

EXECUTIVE ORDER

State Actions to Address Environmental Justice In Minority and Low-Income Populations

By the authority vested in me as Governor of the State of Michigan, under Art. V, § 2 the Constitution of 1963, it is Ordered as follows:

Declaration.

For too long, low-income communities and minority communities have borne disproportionate burdens of modern industrial life. This Executive Order seeks to bring justice to and protect the public health of these communities.

No single group of people, and particularly no group identifiable by race, ethnicity, economic class, or social standing should bear a disproportionate share of the negative environmental consequences from industry, commerce, or government actions and policies.

Environmental Justice refers to the fair treatment and meaningful involvement of all people – no matter what race, color, national origin, or income level – in the development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental Justice addresses environmental racism and injustice by preventing environmental harm before it occurs, in addition to remedying past injustices. It is the public policy of the State of Michigan to avoid, prevent and remedy environmental racism and disproportionate environmental burdens, and to seek Environmental Justice.

Section 1. Implementation.

Agency Responsibilities. To the greatest extent practicable and permitted by law, and consistent with the Declaration and other provisions of this Order, each State agency shall make achieving Environmental Justice part of its mission, by appropriately identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in Michigan and the Great Lakes basin, pursuant to this Order.

This Order is intended to enhance the efficient administration of state government and the law, pursuant to the Constitution of 1963, Art. IV, § 51, providing that “The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern;” and Art. IV, § 52, providing that “The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people.”

Section 2. Creation of Interagency Working Group on Environmental Justice

(a) Within three months of the date of this Order, The Directors of the Department of Environmental Quality (DEQ) and the Department of Community Health (DCH), or their designees, shall convene an interagency State Working Group on Environmental Justice (“Working Group”). The Working Group shall comprise the heads of the following State agencies or offices, or their designees:

- Department of Environmental Quality
- Department of Community Health
- Department of Agriculture
- Office of the Attorney General
- Department of Civil Rights
- Department of Corrections
- Department of Education
- Family Independence Agency
- Department of Labor and Economic Growth
- Department of Management and Budget
- Department of Natural Resources
- Secretary of State
- Department of Transportation
- American Indian Affairs Office
- Such other government officials or other persons as the Director, after consultation with the Environmental Affairs Advisor to the Governor, may designate.

(b) The Working Group shall:

- i. Provide guidance to State agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;
- ii. Coordinate with, provide guidance to, and serve as a clearinghouse for each State agency as it develops an Environmental Justice strategy, as required by this Order, to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;
- iii. Assist in coordinating research by, and stimulating cooperation among, the DEQ, the Department of Natural Resources, the Department of Community Health and other agencies conducting research or other activities in accordance with this Order;
- iv. Assist in coordinating data collection in accordance with this Order;
- v. Hold public meetings in accordance with this Order; and
- vi. Develop interagency model projects on Environmental Justice that evidence cooperation among State agencies.

Section 3. Development of Agency Strategies.

Each of the State agencies or offices listed in Section 2.(a) shall develop an agency-wide Environmental Justice strategy that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The Environmental Justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemaking proceedings relating to human health or the environment that shall be revised to, at a minimum:

1. Promote adequate and effective enforcement of all health and environmental statutes, rules and regulations in areas with minority populations and/or low-income populations;
2. Ensure greater public participation in the development, implementation, and enforcement of environmental laws, regulations, and policies;
3. Improve research and data collection relating to the health of and environment of minority populations and low-income populations, including but not limited to the cumulative impact and synergistic effects of multiple pollution sources and contaminants on populations subjected to disproportionate environmental impacts;
4. Identify differential patterns of consumption of natural resources among minority populations and low-income populations, including but not limited to creating a central, collaborative database that identifies low-income and minority communities who are victims of environmental racism and injustice;
5. Implement pollution prevention plans, strategies, and actions in low-income and minority communities; and
6. Propose a timetable for undertaking identified revisions and changes in policy needed to address Environmental Justice issues, including the consideration of economic and social implications of the revisions and changes.

Within four months of the date of this Order, each State agency shall identify an internal administrative process for developing its Environmental Justice strategy, and shall inform the Working Group of the process.

Within six months of the date of this Order, each State agency shall provide the Working Group with a written outline of its proposed Environmental Justice strategy.

