

**DRAFT**

**MICHIGAN ENVIRONMENTAL JUSTICE PLAN**

**December 11, 2009**

The draft Environmental Justice Plan was developed by the Environmental Justice Working Group. The members of the working group are listed below. The working group has agreed that the draft plan should be submitted to the public for comment. Submitting this document for public comment does not imply that a working group member endorses this plan or its adoption as currently written.

**ENVIRONMENTAL JUSTICE WORKING GROUP MEMBERS AND AFFILIATIONS:**

**MODERATOR:**

Frank Ruswick, Senior Policy Advisor, Michigan Department of Environmental Quality

**FACILITATORS:**

Sara Smith, Performance Consultant, Office of Great Workplace Development

Mark Becker, Performance Consultant, Michigan Department of Transportation

**MEMBERS:**

Rhonda Anderson, Environmental Justice Program Detroit, Sierra Club

Corina Andorfer, Staff Attorney, Michigan State Housing Development Authority

Steven Chester, Director, Michigan Department of Environmental Quality

Harold Core, Public Information Officer, Michigan Dept of Civil Rights

Jarod Davis, Public Policy Communications Leader, The Dow Chemical Company

Sylvia Elliott, Legislative Associate, Michigan Department of Civil Rights

Lisa Goldstein, Executive Director, Southwest Detroit Environmental Vision

Sara Gosman, The University of Michigan Law School

Randall Gross, Jr., Director, Regular Affairs, Michigan Manufacturers Association

Chuck Hersey, Environmental Manager, Southeast Michigan Council of Governments

Abed Houssari, Manager, DTE Energy

Michael Johnston, Director, Regional Affairs, Michigan Manufacturers Association

Brian Kandler, Director, Government Relations, Detroit Regional Chamber

Sally Kniffen, Environmental Specialist, Saginaw Chippewa Indian Tribe of Michigan

Tom Martin, Director of Policy and Legislative Affairs, Department of Labor and Economic Growth

Paul Mohai, Professor, School of Natural Resources, University of Michigan

Lori Noblet, Environmental Justice Coordinator, Michigan Department of Transportation

Matthew Rick, Vice President/General Counsel, Michigan Economic Development Corporation

Corey Calista Ridings, Health Disparities Reduction, Michigan Department of Community Health

Douglas Roberts, Jr., Director of Environment and Energy Policy, Michigan Chamber of Commerce

Kathryn Ross, Senior Environmental Planner, Consumers Energy Company

Frank Ruswick, Senior Policy Advisor, Michigan Department of Environmental Quality

Kelvin Scott, Director, Michigan Department of Civil Rights

Raymond Scott, M.P.H., Manager II, Detroit Department of Environmental Affairs

Patricia Spitzley, Chief, Office of Legal Services, Michigan Department of Natural Resources

Pamela Smith, Saginaw Lead Hazard Control Program, Saginaw County Department of Public Health

Andy Such, EnviroPolicy Consultants

Brad Van Guilder, Organizer, Ecology Center

David Wade, Division Director Environmental Health, Michigan Department of Community Health

Donelle Wilkins, Executive Director, Detroit Working for Environmental Justice

Willa Williams, Director, City of Detroit - Department of Environmental Affairs Administration

David Worthams, Legislative Associate, Michigan Municipal League - State Affairs Office

## **Executive Summary**

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### **BACKGROUND**

On November 21, 2007, Governor Jennifer M. Granholm issued Executive Directive No. 2007-23 charging the Department of Environmental Quality (DEQ) with developing and implementing a state environmental justice plan to promote environmental justice in Michigan. This document is intended to satisfy the requirement of this executive directive, both by providing general guidance and recommendations for all state departments and by providing a specific plan for the DEQ.

As required by the plan, the DEQ established an Environmental Justice Working Group composed of several state agencies, environmental justice advocacy groups, academia, tribal representatives, research professionals, and representatives of economic development and business organizations. Over the course of two years, this working group created a number of subgroups and conducted academic research and public focus group meetings. The working group also established a resource group comprised of interested members of the public to provide assistance in the development of the state plan.

By creating a plan through this more collaborative process, it is hoped that both the implementation of this plan and the continuing results more completely reflect the aspect of fairness that is the essential nature of environmental justice. It is also hoped that the important partnerships created through this process will facilitate more effective and efficient sharing of resources, including both material, human, and information. Such sharing of resources is especially critical since this plan is being released during an unprecedented period of economic contraction.

### **KEY ELEMENTS**

The plan is organized into several chapters matching the work of the subgroups of the Environmental Justice Working Group.

#### **Public Participation**

This plan recognizes that the two “pillars” of environmental justice are the fair treatment of all people and providing for meaningful public involvement in government decision making. Therefore, this plan incorporates comprehensive measures for including the public in legal and policy decisions related to environmental justice issues. Among those measures are guidance to make public participation efforts meaningful and a toolkit of recommended approaches and tactics to effectively communicate with the public.

#### **Integration into DEQ Activities**

The DEQ is the state agency principally responsible for administering most federal and state environmental laws in Michigan. As with any state government agency, the DEQ must carry out its responsibilities in compliance with all federal and state laws and agency regulations prohibiting both intentional and unintentional discriminatory actions based on a number of protected categories, including race, color or national origin. The report therefore contains a

chapter on how the DEQ will incorporate environmental justice considerations into administrative activities such as permitting decisions, compliance and enforcement activities, and grants or other incentive programs. This chapter could be adapted for use in the Environmental Justice plans of other state agencies, including references to whatever specific laws or federal policies govern their responsibilities.

The recommendations included in this chapter include: (1) building the capacity of DEQ employees through training and developing information tools; (2) creating an operational policy that creates expectations and identifies tasks which must be reconsidered to include environmental justice principles; and (3) prioritizing inspections, enforcement, compliance assistance, remediation and other activities which assist in identifying and mitigating disparate impacts.

### **Disparate Impacts Assessment**

In order to prevent discriminatory or negative public health or environmental effects by state laws, regulations, activities or policies, DEQ must first determine the minority or low-income areas where these discriminatory impacts are likely to exist. To accomplish this, the report recommends a methodology for identifying the circumstances under which the DEQ must consider and apply environmental justice principles to certain activities and actions.

### **Interdepartmental Integration**

Environmental justice issues transcend departmental boundaries and clearly are not limited to the activities of just the DEQ. Accordingly, the report contains recommendations for a mechanism to identify the environmental justice related impacts of projects from the perspective of various state agencies to insure that these impacts are addressed in a coordinated manner. Based on the research into environmental justice efforts in other states, strong leadership from the Executive Branch remains the most critical component to keeping the issue a priority across agencies.

The report recommends that an interdepartmental working group be established including the director or a deputy director from a number of state departments. The group will be responsible for the review and consideration of environmental justice complaints filed pursuant to the petition process also recommended by this report. The report also recommends that the Governor's environmental policy advisor serve as the state environmental justice coordinator.

### **Petition Process**

In accordance with the requirements of the executive directive, the working group also recommends a petition process be established as a mechanism for members of the public, communities, and groups to assert adverse or disproportionate social, economic, or environmental impacts. The process provides for flexibility concerning the format of the petition, but also requires that 50 supporting signatures be included. In response to accepted petitions, the interdepartmental working group would develop an action plan including specific community deliverables, a timeframe for implementation, and a description of the resources available. It is important to note that the authority of the working group would not supersede any established laws or regulations.

## **Role of Local Units of Government**

Local governments are well positioned to identify environmental justice areas within the community and particular issues and concerns associated with those areas. Local units of government also have communication mechanisms in place which, when utilized effectively, would allow them to have a transparent and consistent means to share information within their jurisdictions. Accordingly, the plan includes recommendations to local units of government to assist in the identification of environmental justice issues and acting as a liaison between state officials and community members.

All too often, environmental justice considerations are framed in negative terms and perceived as potential obstacles to economic growth. Minority and low-income communities, no less than other communities, want vibrant businesses that add to their economic base without harming their individual health and well-being. Accordingly, this environmental justice plan is not designed or intended to run contrary to the larger economic development efforts of the state. Instead, the focus of this plan, and the hope of the working group, is that this plan provides the best avenue for balancing productive business growth with the high quality of life that is important to all humans.

**[NOTE: THIS DRAFT PLAN REFERS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) THROUGHOUT THE DOCUMENT. ON OCTOBER 8, 2009, GOVERNOR GRANHOLM ISSUED EXECUTIVE ORDER NO. 2009-44 RECOMBINING THE DEQ AND DEPARTMENT OF NATURAL RESOURCES (DNR) INTO AN AGENCY TO BE NAMED THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT (DNRE). THE EFFECTIVE DATE OF THE RECOMBINATION IS JANUARY 17, 2010. CONSEQUENTLY, BEFORE IT IS FINALIZED, THIS PLAN WILL NEED TO BE MODIFIED TO REFER TO THE NEW ORGANIZATION.]**

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## **Chapter 1. Overview**

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### **PURPOSE**

On November 21, 2007, Governor Jennifer M. Granholm issued Executive Directive No. 2007-23. *See* Attachment 1. The executive directive requires the Department of Environmental Quality (DEQ) to develop and implement a state environmental justice plan to promote environmental justice in Michigan. This document is intended to satisfy this requirement and has two key purposes: (1) to provide general guidance and recommendations for all state departments to consider when drafting agency-specific environmental justice plans; and (2) serve as the environmental justice plan for the DEQ.

Environmental justice is defined as “the fair, non-discriminatory treatment and meaningful involvement of Michigan residents regarding the development, implementation, and enforcement of environmental laws, regulations, and policies by the state.”<sup>1</sup> The activities and actions of the DEQ and other state agencies have the potential to significantly impact the health and environmental well-being of all Michigan residents and businesses; particularly individuals living in minority and low-income communities. The DEQ has chosen to play a leadership role in environmental justice matters and encourages all state agencies to do the same in their administration of federal and state environmental laws and policies.

### **BACKGROUND**

#### **The Environmental Justice Movement**

The environmental justice movement is a union of civil rights activism and environmental advocacy. The birth of the environmental justice movement is most often cited as the 1982 campaign by a predominately African American community to oppose a proposed PCB waste landfill to be located in Warren County, North Carolina. The community was concerned that placement of the landfill was based on race, and that they were being singled out to bear a disproportionate exposure to the hazards associated with the landfill.

Following the Warren County controversy, a number of studies validated the concern that race was a significant factor in locating hazardous waste sites. These included a 1983 General Accounting Office (GAO) study, and a 1987 study by the Commission for Racial Justice of the United Church of Christ. In October 1991, the first People of Color Environmental Leadership Summit was held in Washington D.C. The summit culminated in the adoption of seventeen Principles of Environmental Justice. *See* Attachment 2. Subsequent to the Summit, in 1992, *The National Law Journal* published an article claiming that the U.S. Environmental Protection Agency (U.S. EPA) inequitably enforced superfund based on race and income considerations.

A significant milestone in the environmental justice movement occurred in 1994 when President Clinton issued Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” This order compelled each federal agency to make environmental justice part of its mission and to address

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<sup>1</sup> Executive Directive No. 2007 – 23.

“disproportionately high and adverse human health or environmental effects of its programs, policies, and activities” on minority and low-income populations. To meet this mandate, each federal agency was required to develop an environmental justice strategy. The U.S. EPA has developed such a strategy, established an Office of Environmental Justice, and drafted guidance for states in establishing environmental justice programs and meeting their commitments under federal law.

Under Title VI of the Civil Rights Act of 1964, recipients of federal funds are prohibited from discriminating on the basis of race, color, or national origin. The U.S. EPA's Title VI regulations provide that a "recipient shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex." 40 C.F.R. §7.35(b). State environmental agencies like the DEQ are recipients of substantial federal financial assistance, and therefore must comply with Title VI.

The State of Michigan and the DEQ have been the subject of both litigation and administrative complaints alleging environmental injustices. After the then-DNR issued a permit in 1992 to the Genesee Power Station Unlimited Partnership to operate a wood waste incinerator in Genesee Township, the NAACP and others filed a lawsuit alleging violations of civil rights and environmental laws. While the state circuit court found that there was not a disparate impact, it found that the DEQ had violated its constitutional duty to protect the health, safety, and welfare of Michigan's citizens, regardless of their race. Further, the court found that there should be a procedure in place that gives adjoining communities a fair opportunity to be notified and heard concerning the siting of pollution facilities near their borders before zoning is granted. The court also directed the DEQ to conduct a risk assessment. The circuit court's decision, however, was overturned on appeal because the plaintiffs had not pled these claims and the court could not direct the Legislature to act.

A number of years ago, community groups filed several civil rights complaints with the U.S. EPA Office of Environmental Justice about DEQ's permitting activities. These complaints alleged that, at the time, the DEQ was employing discriminatory methods in granting permits in minority communities. A complaint was filed with the U.S. EPA regarding the Genesee Power permit discussed above, but a decision was never issued in the matter. Two other noteworthy permit challenges were lodged with the U.S. EPA. In 1998, the U.S. EPA determined that, contrary to the claims of the petitioners, the Flint-based Select Steel facility did not adversely impact minority residents because the emissions did not pose significant health risks. In 2002, the U.S. EPA concluded that a hazardous waste injection well in Romulus did not cause disparate impacts because the percentage of minorities in the vicinity of the well was less than the state average. However, the U.S. EPA noted that the DEQ did not have an environmental justice program and "strongly" encouraged the DEQ to develop a policy to ensure compliance with Title VI.

The DEQ's first effort to develop an environmental justice program began in 1998 when former DEQ Director Russell Harding convened a workgroup with representatives from the business, academic, and environmental justice communities. The focus of this workgroup was on



addressing recent U.S. EPA guidelines on environmental justice in DEQ programs rather than on developing a state-wide plan. The workgroup produced a report dated October 12, 1999, entitled "Environmental Justice Recommendations." *See* Attachment 3. The recommendations in this report were never formalized in a policy or plan. Thereafter, several workgroup members declined to participate further, leading to dissolution of the workgroup in 2000. However, this effort sparked interest within the DEQ to improve public outreach procedures. A draft document dated January 24, 2001, entitled "Model Community Outreach Plan," was prepared and relied on by various divisions within the DEQ to make improvements in public outreach and communication. *See* Attachment 4.

Most recently, in May 2005 DEQ Director Steven Chester requested that the Environmental Advisory Council (EAC) consider and develop environmental justice principles for the DEQ. In January 2006 the EAC produced a final document entitled "Recommendations for an Environmental Justice Policy for Michigan." *See* Attachment 5. Director Chester and Department of Civil Rights Director Linda Parker jointly submitted the EAC recommendations to Governor Granholm on February 17, 2006, and these recommendations became the foundation for the drafting and issuance of Executive Directive No. 2007-23.

#### **Development of the Environmental Justice Plan**

The executive directive required the DEQ to establish an environmental justice working group to assist in the development of the state environmental justice plan. The state plan is to accomplish all of the following:

- Identify and address discriminatory public health or environmental effects of state laws, regulations, policies and activities, including an examination of disproportionate impacts.
- Include measures to prevent discriminatory or negative public health or environmental effects.
- Provide policies and procedures for state departments to ensure that environmental justice principles are incorporated into departmental decision-making and practices.
- Include recommendations for other state departments and agencies whose functions and responsibilities impact environmental justice.
- Recommend mechanisms for members of the public, communities, and groups to assert adverse or disproportionate social, economic, or environmental impacts upon a community and request responsive state action.
- Ensure consistency with federal environmental justice programs and recommend mechanisms for monitoring and measuring the effects of implementing the plan.
- Assure implementation in a manner that maximizes the promotion of environmental justice while minimizing or eliminating potential adverse or disproportionate social, economic, or environmental impacts.

In addition to developing the state environmental justice plan, the working group must also do the following:

- Identify state departments that could benefit from the development of a departmental or agency environmental justice plan.

- Assist in the development of departmental environmental justice plans and review the plans for consistency with the state environmental justice plan.
- Recommend measures to integrate and coordinate the actions of state departments to further promote environmental justice in this state.
- Recommend environmental justice performance goals and measures for the department and other state departments with environmental justice plans.
- Review the progress of the department and other departments with environmental justice plans in complying with the plan and promoting environmental justice.

With the assistance of the Department of Civil Rights, the DEQ convened the first meeting of the Environmental Justice Working Group in July 2008. Membership on the working group includes representatives from the business sector, academia, the environmental justice community, tribal community, local government, and various state departments. (A list of the working group members appears at the beginning of this document.) The working group created a number of subgroups to focus on specific topics essential to the development of an environmental justice plan. These topical areas included: public participation; integration into DEQ activities; assessing disparate impacts; interdepartmental integration; petition process; and, the role of local units of government. The working group also established a resource group comprised of interested members of the public to provide assistance in the development of the state plan. *See Attachment 6.*

After eighteen months of information gathering, outreach to various organizations and community groups, and discussion within the working group, in December, 2009 the working group finalized a draft environmental justice plan. In \_\_\_\_\_, this draft plan was made publicly available to **[THE FINAL PLAN WILL INCLUDE A DISCUSSION OF PUBLIC COMMENT ON THE AND VETTING OF THIS DRAFT PLAN.]**

On \_\_\_\_\_, 2010, the working group issued the final “Environmental Justice Plan for the State of Michigan and Department of Environmental Quality” (Plan).

## **POSSIBLE CONSTRAINTS TO IMPLEMENTATION**

Current economic conditions may be a constraint on the ability of state departments to implement agency-specific environmental justice plans. The methods, measures, and recommendations identified in this Plan will, to some degree, require resources to implement. All state department budgets have suffered significant reductions in general fund support in recent years, and this is expected to continue for at least the immediate future. This will compel agencies to concentrate on a narrowing band of priority functions and activities. Investment in new activities and ways of conducting operations, such as called for in this Plan, will be increasingly difficult as a result. Nevertheless, departments should use their best efforts to develop environmental justice plans that incorporate the recommendations of this Plan to insure that department activities do not result in discriminatory or negative public health or environmental effects in minority and low-income communities.

Low-income and minority communities have some of the most urgent needs and some of the most historically difficult and multi-faceted problems to address for Michigan's recovery.

Departments should prioritize addressing these problems from an environmental justice perspective using guidance from this document. Collaboration with other departments through the Interdepartmental Working Group (IWG) discussed in Chapter 5 is an opportunity to enhance the efforts of an individual department and bring the greatest benefit from the resources invested.

Another potential constraint could relate to an agency's institutional awareness and consideration of environmental justice issues. By way of example, the DEQ staff understandably perceives the laws they administer and environmental standards they apply as *per se* protective of public health and the environment. It may not be readily apparent, therefore, how certain local community environmental justice concerns can be addressed under existing law. Additional training of DEQ staff would be beneficial to expanding the understanding of environmental justice principles and to develop the enhanced skills and experience necessary to effectively address environmental justice concerns. Other state departments may have similar institutional constraints to overcome.

Finally, a policy integrating environmental justice principles into agency activities must have acceptance among a wide range of interests affected by those activities. To be effective, then, the principles embodied in this Plan must have general political and public acceptability.

## **POTENTIAL IMPACTS ON ECONOMIC DEVELOPMENT**

The discussion of environmental justice most often focuses on the adverse health and environmental effects borne by minority and low-income communities. But just as important is what can be done from an environmental and economic stand point to benefit these communities. Prior to finalizing this Plan, members of the working group hosted several focus group meetings and met with a number of representatives from minority and low-income communities. These individuals stressed over and over again the importance of having clean, safe, and healthy communities and neighborhoods. Far from wanting to drive businesses away, these community leaders emphasized the value of bringing businesses and good paying jobs to their communities. They clearly did not view environmental justice and economic prosperity to be mutually exclusive outcomes.

