

Governor's Advisory Council on Environmental Justice (ACEJ)

**Patrick Henry Building – Richmond
Constituent Services Conference Room
October 11, 2018
10:00 AM – 12:30 PM**

Executive Summary

The Governor's Advisory Council on Environmental Justice (ACEJ) Subcommittee Meeting was held on Thursday, October 11, 2018 at the Patrick Henry Building in Richmond. The Council began with an update from a representative of the Office of the Attorney General, who provided a review of Executive Order 73, the terms by which the Council was established and identified a few conflicting areas in the Virginia Code as it pertains to the lifetime of the Council. Any commission, council or body created by the Governor of Virginia through executive action is valid for one year, with the option for the Governor to renew the order for another year. These gubernatorial commissions, by code, shall not exceed beyond the term of the Governor under whom it was created. Executive Order 73, establishing the Council, was signed and issued by former Governor Terrence McAuliffe in October of 2018. Under Governor Northam, the Council has continued to meet and staff support is provided by the Administration.

One key factor is that general law with respect to all executive orders is that they do not expire at the end of a Governor's term. The Council will continue to meet, and work to deliver an annual report in December.

The Subcommittee discussed the implications of this structure, identified initial priorities in addressing the future of the Council in the annual report. One key step was the annual report assignments and plan for completing this work. The Council intends to review the draft the report during its next meeting- to be held on December 18, 2018 in Richmond – and potentially submitting a final version approved by the full Council.

Welcome and Introductions

The meeting was opened by Beth Roach, Vice Chair of the ACEJ. Ms. Roach gave an overview of the agenda, and began the meeting with roll call and introductions. Ms. Roach noted there was an important announcement from the Office of the Attorney General that pertains to the structure of the Council. She opened the floor for a brief round of introductions and roll call. Council members in attendance included Dr. Janet Phoenix (Chair), Beth Roach (Vice-Chair), Dr. Peter deFur, Dr. Mary Finley-Brook, Dr. Mike Ellerbrock, Angela Harris, Hope Cupit, Dana Wiggins, Dawone Robinson, and Hope Cupit. Also in attendance were Meryem Karad, Office of the Governor, Trieste Lockwood, Department of Environmental Quality, and members of the public.

Ms. Roach reviewed the agenda and asked members to review the agenda documents as well as the annual report topics draft document provided by Dr. Phoenix.

She opened the floor for questions. Ms. Finely-Brook noted that there was no time for public comments allotted during this meeting and suggested an addition to the end of the agenda. Several council members agreed and the agenda was amended to include public comments at the end of the meeting. Ms. Roach announced the group, some of whom were on the phone, would break at noon for public comment.

Update from the Office of the Attorney General: Executive Order 73

Paul Kugelman, representing the Office of the Attorney General, briefly introduced himself and stated that upon reviewing Executive Order 73, the Code of Virginia and the statute specifying the lifetime and existence of gubernatorial commissions like the ACEJ, with more respect to how long these executive orders can remain in effect by law, it appears this order is out of compliance with the code, as it should have expired. He added that in his mind, this leaves a bit of gray area with respect to the body continuing to meet. Mr. Kugelman acknowledged that he is aware that this body has continued to meet and provides valuable guidance to the Governor and this administration, and he is not aware of any law that prohibits the Governor from receiving advisory guidance from this body, including the report due this December. There was an emphasis on the council's report that is due this December, and members were encouraged to include their recommendations for the future of the Council in that report.

Executive Order Discussion

Several council members had questions regarding the future of the Council, which are denoted below and accompanied by a recap of answers provided by the Governor's staff and Mr. Kugelman. A few council members joined by phone after Mr. Kugelman's announcement and were updated throughout the discussion.

- As long as the council continues to meet, the council is subject to FOIA.
- The annual report will determine the next steps the administration will take in regards to the council, and the council is still meeting.
- This current order is out of compliance and not eligible to transition through this Administration because it was created by Governor McAuliffe. A new executive order could be issued to create a new commission (Council) and it could be eligible for renewal upon review at the end of the one-year term, which would be the Council a total of two years.
- We are working with the AG and Governor's office on next steps
- Mr. Kugelman clarified that his is not the official opinion of the Attorney General, but rather it is his advice as a staff member.
- Most similar bodies created by Executive Order state an expiration date and depend on the work of the commission or council.
- The process for the potential creation of a new EO is internal because it is created through governor's administrations. We invite you to provide advice in the annual report

on what you would like to see and how you would recommend the Council's future work is structured.