Within ten months of the date of this Order, each State agency shall provide the Working Group with its written proposed Environmental Justice strategy.

Within twelve months of the date of this Order, each State agency shall finalize and provide the Working Group with its written Environmental Justice strategy and a timetable for its implementation.

Within twenty-four months of the date of this Order, each State agency shall report to the Working Group on its progress in implementing its Environmental Justice strategy.

State agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

Section 4. Reports to the Governor.

Within fourteen months of the date of this Order, the Working Group shall submit to the Governor, through the Environmental Affairs Advisor to the Governor, a report that describes the implementation of this Order, and includes the final written Environmental Justice strategies of each State agency.

Section 5. State Agency Responsibilities for State Programs

Each State agency shall conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that they do not have the effect of excluding persons, communities or populations from meaningful participation in, denying them benefits, or subjecting them to discrimination, because of their race, color, ethnicity, or national origin.

Section 6. Research, Data Collection, and Analysis

(a) Environmental and health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including persons, communities or populations at high risk from environmental hazards, such as people of color, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures and their impacts on people of color and low income populations.

(c) State agencies shall provide minority and low-income populations with meaningful and adequate opportunities to comment on the development and design of research strategies undertaken pursuant to this Order.

(d) State agencies shall publish data regarding people of color and low income populations, and otherwise make environmental and health research, human health analyses, and research strategies regarding Environmental Justice and environmental racism accessible and meaningful to members of the general public.

Section 7. Human Health and Environmental Data Collection and Analysis.

(a) To the extent permitted by law, each State agency, whenever practicable and appropriate, shall collect, maintain and analyze information assessing and comparing environmental and human health risks borne by persons, communities and populations identified by race, national origin or income. To the extent practicable and appropriate, State agencies shall use this information to determine whether their programs, policies and activities, separately or in combination with other activities and sources, have disproportionately high and adverse human health or environmental effects on minority and low-income populations.

(b) In connection with the development and implementation of agency strategies in Section 3 of this Order, each State agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites that may be expected to have substantial environmental, human health or economic effects on the surrounding populations, when such facilities or sites become the subject of any substantial State environmental administrative or judicial action. This information and data regarding potential harm to the affected populations shall be made freely available to the public, unless prohibited by law.

(c) Each State agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income levels, and other readily accessible and appropriate information for areas surrounding facilities that are expected to have a substantial environmental, human health or economic effect on surrounding populations. This information and data regarding potential harm to the affected populations shall be made freely available to the public, unless prohibited by law.

(d) In carrying out its responsibilities under this section, each State agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among State agencies and with federal, local and tribal governments.

Section 8. Subsistence Consumption of Fish and Wildlife.

(a) Consumption Patterns. State agencies, whenever practicable and appropriate, shall collect, maintain and analyze information on consumption patterns of persons, communities and populations who substantially rely on fish and/or wildlife for subsistence. State agencies shall communicate to the public the risks of those consumption patterns, posting notices and widely publicizing any dangers to health.

(b) Guidance. State agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available, including methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

Section 9. Public Participation and Access to Information.

(a) The public may submit recommendations to State agencies relating to the incorporation of Environmental Justice principles into programs and policies. Each State agency shall convey such recommendations to the Working Group.

(b) Each State agency shall, whenever practicable and appropriate, translate relevant public documents, notices and hearings relating to human health or the environment for limited English-speaking populations.

(c) Each State agency shall work to ensure that public documents, notices and hearings relating to human health or the environment are concise, understandable and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purposes of fact-finding, receiving public comments and conducting inquiries concerning Environmental Justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

(e) The Working Group shall be responsible for coordinating Environmental Justice strategies and activities, when two or more agencies or departments are responsible for regulating harmful activities in a given area, e.g., pollution due to both air and water discharges from the same facility.

Section 10. Environmental Justice Petitions, Meetings and Action Plans.

