

ENVIRONMENTAL JUSTICE ADVISORY BOARD

Meeting Minutes

Thursday, May 5, 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
Patrick O'Neill
Cyndi Romero

Members not in Attendance

Lamar Barnes (Unexcused)
Mario Browne (Excused; sent Proxy)
Arthur Frank (Excused)
Edgar Howard (Excused)
Peter Simms (Unexcused)

Others in Attendance

Don Brown
Lou Guerra
Dan Snowden
Pat Miller
Toni Flora
Robyn Gilden
Maurice Randall
Janie Dean
Marylou Barton
Charles Lee
Sue Briggum
Holly Cairns
Alice Wright
Marcus Kohl
Lynne Romanoski

Ayanna King, Environmental Advocate, called the Environmental Justice Advisory Board (EJAB) meeting to order at 9:20 a.m. on May 5, 2005.

Ayanna King: welcomed everyone and asked that each Board member and other guests in attendance, introduce themselves. She also introduced Attorney Marylou Barton, who has been appointed by the Office of Chief Counsel to attend Board meetings. Lynne Romanoski was also introduced as the new secretary, and administrative employee for the Office of the Environmental Advocate. The prior Board Minutes were not voted on due to the lack of a quorum. On the administrative front, six (6) out of 13 candidates will be recommended to fill Board seats, and they are as follows: (1) Erlinda Agron, Northeast Region, who has a community and business background, and is a member of the Latino community; (2) Michael Walker, Southcentral Region, who has a legislative background, and worked with Senator Hughes' office; (3) Ann Morrison, Northwest Region, who has a Government banking background, and has worked in environmental projects in that region; (4) Luvennaise Gamble, Northwest Region, who has broad community experience and a juvenile justice background; (5) Reverend Rocky Brown, a lifelong resident of the Chester area, who has a legislative, community and drug and alcohol background.; and, (6) Efrain Cirilo, Northcentral Region, from Lockhaven University, who has a strong background in Latino affairs, and recruitment at Lockhaven University. There are still two (2) possibly three (3) seats available on the Board, if anyone has any other recommendations. The preferred areas would still be Southcentral and Northcentral, and the Board seeks diversity in finding Asian candidates as well as more women of color.

Jerome Balter: asked that resumes be distributed.

Ayanna King: stated that she hoped that the new Board members will be on-board by the August meeting, and that she is working with the Policy Office to provide an Orientation in July. A letter was sent to Dr. Dixon on March 17th, requesting a replacement for Peter Simms, who has missed too many Board meetings. A copy of the Annual Report will be provided to all Board members on CD-ROM, before departing this meeting, or it was stated that they would be mailed. Maurice Randall, Center for Environmental Health, was introduced as Mario Browne's proxy.

Marylou Barton: stated that the Environmental Protection Agency (EPA) asked how we handle complaints from outside of the Department, alleging discrimination based on race, color, disability, national origin or sex. We use the same procedure as we would an internal complaint. There is a Management Directive stating what procedures to follow. Also, a memo was prepared and forwarded to Ayanna regarding legal issues surrounding the 30/20 definition. Don Brown, DEP Office of Chief Counsel, will be speaking later at this meeting regarding Cumulative Risk, and how we can apply that to Environmental Justice (EJ) issues and minority communities.

Jerome Balter: believed that he had met Marylou at one time, and she acknowledged that it was at a legal conference. He also believes that DEP does not do anything with regards to environmental justice, case in point.—In the Fall of 2003, the state issued a plan approval for an incinerator in Harrisburg. An appeal was made to the Environmental Hearing Board, and an inquiry was made from the EPA. Subsequently, a new approval was granted, without regard to the grievance that had been filed,

accomplishing nothing in the field of environmental justice, and that he hopes that a message goes to the DEP from this group that something needs to be done by 1/1/06, and that the Agency learn how to do an Impact Analysis, which he believes that we don't how to do. He considers all of this to be poppycock, and that the members of the Board know that although we meet and discuss situations like these in our roundtable meetings, there is nothing done by the DEP and no progress made.

