

Governor's Advisory Council on Environmental Justice (ACEJ)

Patrick Henry Building - Richmond
West Reading Room
December 18th, 2017
11:00 AM – 4:30 PM

Executive Summary

The inaugural meeting of the Virginia Governor's Advisory Council on Environmental Justice (ACEJ, the Council) was held on Monday December 18, 2017 at the Patrick Henry Building in Richmond. The Council began its work by reviewing background and charter documents detailing the objectives, procedures, and structures for the work they will do. The Council then identified initial priorities and next steps for future work. One key next step was the formation of a subcommittee to draft a letter commenting on Executive Directive 11: Reducing Carbon Dioxide Emissions for Electric Power Facilities and Growing Virginia's Clean Energy Economy. The Council intends to review the draft letter during its next meeting—to be held on March 20, 2018 in Richmond—and potentially submitting a final version approved by the full Council to the Department of Environmental Quality (DEQ) following this meeting.

Welcome and Introductions

The meeting was opened by Angela Navarro, Deputy Secretary of Natural Resources. Ms. Navarro reviewed Executive Order 73, which established the Council, as well as a structure document, which outlines the seven duties of the group. Ms. Navarro noted that the ACEJ is charged with delivering an annual report to the executive branch. She emphasized the need for transparency within the Council and for engagement with Virginia's diverse communities. Ms. Navarro shared that funding for the ACEJ was provided by a grant from the Energy Foundation, though that funding is sufficient to cover only the first three meetings and a more sustainable source of funding will need to be identified for continued operation of the Council. She introduced Tanya Denckla Cobb, Director of the Institute for Environmental Negotiation (IEN) at the University of Virginia and lead facilitator of the meeting, and shared that the IEN will facilitate the first three meetings of the Council. Together they discussed how a possible first order of the Council could be to submit a letter of support for Executive Directive 11: Reducing Carbon Dioxide Emissions for Electric Power Facilities and Growing Virginia's Clean Energy Economy, which will be moving to a public comment period in January.

Following a brief round of introductions by Council members, Governor McAuliffe arrived and was introduced by Secretary of Natural Resources Molly Ward. The Governor shared that he is excited about the work of the Council and about Virginia's efforts to address climate change and sea level rise, which have expanded recently as the state prepares to join the Regional

Greenhouse Gas Initiative (RGGI). He also discussed the Naval presence in Virginia and how important the issue of sea level rise is to the armed services.

Review of Agenda, Goals for Inaugural Meeting, Preview of Year

Ms. Denckla Cobb introduced co-facilitator Kristina Weaver, PhD (IEN), and project manager, Kelly Altizer (IEN). Dr. Weaver reviewed the day's agenda and possible trajectory of the three initial ACEJ meetings. She proposed a process by which the ACEJ would identify one to three areas of preliminary focus, prioritizing issues of greatest significance in the estimation of Council members. The IEN will take notes at each meeting and provide the meeting summary for each, and will also maintain resources that have been collected by the group on the file-sharing site, Box. Council members may email Kelly Altizer (IEN) to submit any resources to be added to the site. The website for the Council will be maintained on the Secretary of Natural Resources website at: <https://naturalresources.virginia.gov/initiatives/advisory-council-on-environmental-justice>.

Review of Structure Documents

Ms. Denckla Cobb asked members to review the Council's structure documents, which were included in the packets they each received. She opened the floor for questions, which are denoted in italics below and accompanied by a recap of answers provided by Ms. Navarro.

Will the annual report include the sustainability of the Council? Our hope is that it will be discussed well before the annual report is prepared, and that it could also be mentioned within the document.

What is the relationship of the ACEJ to the seven Secretariats listed in the Council's formation document? There will be ex-officio members from those agencies and departments as needed. Ms. Navarro will be liaison to those offices for now.

Some Council members have relationships with funding organizations. Can the members utilize these connections to seek sustainable funding for the Council? At this point, no. It's up to the new administration to determine how to move forward with funding. If the Commonwealth decides to seek Foundation funding, the Secretary's office will initiate the conversation.

What form does advice and counsel from the ACEJ take? It could be formal (for example, a letter, report, or document), or informal (for example, Council members might participate in a meeting that doesn't produce formal recommendations). Members should be careful not to give the impression that they speak for the full Council, which is also a question that the group should consider – who communicates on behalf of the Council, and what does that look like?

How or when will we determine how to approach the next administration? That is part of the transition that is currently in progress. There are lots of decision the next administration needs to make, which will likely take place over the next month. Hopefully by March the new administration will be able to articulate its approach. [Ms. Denckla Cobb added that part of IEN's role will be to smooth that transition, providing continuity and helping them to understand what happens at the ACEJ meeting].

