

ENVIRONMENTAL ADVISORY COUNCIL
Lansing, Michigan
Thursday, May 19, 2005 1:00 – 4:00 p.m.

Members in attendance: Jon Allan for William Beckman, Mark Bertler, Janis Bobrin, Nicole Rom for Andy Buchsbaum, Steven Chester, Mark Clevey, Jim Frey, Kurt Giberson, Mike Johnston, Ellen Kohler, Terry Link, Lisa Locke, Kevin Kruszewski for Steve Luskow, Terry Miller, Fred Gordon for Paul Murray, Alan Greenberg for Allen Reilly, Diane Rekowski, Debra Rowe, Pamela Smith, William Stough.

DEQ Staff in attendance: Linda Albro Sparks, Dennis Armbruster, Bryce Feighner, Allison Gentner, Steve Holmi, Dipo Oyinsan, Amy Kohlhepp, Frank Ruswick. Milt Scales, Bob Sills.

Representatives from other state agencies: Jean Chabut from Department of Community Health, Pam Yager from Department of Labor and Economic Growth.

Presenter: Scot Yoder from Michigan State University

OPENING

Frank began the meeting introducing a presenter from outside the DEQ. Scot Yoder, a visiting professor from Michigan State University will be giving a presentation on environmental justice.

Frank also explained that several representatives of other state agencies will be participating in the EAC's discussion of environmental justice.

CURRENT ISSUES

Director Chester described the work of the Mercury Utility Workgroup which will be holding their final meeting today. The Work Group will be providing a report with recommendations to the Director, including recommendations relating to coal powered power plants. Director Chester indicated that he is anxious to get the report, which he is expecting will contain very useful information and will be of great value. The DEQ is considering making the report available online.

A member indicated that environmental health directors were not represented on the Mercury Utility Workgroup. These individuals have a lot of expertise on local health issues. Air emissions and other significant sources of mercury are outside of the purview of local health officials. The member requested an opportunity to be heard prior to the release of the report. Director Chester advised the member to contact Vince Hellwig, Chief of the Air Quality Division, who is primarily responsible for the efforts of the work group.

Director Chester indicated that Governor Granholm issued an Executive Directive to state departments to find, promote, and implement energy efficiency management in state buildings. DEQ, DLEG, and DMB are charged with providing the Governor with recommendations to promote energy efficiency. Director Chester indicated that he is very excited about this program, and is looking forward to new efforts to promote energy efficiency and clean technology.

A member noted that the House of Representatives had released the initial appropriations subcommittee ranking of DEQ programs under the price of government budget approach. In response to a request, Frank indicated that he would send the rankings to EAC members.

A member asked for an update on the dioxin issue in the Midland and Saginaw Bay area. Frank explained that the DEQ and Dow are developing a proposal for long term community involvement in the dioxin issue. The DEQ and Dow consulted with outside public involvement experts in developing this proposed “on-going community involvement process”. The DEQ and Dow expect to hold a series of three town hall meetings in the affected areas this summer to take comments on the proposal. Before then, a newspaper insert will explain to the affected communities the process that is underway and what they can expect to be happening over the next several months.

The members asked about actions being taken under the Dow hazardous waste operating license and Framework Agreement to address the dioxin contamination itself. Frank explained that Dow is undertaking the actions at Priority 1 areas that are described in the Framework. Director Chester indicated that the member could contact Deputy Director Jim Sygo for additional information.

A member asked what the state and the DEQ think about the time frame for release of the next step in the Annex 2001 process. Director Chester suggested that the member contact Ken DeBeaussaert, Director of the Office of Great Lakes.

PUBLIC INVOLVEMENT HANDBOOK

Frank indicated that the draft public involvement handbook, which had been previously provided to EAC members, was developed to assist the public in communicating with the DEQ. Steve Holmi and Amy Kohlhepp have been instrumental in putting this together. The target audience is members of the public who do not have regular contact with the DEQ. Amy explained that the document would be made available both in hard copy and electronically on the DEQ website. Frank asked the EAC for comments on the draft handbook.

A member suggested an executive summary to help the reader focus on the important points in the handbook. The public often wishes to be involved and we should try to provide short guidelines on how to do that, as well as easy accessibility. The member thought the handbook was very good. The member noted that the loss of boards and commissions presents a structure impediment to public involvement. The public is not well equipped to deal with the DEQ as easily as interest groups that do so frequently. That is why the quick and easy guide could be important.