Marylou Barton: stated that when we talk about about a two (2) plan approval, or an appeal, that it is not necessarily a grievance. Maybe we ought to be more careful about setting up another mechanism.

Jerome Balter: stated that we would only be replacing formality with reality.

Janine Legg: asked how internal complaints are handled, and that there does not seem to be a protocol.

Marylou Barton: explained that when an internal complaint comes into the Agency it is forwarded to Human Resources, and then delegated to the proper department for investigation.

Janine Legg: stated that she still does not feel like there is a protocol in place, and that we are still fighting civil rights issues with regards to environmental justice issues.

Marylou Barton: asked if Janine felt like communities are having difficulties formulating a grievance. Will look into finding out the protocol, and enforcement strategy that targets EJ areas. For those industries that are in these communities, why can't the 20/30 rule form a model-volunteering group who can address these issues, and resolve problems faster.

Janine Legg: agreed that this would be a good idea.

Jerome Balter: brought up that the DEP was sued by Chester County in 1995 for the violation of civil rights, and that the Secretary wrote to him in the middle of 2004, indicating that DEP had done nothing, and have maintained that record until present.

Marylou Barton: agreed that she does not know the "why" either.

Janine Legg: brought up that the State of Alabama, one of the most racist states in our country, has a legislative process.

Ayanna King: suggested that we look into how their state's plan is implemented.

Eli Brill: asked some administrative questions. Will Board members be receiving a copy of the legal memorandum addressing the 30/20 definition. Regarding discrimination complaints that are investigated, is there a Management Directive?

Ayanna King: will look into how the Department wants it relayed.

Marylou Barton: echoed Ayanna's comment, and that she would provide a copy of Management Directive 410.10.

Eli Brill: stated he specialized in the Air Program are for 13 years, and believes that air trading does work, as in the acid rain program that controls emissions well below averages. The mercury treating proposals are bad, and have proved non-responsive in certain areas. He also stated that he doesn't like the mercury proposals because it creates Hot Spots. Likes the suggestion of collaborative approaches, and brought up the NEJAC Report of 2004 as a good example of that.

Janine Legg: asked if there was enough research making environmental justice defensible, as per 20/30.

Marylou Baron: said that there is a lot of research in the state of Pennsylvania, particularly in Carnegie Mellon, Pittsburgh, and the Heinz Foundation. Everything seems to be coming together, and be very defensible. Don Brown will speak more on this later.

Janine Legg: said that the National Academy of Sciences, and the Heinz Foundation is recruiting as they have received a grant for developing health indicators.

Jerome Balter: said that he didn't know how long she had studied the subject, but not to expect something to be done in a week, and that any cumulative risk analysis had uncovered racial discrimination.

Ayanna King: then asked if there were any other questions, and when there were none, suggested that the group move onto the next Agenda item.

Robyn Gilden: is a Registered Nurse at the University of Maryland School of Nursing, and is working with the EPA-funded Center for Hazardous Substances in Urban Environments project. She talked about the work her group does in environmental justice in Maryland. They try to work with communities and property owners toward a common goal, and provide education.

Eli Brill: asked for a definition of community.

Robyn Gilden: defined community in terms of stakeholders around a Superfund or Brownfields site, such as community members; local State or Federal government officials; schools; the media; and technical expertise. She also explained that they work with community groups, and that they reinforce that these people have a stake in what's happening in there community, and when there is a lack of education on pollution in an area, they inform the community.

Eli Brill: asked what the group does with the developers, or the potentially responsible parties, like the site-owners at Superfund sites.

Robyn Gilden: said that they encourage an open dialogue between both parties, and have found that a lot of site owners want to become involved. The develop trust between all parties involved, which then carries over to other projects.

Alfred Ryan: thought that this was a good idea to get regulated parties all on the same page.

