

ENVIRONMENTAL ADVISORY COUNCIL
Lansing, Michigan
Thursday, July 21, 2005 1:00 – 4:00 p.m.

Members in attendance: William Beckman, Matt Monroe for Mark Bertler, Janis Bobrin, Steven Chester, Jim Frey, Kurt Giberson, Mike Johnston, Ellen Kohler, Terry Link, Lisa Locke, Jeff Furton for Steve Luzkow, Terry Miller, Paul Murray, Debra Rowe, Pamela Smith, William Stough, Donele Wilkins.

Guests in attendance: Tom Stephens, Guy Williams, Brendan Boyle from the Department of Community Healthy, James Fields from the Governor's Interfaith Council, Gloria Jeff, Director of the Michigan Department of Transportation.

DEQ Staff in attendance: Ken DeBeaussaert, Linda Albro Sparks, Frank Ruswick, Milt Scales, Bryce Feighner, Dipo Oyinsan.

OPENING

Frank Ruswick explained that most of today's meeting would be devoted to a discussion of a possible state policy addressing environmental justice.

CURRENT ISSUES

Director Chester outlined a series of meetings being held throughout the state by the Senate Natural Resources and Environment Committee to consider the issue of groundwater protection. Director Chester welcomes these hearings and will be attending all of them.

Director Chester described a policy that was recently adopted to clarify when the DEQ considers a property to be a "facility under Part 201, Environmental Response, of the Natural Resources and Environmental Protection Act. This policy grew out of concerns by residents in Midland and along the Tittabawassee River that the DEQ was unfairly characterizing property as part of the facility associated with dioxin contamination. The DEQ has also developed a brochure, based on the new policy that specifies which properties the DEQ considers to be part of the dioxin-related facility. This brochure will be sent to residents along the Tittabawassee River and will be made available to others.

ENVIRONMENTAL JUSTICE DISCUSSION

The following Environmental Protection Agency definitions were provided to EAC members to consider for use in possible Michigan environmental justice policies:

“Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”

“Fair Treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal environmental programs and policies.”

“Meaningful Involvement means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public’s contribution can influence the regulatory agency’s decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) decision makers seek out and facilitate the involvement of those potentially affected.”

The following questions and comments arose during the discussion of these definitions:

1. There were questions regarding the consistency of these definitions with EPA and other states. The EAC was informed that these definitions are currently employed by EPA and have been adopted by several other states. They are also consistent with NJAC.
2. Members expressed concerns that implementing EJ according to these definitions might require agencies to go above and beyond their regulatory authority. If so, would the state actually implement an EJ policy unless there were EJ regulations that superseded environmental regulations?
3. Members raised questions regarding whether changes in outcomes, or merely changes in process, were expected by implementing EJ. How would we measure these outcomes?
4. Members suggested adding words in certain definitions to be more inclusive. For example, some believed that the list of entities that may cause negative environmental consequences in the *Fair Treatment* definition was too narrow. Some suggested adding “agriculture”, “military”, and “transportation” to “industrial, municipal and commercial operations”. Others believed that since lists are never all-inclusive, it would be better to eliminate this list altogether and replace it with the phrase “public or private”. Similarly, some suggested replacing the list of government agencies with the phrase “government agencies”. A related question was asked regarding how to measure negative environmental consequences with only limited and uncertain data?
5. A number of questions were asked regarding the meaning and extent of definitions and words within those definitions. What is fair treatment? What is low income? How do we define disproportionate impact? Is the intent of EJ merely to address environmental issues in low income areas or to address low income itself? Some thought the definition of “environment” should be expanded to include social and economic location as well as its natural and normal use.
6. Some expressed concern that the definitions were more reactive than preventative. On a similar note, another concern was expressed that the definitions do not seem to address future generations. One person reminded us that the origin of EJ is with Civil Rights. Hence, we need to recognize that some of our work must be corrective (or reactive), as well as preventative. We need to improve environmental quality in EJ areas as well as prevent further degradation. We need to provide equal opportunities to those in EJ areas, rather than merely providing equal access to information and public participation. It was noted that financial appropriations for some programs and projects already exist that could be better utilized to accomplish EJ principles.

