

ENVIRONMENTAL JUSTICE ADVISORY BOARD
Meeting Minutes
Thursday, February 10, 2005
Room 105, Rachel Carson State Office Building
Harrisburg, PA

Members in Attendance

Edward Thomas
Ayanna King
Jerome Balter
Alfred Ryan
Eli Brill
Janine Legg
Cyndi Romero

Members not in Attendance

Patrick O'Neil
Lamar Barnes
Mario Browne
Arthur Frank
Edgar Howard
Peter Simms

Others in Attendance

Marjorie Hughes
Don Brown
Susan Shinkman
Janis Dean
Lou Guerra
Dan Snowden
Holly Cairns
Marcus Kohl

Chairperson Edward Thomas called the Environmental Justice Advisory Board (EJAB) meeting to order at 9:25 a.m. on February 10, 2005.

Edward Thomas: announced that they would postpone any agenda items that may require a quorum until the other members arrived. He also mentioned that he had received an advance notice that the following members would not be able to attend: Patrick O'Neil, Lamar Barnes, Arthur Frank, Mario Browne and Edgar Howard.

Edward Thomas: welcomed everyone and asked each Board member to introduce himself/herself including a brief biography. Each person introduced themselves to the Board.

Ayanna King: explained that her office has been developing a Vision and Mission Statement. She read the two draft statements and asked the Board for any additional input or discussion.

Jerry Balter: expressed his views about the statement. He felt the statements are meaningless as well as our efforts because the Department doesn't do anything.

Janine Legg: asked Ayanna if they could look at the statements and get back to her in a week or so to submit their comments?

Ayanna King: agreed

Al Ryan: asked in formulation of this Mission and Vision Statement, is there an approval process by the Department?

Ayanna King: explained that the process is taken to the internal workgroup and they give them input and make comments to the document, they took it back and revised it with the comments and input, gave to the Executive Deputy Secretary for any comments to be made and now we present it to you. After we get a finalized copy, we then submit it to the Secretary.

Jerry Balter: asked if the advisory board is independent of the DEP? DEP makes the policy but do they control how the advisory board operates, what it thinks, when it thinks, if it thinks?

Edward Thomas: No they do not. The only way that they use control is that all document have to be pre-approved prior to coming to the Board.

Jerry Balter: commented on the Department's role. He said that in the final analysis we do not control the Department. Whatever we do, the Department will do what the Department wants to do. The Department can tell us what to do and when to do it.

Edward Thomas: asked Jerry what he is specifically referring to.

Jerry Balter: I am referring to the Mission Statement. I am referring to the fact that the document I sent for distribution is going to be on the agenda at 2:30 this afternoon. Because it didn't come in time to get on the agenda because somebody in the department has to approve it.

Edward Thomas: explained that the Department does not approve the agenda. The reason why his document was pushed back was because the Board accepted Robert's Rule of order which states that if an item is not on the agenda, then it has to be discussed as new business and new business is scheduled at the end of the meeting.

Jerry Balter: asked the question, who makes up the agenda?

Edward Thomas: said that the agenda is made up by Ayanna and himself and any other contribution from any Board member put the agenda together?

Jerry Balter: questioned their decision to present his document during the afternoon session of the meeting.

Ayanna King: explained to Jerry that he had received the agenda before submitting his document and that the agenda is sent two weeks prior to the Advisory Board meeting.

Edward Thomas: explained that there is a cut-off time to submit any documents to be placed on the agenda for discussion.

Ayanna King: stated that since their meetings are quarterly, it would be advisable if members would like something on the agenda, it should be submitted at least a month in advance.

Al Ryan: asked if there is any exception to this hard and fast rule? If a very important issue comes up beyond your cut-off date will it be considered to be placed on the agenda?

Ed Thomas: answered yes and the procedure to follow would be that a motion be made to amend the agenda and seconded, and voted on by one-half of the members present and it would be inserted on the agenda. Any action taken requires a quorum.

Al Ryan: asked the question about OEA's Mission Statement that says, "the OEA will provide recommendations to DEP executive staff." Is there any thought to the OEA providing input to the Board?