Robyn Gilden: explained further that although there can be mistrust, their group is an independent, neutral, third-party, that is funded by EPA, but is not told by them, what to do or what to say. They host training, and would like to provide that to any communities in Pennsylvania that desire it. They can create educational materials, fact sheets, newsletters, on-line materials, etc. Opening up communication is their key goals, and providing a community with the skills and knowledge that they need. They are not permitted to be a community advocate, provide testimony, or collect original data, i.e., environmental sampling or provide a health survey or biological surveys. There is no charge to the communities for their services. She then showed a few slides of problem sites that they have worked with. She stated that her group, EPA, and the Maryland Department of the Environment meet with communities together, and gather questions that the community has, and determine what other needs the community has in terms of other block meetings, public meetings, written materials.

Marylou Barton: asked if any of the sites apply for a TAG grant?

Robyn Gilden: said that only if the site was a superfund site, and then the Maryland Department of the Environment would take over.

Marylou Barton: asked if any other States have public participation policies when it comes to environmental justice issues?

Robyn Gilden: said that she did not know about a broad public participation policy in environmental justice, although there is voluntary participation in Brownfield's properties. She knows that the state of Delaware recognizes the need for it. National legislation is trying to figure out how to deal with and make policy for environmental justice. Public involvement notices appear about a week before a meeting.

Maurice Randall: asked how often they provide Leadership workshops.

Robyn Gilden: said her group would love to provide workshops. They are currently negotiating with Delaware for workshops on arsenic and heavy metals, and the community has to want and need the training.

Maurice Randall: said that we need to let the community know that they have a stake in this involvement, and that we need to define what a community is, and how we empower a community to become involved in, for example, the five (5) Brownfield's sites he passes by in Pittsburgh every day. Abandoned gas stations, for example.

Robyn Gilden: suggested that we can empower a community with redevelopment ideas of these sites.

Maurice Randall: stated that another man's waste, is another man's treasure, and that we can probably find companies that will be willing to redevelop.

Robyn Gilden: informed the group that a lot of abandoned, underground storage sites, are attractive to large drug chains like Walgreens, and CVS because of their location on abandoned corner lots.

Edward Thomas: then asked the group if there were any other questions.

Jerome Balter: asked how their group gets involved in these matters.

Robyn Gilden: said that they publicize their assistance, but it is through community requests that they become involved in projects, and that word of mouth has been the most successful way for them to get continued involvement in projects.

Edward Thomas: thanked Robyn for her presentation, apologized to the group for being late, and introduced the next Agenda item, "Proposed EJ Protocol," by Jerry Balter.

Ayanna King: stated that the group now had a quorum for voting on the previous meetings minutes.

Eli Brill: said that he had a comment on the minutes. About a third or half-way down the page. Where it says, in brackets, "with that is kind," strike out "that is," and stick in brackets, "20/30% low incomes." Then the rest makes sense, and is legal.

The minutes were then voted on, and accepted.

Jerome Balter: told the group that at the last meeting, the Board had decided upon a plan approval for applications from a civil rights point of view. He said that Al Ryan suggested that this be done by 1/1/06. Jerry prepared four (4) handouts for the group. He suggested drawing a circle about a ½ mile radius census tract, and that you determine whether or not the census tract has a 30% minority population. Then you look at four (4) factors: (1) Age-adjusted cancer mortality rates; (2) Age-adjusted non-cancer mortality rates; (3) infant mortality rates; and (4) low birth rates. Literature in the past few years, show that these factors are the least disputed. You take each one of these factors, then you look at each census track within the ½ mile radius zone. Best health is given a rating of 1, and the worst health is 20, divided into 20 percentiles. A five (5) percentile for example, would be a rating of (4), and the worst might be an eight (8) percentile. The bar graph shows the worst health is in minority populations. In the best health, for Philadelphia, for example, only eight (8) percent are minorities.

Alfred Ryan: suggested that we consider particular contaminants in an area. Are we considering that any industrial sites cause health effects, or health indicators that are showing up in the grass. He feels like people are dying for a number of reasons, as well as suffering low birth rates, for reasons other than the Industrial Revolution. A couple of years ago, we discussed having a situation where you have a lot of heavy traffic in an area, it is clearly not the facility causing the pollution, but the amount of pollution, Ozone, and noise, distressing quality of life, which goes into the overall health of that community. If you put in a new facility, even permitted, may add to that problem.

