

Environmental Justice Advisory Board
Meeting Minutes
Tuesday, December 7, 2004
Room 105, Rachel Carson State Office Building
Harrisburg, PA

Members in Attendance

Edward Thomas
Ayanna King
Maurice Brown
Jerome Balter
Patrick O'Neil
Lamar Barnes
Alfred Ryan
Arthur Frank
Eli Brill
Janine Legg
Edgar Howard
Mario Browne
Marcus Kohl

Members not in Attendance

Rev. Horace Strand
Cyndi Romero
Peter Simms

Others in Attendance

Secretary Kathleen McGinty
Joseph Powers
Thomas Fidler
Daniel Desmond
Michael Sherman
John J. Kennedy
Cathy Curran Myers
Todd Wallace
Lou Guerra, Jr.
Jack Farster
Sharon Trostle
Alice Wright Bailey
Holly Cairns
Cathy Curran Myers
Janis Dean

Chairperson Edward Thomas called the Environmental Justice Advisory Board (EJAB) meeting to order at 11:00 a.m. on December 7, 2004.

Edward Thomas: welcomed everyone and asked each Board member to introduce himself/herself including a brief biography. Each person in the room made an introduction to the Board.

Edward Thomas: explained to the Board that there were some minor changes made to the minutes that were sent to them. He asked the Board to review the revised minutes to see if there are any corrections or additions. A motion was made to approve the minutes of the October 5, 2004 meeting as read. Motion passed.

Edward Thomas: stated that at the last meeting the Board voted to accept Robert's Rules of Order. He distributed to the Board a newly revised copy in brief. He proposed that the Board accept the Robert's Rules of Order newly revised (which does not appear in the minutes). He suggested that the minutes be changed to reflect that the Board will accept Robert's Rules of

Order newly revised as opposed to Robert's Rules of Order in its original version. He also stated that the Robert's Rules of Order would guide the Board through their meetings.

Edward Thomas: explained that at the last meeting there was some discussion on the lack of participation and attendance with some of the Board members, as a result, the Executive Committee asked Secretary McGinty to send a letter to those Board members. Letters went out to Calvin Little, Gary Horton, Pheralyn Dove and Mark Freed. Ed stated that he did receive a telephone call before the letters were submitted from Mark Freed explaining that due to other commitments he was resigning and he also forwarded a letter of resignation. Ed read the body of the letter to the Board members that were forwarded to the three members.

Edward Thomas: stated that the Board will be having quarterly meetings starting in February 2005, as opposed to bi-monthly meetings. The meetings will begin at 9:15 a.m. He felt that the Board would be more productive if the meetings started earlier.

Jerome Balter: commented that he would find it very difficult for him at the proposed time, because of the train situation. He questioned Ed about what productivity is and how to measure it. He further stated that unless DEP changes and put them on a schedule as to when they are going to accomplish something, we are just flapping our wings with no productivity.

Janine Legg: felt that starting the meeting at 9:15 a.m. is a good idea, she is sympathetic with what Jerry is saying in terms of getting work done. She also explained that this would also help with subcommittees meeting face to face instead of a conference call. The subcommittees could meet around 9:00 a.m. to 10:00 a.m. (whatever is more accommodating). This is more valuable.

Arthur Frank: explained that a lot of the members come in the night before and the idea is to begin the meeting at 9:15 a.m. and end at 2:50 p.m., this gives everyone the opportunity to get home early.

Edward Thomas: said that he failed to mention that we have accepted Robert's Rule of Order as our parliamentary guide, we will be utilizing these guidelines effective February 2005. He suggests that everyone read their copy and become familiar with it.

Ayanna King: informed everyone that in our by-laws we have 21 members with one or two vacancies. There was a question raised as to whether we want to keep the entire 21 members or reduce the membership down to 17. To do this, an amendment to the bylaws would be necessary.

Ayanna King: opened up the floor for discussion and comments or concerns about reducing the number of members to 17.

Arthur Frank: asked if there is a problem in keeping 21 members on the Board and what's the rationale in going lower if we still can conduct business with the number we have in a reasonable way. If we reduce the number perhaps we are precluding having a more broad distribution around the state. He also asked what the current number of the Board is, excluding the two vacancies, do the two vacancies make up 21 members?

Ayanna King: answered the current number is 14.

Patrick O'Neill: stated that he had a question along the same lines as Arthur and felt that we all have concerns about maintaining diversity on the Board. He further stated that in some respects we have done pretty well with that but in other respects mainly different parts of the state are not being represented. He questioned how we have done with our efforts to get someone from the coal communities and some representatives from the various regional offices.

