

ENVIRONMENTAL JUSTICE ADVISORY BOARD
Meeting Minutes
Tuesday, August 5, 2003
Room 105, Rachel Carson State Office Building
Harrisburg, PA.

Members in Attendance:

Mr. Edward Thomas
Mr. Jerome Balter, Public Interest Law Center of Philadelphia
Mr. Wilder Bancroft, Allegheny County Health Department
Ms. Ayanna King, Ayanna's Consulting & Concepts
Ms. Alisa Harris, Pa. DEP
Ms. Deborah Kilmartin, Kilmartin Environmental Consulting, Inc.
Mr. Gary Horton, Sons of Lake Erie
Eli Brill, Dechert, Price & Rhoads
Alfred Ryan, PECO Energy

Members not in Attendance:

Mr. Truong Phuong, International Service Center
Mr. Sis-Obed Torres Cordero, Council of Spanish Organization
Dr. Stephen Kauffman, Center for Social Work Education
Mr. Mark Freed, Langsam Stevens, LLP
Mr. Calvin Little
Edgar Howard
Pherayln Dove
Patrick O'Neill, City of Philadelphia Law Department

Others in Attendance:

Marcus Kohl
Michael Corbin
Bill Cluck
Janis Dean
Krishnan Ramamurthy
Holly Cairns
Lou Guerra, Jr.
Justina Wasicek
Alice Wright
Janine Legg
Susan Wilson
Dan Snowden

Bill Pounds
John Dernbach

The Interim Chairperson called the Environmental Justice Advisory Board meeting to order at 10:55 a.m.

Edward Thomas made a motion to approve the minutes of June 3, 2003. The minutes were approved by all board members.

Edward Thomas informed the board members that there are 14 members on the board and seven vacancies. He further informed them that Dr. Kauffman and Truong Phuong resigned from the board. He said our plan is to restructure the board and increase the members to 21.

Edward Thomas explained that the resumes of potential board members could not be discussed in an open forum. Instead, he provided an alternate method to discuss the nominations.

Alfred Ryan feels the Chairperson should decide on the potential members.

Edward Thomas made a motion to appoint Ayanna King as interim Vice Chairperson of the board. The motion was approved by the members present.

Edward Thomas surveyed board members individually on the areas they felt potential members should represent on the board.

Jerome Balter wants more representation in industry.

Alfred Ryan would like representation from blue collar workers.

Gary Horton wants more representation from the Northeastern and Northwestern part of the state.

Eli Brill would like representation in the area of economic or regional planning.

Wilder Bancroft wants representation from individuals who live in environmental justice areas with environmental problems.

Deborah Kilmartin wants representation in the following areas:

female, location, public health, Latino, environmental justice community and blue collar.

Ayanna King wants representation in public health, policy, academic, female, location

Alisa Harris wants representation from the Northeast and Northwest part of the state, academia and Asian American. Alisa also wants representation from the Harrisburg area.

Edward Thomas wants representation from academia, public health, Latino.

Jerome Balter asked for a breakdown of the members that are already represented on the board. He feels it might help the board members in their selection of members in certain areas.

Edward Thomas gave the breakdown as follows. He also feels that he should not be included in the count since he is the chairperson.

- 3 State and local government
- 7 Community groups
- 4 Quasi industry groups
- 0 Academia

Alisa Harris said that at least two of the members in the community groups have not been active on the board (Sis-obed Torres Cordero and Pheralyn Dove).

Edward Thomas said that Pheralyn planned to rejoin the board at the October 7 meeting.

Eli Brill wants a copy of the Cumulative Impact Analysis distributed to the board members.

Alfred Ryan feels the focus needs to be on commitment and the desire to make a quorum rather than to fit the demographics that are needed for the board.

Jerome Balter reminded the board that new members will need to be informed where the board is now in their decision making process and the future goals for the board.

