

ENVIRONMENTAL JUSTICE ADVISORY BOARD

Meeting Minutes

Wednesday, September 4, 2002

Room 105, Rachel Carson State Office Building
Harrisburg, PA

The Environmental Justice Advisory Board meeting began at 9:25 by Edward Thomas, Interim Chairperson.

Members in Attendance:

Deborah Kilmartin, Kilmartin Consulting Co.
Calvin Little
Alfred Ryan, PECO Energy
Edward Thomas
Sis-Obed Torres Cordero, Council of Spanish Speaking Organizations
Edgar Howard from Representative Dwight Evan's Office
Jerome Balter, Public Interest Law Center of Philadelphia
Wilder Bancroft, Allegheny County Health Department
Eli Brill, Dechert, Price & Rhoads
Gary Horton, Sons of Lake Erie
Patrick O'Neill, City of Philadelphia Law Department

Members not in Attendance:

Kendall Miller, Delaware Valley Regional Planning Commission
Alta Garcia Oppenheimer
Truong Phuong, International Service Center
Pheralyn Dove, Solutions for Progress
Dr. Stephen Kauffman
Ayanna King, Ayanna's Consulting & Concepts

Others in Attendance:

Alisa Harris
Marcus Kohl
Holly Cairns
Michael Corbin
Krishnan Ramamurthy
Sharon Williams
Dan Snowden
Justina Wasicek
Susan Seighman
Lou Guerra, Jr.
Chris Allen
Eugene Counsel
Mark Freed
Lorraine Wagner



Introduction of Members: There were new board members at this meeting. There was a motion to accept all the board members.

Edward Thomas made a motion to approve the minutes. The minutes were approved by all board members.

Alisa Harris asked the board members what process they wish to use to make recommendations to DEP. Alisa suggested that the board have a common understanding about the process in which the Department will consider the board's recommendations.

Lou Guerra, Jr. , Policy Specialist, explained to the board members the various levels of government and the difference between what is a policy vs. a regulation of the Department, statutes of the Commonwealth and how long each of the processes takes. Each level of government has a different authority on how the Department operates.

Lou explained that the regulation is a much more difficult process. In general to establish a regulation, it takes about two years to complete the process. It is more binding than a policy. It is reviewed by an advisory committee of the Department and is published in the Pa. Bulletin.

Lou explained that a policy is a general statement and gives the Department the authority to interpret or review a regulation or a statute. The process for a policy can range from six months to eighteen months. This is also reviewed by the advisory committees of the Department and published in the Pa. Bulletin.

Lou explained the Executive Order process and some of the other tools that the board can use to make recommendations to the Department.

Deborah Kilmartin asked the question if there is any policy or regulations concerning environmental justice?

Alisa Harris said no, not on environmental justice specifically.

Alisa Harris distributed the Land Recycling and Waste Management Environmental Assessment process, Phase I to all board members. This information was published into a Technical Guidance Document and was distributed for public comment on August 24 and has a 30-day comment period which ends September 23. She further explained that another issue that the board will review is the public participation portion from the internal environmental justice work group. This internal group is ready to create an interim policy and wants the board to review this policy.

Susan Seighman, Office of Chief Counsel explained Pennsylvania's Environmental Assessment process (handout provided).

She said that first you have to identify the known and potential harms and those are offset by any mitigation measures. This process is then balanced against the benefits. She stressed that the harms can be identified either by the applicant, the Department, etc.

The benefits are comprised of social and economic benefits which are then offset by social and economic harms, what remains is added to the environmental benefits side. With this test, the benefits have to clearly outweigh the harms side.

Jerome Balter asked the question if there is any language concerning minority groups in the public participation portion of the Technical Guidance Document?

Alisa Harris explained that this was in the new draft policy separate from the environmental assessment.

Jerome Balter explained that this all goes together, if you don't have that language included in the public participation portion, people would be left out.

Alisa Harris did acknowledge Jerome's point and explained that the document was open for public comment and that specific language could be added to include minority groups in the public participation portion of the Technical Guidance Document.

