

October 7, 2015

VIA EMAIL:

Michelle.A.Reid@state.ma.us

Executive Office of Energy and Environmental Affairs
Attn: Michelle Reid, Director of Environmental Justice
100 Cambridge Street, Suite 900
Boston, MA 02114

Dear Ms. Reid:

Thank you for this opportunity to comment on the draft revisions to the Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs (Draft EJ Policy). As you know, there is a tremendous amount of inequity in the Commonwealth that results in people of color and low-income communities bearing disproportionate environmental and public health burdens. This dire situation is complicated by rapidly rising rents and attendant displacement of the Commonwealth's most vulnerable populations. The Draft EJ Policy holds enormous potential to steer financial and staff resources to benefit communities of color and low-income communities and support their efforts to stave off environmental and health threats and to nurture vibrant healthy communities. Long overdue, the Draft EJ Policy is a step in the right direction, but could be strengthened considerably. I submit these comments on behalf of the Conservation Law Foundation.

Founded in 1966, CLF protects New England's environment for the benefit of all people. We use the law, science, and the market to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy.

Definitions

- In the definition of *Environmental Justice*, we recommend adding in the last sentence at the very end "and burdens."
- In the definition of *Equal Protection*, we recommend that the word "disability" be substituted for "handicap."
- Also in the definition of *Equal Protection*, after the first mention of the word "people," we recommend you add, "... including all federal and state protected classes under Title VI of the federal Civil Rights Act of 1964, 42 U.S.C. Section 2000d et seq. and M.G.L. Chapter 151B, ..."
- In the definition of *Environmental Justice (EJ) Population*, we recommend against the use of the term "Minority," which is quickly becoming outmoded and with the rapid growth of non-white populations, is something of a misnomer, i.e., "minority" populations are becoming the majority. We recommend using language like "people of color" or specifically referring to the racial and ethnic groups you mean, such as Latino/Hispanic, Black/African American, Asian, indigenous people, and people who otherwise identify as non-white. We also recommend that the definition

of *Minority* be stricken from the Draft EJ Policy. Likewise, we recommend that mention of the term “minority” throughout the policy be substituted with “people of color.”

- Also in the definition of *Environmental Justice (EJ) Population*, we recommend that the term “Lacking English Language Proficiency” be changed to “Limited English Proficiency” to be consistent with Presidential Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.”
- Again in the definition of *Environmental Justice (EJ) Population* it’s unclear what is meant by “significantly higher than the statewide averages.” The word “significantly” is vague; similarly, we’re uncertain about the meaning of “averages.” Additionally, we are concerned that the available data for childhood cancer and asthma rates may not be reliable data for the purposes and goals of the Draft EJ Policy. We recommend consulting further with the Massachusetts Department of Public Health to ensure that reliable data is available. We have the same comment for the definition of *Vulnerable Health*.

Statement of Purpose

- In the last paragraph under this section, we recommend the addition of the proper legal citation of the Title VI statute, 42 U.S.C. Section 2000d in the places where the Draft EJ Policy mentions the implementing regulations at 40 C.F. R. Section 7.35(b), Section 7.35(c), and 40 C.F.R. Part 7, Subpart B.
- We also recommend that you cite Executive Order 13166 “Improving Access to Services for Persons with Limited English Proficiency” and its interpretive policy guidance, “Enforcement of Title VI of the Civil Rights Action of 1964 – National Origin Discrimination Against Persons with Limited English Proficiency.”
- Finally, one of the weaknesses of Title VI is that once a complaint is filed, complaining parties are excluded from negotiations with the federal agency that received the complaint. This undermines the ability to reach a just and appropriate resolution. Therefore, we recommend adding the following language: “Any process enforcing Title VI or intended to address a Title VI complaint shall be transparent and allow petitioning party or parties to engage in negotiation processes directly with the respondent agency.”

