

**ENVIRONMENTAL JUSTICE ADVISORY BOARD**  
**Monday, June 24, 2002**  
**Rachel Carson State Office Building**  
**Harrisburg, PA.**

The Environmental Justice Advisory Board Meeting began at 9:35 a.m. by Edward Thomas, Interim Chairperson

**Members in Attendance:**

Deborah Kilmartin, Kilmartin Consulting, Inc.  
Truong Phuong, International Service Center  
Alfred Ryan, PECO Energy  
Edward Thomas  
Jerome Balter, Public Interest Law Center of Philadelphia  
Pheralyn Dove, Dove Communications  
Gary Horton, Sons of Lake Erie  
Ayanna King, Ayanna's Consulting & Concepts

**Members not in Attendance:**

Calvin Little  
Kendall Miller, Delaware Valley Regional Planning  
Alta Garcia Oppenheimer  
Sis-Obed Toress Cordero, Council of Spanish Speaking Organizaitons  
Kim Turner  
Wilder Bancroft, Allegheny County Health Department  
Eli Brill, Dechert, Price & Rhoads  
Dr. Stephen Kauffman, Center for Social Work Education  
Patrick O'Neill, City of Philadelphia Law Department

**Others in Attendance:**

Alisa Harris  
Ben Ganguly  
Marge Hughes  
Robert Wilkey  
Patricia Grim  
Krish Ramamurthy  
Gene Counsel  
Holly Cairns  
Michael Corbin  
Melanie Cook  
Alice Wright Bailey  
Michael Terretti

Dan Snowden  
Lawrence Holley  
Patrick Anderson  
Harold Miller  
Charla Plaines  
Lorraine Wagner

**Truong Phuong** asked if any member wanted to add or delete information to the agenda.

**Jerome Balter** explained that DEP has a responsibility to the Board so that the Environmental Justice Advisory Board is not repeating what the External Work Group did for the last two years. Jerome Balter brought with him a letter he wrote dated May 1, 2002 addressed to Alisa Harris. Mr. Balter explained that he wanted to discuss this letter with the Board members.

**Ed Thomas** - suggested that Jerome Balter's letter be distributed to all members and that the members read this information over the lunch hour so that this can be addressed in the second-half of the meeting.

**Deborah Kilmartin** did not have a copy of the letter that Jerome Balter referred.

All members accepted the minutes, however Deb Kilmartin mentioned that no information was listed on when the meeting was adjourned for the April 29<sup>th</sup> meeting and there was no mention of who took the minutes. The minutes will be amended for the next meeting.

**10-Step Permitting Process:** Presented by Alisa Harris, Director of the Office of Environmental Advocate (handout provided).

Ms. Harris explained that this process was recommended by the Environmental Justice Work Group and that this information will lead the Board into developing additional recommendations for the permitting process.

1. Identify area of concern(AOC)
2. Focus on public participation
3. Determine compliance status
4. Determine if impacts have been minimized
5. Identify all potential impacts
6. Determine if disparity exists
7. Examine opportunities for additional mitigation
8. Analyze environmental harms
9. Determine benefits vs. harms
10. Make decision

**Alisa Harris** explained each step of the 10-step process.

**Step 1. Identify area of concern(AOC)** - This is a process that identifies the demographics and the community within a half-mile radius of a potential regulated activity. If there is a Trigger Permit and the area of concern is a minority or low-income community, then DEP would proceed with the 10-step permitting process. She explained that a minority community has a 30% or greater minority population and a low-income community has a 20% residents at or below the poverty level.

**Step 2 – Focus on public participation** – For a minority or low-income community within an Area of Concern, DEP should enhance its public participation efforts through:

- Community Outreach
- Public Information
- Public Meetings
- Summary of Permit Application
- Document Availability
- Conflict Management

**Step 3 – Determine compliance status** - For a minority or low-income community within an Area of Concern, DEP should determine if the proposed activity is in compliance with all applicable statutes and regulations related to the protection of the Commonwealth's natural resources.

**Step 4 – Determine if impacts have been minimized** – For a minority or low-income community within an Area of Concern, DEP should determine whether the applicant has made a reasonable effort to minimize impacts and potential risks to public health and the environment.

**Step 5 – Identify all potential impacts** – DEP should identify potential impacts and, if significant adverse impacts are anticipated, either conduct or require an analysis of Cumulative Impacts.

**Step 6 – Determine if disparity exists** – DEP should determine if the impacts from the proposed activity will likely create a disparity and conduct or require a disparate impact analysis.

**Step 7 – Examine opportunities for additional mitigation** – If there are cumulative and/or disparate impacts, DEP should examine the feasibility of additional mitigation of impacts. Mitigation may include the use of pollution prevention techniques, alternate technology, alternate transportation routes or additional options that may lead to a reduction of impacts.