A member agreed that much of the public involvement in the DEQ naturally gravitates toward interest groups. The member encouraged the DEQ to develop means to provide greater and more effective access for individual members of the public. Frank responded that this Handbook is intended to describe current public involvement opportunities. In response to the EAC’s prior recommendations, the DEQ has undertaken many activities to improve public involvement generally. Frank will provide summaries of those efforts for EAC members.

A member suggested that the handbook include a table at the end to provide quick links to different sections of the document. The member also asked about how the DEQ intended to distribute the handbook. Amy responded that the distribution plan has not been fully developed. However, the DEQ plans to distribute the document through the web, as well as at district offices and public hearings. Amy welcomed other ideas about how to distribute the document.

A member suggested that the handbook list the various permits that the DEQ administers. Frank indicated that listing in the handbook all the permits that the DEQ administers would be difficult. However, we can provide examples of the major permits and then point the reader to other sources that more fully describe all the DEQ permit programs.

A member suggested that the DEQ should provide in-depth guidebooks to the public on major permit programs. Frank indicated that the DEQ has an effort underway to do this in for the water discharge permit program. However, developing such guidebooks is very time-consuming and expensive.

A member suggested that the DEQ consider attempting to provide public involvement information through school curricula.

A member suggested that the DEQ make the handbook available electronically to other organizations so that they could distribute it.

A member commented that hard copies are much more useful in field offices. Another way to support citizen involvement is by providing a listing of organizations that individuals can join. Individuals are more effective when they come together as groups. Another member was concerned that it would be difficult to list all such organizations and listing some could be viewed as an endorsement. Amy indicated that the EPA maintains a website that lists citizen groups involved in work on individual watersheds. The handbook could point readers to that resource.

A member commented that the tone of the handbook was very welcoming to encourage citizen involvement. The handbook did a good job of considering its audience. The member endorsed the concept of connecting with schools to encourage citizen involvement. The DEQ should consider making presentation in social studies classes on how government works. The member suggested that the DEQ issue a press release when the handbook is ready for distribution.

Frank thanked the EAC for great comments received on the handbook. The DEQ will be developing the next version of the handbook based on those comments.

ENVIRONMENTAL JUSTICE PRESENTATION

Frank introduced Scot Yoder, Visiting Professor of Philosophy at Michigan State University, who gave a PowerPoint presentation about the concept of justice with a focus on environmental justice. See Attachment 1.

DISCUSSION OF ENVIRONMENTAL JUSTICE

Frank began by outlining the reason the EAC is being asked to consider the environmental justice issue. There is a request before the Governor to adopt an environmental justice policy for Michigan. The EAC members are broadly representative of the types of interests whose thoughts on such a policy would need to be considered. Therefore, we are asking the EAC to be an initial sounding board on the issue. It will help us identify the types of issues that need to be addressed in considering an environmental justice policy. We are inviting other state agencies to participate in this discussion as well because the implications of a state policy on environmental justice go well beyond the DEQ. Frank indicated that rather than consider a proposed policy directly, the discussion has been structured to begin with background information on the concept of justice generally. Based on today's discussion we will look at the types of questions that are raised, and the topic areas EAC members express an interest in. From there we will be better able to structure the discussions at future meetings so that we can effectively consider a potential state policy.

In response to a question, Frank indicated that a number of citizen organizations working on the environmental justice had proposed that the Governor adopt a policy on this issue.

A member commented that, whatever the EAC says about environmental justice, we will need to keep in mind the difference between theory and practice. Any policy being considered for adoption must be capable of being implemented.

A member asked if the DEQ has a current policy on environmental justice and, if so, whether it differs from the EPA's policy. EPA has developed an extensive amount of information on environmental justice.

Frank indicated that there had been a prior discussion of environmental justice during the previous administration. However, that discussion developed into a proposal related to community involvement generally, rather than environmental justice specifically.

Director Chester indicated that, although he did not participate in the prior discussion, he understood that the process was not very fruitful. Part of the reason for the discussion with the EAC is so he can be educated on the topic. Director Chester expressed concern that there is sometimes an immediate negative reaction to environmental justice as a policy issue. However, he views it as important from the perspective of protecting children's health, improving local economies, and providing jobs. The DEQ has an obligation to protect the public's health; we are committed to redeveloping Brownfield's; and bringing job opportunities to poorer communities – communities of color. He looks forward to the EAC's discussion of this topic.