Ayanna King: explained that first of all they have a seat on the Board so there is input in that way. We also work in collaboration with the Board and DEP, so all the information that is funneled from the Board, they take back to the Department. As we continue to prepare our goals and objectives the Board will be included in this section.

Jerry Balter: what is the relationship between the OEA, the EJWG and the DEP and how do they interrelate to one another?

Ayanna King: explained that the External Work Group was the group that prepared the 2001 Work Group Report, in that Work Group Report was a recommendation to have an Environmental Justice Advisory Board (EJAB). You are now sitting on the EJAB.

Edward Thomas: further explained that the EWG was formed in 1999 and the OEA is a part of DEP which consist of Ayanna, Alice, Holly, and Marcus.

There was more discussion and comments on the relationship of DEP, OEA and EJAB and its role and the recommendation process.

Jerry Balter: stated that he has to rethink if he wants to be part of such an organization, because, they are limiting the recommendations the Board can make back to the Department,

because the Office of Environmental Advocate (OEA) are with the Department to start with and therefore they are duty bound to carry out whatever the Department wants into their work here.

Janine Legg: stated that if you look at the big picture, every single member represents a stakeholder in the Commonwealth and they have their own reason for applying in their own interest, the Board does nothing more than make recommendations. Regardless of issues, there are limitations with any Board. She further stated that if you look at all fifty states, this is one of the most pro-active Boards, because she is still looking at the vision down the line of the regulations. This state and Washington is the only two states that are actually pro-active.

Edward Thomas: asked the Board to look at two of the handouts, one which refers to a draft letter to the Secretary. He pointed out that in this letter they make recommendations to the Secretary in writing, which is something that he thinks the Board should do, (draft a letter with the Board's recommendations and submit it to the Secretary). The Citizen's Advisory Council (CAC) prepared the second handout and they actually did a survey of advisory boards members and some chairs. The handout is entitled Findings and Recommendation on DEP Advisory Groups. Ed suggested that the Board read this document. There are some recommendations in this document that we can input ourselves without having to take action and would make us more productive and give us more of a choice.

Edward Thomas: asked the Board to look at the page that explains Recommended Short-Term Actions. This is a document we should take into serious consideration, there are very good suggestions.

Marjorie Hughes, the Department's Regulatory Coordinator: gave a presentation on the Development of a DEP Regulation. Marjorie gave the Board a packet of information for their reference and use. She explained to the Board that the Dept is bound like all other Commonwealth Agencies to submit their regulations in a certain format and using a protocol through a step-by-step process requiring review and approval by internally and by other Commonwealth agencies as well as the independent regulatory review commission. A key statute is the Regulatory Review Act, and they are bound by that. She explained the steps of the regulatory review process in Pennsylvania. She also gave an overview of the following:

Proposed Rulemaking Process
Public Participation Center (Website) – Proposals Open for Comment
DEP's Regulatory Agenda, January 2005
Advisory Committee Activities
Information on their eNotice System
List of Regulations Pending
A list from the Governor's Office of regulations being considered by DEP

Al Ryan: asked for a better understanding of the public comment process and does the DEP or any other agency actually get those individual comments. The process does not look like it's geared to reach those people and make it seem like something they should participate in.

Marjorie Hughes: explained that they (EQB) have received One hundred and sixty comments. Twenty of those comments were from individuals. She stated that if there is a regulation that was of particular interest in the EJ community then she would expect the Program that was doing those regulations would suggest to the EQB that they would like to have a public participation meeting in a particular community and a public hearing there as well.

Jerry Balter: raised a question about would the EQB have within its jurisdiction the question of civil rights?

Marjorie Hughes: If there were a statutory authority to do something, if the statute is given to DEP then the EQB would consider it and evaluate those regulations. But she can't answer Jerry's question on civil rights.

There was some discussion concerning civil rights review and how it can be determined. Also guidance documents and policy and recommendations.