The working group shares the perspective of these community representatives. All too often, environmental justice considerations are framed in negative terms and perceived as potential obstacles to economic growth, but this need not be the case. Minority and low-income communities, no less than other communities, want vibrant businesses that add to their economic base without harming their individual health and well-being. 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 in minority and low-income communities. For example, positive impacts could result if integration encourages green development in affected communities through economic incentives or other measures, thereby resulting in less pollution. Addressing environmental justice considerations could also improve the quality of life in affected communities encouraging further appropriate economic activities. Incorporating environmental justice principles can be used as a guide for the business community to pursue sustainable economic, social and environmental development – the triple bottom line.

The working group acknowledges that negative economic impacts could result if the pursuit of environmental justice creates a dual standard for built-out, urban communities. Imposing new regulatory requirements that increase costs and create regulatory uncertainties in environmental justice communities could serve as an obstacle to economic development in those communities. Driving some development away from urban areas could further encourage urban sprawl and create associated unsustainable demand on public infrastructure. 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.

## **Chapter 2. Public Participation**

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### **INTRODUCTION**

The term “environmental justice” is defined in Executive Directive No. 2007-23 as follows:

*Environmental justice means the fair, non-discriminatory treatment and meaningful involvement of Michigan residents regarding the development, implementation, and enforcement of environmental laws, regulations, and policies by this state.*

The two “pillars” of environmental justice, thus, are the fair treatment of all people and providing for meaningful public involvement in government decision-making. To be effective, an environmental justice plan must incorporate comprehensive measures for including the public in legal and policy decisions related to environmental issues. Indeed, full public involvement in governmental decision-making is a basic tenet of democracy.

To facilitate public input an environmental justice plan also must be as flexible and diverse as the public itself. Accordingly, the term “public” is used here in its broadest sense to include anyone who may have an interest in, or be affected by, an environmental program or decision. The term is intended to be inclusive of smaller subpopulations within the larger public, with the clear intent that these smaller groups be provided significant opportunity for input into specific policies and decisions. The actual demographics of the interested and affected public may change both over time and with each specific policy being considered.

An anticipated outcome of effective public participation is that state departments will make better, more informed decisions. The tools and techniques selected for engaging the public should be appropriate for the circumstances with the goal of providing decision-makers with data and information that is both useful and relevant to the action under consideration. Engaging the public is also an opportunity for the DEQ to educate individuals and communities as to the significance of the proposed action and how that action meets or exceeds environmental standards and is protective of human health and the environment.

### **PUBLIC INVOLVEMENT GUIDANCE AND “TOOLKIT”**

The petition process described in Chapter 6 will provide individuals and affected communities a regulatory vehicle for providing comment and feedback to departments regarding the impacts of environmental decisions. Nevertheless, there will be other circumstances under which departments will want to elicit community input and identify issues of concern regarding proposed agency actions.

In 2008, the DEQ/DNR/Michigan Department of Agriculture (MDA) Leadership Academy developed a matrix tool based on work done by the International Association for Public Participation. See Attachment 7. The matrix tool identifies specific public participation techniques for agencies to utilize relative to the level of public participation that they wish to achieve. The levels of involvement are inform, consult, involve and collaborate. For example,

some techniques tend only to inform, while others tend toward the other levels of involvement. The matrix tool also compares the public participation techniques to key performance measures.

The matrix tool is provided as guidance to departments as they consider how best to insure the meaningful involvement and participation by individuals and communities impacted by agency decision-making. Additional guidance and a “toolkit” are provided below to supplement the matrix tool and provide further guidance to departments in responding to environmental justice concerns.

### **Make Public Participation Meaningful**

The purpose of public participation is to inform the public as to the nature and significance of a proposed action (e.g., issuing a permit, approving a cleanup plan) and to allow them the opportunity to express their opinions and concerns regarding that action. In turn, it is the understandable expectation of the public that the agency will fairly consider their comments and make adjustments to the proposed action if appropriate. The overarching goal therefore is to gain the public’s confidence in the process which can best be achieved by eliciting their input in a manner that is truly meaningful and genuine. Below are some suggestions for insuring meaningful public participation:

- Outreach needs to be ongoing to build relationships and establish trust between residents, community groups, and the agency.
- Outreach needs to empower the people. Communication should be “two-way” in that the agency not only offers an outlet for the public to learn and comment, but offers valuable responses and feedback to the local community.
- Outreach needs to occur early in the process. Traditional methods used to inform the public and receive input through formal public comment periods often do not allow adequate time for agencies, companies, and the public to collaborate and develop innovative solutions to difficult environmental problems.
- Agencies should avoid employing methods that will have a negative impact on the trust relationship.
- Departments should take advantage of the diversity of the agency staff. Utilize qualified staff when communicating with the public to make residents feel more comfortable and help establish trust.
- There needs to be a strong sense of accountability within the agency to its own policy and implementation strategies.

### **Educate Department Staff on Environmental Justice and Effective Outreach**

State agencies often are staffed by individuals trained in the sciences, engineering, or law. It is common for departments to develop a language or lingo particular to that agency, and agency staff frequently uses acronyms and technical terms unfamiliar to the public. This is true of the DEQ. The following suggestions are intended to improve communication with the public on environmental justice issues:

- Effective two-way communication involves strong local neighborhood and residential organizational capacity and understanding within both the state agencies and the community.

- Topics in training should include environmental justice training, effective relationship-building, collaborative negotiation techniques, and strengthening local cultural awareness. The training could be provided by the U.S. EPA or other federal and state entities.
- Agency staff need to know:
  - *Who* is affected and *where* they are located.
  - *What* type of information needs to be provided to the public.
  - *How* should that information be provided in the most effective and efficient way. As a general matter, agencies should avoid overly-technical presentations and do their best to present information in terms the public can relate to.

### **Review and Rely on the Public Outreach Toolkit**

Outreach to affected individuals and communities should be in a manner that allows state departments to efficiently and effectively communicate with the public. Agencies can utilize a number of different mechanisms to determine which information disseminating technique or “tool” is appropriate for the circumstances. Below is a **Toolkit** of options for agencies to choose from:

- Telephone “hotline” access during business hours to relevant parties.
- Factsheets.
- Public notices.
- Community newsletters.
- Newspaper postings.
- Mailing lists (email or hard copy).
- Providing documents in “plain English” and/or appropriate languages for the community.
- Direct contact/meetings with community groups and leaders.
- Soliciting and receiving comments via e-mail.
- Issuing press releases to remind the public of meetings or hearings.
- Attendance lists at meetings/hearings (though should be voluntary).
- Repositories of historical records and policy documents related to environmental justice issues.
- Community technology centers (described below).
- Community meetings/public hearings.
- Webcasts of community meetings/public hearings.
- Online forums for stakeholders and residents to voice their concerns.
- Conducting collaborative meetings in the community at which environmental groups as well as the company and the agency participate as presenters.
- Focus groups.
- Environmental Justice Advisory Committee comprised of key stakeholders:
  - Should consist of private sector businesses, community groups, government, and other interested parties.
  - Ask to gather public input from their constituents.
- Posting site specific information on-line.
- Conducting follow-up surveys of public participants.

### **Enhance Electronic Access to Encourage Public Participation**

The Internet and the broad availability of computers provide another avenue for effective communication and engagement of the public. As funds are available, departments should consider taking the following actions:

- Increase electronic access to build public participation by first establishing a user-friendly environmental justice website that is clear and simple to navigate and read.
- On the agency website post public notices, environmental justice policy, public permit information, and other documents for public review in plain language and translated into another language if necessary.
- Use any combination of the tools from the “toolkit” to encourage online participation and communication.
- Encourage the donation of excess computers and technology to community centers, libraries, etc., to establish “Community Technology Centers” for the purpose of benefitting those low-income or minority groups that do not have access to the Internet.
- Connect community groups to all aspects of state agencies including computer-based research, Internet research, risk assessment, and online training programs that will enable community residents to become aware of important agency functions such as inspection programs, enforcement activities, monitoring results, grant opportunities, etc.

### **Identify Community Leaders and Host Community Meetings**

One of the easiest ways to gain the trust of local residents and to effectively communicate with them is through the people they trust and respect. Another way to gain trust is to work with community leaders to host meetings in the affected community. Accordingly, departments should take the following steps to improve communication with the public:

- Identify community leaders and establish relationships with them. Community leaders may be from religious, environmental justice advocacy, medical, educational, or any other institution that serves the community on a regular basis. Working with these groups or individuals will not only establish trust within the community, but will grant insight into the community’s needs and concerns, putting the agencies in a better position to address those needs.
- When requested by a member of the public, or when a site or project is of heightened interest and importance, a community meeting should be held for the purposes of disseminating information, documenting community concerns, and engaging public discussion.
- Community meetings should be organized in a manner that is accessible to the public. Scheduling of meetings should be sympathetic to those with demanding work schedules, and childcare needs. Agencies should receive input from the community before scheduling these meetings, and should allow parents that have childcare responsibilities to bring along their families.



- Language translators and reasonable accommodations for persons with disabilities should be considered as part of the planning of community meetings and all facilities should be fully accessible.

### **Cooperate with Other Departments and Entities**

Successful public outreach may be best achievable through inter-agency partnerships and/or cooperation with other entities such as local units of government, academic institutions or public interest organizations. Departments should consult other state agencies and, as appropriate, local governments, universities, and organizations to see how they can work together to achieve the same goals. Collaboration will be useful in areas that involve some type of study or information gathering (*e.g.* Geographic Information Systems (GIS) usage in identifying environmental justice areas, translation of documents).

## **PUBLIC COMMENT ON REVISIONS TO THE PLAN**

As was done in the development of this Environmental Justice Plan, the public should be given ample opportunity to comment on any substantive revisions to the plan before such changes are finalized. Revisions should be subject to a public comment period of at least 60 days. Subject to cost, notice of the comment period and availability of the proposed revisions to the plan should be made in the DEQ Calendar, several major newspapers located throughout the state, and local community newspapers. The revised plan should also be made available in electronic format on the DEQ Web site, communicated to local health departments (LHD) with a suggestion to place a link on the LHD Web sites, and in hard copy at each of the DEQ's eight district offices and two field offices. LHDs would be encouraged to make hard copies available upon request. The DEQ should also inform the individuals, community organizations, and other participants who provided input in development of the original plan of the opportunity to comment on any revisions to the plan. Tools for effective public participation are identified in Chapter 2.

Department-specific environmental justice plans should likewise be made available to the public for comment prior to being finalized.

## **Chapter 3. Integration Into DEQ Activities**

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### **INTRODUCTION**

Under the equal protection clauses of the Michigan and the United States Constitutions, the DEQ is prohibited from intentionally discriminating against minority residents in its activities. As a recipient of federal financial assistance, the DEQ is also prohibited from discriminating on the grounds of race, color, or national origin under Title VI of the Civil Rights Act of 1964. The U.S. EPA's Title VI regulations provide that a "recipient shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex." 40 C.F.R. §7.35(b). The DEQ would lose federal funding if there is a Title VI violation that is not remedied.

In 1998, the U.S. EPA issued interim guidance for investigating Title VI complaints, which set forth the steps by which the agency would consider Title VI complaints. In 2000, after stakeholders criticized the interim guidance as unclear, the U.S. EPA issued draft revised guidance that explained in more detail each of the steps. The U.S. EPA also issued draft Title VI guidance on environmental permitting programs for funding recipients. This guidance has not been finalized, but does provide suggestions for developing state environmental justice programs. This U.S. EPA guidance will be discussed below in greater detail.

The DEQ is the state agency principally responsible for administering most federal and state environmental laws in Michigan. Understandably, then, the DEQ must insure that its actions comport with state and federal constitutional law, Title VI and the U.S. EPA anti-discrimination regulations. But legal mandates are not the only reason state agencies should familiarize themselves with environmental justice issues and develop environmental justice programs. As noted elsewhere, actively engaging the public in new and creative ways will result in better communication with and education of the public, and better decision-making by agencies.

This chapter identifies how the DEQ will incorporate environmental justice considerations into administrative activities such as permitting decisions, compliance and enforcement activities, and grant/other incentive programs. It is further intended to serve as a model for other state departments to consider when addressing environmental justice concerns as part of their departmental activities.

### **U.S. EPA GUIDANCE**

As noted, the U.S. EPA has promulgated anti-discrimination regulations under Title VI prohibiting recipients of federal funding from subjecting individuals from discrimination on the basis of race, color, or national origin. The U.S. EPA has supplemented these regulations with guidance to the states. 65 *Federal Register* 39650 (June 27, 2000). In this draft guidance, the U.S. EPA suggests three ways to incorporate Title VI considerations into state permitting: (1) a comprehensive approach that improves the permitting process overall and incorporates such activities as staff training, adverse impact and demographic analyses, effective public

participation and outreach, intergovernmental involvement, and reducing and/or eliminating adverse disparate impacts; (2) an area-specific approach that encourages stakeholders to develop an agreement to eliminate disparate impacts; and (3) a case-by-case approach that uses general criteria to evaluate permits and follows the U.S. EPA's steps in analyzing complaints.

The U.S. EPA analyzes whether there is a Title VI violation using the following steps:

- *Assess Applicability:* Determine that the permit action is a new permit or a renewal; modifications such as a name change are not generally considered.
- *Define Scope:* Determine the community concerns, the stressors at issue, and the sources of stressors that need to be considered in the analysis, including background sources and unregulated sources.
- *Impact Assessment:* Determine whether the activities of the permitted entity alone or in combination with other sources cause an impact.
- *Adverse Impact Decision:* Determine whether the impact is significant by assessing cumulative effects, such as cumulative cancer risk levels and hazard index values. 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.
- *Characterize Populations and Conduct Comparisons:* Define the affected population and determine whether a disparity exists between the affected population and a comparison population in terms of demographic characteristics and impacts.
- *Adverse Disparate Impact Decision:* Determine whether the disparity is significant. Disparities of at least a factor of two are likely to be significant.

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. Thus, for example, adverse impacts from a wastewater treatment plant could be justified if there are no practicable and comparatively effective alternatives.

## **CURRENT ENHANCED PUBLIC OUTREACH**

The DEQ has undertaken enhanced public outreach, most notably by the Air Quality Division (AQD). The AQD recognizes that projects that are large, controversial or located in minority or low-income communities may benefit from enhanced public outreach procedures. Enhanced public participation efforts help to promote collaborative solutions to difficult environmental problems.

For the type of projects identified above, the AQD typically conducts a preliminary public meeting before the formal public comment period begins. The purpose of this meeting is to provide information about the project to the public, to open lines of communication between AQD staff experts and the public, and to offer a question and answer period. Another purpose of these preliminary meetings is to seek input from the public on the design of the formal public comment process. Additional interested party mailings and public meetings are often conducted

in response to this input. The AQD staff also meets personally with representatives of local community groups and environmental groups and makes personal contact with individuals who express interest in the project.

Enhanced public participation utilized presently by the AQD includes one or more of the following additional procedures:

- Placing applications and supporting information on the AQD Web page.
- Providing documents in appropriate languages for the community.
- Soliciting and receiving comments via e-mail.
- Issuing press releases to remind the public of the meetings and hearings.
- If requested by community members, providing additional mailings to area churches and community groups.
- Holding at least one collaborative public meeting in the community at which environmental groups, as well as the applicant and AQD, participate as presenters.
- AQD staff conducts follow-up surveys with meeting/hearing participants to gain further insight into community concerns.

Consistent with the additional steps identified below, all DEQ divisions are encouraged to adopt equivalent public outreach measures for permitting and other administrative activities.

## **ENVIRONMENTAL JUSTICE CONSIDERATIONS IN DEQ ACTIVITIES**

Executive Directive No. 2007-23 requires that environmental justice principles are incorporated into DEQ decision-making and practices in order to: (1) identify and address discriminatory public health or environmental effects of state laws, regulations, policies, and activities; (2) prevent discriminatory or negative public health or environmental effects of the same actions; and (3) maximize the promotion of environmental justice while minimizing or eliminating adverse or disproportionate social, economic or environment impact.

This plan identifies three general methods for the DEQ to meet, in part, the above-stated goals. Implementing these measures, however, was based on the following assumptions: (1) there are geographic areas in Michigan that have suffered differential environmental impacts that continue to affect the health of the citizens in these communities; (2) Michigan will continue to suffer economically for the foreseeable future which will limit the resources available to the DEQ to fund existing programs, address environmental justice considerations, and create pressure for economic development; and (3) the DEQ staff will be encouraged by the DEQ management to continue to improve their understanding of environmental justice principles and gain the skills and experience necessary to effectively addressing environmental justice considerations.

The three general methods that should be integrated into DEQ decision-making, to the extent resources are available, are as follows:

### **Build Capacity**

The DEQ must build the capacity within the agency for understanding and implementing environmental justice principles. Developing tools and information, training, and creating some level of expertise all serve to build such capacity. With this in mind, the DEQ should:

- Train key staff in each division in environmental justice principles and their application by the DEQ in its activities.
- Develop an Environmental Justice Handbook for use by all DEQ staff. This handbook should allow DEQ staff to recognize how the operational policy described below relates to their day-to-day activities.
- Identify an environmental justice coordinator within the DEQ who will be responsible for assisting and evaluating the DEQ's environmental justice related programs and activities. This person should also serve as a point of contact for outside parties with environmental justice-related concerns with DEQ activities.

### **Operationalize the Exercise of Environmental Justice Principles**

The DEQ must operationalize the exercise of environmental justice principles so that they become part of the way the DEQ conducts its business. This entails creating expectations and identifying tasks through which DEQ staff start to think and act upon environmental justice principles. The DEQ should:

- Develop an operational policy that describes the DEQ's approach to environmental justice and adopts these integration recommendations. For example, the process by which environmental justice activities will be triggered within the DEQ should be specified.
- Make information on environmental justice and the DEQ's environmental justice activities available to interested parties, including the regulated community.
- Post environmental justice related information on the DEQ Web site.
- Create fact sheets on key regulatory programs for environmental justice communities. These fact sheets should explain, for example, the purposes of the regulatory programs, the nature of appropriate decision-making factors used in the program, and how the public can be involved in the program.
- Create a regional environmental justice outreach team for Southeast Michigan to act as liaison for the DEQ with environmental justice communities and local units of government. Provide similar expertise for other districts through Lansing central staff, with assistance from district staff. Use the DEQ environmental justice advocate identified in Chapter 6 to assist in these efforts.
- Coordinate with the Department of Community Health in assessing and studying public health issues associated with cumulative environmental impacts in minority and low-income communities.

### **Exercise Environmental Justice Principles in Practice**

The DEQ must exercise environmental justice principles in practice. This entails specific actions the agency undertakes at a functional level in terms of prevention (permitting, compliance, and enforcement), remediation (cleanup of contamination), and incentives (grants and incentives).

In general, the DEQ should prioritize inspections enforcement, compliance assistance, remediation, and other activities to assist in identifying and mitigating disparate impacts. The DEQ should undertake the following with respect to specific activities:

#### Permitting

- The DEQ should use enhanced public involvement and voluntary activities on the part of permit applicants to address environmental justice concerns.
  - Use enhanced public participation techniques identified in Chapter 2.
  - Ensure that all applicable legal authorities and criteria are appropriately applied to minimize any detrimental public health or environmental effect of the proposed activity on the affected community.
- Encourage the project applicant and affected community to cooperatively identify and address other public health and environmental stressors affecting the community. If agreed upon by the applicant, voluntary actions can be embodied in permit conditions. If it can be helpful, the DEQ should facilitate appropriate meetings or other interactions between the project applicant and affected community. The DEQ should further encourage such positive interactions by formally recognizing project applicants that voluntarily undertake actions to address community concerns and developing case studies that describe successful examples of this approach.
- The DEQ should also participate in the Pilot Sustainable Alternative Agreement Process described below.