Public Comment Protocol: presented by Holly Cairns, Environmental Advocate, Southwest Regional Office. Handouts were distributed to each board member present.

Holly Cairns provided an overview of the protocol and asked that board members review this document and make any necessary changes.

Deborah Kilmartin suggested in the oral comment section that it be changed to a minimum of 90 days rather than 60 days. She feels that it doesn't give the board enough time to respond.

Alisa Harris agreed with the change.

Lou Guerra reminded the board that sometimes when you have a website you get comments that are not related to environmental justice issues. He suggests flexibility for the staff to decide which comments should go to the board.

Eli Brill asked how will a minority or non-majority view point be expressed? How does this comment process work? He gave the example of Mr. William Cluck representing the citizens against the Harrisburg Incinerator.

Alisa Harris explained that if someone raised an issue that wasn't adequately addressed by the Department, the public participation committee within the board would review the situation and make a determination whether it was an environmental justice issue.

It was discussed among the board members to have board meetings in other locations of the state other than Harrisburg.

Holly Cairns suggested that the board could travel to other locations and have listening sessions with community groups and individuals concerning environmental justice issues.

Deborah Kilmartin said that advocates representing individuals or community groups should contact DEP to present their environmental justice issues to the board for discussion. She suggested that the advocate come to the board to explain a situation in a particular area.

Ayanna King agrees with Deborah Kilmartin in that the advocate should be notified first.

Jerome Balter reminded the board members not to mislead advocates representing individuals with environmental justice issues. He said the board does not have the authority to change the situation, but the board can advise and make a recommendation to the Secretary concerning the situation.

The language will be changed to the document to reflect the changes discussed.

All board members present accepted the Public Comment Protocol.

PUBLIC COMMENT

William Cluck, an environmental attorney spoke to the board concerning the Harrisburg Incinerator. He said he was disappointed that his comments did not appear in the Environmental Justice Advisory minutes and the article that appeared in the Department's newsletter, "the Update" didn't mention his name.

He discussed an issue with Dauphin County on whether or not to flow control.

Although the regional office has already determined changing from a particular landfill to go to the Harrisburg Incinerator is non-substantial. Mr. Cluck feels this should be substantial and this is an opportunity for the Department's Environmental Justice Advisory Board recommend that the regional office reconsider their interpretation and encourage the DEP to reach out and inform the community and solicit their comments.

He spoke about outreach that some environmentalist are doing and that the communities are thankful that someone is reaching out to them in the language they understand concerning the incinerator.

Mr. Cluck requested that the board do a case study on the permitting of the Harrisburg Incinerator that examines the waste permit issued in 2002, the air plan approval that occurred in 2001 and the air plan approval that is about to be issued by the regional office. He suggested that they have the case study address the following questions:

How did the Department seek out and request public participation? Did they utilize the use of their website to reach out to the community? Did they use alternative non-English languages, included on the website? Were relevant documents placed in libraries? Why did 150 people show up to an information meeting, yet one month later, not one person of color showed up for the official public hearing to comment on the application? Why was there so much interest in June and why did it go away in July?

Mr, Cluck would also like to know if a baseline public health assessment was performed?

He also noted concerns over public notice on the receipt of an air application and felt that the advisory board should look into this.

He also questioned the applicability of a technical assistance grant for the citizens of Harrisburg?

Alisa Harris informed Mr. Cluck that the board will follow the Public Comment Protocol to respond to his comments.

END OF PUBLIC COMMENT

DEP's Regional Committee Proposal and a county map was distributed to the board members for review and discussion.

Ayanna King proposed to the board that they have quarterly regional meetings to collect data from these areas to determine what the issues are in their region and how DEP could assist with any outstanding issues. These meetings would be different from the advisory board meetings.

Alisa Harris suggested that the candidates not selected for the advisory board could participate in the regional committee.

Jerome Balter asked how the board will know which areas have environmental justice issues?