- The Council expressed concern about the structure laid out in the Executive Order and emphasized the need a strong legal framework for the Council. As staff looked at this Executive Order and similar orders, they became aware of this legal ambiguity. It can be seen as an opportunity to for the council to include their recommendations for next steps in the December report.

Following the questions, Ms. Finley-Brook suggested that in light of this information, rather than address future site visits, the focus of the rest of this meeting should be on the annual report and working to address the critical questions around structure and long-term standing since the order can only be renewed one more year.

Dr. Phoenix expressed that it is important to have both done. Dr. Phoenix noted that she was aware of the announcement that was going to be made today, and when she was made aware of it, she was left with the impression that the Council will continue to meet until they hear otherwise. She expressed that it is an excellent suggestion that the discussions that members have had about structure and in the process of drafting the annual report, that could also be used to better inform and ensure that the Council continues.

A Council member asked if there were other ways for the Governor to create the Council as a permanent status. Mr. Kugelman cited the Code of Virginia to note the limitation and requirements pertaining to gubernatorial commissions restrict terms to no more than two years. He shared that General Assembly action and creation of this type of body is one way to create a more permanent status.

Governor's Update

Following the Executive Order discussion, Dr. Phoenix invited the Governor's office to provide an update. Ms. Karad shared that the Governor is in receipt of the ACEJ's letter this past August, and greatly appreciates the Council's time, commitment and valuable work. The Council should expect a response in the coming days. Ms. Karad emphasized that Governor Northam and Secretary Strickler very much look forward to the Council's annual report and recommendations this December. She briefly added that the Governor and his staff are in the midst of preparing for the state budget proposal and the upcoming legislative session.

Members then discussed the timeliness of the budget cycle and any opportunities for support of the Council as the Governor prepares the proposed budget bill for introduction by the General Assembly. While considering requesting funding support for the Council in the budget, the group came to the consensus that the December report would be too late in the Budget process, but agreed that it should be included as a recommendation regardless. She reminded the Council the next full member meeting is scheduled for December 18th in Richmond.

Next Meeting & Logistics

Members inquired about the meeting time and logistics. Dr. Phoenix suggested 10:00am – 4:30pm, with a working lunch. Public Comment will take place at 4pm, and the focus of the meeting will be finalizing the annual report.

A few members expressed difficulties using the conferencing system at previous meeting, and Ms. Karad will seek a better alternative if available.

A member then asked what the logistics of how the report is actually drafted and shared that it is important that the Council a “nearly final” draft to work on when the full ACEJ arrives at the December meeting.

Annual Report

Dr. Phoenix proposed beginning with referencing the Executive Order discussions and previous conversation regarding

Communications & Drafting

Dr. Finley-Brook expressed concern about the process of drafting of recommendations, communications and support. Ms. Karad emphasized drafting does need to comply with FOIA requirements but will provide a drop box for the Council to use. Ms. Karad explained that documents can be circulated for edits and comments, however, in order to comply with FOIA requirements, the Council will not be able to work on a living document, such as google docs. Tracked changes on word documents can be used, though Council Members may not correspond through comments on the draft. All documents and drafts will be available to the public.

The Council then discussed the Draft Outline for the Annual Report:

Draft Outline for Annual Report

- I. Introduction to Environmental Justice
- II. Events Leading to the Formation of the Virginia Advisory Council on Environmental Justice Council
- III. Issues and Regions Explored
- IV. Upcoming Issues and Regions
- V. Framework for Future Work
 - Cross Cutting Issues
 - Regional Issues
- VI. Goals and Constraints
- VII. Recommendations

Dr. Phoenix asked to discuss due dates for the draft documents before addressing the annual report sections, and then she opened the floor to members to discuss availability. Council members participating agreed on Tuesday, November 13th at 10:00 AM for the next subcommittee meeting to discuss the first draft of the Council’s report.

After deciding on a date, Dr. Phoenix then opened the floor for review of the draft outline of the annual report. Dr. Finley-Brook expressed discontent regarding the focus on issues in regions, stating this focus limits the Council's work.

She suggested that structure and organizational development should also be a topic within the annual report (citing other states Advisory Council on Environmental Justice).

Council Members raised the following points and suggestions:

- The importance of reeducating individuals on the introduction to environmental justice.
- Who is the readership?
Dr. Janet responded that the readership is anyone in the state who is interested in this topic.
- Holding a public comment period for people in the public to suggest recommendations on what to include.
- Summarizing all the public comments and putting it in the appendix of the final report.