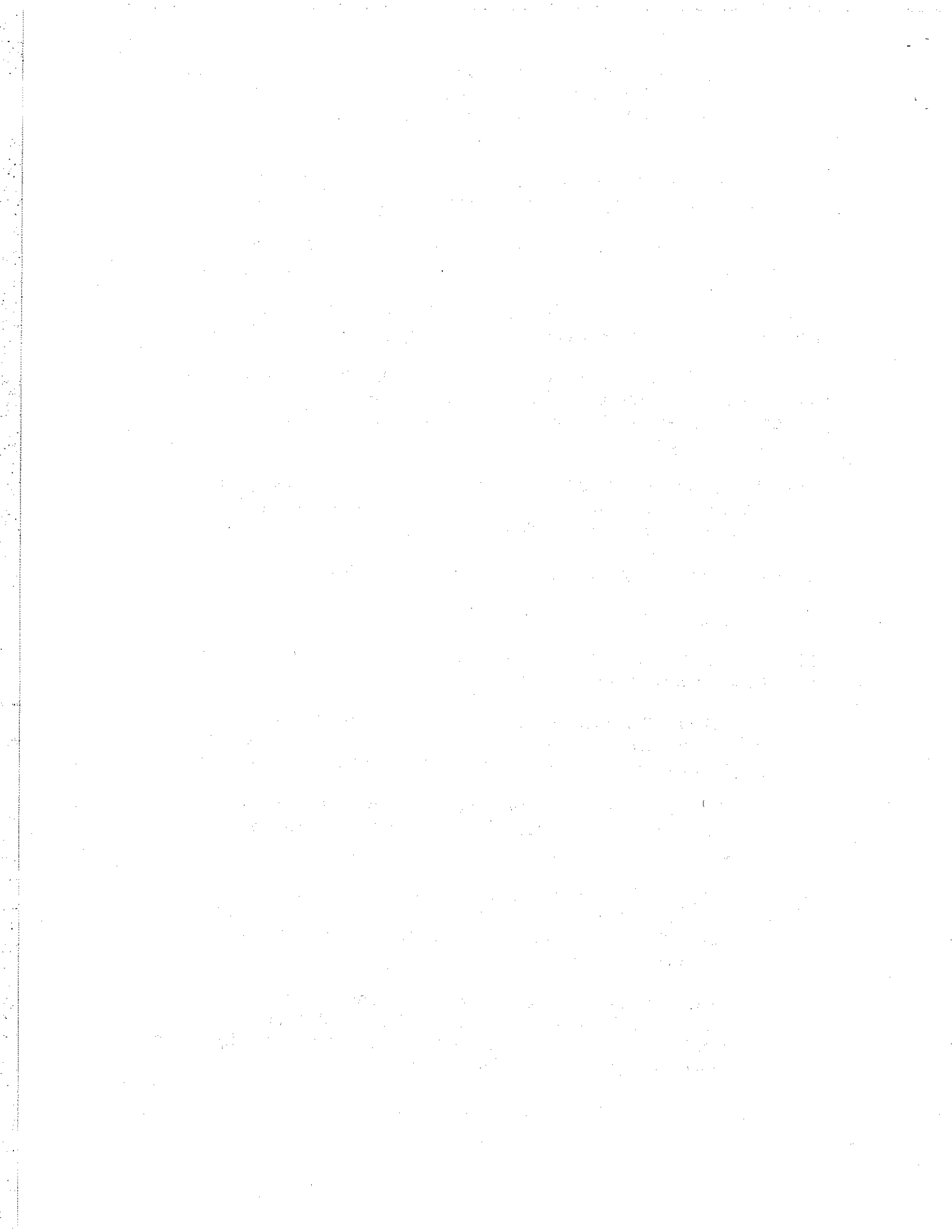
Alisa Harris suggested to Susan Seighman that she emphasize the areas in the Technical Guidance Document for the board members that relate to public participation and how it affects the decision making process.

Susan Seighman suggested the areas for public participation:

Page 3, paragraph 2

Five general principles should be considered when evaluating harms and benefits in environmental assessments:

1. Compare the proposed facility or modification to the conditions that would exist if the project did not move forward. This analysis does not consider other potential uses of the property or to other properties.
2. Focus on harms and benefits that relate to the proposed modification when a facility has previously been subject to an environmental assessment.
3. Look at and beyond compliance with statutes and regulations. Harms may exist even when the law is complied with and benefits may arise inherently from the project, through compliance with the law, or by intention.
4. Evaluate harms individually and collectively; evaluate mitigation measures individually and collectively; and evaluate benefits individually and collectively because the impact from the facility may be greater than the sum of its parts.



5. Consider the anticipated closing of the facility in determining the duration of known and potential harms and benefits. Some harms and benefits will last for a limited time period and others may last longer even after the facility closes.

Page 4, subsection: 4. Adequacy of Information:

Page 5, paragraph 3

Page 7, subsection: 8. Benefits, paragraph 2

Page 8, subsection: 9. Social and Economic Harm

Page 8, subsection: 10. Balancing

Page 9, paragraph 2, the factors:

Factors that should be considered for each harm and benefit:

- Duration
- Intensity
- Frequency
- Reach, or who will be affected
- Sensitivity of receptor
- Known or potential
- Other relevant factors

The above sections in the Technical Guidance Document for public participation were mentioned at the September 4, 2002 meeting by Susan Seighman.

The revised sections for the Technical Guidance Document for public participation are:

Page 3, subsection 2. Consultation and Timing

Page 4, subsection 6. Environmental Harms and Mitigation

Page 5, paragraph 8

Page 8, paragraph 1

Page 9, paragraph 1

Page 9, paragraph 2, sensitivity of receptor

Page 10, paragraph 1, f. A summary of public input.