#### Compliance and Enforcement

- Each DEQ division should develop a written statement describing how environmental justice considerations will be used in its compliance and enforcement activities. At a minimum, this should include:
  - Prioritizing monitoring, inspections, compliance, and enforcement activities in environmental justice communities.
  - Promptly and completely responding to complaints of illegal environmental activities in environmental justice areas to the extent of the division's abilities.
  - A process for targeting compliance inspections upon becoming aware of significant adverse impacts caused by environmental pollutants and discharges in environmental justice areas to ensure emitters of pollutants and discharges are meeting their legal obligations to control such emissions and discharges.

#### Remediation

- The DEQ should give additional consideration to undertaking remedial projects in environmental justice areas.

#### Incentive Programs

- The DEQ should provide additional consideration to awarding grants, loans and other incentive programs that will benefit environmental justice areas.
- Additional incentives for brownfield redevelopment should be developed. These new incentives should carry with them a need to address environmental justice considerations in the affected communities.

- The DEQ should provide environmental justice communities assistance with grant applications.

Pilot Sustainable Alternative Agreement Process

- The DEQ should work with the Interdepartmental Work Group described in Chapter 5 to develop a pilot “Sustainable Alternatives Agreement” (SAA) process. The SAA is a contractual agreement between a person proposing a project, an interdepartmental work group, and/or the community stakeholder group that uses incentives to encourage economic development and address disproportionate impacts in the affected community. The pilot SAA process is further described in Attachment 8.
- An SAA process could borrow successful elements of existing programs in Michigan and other states. It should be initiated only as a pilot program since it comprises a fusion of ideas and applies them in a new context (on behalf of environmental justice communities in Michigan). A pilot could help refine aspects of the program (e.g., what incentives are most effective), as well as assess the appropriateness of full-scale implementation. A pilot should be conducted for a minimum of three years and involve at least five proposals before a decision is made on extending the program and, if so, in what form. At the end of this time period, the interdepartmental work group should seek public comment on the success of the pilot process and issue a report to the Governor and the Legislature that makes recommendations on how to proceed.

## **Chapter 4. Disparate Impacts Assessment**

### **INTRODUCTION**

Executive Directive No. 2007–23 requires the DEQ to develop a state environmental justice plan that, among other things, includes measures to prevent discriminatory or negative public health or environmental effects of state laws, regulations, policies, and activities on Michigan residents. To meet this goal, the DEQ must first determine the minority or low-income areas where these discriminatory or “disparate” adverse impacts exist or are likely to occur before the agency can implement measures to prevent or mitigate such adverse consequences. This chapter describes a methodology or approach for identifying the circumstances under which the DEQ must consider and apply environmental justice principles to certain of its activities and actions. This approach is intended to provide guidance and assistance to other state departments in developing their own environmental justice policies and plans to address the disparate impacts associated with their activities. Although an appropriate response to certain environmental issues, the approach is inadequate for more significant issues like global climate change, which must be addressed regionally or globally rather than through specific projects and other routine activities of the DEQ. Lastly, for the approach identified herein to be successful, environmental justice advocates as well as the business community must find it acceptable.

### **U.S. EPA GUIDANCE ON ASSESSING DISPARATE IMPACTS**

As required by the executive directive, the intent of this plan 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.

The phrase “disparate impacts” and related terms have been the subject of litigation in Title VI and related civil rights cases. Reliance on existing case law, however, has not been helpful for purposes of developing this plan. Legal remedies to mitigate disparate adverse impacts in the context of environmental justice have been largely unsuccessful. Therefore, the plan does not adopt a strict “legal” definition of disparate impact but rather seeks to identify conditions that indicate when disparate impacts exist that, in turn, will trigger environmental justice activities.

Several federal agencies have developed guidance defining key environmental justice terms and methods for determining if disparate impacts exist or are likely to occur based on agency decision-making. This is true of the United States Department of Transportation (USDOT). The USDOT has defined such terms as “adverse effects” as well as “disproportionately high and adverse effect on minority and low-income populations.” While these definitions are useful for the USDOT and the Michigan Department of Transportation (MDOT), for purposes of this chapter and its application to DEQ activities, the U.S. EPA guidelines for determining disparate impacts, entitled “Revised Region 5 Interim Guidelines for Identifying and Addressing a Potential EJ Case,” are more appropriate.



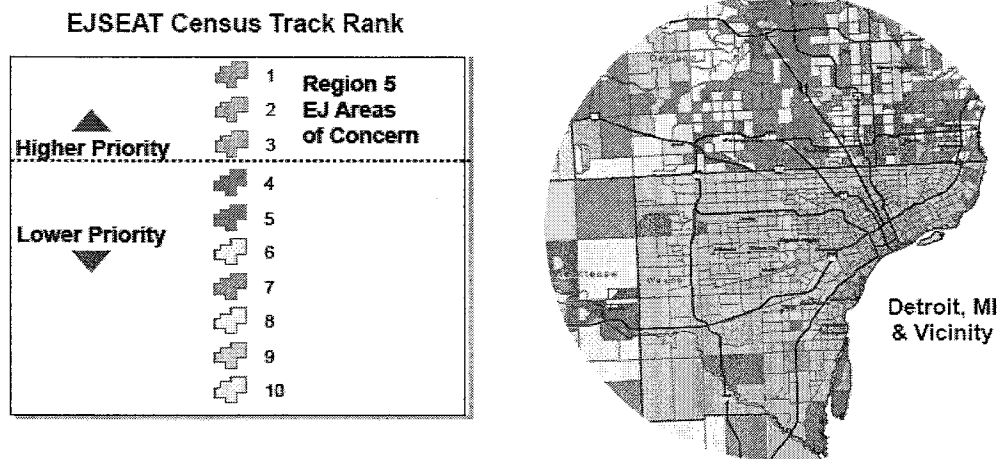
In determining if a geographic area is a minority or low-income community to which U.S. EPA environmental justice activities apply, the U.S. EPA Region 5 guidelines specify the following key criteria:

- If the low-income population or minority population percentage is greater than twice the state-wide percentages, the matter should be identified and addressed as a potential environmental justice issue. The U.S. EPA enforcement, permitting, and community involvement protocols should then be followed, as appropriate.
- If the low-income population or minority population percentage is less than twice but greater than the state-wide percentages and if there are community environmental justice issues, the matter should be identified and addressed as a potential environmental justice issue and the protocols followed as indicated above.
- If the low-income population or minority population percentage is equal to or less than the state-wide percentages, the matter should not be considered an environmental justice issue.

In determining whether an area may be a potential environmental justice matter, Region 5 examines the demographic characteristics of census blocks within one mile of the site of concern.

The above-described U.S. EPA guidance can provide a useful trigger for environmental justice activities in many circumstances if coupled with known environmental data or projects which could potentially result in disparate impacts. There are many other indicators of potential disparate impacts. In addition to the U.S. EPA Region 5 Guidelines, another useful tool is the “Environmental Justice Strategic Enforcement Assessment Tool,” commonly referred to as EJSEAT, which is a composite trigger method using a number of additional indicators.

The U.S. EPA uses the EJSEAT method as a standard screening approach to identify “potential environmental justice areas of concern.” The EJSEAT is also used by the U.S. EPA Office of Enforcement and Compliance Assurance to consistently identify areas with potentially disproportionately high and adverse environmental and public health burdens. EJSEAT uses 18 select federally-recognized or managed databases and a simple algorithm to identify such areas. EJSEAT data sets are divided into the following four indicator categories to calculate EJSEAT priority rankings: (1) environmental; (2) human health; (3) compliance; and (4) social demographics. The various data sets form “layers” used to develop composite maps such as the following for the Detroit area:



All of these areas identified as a level 1, 2, or 3 “potential EJ area of concern” in the EJSEAT map of Detroit also meet the demographic guidelines provided by the U.S. EPA for situations where disparate impacts are likely to exist per the U.S. EPA Region 5 Guidelines.

EJSEAT relies almost exclusively on data pertaining to air pollution burdens derived from the National Air Toxics Assessment (NATA). EJSEAT is currently being reviewed by the National Environmental Justice Advisory Council, which is likely to make recommendations to the U.S. EPA for substantially improving EJSEAT. As a result, EJSEAT will likely change in the future as refinements are made and the DEQ should easily be able to adopt them.

## **ENVIRONMENTAL JUSTICE AREAS OF CONCERN**

The DEQ will employ the following approach to identify potential environmental justice areas of concern which, in turn, will “trigger” implementation of the applicable environmental justice methods, measures, and principles identified in the various chapters of this plan:

- a) when a proposed project or activity is located in a potential environmental justice area as defined by the EPA Region 5 Guidelines, or is located within one mile of a level 1, 2, or 3 potential environmental justice area of concern as identified by the U.S. EPA’s EJSEAT Method;<sup>2</sup>

**and**

- b) the project type and size criteria are met.

As a practical matter, the environmental justice methods, measures and principles identified in this plan can not be employed for every project and every activity. Therefore, the DEQ, along with other state agencies, should prioritize projects in geographic areas of concern by identifying projects that are likely to have a disparate adverse impact given the nature of the project or its

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<sup>2</sup> All census tracts partially or entirely captured by a one-mile radius from the proposed project or activity will be considered within the one-mile distance.

scope. While evaluating these projects in minority and low-income communities, the DEQ and other state departments should also consider the constraints on economic development such that the regulatory burdens do not make Michigan an undesirable place to do business.

Accordingly, when drafting its environmental justice plan, each state agency should include clear identification of specific projects or activities that would meet the threshold standards provided above. For the DEQ, this means that any project meeting the following threshold criteria and located or to be located in an environmental justice area of concern will be subject to the environmental justice methods, measures and principles identified in this Plan:

1. National Pollutant Discharge Elimination System (NPDES) permits under the federal Clean Water Act with discharge at or above 50,000 gallons per day.
2. Air Permits to Install (PTIs) that require a public comment period. These include permits classified as “major” by the Clean Air Act and permits that include limits which restrict the facility’s potential to emit at 90% or more of the major source thresholds.
3. Waste permits – landfills, disposal and recycling facilities.
4. Mining permits.
5. Large Concentrated Animal Feeding Operation permits.
6. Prioritizing monitoring, inspections, enforcement, remediation and compliance assistance activities.
7. Other projects and activities identified by the department as a significant community concern or identified pursuant to the EJ Work Group petition process.

A more detailed explanation regarding what constitutes the type and size of projects and activities subject to the environmental justice requirements of this Plan is preferable to the limited information provided above. It is believed that this detailed information is best maintained in a “living document” that will be used as guidance for state department staff. To that end, the DEQ will prepare an Environmental Justice Handbook for this purpose, and other departments should prepare similar guidance for its employees.

There is also recognition that the indicators currently available in the EJSEAT screening tool can be refined over time as more data becomes available. EJSEAT is intended by the EPA to be applied to all 50 states. This poses a constraint on the EPA because not all the data that would be desirable for an environmental justice screening tool are available for all 50 states. The state of Michigan is not constrained by the data limitations that exist in other states. For example, it may be beneficial to include health data and a broader range of pollution data for Michigan than are currently available in EJSEAT. By way of further example, it would be desirable to include information about such health conditions as asthma rates, cancer rates, lead poisoning, and others at the census tract or zip code area levels and incorporate them into EJSEAT. It would also be desirable to include information about a broader range of environmental burdens, such as soil and water contamination.

## **Chapter 5. Interdepartmental Integration**

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### **INTRODUCTION**

Environmental justice issues transcend departmental boundaries and clearly are not limited to the activities of just the DEQ. This point is acknowledged by Executive Directive No. 2007-23 which requires that the state environmental justice plan include measures to integrate and coordinate the actions of the various state departments on environmental justice matters. Accordingly, a mechanism is needed to identify the environmental justice related impacts of projects from the perspective of various state agencies to insure that these impacts are addressed in a coordinated manner.

Other states that have attempted to address the issue of interdepartmental integration and coordination have most commonly established interdepartmental working groups, but success has been mixed. For example, an interdepartmental working group is an integral part of California's environmental justice program, but the group meets rarely. California appears to place more emphasis on individual leadership, meaningful public participation, and sponsorship of pilot environmental justice projects. New Jersey also had an interdepartmental working group, but it was recently abolished. One unmistakable lesson from the New Jersey experience is that clear direction and leadership from the Governor's Office is imperative for such an interdepartmental working group to succeed.

### **INTERDEPARTMENTAL WORKING GROUP**

From the experience in other states, several things can be learned. First, strong leadership from the Executive Branch is required to assure that work group members treat environmental justice as a high priority. Second, senior level department managers must be actively engaged in the group's work. Finally, highly committed individual leadership is essential.

An interdepartmental working group (IWG) will be established. The following departments will be represented on the IWG: the DEQ, the Department of Civil Rights (DCR), the Department of Natural Resources (DNR), the Department of Community Health (DCH), the Department of Transportation (MDOT), the Michigan Economic Development Corporation (MEDC), the Michigan State Housing Development Authority (MSHDA) the Department of Agriculture (MDA), and the Department of Energy, Labor and Economic Growth (DELEG). The Director or a deputy director from each department shall represent the department on the IWG. The Chair of the IWG will be the Director of the DEQ, and the Co-chair will be the Director of the DCR.

The IWG will be responsible for the review and consideration of environmental justice complaints filed pursuant to the petition process identified in Chapter 6. In addition, other duties of the IWG will include: 1) identifying state departments that could benefit from the development of an environmental justice plan; 2) assisting those departments in the development of such a plan consistent with the goals and objectives of this Plan; 3) recommending performance goals and measures for state departments with environmental justice plans; 4) reviewing the progress of state departments in complying with environmental justice plans and

promoting environmental justice; and 5) recommending measures to further promote environmental justice in this state.

The Governor's Environmental Policy Advisor will also serve as the Environmental Justice Coordinator for the State of Michigan. The Environmental Justice Coordinator will meet at least quarterly each year with the IWG to discuss environmental justice complaints received, reviewed and/or acted on in the previous quarter, any environmental justice plans prepared by state departments, and any and all other activities and actions taken by the IWG to promote environmental justice in Michigan.

The IWG will establish an environmental justice advisory council to advise the IWG on the exercise and fulfillment of its responsibilities and duties under this Plan. This council should include representation from environmental justice groups, local and tribal governments, business and other interested organizations and associations.

## **Chapter 6. Petition Process**

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### **INTRODUCTION**

Executive Directive 2007–23 requires the state environmental justice plan to include "mechanisms for members of the public, communities, and groups to assert adverse or disproportionate social, economic or environmental impact upon a community and request responsive state action." Those states with environmental justice programs have typically chosen one of three approaches for reviewing and responding to environmental justice complaints. These three mechanisms include establishing a grievance procedure, designating an environmental advocate, or creating a petition process.

Allowing minority and low-income communities the opportunity to raise issues of concern with agency decision-makers is an essential component of an effective environmental justice program. To be most effective, the process must be straightforward and capable of securing meaningful results for the petitioners within the constraints of state authority. As discussed below, the preferred approach is for Michigan to create an interdepartmental petition process for reviewing and responding to environmental justice complaints. This recommendation is made knowing that the ongoing fiscal crisis in Michigan may make implementation of this process difficult in the near term.

### **FEDERAL AND STATE COMPLAINT PROCESSES**

#### **Federal Model**

Under the EPA's Title VI regulations, the agency's Office of Civil Rights (OCR) reviews complaints by community members that recipients of federal financial assistance have created a disparate impact on minorities. The process is as follows:

- A complaint letter is sent to OCR within 180 days of the alleged violation; this limit can be waived for good cause.
- OCR undertakes a preliminary review to determine if there is a valid claim (e.g., should the complaint be dismissed, investigated, or referred to another agency).
- If the OCR accepts the complaint for factual investigation, OCR determines whether the recipient's actions cause or contribute significantly to an existing disparate impact. OCR notifies the recipient and gives it the opportunity to respond to, rebut or deny the allegations. OCR generally attempts to resolve the matter informally.
- If the matter cannot be resolved, OCR may make a finding of noncompliance. At this point, the recipient may request a hearing before an administrative law judge and there will be a new set of adjudicative procedures.
- The EPA Administrator then reviews the OCR's decision or the administrative law judge's decision. The recipient has another opportunity to file statements with the Administrator. If the Administrator decides to withdraw funding, s/he sends a report to the House and Senate Committee having jurisdiction over the program funded. (As of December 2008, the EPA has yet to terminate funding.)

- Alternatively, the EPA may elect to send the matter to the Department of Justice, but has not done so in any case.
- If at any point the case is dismissed, the complainant has no right to appeal the dismissal.<sup>3</sup>

### **State Models**

States consider environmental justice complaints in a variety of ways. There are three general approaches: grievance procedures; designation of an environmental advocate/investigator; and a petition process.<sup>4</sup>

#### Grievance Procedures (Illinois, Minnesota)

- Under this approach, the state environmental agency reviews complaints that it has failed to comply with the federal Title VI regulations. The process is fairly formal. After accepting a complaint, the agency conducts an investigation and proposes a resolution. In Minnesota, there is an opportunity for the complainant to comment on the agency's proposed resolution. The agency can refuse to consider a complaint for a number of reasons.<sup>5</sup>

#### Environmental Advocate/Investigator (Connecticut, Pennsylvania, West Virginia)

- Under this approach, the agency designates one staff member or several staff to help resolve the concerns of environmental justice communities. The response to the concerns varies. In Connecticut, the Environmental Justice Complaint Investigator notifies all agencies that could help address the problem, including federal and local agencies, and monitors their responses. In West Virginia, the Environmental Advocate helps explain agency actions and advises residents on ways to get agency attention. In Pennsylvania, Regional Advocates ensure that community concerns are responded to in a timely manner.

#### Petition Process (New Jersey)

- New Jersey adopted a petition process in 2004 through an executive order. The process has elements of both approaches described above.
- Citizens may file a petition asserting disproportionate adverse health risks or disproportionate adverse effects from implementation of public health and environmental laws. The petition must be signed by 50 citizens, of which 25 must be residents of the affected community. A task force composed of the heads of the environmental, health, agriculture, education, human services, economic development, and transportation agencies decides whether to accept the petition.

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<sup>3</sup> See Rechtschaffen & Gauna, *Environmental Justice: Law, Policy & Regulation* 354 (2002).

<sup>4</sup> These programs are described in Public Law Research Institute, University of California, Hastings College of the Law, *Environmental Justice for All: A Fifty State Survey of Legislation, Policies & Cases* (3d ed. 2007).

<sup>5</sup> Further information about these procedures is available on the internet at <http://www.epa.state.il.us/environmental-justice/grievance-procedure.html> (Illinois) and <http://www.pca.state.mn.us/publications/p-gen5-03.pdf> (Minnesota).

Before making a decision, the task force considers the recommendation of an advisory council of environmental justice and other environmental organizations.