7. The Director indicated that it would be good if we could move forward with these definitions. While they are not perfect, they are generally accepted and functional for purposes of developing policy. After a short discussion, the EAC agreed to discuss possible components of an EJ policy rather than continuing the focus on the definitions.

The following questions and comments arose during the discussion of the possible components to include in an environmental justice policy:

1. Outcomes of a successful environmental justice policy would include civil rights considerations being weighed in governmental action, citizens having an effective voice in how their communities develop, and both economic and environmental improvement for communities.
2. The Policy should establish principles for action by the Executive Branch. Such principles might include:
 - a. Michigan intends to be proactive in addressing EJ concerns. This means seeking to prevent EJ problems before they occur and finding ways to address existing disparate impacts beyond just in the context of specific development proposals.
 - b. Michigan's EJ policy should not result in disincentives to development. On the contrary, the policy should foster the creation of incentives for appropriate development.
 - c. Michigan believes in the value of effective citizen involvement in decisions affecting their communities, including how those communities develop. A key aspect of that involvement is the ability to understand and participate in discussions regarding the trade-offs associated with proposed developments.
 - d. The policy is grounded in an interest in reducing overall environmental and social burdens, not relocating them.
3. The Policy should create general requirements for action. Some that should be considered include:
 - a. Each department should establish a strategy and mechanisms to ensure that EJ principles are incorporated into departmental actions and institutionalized.
 - b. Establishing an inter-agency working group to oversee and assist implementation of the state policy
 - c. Establishing mechanisms related to data needs (review currently available data, determine areas of disparate impacts, review data collectively and correlate data on disparate impacts with actions)
 - d. Developing performance goals and measures (for addressing EJ) and periodically evaluate progress

The policy might also require certain actions of the DEQ. Some to consider include:

- a. Developing a statewide environmental quality index
- b. Conducting an independent review of DEQ rules and regulations for disproportionate impact

Several concerns about a possible environmental justice policy were raised. These included the need to develop a policy quickly to minimize the potential for it being negatively affected by a possible civil rights related ballot proposal, a concern that the policy not result in the “red-lining” of certain areas from development, and whether proposed facilities that meeting current legal standards would be impacted.

Frank indicated that he would review the comments from EAC members and guests and develop a proposed framework for discussion at the August EAC meeting.

ANNEX 2001 PROCESS UPDATE

Ken DeBeaussaert, Director of the Michigan Office of the Great Lakes provided an update on the Annex 2001 process. Ken explained he had brief the EAC about a year ago on the first draft Annex agreements. Those agreements were submitted to the public and resulted in over 10,000 comments. Based on those comments, the eight Great Lakes States and two Canadian provinces have made significantly revisions to the draft agreements, which Ken outlined. The revised draft agreements are now being submitted again for public comment. Ken indicated that additional information summarizing the new drafts and the public participation process will be posted on the Office of Great Lakes website at http://www.michigan.gov/deq/0,1607,7-135-3306_29338---,00.html.

A member asked Ken if there was consensus among the Great Lakes governors on the current draft agreements. Ken indicated that the documents will not be submitted for approval by the governors until after public comment is received and considered.

In response to a question, Ken explained that these drafts appeared to be receiving more support from the public than the earlier drafts, although many states had not yet held public meetings.

In response to a question, Ken explained the role of other states in commenting upon water withdrawal proposals in another states. The comment is not a “vote” and is not binding upon the state where the withdrawal will occur.

CLOSING

Frank thanked the members and guests for their participation. He indicated that he will attempt to provide documentation from this meeting as soon as possible, especially the draft framework for a possible environmental justice policy. He invited members and guests to submit comments on that document, so they could be incorporated and then provided to members prior to the August EAC meeting.

Notes by Linda Albro-Sparks; summarized by Bryce Feighner and Frank Ruswick.