The definitions for both Cumulative Impact Analysis and Disparate Impact Analysis are included in the June 24, 2002 meeting minutes.

Jerome Balter believes that environmental justice is a community in which the percentage of minority people exceeds 30%. He said you do not need any other analysis except census figures and it has nothing to do with the rest of the state, except where you draw the line between 30%, 40% or 50%.



Mark Freed explained that when he was in the internal work group that a cumulative impact analysis could not be done in all circumstances; it was too expensive and time consuming. The internal work group came up with limiting principles. They include:

Environmental justice communities;
Trigger permits;
Is there significant public interest in the facility?
Does DEP suspect that there will be a significant impact?

Jerome Balter believes that a cumulative impact analysis is a necessary step in conducting a disparate impact analysis.

Ed Thomas made a motion that the board members convene into subcommittees to discuss cumulative impacts and disparate impacts analysis.

Benefit and Harms Analysis Subcommittee:

This subcommittee was formed from the Cumulative Impacts/Disparate Impacts Subcommittee

Deborah Kilmartin
Eli Brill
Wilder Bancroft
Jerome Balter
Truong Phuong
Mike Corbin
Susan Seighman
Krishnan Ramamurthy
Justina Wasicek

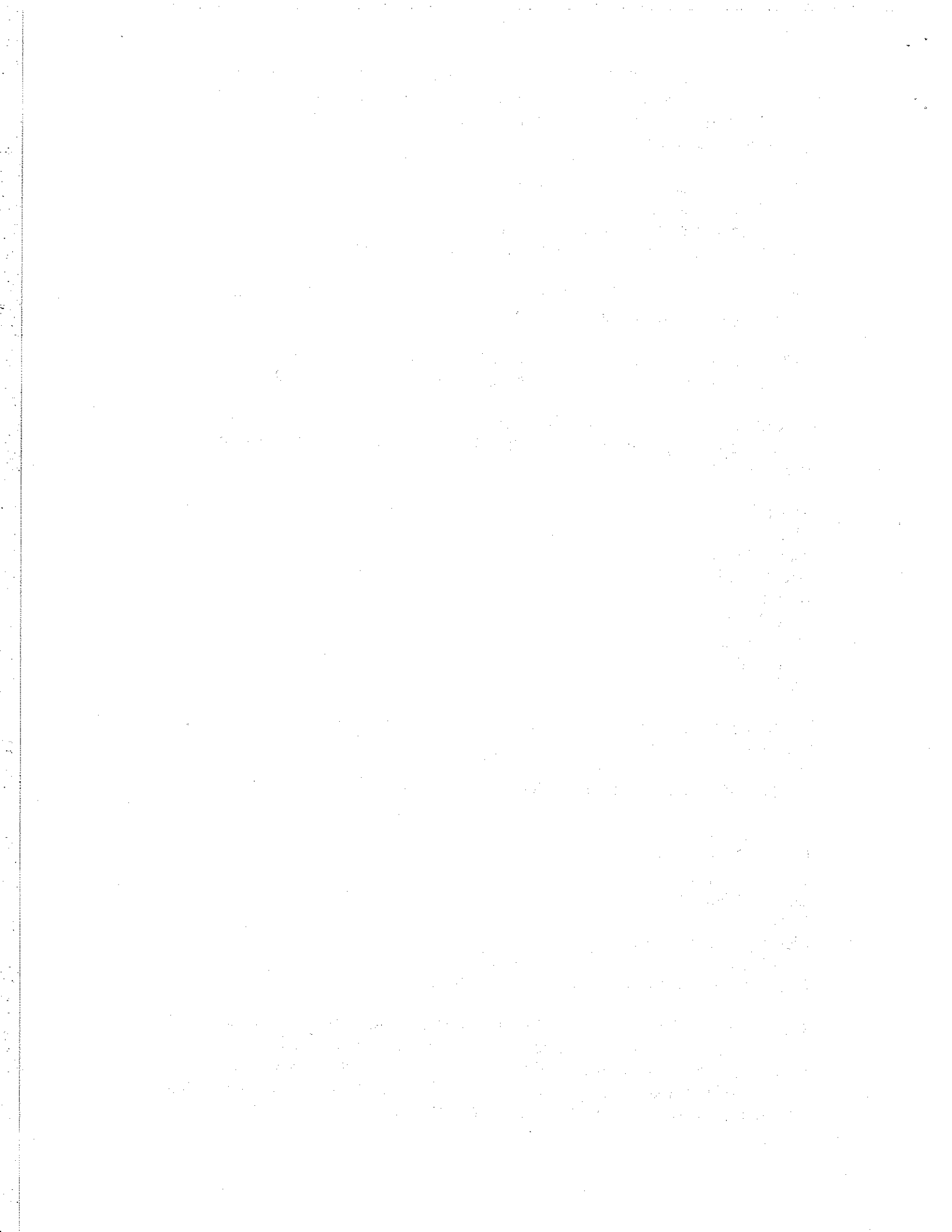
These board members are different from those stated in the minutes of June 24, 2002 by Alisa Harris.