Eli Brill: We were recently informed that there are concerns within the Department's legal staff that approaching the implementation of permitting programs with that is kind of a screening tool is legally problematic and his only suggestion is to learn what legal authority the Department does think they have and try to work with them to design the appropriate permit review program. We need to learn from DEP or the Office Chief Counsel (whose presentation I would move to put on our agenda) what their understanding is of the legality and what DEP thinks on that issue. We need to know what our legal constraints are.

Edward Thomas: asked the Board to take some time to review the December 7, 2004 EJAB minutes.

Ayanna King: Introduced the Department's Office of Chief Counsel, Susan Shinkman who came to visit with the Board for a brief period.

The Board introduced themselves to Susan.

Susan Shinkman (Chief Counsel): Stated that she was very aware of the Board's activities and she has spoken with Ayanna several times. She also stated that they are working on getting counsel assigned to the OEA. She also mentioned to the Board that they want to make sure that as they progress that additional policies and regulations that are devised by the Board should be completely defensible.

Al Ryan: commented on the issue of definition, respond to legal issues and recommendations. We are here to make recommendations as to whether the Department should adopt regulations or new policies and we haven't made that recommendation. Until we do, we need to find out what action is being taken.

Edward Thomas: asked Susan if it is possible for someone from legal counsel to advise the Board.

Susan: responded yes.

Jerry Balter: questioned what is the operating agenda of the Department, is it to get out a formal regulation or is it to do something different? That's the Department's decision not the Board's decision.

Al Ryan: stated that if we take the position that the Department is going to make that decision whenever, then what are we doing here. I don't see my purpose in being here. I am here to make a recommendation that I can support and accept.

Jerry Balter: explained that the Board has been existing for 6 years and he has no idea of the direction of the department is in terms of the protection of the civil rights of minority communities in PA. Are they looking to promulgate regulations, do they want to do it the way EPA does it by means of policy, guidance or protocol? What's the form that the DEP thinks its going to take to protect the civil rights of minorities from an environmental point of view in the state of Pennsylvania?

Susan Shinkman: explained that Secretary Seif set up the original committee the EJ Committee (who produced the report) that was one of the first steps as well as the establishment of this Board as the report's recommendation. She also stated that the department as well as the Secretary has been very supportive of this Board and that the Secretary has addressed the Board on numerous occasions expressing specifically her position.

Jerry Balter: We can make recommendations to the Department and we can discuss it. He felt that the Board does have an important role to play and has a final say in all matters.

Edward Thomas: Motion was passed to accept the minutes.

Public Comment Period: No Comments were presented

There was some discussion on Public Participation, where is the public, why isn't the public in attendance and why have a public comment period.

Ayanna King: stated that part of the issue is that we hold meetings throughout the day, and most people are at work during the day. We focus on minorities and poor communities, most of the time communities like that are reactionary and we need to be very real with the population we are dealing with. We need to understand who we are working with and why, and the fact that there are a lot of different other issues. When you get into poor communities their number one issue is employment.

Ayanna King: explained that she wasn't sure how much resources we have to do public education because of budget issues, but what she is trying to do is figure out what is the best method to get information out, since we only have advocates in the southern parts of the state.

Marcus Kohl: suggested a press release targeted to low-income areas.

Janine Legg: stated that Ed was also concerned about the public comment issue and she thought that perhaps the Board would produce a brochure. She volunteered to put the brochure together and send out to the Board for review. Another suggestion would be to see if we could put a public participation section on the website and then the other thing to address is what DEP wants to see in terms of comments.

Edward Thomas: suggested that we should have a point person to develop some sort of strategy. The advocates can relay the comments they receive and bring back to the Board for review.

Edward Thomas: (update) Mario Browne has resigned as Chair of the Environmentally Burdened Communities subcommittee and Arthur Frank will take over. Rev. Strand, due to personal issues has resigned from the Board and Patrick O'Neill has agreed to serve as interim chair on the Public Participation subcommittee until we get new members to serve on the Board and find a current chair. Ed is now serving on the Cumulative Impact subcommittee.

SUBCOMMITTEE BREAKOUT AND REPORTS

The Board members broke into their subcommittees.

The Board reassembled at 1:00 p.m.