Are there legislative committees that are aware of the Council, or committees that could find the ACEJ useful? Members of the General Assembly are aware of the Council but the work of the ACEJ is geared toward recommendations to the executive branch, not legislative.

How could the Council be formalized by the legislative branch? At some point in the future the ACEJ might wish to introduce legislation, but at this point the Executive Order is sufficient to provide accounting of the worth of the Council.

Are there other advisory councils that are provided for in legislation? Yes, but not ones that have been established via Executive Order.

Following questions, Ms. Denckla Cobb reviewed the other documents in the packet: the contact list, photos/bios, structure document, and Executive Directive 11. She noted that the structure document specifies a two-year term limit for all members, but that Ms. Navarro had shared that in the longer term (year two) there could be a discussion with members and the new administration about whether and when participants would rotate off of the Council. The ACEJ membership would have the ability to stagger term limits at a certain point, but all appointed members are being asked to serve for the first two years to ensure continuity while the Council is getting established.

Ms. Navarro explained that Executive Order 57, signed in 2016, initiated carbon regulation plans in the Commonwealth. The group involved with those plans produced top recommendations, including the establishment of the ACEJ, as well as the ideas behind Executive Directive 11, which directs the DEQ to create a draft regulation for carbon emissions. Executive Directive 11 is the regulation that the Secretary's office recommended the ACEJ include as one of its initial priorities.

Ms. Denckla Cobb walked through the structure document, highlighting the purpose the group, the definitions of environmental justice, and many of the logistics. The structure document is a living document that can be amended as needed. Meetings will be held quarterly and will rotate throughout the state; each will include a public comment period. The next meeting will be held in Richmond in March, after which the location rotation will begin. The third meeting will be held in June. Dates and times will be posted on the Commonwealth calendar, and Council members are encouraged to help spread the word to increase public involvement. Meeting summaries will be drafted by the IEN and shared with members.

Ms. Denckla Cobb discussed the need for decisions about protocols that will help the Council to have productive meetings. These include:

- Media Liaison - How will the group deal with the media? Who speaks for the group?
- Attendance - How will the Council include members who are not present for meetings? How do they participate in decisions? Are there votes by proxy?
- Accessibility
- Open Government requirements
- Consensus decision making
- Inclusion - How will the Council hear from groups and communities that cannot attend the meeting)? To this point Ms. Navarro offered that meetings could be live-streamed and saved to the Secretary's website. A question and answer function of the live-stream could be built into the agenda going forward.

Having identified the issues, Ms. Denckla Cobb recommended that the Council further discuss these items of process at the March meeting.

Ms. Denckla Cobb then opened the floor for members to share requests the group has in order to foster productive conversation. Requests include:

- Ensuring that members from grassroots communities have a chance to share history, concerns, and work that has been done.
- Ensuring that space will be given for those who have not shared as much as others in order for all voices to be heard.
- Staying on topic.

Following the requests, Ms. Denckla Cobb reviewed the idea of decision-making by consensus, which is fundamentally different than voting. The Council was formed to make sure all voices are heard, and consensus allows the group to hear from everyone to address all issues. In adopting a consensus approach, the intention is to build strong and resilient recommendations without silencing or wearing down any one member. The consensus building process begins with a discussion of questions and concerns, which are ideally shared early in the process to maximize the opportunity for solutions to be identified. Discussion typically generates a consensus report, which may include a minority opinion if needed, and can reflect whether it was a strong or weaker consensus.

There are three main considerations in determining whether one consents to a proposal:

1. Can you live with the proposal without compromising issues of fundamental importance?
2. Is the overall proposal and package worthy of support even though there may be some parts you like better than others?
3. Are you willing to support implementation of the whole package, not just the parts you like best?

There are many possible techniques to test for consensus. Ms. Denckla Cobb proposed adopting the “3-2-1 method,” in which members hold up either three, two, or one finger(s) to reflect the extent to which they support a proposal.

3 fingers = member fully supports the proposal;

2 fingers = member has some questions or concerns but can live with the proposal;

1 finger = member has too many questions and concerns, and more conversation is needed before able to support the proposal.

A majority of three finger responses would indicate a strong consensus; a majority of two finger responses would indicate a weak consensus; and the presence of any one finger response would “block” consensus around the proposal as currently stated. Anyone can state a proposal and call for a test for consensus at any time. If consensus is not achieved, or is weak, the first order of business is to ask the member(s) to share their concerns, and what it would need to change in the proposal for them to move to a higher level of support.

Ms. Denckla Cobb called for a test for consensus that this method be used for decision-making within the Council. The vote count was 13 (3 fingers), 1 (2 fingers), 0 (1 finger). Consensus to use this decision making process was reached.

