

## ENVIRONMENTAL JUSTICE ADVISORY BOARD

Meeting Minutes

Tuesday, October 05, 2004

Room 105, Rachel Carson State Office Building

Harrisburg, PA

### Members in attendance:

Ayanna King  
Edward Thomas  
Janine Legg  
Jerome Balter  
Patrick O'Neill  
Cyndi Romero  
Lamar Barnes

### Others in Attendance:

Stan Sneath  
Dan Snowden  
Holly Cairns  
Alice Wright  
Lou Guerra  
Marcus Kohl  
John Dernbach

### Meeting called to order at 11:05 a.m.

**Ed Thomas:** announced that we do not have a quorum therefore we will adjust the agenda to get the meeting started. The EJAB currently has 19 active members and two vacancies. Joe Powers has asked for four names to pass on to Secretary McGinty for consideration. The board seeks diversity – we need more women of color and people from the western and northern parts of the state.

**Patrick O'Neill:** submitted the name of Beverly Braverman, who represents interests from the mining community.

**Janine Legg:** submitted the name of Charlotte Gottschalk from the United Church of Christ and Dr. Grace Mott from Temple University Professor from the School of Public Health.

**Marcus Kohl:** indicated that the EJAB has no members from South Central Pennsylvania

**Ed Thomas:** requested members to recommend potential members and submit their names to Ayanna or himself.

**Ayanna King:** presented the 2005 EJAB meeting schedule she elaborated that the meetings would be quarterly instead of bi-monthly based on the workload and EJAB members inconsistent attendance.

**Jerome Balter:** suggested that the board discuss the reason for so few people in attendance. He expressed his thoughts that DEP did not appropriately respond to certain incidents, such as not citing an incinerator in a racial minority area. The community filed an appeal and the DEP still did nothing, so why should people bother to come to the meetings.

**Ed Thomas:** mentioned reasons that some people were not at the meeting for legitimate reasons, but the commitments of Calvin Little and Pheralyn Dove were being questioned.

**Ayanna King:** stated that the purpose of the board is to make recommendations to Secretary McGinty. The same people have been consistent with attending the meetings. She suggested that perhaps for those who cannot attend meetings to assist and be supportive in other ways. She recently asked her staff to review the workgroup report and develop an accomplishment list for the EJAB members to review the status of their recommendations. The EJAB will need to develop a new list of recommendations including some of the old recommendations that have not been addressed. It is essential for us to strategize on how we move forward, rather than reaching back and complain about the past and what did not work.

**Jerome Balter:** expressed more feeling about a lack of commitment from DEP. His office did a survey of all 50 states. Of the 33 that responded, 30 of them do nothing for Environmental Justice. The EPA gives out money but not oversight to see what the states are doing with the money.

**Janine Legg:** sees the committee as capable of being one of the first states to promulgate an Environmental Justice regulation. She asked how we could get the regulatory process on track. The Environmental Justice group has made positive contributions. It needs to make deadlines with regulatory recommendations.

**Ed Thomas:** We have a quorum. The by-laws state that a quorum requires seven voting members. The issues presented can be voted on. He asked that the board introduce themselves and then to please take a moment to review the minutes.

**Lamar Barnes:** asked, "Who is Bill Cluck?"

**Marcus Kohl:** answered, that he is an environmental attorney in Harrisburg.

**Ayanna King:** Regarding Bill Cluck's comments in the minutes—she was asked to check into the status of Mr. Cluck's appointment and the notification process of potential appointees. Ayanna explained that it is standard procedure to only notify appointees and that it was not apart of the Department's standard practices to notify nominees who were not selected.

**Janine Legg:** Moved to approve the minutes.

**Ayanna King:** seconded

Minutes were voted on and approved 7-0 by the board.

**Ed Thomas:** asked Stan Sneath and Cyndi Romero if they had any recommendations for board members.

**Cyndi Romero:** suggested Jessica Warren of Harrisburg area, who is dedicated and has an incredible background in Environmental Justice.

**Ed Thomas:** said that there needs to be no less than four names submitted.

**Ed Thomas:** announced that the agenda has been shifted. Marcus Kohl will make his presentation and copies of a Scope of Service will be distributed. We can develop one for each committee.

**Janine Legg:** asked that the a report and definition of progress to be shown

**Jerome Balter:** stated that besides the report of June of 2001, there were subsequent reports. They came out every year.

**Ed Thomas:** After lunch we will develop the Scope of Services for the subcommittees. Also, the need to make a parliamentary decision on how we run our meetings I am suggesting that we use Robert's Rules of Order the revised edition. (Revised edition of Robert's Rules of order was passed around and brought up for vote that it be accepted as the guideline)

#### **EJAB Accomplishments – Marcus Kohl**

**Marcus Kohl:** (passed around "Non-Regulatory Accomplishments From Recommendations Made by the EJWG")

Non-regulatory recommendations were pulled together from the Environmental Work Group report.

On page 8, third bullet "advocates should communicate risk to communities," There was some question about what constitutes risk.

**Patrick O'Neill:** There are subparts about risk analysis. To be fair, when we say "1 in a million," we do make a comparison to something they understand, such as a car accident, etc. We also need to try to explain what it means to children.

**Jerome Balter:** One of the problems is that when we talk about discrimination, we talk about comparatives, e.g. death rate = 500 per 1000 people. We need to put forth a comparison to surrounding communities - other communities and other parts of the state.

The health of a community has a lot to do with the effect of pollution. We need data from the Health Dept. to determine the risk.

**Janine Legg:** The Cerrel Report. Its purpose is to cite energy facilities while avoiding profiling and discrimination.

**Subcommittee Meetings:**

Board members broke into subcommittee meetings during lunch.