- After the task force accepts a petition, the environmental justice coordinator in the New Jersey Department of Environmental Protection works with the community, state agencies, and the advisory council to develop an action plan. The action plan specifies community deliverables, a timeframe for implementation, and the resources available within the state's jurisdiction. Agencies must implement the plan "to the fullest extent practicable." The environmental justice coordinator and the task force then monitor implementation of the plan.
- Of seven petitions filed with the task force, five were accepted. New Jersey discontinued the petition process in 2009 when the Governor signed a new executive order on environmental justice.<sup>6</sup>
- The New Jersey process was successful in solving some problems—for example, as a result of one petition, further work was done to remediate a site that posed potential health risks to a nearby community. The process has also given communities an advocate within the government, an opportunity to organize, and more information about problems. But not all communities were satisfied with the state's response. The process lacked resources and commitment from top state officials. Because there was only one environmental justice coordinator, the burden fell on the environmental agency to handle all the issues.

## THE PETITION PROCESS

The executive directive requires development of a mechanism by which minority and low-income communities can assert adverse or disproportionate social, economic, or environmental impacts. This can best be accomplished through the creation of a petition process. In order for the process to work in Michigan, however, the following is needed:

- The process must be supported at the highest levels of state government, especially within the Governor's office. This is necessary so that all of the relevant agencies work together to resolve the issues in each petition.
- The process requires additional resources. More than the resources of single state department are needed to develop action plans and ensure that they are carried out.
- Everyone involved in the process must be clear about what the process can and cannot accomplish. Otherwise, if the communities' expectations are not met, the petition process will lose legitimacy.

To be successful, the petition process should be organized and established as outlined below.

### Organization

- As discussed in Chapter 5, the Governor's environmental policy advisor should also serve as the state environmental justice coordinator. This ensures that the

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<sup>6</sup> For more information about the former New Jersey petition process, information is still available on the internet at <<http://www.nj.gov/ejtaskforce/>>.



environmental justice principles of this plan are supported at the highest level and will have meaningful results.

- As discussed in Chapter 5, an interdepartmental working group (IWG) is established to accept petitions lodged pursuant to the process described in this chapter.
- The DEQ will appoint an environmental justice advocate to assist in the petition process as described below.

#### Form and Requirements for Petitions

- No specific form should be required to file a petition—a letter stating the community's concerns is sufficient.
- The letter should be accompanied by signatures of 50 Michigan residents, including 25 residents of the affected community. This requirement ensures that the petition represents the concerns of at least a part of the affected community.
- The DEQ environmental justice advocate should work with the community and the relevant agencies to gather information to present to the committee for its consideration.
- The DEQ environmental justice advocate should work with the community to include a statement explaining why the issue is an environmental justice issue and/or why the affected community is an environmental justice community. The screening process identified in Chapter 4 can be used to support this statement, but the petition process should not be limited to the "screened-in" areas.
- If the petition can be resolved faster and more effectively using existing mechanisms (for example, the DEQ complaint hotline), the DEQ environmental justice advocate should direct the community to that mechanism.

#### Consideration of Petitions

- On a rolling basis, the IWG should consider petitions and supporting information to determine whether to accept the petition and develop an action plan.
- The petition process is not intended to interfere with existing permitting or project timelines.
- Although not requirements, the IWG should also consider the following criteria in reaching consensus on whether to accept a petition:
  - Whether there is a likely disparate impact;
  - The severity of the environmental, economic, and/or social impact;
  - The severity of the other environmental, economic, and/or social issues facing the community and cumulative effects;
  - The authority of the state to address the problem;
  - The ability of coordinated state action to resolve the problem successfully;
  - Whether there is a pending lawsuit or administrative challenge;
  - Other concerns raised by the community; and
  - Whether the petitioners have taken advantage of existing public comment and participation procedures associated with those permits or projects.
- Petitions should be evaluated individually, taking into account the resources available to the community.
- The activities of some state departments must comply with federal environmental justice requirements and guidance. Where equivalent federal environmental justice

criteria exist, the IWG should not accept a petition for purposes of determining whether those criteria have been met. The IWG may accept a petition for purposes of determining if other actions or steps could be taken by the state to mitigate or minimize any adverse public health or environmental impacts associated with the activity.

- The IWG should accept and consider public input before acting on a petition. The IWG should hold a hearing in the affected community at which members of the public can share their views. The hearing should not be formal and should allow for back-and-forth dialogue.
- The IWG should take into account the work of other interagency groups and federal-state groups that consider environmental issues, and coordinate with these groups to the extent possible.
- If the IWG decides not to accept a petition for development of an action plan, it should explain what other steps the community can take to resolve the problem. This information should be specific and include names and contact information.
- Denial of a petition is not subject to appeal.

#### Response to Petitions

- An "action plan" should be developed by the IWG, the DEQ environmental justice advocate, and the relevant agency. State officials should consult local and federal governmental agencies as relevant, and work closely with the community to develop the plan.
- The action plan should include specific community deliverables, a timeframe for implementation, and a description of the resources available. The responsibilities of the state agencies should be clear so that the community can understand what to expect.
- The action plan should utilize the expertise and resources of the state agencies on the IWG, and any other relevant state agencies, to address the problem in a coordinated fashion.
- While private actors may choose to participate in the development of an action plan, the commitments are undertaken by state agencies. Commitments are based on the agencies' existing legal authority and are conducted within the agencies' existing legal duties.
- Because the IWG does not have independent regulatory authority, it cannot require state agencies to take actions beyond their respective state and federal authority. The IWG could, however, recommend a path for the agency to follow, and could seek to address a community's concerns using the authority and resources of any relevant state agencies.
- The state environmental justice coordinator should be responsible for ensuring that each agency is carrying out its responsibilities under the action plan.

#### Dissemination of Information

- Information about the petition process should be posted on the state government Web site, and a fact sheet should be distributed to communities that have raised environmental justice concerns.

- The IWG should prepare an annual progress report on the petition process, including a description of the petitions submitted and the outcomes. The report should be submitted to the Governor and the state environmental justice coordinator and made available to the public. The report could be part of a larger report on the progress of state environmental justice programs.

Implementation

- The elements of the final petition process should be incorporated in an executive order. This would demonstrate the Governor's commitment to the process and ensure that each state agency will be fully involved.

## **Chapter 7. Role of Local Units of Government**

### **INTRODUCTION**

Executive Directive No. 2007-23 calls for the development of an environmental justice plan which includes a means to identify, address, and prevent discriminatory effects and disparate impacts of environmental decisions while assuring meaningful involvement of individuals from affected communities. Local units of government (LUG) can play a valuable and important role in meeting this objective of the executive directive. Local governments interact with communities and state departments on a daily basis, making them a potentially effective vehicle for residents to articulate their concerns involving environmental justice issues to state decision-makers. Local governments can assist state agencies by early identification of environmental justice issues of concern to minority and low-income communities, which in turn will allow state decision-makers to deploy and use environmental justice resources more efficiently and effectively.

### **PARTICIPATION BY LOCAL UNITS OF GOVERNMENT**

LUGs are well positioned to identify environmental justice areas within the community and to identify the particular issues and concerns associated with these areas. Local governments are well suited to communicate with the public, as they interact with community members on a daily basis. Local and state units of governments have communication mechanisms currently in place which, when utilized effectively, would allow them to have a transparent and consistent means to share information early within the process of siting a facility.

LUGs have extensive and varied obligations to their citizenry. In the context of environmental justice, local units of government should ideally: (1) be knowledgeable of environmental concerns of residents and disparate health impacts within their communities; (2) explore health risks as well as economic benefits when considering the siting of facilities; (3) be capable of guiding residents through a environmental justice complaint and petition process; (4) be willing to re-evaluate/re-establish zoning laws to eliminate disproportionate health burdens; and (5) maintain deliberative local political processes.

LUGs can play an important role within an environmental justice framework in two key areas: (1) identifying environmental justice areas and issues, and (2) acting as a liaison between state officials and community members. Local governments should be encouraged to follow the two concurrent tracks below:

- Michigan local governments should establish a process to assist community groups to receive resources (i.e., grant funding, technical assistance, and/or educational information) which empower the citizenry to identify and address their unique environmental justice issues. This measure also addresses the outcry from citizens who feel that they are unfairly placed at a disadvantage when trying to interpret the technical information in documents. Funding for such activities could be attained through local governments: (1) applying for grant funding to be distributed to community organizations; (2) assessing an annual fee for existing and new facilities

located in affected communities; and (3) petitioners seeking changes to operating permits because of the potential disparate impacts on the community.

- The second track will be more specific to each local municipality where appropriate agencies should establish processes to identify, assess, and eliminate disparities in Michigan communities through LUGs:
  - Ensuring that all pertinent local government agencies as well as state agencies are involved in permitting processes. These agencies should exchange information and commit resources (i.e., technical expertise) to the public. This would assist residents with access to pertinent information for review before decisions are made (i.e., permit, license, etc.). Furthermore, collaboration at public hearings allows all parties access to the same information from the same source.
  - Using a public notice process to insure that notifications reach the proper audience (i.e., those within potentially impacted communities). This will encourage LUGs to engage in public hearings for all proposals that will use "intensive industrial" land use as developable property for residents within a one-half mile radius or that may be impacted due to truck traffic within a one mile radius.
  - Revising local codes so that they are sensitive to cumulative impacts within communities and ensure compliance with environmental regulations and building codes.
  - Holding public hearings regarding environmental justice issues during the zoning ordinance review and revision process. This does not determine whether a facility can be located within a particular area. However, this will encourage prospective developers to present facility siting plans to the community, provide a platform for the community concerns to be heard, establish a community relation liaison, and develop a contingency and an evacuation plan, if necessary.

## **Conclusion**

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[TO BE INCLUDED IN THE FINAL PLAN]

## **Attachments**

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Attachment 1: Executive Directive No. 2007-23

Attachment 2: 17 Principles of Environmental Justice

Attachment 3: Environmental Justice Recommendations, October 12, 1999

Attachment 4: Model Community Outreach Plan, January 24, 2001

Attachment 5: Recommendations for an Environmental Justice Policy for Michigan, January 2006

Attachment 6: Resource Group List

Attachment 7: DEQ/DNR/MDA Leadership Academy Matrix Tool

Attachment 8: Pilot Sustainable Alternatives Agreement Process



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

JOHN D. CHERRY, JR.  
LT. GOVERNOR

**EXECUTIVE DIRECTIVE**  
**No. 2007 – 23**

**PROMOTING ENVIRONMENTAL JUSTICE**

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, under Section 8 of Article V of the Michigan Constitution of 1963, each principal department of state government is under the supervision of the Governor unless otherwise provided by the Constitution;

WHEREAS, under Section 8 of Article V of the Michigan Constitution of 1963, the Governor is responsible to take care that the laws be faithfully executed;

WHEREAS, under Section 52 of Article IV of the Michigan Constitution of 1963, the conservation and natural resources of the State of Michigan are of paramount public concern in the interest of the health, safety, and welfare of the People of the State of Michigan;

WHEREAS, under Article I of the Michigan Constitution of 1963, state government is instituted for the equal benefit, security, and protection of the People of the State of Michigan, and no person may be denied the enjoyment of his or her civil or political rights because of religion, race, color, or national origin;

WHEREAS, the fair, non-discriminatory treatment of all people is fundamental to the development, implementation, and enforcement of environmental laws, regulations, and policies;

WHEREAS, when government acts, careful attention to civil rights can facilitate fair and non-discriminatory treatment, and meaningful public involvement can provide citizens with a more effective voice in decisions affecting their community;

WHEREAS, state government has an obligation to advance policies that foster environmental justice, social well-being, and economic progress;



WHEREAS, initial efforts by an advisory work group organized by the Department of Environmental Quality reveal that the development of environmental justice plans will further equal protection and public health, safety, and welfare;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, direct:

## **I. DEFINITIONS**

As used in this Directive:

A. “Department of Environmental Quality” or “Department” means the principal department of state government created under Executive Order 1995-18, MCL 324.99903.

B. “Environmental justice” means the fair, non-discriminatory treatment and meaningful involvement of Michigan residents regarding the development, implementation, and enforcement of environmental laws, regulations, and policies by this state.

## **II. DEVELOPMENT ENVIRONMENTAL JUSTICE PLANS**

A. The Department of Environmental Quality shall develop and implement a state environmental justice plan to promote environmental justice in Michigan. The plan shall do all of the following:

1. Identify and address discriminatory public health or environmental effects of state laws, regulations, policies, and activities on Michigan residents, including an examination of disproportionate impacts.

2. Include measures to prevent discriminatory or negative public health or environmental effects of state laws, regulations, policies, or activities, including, but not limited to, disproportionate negative impact of state laws, regulations, policies or activities relating to public health and the environment.

3. Provide policies and procedures for state departments and agencies to ensure that environmental justice principals are incorporated into departmental and agency decision-making and practices.

4. Include recommendations for other state departments and agencies whose functions and responsibilities impact environmental justice.

5. Recommend mechanisms for members of the public, communities, and groups to assert adverse or disproportionate social, economic or environmental impact upon a community and request responsive state action.

6. Ensure consistency with federal environmental justice programs and recommend specific mechanisms for monitoring and measuring the effects of implementing the plan.

7. Assure implementation in a manner that maximizes the promotion of environmental justice while minimizing or eliminating potential adverse or disproportionate social, economic, or environmental impact.

B. In developing the state environmental justice plan, the Department shall actively solicit public involvement.

C. The Department shall establish an environmental justice working group of state officials and members of the public to do all of the following:

1. Assist in the development of the state environmental justice plan.

2. Identify state departments and agencies that could benefit from the development of a departmental or agency environmental justice plan.

3. Assist in the development of departmental or agency environmental justice plans and review the plans for consistency with the state environmental justice plan.

4. Recommend measures to integrate and coordinate the actions of state departments to further the promotion of environmental justice in this state.

5. Recommend environmental justice performance goals and measures for the Department and other state departments and agencies with departmental or agency environmental justice plans.

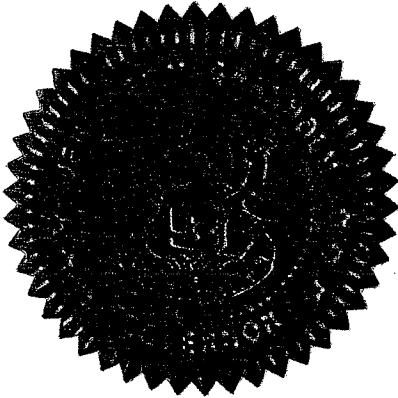
6. Review the progress of the Department and other departments and agencies with environmental justice plans in complying with the plan and promoting environmental justice.

D. The Department may require a department or agency to develop and adopt a departmental or agency environmental justice plan, in cooperation with the Department, if the Department determines that development by a department or agency would promote environmental justice within this state.

E. State departments and agencies shall cooperate with the Department of Environmental Quality as necessary to implement this Directive.

F. The Department of Environmental Quality shall report to the Governor on its progress in implementing this Directive not later than July 1, 2008. The Department also shall prepare an annual report to the Governor on state activities to promote environmental justice.

This Directive is effective immediately.



Given under my hand this 21st day of November in the year of our Lord, two thousand and seven.

A handwritten signature in black ink, appearing to read 'Jennifer M. Granholm', written over a horizontal line.

**JENNIFER M. GRANHOLM**  
**GOVERNOR**

## 17 Principles of Environmental Justice

Adopted October 27, 1991, in Washington, D.C.

"WE THE PEOPLE OF COLOR, gathered together at this multinational People of Color Environmental Leadership Summit to begin to build a national and international movement of all peoples of color to fight the destruction and taking of our lands and communities, do hereby re-establish our spiritual interdependence to the sacredness of our Mother Earth; to respect and celebrate each of our cultures, languages, and beliefs about the natural world and our roles in healing ourselves; to insure environmental justice; to promote economic alternatives which would contribute to the development of environmentally safe livelihoods; and to secure our political, economic, and cultural liberation that has been denied for over 500 years of colonization and oppression, resulting in the poisoning of our communities and land and the genocide of our peoples, do affirm and adopt these Principles of Environmental Justice:

1. Environmental justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.
2. Environmental justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.
3. Environmental justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living beings.
4. Environmental justice calls for universal protection from nuclear testing and the extraction, production, and disposal of toxic/hazardous wastes and poisons that threaten the fundamental right to clean air, land, water, and food.
5. Environmental justice affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples.
6. Environmental justice demands the cessation for the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production.
7. Environmental justice demands the right to participate as equal partners at every level of decision-making including needs assessment, planning, implementation, enforcement, and evaluation.
8. Environmental justice affirms the right of all workers to a safe and healthy work environment, without being forced to choose between an unsafe livelihood and unemployment. It also affirms the right of those who work at home to be free from environmental hazards.
9. Environmental justice protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care.
10. Environmental justice considers governmental acts of environmental injustice a violation of international law, the Universal Declaration on Human Rights, and the United Nations Convention on Genocide.

11. Environmental justice must recognize a special legal and natural relationship of the Native Peoples to the U.S. government through treaties, agreements, compacts, and covenants affirming sovereignty and self-determination.
12. Environmental justice affirms the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all our communities, and providing fair access for all to the full range of resources.
13. Environmental justice calls for the strict enforcement of principles of informed consent, and a halt to the testing of experimental reproductive and medical procedures and vaccinations on people of color.
14. Environmental justice opposes the destructive operations of multi-national corporations.
15. Environmental justice opposes military occupation, repression, and exploitation of lands, peoples, and cultures, and other life forms.
16. Environmental justice calls for the education of present and future generations that emphasizes social and environmental issues, based on our4 experience and an appreciation of our diverse cultural perspectives
17. Environmental justice requires that we, as individuals, make personal and consumer choices to consume as little of Mother Earth's resources and to produce as little waste as possible, and make the conscious decision to challenge and re prioritize our lifestyles to insure the health of the natural world for present and future generations."

*FINAL 10/12/99*

## **ENVIRONMENTAL JUSTICE RECOMMENDATIONS**

### **I. Introduction**

This Report is the result of a collective effort by representatives of state agencies, local governments, industry, and community representatives to develop an approach for identifying and addressing environmental justice issues in Michigan. It grows out of the recognition that our environmental system is primarily managed at the state and local level. To the extent that there are inequities in the environmental system and in its implementation, they must be identified and addressed at that same level. There continue to be efforts at the federal level to deal with these issues, and this report is, in part, a response to those efforts. There have also been some Michigan-specific issues that have sensitized the environmental regulatory community to the problems that may arise from efforts to issue environmental permits or to locate enterprises in proximity to minority areas.

The challenge for state-specific approaches became clear when the United States Environmental Protection Agency ("US EPA"), through its Office of Civil Rights ("OCR"), issued a "Draft Interim Guidelines for Investigating Title VI Administrative Complaints" ("Interim Guidelines") (Appendix 1), on February 5, 1998. While described as "draft", US EPA used the Interim Guidelines to process the backlog of existing complaints alleging environmental racism. US EPA prepared the Interim Guidelines and publicly distributed them without providing an opportunity for meaningful review by the affected state agencies, or by any other interested parties. While a post publication 90-day public comment period was provided, nearly 18 months later, US EPA's responses to the comments have yet to be published. The Interim Guidelines were heavily criticized by a wide variety of groups, including the United States General Accounting Office, which concluded that the Interim Guidelines constituted a rule, and should have been formally promulgated in accordance with the Small Business Regulator Enforcement Fairness Act. (Appendix 2).

