



Protecting the Common Waters of the Great Lakes Basin
Through Public Trust Solutions

May 17, 2022

From: James Olson
Founder and Sr. Legal Advisor
For Love of Water (FLOW)
jim@flowforwater.org

To: Michigan Office of Environmental Justice
Michigan Department of Environment, Great Lakes and Energy (EGLE)
EGLE-EnvironmentalJustice@Michigan.gov

Re: FLOW Comments on EGLE's Environmental Justice Mapping and Screening Tool

Dear EGLE Director Liesl Clark and the Michigan-EGLE Office of Environmental Justice:

Following constitute the comments submitted by For Love of Water (FLOW) on the Environmental Justice Mapping project. FLOW extends its gratitude to EGLE and the Administration, and their staff, for their work and dedication to this important program. We see this as a good foundation and start for implementing environmental and health justice in Michigan as mandated by the clear intent of art 4, sec. 51 and art 4, sec. 52 of the Michigan Constitution, the 5th and 14th amendments of the U.S. Constitution, and the parallel rights of citizens under Michigan's Bill of Rights, Const. 1963.

First, the pattern of disproportionate impacts to environment and health to vulnerable and/ or social-economic populations has been ignored far too long. From my window of experiences over the years, I can make two observations. First, the conditions imposing harsh environmental and health conditions on poor and race has been present for 40 to 50 years. Detroit incinerator, steel corporations coke and smelters down river Detroit, toxic and sanitary landfills, to name a few. But it's not just populated areas. Often rural areas are selected to avoid populations, with the effect of impacts to smaller populations, but which are no less severe, unjust, or unlawful.

Second, our Mich Constitution established in 1963, art. 4, sec. 51, that "air, water, and natural resources" are of "paramount public concern," and they must be protected by laws that prevent "pollution, impairment, or destruction" of the air, water, natural resources of the state. Michigan's Env. Protection Act of 1970, ML 324.1701 et seq., charged state agencies and local governments and the private sector with a duty to prevent "likely pollution, impairment, and destruction" of "air, water, natural resources, of the public trust in those resources." The MEPA and this provision protect all populations, regardless of characteristics, meaning that there is no excuse for the harm to begin with, and this is made worse when disproportionate. In *Highway Dept v. Vanderkloot*, 392 Mich 159 (1974), the Supreme Court ruled that art 4, sec. 52 was self-executing, meaning the legislature and state have a mandatory duty to enact and implement laws

that protect the environment and citizens. In *Ray v Mason County Drain Comm'r*, 393 Mich 294 (1975), the Supreme Court held that the state and other entities have a substantive duty to prevent and minimize likely environmental degradation.

Third, the same is true for health. The 1963 constitution also established, art. 4, sec. 51, public health is a “paramount public interest”, charging the legislature and state agencies with a mandate to protect public health first and foremost, no matter who or where. The language of art 4, sec.51 is substantially the same with respect to the mandate on the legislature and state agencies to protect the paramount interest of all citizens of Michigan in public health. The Courts, if faced with the issue, in my view would make rulings parallel to art 4, sec. 52 to protect all citizens from environmental and health related harms or threats.

Fourth, mapping and screening are very important, and EGLE should be applauded for this work and establishing the tool. The next step will be to use this tool to not only identify environmental threats and injustice, but to implement measures in those communities affected.

Fifth, the definition of equitable as “disproportionate” is important to give priority to the most vulnerable populations and areas, but it should not be used as a justification for violating environmental, water, and health protections required by law, or for pollution in any area of the state—e.g., articles 4, 51, and 4, 52, above, and laws passed to implement these responsibilities apply everywhere to protect everyone.

Sixth, funding is required to make sure the data is collected to make this tool work and do its job. For example, Michigan once had what was called the “Act 307 List” of contaminated sites in Michigan, thousands of them still in the ground or in our water ways Yet, during the Engler years, the list gradually disappeared, and has not been available to the public. This list needs to be uncovered, updated, and widely distributed and available to the public.

Seventh, not only must we look at making sure impacts on health and environment and social economic injustice are addressed, but we must also look at how benefits are distributed-access to recreation, fishing, boating, food, drinking water, sustenance, health. These must be available to all, as they promote health and environment.

Eighth, public participation, accountability, access to government, including affordability, have been lacking, and a fundamental problem creating the need for the tool is the commitment, evident from this effort, to changing the culture of government from one of ‘operating like a business or corporation’ to operating as a “public service or servant” per the responsibilities imposed by our constitution US and State, including arts. 4, sec. 51 and 52. If we do this, as if environment and health were to be protected by government as a trustee under a public trust, we will better avoid devastating harm and denial of dignity, human rights to water and health such as the Flint and Benton Harbor lead crises and Detroit water shutoffs, before and during COVID, and continuing to this day. We need government, indeed all of us, to take on an affirmative role to protect health and environment as “paramount”—which is defined as “above all else.”

Thank you for the opportunity to submit on behalf of For Love of Water (FLOW) these comments on the Environmental Justice Mapping and Screening Tool and Environmental Justice project.

Sincerely yours,

James Olson
Founder and Sr. Legal Advisor
For Love of Water FLOW
jim@flowforwater.org
(231) 944-1568 (o)
(231) 499-8831 (c)