Alisa Harris said the board would look at the communities that meet the 20% 30% criteria for environmental issues and then focus on those groups.

Eli Brill expressed the concern that if the board is going to appointment five more people and to get five individual opinions about environmental issues in certain areas and there is no way to assess if the community is an environmental justice community, he feels the board is wasting its time.

Alfred Ryan expressed concern at having regional representation in certain counties. He is concerned that some responsibilities might overlap with the environmental advocates' responsibilities.

Jerome Balter proposes that the first sentence in the DEP's Regional Committee Proposal read: collecting data for environmental issues and public health issues, etc.

Draft Safe Fill Regulations: presented by Bill Pounds, Chief, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management.

Several documents were distributed to the board members on the Draft Safe Fill Regulations for their review.

The Department is publishing an Advance Notice of Final Rulemaking (ANFR) for regulations that were proposed for the management of safe fill on February 2, 2002 in order to solicit comment on the changes made to the proposed rulemaking. A 45 day public comment period will be provided on the recommended changes to the proposed rulemaking.

Bill Pounds explained that with this regulation package, the department is trying to define what is contaminated and what is not contaminated.

Bill Pounds then provided examples of safe fill material.

Eli Brill asked the question when do you have to sample the fill.

Bill Pounds said that the material must to be sampled if it is known to have been affected by a spill or a release.

Bill Pounds further explained that safe fill did not have to be sampled. It is up to the discretion of the owner.

Historic fill always needs to be sampled. It can never be safe fill. If it moved off the property it is considered waste and needs a permit.

Michael Corbin When safe fill material is determined contaminated, how is this information conveyed to the public?

Bill Pounds said that the Department does not require any submission of data. The regulations state that the person who is using the material as safe fill has the burden of proof to demonstrate that the material is safe. He also said it is only safe fill if the material stays on site. If it exceeds the residential standards, there has to be a notice specifying the location of the material. He said that this could be used to notify environmental justice communities.

Alisa Harris summarized the Boards questions and concerns expressed during the discussion:

More notification to the community and gave an example of how that could be accomplished;
No permits-by-rule issued in environmental justice communities;
Whether or not to support the no release spill from site.

Jerome Balter proposed that there be a big poster in environmental justice communities of what is being proposed in the language of the community, that there be no permits by rule and that there would be a meeting before any permits be granted.

Eli Brill disagreed with the no permit by rule in environmental justice communities.

Alfred Ryan suggested the board make no comment on this. That the board take a look at this in a year and see where this particular situation is at that time and then suggest changes if necessary at that time.

Alisa Harris surveyed the board on submitting the following comments on the safe fill regulations:

1. The department should expand the notification requirements. There should be greater awareness and expanded public notification. For instance, the site should be posted with the type and source of fill proposed to be deposited on the site. These posting should be in the language representative of or used by the affected community. Secondly, the municipality should be notified that an activity is being proposed at a site under the PBR.
2. Within the next year, DEP should do a program evaluation of the safe fill program. The department should conduct a study of the regulations' effect and whether there is a disparate impact on environmental justice communities. For example DEP should look at the number of PBR activities conducted in environmental justice communities, as well as the number of complaints received from those communities.
3. The Environmental Justice advisory Board supports the more protective criteria, states the board supports the concept that in order to be safe fill, the fill should not come from a site that was affected by a spill or release.

The vote was:

- #1. 8 yes votes and 1 abstention
- #2. 8 yes votes and 1 abstention
- #3. 7 yes votes and 2 abstention

Justine Wasicek wrote the comments out for the board and Edward Thomas will e-mail them to Bill Pounds by 6:00 p.m. this evening.

Update on Cumulative Impact Protocol: presented by Deborah Kilmartin.

Overview of State Environmental Justice Programs: presented by Michael Corbin.

The next board meeting is scheduled for October 7 in Room 105, RCSOB.

Meeting adjourned at 4:10
Minutes taken by Lorraine Wagner