The Interim Guidelines relate only to claims brought under Title VI of the 1964 Civil Rights Act ("Title VI"). Title VI prohibits the recipient of federal assistance (such as the Michigan Department of Environmental Quality, or "MDEQ") from discriminating on the basis of race, color, or national origin<sup>1</sup> in its programs or activities. In the environmental context, the argument is that the state agency, when making environmental determinations and issuing environmental permits, would violate Title VI by discriminating on the basis of race, color, or national origin. Title VI does not address "economic" discrimination. An Executive Order issued by President Clinton in February of 1994 (Appendix 3) attempts to broaden the Environmental Justice concept beyond traditional Title VI categories, to include low income population as well.

This following Report does not address the issue of low income raised by the Executive Order. It only addresses Title VI issues.

Michigan has had two instances in which formal claims of violations of Title VI have been made. In both instances, the claims of environmental discrimination were ultimately rejected.

The first matter, involving the Genesee Power Station Limited Partnership, was subject both to a Title VI complaint filed with US EPA's OCR and by a law suit filed in Michigan State Court. The Title VI Administrative Complaint was filed over four and one-half years ago, alleging violations of the civil rights of residents in the area by the Michigan Department of Natural Resources ("MDNR", predecessor to the current MDEQ). OCR has not issued a decision.

The law suit, filed in Genesee County Circuit Court, alleged a violation of the Michigan Civil Rights Act, the Michigan Constitution, and the Michigan Environmental Protection Act by MDNR when it issued an air permit for the facility. The Michigan Court of Appeals has ruled that the trial court lacked jurisdiction to issue any injunctions in the matter. The Court of Appeals did not upset the trial court's determination that the Plaintiffs had failed to establish any violation of the Michigan Civil Rights Act.

The second, and more recent, matter involving an allegation of Title VI violations was made in the *Select Steel* matter in Genesee County. MDEQ issued a permit for a mini-mill facility, known as Select Steel, that was to be sited near the location of the Genesee Power Plant. The Administrative Complaint, filed by some of the same petitioners and plaintiffs in the *Genesee Power* matter, alleged a series of violations, including failure to: (1) provide proper notification, (2) provide an opportunity for comment, and (3) take into account existing pollution sources in the area. Two and one-half months after the complaint was filed, US EPA OCR issued its decision finding that MDEQ had not violated Title VI. Specifically, OCR found that because the emissions from the facility did not affect the area's compliance with the National Ambient Air Quality Standards, there was no adverse impact. According to the decision, if there was no adverse impact, there could be no finding of discriminatory effect in violation of Title VI and US EPA's implementing regulations (Appendix 4). Approximately three months later, the Petitioners asked OCR to reverse its decision. Despite the OCR dismissal of the environmental justice complaint, Select Steel decided not to build its facility in Genesee County because of the prospect of additional administrative, and perhaps judicial, appeals. The company elected to build at another location in Michigan.

## **II. Executive Summary**

In July of 1998, the MDEQ invited potential stakeholders to participate in an Environmental Justice Workgroup ("Workgroup") to discuss and make

recommendations on a process to address environmental justice issues in Michigan. The Workgroup was comprised of representatives from industry, community, local governments, and state agencies (Appendix 5). Four subgroups were developed each with a specific charge to address the issue of environmental justice:

- Role of Local Governments and Local Zoning Subgroup  
The charge of this subgroup was to consider and make recommendations for what role(s) local zoning and local governments should play in a proactive system to address environmental justice issues.
- Environmental Justice Area Subgroup  
The charge of the Environmental Justice Area Subgroup was to identify geographical areas in which environmental justice concerns may exist. The subgroup will develop recommendations on a screening system that can be used in Michigan to identify environmental justice areas, where additional steps beyond the requirements of environmental statutes may be needed to engage the citizenry and evaluate the impacts of agency decisions.
- Community Outreach Subgroup  
The Community Outreach Subgroup was charged with making recommendations on what additional outreach or public participation efforts, beyond those required by statute, should be undertaken in environmental justice areas.
- Disparate Impact Area Subgroup  
The charge of this subgroup was to determine what impacts to a community should be considered in environmental decision making. In addressing this issue, the subgroup will make recommendations regarding whether the impacts considered should be limited to environmental impacts or include all impacts of a facility and address how impacts can be documented. The second issue to be addressed by this subgroup was what are plausible approaches to measuring impacts to the community and determining if a disparate impact exists. In addressing this issue, the subgroup will make recommendations on how to measure impacts on a community. The subgroup will also make recommendations on how to define similar communities for comparison purposes, and what level of impact differences constitute a disparate impact.

All four subgroups developed draft reports in response to their respective charges. A drafting committee was then created to merge the individual subgroup reports into a comprehensive recommendation to the MDEQ. The drafting committee was comprised of representatives from the individual subgroups (Appendix 6).



This document represents a compilation of the concepts developed in the subgroup reports. It is important to note that each subgroup recognized the importance of a proactive approach to identifying and addressing potential environmental justice issues. The subgroups also recognized the importance of early community outreach in all aspects of the MDEQ permitting process.

### **III. Program Recommendations from Each Subgroup**

#### **A. Role of Local Governments and Local Zoning Subgroup Recommendation**

The local units of government, particularly the local zoning boards, are generally the first step in the journey to receive a permit (air, waste, water) from the MDEQ. It is well established that for air sources, the local units of government have given land use approvals well before the permit application is received by the MDEQ. This is an important step in the process that the Interim Guidelines fail to recognize. It is, therefore, crucial to establish cooperation between the local units of government and the MDEQ in an effort to identify interested parties and to provide effective public outreach on the permitting issues at the earliest juncture possible. While this subgroup recognizes the fact that the MDEQ legally cannot require the local governmental units to adopt the recommendations contained herein, it strongly suggests local governmental units incorporate these recommendations into the process utilized to review a proposed permit application for land use.

Five key assumptions were developed and validated by members of the Local Governments and Local Zoning Subgroup. They are:

1. A proactive approach that involves the applicant, community, and state and local officials is highly desired.
2. The identification of potential environmental issues related to community concerns (aside from Title VI criteria) must become an integral step in the process and occur at the onset of any zoning request, change, permit application, and/or significant modification.
3. The role of local officials should be clearly defined so as to enhance the permitting process and not complicate it or lengthen it.<sup>2</sup>
4. Recognition that impacts on the environment in a given community are attributable to many sources, some historical and some by perception. In either instance, a full and meaningful community dialog is needed.
5. It may be advisable to have a demographic analysis performed.

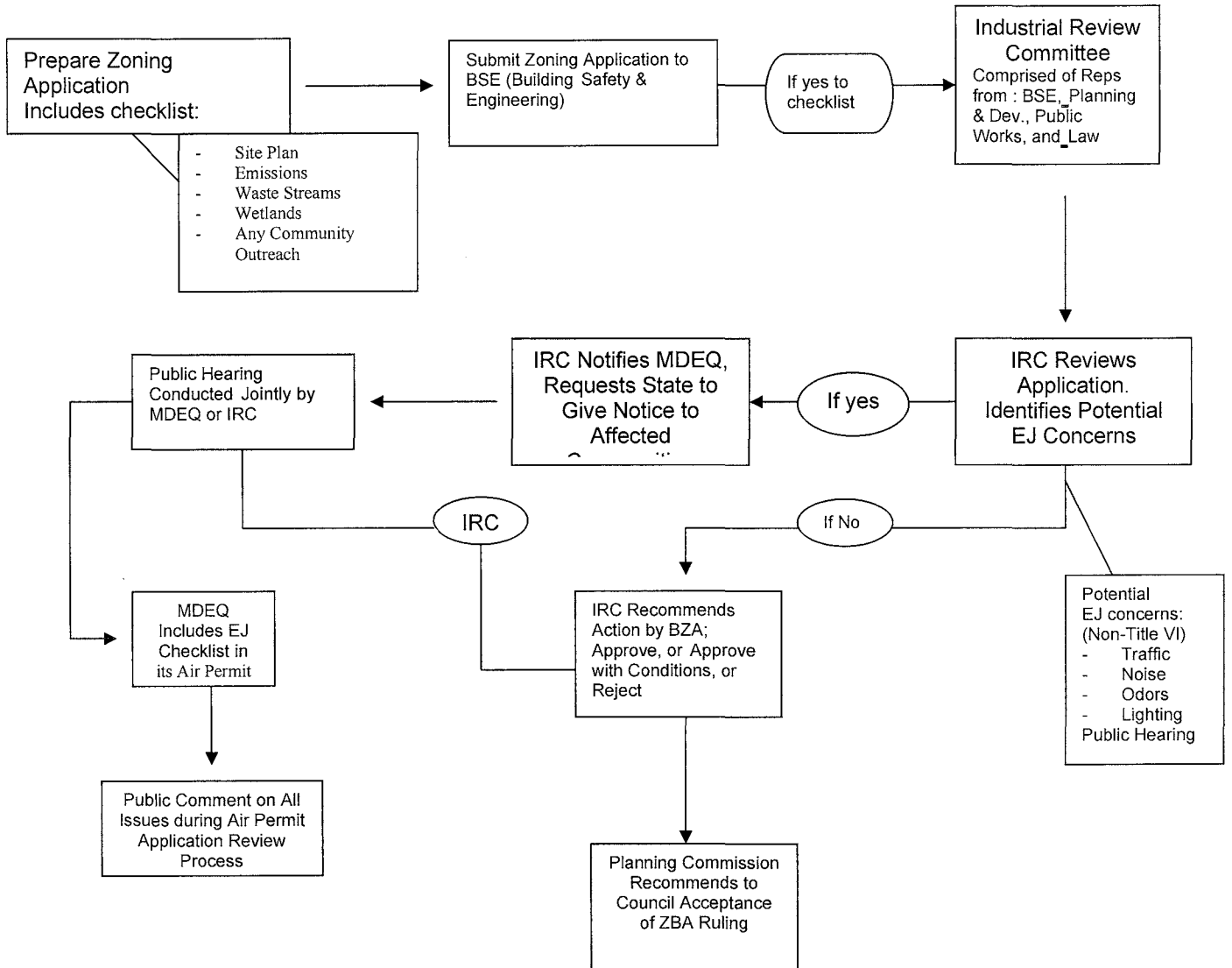
#### **Identification and Resolution**

Assuming a proposed land use requires a change in zoning for the affected property, the subgroup discussed how the local government responsible for zoning decisions and land use planning could identify a potential environmental justice issue during its process. Also, what role it should take in having that issue addressed at the local or state government level, or both, was discussed. To address these issues, the Local Governments and Local Zoning Subgroup developed the following suggestions:

- A zoning change application should contain a checklist that requires the property owner to examine possible impact(s) of the proposed site plan on the property and surrounding area. In addition to the formal site plan, there should be, at a minimum, a checklist for the following types of issues:
  1. Are there potential emissions (air, water, odor, vehicle, etc.)?
  2. What is the description of the waste streams?
  3. Is there a presence of wetlands?
  4. Has any community outreach been initiated, and to whom?
  
- Upon receipt of an application containing such information, the local government officials (perhaps a Planning Department or, as in Detroit, a Buildings & Safety Engineering Department {"BSE"}) should refer the application to what Detroit calls its Industrial Review Committee ("IRC") for further evaluation. In the City of Detroit, this committee is comprised of representatives from a number of city departments, in particular:
  1. Planning and Development
  2. Health
  3. Air Quality (or other environmental department)
  4. Fire Marshall
  5. City Planning Commission (if different from Planning & Development Department)
  6. Public Works
  7. Water/Sewer
  
- In addition to the issues identified above, this committee would routinely look at the site plan, focusing on external emissions such as noise, vibration, smoke, odor, noxious gas, dust, dirt, glare, heat, or other discharges or emissions that may be harmful or of concern to community residents in adjacent areas.<sup>3</sup>
  
- As depicted in the attached chart, if none of these issues are a concern at the proposed site, then the IRC would recommend action by the BSE or by the Board of Zoning Appeals. It can recommend approval, approval with conditions, or rejection.
  
- If, however, there are concerns, then the IRC would notify the MDEQ and the two entities would conduct a public forum. (The MDEQ's role is even more important if the proposed site development is located near the local government's boundary line because of the potential impact on other jurisdictions.)
  
- After the hearing, the IRC is still obligated to make a recommendation to the BSE or Board of Zoning Appeals. The MDEQ will also have knowledge of any community concerns at the outset of its air permitting process. This process is outlined in the flowchart on the following page.

- It is recommended that local elected officials and/or the best suited agency be involved even in the instance that a zoning request or variance is not required. For example, a brownfield redevelopment proposal should contain a similar checklist designed to identify possible environmental justice concerns.

## ROLE OF LOCAL GOVERNMENT IN ENVIRONMENTAL JUSTICE ISSUES IDENTIFICATION AND RESOLUTION



## B. Environmental Justice Area Subgroup Recommendation

The initial charge of the Environmental Justice Area Subgroup ("EJ Area Subgroup") was to identify geographical areas in which environmental justice concerns might arise and to develop recommendations on a screening system that can be used to identify those areas. It was the unanimous opinion of the subgroup not to specifically identify geographical areas in Michigan and label them "Environmental Justice Areas." Instead, the EJ Area Subgroup concentrated its efforts on developing a screening system whereby all major permit applications submitted to the MDEQ would be evaluated to determine if there are "environmental justice issues" associated with that permit application.

The EJ Area Subgroup agreed to the following principles to fulfill its charge:

1. Groups protected by Title VI should be the focus of EJ areas.
2. Determinations of EJ areas in Michigan should be based on clear and precise definitions.
3. EJ areas should be determined through replicable methodology and in a way which avoids data manipulation.
4. A *de minimis* threshold of affected persons should be established as a factor in determining an EJ area.

Under US EPA's Interim Guidelines, a potential EJ issue can arise when an environmental permit is issued by a state or local government that has received federal funding to administer environmental programs under federal statutes. The EJ Area Subgroup, therefore, agreed to develop a recommendation for permits issued by MDEQ under federal law. Recognizing that other environmental issues outside the scope of US EPA's Interim Guidelines could still be of concern to community members, the EJ Area Subgroup recommended that a procedure be developed for "non-Title VI" issues (see flow diagram on page 12.)

The EJ Area Subgroup surveyed the screening methodologies used by various US EPA regions and states, and discovered a wide variety in the way other agencies determine environmental justice areas<sup>4</sup>. No single, scientific way to determine potential environmental justice areas is used by agencies that have environmental justice procedures. Rather, inconsistent and somewhat questionable determinations of demographic data appeared to be used. US EPA Region V acknowledged this point: "[t]here is currently no proven methodology for conducting a direct, scientific assessment of disproportionately high and adverse human health or environmental effects."<sup>5</sup>

Particular attention was given to the US EPA Region V<sup>6</sup> *Interim Guidelines for Identifying and Addressing a Potential EJ Case* (June 1998). Region V

decided to use demographic information employing Geographic Information Systems (GIS) for analyzing census data and census block groups within a one-mile radius of a permitted facility to ascertain environmental justice areas. Within such areas, Region V decided that “[I]f the ... minority population percentage is greater than twice the state percentages, the case should be identified and addressed as a potential EJ case.”<sup>7</sup>

Region V developed its screening methodology as a way to comport with guidance from the Executive Office of the President’s Council on Environmental Quality (“CEQ”), which set a minimum measure of minority population at 50% of the affected area. The CEQ believes that a minority population may be present if the minority population in an environmental justice area is “meaningfully greater” than the minority population of the general population “or other appropriate unit of geographical analysis.”<sup>8</sup> Region V defined “meaningfully greater” as any value above the state minority percentage. Because this approach represents a very large universe in Region V states, Region V decided to use “2 times the state minority population percentage” as a flag for potentially viable EJ cases.<sup>9</sup>

According to 1990 Census Data relied upon by Region V, Michigan has a minority population of 18%. Region V would identify a potential EJ case in Michigan if a permit was issued to an applicant located in an area within a one-mile radius of the proposed permitted site if there was a minority population of 36% or greater. It also would consider an issue to be a potential EJ matter if there was a “community-identified” EJ issue and the minority population was greater than 18%. Region V did not define the “community-identified” term.

The term “minority individual” was determined by US EPA to be those groups classified by the US Census Bureau, namely: American Indian or Alaskan Native; Asian or Pacific Islander; Black; or Hispanic.<sup>10</sup> Although Region V included low-income individuals in its EJ model, this was excluded by the EJ Area Subgroup because this is inconsistent with Title VI, which is the basis of President Clinton’s Executive Order and US EPA’s Interim Guidelines.

The EJ Area Subgroup has defined a suggested area for MDEQ and a permit applicant to consider in determining whether additional,<sup>11</sup> pro-active outreach efforts with the local community would be prudent so as to address potential environmental justice issues. The area suggested for consideration includes a composite of two components: (1) the immediate area; and (2) area of possible impact as governed by the emissions from the site.

- The Immediate Area — For practical reasons, the EJ Area Subgroup suggests that a guideline of an approximate radius of one mile around the site be used as a minimum default for considering a potential environmental justice concern associated with Title VI protected groups and potential disparate analysis. It would be this minimum default which would become the

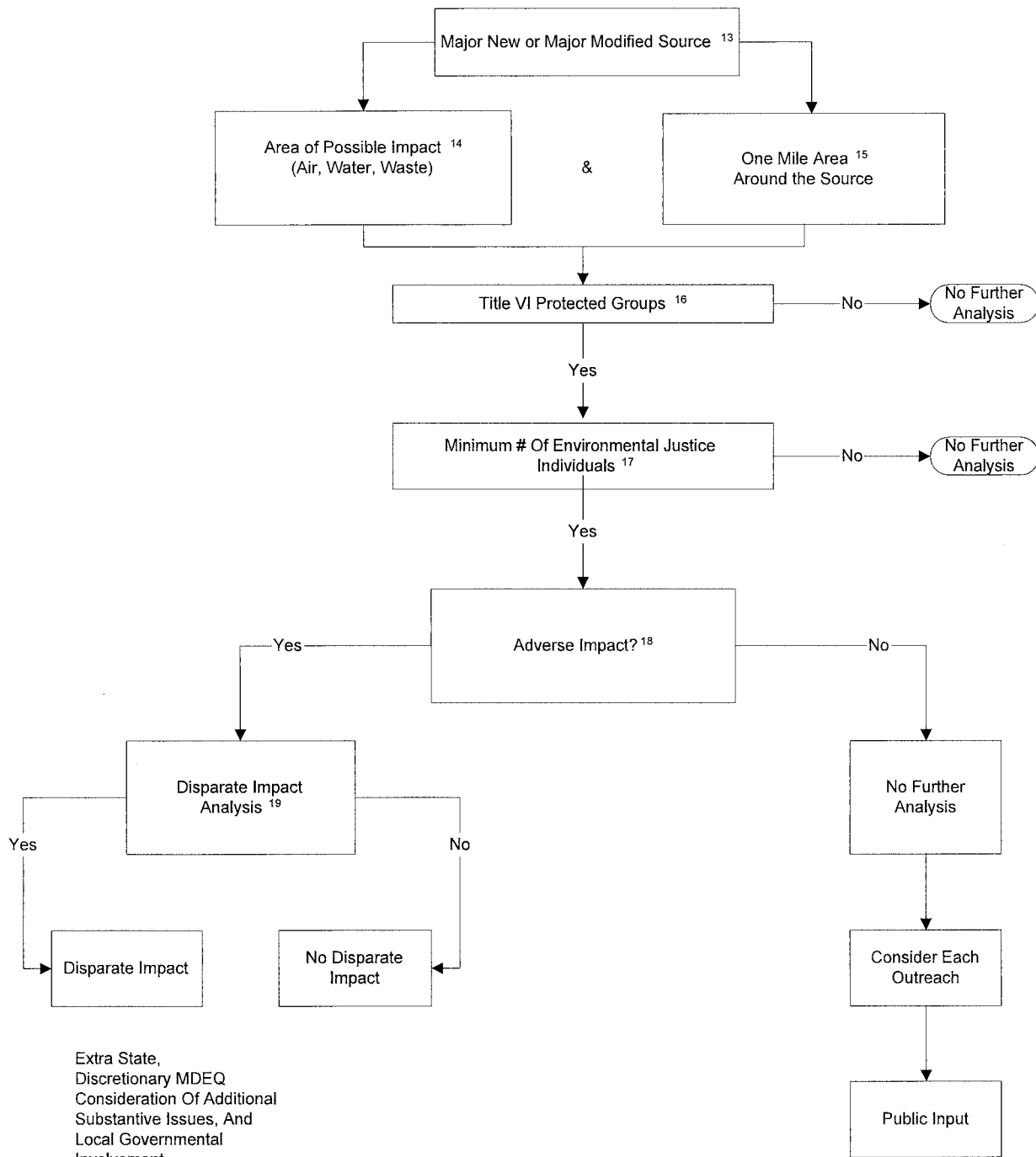
basis for outreach measures to the community, if indicated by further analysis in the decision making tree.<sup>12</sup> (See Page 12)

- Area of Possible Impact — The second component of the composite area would be the additional area that may extend beyond one mile from the site that is impacted due to the emissions or discharges from the new major source or major modified source, including air, water, and waste considerations. The boundaries of each emission stream would be better defined by MDEQ analysts more familiar with appropriate models and toxicology. The area boundary for each major emission stream would be based on a reasonable MDEQ test for significance based on sound science.