Edward Thomas: responded to the question by giving a tally from the demographics. As far as gender is concerned, male 11, female 3, Race, African American 8, Hispanic/Latinos 0, Caucasians 6, Asian/Pacific Islander 0, as far as interest, government 5, community base 2, industry 2, academia 2. As far as regions, SE 9, SC 1, SW 3, NE 1, NC 0, NW 0.

Jerome Balter: There is another aspect of this we need to think about. The nature of our discussion here are fairly sophisticated and if we are to involve people from the affected communities, we might not find that degree of sophistication and they will be dropping out. I think we need to think through how we discuss all of these matters and how we can make our discussions such that people without a lot of education can meaningfully participate with us. We always talk about participation, but we never work it out. This is something we should think about.

Janine Legg: questioned, in the by-laws, are we looking to get members reduced to get the quorum lower, or are we reducing the wrong numbers, we should be getting the quorum number lower and not members of the Board. We initially agreed on 21 members.

Patrick O'Neill: stated that the number is low, possibly only seven as a quorum.

Janine Legg: asked with the Board members that we have here, can we try to be assured that we have the 7 for the quorum, and in that case, I go back to the discussion and ask do we have a problem?

Patrick O'Neill: We have three seats to fill; did anyone contact someone from the coal mining community?

Edward Thomas: not yet, and they have not contacted Beverly Braverman, who represents interest from the mining community.

Patrick O'Neill: feels that we have a pretty broad representation of the entire state, and he would be opposed to reducing the Board.

Arthur Frank: We need to consider at least one if not two of the Hispanic members in the city and rural agricultural areas where there are some issues too, for example, pesticide use and factory farming, etc. We need to work hard to fill the slots that we have and defer or tabling the issue in reducing the number until we have concentrated efforts of getting some folks in here then see where we are before we decide to permanently lower the number.

Eli Brill: agreed with Patrick to keep the number at 21.

Jerome Balter: Supported this as well.

Eli Brill: Supports Pat and Arthur's position as well, and believes we need more diversity on the Board and much needed geographical representation and we should note for the record that even in the area of what we call two people from industry, you have someone from the waste services sector and utilities sector, and you have no one from manufacturing.

Ayanna King: Introduced Daniel Desmond, Deputy Secretary of Energy to the Board.

Daniel Desmond: Explained that he has been with the Department two years and this is a new Deputate and literally a new function of DEP to have a full state Energy office with an emphasis on environmentally beneficial and benign business development. Dan worked at the former Pennsylvania Energy Office until 1995, and spent the remaining time working in private practice in the US and abroad on the development of clean energy and environmentally beneficial technology in the marketplace. He stated that the Department has been very aggressive and active in bringing clean energy jobs in PA.

Dan discussed what's happening with Energy in PA as well as around the world. Also, the recently passed Alternative Energy Portfolio Standards Act, which was passed a week ago. He stated that we have an opportunity for the year 2018 to move 18% Pennsylvania's energy from environmentally detrimental sources to environmentally beneficial sources. It is the most comprehensive in scope of any electricity portfolio standards in the country.

Other issues Dan Desmond discussed were:

- Affordable Green Housing/Energy
- LIHEAP Program
- Key to Manufacturing Jobs in PA
- Energy Crisis
- Keep Energy Dollars in PA

Edward Thomas: Introduced himself and the Board to Secretary McGinty.

Secretary McGinty: Thanked Chairman Thomas and EJAB for their dedication and service.

Edward Thomas: explained to the Secretary that the disparate and cumulative impacts subcommittee are pretty strong as to where they want to go but what they are looking for is technical expertise to carry them further and would like DEP to provide assistance. He stated that Krishnan Ramamurthy (Krish) has been a leader on that in the past.

Secretary McGinty: We may or may not, but Krish will be able to add some very good insight in terms of airborne pollution. If you look at the data play environmental statute. I think it is fair to say that the Clean Air Act approaches a cumulative analysis more than any other statute. We

might be getting there with TMDLs under the Clean Water Act. Krish as one of the expert modelers in our air program, I think will lend some good insight.

There was some discussion on TMDLs, Clean Air Act, and public water supply.

Jerry Balter: explained to the Secretary that he was particularly interested in her account of what the Department did in Pittsburgh with respect to the historic church. I was trying to equate that with what your Department has done right here in Harrisburg. Also a black community, also with a church within an eighth of a mile of where they are putting up an incinerator that serves Harrisburg, Dauphin County and the counties around here have a position of your Department, it seems as though we have no responsibility at all. It's not a question of Harrisburg situation but of the society of the Department with respect to any proposed facility, the Department does not feel it has an obligation to investigate whether it is going to end up discriminating against minority communities, and that is the position your Department takes and if you think I am incorrect, go back to your lawyers and see if I am right or wrong. Three and a half years ago this committee put forth a report on what to do about environmental justice, they were so smart as to even draw maps as to the particular areas that ought to be protected because of the composition in terms of minorities and low-income people, and your Department doesn't pay any attention to it. They don't look at whether or not the proposed facility is in one of these critical areas. The question that he has is, of what value is the work of this committee to your Department if the attitude is, we don't have a responsibility and therefore we are not going to do it.