EJ Populations

Massachusetts, like so many other states, has small, isolated communities that are not statistically large enough by Census Block Group or otherwise to meet the definition of EJ Populations. For example, Freetown has a small Cape Verdean (Black/African American) population that is concentrated in a single region of the town. This community has been subjected to over-lay zoning that allows industrial activities in this tiny residential community. Over the last 15 years, the community has repeatedly had to fight off noxious land uses, such as an asphalt plant, trucking facilities, tire dumps, industrial warehouses, etc. It also filed a federal lawsuit under the Fair Housing Act, Title VIII of the federal Civil Rights Action of 1968, in order to be connected to a proper drinking water supply that was available to the rest of the town, but not to this community. Astonishingly, because Freetown’s Cape Verdean population is so small, it is not considered an EJ Population. And due to its “invisibility,” discrimination and systematic targeting of this

community for noxious land uses has flown under the radar far too long. This community is exactly the type of community the Draft EJ Policy should aim to protect.

Accordingly, we recommend the addition of an opt-in provision, whereby small, isolated communities can petition the Secretary for Energy and Environmental Affairs to be recognized as EJ Populations. The Secretary could designate criteria and procedures for such a petition. The Secretary might, for example, consider clustering of industrial facilities as a criterion. The petition could be a 10 residents petition, using the MEPA fail safe procedure as a model. In any event, we recommend that the Secretary vet possible criteria with the public through a public comment period.

Servicing EJ Populations

- **2. EJ Training.** We recommend that all staff receive some level of EJ training, especially enforcement staff.
- **6. Information Repositories.** With respect to information repositories, we recommend substituting the words “when appropriate” for “consider.”
- **7. Interagency Environmental Justice Working Group.** We recommend that the Interagency Environmental Justice Working Group meet quarterly.
- **10. Secretariat EJ Strategies.** Executive Order 552 required that secretariat EJ strategies be completed within 180 days of the effective date of the Order. They are now, obviously, overdue. We recommend that the Draft EJ Policy require that EJ strategies, if not yet completed, be completed within 60 days of the effective date of the final EJ Policy.
- **11. Senior-Level Commitment.** Contact information for EJ points-of-contact should be posted on the EEA website, in newsletters, in funding requests for proposals, and other appropriate places.
- **12. Agency Public Involvement and Community Engagement Programs.** These public participation programs should be due with 60 days of the effective date of the final EJ Policy.
- **13. Enhanced Public Participation Under MEPA.** We recommend the addition of energy and transportation projects be included under number (1). We also recommend that enhanced public participation include the use of social media along with alternative media outlets.
- **14. Enhanced Analysis of Impacts and Mitigation Under MEPA.** Again, under number (1), we recommend the inclusion of transportation and energy projects. In the first sentence of the first paragraph after the bulleted section, the words “but are not limited to” should be added after the words “may include.” Also, we recommend that in the MEPA certificate, the Secretary should make a specific finding as to potential impacts to EJ Populations as part of any enhanced analysis of impacts and mitigation under MEPA.
- **17. Enhanced Public Participation and Analysis of Impacts and Mitigation Under the Energy Facilities Siting Board (“Siting Board”).** In the penultimate sentence of the second paragraph, after the word “substances” we recommend adding “or the compound impacts caused by proximity to multiple energy, industrial, or transportation sources and the potential synergistic effects thereof.”

- **20. Community Based Projects.** These lists of community-based projects have also come to be known as “SEP Banks.” We recommend that after the words “community-based projects” the words “or SEP Bank” be added, both in the bolded words and within the text that follows.

Investments in the Economy and Open Space

In the last item, number 32, we recommend that the word “climate” be added before “adaptation” in the bolded section.

I’ll close with a general comment on the Draft EJ Policy. I’m aware that in the early 2000s, the Department of Environmental Protection had an internal working group focused on cumulative impacts and how the Department might address them. The implementation of Executive Order 552 and the Draft EJ Policy present the opportunity for EEA and DEP to return to this research. I strongly recommend that a cumulative impacts section be added as an objective of the final EJ Policy. EEA should reconvene the internal group, and perhaps seek input from outside experts and academics or other state or federal agencies that have invested a good deal of thought and investigation in this area. Similarly, EEA should identify communities, such as areas of Brockton or New Bedford that have an extreme clustering of facilities and undertake community impact statements as part of any review process for siting of new industrial, large commercial, transportation, or energy facilities.

Again, thank you for this opportunity to provide feedback on the Draft EJ Policy. Should you have any questions or comments, please feel free to contact me at (617) 850-1730 or by email at veady@clf.org.

Kindest regards,



Veronica Eady
Vice President and Massachusetts Director
Conservation Law Foundation