Jerome Balter: asked if the group wanted him to respond to questions. He stated that EPA used a ½ mile radius.

Eli Brill/Alfred Ryan: asked if he meant a mile, rather than a ½ mile?

Jerome Balter: stated that he said a ½ mile.

Alfred Ryan: stated that large stationary sources already have to do that sort of modeling, and where their plumes are going, and where their affected areas are.

Jerome Balter: suggested that permits not be issued, until are your problems are solved and your questions are answered, in an area.

Alfred Ryan: suggested that Eli help him out, and that once those models are done, they are incorporated into the permit.

Jerome Balter: suggested that we have a procedure in place preceding the issuing of permits. As for the question, “Is industry the soul cause of health problems?,” the answer is no, and nothing I have said in this draft protocol suggests otherwise. He is just commenting that we not add to the problems existing in an area, and that environmental justice areas be protected. He suggested that we take a ride through Chester, or Camden NJ.

Alfred Ryan: so many variables are in place, as economics, such as low birth weights because people in those communities do not have the right food to eat.

Jerome Balter: stated that the whole point should be, whether putting in a facility would aggravate the situation in a community. What he has seen in an area with a lot of industry is a lot of poverty.

Marylou Barton: also stated that she interpreted his protocol to mean that an area not be issued a permit when environmental justice issues are at stake, however, she indicated that a permit would not be issued if there were.

Eli Brill: determined that the language had changed in this draft protocol, from the one in late March that he had commented on. For example, that the census tract was a mile, not a half mile.

Marylou Barton: asked that we determine which draft we are working off of, and the group decided that it would be off the May 4th draft.

Eli Brill: talked about the differences in scorecards between Philadelphia and Chester. He explained that Jerry's protocol stated that air permits couldn't be issued without a town hall meeting in an environmental justice area. DEP polices these situations in the state.

Alfred Ryan: stated that the way he read it was that a town hall meeting could decide whether or not a permit is issued.

Janine Legg: stated that she agreed with Al, and that an increased burden would fall on a low (Socio-Economic Status) SES community.

Eli Brill: continued to state that no air permits would be issued in a high health risk community. He asked Jerry that he be given the time to speak, and that the Board was tasked with looking at environmental justice areas that has a small amount of permit subsets. He suggested that Jerry takes the approach that air permits not be issued unless town hall meetings approve them, which is unconstitutional, and that these groups do not have the technical expertise to make these decisions.

Ed Thomas; prefers that we adhere to the heightened scrutiny model for environmental justice communities. He asked that the Board take a vote on whether or not to accept Jerry's protocol as written.

Janine Legg: suggested that we consider health protocol with social justice factors. We need to stay away from the blame game where we blame industries for causing environmental pollution.

Jerome Balter: stated that even though he believes that his protocol be tweaked, but still be considered because it takes a while for DEP to accept the recommendations.

Alfred Ryan: recommended that Jerry amend this protocol to take into account the items that need to be amended, based upon the Board's recommendations and comments.

Ed Thomas: recommended that comments be provided to Jerry, Ayanna, and himself and that Jerry's proposal along with those comments be submitted to the DEP Secretary.

Eli Brill: stated that he had received the protocol around March 31st, and made comments. He asked if anyone else had.

Janine Legg: stated that she also had reviewed and commented on the protocol.

Eli Brill: suggested that the Board move to circulate comments on the protocol among its' members, and that we provide those comments to the DEP Secretary.

Janine Legg: confirmed that Jerry's protocol would accompany Board comments.

Alfred Ryan: made a Motion that the Board move to circulate comments on Jerry's draft protocol among its members, and that we provide those comments, along with the draft, to the DEP Secretary.

Cyndi Romero: seconded the Motion.

Jerome Balter: felt like this action would only delay the process by three (3) months.

Eli Brill: stated that he's heard comments, several times today, about the DEP not getting things done, however, he recommended viewing the June 2001 Work Group Report which is a bible for cumulative impacts among environmental justice communities. He recommended viewing the issuance of trigger permits.