LaMar Barnes: had major concerns about legal dumpsites as pertaining to household hazardous waste, auto repair waste, abandoned vehicles, also old housing/communities that were built before 1964. and illegal auto repair shops and what they do with their waste. A lot of it ends up in backyards in our urban communities, and also secluded areas. His community has started writing grants for this particular type of research. They have a high incident of asthma in the urban community and he feels that this is a direct correlation to abandoned houses, dumpsites, and things like this. He doesn't see focus put on this.

Secretary McGinty: stated that the Governor's Growing Greener II initiative which includes funding for the Hazardous Sites Cleanup program, that's the program that is nearly bankrupt and that funds are Household Hazardous Waste Cleanup initiatives that the roundup that they do where they allow people to drop things off or we go out and collect it. There is another reason why we need to get that done or else those worthy programs already far too small will be out of money.

Secretary McGinty: Expressed her concern about no one freezing to death this winter, and the Governor is engaged in getting a message out there to the community and people working with EJAB. She discussed Bartram's Gardens (construction and demolition). The proposal has been changed to 300 yards perimeter, there is a special waiver needed for that. She also discussed the Abandoned Mine Project in Pittsburgh and the historic black church situated next to the mining related problem in this neighborhood. She also stated that the Department is concerned about EJAB issues and she would like to bring sensitivity to communities. She said that DEP would give the Board some assistance and will lend some critical and important insight (Krish should be part of the team).

Patrick O'Neill: stated that the city remains opposed to that project (Bartram's Garden) and suggest that legal council should be looking closely at the definition of facility. He questions the possibility that you could move to the far corner of a property which claim to be 300 yards from the project. He also stated that the Council has not taken a position on this proposal, and the Commerce Department has opposed it. They have not received an official request for a waiver.

Eli Brill: stated that it's clear that the science of cumulative impact is a daunting challenge and there is a lot of discussion about synergistic effects. He thinks there is another 50,000 foot level issue which is trying to understand when should you do cumulative impact analysis in the first instance and how should it be done and what should you do with the results once you get them. In what circumstance should the subcommittee do it? They couldn't do a superfund like risk assessment for every project in the state of PA. He further stated that kind of knowing where the Secretary and Administration stands on that issue and give the Board that direction would help. His last suggestion is, there is a third approach that is being discussed now, NEJAC which has issued their own report and now the NEJAC committee is coming up with sort of a collaborative proportional approach to looking at cumulative impact. How can we bring (as Kathy pointed out) more people under the tent to participate in protecting the health of the community?

Secretary McGinty: answered that she would like to dedicate a couple of hours to separately schedule a meeting if we could, with all or part of the Board. She stated that she had asked their policy office to prepare a plan whereby we would begin to require (we are still in the formulative stages of our thinking on this) a multipollute and multimedia analysis of all kinds of factors involved in a project proposal for any major permit application and maybe what's the definition of a major permit application, that's where we borrow from some of the limitations that the EJAB has already brought to certain communities, and certain types of projects. But the idea there is, we have not only a sense but also a pretty strong reason to believe that our single media permitting efforts lead to medial shifting.

Edward Thomas: Thanked the Secretary for being very helpful and informative and also for coming down to speak to the Board.

Cathy Myers: Deputy Secretary for Water explained that her Deputate, which is the Office of Water Management, handles everything that deals with water. Such as: Water Supply, Waste Water, Water Quality, Water Quantity, Water in Stream and Water in the big Basin.

Cathy Myers: stated that they have been committed to looking at Environmental Justice concerns and doing an enhanced public participation and public communication in at least two areas of permitting, specifically industrial waste water, permits from waste water discharges from industrial operators that are over 50,000 gallons per day and sewage treatment plants that are over 100,000 gallons per day. Those are very small systems and typical small residential developments might be 20,000 –30,000. She thinks that's a good number. We want to always have a fall back. We are looking at programs and affects of the watershed as a whole, which is our way of talking about the community that particular activities and also public policy that makes sense for watershed, beaches and the great lakes.

Some highlights Cathy also discussed were:

- Public Health Impact in Low-Income Areas
- Industrial Waste Water
- Sewage Treatment Plant
- Public Water Supply Issues

Meeting reassembled at 1:45

Mike Sherman: Deputy Secretary for Field Operations provided the Board with a handout which gave some background about field operations and the staff's day-to-day activities, primarily permitting, complaint handling and inspection, they do not develop regulations nor policies/procedures but they implement both of those. He stated that the work of the regions in permitting as it has to do with implementing the enhance public participation strategy is primarily between the environmental advocate and our assistant regional directors. You have assistants in each of the regional offices that work closely with the regional director and our community relation's coordinators. He stated that one of their big initiatives right now is an improved compliance and enforcement effort with more standardized, more speedy turn around of enforcement actions, more use of field compliance orders and trying to get enforcement acts resolved in a more timely manner.