Subcommittee Reports: Representatives of the subcommittees provided updates to the board. Updates were provided by **Cyndi Romero** (EJAB Executive Subcommittee), **Eli Brill** (Cumulative and Disparate Impacts), **Janine Legg** (Environmentally Burdened Communities), and **Al Ryan** (Monitoring and Enforcement).

Don Brown: Director of the PA Consortium for Interdisciplinary Environmental Policy (PCIEP). He talked about the organization he is representing and how he became involved in these issues. PCIEP is now comprised of 52 Pennsylvania Colleges and Universities and is supported by DEP and DCNR. He further explained the goals of PCIEP and active program committee's issues which are: Greening Colleges and Universities, Sustainable Pennsylvania, Climate Change, and Human Health and the Environment.

Don Brown: stated that the Secretary asked him look deeper into Synergistic and Cumulative Risk issues. He proposed a process which will analyze what is already going on in the Department in terms of Synergistic and Cumulative Risk.

Don handed out a copy of a memo regarding the current way DEP approaches to Cumulative and Synergistic Risk. He stated that it was determined that the Safe Drinking Water program, Air Program and Waste program routinely make decisions that could have an effect on human health and if the science would support it, allow for considerations of cumulative and synergistic impacts of risk. Other issues he discussed were:

On what basis are standards set

Has the program ever considered the cumulative or synergistic risk of multiple exposures?

Does this program make decisions that have implications for human health in setting?

Standards or issuing permits

On what basis are decisions made

Preliminary Conclusions

There were some comments/questions from the Board concerning discrimination of EJ communities, screening process and how the state reacts to an application for a permit to build another facility in that same community

Don Brown: explained that this sort of basic detective work is necessary to make sense of this issue. This is not long- term research, it may take only eight or nine months. This is simply trying to work out what we already know.

Eli Brill: stated that in his time on the EJAB and work group, this is one of the most promising presentations that he has seen. During the work group process, the group came up with the screening protocol, it was done because there wasn't any thing like this, we needed some kind of screening technique which based on the historical evidence nationally that there was trends of EJ issues in this country.

Janine Legg: Asked the Board to look at the draft document she proposes be sent to the Rendell administration outlining the goals of the board, make comments and e-mail back to her. She will agree to put this document together and submit it to DEP.

After some comments/discussion concerning the Draft Report, the Board did agree to accept the report as a starting point.

Jerry Balter: did a presentation on the Environmental Justice Work Group. Jerry stated that essentially this is a document that says either the Department is going to put out some means by which they are going to screen permitting applications, having to do with the question of race and poverty discrimination. He explained the operating policies of the Office of Civil Rights of the EPA. Jerry said that we as a group should want to say to our State, do something because you have that legal and moral responsibility. We need to pose the following questions to the Secretary:

- What are the number of trigger permits that have been issues in the last 6 years by the Department?
- What is the number of trigger permits in minority census tracks?
- Have any of the six regional offices ever gotten any training on how to review civil rights aspects of applications?
- Is there anyone in the Department that has any wisdom, knowledge or training on how to do it?
- What is preventing the Department from establishing a protocol to test for ? effect discrimination?

There was some discussion/comments on the questions that Jerry raised.

Edward Thomas: There was a decision earlier that the Board would draft a letter with recommendations to the Secretary. The process would be all members will contribute to the letter and forward to the Executive Committee for review. Then they will go to Secretary and then to the legislators. Janine volunteered to draft the letter.

Public Comment: None

Ayanna King: distributed a pamphlet from the Center for Hazardous Substances in Urban Environments. She explained that the group had expressed interest in attending the EJAB meeting, but there was a conflict with this meeting. She would like to extend an invitation to this group to attend our next meeting in May.

Edward Thomas: made a motion to have this group present at the next meeting in May.

Motion passed

Eli Brill: made a motion to invite Charles Lee, who is a Director of EJ at USEPA and a former Director at the United Church of Christ, to speak to the board.

Motion was passed.

Edward Thomas: made a motion that the legal issues surrounding the definition of the EJ communities based on income level and minority status be referred to the Executive Committee for action.

Motion passed

Meeting adjourned at 2:45