A member indicated that we can't manage something we can't measure. We can measure things like jobs, reduction of Brownfield's, and how those assets get utilized in community. The member views environmental justice as ultimately what EPA has done regarding emissions reductions and things we can measure as opposed to a philosophical issue.

Jean Chabut commented the presentation was very good. She noted the wide differences in interest among various types of community organizations including those concerned about rape, domestic violence, bike helmets, drunk driving. Could such groups working on different aspects

of creating safe communities also participate in a broad based effort focusing on environmental justice issues?

A member commented on the connection between product choices, strong economy and environmental justice. The member used the example of a Styrofoam cup that doesn't degrade. An environmental justice issue could be "How can we make biodegradable cups?" since it could provide an economic opportunity for communities in need of jobs.

A member indicated that we have problems when presented with "either/or" choices, such as either environmental protection or economic growth. Too often our system of governance presents such choices. We should look for procedures and opportunities that broaden the choices available to us. That way we could address both the procedural and substantive aspects of justice.

A member cited a book by John Rawls who authored the book "A Theory of Justice". In it, Rawls asked the question: what type of system of governance would be perceived as fair by everyone, if no one knew what advantages or disadvantages they personally would have in working under that system of governance. What rules would we establish to govern ourselves, and create rational democratic deliberation? The member suggested such rules would be different from those we have now that strengthens the influence of special interest groups. An important question is how that sort of process can be created at the local level to improve the democratic process?

A member agreed that it is important to create systems that foster a dialogue among affected interests in a variety of settings. We should not focus so much on creating work groups or changing policies. What we really need to do is provide opportunities for community members to demonstrate leadership on how their communities will develop.

A member noted the difference in choices we have between how to address the problems created in the past (legacy issues), and how we prevent such problems in the future.

A member commented that we should consider the reality of the risks involved? The effect of legacy issues means that certain problems currently exist. We need to be able to explain the relative contribution of various sources to environmental conditions. The public might be fascinated to learn that some sources, such as stationary air emissions, do not contribute to localized environmental problems as much as other sources such as motor vehicles. If a source is a minor contributor, we should not be too concerned about its impact.

A member indicated that one issue related to environmental justice is the difficulty in quantifying long term impacts. Therefore, our policies should be cautious in nature. It is easier that way to be assured that we are not creating new disparate impacts.

A member noted that the federal government has done a lot of work on environmental justice issues. Some policies describe the state's role preventing disparate impacts when implementing delegated federal environmental programs. The member asked whether there was an expert in the DEQ on the Title VI legal requirements. We should know what programs we have in place before we consider another one? Is there something we can do in Michigan that can dovetail with federal guidelines?

A member agreed that it would be helpful to have further background information on the role of the DEQ in environmental justice cases to date.

A member questioned whether the EPA has any data that would be helpful in considering where at risk communities are. Another member agreed that such information would be helpful in determining where disproportionate impacts may be occurring.

A member described how the EPA administered environmental policy resulting from President Clinton's Executive Order. Essentially, when a specific permit was being considered, the EPA policy required the regulatory agency to determine whether the activity would occur in areas defined as containing minority or low income groups. If so, additional outreach to those communities was required. However, the bottom line is that the requirements for obtaining a permit are established in law. If you meet those requirements, you should get your permit. It has never been clear how the EPA policy affected that conclusion.

Director Chester indicated that any system adopted needs to be fair and equitable, allowing interested parties to explore the multiplicity of options. We need to be able to both encourage industrial growth in urban areas and protect human health and the environment. There is little guidance on how to do this balancing. The first articles and studies on environmental justice that were published were extremely controversial within the EPA. After awhile, the EPA reconsidered how its actions may be contributing to the environmental justice problems that had been identified. That generated the policy that required consideration of affected communities.

A member commented that unless the criteria for making decisions change based on the affected community, the only changes that can occur relate to the decision-making process itself. The member used as an example an air emission permit in another state that was remanded to the state agency because EPA decided it didn't meet environmental justice requirements. However, all the state agency had to do after remand was hold a meeting with community members. The permit itself was ultimately issued.

A member commented that the ultimate decision with respect to any development proposal needs to be about the "triple bottom line" involving economic health, social responsibility, and environmental stewardship. We should develop policies and programs that will encourage this perspective in the long term.

A member asked whether the EPA's environmental justice policy resulted in a map that identified minority and local income communities for purposes of environmental justice considerations. Frank responded that he wasn't sure whether a map existed, but that proposals were evaluated based on proximity to census tracts with a given percentage of minority and local income residents. A member indicated that he had seen a map depicting the affected census tracts.