**Step 8 – Analyze environmental harms** - If there are cumulative and/or disparate impacts, DEP should analyze the remaining environmental harm that will result and the benefits to be derived.

**Step 9 – Determine benefits vs. harms** – At the conclusion of a harms and benefit analysis, DEP should determine whether the benefits of the proposed activity outweigh the environmental harm.

**Step 10 – Make decision** – At the completion of the process, DEP must issue a decision on the proposed activity. DEP's decision-making authority extends to the issuance of a permit with conditions or a permit denial.

**Jerome Balter** questioned Step 9

**Larry Holley, Chief, Division of Waste Minimization and Planning** explained Step 9 to the Board – with regards to any environmental project, DEP assumes that there will be harms and benefits. Some of the benefits might be employment; the impact on the tax base, and local improvements.

**Deborah Kilmartin** believes DEP should include a formal step that allows the community to be further involved in the harms vs. benefits analysis.

**Alfred Ryan** observed that there is no set standard to judge if the analysis is complete and public participation is simply public comment.

**Jerome Balter** suggested that there be a town meeting in which everyone has the opportunity to vote on the proposed projects. According to Mr. Balter, this the only way to assess what the community wants.

**Pheralyn Dove** noted that low income and minority communities with poor health are more interested in the immediate needs of survival and are the least likely to attend a public meeting. She stressed this importance of assuring that information distributed reaches everyone.

**Alisa Harris** suggested that several Board members further examine the Harms vs. Benefits Analysis process and submit comments and recommendations to be reviewed by all Board members and the Department. Suggested Board members are: Al Ryan, Deborah Kilmartin, Edward Thomas and Larry Holley.

**Cumulative Impacts Analysis:** Presented by Michael Corbin and Krishnan Ramamurthy (handout provided).

**Definition: Cumulative Impact:** is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.

**Definition: Cumulative Risk Assessment:** involves the consideration of the aggregate ecological or human health risk from multiple stressors such as multiple pathways and multiple sources. The environmental stressors may include, but are not limited to, radiation, microbiological agents, chemicals, vibrations, traffic congestion and noise pollution.

**Deborah Kilmartin** gave an example of a synergistic factor – There is a certain risk that if you smoke, you will have lung problems. The synergistic factor would be an asbestos worker who smokes; would be 500 times more likely to get lung cancer.

**Krishnan Ramamurthy** gave a definition of **Antagonism:** It is the interaction of two potentially toxic substances having opposing affects on a system in such a way that the action of one partially or completely reduces the affects of the other. He gave an example of an antagonistic affect - selenium reduces the toxic affects of mercury. Other antagonists that have been identified are: arsenic, zinc and cadmium.

**Deborah Kilmartin** explained a cumulative risk assessment and raised the issue about existing procedures technology.

**Jerome Balter** feels health should be a factor in the cumulative risk assessment analysis.

**Deborah Kilmartin** indicated that she could not support a stand-alone health-based analysis, but would consider those to be appropriate elements as part of an overall review that would also include violations and complaints.

**Alisa Harris** suggested that the Board consider whether health should be a factor while examining risk.

**Pheralyn Dove** wanted the Board to consider the Environmental Justice Advisory Board's role. Once the Board understands technically what the assessment is all about, what does the Board want to recommend to DEP?

**Alisa Harris** explained that the new factors that could be added to the cumulative risk assessment analysis could be quality of life and health issues.

**Pheralyn Dove** asked the question if there was some kind of mechanism for making comparisons between minority and low-income areas?

**Krishnan Ramamurthy** showed National Scale Air Toxics Assessment (NATA) maps for cancer and non-cancer in the State of Pennsylvania.

**Jerome Balter** discussed his letter that was distributed earlier in the meeting.

The Board discussed Jerry's letter, and DEP's responsibility to the communities involved.

**Alisa Harris** said that this Board would come up with advice to the Department. The Department would take that advice or information and try to determine whether or not that this information is based on existing authority or needs additional authority of the legislature.

**Pheralyn Dove** asked how the board is going to rate or qualify everyone's input? She feels that if the Board gains the community's participation and trust, the Board has to make sure that there is some kind of mechanism to implement what the community wants.

**Alfred Ryan** indicated that he feels it is still the community that makes the decision and some home rule charter communities have more authority than others to make decisions. He thinks we should review the community's toxic loading, review other tools (cumulative impact and disparate analysis) and then reduce or mitigate adverse impacts.

**Alisa Harris** suggested that the Board try to focus on these two or three major issues.

What triggers cumulative impact analysis?

What is going to be included in the cumulative impact analysis?

What authority do we have or do we need to ask the legislature for additional authority?

