbook, operational policies, etc., and conducting necessary training on these materials. Expectations will need to correspond to economic realities and the plan should seek to conserve resources; not create work for activities performed as a part of the regulatory process.

Clearly Defined Expectations

The current EJ Plan lacks the clarity, certainty and predictability needed to ensure the implementation of a successful EJ program for the state. The EJ Plan addresses broad, philosophical approaches to addressing aspects of the Executive Order, but does not provide definitive guidelines on how to achieve the desired results. Definitive goals and measurable targets should be set to ensure a successful implementation and to provide a manner to benchmark the EJ Plan.

It appears that further refinement will be developed in the operational plans, handbooks and other documents. However, prior to the development of any supplemental documentation, terms and definitions should be defined in a consistent manner to avoid confusion. This could negate the need for operational plans, handbooks and other documents, which ultimately may lead to more confusion and uncertainty on implementing the EJ Plan in a meaningful way. To encourage business partnership, the Plan should define specific terms in a consistent manner and set definitive goals with measurable targets. Clarity, certainty, and predictability are critical to the successful implementation of an EJ Plan.

Impact on Manufacturing Community and Regulatory Certainty

Executive Directive 2007-23 should not be construed to impose requirements beyond those prescribed by state or federal law. As a practical matter, the EJ Plan should not delay, inhibit or otherwise frustrate the efforts of businesses to receive approvals or permits in a timely manner. MMA is concerned with the EJ Plan's approach because we believe the State already has the ability and tools to protect human health and the environment in all communities and has the obligation to do so. As a result, the impact on business community is unknown. The business community advocated for a voluntary program, yet the EJ Plan fails to clearly identify or distinguish between mandatory and voluntary requirements. The EJ Plan also references impacts on permitting and enforcement, which appears to create an uncertain regulatory environment and hinders future economic development. Further, there seems to be an implication that any project with EJ concerns will have to satisfy the requests of the community, whatever those may be, before the permit will be issued or the project may proceed. Companies should not be burdened, or discriminated against (i.e.: not get their permits in a timely manner), due to historic environmental issues that are not associated with their project.

Industry, as well as many DNRE staff, perceives existing environmental laws and regulatory requirements as fundamentally protective of public health and the environment. The DNRE already has the authority to address environmental impacts via the permitting and compliance/enforcement processes, and although the EJ Plan alludes to having more authority, the EJ Plan does not provide any clarity on what additional regulatory authority the EJ Plan does or does not provide the Agency. Manufacturing facilities with NPDES or Air PTI permits already comply with existing monitoring, inspection, enforcement, remediation, reporting, compliance scheduling and best available treatment technology implementation requirements, the EJ Plan does not seem to clarify how the EJ principles will have any additional impact on those facilities.

The EJ Plan does not appear to clearly delineate between mandatory and voluntary requirements. Although MMA supports a voluntary approach, it only works if this approach is truly voluntary and companies are not forced into action as a condition for obtaining a permit. We do not feel the EJ Plan is clear enough on this point. Failure to provide clarity on this may scare away many companies from addressing additional environmental issues that are over and above what is required by a permit or regulations.

The EJ Plan should not add new layers of bureaucracy or duplicative efforts already performed as part of the regulatory process. This will have a troubling effect on economic development in urban communities if it is easier to develop "green space" than redeveloping brownfield sites due to a dual regulatory structure. Failure to address this issue in the EJ Plan will likely result in

"brownlining" communities and further stunting economic growth. The EJ Plan should promote incentives (i.e. tax credits, R&D grants) and avoid new mandates to enhance positive investment in economic development. An uncertain regulatory environment will negatively affect any future economic development and it will be counterproductive to the state's efforts to promote economic development and the redevelopment of urban areas if the definition and identification of EJ areas is so expansive that huge portions of the state meet the definition.

Conclusion

The aforementioned paragraphs reflect the concerns with the current draft EJ Plan. MMA and its members are supportive of efforts to communicate openly with neighbors, local communities and other key stakeholders where they have operations. We generally support moving down a path driven by voluntary participation and that is incentive based. However, the current draft EJ Plan has too many uncertainties, vagaries, and potential detriments to economic development for us to support. This plan will serve as a competitive barrier in attracting new, and retaining existing Michigan companies. We look forward to continuing to work with the stakeholders to refine the EJ Plan to recognize the State's economic constraints, to provide clearly defined expectations that will not adversely affect the State's regulatory climate, and to ultimately enhance Michigan's economic development.