A member suggested that we do not need to couch this discussion in terms of environmental justice. Rather, we can talk in terms of the proactive things that need to be accomplished with respect to, for example, protecting public health.

A member asked what information is available on which communities are currently being impacted from a public health perspective.

Director Chester indicated that we are perhaps considering the issue too narrowly. There is an intergenerational component to environmental quality and human health that needs to be considered.

A member noted that the EAC needs to be clear about what it is being asked with respect to an environmental justice policy. Environmental justice is one component of a decision making process. The members expressed an interest in starting from a more global perspective.

Dipo Oyinsan noted that one aspect of the concept of disparate impacts is the issue of cumulative effects. That is, even though a group of permitted sources may individually meet legal requirements, there can still be an impact caused by the cumulative effect of the permitted sources taken together.

A member cited the federal Prevention of Significant Deterioration (PSD) permit in the air quality program. Cumulative impacts have to be considered under the PSD program for certain pollutants such as carbon dioxide and particulate matter. It doesn't apply to toxic air pollutants.

A member noted that many minority and low income communities suffer from increased risks to human health beyond environmental causes. Therefore, what might be considered a safe emission or discharge in one community may not be in another.

A member commented on the social equity component of this discussion.

Director Chester noted that some sectors of the community are worried by discussions of cumulative risk. They want economic development in their community because they want to provide people with good jobs. There can be a willingness to accept some level of risk, if they have a say in that risk and the economic benefits accrue to the community.

A member reported experiences that have created distrust by community members of government officials. In one instance years ago, even though the facts supported the community's contention that a proposed incinerator had significant problems, government officials persisted in characterizing it as safe. In a current example, public officials in one community are denying the presence of contamination or the need to clean it up. However, we have to be careful about assuming adults or elected officials speak for everybody. We also need to watch out for our children and future generations. Therefore, individual communities should not be allowed to choose the level of contamination that is acceptable to them.

A member indicated that the EAC should not limit itself to considering only rules and regulations when devising tools to address environmental justice concerns. We should find ways of encouraging community dialogues. This raises the question as to whether participants can really leave their self interests at the door when participating in such dialogues. We don't know for sure whether people can act in the furtherance of a greater good, but we should try.

A member thought it impossible for members to participate in a group effort without representing their own interests.

A member countered that experience leads to the conclusion that people can act beyond their individual self-interest. It can be very energizing to see this happen.

A member expressed concern with the suggestion that a new community group process accompany the environmental permitting process. Much of the permitting process is technical in nature and it is difficult to take such issues to a group of lay people. The member also expressed concern about the time it would take to get a permit decision if such a community group process was added.

Director Chester relayed that he thought it possible to have a group of individuals work beyond their individual interests. He cited the membership of the Land Use Leadership Council that represented a wide range of interests, but still agreed to 160 recommendations. More recently, the work group formed to address the controversy over mining in the Upper Peninsula agreed on a very extensive legal framework. Director Chester admitted to being originally concerned about the group's potential for reaching consensus, however, he was happy to say he was wrong. The mining legislation was passed and signed by the Governor in December. One can be surprised by what can be learned through such group discussions.

A member responded that these were only examples of special interest groups coming to a reasonable accommodation with one another that provided mutual benefits.

A member agreed that it is difficult to leave personal biases aside. It is natural for people to defend their positions.

A member encouraged the EAC to work with local governments on environmental justice issues. Local governments use zoning and other land use tools that could be impacted by a state environmental justice policy, and, therefore, need to be considered in this process.

CLOSING

Frank indicated that this had been a fascinating discussion. There is clearly a fair amount of interest in discussing the topic of environmental justice. He thought the effort should be very interesting for the EAC and, hopefully, very rewarding. As we get into the topic further, there may be a need for more reading assignments for EAC members, but he will try to keep the amount manageable. Based on today's discussion, it looks like the June meeting should be devoted to a presentation and discussion on specific developments in Michigan and nationally on environmental justice policy. Frank invited Professor Yoder to join the EAC in future meetings discussion environmental justice. We will also continue to invite other state departments to participate.

Frank also indicated that one of the EAC members has done some work with alternative community decision making models. Based on today's discussion, this may be something we might want to include since it appears there is some interest in it.

Professor Yoder encouraged the EAC to continue to recognize the intergenerational aspects of environmental justice.

Notes by Linda Albro-Sparks; summarized by Frank Ruswick.