Alfred Ryan: is interested in the level of enforcement over time primarily from Mike's field people. A lot of our concerns are how enforcement has been unequal over time and various communities and EJ communities.

Michael Sherman: Stated he doesn't have any data to discern between those efforts. The efforts overall may be consistent from year-to-year but with any given region within a given program, it can go up and down. He stated that they are working on getting multiple compliance specialists in a program doing that work as oppose to relying on just one.

Thomas Fidler: Acting Deputy Secretary for Air & Waste. He went over the hand out he distributed (a fact sheet) to the Board and guests. Tom stated that he hopes you will find it informative and useful and maybe something you can share with counterparts in areas you represent. He has become aware that the programs that he is overseeing; Air Quality Management, Waste Management and Radiation Protection, particularly from the standpoint of homeland security and security issues are probably the three programs that have drawn the greatest attention with respect to permitting issues and compliance related issues, especially in EJ communities. The most significant cases clearly have been in the Chester area where we have a resource recovery facility; chemotherapeutic waste facility, there was a proposal for a soil burner. I think that became a lightning rod for us to draw much greater attention to this issue as we issue permits and clearly track compliance. He explained the roles of the three different bureaus. He spoke about the HSCA program and its lack of funding, which could potentially bring an end to a very valuable program.

Subcommittee Reports

Janine Legg: presented the subcommittee report to the Board. She explained what they did in the report was start with the definition of what the Environmentally Burdened Communities could be. She gave a brief description of the health disparities identified. She also went over Al Ryan's recommendation for the definition of Environmentally Burdened Communities.

Janine Legg: stated that she felt that they would accomplish more if they meet face to face. She recommended that at the next meeting perhaps the subcommittee could meet for 30 minutes.

Mario Browne: said he remembered during the conference call that Al suggested looking at the economic piece in communities when we look at environmental burdens.

Eli Brill: said regarding the cumulative impact subcommittee, he did not have a written report to provide based on the e-mail Ayanna sent, his impression is that Marcus is going to generate minutes from the conference call (Dec. 3rd conference call). The conference call had three participants, Jerry, Janine and myself. I think that to try to convey at least some of the perspective that was brought out in the subcommittee call one view which was expressed by me was that there has been a lot of new information that has come out of the NEJAC federal committee that were EJ issues. There was a 2003 EPA document on how to do cumulative impacts and then NEJAC was trying to take that analysis and make it more collaborative and bring multiple stakeholders to the table.

Alice Bailey: stated that there were only two people involved in the Public Participation conference call, Rev. Strand and herself. The Public Participation Subcommittee agrees with the recommendations that there should be a minimum of two meetings, one prior to submission of an application (which would be the pre-meeting) in which the applicant takes the initiative to reach out to the community. The environmental advocate may assist the applicant with determining the characteristics of a neighborhood, finding a meeting location, notification, and any other assistance that the applicant may need to hold the meeting. During the permitting process, DEP will hold a second meeting and also an advocate would participate in that process. Rev. Strand suggested that we recommend the easy to read information brochure that is non-biased nor anti-applicant. He also suggested that the brochure should be generic in the sense that it gives the community advice on what it is that they can do and what process they can become involved in.

Janine Legg: had a comment concerning not seeing notification in a more timely manner to the communities, she thinks 30 days is not enough time prior to the submission of the application it should be at least 60 days.

Alfred Ryan: Gave an overview on draft ideas/procedure compliance recommendations and what their goals. The purpose of the committee is to recommend to the Board what kind of procedures DEP could use for increasing compliance in the EJ communities. They were several suggestions ranging from basic identification issues to methods to enforcement options. Other issues discussed were important activities for monitoring emissions on various facilities within communities discharge sources and ability of the DEP to assist communities and their ability to self monitor what's going on in the communities.

There was some comment/discussion on enhancing enforcement response, Environmental and Criminal Prosecution and civil and environmental penalties.

Public Comment Period: None

New Business:

Ayanna reminded the Board of the 2005 meeting schedule; the first meeting is February 10, 2005. She asked the Board to refer to the sheet included with the handouts. She explained that if there is a meeting members cannot attend, please e-mail her so she can reschedule if there is not a quorum. On the sheet there are also proposed dates for all conference calls for subcommittees members the chair should send those dates out to their members and get them on their calendar and make sure that they can participate.

Meeting adjourned at 3:25 p.m.

Minutes taken by Marilyn Wooding