Ed Thomas: introduced Don Brown, Office of Chief Counsel to the group, as the next Agenda item was to be an update on Cumulative & Synergistic Risk Approaches.

Don Brown: believes that Robbi Ali, University of Pittsburgh, has developed a great database to map and track environmental justice issues by using visualizations on environmental exposures. He viewed cancer information being loaded at the County level. He will be participating in a meeting on May 20th, with the Heinz Foundation, and hopes that we will have a tool like theirs to use by September 12th. He hopes to come out of that meeting being able to complete some mapping of high priority diseases and their exposures, in nine (9) months to a year. What is being shown is that some diseases are caused by environmental factors, like asthma, for example, which is seen in environmental justice areas with a lot of roads, and transportation, and that discrimination needs to be comparative. Arc View is recommended. A software developed by a company named Maya was studied.

Alice Wright-Bailey: suggested that a demonstration of this tool be provided to this group.

Jerome Balter: asked the question, "If Joe Blow Company wants to put a facility here, which gives off this kind of emissions, what will your system be able to tell us?"

Don Brown: stated that for some diseases that are suspected environmental exposures linked environmentally and spatially. We will see a connection comparison between the temporal and spatial.

Jerome Balter: asked if this will allow us to somehow make a comparative analysis, when we talk about discrimination. How would this system work?

Don Brown: said that what he wants to show is a visualization of exposure, and what is done with that is not on the table.

Alfred Brown: asked how far back does this temporal go?

Don Brown: said that each database is different, and that different challenges will be presented with each one, and that it is often difficult to get disease information to load.

Janine Smith: asked if Don had seen the REIS database in CD-Rom for the EPA? She said that she has tried to publish a paper on this subject for a long time now, and is sensitive for trying to get townships or counties data. She recommended that the State get Arc View.

Edward Thomas: suggested that the Board break for a working lunch, and encouraged Don and Janine to further discuss these issues with one another. Ed also recommended that a visual presentation be provided at the next meeting.

Don Brown: said that he would try to get the Maya people in for a demonstration.

Alice Wright-Bailey: asked how we deal with two (2) communities having similar problems—one having health insurance and one not having health insurance.

Don Brown: stated that all we are trying to do is load diseases and environmental exposures, but the platform will allow insurance data or any other social data.

Edward Thomas: instructed the Board and guests to prepare their lunch, and bring it back to the table, for a working lunch.

Charles Lee and Sue Briggum: Charles is from the EPA, and Sue is with the National Environmental Justice Advisory Committee (NEJAC). They provided handouts and gave a presentation on Risk Reduction and Tools for EJ Communities.

Marylou Barton: asked Sue if the de-coupling is voluntary, or regulatory extension for a change.

Sue Briggum: answered that it's voluntary, but voluntary with waivers. If there was a permit pending, there would be conversations with the community, and a decision made on how industry can be a good neighbor and try to provide 100% compliance.

Marylou Barton: agreed that having the right group of people together at the right time you can do anything.

Sue Briggum: stated that if you have a bunch of losers, you have to go to the rigors of the law.

Marylou Barton: asked about “scoping,” and was it correct that scooping in a community outreach program that involves scoping the community to determine what they believe is the problem.

Charles Lee: confirmed that.

Edward Thomas: asked if there was any old news.

Janine Legg: brought up “Building Healthy Communities.” She believes that it would be a starting point, and that the subcommittees would take action. She also stated that a paper from the work group has not come out since 2001.

Edward Thomas: stated that a Motion be voted on for Janine’s request.

Janine Legg: reiterated that the group look at “Building Healthy Communities” as a document to be used as a starting place on the sub-committees.

Jerome Balter was in favor of the Motion, however, **Patrick O’Neill** opposed the Motion due to not being at the last meeting and having not seen or reviewed the document. The Motion was opposed.

One Motion passed, 050505, one Motion opposed.

The meeting was adjourned at 2:30 p.m.

Minutes taken by: Lynne Romanoski