The composite area thus defined is simply mapping out the reasonable area for considering outreach efforts with the community(ies). If MDEQ determines that there is no significant adverse impact from the proposed permitted source, then no further steps need be required in the decision making tree. As a practical matter, however, the MDEQ and permit applicant may still wish to consider enhanced interaction and communication with the local community.

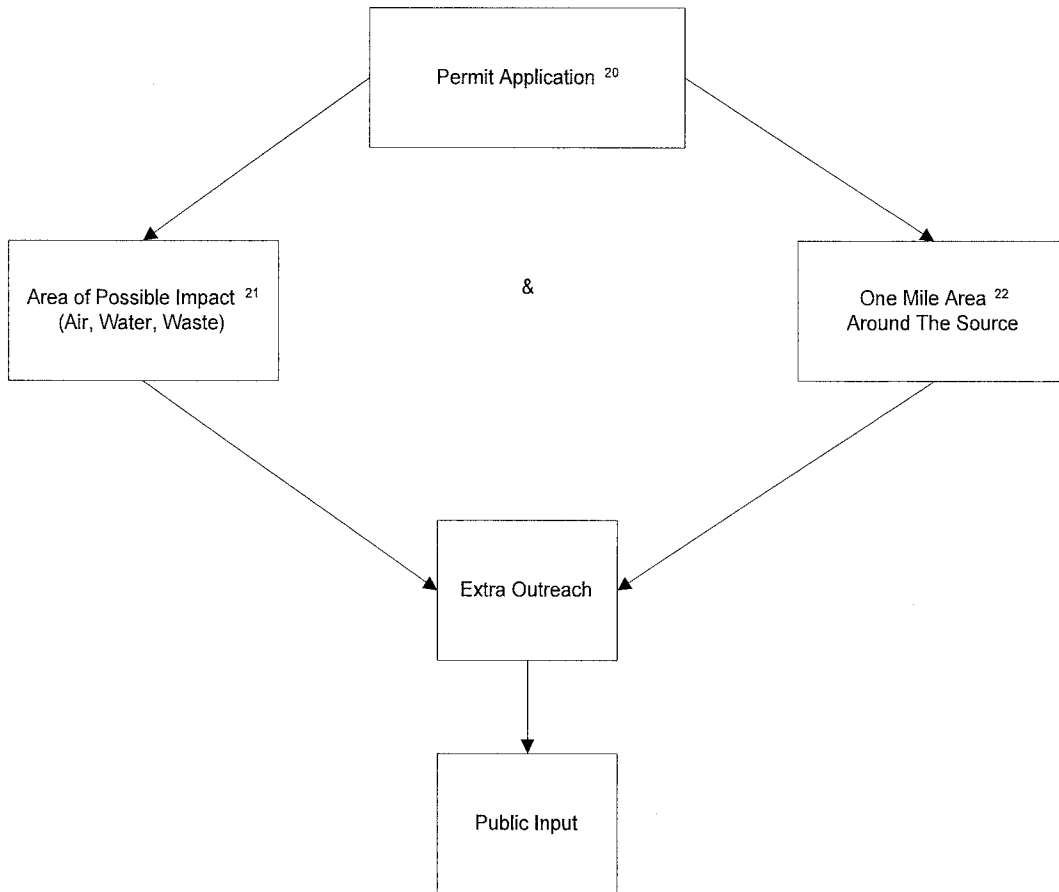


**PROPOSED MDEQ ENVIRONMENTAL JUSTICE  
DECISION MAKING TREE**



PROPOSED MDEQ COMMUNITY OUTREACH  
PROCESS FOR NON-TITLE VI ISSUES

This process should be utilized for those permit applications that are outside the scope of Title VI, do not meet the definition of a major source under applicable MDEQ programs, but may generate significant community concern. The MDEQ would have the discretion to implement this decision-making tree and to put into motion additional community outreach activities in an effort to educate the local community regarding a particular permit application.



### **C. Community Outreach Subgroup Recommendation**

Public participation is a key aspect to addressing environmental justice concerns in a proactive manner. In communities of concern, extra efforts, beyond the normal public participation requirements of environmental statutes, may be needed to engage the citizenry in an upcoming action by the environmental regulatory agency. Outreach efforts may be necessary to ensure that the local community is informed about the issue and has meaningful opportunities to engage in the issue. This subgroup offers a number of recommendations on what additional outreach or public participation efforts, beyond those required by statute, should be undertaken in communities of concern.

- Statutory Public Participation Requirements

Statutes require that the regulatory agency provide public notice and an opportunity for a public hearing and comment on permit applications for major sources of and major modifications of sources of air pollution. The public comment period is usually 30 days with a public hearing scheduled within that time frame. The public hearing is a quasi-judicial event where written and oral comments are accepted. The agency later responds to the comments in writing, explaining why the agency did or did not agree with the comment without the chance of further interaction.

- The Problem

Often, and even with full compliance with environmental statutes and the Michigan Administrative Procedures Act, residents of communities in which new or modified facilities are proposed may be concerned about their opportunity for meaningful participation. Residents may have difficulty receiving notice of the proposal if no effort to publish the information beyond the statutory requirements is made. There may be instances where the technical language in the published public notices is difficult to understand. Residents may lack the ability to objectively understand and evaluate the impacts of a facility. Further, the format of the public hearing might discourage meaningful interaction with area residents.

Public participation is normally limited to review of technical information organized and submitted to support compliance with specific regulatory requirements and permit approval. The permit process may not provide information in a format that addresses specific community interests or is understandable.

Fulfillment of all statutory requirements and a valid permit are no guarantee the applicant's neighbors will feel comfortable that their health and the environment will be protected.

- Statement of Principles

1. Permit applicants should voluntarily engage residents in communities of concern as early as possible, and in meaningful dialog when proposing new facilities or expansion of existing facilities.
2. Permit applicants and regulatory agencies should voluntarily go beyond the public participation requirements of environmental statutes and the Michigan Administrative Procedures Act for proposed new facilities and expansions of existing facilities located in communities of concern.
3. Regulatory agencies and permit holders, who have demonstrated a competency in effective public participation, should provide assistance to potential permit applicants for proposed new facilities and expansions of existing facilities located in communities of concern.
4. Regulatory agencies and permit holders, who have demonstrated a competency in effective public participation, should provide technical assistance to communities of concern.

- Proposal

The Community Outreach Subgroup proposes that permit applicants be encouraged to begin to work with their neighboring communities as early as possible, preferably prior to submittal of an application. The applicants should be advised by those with experience in successfully working with their own neighbors. Community members should have objective technical resources available to them to assist them in understanding the impacts of the proposed facility or modification of a facility. Meetings between the applicant and the community should be held as early as possible, and preferably before a permit application is submitted.

Establish a Resource Group

The Community Outreach Subgroup proposes that a resource group be established. The group would consist of state and local agency personnel, community representatives, and holders of permits located in communities of concern. The group makeup must be flexible, based on the type and location of the facility involved. The group would be available to provide technical assistance to the community. A second charge for the group would be to provide assistance to potential applicants regarding how to engage in effective public participation.

The MDEQ would support the resource group through a web page within their home page. The web page could be used by both potential applicants and communities of concern.

### Develop Additional Tools and Mechanisms for Community Notification

The subgroup proposes that the MDEQ develop additional tools and mechanisms to enhance community outreach notification. Proposed mechanisms and tools suggested include, but are not limited to: direct mailings, public service announcements on television and radio, use of Internet bulletin boards, e-mail, public notices published in newspapers, a dedicated toll-free telephone line, local community publications, informational public meetings, audience directed brochures (i.e., business, community groups, citizens), utilization of other institutional information media, newsletters, special notices, web pages.

### Develop a Baseline Tool Kit for Public Participation

An inherent aspect of outreach and communication is the requirement for on-going educational efforts on the permit application process and general environmental issues. There was consensus that MDEQ should maintain a baseline level tool kit of brochures, flyers, web pages and other communication tools for both citizens and business about the permitting process and public information and outreach procedures and issues. A brochure detailing the steps necessary to fully utilize the public participation process should be developed by the MDEQ. This brochure should include a flow-map for the public participation process. It should also include a source of information for public outreach groups, recommended mechanism for disseminating public information, and description of instances when enhanced public outreach and notification should be employed. This brochure should be made available to any company who is seeking a permit in a community of concern.

### Develop Triggers

In addition to a "baseline level tool kit" and general community information strategy, MDEQ should have a defined protocol that is implemented by certain triggers. Some triggers would be those associated with environmental justice (i.e., Title VI, disparate impact, zoning changes, etc.). Other triggers would be associated with non-environmental justice factors that are considered controversial to communities of concern, such as odors, noise, excessive traffic, hazardous waste or solid waste processing, incineration/combustion processes, fugitive dust, facility size, plastics manufacturing, and pre-existing or a prior compliance history of the facility or operators.

## D. Disparate Impact Area Subgroup Recommendation

### Introduction

The Disparate Impact Area Subgroup was asked to address two fundamental, interrelated issues. The first issue was what impacts to the community should be considered in environmental decision-making. In addressing this issue, the Disparate Impact Area Subgroup offers recommendations regarding whether the impacts considered should be limited to environmental impacts or include all impacts of a facility. The subgroup also addresses how these impacts should be documented.

The second issue addressed by the Disparate Impact Area Subgroup involved the feasible approaches to measuring impacts to the community and the determination of whether a disparate impact exists. In addressing this issue, the subgroup considered how to measure impacts on a community. They were also expected to define similar communities for comparison purposes and to determine what level of impact differences constitutes a disparate impact.

The following recommendations summarize our findings regarding these issues. The purpose of this analysis is to identify issues that might trigger a viable environmental justice complaint under federal guidance. In addition, the Disparate Impact Area Subgroup was asked to develop a proactive screening process for addressing environmental justice issues arising under Title VI. Due to the complexity of these issues and the limited time frame in which to address them, it is not surprising that on most of the issues mentioned above, the subgroup was unable to reach consensus. Many of these differing viewpoints are noted below.

### Discussion of Issues

**Issue 1: What impacts to a community should be considered in environmental decision making? How can impacts be documented?**

In a November 19, 1998 meeting with several state environmental regulators, US EPA Administrator, Carol Browner, and OCR Director, Anne Goode, indicated that US EPA would narrow its focus in reviewing Title VI administrative complaints under its Interim Guidelines. They stated that US EPA will now, under Title VI, only review environmental issues that the permitting agency has authority over, such as air quality standards. Also, US EPA will no longer consider non-environmental issues, such as traffic and jobs, over which the permitting authority has no control.<sup>13</sup>

In light of these recent US EPA policy changes and the US EPA's decision in response to the environmental justice complaint challenging the environmental

permits for the Select Steel Mill in the Flint, Michigan area (see summary of the case in the Introduction), the Disparate Impact Area Subgroup agreed that the focus should be on public health and environmental impacts (i.e., air, water, soil, etc.) to the community. It was, however, agreed that in certain circumstances, non-environmental impacts such as traffic, safety, noise, and aesthetics appropriately should be considered by local government and zoning authorities.

The Disparate Impact Area Subgroup agreed that impacts should be quantified using recognized, "traditional" methods such as the Toxics Release Inventory ("TRI"), modeling, emission and discharge estimates, monitoring data, public health records, etc. In addition, the subgroup recognized that accurate and reliable scientific tools and techniques do not exist to document synergistic impacts on a community. The subgroup also recognized that, while such tools and techniques do exist to document cumulative impacts on a community, they require data that does not yet exist for all compounds and for all areas of the state.

**Issue 2: What are feasible approaches to measuring impacts to the community and determining if a disparate impact exists? Recommend how to measure impacts. Recommend a definition for similar communities, for comparison purposes, and determine what level of impact differences constitutes a disparate impact.**

Based on US EPA's decision in *Select Steel*, the subgroup unanimously agreed that an actionable "disparate impact" in a potentially viable environmental justice complaint must be both adverse and disparate. If an adverse impact exists, then an evaluation must be conducted for a disparate impact. If neither an adverse nor a disparate impact exists, then evaluation is not necessary because the facility will not likely result in a viable environmental justice complaint.

#### 1) CRITICAL DEFINITIONS

An "**impact**" is defined by the Subgroup as "any introduction of a pollutant into the ambient environment."

An "**adverse impact**" is defined to mean "any activity, process, operation or release, that causes or results in an exposure of people or the environment to pollutants in violation of public health-based environmental statutes, rules or regulations."<sup>14</sup>

The Disparate Impact Area Subgroup believes that the term "**disparate impact**" generally refers to an incongruous or uneven impact on the community. This is consistent with the definition in *Webster's Ninth New Collegiate Dictionary*, which defines "disparate" as "different" and "distinct." In the context of

Title VI and environmental permitting, the subgroup believes that “disparate impact” refers to “a finding of any adverse impact on protected groups (under Title VI) as demonstrated by a comparison of the demographics in the impact area versus the statewide demographics.

Some members of the subgroup recognize that the above definition of “disparate impact” may be contrary to common perceptions of the term’s meaning. It may be fair to say that a more common understanding of “disparate” in the context of Title VI and emission permitting is that the term refers to an unusually high occurrence or predominance of pollution in an area, such that an additional increment of pollution results in a greater increment of public health risk than it would in areas with less pre-existing pollution. Under that general definition, there would arise a need to develop an appropriate methodology so that the degree of disparity can be characterized and applied in a regulatory program.

### Measuring Impacts

The Disparate Impact Area Subgroup was, however, deeply divided on how to measure impacts, and devised several analytical schemes for evaluating impacts.<sup>15</sup> Notably, in 1998, OCR developed two proposed methodologies for analytically determining disproportionate impacts from air emissions. Subsequent review by the US EPA Science Advisory Board (“SAB”) found that these initial efforts were commendable, but that both methods had serious limitations. The first one, the Relative Burden Analysis (“RBA”) was simple and easy to apply, but did not result in any measure of risk. The resulting measure, the “Relative Burden Ratio,” would not indicate if an impact was adverse and, therefore, would not support decision-making, according to the SAB. The other proposed approach, Cumulative Outdoor Air Toxics Concentration Exposure Methodology, is designed to estimate risks, which would support decision-making. The method applied by US EPA in evaluating the air toxics impacts of the Select Steel proposed facility was referred to as an enhanced version of the RBA; it had been modified to provide an estimation of risks. Based on that approach, US EPA concluded that the estimated cumulative impacts did not indicate the likelihood of adverse health impacts.

Based on the US EPA approach in the *Select Steel* decision, the subgroup suggested that the methodology for measuring adverse impacts should characterize impacts in a risk-based approach, rather than a relative burden approach.

### Similar Communities

For the purpose of this analysis, the Disparate Impact Area Subgroup deviated from its charge and did not define a “similar community.” The subgroup believes that any so-called “similar community” would be chosen arbitrarily and



would be, in many cases, impossible to accurately determine; therefore, such a definition is not necessary or useful.

Proposed Screening Test for Evaluating Potential, Adverse, and Disparate Impacts

In determining the impacts to the community, the Disparate Impact Area Subgroup identified several steps that could be considered during the permit application process when assessing the potential for a viable environmental justice claim.<sup>16</sup>

**PART I. Determine the Existence of Adverse Impacts to the Community**

**STEP 1:** Identify existing or potential impacts from the source that have human health exposure pathways,<sup>17</sup> such as:

- Air<sup>18</sup>
  - carcinogenic and non-carcinogenic air toxins<sup>19</sup>
  - criteria pollutants, including lead
- Water
  - bio-accumulative compounds
- Soil and Hazardous Wastes
- Soil
- Health
- Biota<sup>20</sup>

**STEP 2:** In limited circumstances and where permitted under the existing environmental statutes and regulations, MDEQ should measure cumulative impacts by reviewing available environmental information about the facility, (i.e., monitoring data urban scale modeling, TRI data, total maximum daily loads, or permit requirements) or, if applicable, by comparing proposed impacts to *de minimis* level(s)<sup>21</sup> that MDEQ may establish on a chemical-specific basis. The method chosen will be that one which makes sense for each chemical in light of the type of information available for that chemical.

**STEP 3:** Determine whether the proposed impacts meet applicable requirements under federal and state public health-based environmental statutes rules, regulations.

If proposed impacts do not satisfy the requirements under applicable public health-based environmental statutes, rules or regulations, an adverse impact may exist.

## PART II. Determine Existence of Disparate Impacts

**STEP 1:** Determine if the impacted environmental justice area<sup>22</sup> includes a group that is protected under Title VI.

**STEP 2:** Compare the demographics of the impacted environmental justice area with the statewide demographics for each protected group.

If the demographic percentages for the protected group that resides within the environmental justice area is larger than<sup>23</sup> the statewide demographic percentage for that group, then a disparate impact may exist and a heightened cumulative impact assessment for the impacted area may be necessary.

## PART III. Mitigation and/or Greater Public Participation

- Depending on the outcome of the analysis under Parts I and II, greater public participation efforts may be necessary to account for viable environmental justice concerns in the affected community. Opportunities for public participation should be encouraged during the entire permitting process.
- If MDEQ and/or the permittee determine that an adverse and disparate impact may exist, MDEQ and/or the permittee may decide to conduct a more rigorous analysis. If supported by the results of the more rigorous analysis, which demonstrates that an adverse impact would exist, the MDEQ and/or the permittee shall develop a way to reduce existing or proposed impacts, or consider other mitigating factors.

### Concerns and Recommendations

Most members of the Disparate Impact Area Subgroup recognize the need for some type of environmental justice program that provides greater public participation in environmental decision-making and permitting. There were, however, concerns among some members of the subgroup that the above process might lead to "reverse discrimination" -- the implementation of higher environmental standards in minority and low-income communities than in richer, non-minority communities. Other members were concerned that the approach results in redlining communities in such a way that businesses might avoid new developments in those areas.

Certain individuals in the subgroup had several suggestions that were outside the scope of its charge regarding an environmental justice program and better environmental regulation.<sup>24</sup> These suggestions included:

- Improve community outreach.

