

## **Common Council unanimously approves Madison’s first environmental justice policy**

*City Planning Division Director assures that it’s just “comfort language”*

During the Oscar Mayer Special Area Plan (OMSAP) approval process, MEJO asked the Plan Commission, Parks Commission, and Sustainable Madison Committee that the plan address toxic chemical exposures that might occur during and after the site’s redevelopment, especially to low income people and people of color. In other words, we asked that environmental justice be included.

MEJO’s extensive comments and supporting documents for the July 21 Common Council meeting also emphasized the need to address environmental justice in the plan.

## **Sustainable Madison Committee unanimously added environmental justice to plan; Plan Commission dropped it**

Drawing on discussions with MEJO, and comments we had submitted to date, at the June 23, 2020 Sustainable Madison Committee meeting, Alder Syed Abbas proposed this amendment to the plan:

*“To address racial justice and social equity during the OMSAP redevelopment process which must include assessing and preventing human exposures to toxic chemicals at the site and/or released from the site among all people and particularly at-risk low income people and people of color.”*

Sustainable Madison Committee members unanimously approved the amendment.

However, on June 29, the Plan Commission dropped the social justice/racial equity language from the plan—and oddly, it isn’t even mentioned in the meeting minutes. Apparently commissioners were convinced by a city staff memo submitted for this meeting that claimed that DNR NR700 (brownfields remediation and redevelopment) laws “offer a robust and comprehensive process for guiding the redevelopment of brownfields from contaminated wastelands into new commercial and residential properties” and “*Redevelopment of these properties is the key to ensuring they are remediated safely, thoroughly, and expediently.*”

Curiously, city staff don’t seem to realize that this claim, repeated often in assuring the public and elected officials that contaminated sites will be thoroughly investigated and cleaned up, confirms that NR 700 laws aren’t working very well. If they were, polluters would investigate and clean up their toxic messes before selling the property to someone else who then has to clean it up during development.

Oscar Mayer is a case in point. As we describe here and here, huge swaths of the site have never been investigated or cleaned up, despite NR700 laws—and now the city wants to buy parts of the former Oscar Mayer land and may be responsible for cleaning it up.

After making the above assurances, the city staff memo pointed to developments on other contaminated sites in the city, implying that at these developments, exposures to toxic chemicals, especially among low income and people of color, were addressed per NR 700 and other laws (while not explicitly saying so or providing evidence that this occurred).

We are not reassured by this either. We know of many contaminated sites—such as the Tennyson developments—where contaminants were not cleaned up thoroughly, but instead buried under pavement and buildings.

The staff memo concluded: “Staff supports the amendment related to ensuring properties are evaluated and remediated to minimize human exposure and potential adverse health risks associated with unmitigated contamination. However, the processes outlined above show these checks are already in place. *While*

*incorporating this language into this plan may be appropriate, it is likely not the best location for a broad policy statement that is relevant to many redeveloping areas in the City.”*

Hmmm. Is the city concerned that this “broad policy statement” may be applied to other “redeveloping areas” in the city? If there are in fact existing regulations and “checks” that apply to all city redevelopments—and Alder Abbas’ proposed statement is only token—why would city staff suggest removing it?

Further, this assertion begs more questions. If they don’t think this is “the best location for a broad policy statement” that is relevant to all redeveloping areas in the city, where do they think such a policy statement should be? Or, if there is already an existing “broad policy statement” that pertains to addressing environmental justice at all redeveloping areas in the City, where is it? We have never seen such a policy statement.

### **Common Council votes unanimously for the environmental justice amendment; Planning Division Director says it’s “comfort language.”**

Before the July 21, 2020 Common Council meeting, MEJO submitted comments highlighting the lack of any mention of environmental justice in the plan. At the end of a very long meeting, Alder Syed Abbas submitted a motion to add the amendment back into the plan.