Any person may file a petition with the Working Group that asserts that residents or workers in a population or community are subjected to disproportionately high and adverse human health or environmental effects of State programs, policies, or activities, to disproportionate adverse exposure to environmental health risk, or to disproportionate adverse effects resulting from the implementation of laws, policies or programs affecting the environment or health. Such petitions shall be signed by 50 or more residents or workers, provided that at least 25 of them are residents in the affected population or community. Representatives of the Working Group and the state agency whose responsibilities are most relevant to the issues raised by the petition, as practicable and appropriate, shall meet directly with residents and other representatives of the affected population or community, to hear and understand their concerns. The Working Group shall develop an action plan in response to such a petition, present the action plan to the

relevant State agencies, and monitor the implementation of the action plan, where practicable and appropriate.

Section 11. Precautionary Principle Policy Statement.

(a) Precautionary Principle. The Precautionary Principle is intended as a tool to help promote Environmental Justice, while weeding out the negative and often unintended consequences of new technologies. A central element of the precautionary approach is the careful assessment of available alternatives using the best available science. An alternatives assessment examines a broad range of options in order to present the public with different effects of different options considering short-term versus long-term effects or costs, and evaluating and comparing the adverse or potentially adverse effects of each option, noting options with fewer potential hazards. This process allows fundamental questions to be asked: "Is this potentially hazardous activity necessary?" "What less hazardous options are available?" and "How little damage is possible?" It is consistent with the legal standards of the Michigan Environmental Protection Act, requiring the selection of the least harmful alternative.

(b) Alternatives Assessment. The alternatives assessment is also a public process because, locally and internationally, the public bears the ecological and health consequences of environmental decisions. A government's course of action is necessarily enriched by broadly based public participation when a full range of alternatives is considered based on input from diverse persons, populations, communities and groups. The public should be able to determine the range of alternatives examined and suggest specific reasonable alternatives, as well as their short- and long-term benefits and drawbacks. Transforming our society to realize these goals and achieving a society living respectfully within the bounds of nature will take a behavioral as well as technological revolution. The precautionary approach to decision-making will help Michigan speed this process of change by moving beyond finding cures for environmental ills to preventing the ills before they can do harm.

(c) Policy. The following shall constitute the State of Michigan's Precautionary Principle policy. All State agencies shall implement the Precautionary Principle in the development, implementation, and enforcement of environmental laws, regulations, and policies. The Precautionary Principle requires a thorough exploration and a careful analysis of a wide range of alternatives. Using the best available science, the Precautionary Principle requires the selection of the alternative that presents the least potential threat to human health and the State's natural systems. Public participation and an open and transparent decision making process are critical to finding and selecting alternatives. The proponent of an activity, rather than the public, shall bear the burden of proof that the particular activity at issue is economically viable, socially just and ecologically sound.

Where threats of serious or irreversible damage to people or nature exist, lack of full scientific certainty about cause and effect shall not be viewed as sufficient reason for the State to postpone measures to prevent the degradation of the environment or protect the health of its citizens. Any gaps in scientific data uncovered by the examination of alternatives will provide a guidepost for future research, but will not prevent protective action being taken by the State. As new scientific data become available, the State will review its decisions and make adjustments when warranted. The precautionary principle requires that, where the preponderance of available data indicates a need for public protection, the state must take action to prevent harm before it occurs.

Where there are reasonable grounds for concern, the precautionary approach to decision-making is meant to help reduce harm by triggering a process to select the least potential threat. The essential elements of the Precautionary Principle approach to decision-making include:

1. Anticipatory Action: There is a duty to take anticipatory action to prevent harm. Government, business, and community groups, as well as the general public, share this responsibility. This duty is triggered by the availability of any information that would lead a reasonable person to be concerned about the potentially dangerous or irreversible consequences of a proposed action.

2. Right to Know: The community has a right to know complete and accurate information on potential human health and environmental impacts associated with the selection of products, services, operations or plans. The burden to supply this information lies with the proponent, not with the general public.

3. Alternatives Assessment: An obligation exists to examine a full range of alternatives and select the alternative with the least potential impact on human health and the environment including the alternative of doing nothing.

4. Full Cost Accounting: When evaluating potential alternatives, there is a duty to consider all the costs, including raw materials, manufacturing, transportation, use, cleanup, eventual disposal, and health costs even if such costs are not reflected in the initial price. Short- and long-term time thresholds should be considered when making decisions.

5. Participatory Decision Process: Decisions applying the Precautionary Principle must be transparent, participatory, and informed by the best available information.

SO ORDERED.

Governor, State of Michigan