- Broaden the application of public participation provisions under existing federal, state, and local environmental statutes, rules, and regulations.
- Improve the study of air toxics in urban areas, such as additional monitors, more measured contaminants (where appropriate), and synergistic effects of different pollutants in exposure pathways.
- Improve and validate methodologies for measuring cumulative impacts.
- Create a “regulatory development” task force to: (a) examine the various studies and other sources of information; and (b) recommend areas that MDEQ needs additional authority to better protect the health of all communities in the state.

**IV. Appendix**

1. Interim Guidelines for Investigating Title VI Administrative Complaints
2. GAO Report
3. President's Executive Order
4. *Select Steel* Decision
5. List of Environmental Justice Workgroup Participants
6. Environmental Justice Workgroup Drafting Committee Participants
7. A Science Advisory Board Report: Review of Disproportionate Impact Methodologies – A Review by the Integrated Human Exposure Committee of the Science Advisory Board

<sup>1</sup> The protected groups under Title VI are identified in the text of this document, at page 10.

<sup>2</sup> I.e., local governmental officials will not be reviewing permit applications submitted to the MDEQ or adding to their expert review of permit applications, but would add to the public participation process by facilitating public concerns.

<sup>3</sup> These are not issues that would be considered in a Title VI investigation. Only those issues that a state Agency has regulatory control over would be investigated under the Interim Guidelines.

<sup>4</sup> Environmental Justice programs in US EPA Regions V, VIII and IX were reviewed, as well as programs in Louisiana and New Jersey.

<sup>5</sup> US EPA Region V *Interim Guidelines for Identifying and Addressing a Potential EJ Case (June 1998)*, page 20. Region V noted that States are not bound by regional environmental justice guidelines.

<sup>6</sup> Region V oversees federal environmental matters for Michigan and other midwestern states.

<sup>7</sup> See US EPA *Interim Guidelines*, *supra* @ Endnote #5, at Environmental Justice Assessment – Process Flowchart, page 7.

<sup>8</sup> CEQ, *Environmental Justice Guidance Under the National Environmental Policy Act [Dec. 10, 1997]*, at page 25.

<sup>9</sup> See US EPA *Interim Guidelines*, *supra* @ Endnote #5, at Question and Answer #14, page 11.

<sup>10</sup> See US EPA *Interim Guidelines*, *supra* @ Endnote #5, at Question and Answer #10, page 10. This determination is consistent with Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d to 2000d-7).

<sup>11</sup> I.e., in addition to current state regulatory review requirements for the issuance of permits.

<sup>12</sup> Identification of geographical areas in which environmental justice concerns might arise need not be restricted to the one-mile area. The recommended one-mile area was not intended to exclude consideration of other relevant factors, such as natural boundaries or census tract configuration.

<sup>13</sup> The Disparate Impact Area Subgroup's assumptions in this report are largely based on US EPA's position.

<sup>14</sup> Although not verbatim, this definition seems to be consistent with the *Select Steel* decision. Several members of the Disparate Impact Area Subgroup recognize that in certain circumstances a risk assessment under existing environmental rules and regulations may appropriately rely on public health benchmarks that do not necessarily correlate to an environmental standard.

<sup>15</sup> It was generally agreed that the specific draft proposed methodologies would not be included in this report. However, copies of these methodologies are available upon request.

<sup>16</sup> The Disparate Impact Area Subgroup recognizes that these are very controversial.

<sup>17</sup> The members of the Disparate Impact Area Subgroup did not reach consensus that odor-causing contaminants can lead to a viable environmental justice complaint. The supporters of this concept suggested that odor-causing contaminants could and actually would be likely to lead to a viable environmental justice complaint because odors really irritate people. Also, they argued that even if an odor complaint is not enforceable at the federal level, the odor problem could cause a major public relations issue for the company and, as a result, the community may be motivated to look hard for anything that might possibly be a basis for a valid environmental justice complaint. The opponents suggested that it could not be a viable environmental justice complaint because the federal government has no regulatory authority over odor. In fact, the only regulatory authority over odor-causing contaminants is found in Rule 901 of the rules promulgated under Michigan's environmental laws. See Mich. Admin. Code r. 336.1901. Also, note that recently there was a debate over whether this rule should be included in Michigan's State Implementation Plan ("SIP"), which resulted in US EPA's decision not to include Rule 901 in the SIP. In effect, this decision means that Rule 901 is not federally enforceable and cannot be the subject of a citizen suit under federal law.

<sup>18</sup> The Disparate Impact Area Subgroup focused primarily on air issues because they believe that this issue is where most potential environmental justice claims will arise.

<sup>19</sup> Some members recommended that carcinogenic effects not be considered when evaluating for adverse impacts. They argued that MDEQ Air Quality Division's air toxics rules establish acceptable incremental cancer risks for new and modified air emission sources which can be considered to be appropriate to apply to all such permit applications, regardless of the background air quality. In other words, an acceptable

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incremental increase in cancer risk of 1 in 100,000 per carcinogen emitted from a facility may be considered to be a *de minimis* risk protection level whether the site specific background for air quality indicates relatively low or high background cancer risk levels.

Alternatively, other policy choices on this issue may be considered, which, for example, may include the setting of some ambient “air risk cap” (e.g., 1 in 10,000) applied to background plus the increment. This cap would preclude any additional increment if the ambient air already exceeds the cap, unless the applicant/permittee can remediate existing source impacts such that the cumulative source impact would be less than the existing contaminant level. In effect, this may allow MDEQ and the permittee an opportunity to work with the community to address the existing impact to the area

<sup>20</sup> This refers only to animal and plant life that constitutes a pathway to human exposure. Ecological risks by themselves could not likely be a part of a Title VI environmental justice claim.

<sup>21</sup> The use of *de minimis* levels was suggested by certain members of the Disparate Impact Area Subgroup as a tool for measuring cumulative impacts. These certain members also suggested that if *de minimis* levels are exceeded, existing background levels plus incremental impacts from proposed source relative to the health benchmarks should be reviewed. They further suggest that in cases where the background level plus proposed source impacts exceed the health benchmarks, then there may be sufficient concerns for adverse impacts to require more rigorous analysis or pursue other means to reduce the impacts.

<sup>22</sup> To evaluate what is an “environmental justice area” the demographics and plume of contamination should be evaluated as directed by the Environmental Justice Area Subgroup.

<sup>23</sup> The Disparate Impact Area Subgroup leaves the exact figure of what is “larger” to MDEQ’s discretion. Certain members of the Subgroup recognized, however, that if the demographic percentage for the protected group that resides within the environmental justice area is less than the statewide demographic percentage for that group, the permitting authority may, depending on the circumstances, still determine that a more rigorous analysis is necessary. See the discussion in Endnote #16 and corresponding text.


<sup>24</sup> It is important to note that everyone in the Disparate Impact Area Subgroup does not agree with the necessity or practicality of these suggestions.

## MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

## INTEROFFICE COMMUNICATION

January 24, 2001

TO: Russell J. Harding, Director

FROM: Lynn Y. Buhl, Director of the Southeast Offices 

SUBJECT: Community Outreach Process Improvement

Since US EPA released its "Draft Interim Guidelines for Investigating Title VI Administrative Complaints" in February 1998, DEQ has struggled with whether or how to adjust our environmental permitting programs to prevent conditions giving rise to Title VI complaints. The Workgroup convened by DEQ and the City of Detroit issued a report in October 1999 that strongly emphasized the role of local government and the importance of community outreach in our permitting process. Rather than design a "fix" for all programs, I asked each division to design improvements to its processes. The responses were mixed. Therefore, I drafted a model community outreach plan for each division to consider and possibly modify for consistency with their enabling statutes.

The underlying premise to this approach is that public participation should occur much earlier in the permitting process. We believe local government is an important player in this discussion, for two major reasons. First, it has authority over issues often brought up by concerned citizens, such as noise, traffic and zoning. Second, it is a potential source of information to the DEQ on any particular characteristics of the community that may influence a permit review. By waiting until the end of our permit review process to conduct a public meeting, we may be missing opportunities for concerns to be identified and eliminated. By waiting until the end of the permit review process, we create the impression to the local community that the permit is a "done deal". Instead, our process should foster outreach to the local community early enough so that their concerns can be identified, discussed and hopefully accommodated as part of the application process. In addition, community outreach can be an opportunity to educate the public on what the permit application review involves and how it protects their health. It is also an opportunity to foster better communication between the permit applicant and its neighbors.

I also attach a table that compares our existing programs to the draft model.

Once you have reviewed and commented on this, I propose circulating it to the EJ Workgroup for their comments.

Attachment

cc: Gary R. Hughes, Deputy Director  
Arthur R. Nash Jr., Deputy Director

## MODEL COMMUNITY OUTREACH PLAN

January 24, 2001

DRAFT

### **I. Prior to permit application**

*Proposed Change:* As part of its permit application, applicant should be required to demonstrate it has:

- notified local government officials, and
- hosted a public meeting or an information session for interested or potentially impacted neighbors prior to or simultaneously with the submission of the application.

DEQ staff should attend as neutral third-party observers.

*Rationale:* The current process places too much of the burden of community interaction on the DEQ and not enough on the applicant. The result is that DEQ appears as the advocate when the company should occupy that role and accept its responsibility for ongoing community relations should the permit be granted.

*Comments from Division Chiefs/Deputies:* We have no statutory authority to require permit applicants to conduct this public outreach. Nonetheless, it is a good idea. Most applicants will not perform such outreach if it voluntary and some who wish to do so will need training in how to conduct such a meeting. We need to look for inducements, perhaps similar to those offered under the Clean Corporate Citizen program.

### **II. At the outset of the permit application review by DEQ staff**

*Proposed Changes:* (1) A DEQ letter confirming receipt of the application would request information about the public meeting:

- What issues were raised?
  - Who attended?
  - Was the application modified as a result?
  - Is local government aware of complaints that fall within its jurisdiction?
- (2) DEQ should routinely contact the local unit of government; request any characteristics of the community that could be a factor in evaluating the potential impact of the permit decision.
- (3) DEQ should consider establishing a Resource Group comprised of representatives of state and local health and environmental departments, community representatives, DEQ, the permit applicant. This group should be available to assist concerned citizens with technical details.
- (4) DEQ should notify neighboring jurisdictions, if a potential impact could reach those areas.



- (5) Finally, DEQ should conduct an informal "information exchange" with interested members of the community (including local government officials and the applicant) before much time is devoted to review of the application. This would allow community members to raise questions with staff and make them aware of historical issues. This would not be a negotiating session.

*Rationale:* DEQ should hear about community problems earlier in the process, before staff has invested numerous hours in a permit review without knowing all the facts. Community representatives have indicated repeatedly that an informal session in a conference room is likely to be more productive than a formal hearing OR meeting in an auditorium. Clarification early on in the process of which factors DEQ can consider and which it cannot would improve credibility of the Department. The permit applicant has a greater stake in this process than does DEQ, and should be present to hear what issues exist. If advised early enough, perhaps those concerned over a non-DEQ issue will have the opportunity to raise it with the proper governmental authority or with the permit applicant. The EJ Workgroup's recommendations included the formation of a Resource Group.

*Comments from Division Chiefs/Deputies:* An important concern is the efficient use of limited Department resources. No one wants to plan heightened community outreach over a permit that is of little interest (and in theory, impact) to anyone. Several divisions asked what threshold factors would trigger enhanced efforts. Rather than relying on a demographic analysis, as proposed by US EPA, the following approach is suggested:

- If the proposed operation is "controversial". This assessment can be based on past experience. All divisions seemed able to identify the types of proposed facilities that have generated controversy in the past.
- If the proposed operation involves lead or mercury emissions, or perhaps other bioaccumulative toxics of concern in the Great Lakes, then staff should ask local health department specifically for information relating to pre-existing conditions. This would probably be most effectively accomplished by developing a questionnaire. In this instance, DEQ may want to prepare a "siting analysis" that reviews pathways of exposure and potential impacts.

The above suggestions apply when either of these triggers is met.

### **III. When application review is complete and permit is proposed**

*Proposed Changes:* (1) Publish notice of public comment period more broadly than in local newspaper; also on Web page; consider notifications via Email to interested parties; postings in public library or post office; public service announcements on television or radio; mailings; church bulletins

(2) A public meeting should be planned at the outset of the comment period, or at some point during the comment period when time remains for an individual to prepare and

submit comments based on what he or she heard at the public meeting (minimum two weeks).

*Rationale:* We need to avoid the appearance of a "done deal".

*Comments from Division Chiefs/Deputies:* This needs to be done in a way that doesn't delay permit approval and doesn't increase costs substantially.

#### **IV. Format of public meeting**

*Proposed Changes:* (1) The public meeting should begin with the applicant making an introductory presentation that describes the proposed operation. DEQ should then comment on the extent of its legal authority and on the scope of its review, followed by a summary of the issues. A fact sheet would be available. If a hearing is required, it should be combined with a public meeting. As is now done with our Department meetings across the state, staff should be available for informal discussions for one to two hours prior to a formal hearing where testimony is taken on the record.

(2) DEQ staff should be familiar with any issues relating to the same facility that are being handled by other divisions. The answer of "that aspect doesn't affect this permit" isn't satisfactory. It makes our review appear superficial.

*Rationale:* The applicant should have a larger role in the public meeting. DEQ should strive to portray its role as it really is: neutral third party interpreter of the law. The current process in which DEQ summarizes the proposed permit for the public causes us to be perceived as advocates.

Public hearings, if conducted without any opportunity before or after for interaction with the attendees, are stilted and cause staff to be viewed as "removed" or "insulated" from the public.

The current process has the hearing officer recite the department's legal authority at the outset. That information could be printed and made available as an appendix to a "plain English" fact sheet that is made available to meeting attendees as well as submitted for the record. Instead, the introductory remarks should be educational and focus on explaining what the statutory requirements include and don't include. In short, there are numerous issues that staff has considered in its permit review process. Those should be summarized, as the public understands very little of the specifics of the DEQ review and consequently doesn't believe we've thoroughly examined the issues. Our presentation should end with our identifying the particular issues of concern in this proposed permit and how DEQ dealt with them.

*Comments from Division Chiefs/Deputies:* There was support for the idea of creating a greater role for the permit applicant in any public outreach activities. Several expressed concern over the idea that division staff should be expected to be familiar with another division's issues with the same facility.

## V. After the Public Meeting

*Proposed Change:* A tape should be maintained and a Responsiveness Summary prepared that answers the specific questions (which can be grouped, but should be quoted) posed by the audience. As much documentation as possible should be available for downloading from the DEQ web site.

*Rationale:* The current hearing process that doesn't call for staff to respond to questions and then doesn't generate a written response to the questions later makes the whole process appear superficial and pointless to the public.

*Comments from Division Chiefs/Deputies:* The original proposal suggested that a transcript of all meetings/hearings be maintained. Hearing a chorus of complaints over the cost, the proposal was modified to recommend that a tape be maintained.

Comparison of Existing Community Outreach Process for DEQ Permits  
To Model Process  
January 24, 2000

<b>Current Process</b>	<b>Model Process</b>
No requirement that applicant conduct public meeting, except federal MSW incinerator regulations.	Public meeting conducted by applicant before or when permit application is submitted to DEQ. DEQ should attend but not be part of presentation. Also applicant should be required to notify local unit of government. Letter confirming receipt of application would ask whether any issues were identified at the public meeting or have been brought to applicant's attention by local unit of government or anyone else.
AQD required to maintain list of all major source/modification permit applications; pertinent portions must be furnished and updated to Chairman of Board of County Commissioners.	DEQ should inform Mayor and County Commissioners of all permit applications within their jurisdiction upon receipt of those applications. DEQ's notification should request any pertinent information or issues from local government.
No technical expertise available from State to interested parties. Some Technical Assistance Grant funds from US EPA.	Resource Group comprised of health and environmental department staff, private sector technical experts, permit applicant available to explain permit details to citizens.
Staff generally available throughout process for meetings with interested parties.	Upon receipt of application and depending on outcome of applicant's public meeting, staff conducts information exchange with interested community representatives and local government officials.
If proposed facility known to be controversial, staff often does additional analysis; meets with groups —on case-by-case basis. AQD required to issue public notice and opportunity for public comment and meeting.	If proposed facility known to be controversial <b>OR</b> lead or mercury are among the proposed emissions, then staff communicates with local unit of government and local health department; inquires whether there are any pre-existing background conditions in community to consider. DEQ should develop a questionnaire that solicits useful information. DEQ prepares a siting analysis. A public meeting is scheduled with or without request.

<b>Current Process</b>	<b>Model Process</b>
Public notice with opportunity for public comment and hearing is required for major sources/modifications. Hearing conducted by DEQ after permit review completed, if requested.	Once DEQ review is complete, public notice of permit application, and DEQ conducts public meeting, if requested.
Formal notice of 30-day public comment period published in local newspaper and sent to mailing list; public hearing conducted by DEQ at the end of the public comment period.	Formal notice of comment period published in newspaper, on Web page, posted at public library? Post office? Public meeting conducted by DEQ should be at outset of the comment period.
Notice by DEQ to local government officials of public hearing; SWQD's goes to local unit of government, health department, drain commissioner and adjacent property owners.	Notice by DEQ to local unit of government, health department adjacent property owners and drain commission (if water resources impacted) of public meeting.
No requirement to notify neighboring communities (government or citizen).	If potential migration or impact beyond jurisdictional boundaries, notice to neighboring local unit of government and citizen group(s), if known
Formal hearing process discourages Q&A with staff; just records testimony. Staff available informally before and after.	Combined hearing/meeting format: staff officially available for 1-2 hours before hearing.
Recitation of legal authority as part of introduction/welcome to hearing.	Plain language explanation of scope of DEQ's review and authority. (i.e., what does staff look at?) Have fact sheets that list statutory/regulatory citations.
DEQ describes project, then opens forum for testimony.	Applicant presents proposal; DEQ highlights the issues and then opens the forum for testimony.
No publication of transcript or response; available upon request.	Response should be available on DEQ web page. Tape available upon request.
Responsiveness Summary: No consistency across divisions. Some draft the responsiveness summary by grouping questions into general issue categories rather than listing specific questions and answers.	Specific answers to specific questions should be drafted and available. (Questions can be grouped, but should be quoted).
Inadequate knowledge of other division involvement; if questioned, the response is often a cursory "that doesn't impact this permit review" without explanation.	Staff should be prepared to summarize other division issues and describe process by which those would be resolved in a different forum.



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



STEVEN E. CHESTER  
DIRECTOR

February 17, 2006

The Honorable Jennifer M. Granholm  
Governor of Michigan  
P.O. Box 30013  
Lansing, Michigan 48909

Dear Governor Granholm:

We are pleased to transmit to you the enclosed recommendations of the Michigan Department of Environmental Quality's (MDEQ) Environmental Advisory Council (EAC) on Environmental Justice. We recommend that you incorporate these recommendations in an Executive Directive.

In April 2005, your office requested that the MDEQ consider the potential for a state policy on Environmental Justice through the EAC. The EAC consists of a wide range of interests affected by MDEQ operations, including the regulated community, environmental and citizen organizations, local government, and others. It was considered to be an ideal forum for discussion of this important topic.

Throughout much of 2005, the EAC learned about issues surrounding Environmental Justice and considered the potential for a state policy. Since the activities of several state departments affect Environmental Justice considerations, we invited Directors Olszewski and Jeff to join us. They, or their representatives, participated in many of the EAC discussions. We were also joined in those discussions by members of the Michigan Environmental Justice community.