**Jerome Balter** suggested the four health factors to the Board:

1. Age adjusted non-cancer mortality rate (per 100,000 population)
2. Age adjusted cancer mortality rate (per 100,000 population)
3. Infant mortality rate (per 1000 live births)
4. Low birth weight rate (under 2500 grams)(per 100 live births)

**Deborah Kilmartin** suggested the Board take a vote on whether health would or not be the only cumulative assessment factor. The members present agreed that health should be a factor, but that there are other factors to be considered.

**Alfred Ryan** was uncertain with this approach because it does not include environmental justice low-income characteristics.

A show vote was taken if health should be the only factor.

Did not have a quorum to vote on this issue, but those members present generally agreed that health factors should be considered.

**Jerome Balter** was the only **yes** vote.

**Pheralyn Dove** suggested the Quality of Life Factors:

- Noise Pollution
- Crime vs. Safety Issues
- Odor Pollution
- Air Pollution
- Aesthetics Issue
- Water Quality Issues
- Job Training
- Literacy

**Jerome Balter** indicated that he envisions a negotiation between the applicant and the community where the community receives additional benefits/payments and the agreement is part of the DEP permit.

**Alisa Harris** explained that there are policies and regulations within the Department to address certain quality of life factors that were mentioned.

The Board was in agreement on the quality of life factors given for discussion purposes only.

**Deborah Kilmartin** suggested that two other factors be added to the list:

- Facilities that have current violations
- Facilities that have community complaints

**Alisa Harris** suggested that two issues be brought before the Board for discussion:

- Compliance issues throughout the permitting process
- How to improve our monitoring and enforcement actions

**Disparate Impacts Analysis:** Presentation by Michael Corbin and Krishnan Ramamurthy (handout provided).

Based on the recommendations of the Environmental Justice Work Group, DEP should determine if the impacts from the proposed activity will create a disparate impact on the community and, again utilizing case-by-case flexibility, conduct or require a disparate impact analysis.

### Steps for Identifying an Environmental Justice Community:

- delineate the area of concern (AOC)
- a circle defined by a radius of one-half mile from the center or boundary of proposed activity;
- areas of impact for which DEP is authorized to require analysis. For example, traffic corridors and groundwater plumes;
- Other reasonably anticipated impacts associated with the proposed permit activity;
- Determine whether the AOC contains a minority or low-income community;
- If the AOC contains a minority or low-income community then identify the reference community for comparison against the AOC.

The Board's responsibility is to decide what factors they want to add, then the Board will submit this to DEP and see if they have the authority to address the issue or find out who could address the issue.

**Ed Thomas** suggested that the subcommittee Cumulative/Disparity recommend what factors the Board wants to include and these should be implemented into the Disparate Impact Analysis.

### **Conclusion:**

DEP is committed to addressing disparate impacts;  
EJAB is needed to help DEP address this difficult issue;  
The Board should begin developing a joint plan to move forward on this issue.

### **Action Plan:** Presentation by Alisa Harris

The Plan is divided into four different areas:

- I. Improving the condition of environmentally burdened minority and low-income communities;
- II. Permitting process;
- III. Monitoring and enforcement;
- IV. DEP organizational change



**Alisa Harris** explained that under each area there are goals established:

I. Improve the condition of environmentally burdened minority and low-income communities.

Goal 1. To assess our decision-making process, current environmental conditions and procedures to set priorities and allocate resources to improve restoration efforts in environmentally burdened communities.

II. The permitting process:

Goal 1. Develop a permitting process that encourages early and meaningful public participation.

Goal 2. Develop a permitting process that considers relevant impacts to minority and low-income communities.

Goal 3. Provide and encourage the use of alternative dispute resolution and mitigation techniques that benefit both the applicant and the impacted communities.

Goal 4. Improve community outreach procedures in low-income and minority communities.

III. Monitoring and enforcement:

Goal 1. Eliminate the potential for disparity in the way facilities in minority and low-income communities are monitored and the regulations are enforced.

Goal 2. Reduce the need for enforcement by encouraging and educating facilities on good housekeeping and pollution prevention practices.

IV. DEP Organization change:

Goal 1. Seek advice from the EJWG, EJAB and OEA to plan and implement training programs relevant to the issues discussed in the Work Group Report.

**By Laws:**

The Board could not vote on the by-laws because there was no quorum; the interim chairperson set aside the vote on the by-laws until the next meeting.

**Chairperson:**

The Board needs to vote on a permanent chairperson. The vote will be set aside until the next meeting.

**New Business:**

**Jerome Balter** – discussed the decision of the Supreme Court on Title VI.

The next meeting is September 4.

The Board agreed that November 15 would be the date for the November meeting.

**Meeting adjourned at 4:05 p.m.**  
**Minutes taken by Lorraine Wagner**