Public Participation Subcommittee:

Pheralyn Dove
Patrick O'Neill
Dr. Kauffman
Kendall Miller
Gary Horton
Sis-Obed Torres Cordero
Alisa Harris

Each group picked a chairperson for each group:

Alisa Harris , Chairperson for the Public Participation Subcommittee: reported her group's deliberations. She said that there needs to be some weighted formula in terms of looking at what the community considers to be a benefit and harm and how that formula would be applied in the decision-making process of the environmental assessment process.



She explained that the group discussed further what DEP has in technical assistance. The group also discussed a formal mediation process in the environmental assessment process.

Deborah Kilmartin, Chairperson for the Benefits and Harms Analysis Subcommittee: explained how her group was trying to get a specific definition for the benefits and harms analysis. She further explained that there is a conference call scheduled for September 13 at 10:00 a.m. and this issue will be further discussed at that time.

Disparate Impact Analysis – Presented by Michael Corbin and Krishnan Ramamurthy.

Mr. Corbin conceptualized the 10 Step process for the Board on Page 18 of the Environmental Justice Work Group.

Disparate Impact Analysis Process:

Pre-Step A DEP becomes aware Applicant seeks a trigger permit.
Pre-Step B DEP screen Area of Concern (20% poverty or 30% minority).
Pre-Step C Pre-application meeting between DEP and Applicant (optional)
Pre-Step D Pre-application meeting between Applicant and Community (optional)

Step 1. Applicant submits Application/Plan approval
Step 2. DEP requires enhanced public involvement
Step 3. Proposal compliance with regulations
Step 4. Impact analysis

ADVERSE IMPACT
Step 5A Cumulative impact analysis
(DEP discretion)

NO IMPACT
Step 5B Decision

IF SIGNIFICANT ADVERSE IMPACT
Step 6. Disparate impact analysis
Step 7. Mitigation
Step 8. Balancing/justification
Step 9. Decision

Jerome Balter believes there is a disparity between what is happening in the minority communities versus the white communities. You may calculate the communities with cumulative, but what you are looking for is disparity

Mark Freed explained that the environmental laws do not properly take into account cumulative impact. He further explained that when you do a cumulative impact analysis, before you get to the disparate analysis, you may find that the risk is so high even though it is not in violation of the environmental law.



Mark Freed further explained that if you do find a disparate impact in a community, is there a justification to issue a permit and who gets to say what the justification is?

Jerome Balter believes DEP and the community.

Cumulative Impact Analysis – Presented by Krishnan Ramamurthy (handout provided).

Two questions were asked: What factors should the board consider for Cumulative Impact Analysis and Disparate Impact Analysis.

Patrick O'Neill suggested that the board use the five recommendations on Cumulative Impact Analysis discussed by the Environmental Justice Work Group on p. 23 of their report.

Deborah Kilmartin assisted the board in prioritizing the triggers for Cumulative Impact Analysis:

If it is an environmental justice community and a trigger permit and if there is at least one of the following factors:

- Health impacts;
- Quantifiable impacts;
- Quality of life impacts;
- If there is more than one trigger permit in the area

Mark Freed suggested the 10 step process that is in the Environmental Justice report by the Environmental Justice Work Group on p. 18.

Eli Brill suggested the board use subcommittees to discuss this issue.

There was a motion by all board members to establish a subcommittee to discuss what factors trigger a cumulative impact analysis. Conference calls were set up for September 10 at 10:00 a.m. for the Public Participation Subcommittee and September 13 at 10:00 a.m. for the Cumulative Impact Subcommittee. The Conference Call for September 10 was rescheduled to September 12 at 10:00 a.m.

Cumulative Impact Subcommittee:

Wilder Bancroft
Deborah Kilmartin
Eli Brill
Truong Phuong
Edward Thomas
Krishnan Ramamurthy
Justina Wasicek
Michael Corbin
Susan Seighman
Eugene Counsel
Larry Holley



The board members could not vote on the by-laws because there was no quorum at the time of the discussion. The chairperson set aside the vote on the by-laws until the next meeting.

New Business:

There was a motion to have Mark Freed appointed to the Environmental Justice Advisory Board.

Alisa Harris explained that there may be an opening for new members on this board.

The next Environmental Justice Advisory Board Meeting is scheduled for November 15, 2002 in Room 105 at the Rachel Carson State Office Building.

Meeting adjourned at 3:33 p.m.
Minutes taken by Lorraine Wagner