Best Regards,



Randall Gross
Director of Environmental and Regulatory Policy

From: DEQ-EJplan
Sent: Friday, April 09, 2010 3:18 PM
To: Crawford, Linda (DNRE)
Subject: FW: MCC Comments to EJ Plan

Importance: High

Attachments: MCC Environmental Justice Comments 040910.doc

From: Cynthia Zwick [mailto:schulzmcc@voyager.net]
Sent: Fri 4/9/2010 2:41 PM
To: DEQ-EJplan
Subject: MCC Comments to EJ Plan

Please find the comments to the draft Environmental Justice Plan on behalf of the Michigan Chemistry Council.

Thank you and please feel free to contact me with any questions.

Cynthia Zwick
MCC
517.202.1789
517.372.8898
schulzmcc@voyager.net

April 9, 2010

MEMORANDUM

To: Rebecca Humphries, Director
Michigan Department of Natural Resources & Environment

From: Cynthia Zwick, CEO
Michigan Chemistry Council

**SUBJECT: Public Comment On Michigan Environmental Justice Plan
(December 11, 2009 Draft)**

The following comments to the proposed Michigan Environmental Justice Plan (draft dated December 11, 2009) are submitted for your consideration by the Michigan Chemistry Council.

Introduction:

The Michigan Chemistry Council is the primary trade association for companies engaged in the business of chemistry in Michigan. Our member companies employ nearly 30,000 people and are an integral and stable part of Michigan's economy.

The Michigan Chemistry Council and its members are supportive of efforts to communicate openly with neighbors, local communities and other key stakeholders where they have operations. This is evidenced by members' participation in the American Chemistry Council's "Responsible Care" program which was established in 1988. Responsible Care is a requirement for membership in the American Chemistry Council. For more information about the Responsible Care program and what our member companies are doing to support and engage with our communities, please visit the Responsible Care website at: http://www.americanchemistry.com/s_responsiblecare

Chapter 1: Overview

The Michigan Chemistry Council ("MCC") shares the concern that in the current economic climate, the MDNRE and other state departments must carefully assess and prioritize the number and scope of programs to be implemented; as well as the "general political and public acceptability" of those programs to be supported. Priority should be given to those programs which directly relate to a state department's primary mission and those activities required to be supported by state & federal law (including those programs specifically delegated to the State of Michigan by the federal government). Additional priority should be given to

those programs which funding is “leveraged” by matched federal or other third-party funding sources.

Given the present economic conditions in the state, the Department should guard against undertaking those projects and programs which do not support or advance a department’s primary mission.

The Plan states that it is the “genuine hope and expectation” of the working group that the integration of environmental justice principles into state department activities will have a positive impact on economic development and neighborhood revitalization. However, it should also be recognized that placing additional mandatory and “voluntary” requirements on businesses could have a significant negative impact on economic development and neighborhood revitalization.

The Plan specifically acknowledges this potential negative outcome when it states that “*negative impacts could result if the pursuit of environmental justice creates a dual standard for built-out, urban communities....(i)mposing new regulatory requirements that increase costs and create regulatory uncertainties...(that) could serve as an obstacle to economic development in those communities.*” These potential negative impacts give us concern.

In the crafting the final plan, careful consideration should be given to the environmental justice policies (or the lack thereof) of neighboring and competing states. Michigan’s proposed plan should be “bench marked” against neighboring and competing states from an economic development perspective to determine if it creates an undue competitive liability. The Michigan Economic Development Corporation (MEDC) should be consulted and enlisted to provide this review and analysis.

Additional concerns: The last sentence of the Potential Impact on Economic Development says: “*The Working Group recommends that state departments seek positive environmental and economic outcomes and guard against potential negative consequences as they integrate environmental justice principles into their activities and operations.*” While we recognize these are recommendations, there is no suggestions or direction of how the state departments will accomplish these goals, how they will be measured and who will pay for them.