Ms. Karad suggested a survey among council members to suggest their top topics for the annual report, and offered to send this out in a communication to the Council. All comments and drafts should either be forwarded to Meryem or posted in our new shared drive.

Work on Drafting our Annual Report:

- November 5th - First Drafts of Sections
- November 11th - Submit comments on first drafts
- November 13th - Conference Call Discussion of Drafts
- December 1st - Comments incorporated and 2nd draft completed
- December 10th - Last day to submit comments on 2nd draft

Writing Assignments:

- Section I: Intro to EJ: Faith, Tom, Janet
- Section II: Events Leading to the formation of the Council: Angela, Mary F.
- Section II: Issues and Regions Explored: Mary Cromer, Angela, Janet, Mary F., Dawone
- Section IV: Upcoming Issues and Regions, Janet, Mary F, Beth, Dawone
- Section V: Framework for Future Work: Janet, Mary F, Beth, Dawone
- Section VI: Goals and Constrains: Mike, Janet, Peter, Angela
- Section VII: Recommendations: Hope, Dawone, Meryem

Site Visits

Dr. Phoenix stated that she was planning on making preliminary site visits to the Hampton Roads area in the coming weeks. She added that Council member Mary Cromer is also working on the South West site visit preparations.

It was reinstated that the administration is looking forward to the recommendations in the annual report to guide next steps for the Council. The Council then talked about planning of the site visits, and members of the Council identified the following dates as potential meeting dates:

- Week of March 13th - Tidewater
- Week of June 10th - South West

Funding

Ms. Roach then provided an update regarding funding opportunities for the Council. She informed members that she met with Mothers Out Front Foundation regarding supporting the ACEJ, and relayed that the organization asked for a travel budget.

Ms. Harris noted she spoke with Mertz Gilmore (Manhattan based), whose chair is from Virginia and currently funds 10 projects in the state. There was some hesitation from Council members regarding the likelihood of supporting government bodies and a participant on the phone expressed they believe the funding would come from the government.

Mr. DeFur, and a few others, suggested a few in state organizations that have within their charges moneys appropriated to support this work.

Members decided on the following budget line items

- Travel : Council & Stakeholder
- Administrative Support
- Issue Exploration
 - o Identifying Issues
 - o Preparing issue briefs for the Council

Next Steps

The Council will meet November 13th to discuss the first drafts of the annual report. The meeting will take place in Richmond, Virginia and will be available for access by conference call.

Public Comment

Ms. Queen Shabazz, Virginia Environmental Justice Collaborative

- Ms. Shabazz expressed thanks to the Advisory Council on Environmental Justice for the experience relating to public comments, very well pleased and shocked at the last meeting held in Richmond when was provided with feedback. Other councils and bodies are not as engaged as this council. Humanizing environmental justice, you all are really hearing and really listening. Appreciative of that and asks to continue along that line.
- Ms. Shabazz noted that she was currently in Chicago to oppose this administration [President Trump's Administration] efforts to uphold the Clean Power Plan.
- Dr. Mary Finley-Brook: Virginia is fifth mortality if the administration rolls back efforts of the Clean Power Plan. Most of those individuals are in Southwest, Virginia
- Ms. Shabazz- "We have made contact with the campaigns in Southwest, Virginia, we were able to talk about environmental justice issues"

Mr. Chad Ova, Friends of Buckingham

- Mr. Ova expressed appreciation of council member, Dawone Robinson's suggestion to add in public comments in the recommendations/annual report. Buckingham County has several environmental justice issues. Really encouraged that someone was listening to the individuals in the Buckingham County community (Union Hill). We don't have the time to wait for the resolution to go through the Governor. What can you do for us? The Virginia State Air & Pollution and Control Board will meet soon. Including the fact that the site is totally unsuitable due to the history of the area. Asking to take timely action on the behalf.
- Ms. Angela Harris and Dr. Mary Finely-Brook: discussed Title 6 information on the Raff Program and stop work order.
- Ms. Beth Roach: Understands the Governor will be responding to the letter in a few days and asked if their letter could be brought up to and submitted to FERC.
- Ms. Angela Harris: Trash that is being dumped in Cumberland County and people have been unaware that it was going on.

This concluded the public comment period at 12:23 PM.

The Subcommittee Meeting adjourned at 12:24 PM.