**The board reassembled at 1:40 p.m.**

**Ed Thomas:** Roberts Rules of Order was put up for a vote.

**Lamar Barnes:** made a motion to accept Roberts Rules of Order

**Ayanna King:** seconded.

Voted on and unanimously approved by the board.

**Ed Thomas:** presented list of subcommittee chairs.

Deborah Kilmartin – Disparate and Cumulative Impacts

Reverend Strand – Public Participation

Alfred Ryan – Monitoring and Enforcement

Cyndi Romero – Executive Committee

Mario Brown – Environmentally Burdened Communities

**Ed Thomas** introduced John Dernbach, Director of the Policy Office

**John Dernbach:** talked about Draft Environmental Justice Communications Regulations

- 1) Must be implementible; reasonably simple
- 2) Must be defensible; if a permit is denied, it must be for good cause
- 3) However problems are defined the regulation must make a difference
- 4) Must be a regulation for which DEP makes a final decision

**John Dernbach** introduced **Stan Sneath** to discuss the regulations.

**Stan Sneath:** There are efforts in other states and regulations elsewhere that prohibit facilities from locating in an area without the community awareness. Substantive standards have not been developed before, so “Public Outreach by Applicant” was initiated.

--Public Outreach must be a requirement

- Applicant can then gauge the community reaction before a lot of expense is incurred. The community is also given the opportunity to be educated about the project.
- It should be at least 30 days prior to the application.
- DEP must be informed of the “Where and When” of the meeting.

- There should be Public Notice of the meeting, by way of newspaper advertisement as well as visible and accessible signage. This should include a description of the facility and of its purpose, and maps of the location, handicapped provisions, contact numbers, etc.
- It should include minority language.

**Stan Sneath:** Since undue burden should not be placed on all applicants, he raised the question of whether these regulations should only apply to EJ areas rather than to every permit everywhere.

**Lamar Barnes:** asked for clarification about whether it should be modified for each program.

**Sam Sneath:** Possibly it would entail looking at the list of permits and determining if they would have any EJ impact.

**Lamar Barnes:** Is there a pre-application process?

**Stan Sneath:** It is strongly encouraged that developers come to DEP before they apply.

**Cyndi Romero:** asked how a developer would know they are supposed to come to the pre-application meeting?

**Stan Sneath:** answered if they were regulated, they would know to do that.

**Janine Legg:** noted that the time periods are not long enough, e.g. in paragraph 3 it should be longer than the given 30 days – perhaps 45 days. The Office of Environmental Advocate should be available for feedback from the community.

**Stan Sneath:** explained Permit by Rule as a statute that requires that a certain activity needs a permit. For certain things you automatically qualify for a permit without a review process.

A General Permit states certain facilities, such as dams and waterways, may build as long as they meet the permit requirements. No review is needed

**Jerome Balter:** recommended that 7-10 days before the meeting, the applicant would send notice by way of first class mail to all of those living in the affected area, so they all have an opportunity to know about the meeting.

**Ed Thomas:** commented that certain sections seemed vague and needed to implement aspects of the Work Group Report. He questioned how records would be kept of the actual meeting. Taping may be a reasonable action.

**Lamar Barnes:** stated that it is difficult enough to do business in Pennsylvania, and consideration must be given to those who bear the burden. It is important not to discourage new business in Pennsylvania.

**Stan Sneath:** said that because it is difficult to craft something that protects the community, yet encourages business development, the pre-application process should apply only to Trigger Permits.

**Jerome Balter:** suggested that the DEP should provide the oversight to ensure that the applicant provides some semblance of reality and truth to the community. The fee that is charged to the applicant should pay for this communication.

**John Dernbach:** explained that some facilities may not be subject to the draft, but then when it is realized that there may be cause for concern within the community, the decision ought not to be made on an ad hoc basis. There should be a discernable, measurable way to determine to whom it applies. The Secretary has made it clear that we are emphatically in favor of economic development, and we need to find the balance between encouraging economic development without a negative impact upon the health of a community.

**Jerome Balter:** cited the examples of Chester and Camden. E.g. Kimberly Clark Corp. did not take responsibility for the community. Those people have the lowest income, and the lowest level of education. They hired very few people from there because the people were not properly educated, yet did nothing to change that situation.

**Stan Sneath:** commented that the dilemma is that when a facility is given a permit, some level of pollution is allowed to take place. We have tried a harms/benefit approach. If it doesn't cause a lot of harm, then the jobs created would be worthwhile. It is an ad hoc analysis, but it gives us the discretion to say "no."

**Janine Legg:** said that DEP needs to look at whether a facility will really economically benefit the community. A harms/benefits analysis.

**Jerome Balter:** commented that the engineers shouldn't be the ones doing the civil rights analysis. The present health of the community needs to be analyzed.

**Stan Sneath:** responded that engineers make the technical decisions as to whether to permit is granted. They are hoping to put something together that allows DEP to make the right decision. The next step is for comments to be considered by the internal work group so that they can have something a little more polished to present at a future date.

#### **New Business:**

**Cyndi Romero:** Mentioned the "Unhealthy Air Quality Report" from the Pitt Environmental Policy Office ([www.pennenvironment.org](http://www.pennenvironment.org)) contact: Liz Hartman at 1-202-546-9707

**Ed Thomas:** Looking at the Sunshine Act, Can we close the meeting? Public Comments are scheduled for 3:45 and it is only 2:55. It allows that public comment be deferred to another meeting.

**Jerome Balter:** Motioned that the meeting adjourn

**Cyndi Romero:** Seconded.

**Meeting adjourned at 3:00 p.m.**

Minutes taken by Kathleen Burk