Before it could go on for a vote, Alder Furman nervously said, “Overall I agree with what this motion is trying to say,” but then asked whether it is necessary. “I remember plenty of developments in New Jersey” (where he previously lived) “that were Superfund sites...people can’t just develop on properties that are brownfields and pretend like the contamination doesn’t exist.” (Actually, they can, and do, all the time). Echoing the staff memo to Plan Commission, he asked “how much this motion matches up with what would be legally required, and if we are increasing above and beyond the legal requirement, what does that mean?”

Planning Division Director Heather Stouder answered. “I don’t think it adds anything over and above what we would already be doing and what developers would already need to be doing legally, but I’m certainly comfortable with the language, *as sort of a comfort language moving forward.*”

“Comfort language”? What does this mean? Whose “comfort” is she referring to?

None of the alders asked for clarification, but Mayor Rhodes-Conway asked if there was any objection to calling for a unanimous vote in favor of the amendment (probably, in part, because it was 2am and several alders were likely asleep on their couches at home).

Hearing none, the environmental justice amendment was approved.

Would any of the alders, such as Alder Furman, have voted against the amendment if they hadn’t been assured that it is only “comfort” language? If they thought it might reflect new environmental justice policy, above and beyond any existing policies?

### **Do the city or state have any existing environmental justice policies?**

We doubted there were any city or state environmental justice requirements city staff could point to that would pertain to the Oscar Mayer redevelopments. In our years of working on environmental justice in Madison, we had never come across any.

After watching the Common Council discussions, we asked Heather Stouder if she or other city staff could point to existing legal requirements developers need to follow regarding environmental justice, and in particular disparate race/class exposures to toxic chemicals—either in NR700 rules or other city or state laws.

On July 30, she responded: “While NR 700 does not have any explicit language about environmental justice, its provisions will cover and ensure clean-up of private properties in order to facilitate redevelopment consistent with the adopted Oscar Mayer Special Area Plan. As staff, we remain supportive of the language the Council adopted as part of the Plan related to environmental justice.”

The fact that NR700 doesn’t, in fact, include any environmental justice requirements didn’t come as a surprise to us. In 2012, watching the egregious toxic vapor situation at Madison-Kipp Corporation, and noting the complete lack of government agency attention to disparate toxics exposures to low income, people of color, children, and other vulnerable people nearby—such as the children at Goodman Community Center—MEJO submitted these comments about embedding some environmental justice requirements into NR700 during the DNR’s public comment period in the rule revision process.

After meeting with us, in response to our proposals to include requirements to address race/class disparities in toxics exposures and in risk communication, DNR pasted the same response (or variations of it) over and over:

*"The Department does not feel that the rule should be revised to give priority to specific groups. Instead, the focus should be on providing all interested parties with the necessary information."*

This is similar to saying "All lives matter" in response to "Black lives matter." The fact that they pasted this statement (and other similar ones) over and over in their response document to us shows that they have no understanding of what environmental justice means, nor of what addressing racial inequities would entail.

See our response letter to DNR, explaining why this response is deeply problematic.

After our efforts failed to convince DNR to include environmental justice requirements in NR700, MEJO met a few times with high level DNR staff to talk further about environmental justice. We shared EPA documents describing in detail what environmental justice means and what addressing it in risk assessments entails.

These discussions—with white, male DNR managers—were awkward, painful, and ultimately futile. They clearly did not understand what we were saying. Until there is more gender and race diversity in DNR and other government agencies and among those who are creating environmental policies, it’s unlikely that this will change very much.

Now, sadly, we are addressing a horrifically toxic site at Oscar Mayer, and DNR NR700 rules do not include any legal requirements that responsible parties address race and class inequities in toxics exposures—in other words, environmental justice—during its redevelopment. The NR 700 rules pertain to all contaminated sites, not just those being re-developed—so this problem applies to the myriad other contaminated sites in Madison that we are concerned about, such as Truax Air National Guard site, Madison-Kipp, Tennyson redevelopments, and many more.

In summary, city staff’s repeated claim that state laws require that environmental justice be addressed in redevelopments is a misleading and false assurance, since these laws do not exist. This is why we have asked the progressive City of Madison to step up to the plate and live up to its stated commitment to racial equity and social justice.