Chapter 2: Public Participation

As part of their obligations under the American Chemistry Council’s “Responsible Care” program, most of our members already engage in significant public outreach activities. These outreach activities include local community advisory panels consisting of neighbors and community leaders as well as other community support activities. To the extent these pre-existing community outreach mechanisms are already established, they should be acknowledged and

considered as sufficient for purposes of meeting the public participation and outreach objectives of the Plan.

In those cases where a project developer or permit applicant has no pre-existing public outreach mechanisms, there is a significant concern that the timeframe for review and issuance of permits could be adversely impacted.

As a legal matter, Executive Directive 2007-23 should not be construed to impose requirements beyond those prescribed by state or federal law. As a practical matter, the Michigan Environmental Justice Plan should not delay, inhibit or otherwise frustrate the efforts of businesses to receive approvals or permits in a timely manner.

Additional Concerns: Public Outreach Toolkit. (Page 8 & 9) The cost of implementing and utilizing the elements of toolkit will be very expensive and there is no discussion of these costs nor the revenue to pay for these "tools".

Chapter 3: Integration Into MDNRE Activities

During these challenging economic times, the integration of environmental justice principles into MDNRE activities requires a balance (as we mentioned earlier) between the benefits and cost in light of other department priorities. The Plan specifically notes that current economic circumstances will limit the resources available.

In communicating and integrating environmental justice principles into the MDNRE, it will be important to emphasize, as the draft Plan specifically acknowledges, that *"An adverse disparate impact may be justified if the permit is reasonably necessary to meet a goal that is legitimate, important, and integral to the recipient's institutional mission and there are no less discriminatory alternatives."*

Under "Exercise Environmental Justice Principles In Practice," the Plan recommends (with regard to "Permitting") the use of *"enhanced public involvement and voluntary activities on the part of permit applicants."* This directive is of concern as it may result in the unreasonable delay of permit decisions and require applicants to engage in so-called "voluntary activities" which are in fact not "voluntary" and go well beyond the scope of applicable law or permit requirements.

Regarding "Compliance and Enforcement", there appears to be a directive (articulated as "prioritizing") toward increased monitoring, inspections, compliance and enforcement activities in environmental justice communities. This is directed to be done without any assessment of the nature of the activity, environmental track record of the permit holder or other considerations. If this is the case, the potential result will be less opportunities for growth or economic

development projects in these areas due to the fear of increased oversight, costs and public scrutiny.

Additional Concerns:

Adverse Impact Decision (Page 13) This section says that *"If the permit complies with a health-based ambient standard, there is a presumption that there is no significant adverse impact; however, this presumption may be overcome if there is evidence that residents are exposed to high levels of the pollutant from other sources."* There is no mention made of what form this evidence will take, where it will come from or who will pay for it

Permitting (page 16) reads: *"The DEQ should use enhanced public involvement and voluntary activities on the part of permit applicants to address environmental justice concerns."* Our concern is that even though this Plan has been represented as "voluntary" this statement makes it clear that environmental justice compliance will be an additional part of existing permitting requirements.

Compliance and Enforcement (Page 18) *"Each DEQ division should develop a written statement describing how environmental justice considerations will be used in its compliance and enforcement activities"* Again, even though the Plan is supposed to be voluntary this statement makes it clear that EJ will be a part of the Department's compliance and enforcement activities.

Chapter 4: Disparate Impacts Assessment

The stated intent with regard to assessing disparate impacts is to *"prevent state agencies from authorizing or conducting activities that have discriminatory or negative public health effects on the residents of minority and low-income communities."* *"If indicators identify a likely potential for such impacts to occur, then agencies must consider possible corrective measures."* It is unclear what the term "likely potential" means or how it is to be determined.

The Plan proposes using the USEPA Region 5 guidelines for determining disparate impacts. The USEPA Region 5 guidelines are focused, principally, on identifying "low income" and "minority population" areas without regard to health and environmental factors.

The inclusion of census tracts that fall in the one mile radius in determining a EJ area gives us some concern. We think at least 50% of the census should be in the one mile radius to be included in the affected area.

MCC members are concerned the use of the tool alone will simply result in the identification of large geographic areas of the state (such as low income rural areas in the Upper Peninsula) as being identified as "EJ areas of concern" without any reference to existing local environmental or health factors.

