

Municipal Environmental Justice Policy - Summary and Suggestions for Improvement
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During the Fall 2016 semester, students in the Directed Study course Research for Environmental Agencies wrote a draft Municipal Environmental Justice Policy which is summarized below. Below the summary of this policy there are suggestions for improvement of the policy provided by environmental justice experts and by students of the 2017 Spring Semester.

Summary of the Model Municipal Environmental Justice Ordinance

Introduction

The introduction articulates the principle that it is in the interest of the entire community, not just the EJ neighborhood, to have a protected environment and to have equal protection, and this is of great importance to a strong economy. Blight is infectious. If one part of a town is heavily impacted, that actually has a bad effect on the entire town. The EPA cannot exercise local police power, so municipalities must take action on their own behalf. However, they need more risk information to do it.

Definitions

Definition of cumulative impact and determinants of health are set forth to assist in fully understanding risk - to help communities know the impacts of proposed developments before they approve them. The EJ impact assessment concept is introduced to ensure that the evaluation of impacts is triggered when a development that might have impacts is proposed in a neighborhood that is defined as EJ. These areas are assumed to have reduced political power and to need the intervention of authorities to ensure proper evaluation of risk. They are likely to already have disproportionate impact. Defining host community benefits also helps emphasize what communities may choose to support, and enhances chances that developments benefit the community and not just the developer.

Declaration of Policy

The declaration emphasizes the fact that everyone benefits from preventing harm, not just the EJ neighborhood, and that it is important for the economy, creating jobs, and protecting health and safety. It articulates the principle that expediting development should not exacerbate impacts in already impacted areas.

Scope

The ordinance is written as applying to EJ communities, but this definition can be expanded to cover areas experiencing cumulative impact as the capacity to assess such impact improves. The ultimate purpose is to protect the health and safety of the entire municipality. The fact that development is proposed within an EJ area triggers the special requirements of the ordinance because the residents require assistance in ensuring their perspectives are represented in decision-making.

Assessment

The EJ Community Impact Statement should include an analysis of the environmental and public health consequences of the proposed project, including positive and negative impacts, and the benefits to the community. It should include cumulative impacts and reasonable alternatives.

Public Notice

This section emphasizes the importance of the availability of information about the proposed project, and specifies the importance of written notice to the affected community, and using other means of providing notice of the proposed project, such as public announcements. The public should be able to easily obtain comprehensive information about the project.

Public Participation

The public should be able to comment, submit information and questions. Public participation is vital, and citizens should be given many opportunities to provide feedback and learn more about the project. Their feedback should be a central concern and given close consideration to encourage public participation and underline the importance of citizen engagement. Responses should be prompt and public. The authorizing body should also “independently examine possible alternatives to ensure a good faith effort has been made” and seek independent advisory assistance concerning alternatives, if needed and as available, so that proponents will take seriously the responsibility to examine safer alternatives and the public will understand them.

Administrative Review

The municipality reserves the right to reject the project if the EJ Community Impact Assessment was not thoroughly completed, or if safer alternatives were not thoroughly investigated. If rejected, the revised project may seek approval with mitigation measures. A project that is inherently beneficial to the community may be excused from the need to perform an assessment, but must still be required to address: a. determinants of health; b. permanent displacement of existing residents; c. dislocation of a significant number of small businesses. backed by substantial evidence considering EJ factors.

Appeal

This includes alternative dispute resolution in the process for appealing a rejection.

Enforcement

The enforcement of this EJ policy is set forth so that penalties will be known and can be imposed for violations. It clarifies that knowing omission or misrepresentation of information is a misdemeanor. This section underlines the seriousness of an EJ ordinance for the community and its serious efforts to address violations. The ordinance cannot be effective without enforcement and accountability. A high degree of legal consequences for a violation exemplifies the importance of the ordinance and helps ensure that developers will not disregard its requirements.

Public Danger

If the project poses imminent public danger in violation of this policy, the municipality may commence a civil action for appropriate relief. The municipality has a right to be compensated for any damages.

Severability

If any provision of this policy is considered unlawful or unenforceable by a court, the remaining provisions will remain intact and in effect.

Issuance

The ordinance will take effect upon final approval by the municipality.

Suggestions for Improvement of the Environmental Justice Ordinance

Suggestions from professionals in the EJ field

1. Lauren Richter, PhD candidate in sociology, member of the board of directors at ACE (Alternatives for Community and Environment)
 - “In terms of community engagement/participation, it is always best to identify existing organizations, especially ones that do community organizing, and ask them to help promote the event through their networks.”
 - Consider barriers the EPA sees in implementing the various elements of the ordinance, and under what conditions they think those barriers could be overcome (i.e. people in the streets).
2. Gerald Torres, professor at Cornell Law School and leading figure in critical race theory, environmental law, and federal Native American law
 - Principal problem of the ordinance is that the definition of an EJ community is too vague, “it left me unsure of exactly who gets treated as an EJ community.”
 - “This is especially problematic as it is the trigger for much of the review that follows.”
 - “The impact assessment is loosely worded and should, in my view, be tied to existing burdens the community is facing so that total public health costs might be taken into account.”

Suggestions from the RCCP team (Professor Richard Reibstein, Paige Dolci, Armina Petrescu-Tudor) and Deborah Brown of the EPA

1. Implement a fee in the permit application to pay for independent community monitoring and assessment (if the plant poses a risk to water supply, water will be tested both before operation begins and during operation)
 - a. Municipalities need resources to collect data that enables evaluation of cumulative risk
 - b. Policy could either spell out how this would work, or establish a process that would continuously develop the effort (describe the responsibility and assign it to new or existing staff)
 - c. This provision will create the capacity to assess cumulative risk.

2. Find ways to more strongly state how this is central to economic development in a community
 - a. Incorporate economic development planning efforts to encourage cleaner industry
 - b. Include preferences for industries that offer solid assurances of safety and commitments that protect the community from the costs of accidents (i.e. insurance)
3. Make disproportionate impact sufficient to act, particularly when there is already a cumulative impact
 - a. According to the EPA, need to show intent of discrimination before acting (very challenging)