At this point, the Council adjourned for lunch.

Open Government Requirements

Following the meal, Ms. Navarro reviewed Open Government requirements, which apply to the ACEJ. She emphasized the value of transparency in government, and that particularly with environmental justice there is a need to be sensitive to ensuring community members are able to access information and have opportunities to participate in the process. In order to abide by requirements, members of the Council may speak one-to-one about matters pertaining to the work of the ACEJ, but they are prohibited from speaking in groups of three or more members without prior public notice—groups of three or more are considered public meetings. This requirement applies to all forms of communication about matters pertaining to the work of the Council, including email and conference calls. Ms. Navarro clarified that members may, however, communicate about outside matters that bear no relevance to the work for the Council. The IEN will assist the Council in complying with Open Government requirements. Members may email Kelly Altizer (kaltizer@virginia.edu) any information they would like to distribute to the group, and she will send that information to all members with the email addresses blind carbon copied (bcc'd).

If the group decides to establish subcommittees, those meetings (in person or via remote technology such as conference call) will need to be publicly noticed so that members of the public can access them. The Secretary's office needs to receive a request within a minimum of seven days prior to a meeting in order to secure a venue and ensure public notice.

Getting to Know Each Other

Following the review of Open Government requirements, Dr. Weaver invited the members to take one minute each to share with the group what had brought them to this meeting (their background, experience, and what drew them to working with EJ).

Council Concerns, Hopes, and Priorities

Ms. Altizer gave an overview of the assessment the IEN had prepared to summarize the responses Council members provided in phone interviews prior to the first meeting. In aggregate, members were cautiously optimistic about the potential of the Council and what it could achieve. Many shared concerns that a limited scope of focus would be needed in order to achieve real results, and that sustainable funding would need to be identified in order for the Council to continue its work past the few three meetings. Several members expressed the desire to engage with grassroots communities in a way that would benefit the people within those communities and not just extract their knowledge. Climate change (including adaptation, mitigation, resiliency and other aspects) was a top concern for the Council, as was air quality and water quality. The entire summary was included in the assessment document found in the packet provided to members.

Seven Council Objectives: Setting Priorities for the ACEJ Council's Next Steps

Ms. Navarro provided an in depth review of Executive Directive 11, given the suggestion that it may represent a timely first opportunity for the Council to take action by preparing a letter

commenting on the proposed legislation. As instructed by the Directive, the DEQ has drafted regulations regarding emissions of new and existing power plants in order to regulate carbon and establish a cap and trade system. Based on this Directive, Virginia is now poised to join the Regional Greenhouse Gas Initiative (RGGI). The Air Pollution Control Board voted to move it forward, and a 90-day public comment period will open in January.

In response to a question about whether EJ concerns were considered in the formation of Executive Directive 11, Ms. Navarro shared that the content was based on the RGGI foundational model.

The IEN explained that the ACEJ could submit a letter commenting on how the regulations do or do not effectively address EJ concerns. If the group wanted to pursue this, one possibility would be to identify broad principles in this first meeting, rely on the IEN to write up and distribute these principles to the Council, invite members to provide feedback individually, and rely on the IEN to write up a draft letter to be finalized at the March meeting.

Ms. Denckla Cobb then called for a test for consensus on whether the Council wanted to continue discussion about potentially commenting as a body on Executive Directive 11. Consensus was achieved, with members supporting the proposal: 11-3-0.

Following the test for consensus, members discussed the specifics of a comment letter. Some members expressed concern about a lack of community involvement in the process of carbon regulation and felt that the comment period of 90 days is too brief. Ms. Navarro shared that a 60-day comment period is required, and since the 90-day period already exceeds that, she was not sure that the Secretary would be in favor of an extension. Support was expressed for forming a subcommittee of ACEJ members who have expertise in this area. The subcommittee could request a presentation from the EJ staff person at the DEQ, and could then determine whether it would be useful for that person to present to the full group.

A group member called for a test for consensus for asking the DEQ for a 30-day extension of the comment period. Consensus was achieved, with members supporting the proposal: 10-4-0.

Members then discussed the best way to proceed with the subcommittee and drafting of the letter to be submitted to the DEQ on behalf of the Council. Many expressed the desire for the full Council to provide input to the letter, even if the initial drafting happened in the subcommittee. A member suggested that since there was concern that actual community input might have been lacking in the drafting of the regulations, this represented an opportunity for members to engage their own communities and solicit feedback that could inform the comment letter from the Council. The subcommittee could be charged with drafting a letter, while all other members are tasked with consulting their stakeholder communities to provide feedback for the letter. Consensus was achieved, with members supporting the proposal: 11-3-0.