The USEPA's EJSEAT model also has criteria that give our members concern. The EJSEAT brings in 18 different variables to assess environmental justice areas and we don't really know the full impact of the EJSEAT tool because it is still under development and will probably be changed.

The proposed Plan methodology for identifying EJ areas of concern, which also includes an assessment of "the project size and type..." is a preferred approach. An initial review of a proposed project size and type could alleviate many potential environmental justice issues and concerns on the front end----- resulting in greater opportunity for economic development and revitalization in urban areas.

This fact is acknowledged in the Plan wherein it is stated that "*environmental justice methods, measures and principles identified in this plan can not be employed for every project and every activity.*" The agency is correct in identifying upfront those "projects that are likely to have a disparate impact given the nature of the project or its scope" and excluding from consideration those that do not.

The determination of threshold criteria for determining which projects are of sufficient type and size to warrant environmental justice measures to be included in an Environmental Justice Handbook should be subject to further input from the business community. The inclusion of "*7. Other projects and activities identified by the department.....*" is much too vague and open ended and seems to negate the reason for having a list at all.

In summary, it will be counterproductive to the state's efforts to promote economic development and the redevelopment of urban areas if the definition and identification of environmental justice areas is so expansive that huge portions of the state meet the definition. Alternatively, those areas which have large low income and minority populations and which populations are subject to adverse health and environmental impacts should be identified as environmental justice areas of concern.

In addition to demographic, environmental and public health factors, the upfront assessment of the project type and size will be a critical consideration in determining which projects are subject to environmental justice measures and allocating scarce resources to those project.

Chapter 5: Interdepartmental Integration

The creation of an interdepartmental working group could be helpful and provide a level of consistency across all areas of the Executive Branch. However the control over the permitting process of this working group is unclear.

We have concern that this group may change the permitting process by adding requirements to the process and turning voluntary efforts by the company involved into requirements for that permit and a “model” for permits granted in the future. It must be clear that the working group cannot add additional elements to permits and cannot contravene the permitting process or exceed current law.

Assigning the Governor’s environmental policy advisor as the EJ coordinator will provide an important single point of contact for those who wish to discuss EJ policy implementation.

Chapter 6: Petition Process

Michigan has chosen to adopt a “petition process” as a means for minority and low income communities to have further opportunity to raise issues of concern with agency decision-makers. The submission of the petition to the interdepartmental working group (IWG) is an appropriate process for petition review.

The requirement of 50 signatures of Michigan residents, with only half (25 of them) to be from the affected community, is unacceptable. First, a super-majority of petitioners should be residents of the impacted community ----not half from outside interests. Second, whether 50 signatures is a sufficient number of residents depends upon the size of the community. The “community” could be a very large (several square mile) “EJ area of concern” or it could be a neighborhood surrounding a single plant site.

In any event, we feel strongly that petitioners must establish a rational connection or stake in the outcome of a proposed project. The “Form and Requirements for Petitions” do not include any requirement for establishing the standing of the petitioners, their rationale for the petition (including anticipated adverse economic or public health effects), the identification of the relevant state agency or a statement of the requested redress by the agency.

It is acknowledged that the Plan provides for the Governor to finalize the elements of the petition process in a future Executive Order. These comments should be taken into consideration in the crafting of the E.O.

As acknowledged in the Plan and previously emphasized in these comments, the petition process should not interfere with existing permitting or project deadlines. And with regard to the “Response To Petitions,” any proposed action plan should not require state agencies to take action beyond their state and federal requirements.

Chapter 7: Role of Local Government

We recognize local units of government can play an important role in identifying environmental justice issues and acting as a liaison between state officials, project developers and community members.

Local units of government have a great interest in economic development and urban redevelopment projects and their participation can be valuable as long as it doesn't add another layer to the permitting process.

Specific Concerns: The tone of the language in this section seems to indicate that local governments need to take a role in the permitting process. We have serious concerns about the ramifications of separate local permitting requirements in the name of Environmental Justice. We also have concerns about the funding of these local government initiatives

The member companies of the Michigan Chemistry Council and their employees thank you for the opportunity to provide these comments on the proposed Michigan Environmental Justice Plan (draft dated December 11, 2009).