The enclosed recommendations are the culmination of that effort. These recommendations were unanimously supported by the EAC, including members from DaimlerChrysler, the Michigan Manufacturers Association, Consumers Energy, Small Business Association of Michigan, LaSalle Bank, Herman Miller, National Wildlife Federation, West Michigan Environmental Action Council, Michigan Environmental Law Center, Lone Tree Council, Detroiters Working for Environmental Justice, and others.

The Honorable Jennifer M. Granholm

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February 17, 2006

Thank you for your consideration of these recommendations.

Sincerely,



Steven E. Chester  
Director  
Department of Environmental Quality



Linda V. Parker  
Director  
Department of Civil Rights

Enclosure

cc : Mr. John Burchett, Governor's Office  
Ms. Theresa Bingman, Governor's Office  
Ms. Lynda Rossi, Governor's Office  
Ms. Dana Debel, Governor's Office  
Mr. Kelly Keenan, Governor's Office  
Ms. Janet Olszewski, Director, Michigan Department of Community Health  
Ms. Gloria Jeff, Director, Michigan Department of Transportation



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



STEVEN E. CHESTER  
DIRECTOR

**Recommendations for an Environmental Justice Policy for Michigan**  
**Environmental Advisory Council**  
January, 2006

## **Introduction**

In May 2005, Michigan Department of Environmental Quality (MDEQ) Director Steven E. Chester asked the MDEQ Environmental Advisory Council (EAC) to consider making recommendations for an environmental justice policy. This paper provides recommendations for such a policy and describes the steps the EAC took in developing the recommendations.

The EAC's consideration of environmental justice is unusual in that it could directly affect state agencies other than the MDEQ. As a result, Director Chester invited the directors of several other state agencies to participate in the EAC's discussions. The director or a representative of the Departments of Labor and Economic Growth, Community Health, Civil Rights, and Transportation, and the Governor's Interfaith Council, joined the discussion at one or more EAC meetings. In addition, several representatives of citizen organizations concerned with environmental justice also participated in the EAC discussions as the result of an invitation from Director Chester.

The EAC began its consideration of environmental justice with a presentation by, and discussion with, Professor Scot Yoder of Michigan State University, on the conceptual underpinnings of justice, generally, and environmental justice, in particular. At the next meeting, Professor Bunyan Bryant of the University of Michigan, informed the EAC of developments in environmental justice nationally and in Michigan. In addition, the EAC has reviewed a variety of source material, including the United States Environmental Protection Agency (U.S. EPA) and state policies addressing environmental justice, academic papers on environmental justice, and materials developed by the environmental justice community, nationally, and in Michigan. (See References, p. 4).

Throughout this report, "environmental justice" is used to mean the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

This report provides recommendations for the content of an environmental justice policy for Michigan. We recognize that these recommendations speak directly to the activities of the Executive Branch and thus assume it would be appropriate to adopt the policy through an action by the Governor.



## Recommendations

1. Michigan should adopt an environmental justice policy to further the important social values of fair treatment and meaningful involvement. **Fair treatment** ensures that civil rights considerations are weighed in governmental action. **Meaningful involvement** provides citizens with an effective voice in decisions that affect their communities. Michigan should recognize the interconnection between policies that foster environmental justice and advancing social well-being and economic progress.

2. The environmental justice policy should be based upon the following principles:

Michigan government should identify and appropriately address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on citizens, both present and future.

Michigan should seek to prevent any group of people and particularly any group identifiable by race, color, national origin, or income, from having to bear a disproportionate share of negative environmental consequences.

Michigan should encourage economic, social, and environmental choices that provide for enduring environmental health while recognizing implications for social well-being, and economic progress to meet the needs of both current and future generations.

Michigan citizens should have the opportunity for effective citizen involvement in decisions affecting their communities, especially those impacting their environment and their health.

3. The environmental justice policy should be implemented through specific mechanisms:

Each department should establish an environmental justice plan that provides a strategy and mechanisms to ensure that environmental justice principles are incorporated into departmental decisions and practices. These plans should be developed through appropriate public involvement processes, be consistent with federal environmental justice programs, and provide specific mechanisms for monitoring and measuring the effect(s) of plan implementation. All plans should be implemented in a manner that maximizes realization of the environmental justice principles while minimizing or eliminating potential adverse social, economic, or environmental consequences not envisioned or intended by this policy.

The policy should establish an interagency working group to: (1) integrate and coordinate the actions of state departments in furtherance of environmental justice; (2) assist in the development of department plans and review the plans to ensure they are consistent with the overall goals of the policy; (3) develop performance goals and measures that address

both the progress of individual departments in implementing their environmental justice plans, as well as overall progress toward achieving the broader principles underlying the policy; (4) periodically review the progress of individual departments against these benchmarks; and (5) prepare an annual publicly available report on progress in meeting environmental justice goals. The interagency work group should establish a citizen's advisory panel to assist in its efforts.

4. The EAC discussed mechanisms for individual communities to further environmental justice interests. The EAC recommends that further consideration be given to such mechanisms including:
  - a. A self-designation process by which a community could nominate itself for targeted efforts to address environmental justice concerns, including the application of incentives to promote environmentally and socially responsible economic development.
  - b. A petition process to address the concerns that any group identifiable by race, color, national origin, or income, is or will be disproportionately and negatively impacted as a result of the development, implementation, and enforcement of environmental laws.

## References

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Environmental Justice Resource Group

Anderson, Stephanie  
Michigan Environmental Council

Batterman, Stuart - Professor  
University of Michigan, School of Public Health

Crisp, Jim - Executive Director  
Michigan Community Action Agency

Davis, Eric  
Michigan Association of Counties

Davis, Jarod D.  
The Dow Chemical Company - Global Government Affairs & Public Policy

Dewey, Andrea S. – Transportation Planner  
Grand Valley Metropolitan Council

Egelhaaf, K. John – Executive Director  
Southwest Michigan Planning Commission

Elhardt, Nicole - Director  
Arab Community Center for Economic and Social Services

Gilezan, Grant  
Dykema Gossett

Glysson, Stephanie – Area Director of Governmental Affairs  
Republic Services of Michigan

Greenberg, Alan, M.  
Horizon Environmental Corporation

Gurba, Melanie – Graduate Student  
University of Michigan

Kniffen, Sally - Environmental Specialist  
Saginaw Chippewa Indian Tribe of Michigan

Makki, JD, Zeina – Advisory Board  
American-Arab Anti-Discrimination Committee - Advisory Board

Maxey, Ahmina – Policy Director  
East Michigan Environmental Action Council

Metzger, Kurt, R. - Director  
Detroit Area Community Information System (D-ACIS) - City Connect Detroit

## Environmental Justice Resource Group

Morris, Father Charles  
Michigan Interfaith Power and Light

Oemke, PhD, Mark  
Alma College

Oliver-King, Lisa – Executive Director  
Our Kitchen Table

Philo, John - Legal Director  
Sugar Law Center for Economic & Social Justice

Ross, Kathryn – Senior Environmental Planner  
Consumer Energy

Rowan, George  
Michigan State University

Schroeck, J.D., Nick – Regional Representative  
National Wildlife Federation

Seales, Diana – Executive Director  
East Michigan Environmental Action Council

Shaffner, George - Division Manager  
Marathon Petroleum Company, LLC

Spady, Lottie - Education Director  
East Michigan Environmental Action Council

Spencer, Mike - Associate Professor  
University of Michigan

Turner-Handy, Sandra  
Michigan Environmental Council

White, Yvonne  
National Association for Advancement of Colored People

### **INTERESTED IN RECEIVING INFORMATION**

Fisher, Debbie  
Focus Hope

Ripley, Mike  
Chippewa Ottawa Resource Authority



	Inform	Consult	Involve	Collaborate
<b>Public Participation Goal</b>	To provide public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions	To obtain public feedback on analysis, alternatives and/or decisions	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution
<b>Promise to the Public</b>	We will keep you informed	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible

Key Performance Measures	Is it required by regulations?	Will it enhance the public's understanding of the process and/or topic of discussion?	Will it enhance diversity among stakeholders, participants and the public?	Will it enhance the public's trust of the agency?	Will it provide for feedback on the effectiveness of the process?	Will it provide feedback loop to inform public of agency decision and basis for decision (e.g. transparency)	Will it identify a communication point person for the public?	Will it help identify solutions and/or solve a problem?	Is it intended to achieve consensus?	Will it help identify problems?	Will it help depolarize an issue?
<b>Public Participation Technique</b> 1. FORMAL MEETINGS Public hearing recording comments from the public for the administrative record	X		X			X	X			X	
Public meeting with presentation and question & answer session		X	X	X		X	X			X	X
Public meeting with presentation and panel discussion for Q & A		X	X	X		X	X			X	X
Sunshine Meeting - Administrators do everything in their power to have the public understand their work as they do it e.g., updates, progress reports.		X	X	X		X	X				

\*Adopted from International Association for Public Participation, IAP2 Spectrum 2007

EJ Public Participation Subgroup Report

Attachment B

Key Performance Measures	Is it required by regulations?	Will it enhance the public's understanding of the process and/or topic of discussion?	Will it enhance diversity among stakeholders, participants and the public?	Will it enhance the public's trust of the agency?	Will it provide for feedback on the effectiveness of the process?	Will it provide feedback loop to inform public of agency decision and basis for decision (e.g. transparency)	Will it identify a communication point person for the public?	Will it help identify solutions and/or solve a problem?	Is it intended to achieve consensus?	Will it help identify problems?	Will it help depolarize an issue?
Web based interactive tools for allowing public comment on specific sections of documents		X	X	X				X		X	
Provide reps from other divisions/Dep'ts that may be relevant to project		X	X	X			X	X		X	X
Provide translator for deaf or non-English speaking populations		X	X	X				X		X	X
Have a staff greeter		X		X	X						
Select meeting locations and times which allow for inclusion of underserved groups and persons with disabilities		X	X	X							X
Registration table		X		X	X						
Have the audience write their questions on index cards to be read during the Q&A session		X	X	X							
Agency staff to record questions in writing prior to the meeting which will be read during the Q&A session		X	X	X							
Write comments on a projected image as people give them		X	X	X			X			X	
Write questions on a flip board as they come up - answer at the end		X	X	X			X			X	

\*Adopted from International Association for Public Participation, IAP2 Spectrum 2007

Key Performance Measures	Is it required by regulations?	Will it enhance the public's understanding of the process and/or topic of discussion?	Will it enhance diversity among stakeholders, participants and the public?	Will it enhance the public's trust of the agency?	Will it provide for feedback on the effectiveness of the process?	Will it provide feedback loop to inform public of agency decision and basis for decision (e.g. transparency)	Will it identify a communication point person for the public?	Will it help identify solutions and/or solve a problem?	Is it intended to achieve consensus?	Will it help identify problems?	Will it help depolarize an issue?
Provide visual aides and other information materials to improve public understanding of the issues and process		X	X	X			X				X
Distribute and collect evaluation forms		X	X	X	X	X	X	X		X	X
Provide contact cards with key contacts		X	X	X		X	X	X		X	X
Provide clear explanation of project impacts (health, well being, etc)		X		X				X		X	X
Incorporation of soft ppt (Mtg location, seating, audio-visual, interpreters, sign language, etc)		X	X	X							
Use outside facilitator		X	X	X				X	X	X	X
Providing timely, balanced, and objective information on the problem, alternatives considered, and solutions reached.		X	X	X		X		X		X	

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EJ Public Participation Subgroup Report

Attachment B

Key Performance Measures	Is it required by regulations?	Will it enhance the public's understanding of the process and/or topic of discussion?	Will it enhance diversity among stakeholders, participants and the public?	Will it enhance the public's trust of the agency?	Will it provide for feedback on the effectiveness of the process?	Will it provide feedback loop to inform public of agency decision and basis for decision (e.g. transparency)	Will it identify a communication point person for the public?	Will it help identify solutions and/or solve a problem?	Is it intended to achieve consensus?	Will it help identify problems?	Will it help depolarize an issue?
Staff making follow up site visits in response to comments received				X				X		X	
Telephone conversations	X	X	X	X			X	X		X	X
E-mails	X	X	X	X			X	X		X	X
Meetings with individuals	X	X	X	X			X	X	X	X	X
Public speaking tours	X	X	X	X			X			X	X
Use outside facilitator	X	X	X	X				X	X	X	X
Tapping into existing networks, organizations, and institutions (Staff Mtgs, Clubs, service groups, tribal governments, schools, community organizations, other government organizations)	X	X	X	X			X	X		X	X
Roving Ambassador making contact with visitors at parks, campgrounds, field stations, etc and disseminate information.	X			X						X	
Employing an advocate on behalf of an interest group	X	X	X	X			X	X		X	X
Regularly scheduled meetings to touch base with interest groups, elected officials, agency officials, and opinion leaders)	X	X	X	X			X	X		X	X
Identify opinion leaders, those who are listened to and whose counsel you trust; meet with and or visit by phone as often as possible	X	X	X	X			X	X		X	X

Key Performance Measures	Is it required by regulations?	Will it enhance the public's understanding of the process and/or topic of discussion?	Will it enhance diversity among stakeholders, participants and the public?	Will it enhance the public's trust of the agency?	Will it provide for feedback on the effectiveness of the process?	Will it provide feedback loop to inform public of agency decision and basis for decision (e.g. transparency)?	Will it identify a communication point person for the public?	Will it help identify solutions and/or solve a problem?	Is it intended to achieve consensus?	Will it help identify problems?	Will it help depolarize an issue?
Negotiation and conflict mediation									X		
Sounding Boards - groups of people (citizens, employees, etc) for testing ideas		X	X	X				X		X	
Brainstorming sessions - for gathering many comments and ideas without any value judgements.		X	X	X		X	X	X		X	
Stakeholder group - work out action plans to accomplish specific activities		X		X				X			
Consensus building - facilitate diverse groups getting together to develop mutual solutions		X	X	X				X	X	X	X
Identifying and segmenting public and groups affected by issue		X	X	X			X			X	
Collaborative effort before a permit application is received		X	X	X			X		X	X	X
Partnership Building - using local citizens/organizations for projects meeting mutual objectives		X	X	X			X	X	X	X	X
Citizen advisory groups intended to work collaboratively on each aspect of decisions		X	X	X		X	X	X	X	X	X



EJ Public Participation Subgroup Report

Key Performance Measures

	Is it required by regulations?	Will it enhance the public's understanding of the process and/or topic of discussion?	Will it enhance diversity among stakeholders, participants and the public?	Will it enhance the public's trust of the agency?	Will it provide for feedback on the effectiveness of the process?	Will it provide feedback loop to inform public of agency decision and basis for decision (e.g. transparency)	Will it identify a communication point person for the public?	Will it help identify solutions and/or solve a problem?	Is it intended to achieve consensus?	Will it help identify problems?	Will it help depolarize an issue?
Frequently Asked Questions (FAQ) document		X		X							
Power Point Presentations		X									
Agency publications		X					X				
Web site postings of program information, proposed statute or rule amendments and permit applications		X				X	X				
E-mail listserver notices		<b>Yes for some statutes</b>				X					
General Education Sessions		X	X	X			X				
Newsletters		X					X				
Adequate notice of involvement opportunities at key decision points	X	X	X	X							
Public Information Materials: brochures, display boards, fact sheets, fliers, news articles, grocery bag inserts, video tapes, posters		X	X	X							
Field information stations for information dissemination		X	X	X							

Attachment B

Key Performance Measures	Is it required by regulations?	Will it enhance the public's understanding of the process and/or topic of discussion?	Will it enhance diversity among stakeholders, participants and the public	Will it enhance the public's trust of the agency?	Will it provide for feedback on the effectiveness of the process?	Will it provide feedback loop to inform public of agency decision and basis for decision (e.g. transparency)	Will it identify a communication point person for the public?	Will it help identify solutions and/or solve a problem?	Is it intended to achieve consensus?	Will it help identify problems?	Will it help depolarize an issue?
Reviewing and monitoring media to learn about values, priorities, issues, and concerns of interest groups			X							X	
Identifying emerging issues			X							X	
Seminars		X	X	X							
Brown bag lunch series		X	X								
Field trips - Show me trips		X	X	X						X	
Blogs		X								X	
Social networking web sites (e.g., Facebook, My Space)		X					X				
Staff responding to written questions or comments received from the public		X		X		X	X		X		X



	<b>Inform</b>	<b>Consult</b>	<b>Involve</b>	<b>Collaborate</b>
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**Public Participation Technique**

4. FEEDBACK

Accepting written comments in response to public notices of permit applications, proposed rule amendments, etc.

Accepting public comments via web site

Follow-up surveys—written, telephone, e-mail

Accepting written comments in response to public notices of permit applications, proposed rule amendments, etc.	X		X	X						X	
Accepting public comments via web site			X				X			X	
Follow-up surveys—written, telephone, e-mail				X	X			X		X	



	Inform	Consult	Involve	Collaborate
<b>Public Participation Goal</b>	To provide public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions	To obtain public feedback on analysis, alternatives and/or decisions	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution
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**Public Participation Technique**  
5. OTHER

Staff Training (Communication skills, Public Participation Techniques)

Using variety of audio-visual materials to disseminate information

Communication Techniques and Skills (Active listening, recording, documentation, lay terminology, braille, TTY, bilingual)

Staff Training (Communication skills, Public Participation Techniques)	X	X	X	X	X	X	X	X	X	X	X
Using variety of audio-visual materials to disseminate information	X	X	X								
Communication Techniques and Skills (Active listening, recording, documentation, lay terminology, braille, TTY, bilingual)	X	X	X								

\*Adapted from International Association for Public Participation (IAP2) decision making matrix.



## Pilot Sustainable Alternatives Agreement Process

A sustainable alternatives agreement (SAA) is an agreement between a person proposing a project, an interdepartmental work group (IWG), and/or the community stakeholder group that uses incentives to encourage economic development and impacts of the proposal on the affected community. Incentives should encourage actions to reduce emissions of harmful pollutants such as: (a) priority access to grants or public financing tools to implement an alternative process that emphasizes pollution prevention and thereby creates less harmful impacts or (b) priority access to grants, public financing tools or research assets to develop and implement in this project a less harmful process if none currently exists.

A pilot SAA process could be structured as follows:

1. Project proposal is presented to relevant regulatory agency in the form of a description of the project or a formal permit application. Proposers should be encouraged to contact the agency early to begin this process.
2. Using the tool developed by the disparate impacts subgroup, the regulatory agency informs proposer that the project may occur in a vulnerable environmental justice community.
3. Regulatory agency forwards project proposal to the IWG for assessment of impacts of the proposal on the community and evaluation of incentives to reduce those impacts.
4. The IWG enlists the assistance of a community liaison(s) to form a community stakeholder group.
5. With input from the stakeholder group and involvement of the proposer, the IWG reviews the proposal and determines the nature of the impact on the community taking into account existing burdens to the community. The IWG should use the U.S. EPA Title VI guidance to help structure this review. The determination will help the relevant agency in assessing its legal obligations under Title VI.
6. Based on the results of this review, the proposer and community group may be encouraged to participate in a voluntary process to develop a SAA to address the impacts of the proposal on the community. The IWG participates in these discussions to help identify incentives that can be used to assist the proposer in undertaking actions to address impacts on the community.
7. Taking into account the determination of the IWG and the existence of an agreement, the relevant agency determines whether to issue the permit/approval for the project in light of the requirements of Title VI. If the permit approval would otherwise result in a violation of Title VI, terms of the agreement can be incorporated in the permit as conditions.