There was a request for a draft letter to be circulated to the group at least two weeks prior to the second meeting to give time for the full Council to review and prepare to discuss in March. Ms. Navarro affirmed that subcommittee meeting(s) will need to be publicized and open to the public, which should be coordinated through her.

Some members expressed concern that the Council might not be able to provide substantive comments within the 90-day period. Another member suggested that the Council could put forward a letter outlining observations and concerns, not necessarily in support or opposition, but just to articulate issues the Council thinks should be taken into consideration. A member noted that because public comment letters are usually sorted into “for” or “against” categories, the letter should be explicit that it is not declaring such a stance but rather contains recommendations on how the process could be improved in the future to ensure that EJ concerns are adequately reflected. With regard to the subcommittee, there was a request to identify information and outreach needs and determine what organizations should be contacted to request a presentation or speaker (for example, the Department of Mines, Minerals and Energy, and Dominion).

Five Council members agreed to serve on the subcommittee: Dana Wiggins, Dawone Robinson, Dr. Mary Finley-Brook, Faith Harris, and Dr. Janet Phoenix.

Council Member Priorities

Ms. Denckla Cobb and Dr. Weaver invited Council members to brainstorm the issues of highest priority to each person, which was also described as the one or two top achievements or issues each member wanted the Council to accomplish or address within the next two years. Ideas were collectively assessed and arranged into thematic categories as documented below:

Air

- Air pollution and public health (including asthma)
- Radford Army Arsenal and open pit burning
- Transportation (biking, pedestrian, and public transportation)

Water

- EJ informing flood resilience funding
- AVP and MVP pipelines
- Water pollution
- Sea level rise preparedness
- Emergency evacuation planning
- Water quality standards
- Fish contamination
- Lead in public schools and public buildings

Regional Approach

- Potential partners include: All agencies (HUD, DOT, etc.), League of Mayors, the EPA, the Regional Transportation Authority, Commonwealth Authority
- Identify one or two EJ issues important to each region of the state
- Understand and advocate for EJ issues that are a priority for Virginia regions
- Protecting Virginia’s food and water sovereignty among communities
- Universal food recycling law (I.C.) Act 148 – VT including agricultural access to new immigrants.

- Zoning

Education/Outreach

- Establish better education for children regarding the environment
- Denial of science
- Need representatives from DMME and Commerce and Trade at the next meeting.

Legislative

- Facility siting
- Virginia General Assembly bill for EJ
- Sustained funding for the ACEJ
- Meaningful engagement throughout all Cabinet Secretariats
- Strengthening and making permanent the ACEJ

Economic Development

- HUD
- Just economic transition for coalfield communities
- Access to renewables
- Utility cost/fairness
- W&M/ODU/GSDC – History of Hampton Roads – “Endless Harbor”
- Green jobs for the next generation
- Whole grass-root community engagement

Energy Efficiency

- Demand side management for low-income communities
- Virginia commits to the International Building Code of Energy Efficiency

Next Steps

The Council agreed by consensus (14-0-0) on the time, date, and location of the next meeting: 11:00 a.m. – 4:30 p.m. on Tuesday March 20th in Richmond.

Ms. Denckla Cobb noted the procedural need to select a Chair and Vice-Chair of the ACEJ Council at its next meeting. Members are invited to send nominations for themselves or others to Ms. Altizer prior to the March meeting. A member suggested the criterion of geographic diversity in filling the two leadership roles, recommending that the Chair and Vice-Chair should live in different areas of the state. Another member suggested the criterion that either the Chair or Vice-Chair should represent Virginia’s grassroots. The Council also needs to decide at its next meeting whether the Vice-Chair eventually becomes the Chair, and other expectations for these roles.

Before turning to the final segment of the day, the public comment period, several members requested that the public comment be moved to earlier in the agenda at future meetings so that attendees from the public do not have to wait all day to speak.

Public Comment

Members of the public in attendance were invited to speak for three minutes each. Gary Harris with the Center for Sustainable Communities shared the work of his organization and expressed his willingness to be a resource for the Council upon request. Alden Cleanthes with the Environmental Defense Fund urged the Council to focus on climate change in Hampton Roads as a top priority. Council member Dr. Mary Finley-Brook read a comment from Kate Boyle with Appalachian Voices, who was unable to attend the meeting. Ms. Boyle emphasized two priorities she hopes the Council will consider: (1) Strengthening the authority of the Council (via an Executive Order from the Governor requiring EJ to be considered in all agency decision-making, a step that Massachusetts has taken); and (2) Ensuring meaningful engagement in government (i.e. taking steps to enable the greatest number of people to participate in the process). Council member Angela Harris conveyed that Dr. Erica Holloman with the Southeast CARE Coalition has also offered her support to the Council.